

MINUTES OF THE
ASSESSING STANDARDS BOARD

Approved as Amended

DATE: February 12, 2016

TIME: 9:30 a.m.

LOCATION: NH Dept of Revenue, 109 Pleasant Street, Concord NH

BOARD MEMBERS:

Senator Bette Lasky ~ *Absent*
Senator Regina Birdsell
Representative Peter Schmidt
Representative Mark Proulx
Stephan Hamilton, NHDRA
Len Gerzon, Public Member, Chairman
Jim Wheeler, Municipal Official, City
Paul Brown, Municipal Official, Towns >3,000

Eric Stohl, Municipal Official, < 3,000
Robert Gagne, NHA AO
Rick Vincent, NHA AO, City Official
Loren Martin, Assessing Official, < 3,000
Marti Noel, Assessing Official, > 3,000
Betsey Patten, Public Member
Thomas Thomson, Public Member

MEMBERS of the PUBLIC:

Mary Pinkham-Langer, NHDRA
Ellen Scarponi, Fairpoint
Cindy Brown, BTLA
Scott Dickman, NHDRA
Mark Stetson, Avitar
Chris Boldt, DTC
Kristen McAllister, Tri-Town
Joe Lessard

Kevin O'Quinn, Fairpoint
Teresa Rosenberg, Devine Millimet
Jon Duhamel, Laconia
Jim Michaud, Hudson
Joseph Devarenne, Concord
Norm Bernaiche, Tri-Town
Andrea Curtis, GES

Chairman Gerzon convened the meeting at 9:30 a.m.

Introductions followed.

RSA 91-A

Ms. Betsey Patten discussed RSA 91-A:2 in relation to "secret ballots" pertaining to elections and the need to keep things transparent. Under RSA 91-A:2 II. "no vote while in open session may be taken by secret ballot." Ms. Betsey Patten also spoke regarding RSA 91-A:1-a IV. "Information" means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form in relation to an email that should have been brought up in open session and to be mindful of transparency and accountability to the people. Representative Schmidt asked if Attorney Chris Boldt had any thoughts to add. Attorney Boldt spoke of RSA 91-A and talked of secret ballots and cautioned on email usage etc.

Elections

Mr. Bob Gagne spoke well of Chairman Gerzon as continuing chairman and asked to withdraw his name for election to chairman. ***Mr. Gagne made a motion for Chairman Gerzon to continue as Chairman unanimously, Mr. Tom Thomson seconded.*** Mr. Thomson spoke of his concern regarding the secret ballot occurring in the first place. A discussion and clarification followed between board members. ***All approved the motion for Chairman Gerzon to continue as Chairman unanimously. Mr. Eric Stohl moved to nominate Mr. Gagne as Vice-Chairman, Mr. Steve Hamilton seconded. All approved, motion passed.***

Minutes of 1/29/16

Mr. Bob Gagne moved to accept the minutes, Representative Proulx seconded. A discussion followed regarding a comment made in the January 29, 2016 that was incorrect according to "RSA 21-J:14-a IV. The board shall annually elect a chairperson from among its members." It was decided a footnote would be added to correct this. **Mr. Bob Gagne made a motion to make this correction, Representative Proulx seconded.** A lengthy discussion followed on making sure that significant comments from members of the public are being noted in the minutes. **Representative Proulx moved to request that speakers of the public be identified in the minutes, Senator Birdsell seconded. All approved.** The meeting was brought back to the original motion regarding accepting the minutes. **All approved accepting the minutes as amended.**

Telecom/547 Committee Update

Ms. Patten spoke of a concern under RSA 74:19 Inventories of Telecommunications Poles and Conduits on the "description of the conduit when available" would mean that companies would have to start digging up their conduits in order to comply with the inventory. Ms. Patten confirmed that was not the board's intention. She read into the record for information on conduits in the past: "best available description of conduits using historic information available as of the effective date of H.B. 1198." Ms. Patten then read 74:19 (d) "An accurate description of conduit additions, replacements and deletions in the format previously reported." Mr. Steve Hamilton added that there was no change to RSA 75.1. **Mr. Bob Gagne moved to endorse 74:19 changes as recommended by 547, Ms. Loren Martin seconded.** Ms. Marti Noel questioned "shall vs may" under 74:19 I. Ms. Patten and Mr. Hamilton replied. Mr. Hamilton further explained the form is required to be filed, but that the law not be so specific to limit what might be on the form, as the information may change through time; and they do not want the form to be so constrained by the law that it won't be able to change with changing available information.

Ms. Andrea Curtis spoke of **(d)** and does not feel it would be unduly burdensome to expect that the industry companies provide the length and size of the conduits going forward. Mr. Jim Michaud spoke referring to **(c)** that the industry talked about how they take an original cost number, allocate a percentage to a host or main community such as 75/25 for example, and the remainder goes to a neighboring community; he asked how this would be done. He further asked if the conduit owner is going to report the original cost and what they allocate, is the Department then going to change that allocation? Mr. Gagne responded that the idea is that they have to report the best information they have available. He gave an example of Manchester and Goffstown exchange. Mr. Hamilton agreed with Mr. Gagne and advised that there is logic behind the calculation; his recollection is it is not that random, it is based upon the exchange accounting of it in the past rather than physical location. Mr. Michaud then asked about the allocation etc. Mr. Hamilton advised it is premature at this point to discuss, but he did advise that the valuation would be accomplished by the municipality not the Department etc. Attorney Boldt then commented on his concerns on the "shall and may issue". Mr. Rick Vincent made a comment about being unsure if this is premature or not. Mr. Brown also commented on his concern of "shall and may" in the first paragraph of 74:19 and suggested different wording. Chairman Gerzon then recognized/asked Mr. Gagne to take over as temporary chair during this discussion. Mr. Hamilton and Mr. Gagne explained this is not really premature as all of this is going to be put on the books at the same time. The discussion continued regarding the PA-34 form, HB 1198, RSA 74:18 "more wording" etc. Mr. Michaud questioned that the wording doesn't actually say the Department is actually responsible for the form; but it's assumed - who else would do it? Mr. Hamilton replied that forms under Chapter 74 are a duty of the Department. Mr. Michaud then asked about the "unincorporateds". Mr. Hamilton advised that the county commissioners act as the governing body for the purpose of administering property taxes. Mr. Michaud asked about 74:18 V. Mr. Hamilton advised he believed that 74:18 V was created as a protective measure. Mr. Michaud replied that he's requested information from the telecom industry but it wasn't provided. Ms. Ellen Scarponi answered that they never said they wouldn't provide the information; they won't provide statewide information to an individual town prior to this being finalized etc. A brief discussion followed. Mr. Norm Bernaiche talked of losing "right of appeal". An explanation from Ms. Patten followed regarding the legislature. Mr. Hamilton spoke of 74:12 and doamage etc. Ms. Noel asked about the penalty fine. Mr. Hamilton was unsure but believed there is a limit on the amount of the fine, possibly \$1,000. **(Mr. Gerzon asked that the record show that he abstained from all of item IV on the agenda.) Ms. Noel made a motion that each form shall include at a minimum the following information. Ms. Loren Martin seconded. Motion passed 7 - 6. Amendment passed 14 - 1.**

Ms. Patten proceeded to discuss the 72:8-c formula: the Replacement Cost New (RCN) of the telecommunications pole or conduit, less depreciation calculated on a straight-line basis for a period of 40 years with a residual value of 20 percent. On or before July 1 of the tax year, the Department of Revenue Administration shall provide to every municipality a schedule of telecommunications pole and conduit RCN, using national telecommunications industry standard cost data, calculated annually using a 5 year rolling average. Mr. Jim Wheeler did not feel the numbers were adequate (too low) and will be changing his vote today. Ms. Noel asked Mr. Wheeler if he had another idea. Mr. Wheeler voiced his concerns regarding economic obsolescence, useful lives, and the fact that geographically “we’re in a less severe area” etc.

Mr. Paul Brown handed out paperwork and spoke of the long life of poles; how he would like to see a higher number; and a discussion followed. Mr. Gagne reminded of concessions. Ms. Andrea Curtis spoke of longer life, less depreciation and the Department developing the RCN on poles and conduits and reporting at original cost etc. Mr. Hamilton discussed inventory and some may be reporting inventory information at the original cost. Ms. Ellen Scarponi clarified that the 30/20 numbers were not from the industry but put forth by legislation etc. Mr. Jim Wheeler spoke of H.B. 547 amended. Mr. Norm Bernaiche agreed with Mr. Wheeler and Representative Schmidt regarding best technical answer, best numbers, taking to the legislature and staying with technical vs. political.

Mr. Tom Thomson, Mr. Bob Gagne and Mr. Hamilton then had a discussion (including handouts) regarding the range, the valuation issue etc. Mr. Scott Dickman explained his research and findings (handouts). Ms. Andrea Curtis stated that Massachusetts values much more than just the poles and conduits – they’re much different than New Hampshire. Mr. Joe Lessard commented that this board needs to be the (ASB) technical committee. Ms. Kris McAllister reminded “we’re here for the taxpayers, I listen to the nationwide indexes - we don’t value anything nationwide, we are in New Hampshire, it’s specific to New Hampshire”, and feels this class of property is getting some “major special treatment”. It is “very political” in her opinion and she thinks there is “a lot going on behind the scenes” and “doesn’t feel it’s fair to her taxpayers” and defers to Representative Schmidt etc. to handle in the legislation and let it be “on them”. Mr. Dickman responded and explained his thoughts on this regarding special assets etc. Attorney Boldt asked Mr. Thomson about current use, this bill and open space. Mr. Gagne responded the law reads now that you appraise everything at market value highest and best use (with exceptions) = current use and spoke of open space etc. Mr. Hamilton responded about the Constitution being amended in the late 1960’s to allow for the land conservation program (current use) - it authorized the valuation of property at their “current use”. Attorney Boldt spoke of LUCT, how this gives him “great pause” and voiced his concerns.

Mr. Steve Hamilton made a motion to recommend the reported revision from the subcommittee as included here, which is 40 year life, 20% residual value. Representative Proulx seconded. Ms. Marti Noel stated they haven’t discussed the national telecommunication standards. Mr. Hamilton reminded that they don’t want to imbed into law a requirement to use RS Means. Mr. Jim Michaud asked for confirmation that this does not apply to cell towers – they are not considered poles. His concern was RSA 75.1 as amended and other half of poles. Mr. Hamilton stated that he did not believe this had ever come before them before regarding towers. He did not believe that cellular towers would in any way be part of that description of property and referred to RSA 72:8 etc.

Mr. Eric Stohl advised that if he had been at the subcommittee meeting during the vote, he would not have voted for 40/20. He would support 50 years but only if the floor is 25. Mr. Paul Brown agreed with Mr. Stohl and that he would be voting against also - his concern also being the length of years. A discussion followed with Mr. Hamilton and Mr. Brown regarding PUC, regulations, burdens, and current cases before the courts. Mr. Thomson asked if any kind of analysis on this had been done and if it were to go through, how would that impact the total number of tax dollars coming in? Mr. Dickman responded he had not analyzed that; and he felt that, at this stage, it would be an inappropriate study to undertake because they are not looking for political consideration as to strengths and weaknesses of the outcome. He also mentioned the technical nature of the economic life and the way to calculate depreciation etc. Mr. Michaud then commented on RSA 72:8-c – the law has unintended consequences, that whatever passes in the Legislature is probably going to be used to force and incur settlement of the many cases out there – which would make a statement about the past as well.

Mr. Gagne brought the discussion back to the motion on the table of the recommendation of RSA 72:8-c as was handed out of 40 years and a 20 floor. Motion failed 6 – 7, which made it 30 years and 20% floor. Ms. Noel stated it was still up for debate. Mr. Gagne advised that he did not feel the ASB had made a

recommendation. **Mr. Paul Brown moved that the ASB not recommend until they're given more time to study. Ms. Noel seconded - with discussion.** He felt the board needed to make a statement to go to the Legislative committee. Mr. Hamilton was not in favor of the idea of not making a recommendation; he was concerned they would lose their voice in this issue. Representative Schmidt questioned what impact this proposal would have with regard to the pending court situation if a recommendation is made as he was reluctant to engage before the courts had ruled. Mr. Gagne discussed his observations regarding the three legal points, value issues etc. Mr. Stohl advised he liked the formula but not the numbers in the formula. **He made a motion to reconsider the vote. Representative Schmidt seconded. Mr. Brown and Ms. Noel both withdrew their previous motion (and second to the motion).** Mr. Stohl then advised he would change his vote for 40/20 if this meant going in with a formula. Attorney Boldt gave guidance on the motions. **Mr. Stohl and Representative Schmidt both withdrew their motion, and second, to reconsider. Mr. Stohl then made a motion to change 72:8-c to 50 years and 20 for floor. Ms. Loren Martin seconded.** Mr. Tom Thomson asked Mr. Stohl if he would consider 45 years. Mr. Stohl advised he would like the motion to stay. Ms. Noel spoke of adding additional wording and replacing RS Means etc. Mr. Hamilton observed there is a motion on the floor adopting a recommendation substituting 50 for the 40 and if that didn't pass then maybe going with Ms. Noel's suggestion. Further discussion followed with Ms. Martin, Representative Proulx, Mr. Dickman and Mr. Gagne regarding referencing a specific company (RS Means) and the ramifications etc. Mr. Michaud spoke of the subcommittee being one or 2 members short, FERC, category 364, wood poles and steel poles and 60 year life etc. He thought 50 was a good compromise. Representative Proulx moved the question. **Mr. Gagne brought the discussion back to 72:8-c as written with the exception of changing to 50 years. Motion passed 8 – 5.**

Ms. Patten asked if there was someone that could vigorously support 50/20. Mr. Gagne agreed that people need to have their voices heard. Mr. Hamilton will testify for ASB and NHRA Commissioner. **Mr. Hamilton made a motion to recommend adding a provision to RSA 21:J-14b under the powers and duties of the board be increased to include a new (e) the annual determination of a schedule of telecommunications pole and conduit current use values pursuant to RSA 72:8-c, and the local use thereof. Such schedule shall include the appropriate total depreciation based on actual age of poles and conduit. (And further under II. add the phrase to the second sentence), and one public forum dedicated to the annual determination of pole and conduit values. Representative Proulx seconded.**

Mr. Jim Wheeler discussed the cost of working in bedrock and multiple values etc. He spoke of his concern regarding language being pulled out and setting values going forward - that they won't be able to use local factors. **Mr. Wheeler made a motion to amend the language that says annual determination of the scheduled telecommunication pole and conduit current use values which may consider the local geologic conditions pursuant to RSA 72:8-c.** Mr. Wheeler confirmed this would be added after "values". **Ms. Marti Noel seconded.** Mr. Hamilton discussed his concern of pole by pole analysis. Mr. Wheeler stated that the methodology he proposed would not have resulted in a pole by pole calculation, it was to come up with a factor to apply across the full inventory of poles. Mr. Dickman reminded cost not value. Attorney Boldt reminded starting with replacement cost so it does make a difference; "now is the time to put that language in". Mr. Hamilton spoke of cost approach, functionally obsolete, curable, incurable and that a broad geographic location may have easy and hard places to drill. **Mr. Gagne brought the discussion back to Mr. Wheeler's motion. Motion failed 11 – 2.**

Mr. Michaud stated that the language is not in any of this proposal - that the valuation shall be equalized for the purpose of assessing taxes and it is in the current use statute. He suggested adding that. He also spoke of there being "no appeal mechanism". He stated the community would be forced to take a number, send out the bill, and then have to defend that appeal – "there needs to be an effective appeal mechanism". Mr. Hamilton spoke of there being no specific appeal processes for a municipality, but he did advise of general appeal of RSA 76:16-a and 17. A discussion then followed with Mr. Rick Vincent, Mr. Gagne and Mr. Hamilton regarding the municipality having to pick up the cost, apply the formula and appeal the assessment etc. Ms. Loren Martin commented on 21:J-14b II., the municipality would have the opportunity at the public forum to have input into the range or value etc. **Mr. Gagne moved the question regarding the recommendation of the proposed language under 21:J-14b adding a new (e) and adding a phrase to II. Motion passed 11 – 4, 2 opposed and 2 abstained.**

The meeting was turned back over to Chairman Len Gerzon. Ms. Patten spoke to Chairman Gerzon regarding the NHAEO code of ethics, abiding by governing documents and unfunded mandate. Ms. Patten then passed

out her response to Ms. Loren Martin's email. Chairman Gerzon suggested putting it in to discuss later, and accept into the record for the 2016 Priority List.

A discussion followed about appearances by members of the ASB to the Tuesday hearing (officially or unofficially). Ms. Patten advised that Representative Abrami had asked her to be there as she chaired the subcommittee. Mr. Gagne agreed. Mr. Paul Brown advised he would attempt to appear. Mr. Jim Michaud asked how the 4 items will be transmitted to the ASB. Mr. Hamilton volunteered to send to Representative Abrami and Senator Boutin a copy of the recommendations of the ASB. A discussion followed regarding the 4 items. Ms. Patten also reminded that when Mr. Hamilton does the administrative work, it is as DRA not so much as a member of ASB. Ms. Ellen Scarponi asked that the letter reflect the recommendations of the subcommittee as well as the full ASB due to all the work the subcommittee also did. Ms. Patten said that cannot appear in the letter itself. Mr. Paul Brown confirmed he will speak of longer life.

Mr. Norm Bernaiche spoke of his concern of the door "being opened" regarding the separation of telecommunications and utilities; "it's going to rear its ugly head". Ms. Patten stated they have the right to ask, it's our duty and obligation to listen to the taxpayer etc. Mr. Rick Vincent advised he agreed with Mr. Bernaiche that it's just going to "grow". He is "totally opposed to what they" (the board) "just went through" – standards board vs. values board. Mr. Hamilton stated we're here to represent taxpayers; to be sure there are standards for the valuation of all taxpayers' property; and further mentioned standard 6, transparency etc.

Next meeting tentatively set for Friday, March 11, 2016 at 9:30. Room availability will be confirmed.

Mr. Steve Hamilton moved to adjourn; and Ms. Patten seconded.

Respectfully submitted,

Elizabeth McGill

Municipal and Property Division
NH Department of Revenue Administration

A recording of all meetings are recorded and available

Documentation relative to the Assessing Standards Board may be submitted, requested or reviewed by:

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