Assessing Standards Board
Regular Board Meeting

Approved as written

DATE: July 13, 2018         TIME: 9:30 a.m.

LOCATION: Department of Revenue Administration, Training Room, 109 Pleasant Street, Concord

BOARD MEMBERS
(E) Excused absence
Senator James Gray
Senator Bob Guida (E)
Representative Peter Schmidt
Representative Mark Proulx
Betsey Patten, Public Member, Chair
Robert Gagne, NHAAO, City Official
Stephan Hamilton, NHDRA
Jim Wheeler, Municipal Official, City
Paul Brown, Municipal Official, Towns >3,000
Vacant, Municipal Official, <3,000
David Marazoff, NHAAO, At-Large Member
Loren Martin, NHAAO, Towns, <3,000 (E)
Joe Lessard, NHAAO, Towns >3,000
Len Gerzon, Public Member
Thomas Thomson, Public Member

MEMBERS of the PUBLIC
Mary Pinkham-Langer, DRA
Mark Dean, NHEC
Bob Edwards, Antrim
Teresa Rosenberger, DMB
Joe Devarenne, Concord
Jim Michaud, Hudson
Charelle Lucas, GES

Chair Patten convened the meeting at 9:35 a.m. and welcomed those in attendance. Introductions followed.

Chair Patten reported she had spoken with the Governor’s Office about the vacancy on the Board of the municipal official representing a population less than 3,000, formerly filled by Selectman Stohl from the Town of Columbia. The Governor’s Office indicated they would like have geographic representation, preferably from the North Country, and that is the reasoning why Mr. Edwards from the Town of Antrim has not been appointed.

Minutes
June 1, 2018 - Regular Board Meeting

Mr. Brown motioned to approve the minutes of the June 1, 2018, regular board meeting; Mr. Thomson seconded the motion. Mr. Thomson requested it be noted on the vote on page 2 for the nomination to represent the Board on the study commission that he abstained from the vote. Ms. Derosier noted the bold edits with the arrows on the draft minutes, beginning on page 5, represented requested edits by Mr. Sansoucy. She confirmed the edits were correct based on the presentation. Chair Patten asked for comments. After a brief discussion, Chair Patten stated this was not normal procedure, however because it was a presentation and the edits provided were for clarification they would be accepted in this instance. Chair Patten called the motion to approve the minutes of the June 1, 2018, regular board meeting as amended. Representative Schmidt abstained. All others approved. Motion passed with a majority vote.
June 27, 2018 – Utility Valuation Subcommittee Meeting

Mr. Hamilton motioned to approve the minutes of the June 27, 2018, utility valuation subcommittee meeting. Mr. Lessard seconded the motion. Discussion followed and the following edits were requested:

- Page 2, paragraph 5, line 7 –
  - Correct the word “tariff” to “tarrifed”: “[…] relating to mixed lines running tarrifed electricity and distribution electricity. After further discussion, it was reiterated […]”

- Page 2, last paragraph, last line –
  - Add the word “been” to the last sentence: “[…] lines is the public right-of-way and a different formula has been suggested for that; this focus has been about the […]”

- Page 3, paragraph 3, line 1 –
  - Change sentence to: “Mr. Wheeler feels valuing this land the same as valuing any other land is the simplest way and makes the most sense.”

- Page 3, paragraph 2 under Land Owned in Fee, line 4 –
  - Delete “in a”: “[…] residential and commercial land values within each [in a] community and a formula that can be simply filled out. He […]”

- Page 3, paragraph 5 under Land Owned in Fee, last full line –
  - Add “or disagree” after agree: “[…] acre primary use of the property because there is a substation in one corner of that lot. Mr. Lessard did not agree or disagree.”

- Page 4, paragraph 1, line 7 -
  - Add the word “it”: […] of that land and allowing it to be placed into the current use program may resolve the issue. Mr. Bartlett and Mr. […]”

- Page 4, under Formula for Public Right-of-Way and Suggestions for a factor –
  - Delete [*] on second bullet: “[*] This is close to 0”

- Page 5 – Delete second and third bullets
  - "This is that one where, he doesn’t believe you can argue 0 but thinks you can argue close to 0”
  - I think you can argue significantly more and this is always going to be there

- Page 5, paragraph 1, line 2 –
  - Replace “Irvine” with “Urban: “[…] ASB and the commission with this resource which shows the various kinds of [Irvine] Urban sections of the placement of […]”

- Page 4, paragraph 4, lines 2 and 3 –
  - Original sentences: “Mr. Wheeler thinks land should be valued by the assessor; he does not feel the system is broken; he acknowledged that more research for the current use idea would be needed. He has some concern that once placed in current use, it stays forever.”

  - Requested edits: “Mr. Wheeler thinks land should be valued by the assessor; he does not feel the system is broken; he agrees with the acknowledgement that more research for the current use idea would be needed. He has some concern that once placed in current use, it stays forever.”

Mr. Wheeler expressed concern this statement, as written, conveys that he is promoting the idea of current use and that was not his intention. He requested the following amendments:
Amended sentences: “Mr. Wheeler thinks land should be valued by the assessor; he does not feel the system is broken; he acknowledges that more research of the current use idea would be needed. He has some concern that once placed in current use it stays forever.

Chair Patten called the motion to approve the minutes of June 27, 2018, utility valuation subcommittee meeting as amended. Representative Schmidt and Mr. Edwards abstained. All others approved. Motion passed by majority vote.

Utility Valuation Subcommittee Recommendations dated July 13, 2018

Chair Patten reported the subcommittee met many times; a lot of discussion took place on various ideas with some receiving a consensus and others that did not. A consensus was not reached on a formula to value land owned in fee and there are two recommendations. She acknowledged this will be a lot of information for the Board to absorb and a lot of it will be new for some members.

She reported that she received a message from Representative Abrami, Chair of the Commission, and he indicated the earliest meeting of the study commission would be the week of July 23. It is her hope the ASB can approve a recommendation for Mr. Thomson and herself to present to the commission. If the Board needs more time to consider the information presented at this meeting, she suggested next Friday would be the last day to get together before the commission meets.

She read the introduction statement of the Utility Valuation Subcommittee Recommendations handout:

“The subcommittee recommends that the following formulas be the basis of a recommendation from the ASB to the HB 324 Commission. This recommendation relates to the valuation of distribution property owned and operated by NH PUC regulated utilities. It does not relate to the valuation of FERC regulated transmission lines and/or merchant generation facilities. This valuation method is of the current use, rather than the highest and best use of the property.” She added based on the recommendations by the subcommittee, approval by the Board, study commission and legislature would require amendments to RSA 79-A, Current Use Taxation.

A brief review followed about the recommendation made to the House Ways and Means Committee for valuation of utility physical property, the weighted formula of 25% of net book value / 75% of original cost. The formula recommended took into consideration information provided by Unitil and NH Electric Co-op; the legislature amended the formula to 50% of net book value and 50% of original cost.

Land Value

Chair Patten explained land value was not included in the discussion and recommendation for physical property and that is where the focus has been with the subcommittee. She explained the three types of land use the subcommittee discussed:

1. Use and occupancy of the public right-of-way;
2. Use and occupancy of the private right-of-way; and
3. Ownership of land in fee.

One idea considered was using a weighted average value per acre based on the residential and commercial/industrial land values reported to the Department of Revenue Administration (DRA) on the MS-1. By adding the residential and commercial/industrial land values together and dividing that figure by the number of residential and commercial/industrial acres within the community, you get a weighted average value per acre. This formula incorporates the unique characteristics of land within each community and is about the assessments of the
improved and unimproved properties in a community. It does not include current use land, or discretionary or conservation easements and represents the unique differences within the communities rather than a one size fits all solution.

A discussion followed pertaining to the use of values for both improved and unimproved land and the intent to provide a simple formula. A question was raised about the reason for not using the average value of improved land only. It was explained the basic theory considered is an across the fence technique along with a factor to differentiate the different types of land such as the public and private right-of-ways or land in fee. There was discussion, input and testimony on several different ideas including testimony from Mr. Hughes of the DRA, a former appraiser in the Right-of-Way Division at the NH Department of Transportation (NH DOT), who provided input on the valuation of rights-of-way.

A discussion ensued about the description of “current use” in the introduction statement of the recommendations handout. It was clarified the “current use” did not relate to RSA 79-A rather RSA 75:1 that states property has to be valued at its highest and best use except when it is valued at its current use, which is an exception, such as low-income housing, pole and conduit valuation and the valuation of a residence in a commercial zone. A suggestion was made to change the word “current” use to “actual” use and agreed to.

Mr. Gerzon commended the excellent work of the subcommittee however he feels a vote by the ASB for a recommendation on this issue is outside the realm of standards work and too political in terms of the direction. He feels a conclusion of the full ASB is wrong and he does not want to support or draw an opinion on it. Representing two of the 11-member commission, he feels it would be adequate for Mr. Thomson and Chair Patten to bring information discussed by the subcommittee and full Board to the commission rather than a recommendation by vote. A brief conversation took place about the references to current use, highest and best use, unit method and DRA and the distinction that the highest and best use the DRA is looking at is for the system and what the ASB is looking at is valuing the pieces within borders. The conversation was deferred to later when the vote was called.

Clarification was provided about the intent of the subcommittee to adhere to the 21 principles previously adopted by the Board and recommended to the legislature including creating a formula that would be consistent from community-to-community in its structure rather than its values.

Senator Gray asked if it made sense the weighted average value per acre would be closer to a residential average per acre versus a commercial/industrial average per acre. Does the math provide the expected solution and is it equitable? Of the property utility companies own, how much is residential property; how much is commercial/industrial? Mr. Lessard stated, in his opinion, the majority of rights-of-ways would be residential however the physical property would be commercial/industrial. Mr. Hamilton offered that it changes by the nature of the community as some have very little commercial/industrial land and that is why he feels the weighted average calculated with the actual values, is the way to accommodate those differences. It was noted there are some communities and unincorporated places that do not have commercial or industrial land.

Mr. Hamilton provided examples of four communities representing small, medium and large towns and one city, to help show the potential community-to-community impact using the recommended formula for the use and occupancy of the public right-of-way, not including a factor. He feels the approach shows a reasonable relationship between the value of the property and the size of the community, both in terms of its size and the number of miles of roadway. The public right-of-way can be analyzed and an outcome determined however there is no source of discreet numbers on private rights-of-way to do the same analysis. A short discussion followed including a reiteration of the intent of the ASB and utility valuation subcommittee to find a formula that is reasonable, transparent, fair and equitable and can be used by every community. No matter what the outcome, Mr. Gagne felt it
would be a compromise that will inevitably cause some people to pay more taxes and some to pay less. The formulas being presented encompass the goal of treating everyone the same regardless of local differences.

A discussion followed about whether or not the ASB should make recommendations. Mr. Gagne felt the ASB should make a recommendation on land so the lawmakers understand that it is important. He feels not dealing with it does not solve the problem; there will still be court cases. Mr. Gerzon expressed his support and respect for the work the subcommittee has done on this issue, he reiterated his opinion that the issue is too political and outside the limits and boundaries described under RSA 21-J:14. When he voted for the 25/75 formula, he understood it to include land. Since that vote, land, public and private rights-of-way, FERC tariffed corridor and FERC tariffed substations have been added which could result in more litigation by not keeping land simple. He reiterated the message could be presented to the commission by the two commission members without a vote of the full ASB.

It was stated the legislature has, in the past, given the Board issues to provide a recommendation such as the telecommunication poles and with this issue they did not. In response, it was stated the ASB was criticized by the President of the Senate who directly challenged Chair Patten about where the Board had been on the issue and why hadn't they done anything. Chair Patten stated this Board recommends legislation and if the commission or the legislature does not want the input of the ASB, they could disband it. She feels the recommendations presented are simple and reasonable for both the municipalities and utilities however if the Board feels they should not make a recommendation; no recommendation is what she will bring to the commission.

**Recommendations**

**Use and Occupancy of Public Rights-of-Way**

<table>
<thead>
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<th>(*) Multiplied by;</th>
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<tr>
<td>43,560 = Number of square feet in an acre</td>
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<tr>
<td>5,280 = Number of feet in a mile</td>
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Average value per acre per MS-1 / 43,560 (*) 5,280 (*) Miles of public rights-of-way occupied (*) Factor

Recommended Factor: .20 to 1.0

Mr. Hamilton stated he has heard not every town values the occupancy of the right-of-way which is a significant problem however even though it has not surfaced as a problem, it should be resolved. This formula provides a way to recognize that need and have it be applied uniformly, proportionally and equitably across the state.

Mr. Brown offered another inconsistency that needs to be addressed pertaining to pole licenses. Chair Patten stated that is something to add the task list as she knows there are different ways they are being treated as well. There was legislation to amend RSA 72:23 but there was no knowledge if it passed or not and was suggested that be verified.

Pertaining to Mr. Hamilton’s statement about the inconsistency of valuing the rights-of-way, Mr. Gerzon agreed and added the DRA includes the value of the public right-of-way in the unit allocated value for equalization purposes; and towns that use the DRA value have the public right-of-way value included. This approach is different than the across the fence formula used by assessors and enhances the need to work towards uniformity.

Mr. Gagne felt whatever process is determined resulting in winners and losers he thinks Manchester will make out well and he does not want to be seen as pushing for any process for that reason. He would like to see as simple a solution as possible; would like to avoid having to hire a utility appraiser and avoid litigation to the extent possible.
Discussion followed about the factor range recommended by the utility valuation subcommittee of .20 to 1.0. A range was recommended because the subcommittee could not come to a consensus on one number and those were the two numbers suggested. Mr. Wheeler felt the subcommittee did not study or get to an understanding of what the factor represented and feels the range is the right idea at this time. He suggested using the NH DOT Utility Accommodation Manual to assist with understanding the factor. Senator Gray suggested if a range is recommended, a reason for the range and description of the criteria be included.

Mr. Hamilton provided his reasons for suggesting .20. He feels the utility’s occupancy of the right-of-way is slight and negligible because they are regulated by the PUC and provide a public service over public roads; they are located on poles but also pipelines buried beneath the roadways that do not impede anything. He does not think it is fair to equate the value of the across the fence determination of a right-of-way with what they are actually doing in the right-of-way and why they are doing it there. Additional discussion followed pertaining to the use of 1.0. Mr. Gagne suggested the discussion is about utilities that have a monopoly and if the consideration is 1-foot or the shadow of the pole, he did not feel a factor was needed. In the case of utilities that do not have a monopoly, he feels a factor might be appropriate. He added the range from .20 to 1.0 was too big.

Mr. Brown made a motion to recommend the following formula for the use and occupancy of the public right-of-way: Average value per acre per MS-1 / 43,560 (*) 5,280 (*) Miles of public road. Mr. Lessard seconded the motion. Discussion. Mr. Wheeler stated he does not feel this has been studied enough and does not agree the impact of the right-of-way is slight. He believes there is more than just the pole and is a proponent of pointing out the NH DOT Utility Accommodation Manual to the commission to reference and come up with a more reasonable factor. Discussion ensued about whether or not to include the factor in the formula. Mr. Hughes suggested that part of the factor is the acknowledgement that it isn’t 100% ownership and to remove the factor would create a 100% ownership of the rights of that land. Mr. Lessard disagreed because width is not being considered therefore ownership is not part of the discussion; the effort is to value the use and the ability to put something there. It was suggested if a range is proposed and explanation is needed. Chair Patten called to motion to recommend the following formula to the commission for the use and occupancy of the public right-of-way: Average value per acre per MS-1 / 43,560 (*) 5,280 (*) Miles of public road. A hand vote was taken. 10 Yes; 1 No; Senator Gray abstained. The motion passed by vote of 10-1.

Use and Occupancy of Private Rights-of-Way

(*) Multiplied by;
43,560 = Number of square feet in an acre

\[
\text{Average value per acre per MS-1 / 43,560 (*) Width of right-of-way (*) Length of right-of-way (*) Factor} \\
\text{Recommended Factor Range: .10 to .20}
\]

Mr. Lessard made a motion to recommend the following formula for the use and occupancy of the private right-of-way: Average value per acre per MS-1 / 43,560 (*) Width of right-of-way (*) Length of right-of-way (*) Factor range of .10 to .20. Mr. Hamilton seconded the motion.

After a brief discussion about the factor, Mr. Lessard amended his motion to change the factor from the range of .10 to .20 to .15. Mr. Hamilton accepted the amendment. Chair Patten read the amended formula: Average value per acre per MS-1 / 43,560 (*) Width of right-of-way (*) Length of right-of-way (*) Factor of .15.

Mr. Wheeler clarified that he supports the formulas however he does not feel the factors were discussed enough to pick just one. For that reason he will vote against this. Mr. Gerzon added he feels this factor is the right parameter for this particular element but reiterated his discomfort with that leading to the final recommendation. Chair Patten called the motion to recommend the following formula to the commission for the use and occupancy of the private
right-of-way: Average value per acre per MS-1 / 43,560 (*) Width of right-of-way (*) Length of right-of-way (*) Factor of .15, as amended. A hand vote was taken. 10 Yes; 1 No; Senator Gray abstained. The motion passed by vote of 10-1.

10-minute break

Chair Patten stated the introduction paragraph of the Utility Valuation Subcommittee’s Recommendations will be corrected to reflect that NH Electric Co-op is not regulated by the PUC.

Chair Patten then stated the following caveat for the minutes and will be stated to the commission: The ASB has not run numbers to determine the impact on rates for taxpayers or ratepayers. Some analysis was done using information provided by utility companies to come up with the formula for the valuation of physical property recommended to the legislature however the ASB did not receive information from Eversource, the largest electric utility in the state. A factor was used to provide examples however that is not a determination of the ASB rather the commission and legislature. Assessing is not based on the outcome; it is based on best assessing practices.

Ownership of Land in Fee (by Title or Deed) Recommendation

Chair Patten reported the subcommittee could not come to a consensus on this issue, therefore two options are being submitted for discussion. She summarized the two formulas below.

1. Average value per acre per MS-1 for primarily used land; with an allowance that excess land be allowed to be placed into current use assessment pursuant to RSA 79-A; or

2. Assessed as if it were any other parcel of land by the local assessing official (*) Factor

Pertaining to recommendation #1, an example might be a utility owns a 100-acre parcel and only 20-acres are used for a substation; the remaining 80-acres would be considered non-primary or excess land. It was clarified that a factor was not included in this recommendation. A brief summary was provided for the process that Mr. Bartlett uses; he applies the cost approach for land owned in fee and regulated by the PUC. He values the parcel at its highest and best use; then applies a factor to account for the regulation.

Senator Gray questioned whether a utility can put land into current use and what the difference was between the two recommendations. Mr. Hamilton stated at this time, a utility cannot place land into current use because it already has a use for the utility and therefore cannot be used to conserve open space. It was clarified, if the formula were adopted and the law changed that would be a decision for the utility company to make, whether they want to place excess land in current use or not, which would create a land use change tax for the town if they decided to develop it. The difference between the two recommendations is in #1 uses the average value per acre per the MS-1, which is the average value of the town; #2 allows the local assessing official to value the specific property. Senator Gray questioned why land would be allowed to be placed into current use in #1 and not in #2.

Mr. Hamilton responded if the decision is to allow the local assessor to determine a value for this type of land; other laws would need to be amended to say if you are a regulated utility and own a separate property by deed, you have the right to appeal it as though it were some other property; then the utility would not have to prove what percentage of the property they are disputing, it would be focused on one property. If no change is made in the law, the argument on value would just be relocated. This type of change could be made as long as it was clear that taxpayer had a different set of rights to appeal a narrow section of value. Chair Patten explained that Unitil provided a property listing in Concord and have 15 parcels of land owned in fee. If they were to appeal, they would be appealing total value of the 15 parcels versus an individual parcel. Mr. Hamilton added one of those parcels is 132-acres, assessed at $70,550 and the presumption is that is it wetland or backland. The thought is if you can distinguish the primarily used land from the non-primary use land that is a fair way to approach it. He added he is...
Mr. Gagne raised the question if option #2 were chosen, how would you verify the regulation issues are being recognized? How could that be measured? While Mr. Bartlett is adjusting for regulation that does not mean all assessors are or that it can be verified. He is leaning towards #1 to have a simple process and avoid litigation. A clarification was made that if land is not placed in current use, it would be assessed at the average price per acre per the MS-1 within each community. That created concern for land that may qualify for current use but is not allowed or qualified to be enrolled in the current use program.

Mr. Hamilton stated that while #2 is preferred by many assessors because it does allow them to do their job and it does meet one of the 21 principles adopted, it defies some of the other principles; most importantly it does not provide a uniform way to value this property across the state. He does not believe #2 will eliminate dispute but if there were special treatment given for the valuation and appeal of those properties, different than everyone else’s rights, it could work. Allowing these properties to be valued like every other property must protect the utilities like every other property owner. He reiterated that with appropriate limitations #2 could be adopted however he is not sure that it does keep with enough of the 21 principles and prefers having a simple formula that can be calculated by each municipality as the best way to meet as many of the principles as possible including consistency and year-to-year expectations.

Mr. Wheeler stated it is important to be consistent and feels that the development of the 21 principles did not include the consideration for land; only the fixtures, poles, wires and pipes, etc., that land was specifically excluded. He feels Mr. Hamilton’s suggestion to create specific language allowing a utility to appeal a specific property makes sense because it allows the parcel to be valued in consideration of the context of what that parcel is; it allows for an appeal just like any other property owner and so he thinks that might be a good option. Mr. Lessard stated he would lean toward #2 however he feels the statutory changes necessary would be difficult. The concern expressed with #2 was properties currently assessed at tens of thousands of dollars could increase to millions of dollars and the opposite would also be true. Mr. Lessard moved to adopt both recommendations and present to the commission with the provision that #2 include the allowance of excess land to be placed into current use, if it qualifies. Mr. Hamilton seconded the motion. Discussion followed.

Mr. Lessard stated the reason for his motion is there are many reasons to have one option or the other and feels it should be a policy decision. Mr. Gerzon summarized the unit method methodology Mr. Dickman, the former Utility Tax Appraiser for the DRA, used to value utility property that involved determining the market value through an analysis of the cost and income approaches and then allocating the value to the different communities. This valuation method included the value of land and land rights as an operating cost. He expressed the inconsistency in the valuation of utilities from the DRA’s method to local assessors who may or may not include the land. He suggested using a similar method like the method used to value low-income housing properties, for utility land. Due to the complexity of the issue, 35 states that apply the unit method have chosen to not value land and land rights. He does believe because it is regulated property that it should be segregated out and given a separate process.

A brief discussion followed whether or not more time and another meeting was needed to process the information, a suggestion was made to move the motion. Mr. Lessard Mr. Lessard moved to adopt both recommendations and present to the commission with the provision that #2 include the allowance of excess land to be placed into current use, if it qualifies. Mr. Hamilton seconded the motion. Chair Patten called motion. A hand vote was taken. 8 Yes; 3; No; Representative Schmidt abstained. The motion passed by a vote of 8-3.
Next Meeting

Friday, July 20, 2018, at 9:30 a.m. at DRA – Training Room

Mr. Gagne motioned to adjourn; Representative Schmidt seconded the motion.

Chair Patten adjourned the meeting at 1:05 p.m.

Respectfully submitted,

Stephanie Derosier
Municipal and Property Division
NH Department of Revenue Administration

All meetings are recorded and available upon request.

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

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