

MINUTES OF THE
ASSESSING STANDARDS BOARD
Subcommittee on Former HB 547

Approved As Amended

DATE: July 23, 2015

TIME: 9:30 a.m.

LOCATION: NH State House – Room 103, 107 North Main Street, Concord NH

COMMITTEE MEMBERS:

Betsey Patten, Public Member, Chairman
Joseph Lessard, NHA AO, Towns >3,000

Eric Stohl, Municipal Official, Towns <3,000
Representative Peter Schmidt

MEMBERS of the PUBLIC:

Representative Patricia Lovejoy
Ellen Scarponi, FairPoint Communications
Cordell Johnston, NHMA
Kevin O'Quinn, FairPoint Communications
Chris Boldt, DTC
Jim Wheeler, ASB
Bob Dunn, DMB
John Nugent, DMB
Henry Veilleux, Sheehan Phinney Capitol Group
Jon Block, Pierce Atwood
Maura Weston, Weston Associates
Rosann Lentz, Portsmouth
Stephan Hamilton, NHDRA
Jim Michaud, Hudson
Heidi Kroll, Gallagher, Callahan & Gartrell
Teresa Rosenberger, Devine Millimet

Representative Mark Proulx
George Hildum, CNHA
David Cornell, NHDRA
Cindy Brown, BTLA
Marti Noel, ASB
Karen Hanks, NHEC
Brenda Inman, NHEC
James McClure, DMB
Mark Lambert, Unitil
Andrew Kingman, AT&T
Chris Hodgdon, Comcast
Robert J. Gagne, Manchester
Kathy Temchack, Concord Assessor
Elizabeth Ewing, Concord
Len Gerzon, ASB, Len Gerzon LLC
Andrea Curtis, George Sansoucy's Office

Chairman Patten convened the meeting at 9:43 a.m.

Chairman Patten began the meeting by clarifying the members of the subcommittee: Herself representing the public, Selectman Eric Stohl, Municipal Official representing communities with a population less than 3,000, Joe Lessard, Assessor, representing the NHA AO and communities with a population greater than 3,000, House Representative Peter Schmidt and Senator David Boutin.

Representative Mark Proulx, Representative Patricia Lovejoy and Representative Patrick Abrami who is not in attendance today have been invited to sit at the table with the committee.

Chairman Patten stated that Mr. Lessard's term on the ASB has not been renewed by the NHA AO, however she would like him to remain on the subcommittee through its completion and asked that the NHA AO determine if that would be possible.

Minutes

Mr. Lessard ***motioned to accept the minutes of the July 9, 2015, meeting with amendments, including changing the references of Mr. Boldt to Attorney Boldt.*** A brief discussion followed. Chairman Patten called the motion to accept the minutes with amendments and reference change. ***Motion failed.*** Chairman Patten called the motion to accept the minutes of the July 9, 2015, meeting with amendments excluding the reference change. Mr. Stohl ***seconded the motion.*** Chairman Patten, Mr. Lessard and Mr. Stohl voted yes. Representative Schmidt voted no. Motion to accept the minutes as amended passed.

Additions to July 9, 2015, Meeting Minutes

Mr. Michaud requested the following statements be added to the minutes of July 9, 2015.

Under Historical Background

- Representative Schmidt commented on the complexity of valuing the poles due to the various locations and physical characteristics of the poles.
- Chairman Patten added the ASB spent significant time studying and recommending standards for residential properties; the board has not examined or recommended parameters for utility properties and it is the subcommittee’s intent to study the issue and provide a recommendation to the legislature, if necessary. Chairperson Patten suggested that the ASB could provide parameters that would require consideration of the locations including the characteristics of the pole amongst other factors.

Chairman Patten agreed with the additions as the complexities and parameters will be issues for the subcommittee to consider.

- Mr. Boldt suggested that the ASB continue studying whether the RSA 83:F reports should be used in municipal property tax abatement proceedings in light of the recent BTLA decisions.

Chairman Patten clarified that the issue of RSA 83-F pertains to HB 192 in which the subcommittee is also charged to study.

- Mr. Stohl questioned whether the ASB should address the valuation methodologies employed by the DRA under RSA 83-F in light of the BTLA response.

Chairman Patten agreed with that statement.

Under Presentations

- Representative Schmidt added that the methodology used to value poles will be important and that a technical subcommittee on the valuation method could be helpful due to the many factors that can go into valuing a pole.
- Ms. Curtis of George Sansoucy's office suggested that Mr. Sansoucy may wish to make a presentation to the subcommittee on how his company values poles, conduits and the use of the right-of-way.

Chairman Patten stated the subcommittee would discuss whether a technical subcommittee is necessary and would verify whether Mr. Sansoucy would be willing to present. Ms. Curtis added that Mr. Sansoucy was currently away but is checking his calendar for available dates that coincide with the subcommittee’s meeting schedule. She is hoping to be able to let the subcommittee know for sure by the next meeting.

Chairman Patten stated that rather than going back over the July 9 minutes, that these additions be included in the July 23 meeting minutes.

DRA Survey Update

Mr. Cornell began by stating the DRA generated handout contains 2014 survey data only. It is a work in progress and is by no means the final product. Information is still missing or has not been entered into the database yet and therefore the average pole assessment could not be calculated for some towns. The department, to the best of its ability, will work to collect missing data. Using the survey information, the calculation used to determine the average assessment per pole is:

Assessed Value of Poles / # of Solely Owned Poles + (# of Jointly Owned Poles / 2)

Example:

Assessed Value of Poles / # Solely Owned Poles + (Jointly Owned Poles divided by 2)

$$\begin{array}{rcc}
 \$477,900 & 555 & 483 / 2 \\
 \$477,900 / 555 + 241.5 & \longrightarrow & \$477,900 / 796.5 = \$600 \text{ per pole}
 \end{array}$$

The per pole assessment is rounded to the nearest dollar. Mr. Cornell stated he would like to gather a small working group to review this information, when complete, to attain the most accurate data for the final report. Mr. O'Quinn, Mr. Lessard and Ms. Lentz volunteered to assist Mr. Cornell with this task.

Mr. Cornell explained the initial request for information included the number of solely and partially owned poles and assessed value of the poles, conduits and right-of-ways. It did not include the height, age or other information. If, after reviewing the data, outliers were found, additional information such as height and age, etc. may be requested to determine the reason(s) for the outlier(s).

He added one of the challenges has been formatting the data received so that the same information is used. An Excel spreadsheet was distributed; however the information has been received in multiple formats. For example, one company reported the total number of poles under solely owned poles and a percentage under jointly owned poles. This conversion was not completed for the report distributed today so there is still more work to be done. There will be a lot of changes between this and the final document as more information is received and necessary conversions are completed.

The request for information was extended to other companies. No responses have been received to date. FairPoint does represent the vast majority of poles and has been very responsive. In addition to the survey numbers, another handout was distributed containing the 2014 information provided by FairPoint. Once the survey information from the municipalities is complete, a comparison will be made between both sets of information.

A brief discussion took place about labeling the reports with the date, source and title in order to keep track of the most current data. The reports distributed to date will be labeled as follows:

July 9, 2015, Meeting Handout

- Report generated from Survey information:
 - Title: **Exhibit A – 2014 Draft 1; Date 7/9/2015; Source: DRA**

July 23, 2015, Meeting Handouts

- Survey Information
 - Title: **Exhibit A – 2014 Draft 2; Date 7/23/2015; Source: DRA**
- FairPoint Information
 - Title: **Exhibit B – 2014; Date 7/23/2015; Source: FairPoint (formatted by DRA)**

Chairman Patten stated this naming convention will be continued on key documents going forward.

Representative Schmidt referenced a report distributed at the July 9 meeting, of communities who had not responded with information and asked if that list had changed. Ms. Derosier reported that list has not changed much and no city on that list has responded to date. It was requested those municipalities who have not submitted data be included in the report has place holders.

FairPoint Presentation

Ms. Scarponi, representing FairPoint, thanked the committee for allowing them the opportunity to explain why they feel there is a problem in the way telephone poles are assessed by municipalities in New Hampshire.

She began by stating the current municipal assessments of telephone poles are inconsistent. They vary between towns as well as from year-to-year within a single town and use different considerations of what goes into the actual cost of a telephone pole. The spreadsheet of information being collected by the DRA is transparent and objective and she believes it will demonstrate the inconsistencies stated.

In addition to the history presented by Mr. Johnston at the previous meeting, Ms. Scarponi stated in 2011, FairPoint was issued over 230 bills. These bills lacked consistency in values, how the values were broken out, if at all, and of those, only 13 included an assessed value for right-of-ways. Using the best information at industry standards, FairPoint used the numbers received, divided them by the number of poles they knew to be in those towns and came up with a per pole value. The results were inconsistent even between similarly situated towns. Seeing there was a problem, FairPoint hired an outside consulting firm, CPTM, to assist with valuing telephone poles and managing the process.

A meeting was convened at their office on December 6, 2011. Representatives from Portsmouth, Ms. Lentz and Manchester, Mr. Gagne and Lebanon, as well as representatives from Avitar and Sansoucy were in attendance.

It was agreed a report of pole inventory would be made available to towns with the following information: size, class, age, ownership percentage, and street. In addition to this information, an actual replacement cost new value, the actual current price of a pole not the original value, and a loaded labor cost was provided and to this, a 20-year depreciation scheduled was applied. This combined value was offered as a recommended settlement value. The updated information has been and is available to every town, for every year since 2011. It is FairPoint's goal to have an understandable, fair and equitable way to assess telephone poles that can be used as a standard throughout the state.

Four years later, there is still no standardized formula being used and numbers continue to vary from town to town for like assets. The information available to the towns is not being used consistently resulting in continued variations. Therefore, based on their information the municipalities' average pole valuations vary from under \$100 to over \$1,000 per pole, when height, class, age, percentage ownership and depreciation are considered.

A question was raised, what was FairPoint's procedure when they did not agree with an assessment? Mr. O'Quinn responded that FairPoint has paid every single bill since 2011. The tax costs FairPoint \$6 to \$7M per year. They have not withheld payment whether they felt the assessment was 5, 6 or 7 times the value. The valuations are the equivalent of having a home worth \$200K being assessed at \$1M. Further, prior to the law change in 2011, approximately 15 to 20 municipalities billed FairPoint for Rights of Way (ROW) and now virtually all do.

FairPoint has followed the process of appealing their tax bills with the municipalities, and if denied there, the company has taken their requests to superior court. The process in superior court has been on-going for the 2011, 2012 and 2013 tax periods and they are currently in the process of making decisions on the 2014 tax bills.

Mr. Stohl asked if FairPoint has sat down with the assessors within each community to discuss how they came up with the pole values. Mr. O'Quinn responded that under his guidance, CPTM has been instructed to meet with any and all assessors and municipalities in order to resolve the issues at a reasonable level. With 230 municipalities, FairPoint through CPTM and their attorneys at Devine Millimet have tried to make their position known that they are ready to talk. At this time, FairPoint has settled or accepted the bills for over 50 municipalities.

Mr. O'Quinn mentioned the comparison between how utility and telecommunication companies are assessed. Utility companies are assessed on their entire network and generating plants, telecommunication companies are limited to real estate including poles, conduit and right-of-ways. Also, utility companies' rates are regulated to collect their costs where telecommunication companies do not. Their rates are set by the market so when costs go up rates cannot go up in order to stay competitive.

FairPoint has not settled with the larger cities. Generally speaking, it is the smaller communities that we have been able to settle with. We have met with virtually every assessing firm if nothing else than to express an interest.

It is important to us and to the subcommittee to be able to understand how the assessed value is determined on the tax bills and with the information that is being compiled; we believe it will show the inconsistencies we believe exist.

A discussion took place to try to understand what information is or could be used to determine the value of a pole. Mr. O'Quinn restated that FairPoint outsources to CPTM to provide a valuation. If jointly owned, the value of a pole would be half of what the value of the pole would have been if 100% owned. Mr. Lessard asked if FairPoint considered the use of the pole in their valuation which could cause a variation of value between communities. Mr. O'Quinn responded that there is a host of ways to value a pole and what they are trying to accomplish is standardization.

Representative Schmidt asked if any guidance could be achieved from what has been done in other states. Mr. O'Quinn responded that Vermont and Maine have different tax structures than New Hampshire. New Hampshire is unique and to a certain extent we may be inventing the wheel.

Ms. Scarponi added that there are no apples to apples comparisons with other states and they are not looking for an untried and tested methodology for standardizing a value. In the attempt to implement a standardized, fair and equitable formula, the use of replacement cost new with depreciation and now residual values was added to the bill. It is our understanding that many communities are using this, the difference being a different starting point for what the cost of the pole would be.

In summary, we have tried to demonstrate why we think there is an issue. Our feeling is it would be better to have a fair and equitable way to assess the value on telephone poles based on known and quantifiable

information that can be used as a statewide standard than having everyone doing it their own way resulting in costly litigation and assessing fees.

Mr. Stohl asked if either Ms. Scarponi or Mr. O'Quinn could state what the fair price for a pole in NH is. Ms. Scarponi responded they have a schedule stating by pole, the actual cost from the manufacturer plus loaded labor cost and this information is provided to each town. Based on the age, size, class of service and percentage of ownership, a price is determined for each pole in the state. The age of the pole determines depreciation, which is subtracted from the cost to come up with what we believe to be a reasonable value.

Mr. Gagne spoke to correct the 2011 case with Manchester. FairPoint's legal team is still arguing they should pay \$0 on their real estate, right-of-ways, poles and conduits in Manchester and that there has been no attempt by FairPoint or CPTM to discuss Manchester's values.

Mr. O'Quinn agreed with Mr. Gagne on the point that (for legal reasons in our abatement filing) the valuation should be zero and added there are two parts to the litigation. The first is to determine whether FairPoint should be taxed which includes the right-of-way as well as the overall tax; the second is valuation. Once the first part is determined, the second part will ensue. Ms. Scarponi added the intent is to go forward with a solution on the poles and conduits for the future.

Representative Lovejoy stated the attempt of the earlier amendment was that FairPoint was going to give up the position they shouldn't be taxed in return for having a standardized method of valuation. What Ways and Means had put forward in the House Bill was a 30-year life based upon the actual cost and a 30-year straight line depreciation which couldn't depreciate down to less than 20% of its value. The amendment to the bill was intended going forward, therefore starting in 2015. This did not pertain to the current appeals.

Ms. Scarponi offered some clarification. The original bill was written to re-establish the exemption. The committee said no. So we looked toward standardization as a way to solve the problem. We said going forward; we would not contest poles and conduits if the appraisal formula were laid out as written in the bill. The right-of-way is different. It is complicated and we cannot speak to that litigation.

Mr. Gagne stated even with the numbers in the draft report, the picture being painted is quite a bit different than the picture and range that what was testified to. Ms. Scarponi stated a range of \$100 to \$1,000, but if you drop the high and low, it is more like a range from \$200 - \$800 predominantly. There can be explanations for why there is that range.

Ms. Scarponi clarified the 2011 were based on the numbers they had at the time and as newer information has been received, the variations have decreased, although still not acceptable. In response to Mr. Gagne, your pole count hasn't changed since 2011; correction 2012, and the numbers on the spreadsheet were the same for Manchester since then. Poles have been replaced. Your assessment does not take into consideration size, class of service or age and that doesn't make sense to us.

Ms. Curtis asked for clarification on the 20-year service life mentioned earlier and if they could expand on shared income. Ms. Scarponi stated it was a 20-year depreciation schedule. FairPoint has an inventory of solely owned poles and jointly owned pole and attachment fees. The fees come from each respective entity. With respect to using the income approach, the maintenance, which is hefty depending on the more attachments you have, could create a negative income. What if there is a negative income and you are using the income approach?

Ms. Curtis asked for clarification pertaining to jointly owned poles. Are the expense on a jointly owned pole shared or is one company paying the pole expense? Ms. Scarponi answered they are responsible for a maintenance area. FairPoint has an agreement with the electric companies, the co-owners of the pole in that jurisdiction, that FairPoint would respond first to the accident site and put the new pole up. The ownership and expenses are split 50/50.

Ms. Scarponi asked to hear why those opposed to a standardized formula feel it would not work.

Mr. Hildum stated he attended the December 6, 2011, meeting with FairPoint and would like to caution the use of the 2011 data which most communities estimated rather than using actual data because it was not made available in time. He also asked for clarification as to who is generating the values, FairPoint or CPTM, and who it is he needs to have the discussion with regarding settlements within his towns.

Ms. Scarponi responded that they could not agree more that 2011 should not be considered. They were hopeful in the ensuing years with more information that the variations would not occur, but they are still occurring and that is what led to here.

Mr. O'Quinn clarified the company provides the fundamentals to CPTM who then does the price out of the individual poles using replacement cost new, rate and depreciation. If the discussion has not been made available, I will look into it. We would love to settle, to come to a reasonable value for any and all assessed values.

Representative Schmidt asked if those who haven't responded to the request for information are being contacted. Mr. Cornell stated not yet as most of the energy has been to get information and ensure it is correct, however we will try to reach out to those who have not responded.

Representative Schmidt asked if the recordings of the meetings were available on-line. Mr. Hamilton stated they are not available on-line however a copy of the recordings will be made available to anyone who would like one. Contact Stephanie by phone or e-mail and she will get a copy to you.

Ms. Scarponi stated the committee asked FairPoint to come in and explain why we thought there was a problem. With the help of the spreadsheet we believe it will prove our contention, even with the current data, the variance of pole values is \$100-\$1,000. She asked if the committee if they would agree there is a problem if these numbers are borne out from the spreadsheet.

Mr. Lessard stated the range does not alone determine whether or not there is a problem. Chairman Patten agreed it could be a number of things. If the question is, is there a problem? The committee is not prepared to answer that. Information is still coming in that needs to be considered. Representative Schmidt added the fact that there are still a large number of poles in big communities that have not responded; the facts are not complete.

Mr. Boldt asked Ms. Scarponi and Mr. O'Quinn if the information being relied on for the labor costs is broken out by town. Is it town specific or are they an average? Ms. Scarponi responded they are averages. Mr. Boldt asked if the price to replace a pole in the areas FairPoint is responsible the same in every town? Ms. Scarponi stated she did not know.

Presentations

Chairman Patten asked if the DRA would be ready to give a presentation on how utilities are assessed at the August 13th meeting. Mr. Hamilton stated he would verify if Mr. Dickman is available.

Mr. Abrami submitted a request to have assessors representing small, medium and large communities to give a brief overview of how they are assessing poles. The committee could ask them to rank the variables within the process such as height, age, etc., which would help provide guidance as to what the important variables are in the eyes of the assessors. The committee agreed it would be helpful information. A suggestion was made to include contractors as they may represent the various sized municipalities and use different methodologies. Another suggestion was to include communities who have settled. Chairman Patten stated she will try to get that list together for the August 13th meeting.

Chairman Patten suggested talking about House Bill 192 at the August 27th meeting in order to be able to provide input to the Senate.

Mark Lambert representing Unitil stated they also believe there is a problem with valuation pertaining to House Bill 192, and would be happy to give a presentation to describe some of the inequities including some of the issues FairPoint presented. Chairman Patten asked Mr. Lambert to prepare to present at the August 27th meeting.

Ms. Brown, representing the BTLA, had been asked in a previous meeting to verify if the board had any current cases regarding telecommunications and the answer to that is no. They are all basically in superior court. She also researched cases back to 1994 and the board has not rendered a decision in telecommunications. They had either settled or withdrawn.

Meeting Schedule

The next meeting will be held on Thursday, August 13, 2015, at 9:30 a.m. at the NH State House, Room 305.

Mr. Lessard ***motioned to adjourn.*** Representative Schmidt ***seconded the motion.***

Chairman Patten adjourned the meeting at 12:00 p.m.

Respectfully submitted, Stephanie Derosier

NH Department of Revenue Administration – Municipal and Property Division

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

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