MINUTES OF THE
ASSESSING STANDARDS BOARD

Approved as Amended

DATE:  April 14, 2017    TIME:  9:30 a.m.

LOCATION:  Legislative Office Building – Room 303, 33 North State Street, Concord, NH

BOARD MEMBERS:

Senator James Gray  Eric Stohl, Municipal Official, < 3,000 ~ Absent
Senator – No Appointment Robert Gagne, NHAAB, At-Large Member
Representative Peter Schmidt ~ Absent Rick Vincent, NHAAB, City Official
Representative Mark Proulx ~ Absent Loren Martin, Assessing Official, < 3,000
Betsey Patten, Public Member, Chair Marti Noel, NHAAB, Towns > 3,000
Stephan Hamilton, NHDRA Len Gerzon, Public Member
Jim Wheeler, Municipal Official, City Thomas Thomson, Public Member ~ Absent
Paul Brown, Municipal Official, Towns >3,000

MEMBERS of the PUBLIC:

Mary Pinkham-Langer, NHDRA Jon Duhamel, Nashua
Josephine Belville, NHDRA Jim Michaud, Hudson
Joe Devarenne, Concord Sue Golden, Concord
Tressa Northrop, Unitil Jonathan Giegerich, Unitil
Jim Commerford, Meredith Scott Bartlett, Goffstown
Tom Hughes, BTLA Teresa Rosenberger, Devine Millimet
Gary Roberge, Avitar Robert Estey
Timothy Fortier, NHMA Charelle Lucas, George Sansoucy

Chair Patten opened the meeting at 9:30 a.m. Introductions followed.

Minutes

Chair Patten requested a motion to accept the minutes of the March 24, 2017, meeting. Mr. Hamilton motioned to accept the minutes. Mr. Wheeler seconded the motion. Ms. Noel had the following suggestions:

☐ Page 2; 1st Paragraph under DRA Utility Valuation Method - Clarify the appeal documents distributed.
  o “Chair Patten clarified the Bath and Brentwood” appeal documents distributed for discussion…”

☐ Page 4; 2nd Paragraph following bullet points – Clarify the following statements.
  o “An example of a small subdivision was used to discuss who installs the poles necessary, what the associated costs are and whether or not a rate of return can be earned on that property.”

☐ Page 5; 2nd paragraph; Lines 2, 3- Change “used” to “using”
  o “…would the same assumptions and process be the same as an appraisal using this method…”
He followed by saying the items was included were as taxable.”
Confusing sentence, reword.

HE stated the items included in the miscellaneous figure were taxable expenses.”

No further discussion. Chairman Patten called the question to approve the minutes of March 24, 2017, as amended. Mr. Gerzon abstained. All others approved.

Chairman Patten stated she printed the e-mail from Mr. Haas as well as the court cases referenced and that this information will be given to the manual subcommittee for review. The reference manual update is anticipated to take place later this year and a decision as to whether or not to include the court case(s) in the manual will be determined at that time by the subcommittee.

Chairman Patten stated she met with Chairman Berry of the Science, Technology and Energy Committee and reported the board is gathering information from assessors on the different valuation methods and techniques they use to appraise utility property. Chairman Berry stated he would like a report by the middle or end of June, therefore, Chairman Patten stated she would like to compile and review the information received by the June 23, 2017, meeting to be able explain to the committee how the appraisals are being done.

Chairman Patten summarized the upcoming presentations. Mr. Scott Bartlett of Goffstown will present on April 28 and Mr. George Sansoucy will present on June 9. Unitil has been invited back to explain how they determine their value, Mr. George Hildum will be sent an invitation to present and Mr. Dickman from the DRA will be returning to complete his presentation. The dates for these presentations have not yet been confirmed. Mr. Michaud asked for clarification that the appraisal presentations today and forward are not based upon years under appeal. That was confirmed; the reports being discussed are not under appeal and are public record.

Chairman Patten added that she wrote a letter to the three commissioners and legal counsel of the Public Utilities Commission (PUC) inviting them to talk to the board. She has not received a response to date.

Mr. Giegerich and Ms. Northrop of Unitil distributed reports of information the board had requested. The first report provides information for the years 2009-2016 of property tax as a percentage of their operating and maintenance expenditures. The second report is a list of towns by the two divisions in NH reporting net book, assessed value and variance. Ms. Northrop confirmed this was public information and it comes from their FERC report and PUC filing. Mr. Michaud asked if the documents were available to the public and if yes, could he have a copy. It was confirmed they were and the reports will be provided by the board clerk.

History of Unit Method

Chairman Patten welcomed and thanked Mr. Bob Estey for coming to offer a history of the unit method and answer questions. Mr. Estey explained the unit method came about in the mid-1970s for equalization purposes. Assessments and ratios for land and land and buildings varied greatly at that time with many towns assessing at less than 25% of market value. There was no consideration for neighborhoods or subsets and looking at the relationship of the whole. The value on utility property compared to the value of a town also varied greatly; in some cases the utility was assessed 3-4 times more than the entire town. Therefore, using the ratio against utility property could significantly impact property tax in a community; which at this time it did, particularly in the communities along the Connecticut River, Newington and Bow.

Some research was done and a method was found called a unit basis that calculated a value of the whole and then distributed value to the different counties (which is how assessing is done in the western part of the country). Mr. Estey attended a school in Wichita and received some basic training of this process. To begin,
they looked at a regulated cost approach because the PUC regulated the utilities and determined what the utility could earn based on the original cost. It was the PUC that said to some utilities that their taxes were out of line. This prompted some appeals of assessments by the utility companies.

The school in Wichita was an assessing program for everyone and was attended, in large part, by accountants so assessors formed their own group called WSATA, as a utility school to run in conjunction with Wichita in an effort to make the process for appraising utilities more market oriented. As the process progressed, the information became more technical including the use of discounted cash flow and analysis. The unitary value was used primarily for equalization purposes and equity for the distributional programs. There were large differences in the beginning. The department’s values were not far from net book; they were higher because net book was not being used as the basis for determining the value. Using original cost, variances between the income approach and cost approach were due to abatements which affected the income for that year, otherwise there was consistency between the two approaches.

Mr. Estey continued, the use of the unit value began in the smaller communities in which the department performed revaluations, assessment and maintenance work. The information was readily available to defend the value in an appeal, which there were not a lot of because the assessed value using the unit method tended to be less than the equalized market value. At some point, there was a release for other towns to use the DRA value.

Mr. Gerzon verified with Mr. Estey that the DRA changed from using the ratio on utility property to the unit method prior to 1977 or 1978 and that the discomfort he expressed using the ratio on utility property was particularly in communities along the Connecticut River and there was nothing in statute or administrative rules that provided a basis for that discomfort. Mr. Estey explained in the beginning the unit value and assessment were compared; if the assessment was greater, the assessed value was used for equalization because the town had the effort to collect even if it was over-assessed. If the assessment was less than the unit value, the department adjusted the assessed value by the difference for equalization purposes.

Mr. Gerzon asked why the unit method was used versus assembling the costs of the individual towns or the whole state and then trend up to do a cost approach. Mr. Estey replied it makes sense to know what something is worth before determining what the pieces are worth. He added, the problem with the unit method is allocation and “how” to determine the percentages. Mr. Gerzon asked why the income approach was not applied to the methodology. Mr. Estey replied it had a lot to do with the embedded debt rate the utilities used which changed as their debt change. This created a mathematical calculation of rate that affected how the PUC determined how much the utility could charge for income. The other factor was abatement and how it could change the income.

Mr. Gagne asked Mr. Estey if it could be stated that assessing is better than it was in the 1970s. Mr. Estey addressed equalization and stated it is far better than it used to be as strata were not done years ago. The unit value was not usually far from net book value however there were considerable differences compared to assessed values. He added he does not believe you can value anything until you know what the whole is worth and that allocation is a problem all its own. Mr. Gagne asked how the state allocated the value. Mr. Estey replied, they used the original cost because it indirectly considered depreciation as it was already embedded (versus using book depreciation), which caused some difference between original cost and net book in terms of the valuation process. Using a replacement cost does not apply to value rather it is used for the purpose of determining an allocation factor. Materials and supplies were also added because statute allowed for that so those were a part of the original cost figure but not the value. He stated allocation will always be a problem; somebody wins and somebody loses. Mr. Gagne asked if any other methods had been considered back then; Mr. Estey replied no and added that synergy, everything working together, should also be considered.

Mr. Gerzon verified that WSATA, Western States Association of Tax Administrators, was the group that left Wichita and have since grown and built their own organization, manual and advocacy on behalf of the tax
Mr. Michaud asked Mr. Estey if there was an administrative rule or state law that said how they were supposed to do allocation. Mr. Estey replied no. Mr. Michaud stated he doesn’t think there is one today. Again to Mr. Estey, when the department applied values to communities they performed revals in, did the department provide a copy of the appraisal back then? Mr. Estey replied no.

10 Minute Break

**Gary Roberge, Avitar – Merrimack Appraisal**

Mr. Roberge began the review of his replacement cost less depreciation approach. He stated the Merrimack Appraisal distributed explains his opinions and beliefs. He will review what he does and why he believes it is a reasonable approach and will try to answer any questions.

For each utility appraisal, Mr. Roberge stated he requested from the utility a report of all their assets in town based on year in-service and the original cost and received fairly lengthy reports with detail of all of the assets in the town with their federal energy regulation codes as well as the original cost and year in-service.

Years ago he wrote a program using the Handy Whitman codes and factors, which are updated twice a year and entered into the program when new data is released. A value base of 1973 is used and the values are brought forward to the current year. From this program a summary report is produced with the original cost, the replacement cost, the amount of depreciation and the end results. Depreciation is based on 30 years of historic data captured for most utilities in the state; with this data he can determine how long different aspects last that are still in service, how many years are still out there and then develop an average age life depreciation rate. This is somewhat different than utilities; the depreciation they use is generally an accounting form to get back their investment as reasonably and quickly as possible but is not necessarily the actual life of the item. The end result is a replacement cost less depreciation answer and for him it is the only way to develop an opinion of market value for any utility in the state.

With this approach, he is using what is actually in that community so there is no allocation. If this approach were used to value the entire state, using the same method of replacement cost less depreciation and then allocating, the value would be the same because the allocation would be based on the replacement cost less depreciation in each community. Mr. Roberge stated his opinion of market value for Merrimack is very similar to the value by PSNH but he thinks that is due to the large amount of construction for which the assessment is one-year behind. He added the reasons for not using the income or sales approach and why they cannot be used to determine an opinion of market value are explained in the appraisal report. The cost less depreciation approach is pretty straightforward.

Mr. Hamilton asked if PSNH’s opinion of value was included in the appraisal report. Mr. Roberge answered it was not; the report is his opinion of value. The report PSNH provides indicates a total taxable property value; the detail that he requests from the utility is the year in-service and original cost and the summary of that information is included in the appraisal. Mr. Roberge explained that he has been asked by several utilities not to provide the details unless he was going to court in order to maintain a level of confidentiality. To maintain the relationship with the utility, he provides a summary in the appraisal report which the utilities have agreed is reasonable. The utility is provided a copy of the same appraisal report distributed including the results and summary; the entire document with detail is maintained in his company’s file. It is available for review however he would request approval from the utility to provide a copy.

Mr. Gagne questioned whether the definition of fair market value was part of a standard definition. Mr.
Roberge believed that it was. Mr. Gagne questioned the following statement, “...a rate of return is virtually guaranteed of and on the investment.”, and asked if that negates the need for economic depreciation and if a rate of return can be earned on the replacement cost less depreciation value. Mr. Roberge responded they are earning a rate of return based on their investment and he does not believe economic depreciation is required because part of regulation is that they regulate a rate of return which guarantees them a monopoly. He feels that regulation is both negative and positive. The negative can be and is measured however it is the positive that is difficult to measure because of the lack of market data related to utilities. He believes the positive is equal to the negative but he can’t prove it using typical appraisal methods.

Mr. Gerzon, referencing the model and iteration of Handy Whitman less depreciation for an age-life basis, asked if Mr. Roberge could explain how he considers land and public rights-of-way. Years ago, through appeal negotiations, a value of $3,000 was determined for easements. In his opinion, a public right-of-way should not be assessed because everyone uses it. However when the court determined it was a taxable entity, there were several methods used to value them. We started with a value of $5,000 and through discussions with other assessors lowered it to $3,500. He does not believe there is one value; he believes the value of the public right-of-way is to the user and therefore should be the same.

Mr. Gerzon asked how land was valued. Mr. Roberge responded that it is the same schedule as other land in the town. Mr. Gerzon clarified that utility land owned by utilities for utility use is used in the land model. Mr. Roberge responded yes. Mr. Gerzon asked whether Mr. Roberge feels that is a consistent use. Mr. Roberge believed it was; in his opinion it was commercial use. Mr. Gerzon asked if Mr. Roberge valued CIAC (Contributions In Aid of Construction). Mr. Roberge does value it and has to value it in order to come up with an opinion of market value.

Mr. Hamilton, questioned what he felt was a limitation in the definition of fair market value in the appraisal report, and asked Mr. Roberge if he believed that definition was the most commonly used and accepted definition of fair market value and if this definition would exclude any impact on the property by regulation. Mr. Roberge replied yes and yes it would include any outside forces including regulation. He does not believe any sale of a utility is fair market value. Mr. Hamilton indicated there has been a number of Supreme court cases in NH where that kind of regulation, not even on utility property, has been determined to be necessary to be considered in order to come up with the taxable value of property. Mr. Roberge reiterated that outside forces do affect the sale of this unique property however he does not think the sale of these properties are at fair market value.

Mr. Gagne presented an example of an apartment complex where in most cases, a cap rate is developed. He asked if that income were regulated based on the rent allowed 20 years ago, wouldn’t that negate or affect the use of the replacement cost new on the value today? Mr. Roberge stated it would not negate the use of that method but would have to be accounted or adjusted for and therefore would have an impact. Ms. Martin added she feels regulation should be considered and that there are positive impacts that should be considered such as no vacancy, guaranteed rent and low financing interest rates. Chairman Patten asked for clarification as to whether or not a positive can be proven as Mr. Roberge said that it could not. Ms. Martin replied in the example of the apartment building, the positive can definitely be proven; no vacancy and a lower interest rate can be measured and proven.

Additional discussion took place pertaining to the definition of fair market value. Mr. Hamilton explained that it is critical to understand how a valuation, an appraisal is framed and the words used to define the process you go through is an important and critical part of the appraisal work flow. Understanding the rights and the property that are valued; deriving how those rights are defined and valued, that is important. There has been a lot of property in the state subject to regulations and those types of impact of regulation (Royal Gardens v. City of
Concord) where the Supreme Court examined regulation and stated that for the valuation for taxation purposes, it is important that something like regulation be considered.

Mr. Roberge stated that regulation is not only one thing, that even in the case of zoning, buyers still have a right to pay what they want. The utility regulation restricts what you can pay for it and that is what takes it out of fair market value. Market value cannot be proven because this market is not free and open because it is regulated. He believes his opinion is reasonable and defendable but as utility sales are not open fair market exchanges in his opinion, market data is not available to use in support of the replacement cost new less depreciation approach he uses. The sale will be closer to net book because that is what the property is regulated on and that is the problem, it is not market value. Everything else in assessing can be proven and defended with additional supporting market information. He added, when the legislature determines how utilities should be assessed that is best for the entire state, time should be allowed for towns that will have a significant change up or down, to make the change gradually and not overnight. Chairman Patten summarized that maybe the issue is the regulated utilities do not have a provable market value and therefore that may be the problem and that is what we need to continue to research.

Mr. Hamilton added the issue Mr. Roberge has with proving a market value for a regulated property is the same problem the towns and cities are having, estimating a fair market value in order to administer the property tax. Mr. Roberge reiterated he believes he is coming up with a good, defendable opinion of market value; what he cannot do is find information in the market to prove it. Mr. Hamilton asked when a taxpayer appeals their assessment, whose burden is it to prove what the market value of that property is? Mr. Roberge responded he believes it is both parties but the burden of the appeal is the appealing party not the municipality. Mr. Roberge added that in his opinion of market value he uses actual cost provided from the utility, replacement costs, year in-service and depreciation, all information that is provable. He clarified that what he cannot find is other corroborating evidence in the market similar to what is out there for properties such as commercial and residential to prove that value.

With regards to the example discussed about being able to value a porch without valuing the entire property, Mr. Roberge felt that you could not compare a house with a utility because that is not what his method does. If he were to use his method to the value the property in the state versus one community, the value would be the same. He is using replacement cost less depreciation. If the information provided by a utility was for the state, the value for each community would be included in that information and therefore would get the same answer. For clarification, Mr. Roberge asked what the state’s allocation was based on. Mr. Hamilton replied it was based on original cost.

Other Business

A concern was expressed that after two meetings the board still did not have a complete understanding of how the DRA allocates value to each community and that information would be important for the board to include in their report to the legislative committee. Chairman Patten stated Mr. Dickman would return to finish his presentation but a date was unknown at that time. A discussion ensued with regards to allocation and what part it played in the appraisal process and it was agreed it was an integral part of the process. A brief discussion followed about the sum of locally assessed values for communities being more than the value of the estimated value for a utility property; there is no limit to what a taxpayer may pay in taxes; and the difficulty of a taxpayer being able to appeal values in multiple communities versus appealing the sum of that value.

Next Meeting

Friday, April 28, 2017, at 9:30 a.m. at the DRA
☐ Scott Bartlett, Goffstown
Mr. Gagne *motioned to adjourn*. Mr. Vincent *seconded*.

Chair Patten adjourned the meeting at 12:08 p.m.

Respectfully submitted,
Stephanie Derosier

Municipal and Property Division
NH Department of Revenue Administration

All meetings are recorded and are available upon request.

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

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