

**West Virginia Board of Public Works
December 3, 2012 – 10:30 a.m.
Governor's Cabinet and Conference Room
Minutes**

Attendees:

Members

Commissioner of Agriculture Gus R. Douglass
Secretary of State Natalie E. Tennant
Attorney General Darrell V. McGraw, Jr.
State Auditor Glen B. Gainer
Diana Stout for State Treasurer John D. Perdue
Joe Panetta for State Superintendent of Schools Charles K. Heinlein
Peter Markham for Governor Earl Ray Tomblin

Guests

Jeff Amburgey, Tax Department
Scott McNeil, Tax Department
Jan Mudrinich, Tax Department
Dawn Warfield, Attorney General's Office
Kathy Schultz, Attorney General's Office
Wayne Williams, Attorney General's Office
Mike Thomas, Attorney General's Office
David Neil, Division of Highways
John McHugh, Division of Highways
Lee Snyder, Jefferson Utilities
Scott Burgess, Jefferson Utilities
Russ Rollyson, Auditor's Office
Sandy Marinacci, Department of Agriculture
Ashley Summitt, Secretary of State's Office
Ashley Parsons, Secretary of State's Office
Jake Glance, Secretary of State's Office
Curt Zickafoose, Secretary of State's Office
Nancy Harrison, Secretary of State's Office
Phil Kabler, WV Gazette

The West Virginia Board of Public Works re-convened on Monday, December 3, 2012 at 10:30 a.m. in the Governor's Cabinet and Conference Room, Building 1, Suite 10 of the State Capitol Complex. The meeting was called to order and chaired by Commissioner Douglass. A quorum of elected officials was established.

The first item on the agenda was the approval of the minutes from the November 1, 2012 West Virginia Board of Public Works meeting. Auditor Gainer made a motion to approve the minutes with Peter Markham seconding. The motion carried.

The second item on the agenda was the receiving and approval of the final tax assessments for public utilities for tax year 2013. Commissioner Douglass referred to the memo provided by the Tax Department. Jeff Amburgey, Director of the Property Tax Division, addressed the Board. He expressed that it has been a pleasure working with Commissioner Douglass and Attorney General McGraw. He continued by discussing the response to the three protests that were made at the November 1, 2012 hearing by Jefferson Utilities, Norfolk Southern Railroad and CSX provided in the memo. The memo also addressed the upcoming peer review. With regard to the peer review, a request for quote has been issued. The bid opening is scheduled for December 11, 2012. It will not be complete until after the assessments for this year must be finalized. In order to assure the Board that the procedures used by the Tax Department are in common practice throughout the Nation, they did a survey of other states. The results are attached to the memo as exhibit 1. One of the issues discussed at the hearing was whether the weighting provided to the cost approach and the income approach needs to be identical for rate-based utilities, like Jefferson Utilities, as it is to the railroads. Another issue was whether the department's use of free cash flow was proper in the income valuation. The survey showed that a majority of the states that responded utilize judgement in the weighting of the approaches. In Utah, where there has been significant litigation over the utility assessments, they have put in to their law how they weight the railroad values. It states, "The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value for the railroads." The Tax Department is in full agreement with that. With respect to the income level, the survey showed that the states are split between using net operating income and some type of free cash flow calculation. The State Tax Department normally uses net operating income, but in certain instances, they would look at both calculations. In response to the protest of Jefferson Utilities, they are a rate-based, regulated utility. This means that their rates and their income are tied directly to their investment in the plant. The cost approach and the income approach are directly tied. The Tax Department determined they should give weight to both of those approaches. However, once they reviewed and met with Jefferson Utilities, the Tax Department recommended that the weightings for that company be adjusted to be more closely in line with other water companies. Also, after the meeting, the Tax Department went over additional data. Jefferson Utilities' net operating income excluded some rental income from their operating property. The Tax Department recommends that the additional income be added to their appraisal and income estimate. After making those two adjustments, they finally recommend that the tentative assessment for Jefferson Utilities of \$3,037,400 be finalized at \$2,224,400. With respect to Norfolk Southern and CSX, based on the comments heard at the hearing, the Tax Department thoroughly reviewed the procedures used to value the large railroads. They recommend a change in those procedures, but not in the final value that has been established. The income value used for both railroads was derived from the annual report to the stock holders. Those are the only two utilities where this report was used. For all other utilities, they use the regulatory report. The Department believes in order to be consistent the regulatory report filed by the railroads should be used. The Department altered the tentative appraisals for both Norfolk Southern and CSX to reflect net operating income as reported to the Service Transportation Board. The Department also adjusted free cash flow calculations. Upon reviewing the new numbers, they determined the initial estimate of income was reasonable. They recommend that the estimate of income be unchanged. The Tax Department recommends that the tentative valuation for Norfolk Southern of \$499,065,600 be finalized. They recommend

that the tentative valuation for CSX of \$493,683,100 also be finalized. In addition to the protests, each year some companies file late or provide additional information. That requires modification to the tentative assessments. Attached as exhibit 5 to the memo, is a listing of the companies affected by those recommendations, the proposed changes to their tentative values and the reason for those changes. The recommendations in the memorandum modify the tentative aggregate value from \$8,975,933,900 to an aggregate final assessed value of \$8,950,607,400. The recommended final value represents an increase of \$489,905,906 when compared to the 2012 final assessed values. The Tax Department recommends that the Board modify the tentative assessed values and establish the final assessed values as referenced as exhibit 5 of the memo. Commissioner Douglass asked for questions. Secretary Tennant asked, in reference to Jefferson Utilities, does the Tax Department anticipate more utilities asking for de-regulation like the railroads to keep assessments fair. Mr. Amburgey stated it has already been seen to some degree in the telephone industry. He continued that for rate-based regulated utilities there is some security in being rate-based regulated. Those companies are allowed to earn a percentage of their cost. The railroads are affected by other sources and are not guaranteed anything. Mr. Amburgey stated that he does not expect that to be a trend. Secretary Tennant noted that after the adjustment for Jefferson Utilities, their 2013 valuation is now less than in 2012. She asked if they could now protest their 2012 valuation. Mr. Amburgey stated they could not, because those values have been finalized. Secretary Tennant asked if it was uncommon to have so many companies with changes to their valuations as shown in exhibit 5. Mr. Amburgey stated that it was common. He explained that a lot of the changes were railroad car line companies that sent in additional data on their mileage. He continued that a couple of the larger changes were underground storage companies which were assessed and should not have been assessed. Their information gets filed with the local tax assessors. Overall, the number of changes is similar with past years. Diana Stout asked when somebody appeals, do they run the risk of having their assessment increased? Mr. Amburgey replied that it could happen. Joe Panetta asked about the two underground gas storage companies. They went from a significant amount to no assessed value. Is that because they are to be assessed locally? Mr. Amburgey stated yes. He explained that several years ago the pipelines were de-regulated and the gas in the storage facilities was now owned by the customers. Now the pipelines provide the Tax Department with a list of all of the customers that have gas stored underground in their facilities. That makes those companies gas marketers and not utilities. Gas marketers file locally. Auditor Gainer made a motion to receive and approve the final assessments as presented by the WV State Tax Department for public utilities for tax year 2013. Peter Markham seconded. The motion carried.

The next item on the agenda was approval of the following deeds:

1. Deed between the West Virginia Department of Transportation, Division of Highways and the City of Bluefield, dated November 8, 2012, approved as to form by the Attorney General's Office November 19, 2012.
2. Deed between the Board of Education of the County of Monongalia and the West Virginia Department of Transportation, Division of Highways, dated August 23, 2012, approved as to form by the Attorney General's Office November 20, 2012.

3. Deed between West Virginia University Board of Governors, on Behalf of West Virginia University and the West Virginia Department of Transportation, Division of Highways (Parcel No. 1), dated October 24, 2012, approved as to form by the Attorney General's Office November 26, 2012.
4. Deed between West Virginia University Board of Governors, on Behalf of West Virginia University and the West Virginia Department of Transportation, Division of Highways (Parcel No. 38), dated October 24, 2012, approved as to form by the Attorney General's Office November 26, 2012.

John McHugh addressed the Board concerning deed number 1. He stated that the property was approximately 1/3 of an acre for the City of Bluefield to construct a new headquarters for the Bluefield Area Transit. It is located near the intersection of interstate I-77 and US 52. Secretary Tennant asked if construction had started. Mr. McHugh replied that it had not. Secretary Tennant made a motion to approve deed number 1 with Auditor Gainer seconding. The motion carried.

John McHugh addressed the Board concerning deed number 2. He stated that the remaining 3 deeds on the agenda were all part of the same Department of Highways project. The property in deed number 2 will be used for Highways to construct a round-about junction. It will improve the intersection northeast of WV 705 and 119. The next two deeds with the WVU Board of Governors are in connection with the same project. Secretary Tennant asked why the amount paid for the property contained in deed number 3 is in excess of the appraised value. Mr. McHugh explained that the appraisal was a WVU appraisal from 2010. The amount paid is based on a more recent appraisal from DOH. David Neil addressed the Board to confirm that the sale was based on the most recent sales available in the area. The price per acre of property went up. They used a fair market value appraisal. Secretary Tennant asked if that was the same for the price of the property contained in deed number 2. Mr. Neil explained that they are building a new school near the intersection. The project will provide the school board with access to the round-about. The price reflects fair market value as established by the appraisal from sales in the past year.

Secretary Tennant made a motion to approve deed number 2 with Auditor Gainer seconding. The motion carried.

Secretary Tennant made a motion to approve both deeds number 3 and number 4 with Auditor Gainer seconding. The motion carried.

Commissioner Douglass asked a question concerning deed number 4. He stated that the WVU Board of Governors and the WVU College of Agriculture are acquiring part of a farm in the area. There is \$1,800,000.00 being transferred between the two entities. He asked who gets control of the money. Auditor Gainer responded that the money would go to the Board of Governors and be distributed at their discretion. Commissioner Douglass stated that the College of Agriculture has been trying to develop a new facility as well as maintain the active teaching program at Mile

High Ground. He requested to know if the Board of Governors would consider giving the money to the College of Agriculture. Secretary Tennant suggested that Treasurer Perdue may be on the Board of Advisors at WVU and may be a good person to consult. Diana Stout stated that she would ask the Treasurer about it.

Auditor Gainer made a motion that the Board go in to Executive Session for the discussion of pending legal matters with Secretary Tennant seconding. The motion carried. The Board went in to Executive Session.

Commissioner Douglass stated for the record that the Board came out of Executive Session at 11:45. He asked for any further business. Secretary Tennant thanked Commissioner Douglass and Attorney General McGraw for their guidance and support over the last four years. She stated that she had been honored to work with both of them. Commissioner Douglass responded that it has been quite an experience from 1964 to the present. He stated that he has seen a lot of changes and growth. He continued that he has quite an array of people that it has been a pleasure to work with. He wished everyone the best. Attorney General McGraw also said thank you.

With no further business, Commissioner Douglass declared the meeting adjourned.

A handwritten signature in cursive script, reading "Natalie E. Tennant", is written over a horizontal line.

Natalie E. Tennant,
Secretary of State
and Ex-Officio Secretary of the
WV Board of Public Works