

**West Virginia Board of Public Works
Wednesday, November 10, 2021 – 10:00 a.m.
Governor’s Cabinet and Conference Room
Minutes**

Attendees:

Members

Governor Jim Justice
Secretary of State Mac Warner
Attorney General Patrick Morrisey
State Treasurer Riley Moore
Jennifer Greenlief for Commissioner of Agriculture Kent Leonhardt

Guests:

Matthew Irby, WV Tax Commissioner
Michael White, Director, Property Tax Div., Tax Department
Frank Capehart, Property Tax Division, Tax Department
Brian Abraham, Governor’s Office
Berkeley Bentley, Governor’s Office
Kathy Schultz, Attorney General’s Office
Chad Toney, Division of Highways
Steve Adams, Ogden Newspapers
Lacie Pierson, WV Gazette-Mail
Greg Wood, Norfolk Southern Corp.
Jennifer Schilke, Norfolk Southern Corp.
Scott Ash, Eastern Gas Transmission and Storage
David Wang, Ernst and Young for Eastern Gas Transmission and Storage
Jason Harshbarger, Eastern Gas Transmission and Storage
Stephanie Reel, Shenandoah Junction Public Sewer
Lee Snyder, Shenandoah Junction Public Sewer
Jodi Rosier, Shenandoah Junction Public Sewer
Ryan Cole, Tax Director, CSX Transportation
Donald Kersey, Secretary of State’s Office
Maureen Lewis, Secretary of State’s Office
Denys Snodgrass, Garrett Reporting

The West Virginia Board of Public Works re-convened on Wednesday, November 10, 2021 at 10:00 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 Governor Justice. A quorum of members was established.

The second item on the agenda was the approval of minutes from the September 29, 2021 Board of Public Works meeting. Attorney General Morrisey made a motion to approve the minutes. Treasurer Moore seconded. The motion carried.

The third item on the agenda was to receive comments from public utility companies concerning notices of tentative assessed values for tax year 2022.

Scott Ash from Eastern Gas Transmission and Storage addressed the Board. He explained that last November, Berkshire Hathaway Energy purchased Dominion Energy Transmission which is now known as Eastern Gas Transmission and Storage. This is the first year Eastern Gas is working through the tax filing process. He referred to the Power Point presentation he submitted. He has been in contact with the Tax Department. Eastern Gas will continue to work with the Tax Department over the next few days to discuss the information. Commissioner Irby responded that they have had ongoing discussions with Eastern Gas and many other taxpayers. A list of those taxpayers has been provided to the Board members. He continued that they have received a lot of information from Eastern Gas and are continuing to work through that information. He introduced Frank Capehart and the new Director of the Property Tax Division, Michael White. They will be working with taxpayers that provide additional information and will provide the Board with detailed answers when they present adjustments to the original tentative values. Attorney General Morrissey asked the company what they think is causing the significant variance in the value that has been assessed. What tangible factors led to the obsolescence point? David Wang replied that the point of obsolescence is coming from the nature of the company's business. Eastern Gas is regulated by FERC, and because of that regulation, they are only allowed certain amounts of revenue. When the certain amount of revenue is compared to the actual revenue that they received, sometimes there is a disparity. The disparity is not always captured in the data provided to the State. To reconcile the difference, they came up with a number that is the requested economic obsolescence. That is what they are asking for. Attorney General Morrissey asked how relevant the decision to stop construction of ACP after the Supreme Court announcement was to this issue. Mr. Ash said he could not speak to that, because it was a Dominion decision. Jennifer Greenlief asked what percentage of Eastern Gas's revenue the 2.2 billion dollars is of the actual revenue produced. Mr. Wang replied that it is approximately 46% of ultimate value. Governor Justice asked if anyone had anything else to add. Mr. Ash replied they are comfortable continuing to work with the Tax Department and provide any needed information.

Greg Wood addressed the Board concerning the tentative assessment for Norfolk Southern Corporation. He stated he wanted to discuss the unit valuation. He distributed a 1 page worksheet. He stated that West Virginia is part of the South Eastern Association which does unit valuation. He did comparisons and the value in other southern states is significantly less than the value calculated in West Virginia. The first issue he has is the cap rate. In other southern states the cap rate is between 11.36% - 12%. In West Virginia it is 9.99%. He continued that he has not been able to obtain documentation explaining the percentage used. His next issue was a reduction called "Less: Intangible Property & Special Charges" on the worksheet. Norfolk Southern has provided documentation of all the intangibles for a number higher than what's listed. They have not been afforded the benefit of the full value. His last issue was the obsolescence factor. Norfolk Southern is a mature company, they have acquired many small railroads. In other southern states, similar railroad companies receive at least a 30% obsolescence adjustment. Norfolk Southern is requesting an adjusted value of approximately 19 billion dollars. Attorney General Morrissey asked how the 9.99% capitalization rate used is different from past years. The same question applies to the Less Intangible Property and Special Charges and Obsolescence. How do these compare with previous years and what was the decision of the company with respect to those numbers? Mr. Wood replied that in past years, the company has had discussions with Tax Department staff and negotiate a number based on current earnings and current future earnings. Sometimes the numbers aren't adjusted, the overall value is adjusted.

When working on the baseline for what the numbers should be this year, the company used a different cap rate. Attorney General Morrissey asked how it changed this year from previous years. Mr. Wood replied that there was different personnel in the Tax Department and there was an apportionment to the State of West Virginia. There was a lot of negotiation. It is not a simple answer. He again stated he was not able to obtain documentation for the cap rate used. Governor Justice asked what the cap rate was last year. Mr. Wood stated that because of COVID, some things got by them. They wanted to appeal but they missed their hearing date. Governor Justice asked what it was the year before that. Mr. Wood replied that he didn't get all of the numbers. Jennifer Schilke addressed the Board. She stated that in the past, Norfolk Southern would make a presentation using their cap rate which was in the range of 11.5% - 12.25%. They would then calculate what their unit value was and what their State value was. When they negotiated, it was to the State value. The Tax Department will have to provide historical information. Norfolk Southern can provide what they used when writing their valuation, based on numbers they were using. They don't have what the State used for calculating the value. Jennifer Greenlief asked if they had provided the information to the Tax Department about how they arrived at the cap rate they used or had they just presented them with a proposed cap rate. Ms. Schilke responded that they are in a group called the National Association of Railroad Property Tax Representatives. They work with the American Association of Railroads to perform a cap rate study. That study was presented to the State in support of the cap rate they use. Governor Justice stated that the Board appreciates Norfolk Southern and the contributions they make to the State. The questions being asked are to obtain information for a better understanding. Ms. Schilke replied they have had some good discussions with the Tax Department and are optimistic that something can be worked out. She continued that they had considered filing an appeal to their valuation last year due to significant changes in the valuation method and other concerns. They want to make their concerns heard. Commissioner Irby stated that if the Board would like the historical approach to their value over the last 3 - 5 years, it can be provided at the next meeting. It may have to be discussed in an Executive Session because it contains confidential information. Secretary Warner asked what his reaction is to the cap rate discussion. Commissioner Irby responded that historically the cap rate has remained about where it currently is. He continued that they also do their own cap rate study using a third party contractor. It has not been shared because it could contain private information. It can't be shared if it does. He is trying to get confirmation from the contractor that it does not. The goal is to publish the cap rate study next year with public information.

Stephanie Reel addressed the Board regarding the tentative assessment for Shenandoah Junction Public Sewer. She introduced Lee Snyder the president of the company, and Jody Rosier the corporate treasurer. Lee Snyder stated that the appeal of the tentative assessment is based largely on the adjustment of income based on the write off of bad debt. Ms. Reel continued that after some discussions with the Tax Department, it is understood that this is the write-off of bad debt which is not a normal course of business. The company is under a moratorium currently and will be until major upgrades are done or the sale to a different utility at a loss. The revenue shown in this tax year is not what will be received in the following year. They are hopeful for a reassessment based on recommendations from the Tax Department. Frank Capehart replied that the information given is accurate. It is the write off of liability that was not identified when the tentative values were prepared. The Tax Department is not prepared to recommend specific numbers today, they do expect to have a revised number for Shenandoah Junction Public Sewer at the next meeting. Treasurer Moore stated that the request as presented by the company seems reasonable. Mr. Capehart replied that it is relatively straight forward.

Ryan Cole addressed the Board regarding the tentative assessment for CSX Transportation. He explained that they are a Class I freight railroad operating approximately 1,700 miles of track in West Virginia. They have concerns related to inputs included in the assessment which resulted in an over valuation of CSX's property. The objections include, the bands of investment included in the State's capitalization rate do not properly reflect the debt and equity structures of publicly traded US railroads. The states capitalizations non-recurring income streams in both income and cash flow approaches results in over stated values. Lastly there are significant departures from the valuation methodologies from those used in last year's final assessment. The company has worked with the Tax Department to address the concerns. They are hopeful continued dialogue will take place. Commissioner Irby replied that they are continuing to work with CSX. After review, they will either recommend an adjustment or explain their reasons for not recommending an adjustment.

The next item on the agenda was the consideration and approval of the following deed:

1. Between Southern West Virginia Community and Technical College Board of Governors and the West Virginia Department of Transportation, Division of Highways, dated September 9, 2021, approved as to form by the Attorney General's Office October 26, 2021.

Chad Toney addressed the Board. He explained that the transfer involves a bridge rehabilitation job in Logan County. It is not a full bridge replacement. It involves two easements. Attorney General Morrissey made a motion to approve the deed. Treasurer Moore seconded. The motion carried.

Governor Justice asked for a motion to go in to Executive Session for a confidential discussion under subsection 12. Attorney General Morrissey made a motion that the Board go in to Executive Session. Secretary Warner seconded. The motion carried.

The Board came out of Executive Session. Governor Justice stated that no action had been taken during the session.

With no further business, Secretary Warner made a motion to recess until the next meeting. Treasurer Moore seconded. The motion carried. The meeting recessed.



Mac Warner, Secretary of State
And Ex-Officio Secretary of the
Board of Public Works