Assessing Standards Board
Low-Income Housing Tax Credit (LIHTC)
Subcommittee Meeting

Approved as written

DATE: March 4, 2021 **TIME**: 9:00 a.m.

LOCATION: Remote Meeting through WebEx

SUBCOMMITTEE MEMBERS
(E) Excused

Bob Gagne, Chairman
Joe Lessard
Loren Martin
Betsy Patten

MEMBERS of the PUBLIC

James Gerry, NHDRA
Kathy Temchack, Concord
Jim Michaud, Hudson
Scot Heath, NHDRA
Robert Tourigny, NeighborWorks Southern NH
Jim Menihane, NHHFA
Sue Golden, Concord
Linda Kennedy, NHDRA
Angela Silva, Seabrook
Cathy Capron, NHDRA
Representative Tony Piemont
Norm Bernaiche, Hanover

Mr. Gagne convened the meeting at 9:00 a.m.

Mr. Gagne explained the low-income housing tax credit (LIHTC) program, RSA 75:1-a, was implemented in 2008 or 2009 because there was a large disparity in how these properties were being assessed and tax burdens were running between 8-28% of effective gross income throughout the state and it wasn't fair. Some of the issues that have occurred over the years were known to need addressing and that is the task of this subcommittee. To review the issues, determine whether the law is working the way it was intended and address changes that may be needed.

Mr. Gagne provided some information and thoughts based on his experience in Manchester. Some of the issues he has seen include having a circuit breaker for a bottom threshold on the property tax but not having one for an upper threshold; a single cap rate does not reflect entirely the various types of projects and their differences and the unpredictability of the functions within the real estate market. The most recent example were the aggressive, unanticipated inputs including vacancy factors and cap rates. A couple years ago when the cap rate was less than five in Hillsborough County, values increased significantly and the burdens these properties faced could not have been anticipated to budget for. The typical tax burden for these properties is 12-16% of the gross income. He suggested a couple possible fixes for discussion including a circuit breaker with an upper threshold of 15-16% and the development of a matrix including a range of cap rates and adjustments.

Mr. Jim Menihane, representing the NH Housing Finance Authority (NHHFA), suggested there have been some unintended consequences occur with this program including it being too restrictive by boxing assessors in to how they have to value these properties and a lack of transparency with how the DRA establishes the cap rate. He expressed concern that the cap rates are not driven by market data, the lack of consideration for property taxes and a general flaw in the way the process of determining these values is working. He did agree that a range of rates would provide for more flexibility.

Mr. Gagne responded to Mr. Menihane's concerns about the cap rate and stated the inputs are prescribed by statute. With regards to the capitalization rate, he feels there may by some flexibility providing a range that the Assessing Standards Board (ASB) may be able to provide through rules; the circuit breaker to cap the rates and a change in the formula to use actual rent instead of maximum allowed rent would both require a statutory change.

Mr. Robert Tourigny, representing NeighborWorks Southern NH, stated the biggest challenge is the rollercoaster of annual assessments based on wide-swings in operating expenses and the more predictability they can have, the better the properties can perform. He agreed a range for the cap rate and circuit breaker for the upper threshold may be helpful in predicting tax increases year-to-year.

His concern with using the current income source of 100% of the published income limits is that they can never charge that because it would limit the number of people they can afford to rent to. NH Housing underwrites, he believes, 90% of the maximum published income limits and he believes this topic should be discussed further and considered for a legislative change. Another issue with these properties is the 99-year land use restriction associated with the properties that is not considered and to assess and value these properties the same as the rest of the multi-family inventory is a problem.

Ms. Martin stated the initial push for discussing this issue was the cap rate which, by statute, is established by the Commissioner of Revenue and is typical for the geographic areas and she felt that a rule change may be possible to develop a range. At this time, a cap rate is determined for each county which can create unfair values due to the impact of larger municipalities. The reason for the program was to provide a procedure to value these properties and properly consider their restrictions because they were being valued as if they didn't have them. She felt if assessors were educated on how to assess these properties, to properly consider the restrictions and other attributes, owners would not have to apply for this program.

Another concern is that the formula has been difficult to implement. It arrives at what a property's annual taxes will be which cannot be known until a tax rate is available and a tax rate cannot be set without knowing what the value of all taxable property is. It is a rollercoaster as each year there are adjustments, abatements and/or supplemental bills needed to make sure the proper values and taxes are being assessed. Ms. Martin understands why the legislation was created but does not feel that it is necessarily working as it was intended.

Mr. Gagne offered that there may also be a disconnect in the use of ratios. In Manchester, revaluations are performed every five years but the LIHTC properties are valued annually. This year, the city's general level of assessment is 73.4% however the ratio, generated by properties with 5-units or more is 68.4%. but the LIHTC properties are revalued using the general level of assessment. A possible fix to consider may be to apply the formula in the year a municipality completes a revaluation. For those municipalities that do revaluations more frequently than once every five years, for example every two to three years, they may reset the LIHTC properties on the formula for that year but hold the value until the next revaluation.

With regards to the inability for these properties to achieve the maximum allowed rents, if there were a way to determine what a property's average percentage of rents received was, whether geographically or by property type, then maybe an adjustment could be made in the formula to recognize that.

Ms. Temchack stated was part of the group that discussed the legislation and she remembers expenses were a main focus. There are reporting and annual checks in place to make sure the different projects are following their applicable restrictions. She agreed the change in values are in part due to the cap rate and vacancy factors and offered that maybe a range for vacancy rates should also be considered.

Mr. Lessard inquired whether the effected participants thought the formula was working but needed adjusting or if a complete change was needed and allow assessors to assess these properties with proper considerations for the restrictions. He wondered if these properties could be assessed and, similar to public charter schools, have a fixed percentage of value for tax purposes.

Positives and negatives to providing ranges were discussed. At the time of the legislation, rather than allow discretion that might lean in a particular direction, this rigid formula was developed. There have been suggestions to consider ranges for the cap rate, vacancy rate and percentage adjustment of maximum allowable rent. At this time, the only thing that can be appealed is whether the inputs are correct or not and if the formula was followed and information was input correctly. Providing ranges allows for more interpretation and possible litigation. On the other side, allowing assessors to assess the property properly considering the restrictions may be difficult to legislate.

Mr. Tourigny felt some formula is better than no formula and even though he has a good working relationship with the municipalities, that may not always exist. The current formula is overly complicated and he would like to see information that is easier to derive. With regards percentage of the income, this is set by NHHFA during the application process. Tax credits are awarded based on the percentage of maximum allowable income to make the project feasible. Once set, that is the percentage for the life of the project. Mr. Tourigny believes this is an area worth revisiting.

Ms. Capron agrees that a range of cap rates versus a fix cap rate would provide more flexibility for assessors and account for the various geographic locations and classes of property. The requirement of a fixed cap rate is written in Rev rule 611.03 (a) which states, *"The commissioner shall annually by March 31 establish a market capitalization rate, as referenced in RSA 75:1-a, VI, for each county in the state."* Mr. Gerry agreed and stated the Department will support the change recommended by this subcommittee and the Assessing Standards Board (ASB) and work toward whatever fix is necessary.

The subcommittee agreed more discussion is needed as to issues set forth, proposed fixes and whether those fixes would require rule or statutory change. They agreed it is important to find a way to set some parameters to cap this for the fair treatment of this type of property.

Ms. Martin motioned to adjourn; Mr. Lessard seconded the motion.

Mr. Gagne adjourned without exception at 10:07 a.m.

Respectfully submitted,

Stephanie Martel, ASB Clerk
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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