

Assessing Standards Board
Regular Board Meeting

Approved as amended

DATE: April 23, 2021

TIME: 9:30 a.m.

LOCATION: Remote Meeting through WebEx

BOARD MEMBERS

(E) Excused absence

Senator James Gray	Paul Brown, Municipal Official, Towns >3,000
Senator Kevin Cavanaugh	Vacant, Municipal Official, <3,000
Representative Peter Schmidt	David Marazoff, NHAAO, At-Large Member
Representative Tony Piemonte	Loren Martin, NHAAO, Towns, <3,000
Betsey Patten, Public Member, Chair	Joe Lessard, NHAAO, Towns >3,000
Robert Gagne, NHAAO, City Official	Vacant, Public Member
James Gerry, NHDRA	Thomas Thomson, Public Member
Jim Wheeler, Municipal Official, City (E)	

MEMBERS of the PUBLIC

Peter Roth, NH DRA	Mike Haley, NH DOJ	Scot Heath, NH DRA
Steve Hamilton	Sam Greene, NH DRA	Becky Benvenuti, NHMA
Laurie Ortolano, Nashua	Phil Bodwell, NH DRA	Todd Haywood, GHMS
Charelle Lucas, GES	Susan Golden, Concord	Cathy Capron, NH DRA
David Grant, Unitil	Jim Michaud, Hudson	Jim Rice, Durham
Rick Vincent, Nashua	Scott Bartlett, Goffstown	Teresa Rosenberger
Jim Menihane, NH Housing Authority	Tom Hughes, Moultonborough	

In the absence of the Chair Vice-chair Gagne convened the remote meeting at 9:30 a.m.

Senator James Gray stated the following for the records: *“Today we are having a meeting of the Assessing Standards Board. Before we get started, we will go through the check list to ensure our meeting is in compliance with the Right-to-Know law. Acting for the Chair and Vice-chair, it is declared that due to the state of emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to the Executive Order 2020-04 and its extension, this public body is authorized to meet electronically. Please note, there is no physical location to observe and listen. Contemporaneously to this meeting which was authorized pursuant to the Governor’s Emergency Order and in accordance with the Emergency Order, confirming that we are providing public access to this meeting electronically through Webex and was posted in the House and Senate calendars. If the public has any difficulty accessing this meeting, contact the ASB clerk or if the public has difficulty accessing the meeting due to technical issues on the Board’s end, it will be adjourned and rescheduled. Please note, all votes taken at this meeting will be by roll call. Those announcing their presence at this meeting shall state their name, where they are and if there is anyone in the room with them.”*

Introductions of the Board and members of the public followed.

Minutes

Mr. Gagne *motioned to accept the minutes of the February 19, 2021, regular board meeting*; Mr. Marazoff *seconded the motion*. No discussion. Chair Patten called the motion.

Vote by Roll Call: Ms. Patten, Yes; Mr. Gagne, Yes; Mr. Lessard, Yes; Mr. Marazoff, Yes; Senator Gray, Yes; Representative Schmidt, Abstained; Mr. Gerry, Yes; Mr. Brown, Yes; Ms. Martin, Yes. *Motion to approve the minutes of the February 19, 2021, regular board meeting, as written, passed unanimously with (1) abstention.*

Administrative Rules

The rules have been filed for rulemaking however the staff at Administrative Rules have not yet reviewed them to date. Chair Patten reported that due to not having an exam prepared and confusion and uncertainty with a portion of the rules, she made an executive decision to remove the section of the rules relating to the comprehensive exam in Asb 303.06 (7) from the filing.

The Board voted the entirety of the rules into rulemaking and there was a question whether or not the excluded portion of the rules could be added back in. The answer was no because the rules have already been submitted into rulemaking.

The Board had also voted to submit an emergency rule for the allowance of a conditional approval by the Department of Revenue (DRA) for individuals who worked out of state who would otherwise qualify for certification with the exception of not having NH State Statutes and USPAP. Chair Patten stated the requirements for submitting an emergency rule included demonstrating the rule was necessary to prevent imminent peril to public health or safety and substantial fiscal harm to the state or its citizens and she was unable to justify this rule having those impacts. This change was included in the rules that were filed and the consequence, compared to filing it as an emergency rule, will be a delay in when the rule takes effect.

Concern was expressed about the action by one member of the Board making a decision against a Board vote. It was reiterated that the Board discussed the proposed rules and accepted that input may be received by Administrative Services to make changes or corrections. Senator Gray offered to discuss this with the Joint Legislative Committee on Administrative Rules (JLCAR) and see if there is a solution to correct it. Chair Patten apologized for acting against the Board and would not do so again.

Mr. Lessard *motioned that the Board follow the solution that Senator Gray finds, if one exists, to add back in the language in Asb 303.06 (7) for rulemaking*; Mr. Gagne *seconded the motion*. No further discussion.

Vote by Roll Call: Ms. Patten, Yes; Mr. Gagne, Yes; Mr. Lessard, Yes; Mr. Marazoff, Yes; Senator Gray, Yes; Mr. Gerry, Yes; Mr. Brown, Yes; Ms. Martin, Yes. *Motion to follow the solution, if one exists, to add back in the language in Asb 303.06 (7) for rulemaking, passed unanimously.*

Mr. Lessard *motioned if the language can be added back in and if an exam is required by JLCAR, that the current NH Association of Assessing Officials (NHAAO) CNHA exam be initially used as the comprehensive exam*; Mr. Gagne *seconded the motion*. The Certified New Hampshire Assessor (CNHA) exam is signed off by both the NHAAO and the DRA and could be considered a joint exam.

It has the same standards as the proposed rule including it being 100 questions and requiring a 70% to pass.

Vote by Roll Call: Ms. Patten, Yes; Mr. Gagne, Yes; Mr. Lessard, Yes; Mr. Marazoff, Yes; Senator Gray, Yes; Mr. Gerry, Yes; Mr. Brown, Yes; Ms. Martin, Yes. *Motion to use the CNHA exam as the comprehensive exam, if required by JLCAR, passed unanimously.*

Representative Schmidt and Senator Gray left the meeting. A quorum was no longer met.

Low-Income Housing Tax Credit Subcommittee Report

Mr. Gagne reported the subcommittee determined several issues that could be considered immediately and others that would require statutory change and therefore could not be addressed at this time.

Mr. Gagne *moved the following subcommittee recommendations for consideration by the full Board*; Mr. Lessard *seconded the motion*.

1. DRA develop a cap rate range instead of a single point estimate
2. Develop a standard matrix and criteria for use by local jurisdictions to apply to the range to determine where in the range a particular property should fall; what adjusted cap rate to use
3. Add a line to the existing PA-67, spreadsheet to account for collection loss as an allowed expense

It was explained that the DRA would determine the cap rate range the same way the single cap rate for each county is developed. The matrix would need to be developed and reviewed by the full Board before implementing and the third recommendation, accounting for collection loss, is already a requirement in statute. The change is meant to clarify that everyone is including it as an expense as it has been found that some do and some do not.

The current cap rates are developed by county and it has been expressed that this is not necessarily appropriate as one municipality is not the same as another. The matrix would help determine the rate within the range for each property based on certain criteria. Some suggestions for criteria included location, quality, size, age and condition.

Concern was expressed that incorporating the range and matrix would create an increase in appeals compared to the one county rate currently used. It was suggested that understanding how the cap rate range is developed would be helpful in implementing the range and defending values of these properties. Using the matrix would be similar to the one used for current use; once a point estimate is determined for a property, it should not change and being transparent and having a discussion with the property owners about the process may be helpful. This does not mean there will not be appeals but after this program being in place for over 10 years, this was one of the areas of concern expressed.

Mr. Bartlett offered that this process is becoming too complicated and that moving out of this program into a payment in lieu of taxes (PILOT) program may be more appropriate. These properties are not valued at market value but at a current use value. They have very different factors and require a different approach. Mr. Gagne responded the PILOT idea is a good one and has already been suggested. Because it would require a statutory change and cannot be implemented at this time, it is on the subcommittee's task list to discuss further. Varying opinions and interpretations of the statutory language were offered relating to whether or not creating a cap rate range would require a statutory change.

Mr. Gagne amended his original motion, *subject to review of DRA council, the Board recommends DRA develop a cap rate range versus a single point estimate*; Mr. Lessard *seconded the amended motion*.

Vote by Roll Call: Ms. Patten, Yes; Mr. Gagne, Yes; Mr. Lessard, Yes; Mr. Marazoff, Yes; Mr. Gerry, Yes; Mr. Brown, Yes; Ms. Martin, No. This vote was not valid due to a quorum not being met and would be presented again at the next meeting.

The recommendations made by the subcommittee will be voted on at the next full Board meeting. Mr. Gagne stated he will schedule a subcommittee meeting to begin discussion on the criteria for the matrix. Mr. Brown requested DRA expedite the review with council of whether or not the development of a cap rate range is allowable under the current statute. Mr. Gerry agreed to do so.

Respect and Civility in the Workplace

Chair Patten stated the Governor issued a mandatory order for all employees and State officials including board and commission members and volunteers to complete the Respect and Civility in the Workplace Training. She indicated the training takes about an hour and to forward the completion certification to Ms. Martel. Mr. Gagne and Ms. Martin expressed frustration about this requirement and will cause them to reconsider whether or not to continue to participate on the Board once their terms expire. Ms. Martel will look into the date the training must be completed by and if a copy of the certificate is needed.

Code of Ethics Canon 5

Canon 5 (Professional Duties Ethical Rule) of the Code of Ethics and Standards of Professional Conduct, adopted by the ASB on March 9, 2018, states: *“DRA Certified Personnel shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice.”*

Ms. Martel questioned how this would apply to individuals certified at the levels of Building Measurer and Lister and Assessor Assistant if the Uniform Standards of Professional Appraisal Practice (USPAP) is not required. This requirement does not occur until the Assessor certification level. Chair Patten asked the Board to review this and come back to the next meeting with comments.

Correspondence

A brief discussion took place about an e-mail received by the Board relating to a veteran’s exemption. It was suggested this question be directed to the assessor in the taxpayer’s municipality.

An article relating to the real estate market was submitted by Chair Patten for informational purposes.

Legislative Update

House Bill 189 – Relative to accessory dwelling units. - **ITL**

House Bill 64 – Relative to renewable generation facility property subject to a voluntary payment in lieu of taxes agreement. **House: Passed; Senate: Ought to Pass**

House Bill 411 – Establishing a commission to study the equalization rate used for the calculation of a property tax abatement... **House: Passed; Senate:** No update as of 4/23/2021

House Bill 552 – Relative to property tax valuations. – **ITL**

Public Comment

Laurie Ortolano from Nashua thanked the Board for their work on certification standards however she expressed concern relating to the workforce in this profession and the low number of people entering the field. She would like to see more balance in the state across the board for representation of citizens or property owners on boards as she has found very few opportunities to contribute, in particular at the BTLA.

She felt the lack of requirements to be able to get into homes to measure and list is causing building to not be properly assessed and she does not see the value in that effort. She stated that using models and depreciation schedules may be a more valid way of appropriately assessing properties.

Her other concerns included the lack of recourse to make changes in corrupt municipalities; that laws, rules, policies, regulations and ordinances are mute and not applicable and the lack of statutory regulation for record-retention, in particular, in her community.

New Business

A lengthy discussion took place about whether or not certification records of assessing personnel were public record. The DRA's position is that the certification records of assessing personnel do not fall under municipal services and are, therefore, confidential. Chair Patten stated it has always been the intent of this Board to provide fairness and transparency in the assessing field and that includes the availability of certification records of assessing personnel.

Mr. Roth, counsel for the DRA stated it is the Department's position that the certification files of DRA-certified people are confidential records under RSA 21-J:14 and RSA 91-A, as an exemption from disclosure of personnel records for confidential and private information and they do not fall under the exceptions for municipal and regulatory responsibility. He added there has been a RSA 91-A request for to obtain several Department employee records and a threat of litigation. Mr. Haley, Attorney for the Department of Justice, added this is not a DRA specific situation under RSA 21-J:14; it applies to all other government agencies in the state.

Ms. Martin suggested the certification records should not part of the state's personnel records. Transparency is a requirement under the NH Constitution and the intent of the Asb rules was for these records to be public. She submitted a motion that the Board form a subcommittee to address some of these concerns and look at separating the certification process from the DRA for these reasons. However, because there was no quorum, the motion was not completed.

Chair Patten felt it was essential that all records of certified assessing personnel be public information. Since the Board's beginning in 2001, it has been working to build public confidence in assessing practices and assessing personnel so the taxpayers of the state can have confidence that their assessed values are true and fair and this does not follow that intent.

Mr. Gerry added the assessing personnel and their certification levels are published however the documentation in the files include not only course work but other information such as background checks, any and all complaints filed whether found valid or not and reasons for extensions which may be highly personal. There is also the situation where a complaint may be filed and the complainant wants to remain anonymous because they fear retaliation by an assessor. Allowing these files to become public would erase any confidentiality of the whistleblower which could become very

problematic from prosecuting further violations of Asb rules. It would also make any complaint filed against any certified individual public record.

Ms. Martin responded that if there is information in the files that is confidential, it could be redacted when requested and the whistleblower protection is another issue. The ASB has always said this information would be public as part of Asb 308. The request just needs to be clear about what is being asked for which does not include confidential information.

Chair Patten stated there will be further discussion on the issue at future meetings.

The question was asked if individuals could review their own records. It was stated that if there was a complaint about an individual, it would be in their file and they would know about it. The form includes the acknowledgment by the complainant that their complaint may be shown to the assessor however not all complaints are received on the form and on those, the complainant may request to remain anonymous fearing retaliation by the assessor. In that case, the complaint would not be provided to the assessor. If that particular complaint was determined to be groundless, there would no information to provide, however if a complaint was found to be valid, the assessor would be involved in adjudicating the complaint.

Next Meeting

At the call of the Chair.

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

Chair Patten adjourned the meeting 11:18 a.m. without exception.

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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109 Pleasant Street, Concord

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