

Assessing Standards Board
Regular Board Meeting

Approved as amended

DATE: May 14, 2021

TIME: 9:30 a.m.

LOCATION: Remote Meeting through WebEx

BOARD MEMBERS

(A) Not in attendance.

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

MEMBERS of the PUBLIC

Peter Roth, NHDRA	Michael Haley, NHDOJ	Becky Benvenuti, NHMA
Linda Kennedy, NHDRA	Laurie Ortolano, Nashua	Todd Haywood, GHMS
Charelle Lucas, GES	Phil Bodwell, NHDRA	Lisa Mudge, NHDRA
Robert Tourigney, NeighborWorks Southern NH		

Chair Patten reported that the Board will be looking to meet in-person in June at the Department of Revenue and provide remote public access.

Introductions of the Board and members of the public followed.

Minutes

Mr. Lessard ***motioned to accept the minutes of the April 23, 2021, regular board meeting***; Mr. Gagne ***seconded the motion***. Within lines 239-240, language was changed to clarify that complaints filed against a certified individual would become public. The word “it” was added to line 250 to complete the sentence. No further discussion. Chair Patten called the motion.

Vote by Roll Call: Ms. Patten, Yes; Mr. Gagne, Yes; Mr. Lessard, Yes; Ms. Martin, Yes; Mr. Gerry, Yes; Representative Schmidt, Abstained; Senator Gray, Yes; Mr. Brown, Yes; Mr. Marazoff, Yes. ***Motion to approve the minutes of the April 23, 2021, regular board meeting, as amended, passed unanimously with (1) abstention.***

Chair Patten read the following into the record: “*Today, we are holding a meeting of the Assessing Standards Board. Before we get started we will go through the checklist to make sure 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 Order Number 12, pursuant to 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 it was posted on the House and Senate bulletin boards. 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 that 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."

This statement was followed by reintroductions of the Board and public members to include where they were and if anyone was in the room with them.

Low-Income Housing Tax Credit (LIHTC) Report

Mr. Gagne provided a brief summary of the discussion and the motion from the last meeting relating to the subcommittee's recommendations presented to the full Board. The recommendations were to have the DRA develop a cap rate range instead of a single point estimate; 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 and to add a line to the existing PA-67 spreadsheet to account for collection loss as an allowed expense. There was question whether or not statute allowed for the development of a range.

With regard to whether or not statute allowed for the development of a range of cap rates, Mr. Roth, DRA counsel, stated in his opinion, based on a review of the statute, the administrative rule and particularly the legislative history, there is nothing in statute that permits the commissioner to make a band or range of cap rates. The term geographic area is defined in the rules to mean county, however, there is nothing preventing a change to a smaller geographic area. He added, within early discussions of the bill among the working group, a range was considered but not adopted and the bill passed without it. In 2010, the assessing community signed off on some amendments, none of which included a range of cap rates.

The statutory construction on this point, we at the Department are bound to interpret statute in a way that is consistent with their intents and purpose. It is our opinion that having a range of cap rates that could be applied and adding the discretion of the assessor would be inconsistent with intents and purposes of this statute which is to make the assessing program more predictable; streamlined and simpler so that the tax credit community could continue to make investments in these properties.

In response to Mr. Roth's presentation, Mr. Gagne suggested due to the lack of statutory authority, recommendations one and two by the subcommittee should be taken off the table. However, in reference to item three, the law requires the inclusion of collection loss as an expense and therefore a line may be added to the form to represent this figure and he would look for a motion to approve that change and move forward. Mr. Roth responded that when this statute was passed, the ASB was given until July 1, 2010, to write rules for this program, however because the Board did not write rules by that date, he suggests the Board discuss with their counsel whether or not they have the authority now, to make this change in rules. The question was asked whether Mr. Roth was the Board's counsel and it was stated, he was not. It was confirmed that the Board's counsel is Michael Haley of the Department of Justice (DOJ).

Discussion continued including clarification that this was not about creating a rule, rather correcting an omission where the statute clearly says collection loss is an allowed expense and for the form to clearly reflect that and the right of the subcommittee to bring the recommendations to the full Board for consideration, whether needing further review by counsel or not, rather than having to bring it back to the subcommittee and start over.

Mr. Lessard *motioned, subject to review and approval by both ASB and DRA counsel, that a line be added to the existing PA-67, to account for the collection of loss as an allowed expense*. Ms. Martin *seconded them motion*. Mr. Lessard added that it is already included on the form, it is just not separately itemized and that is what the subcommittee is looking form. More discussion followed about the need for legal review and their role, the subcommittee and Board roles and how to proceed. It was suggested that this go back to the subcommittee where legal interpretation and other necessary discussions can take place, if needed, and then bring the motion back to the full Board for a vote. Mr. Lessard *withdrew his motion*; Ms. Martin *withdrew her second*.

Code of Ethics Canon 5-1: DRA-certified personnel shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice.

At this time, the DRA-certified measurer and lister and DRA-certified assessor assistant certification levels do not have a USPAP requirement and the question was raised whether a change should be made to the language to reflect that. Chair Patten asked the Board to review and submit suggested language prior to the next meeting.

Certification Records

Chair Patten stated she had a discussion with Mr. Haley about the confidentiality of certification records and he believes for them to be considered public records, a statutory change will be required. She suggested a subcommittee be formed to discuss the issue and consider the changes and asked for volunteers. Chair Patten volunteered as chair, Ms. Martin, Mr. Gerry and Mr. Marazoff, volunteered from the Board. Ms. Martin suggested Ms. Ortolano be on the subcommittee to represent the public as she has brought some significant issues to the Board; Ms. Ortolano accepted. Mr. Haywood also requested to be on the subcommittee. A meeting will be scheduled in June.

Rules Update

Ms. Martel reported pursuant to the Board's discussion at the last meeting, the initial rulemaking request of the Asb rules was withdrawn. The process was restarted with the filing of the request for fiscal impact statement on April 29, with the original language voted by the Board. It has not been returned to date. Mr. Gerry thanked Senator Gray for his suggestion and assistance with this process.

Legislative Update

Relating to SB 100, Senator Gray reported that he was the only representative from the Board to attend the public hearing to create a committee to study payment in lieu of taxes (PILOTs). The hospitals and a few others that would be affected by this were adamantly against setting up a committee that might in some way infringe upon their not having to pay a PILOT. He suggested submitting letters to the committee explaining why the Board would like to see this change.

Public Comment

Ms. Laurie Ortolano, Nashua, expressed concern about the availability of data that is returned to municipalities after a statistical update or revaluation, which she understands to be public record. Since the 2018 update, the City of Nashua has determined the records from the assessing firm to be non-public and private including property record cards. In an effort to understand how and why her property assessment was so wrong she found out that the assessing firm did not do a field review but rather a drive-by review. The assessor they met with at the informal hearing to discuss their value noticed right away their card was incorrect and stated that their property had been sales chased. Her concern is the difference between a field review and a drive-by review and the lack of notification to the public about what they are and which is being performed.

Ms. Martin stated there is some confusion with this, a field review is generally a drive-by; it is a final review, in some cases, of a cyclical inspection process to verify it is the correct property on the card and it is properly listed. In her case, that field review is typically part of their company's work product and is not turned over to the municipality. It is important to understand the contractual obligations and any information that is turned over to the municipality, she believes is and should be available to the public for review. Further discussion, questions and examples of other contractor's procedures followed.

Next Meeting

June 25, 2021, at 9:30 a.m. Location to be determined.

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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