

**Town of Auburn
Board of Selectmen
August 13, 2018
Town Hall**

7:00 p.m.

() Call to Order – Pledge of Allegiance

Approval of Payroll for the Week of August 6, 2018 -- \$43,483.34

Approval of Accounts Payable for the Week of August 13, 2018

Approval of Consent Agenda – Week of August 13, 2018

() Appointments with the Board

Rene LaBranche - Review of Potential of Water Service for By-Pass 28

() New Business

BK Bazan – Resignation from Parks & Recreation Commission

Offering of Surplus Police Vehicles for Sale

November 2018 and March 2019 Election Considerations

() Old Business

Superior Court Decision and Motion to Reconsider – Telephone Poles Valuation

Parks & Recreation Operations and Structure

() Other Business

() Minutes

- July 30, 2018 Public Meeting
- July 30, 2018 Non-Public Session (x2)
- August 6, 2018
- August 6, 2018 Non-Public Session

() Non-Public Session pursuant to RSA 91-A: 3, II (b)

Consideration of hiring an individual as a public employee

() Adjourn

Note: "Any person with a disability who wishes to attend this public meeting and needs to be provided reasonable accommodations in order to participate, please contact the Board of Selectmen's Secretary at (603) 483-5052 x100, so that arrangements can be made."

To:	Bill Herman – Town Administrator Town of Auburn, NH	From:	Rene LaBranche Auburn, NH
File:	General Services	Date:	August 8, 2018

Reference: Municipal Water Main Extension to the Rte. 28 Bypass Southern End

In accordance with your request we have explored two potential options/alternative routes and the process and costs associated with extending municipal water to the southern end of the Rte28 By-pass of Auburn. The two options are as follows:

- Alternative A – via Auburn Road/Beaver Brook Road to Rte. 28 Bypass
- Alternative B – via Hunter Mill Way/Cross Country/ Gold Ledge Ave to Rte. 28 Bypass

Initially we contacted Dave Boisvert of Pennichuck Water Works (Pennichuck), we explained the interest of the Town to extend municipal water from where it ends near the Londonderry-Auburn town line on Auburn Road into Auburn to service the southern end of the area along the Rte. 28 Bypass. Mr. Boisvert said that the area described was not within Pennichuck's franchise area and he believed it would be serviced by Manchester Water Works (MWW).

We then spoke with John St. Pierre of MWW. We explained the interest of the Town relative to extending municipal water into Auburn to the southern end of the Rte. 28 Bypass area. Mr. St. Pierre identified that the MWW existing water main on Auburn Road extends approximately 200 ft past the intersection of Longwood Ave. and Auburn Road. The existing water main is a 16" ductile iron (DI) pipe and the static pressure at the end of the main is 70 psi. Mr. Pierre also indicated that the process of extending a MWW water main into Auburn would require:

1. Submission of a Petition Application to the Board of Water Commissioners. Information by MWW included:
 - The petition application cost is \$200,
 - A petition of this magnitude would require some estimates of the amount of the daily flow demand of the area to be serviced,
 - Once a preliminary scope of the project is determined, schedule meetings with the Engineering staff at MWW to discuss design concerns in order to be "on the same page" and work together on this project,
 - The financial burden for this project would be absorbed by the Town of Auburn including design, inspection, and installation costs. MWW would require one of our inspectors to be onsite full-time during construction,
 - According to our records, the static pressure at the last hydrant on Auburn Road at the end of the main is 70 PSI.

Later we were informed by MWW that the south end of Auburn along the Rte. 28 Bypass is not within their franchise area, or, according to MWW, the area is in no other water suppliers franchise area. MWW indicated that the process would involve MWW going to the NH Public Utilities Commission for approval to expand their franchise area. MWW suggested that the Town and Stantec meet with senior level MWW staff prior to submission of the Petition Application due to the magnitude of the water main extension.

Reference: Municipal Water Main Extension to the Rte. 28 Bypass Southern End

Regarding the two-alternative water main extension routes previously identified we offer the following assessment of each:

Alternative A – via Auburn Road/Beaver Brook Road to Rte. 28 Bypass

As shown on attached Figure 1, this water main extension would start at the end of the existing 16" water main on Auburn Road in Londonderry approximately 3,000 ft. from the Londonderry/Auburn town line. The main would continue along Beaver Brook Road in Auburn for approximately 1,000 ft. to the Rte. 28 Bypass. MWW indicated that they would require that the water main installed along Auburn Rd/ Beaver Brook Rd be a 16" dia. main. To service the existing businesses along the Bypass and to extend to Leppert Way to service potential commercial, professional, and industrial developments on properties west of the Bypass and Leppert Way a new 12" water main must be installed from the intersection of Beaver Brook Road, extending southward along the Bypass approximately 4,000 ft to Leppert Way.

A minimum 12" dia. water main is suggested, at this point, because it is likely and attractive to businesses to have the capability of providing adequate water supply for fire suppression system for larger structures and 12" dia. water main can readily provide a reasonable fire flow. As noted, the existing water main on Auburn Road is a 16" dia. line, MWW indicated that they may ask that new water mains installed on the Bypass by 16" dia., and in the past, they have contributed funds to pay for the increase in main size from, in this case the increase from a 12" pipe to a 16" pipe.

There are various aspects of this route that must be considered including:

- The water main extension starts in Londonderry and would continue for approximately 3000 ft under the jurisdiction of Londonderry and would be subject to the specific requirement of that Town.
- Approximately 3 years ago the Town of Londonderry reconstructed Auburn Rd. to the Auburn town line. The project included one major box culvert for a significant stream crossing.
- Based on our knowledge of the Town and the requirements of their Public Works Department, we anticipated that it would be required that a water main crossing at this location would likely be required to be a horizontal directional drill installation, off the right of way, requiring an easement from the adjacent property owner.
- Because much of the roadway has significant wetlands on each side, it is anticipating that new water main would be installed in one of the travel lanes, requiring replacement of the pavement in one the travel lanes and a full roadway width overlay.
- The water main installation along the Bypass would likely be installed off the road in the shoulder.
- A preliminary conceptual linear foot project cost to construct the project described above would be approximate \$350/ linear foot, at total length of approximately 8,000 ft. A preliminary overall conceptual level project cost would be around \$2,800,000.

August 8, 2018

Bill Herman – Town Administrator

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Reference: Municipal Water Main Extension to the Rte. 28 Bypass Southern End

Alternative B – via Hunter Mill Way/Cross Country/ Gold Ledge Ave to Rte. 28 Bypass

As shown on attached Figure 1, this water main extension would start on Hunter Mill Way utilizing potentially a tapping sleeve and valve to tie into the existing 8" water main. A new main would then extend approximately 3,000 ft easterly cross country towards Gold Ledge Drive. Based on a preliminary review of this portion of this alignment we would anticipate a number of moderate to minor wetland crossings requiring either environmental permitting or use of a trenchless technology such as horizontal directional drill. Once at Gold Ledge Drive the main could run along the roadway shoulder, extending to the intersection of the Bypass. The main could then extend northerly, approximately 500 ft, to Leppert Way to service existing businesses and anticipated development in this area. In addition, a new main could extend southerly along the Bypass roadway shoulder to Beaver Brook Road to potentially service existing homes, businesses, and future development along the south end of the town along the Rte. 28 Bypass.

The issue with Alternative B is that the existing water main at the tie-in point on Hunter Mill Road is only an 8" dia. main that extends through a residential development. An 8" water main cannot provide sufficient water flow volume for fire suppression systems for larger commercial and industrial buildings.

There are various aspects of this route that must be considered including:

- The water main extension starts in Londonderry and would continue for approximately 2000 ft under the jurisdiction of Londonderry subject to the specific requirements of that Town, however because the line would be installed cross-country, excessive conditions would be unlikely.
- There are not existing easement providing utility access to the crossing county route east of Hunter Mill Way, therefore an easement from a private property owner would be required.
- The cross-country route between Hunter Mill Way and Gold Ledge Drive is private property requiring easements.
- Once the main extends through the cross-country portion of Alt. B, there is a section of the main that must extend through Main Drilling & Blasting property requiring an easement. In addition, the water alignment shown on Figure 1, extends close to Main Drilling & Blasting's explosive storage facility which could be an issue.
- A preliminary conceptual linear foot project cost to install the project described above would be approximate \$300/ linear foot, an approximately of 7,200 ft, from Hunter Mill Way to Leppert Way and another approximate 3,800 ft from Gold Ledge Drive to Beaver Brook Road extending southerly on the Bypass for a total length of 11,000 ft. A preliminary overall conceptual level project cost would be around \$3,300,000.

Recommendation

Because the existing tie-in main on Hunter Mill Way is only an 8" dia. line it is not feasible to provide adequate water flows for large building fire suppression systems, therefore Alternative A should be considered the more viable option to provide a municipal water supply to the southern end of the Rte. 28 Bypass in the Town of Auburn.



August 8, 2018

Bill Herman – Town Administrator

Page 4 of 4

Reference: Municipal Water Main Extension to the Rte. 28 Bypass Southern End

If you require any additional information, please call.

Stantec

A handwritten signature in black ink, appearing to read "Rene LaBranche", with a long horizontal line extending to the right.

Rene LaBranche
Senior Principal

Phone: 603-669-8672

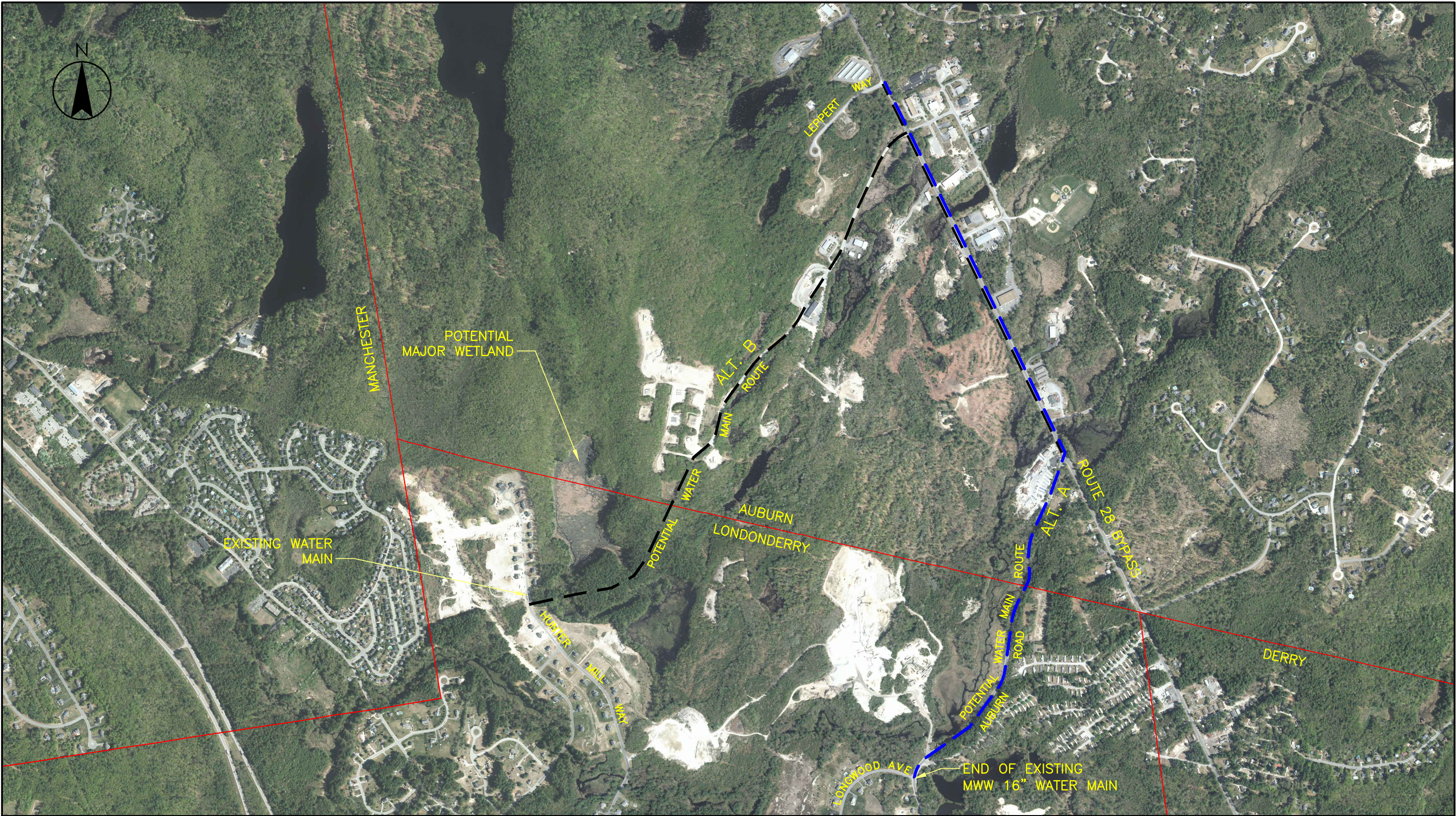
Fax: 603-669-7636

rene.labranche@stantec.com

Attachment: Figure 1

c. Dan Tatem
Auburn BOS

v:\1951\active\195113307\municipal water drawings\water main extension 2018.08.10 10:23:36 AM



Stantec Consulting Services Inc.
5 Dartmouth Drive Suite 101
Auburn NH 03032-3984
Tel: (603) 669-8672
www.stantec.com

Notes



Client/Project
TOWN OF AUBURN, NH
WATERMAIN EXTENSION

Project No.
195110946

Title
EXTENSION TO SOUTHERN
END OF RT. 28 BYPASS

Revision	Date
	2018.08.08
Reference Sheet	Figure No.
	1

July 20, 2018

To whom it may concern,

Please accept my resignation from the Auburn Parks and Recreation Commission. Although I have enjoyed my time on the Commission, work and family commitments take priority. I appreciate the opportunity to serve the people of Auburn. I look forward to attending Parks and Recreation events in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "BK Bazan", with a stylized flourish at the end.

BK Bazan

[illegible]

CHICAGO MOTORS INC.

2553 W. CHICAGO AVENUE
CHICAGO, ILLINOIS 60622

DATE: 08-09-18

ATTENTION: Selectman's Office
Auburn NH

BID FOR 2- VEHICLES

Dear Sir/Madam

Our bid for Vehicle/Vehicles is as under:

2013 Explorer	84K	\$6510.00
2014 Explorer	90K	\$6510.00

If you have any question feel free to contact us, also please kindly let us know the bid results and keep us posted for future bids.

M. Navin

Telephone (800) 942-0005 (773) 235-6500 FAX: (773) 235-9670

**PUBLIC NOTICE
AUBURN, NEW HAMPSHIRE**

PUBLIC SALE

The Town of Auburn is offering the following for sale by sealed bid:

- 2013 Explorer Police Interceptor
Color: White
Front Push Bumper, Trailer Hitch & Utility Spotlight
Mileage – 84,643.2
Minimum Bid -- \$6,000

- 2014 Explorer Police Interceptor
Color: White
Utility Spotlight
Mileage – 90,698.8
Minimum Bid - \$6,000

Both vehicles feature AM/FM/Sirius/CD Player, Bluetooth Connection, Air Conditioning, Power Windows, Power Locks, Power Seats (Front), Cloth Seats, and Window Splash Guards Front & Rear.

The vehicles are offered for sale on an “as is” basis with no warranty expressed or implied. The vehicles have most recently been used as police cruisers. The vehicles are available for inspection at the Auburn Town Hall during normal business hours.

Sealed bids indicating the amount offered and the particular vehicle the bid is for should be submitted in a sealed envelope marked “AUTOMOBILE BID”. Bids must be received at the Selectmen’s Office, 47 Chester Road (P.O. Box 309), Auburn, NH 03032 no later than 2:00 P.M. on Friday, August 10, 2018.

The Board of Selectmen reserves the right to accept or reject any or all proposals in the best interest of the Town of Auburn.

TOWN OF AUBURN
July 30, 2018

Town of Auburn

Town Hall
47 Chester Road
P.O. Box 309
Auburn, NH 03032



Town Administrator

William G. Herman, CPM
Phone: (603) 483-5052 Ext. 111
Fax: (603) 483-0518
E-Mail:
townadmin@townofauburnnh.com

To: Board of Selectmen

From: Bill Herman, CPM, Town Administrator
Date: August 10, 2018
Re: September & November 2018 Elections

During the past week, Town Clerk Kathy Sylvia and I met with Lori Collins to review the school property and the renovation & addition project with an eye as to how the September State Primary Election and the November State General Election may be affected.

Right up front we want to acknowledge the School District is being very accommodating and, in fact, has delayed the beginning of major construction activity at the rear entrance of the building until September 12th in deference to the Primary Election.

While there should be little impact on the September election, there is concern for the November State General Election, and possibly the March 2019 Town and School District elections. With certainty, by the November election, the rear entrance to the school property will not be available and will be physically fenced off to public access. A significant portion of the rear parking lot will also not be available for use.

Access will have to be through a different door in the back of the building near where the dumpster is located. It is likely we can secure a couple of handicapped parking places there. The access is from the back portion of the cafeteria, with individuals then going through the cafeteria to the normal entrance to the gym and voting, but is not a code compliant handicapped access entrance/exit.

There is no school scheduled that day, so we won't be competing with students and school buses. However, there are Teacher / Parent conferences scheduled for the day. Past experience indicates that actually has a greater impact on the parking situation as parents come, park and stay longer than a voter might, so voters will be left with less parking capability as a result. Even with the potential of most faculty members parking at the Safety Complex and skating rinks areas that day, parking for this election will be very difficult.

Under RSA 658:9, one of the election responsibilities of the Board of Selectmen is to provide for the "arrangement of the polling place". For at least this one election in November, and possibly the March election, the Board should give consideration to possibly moving the election to another location to avoid this situation and ensure the Town is in full compliance with State election regulations.

At this point, we believe the only other facility that would likely meet all of the required standards might be the First Assembly of God facility.

Thank you for your consideration.

Town of Auburn

Town Hall
47 Chester Road
P.O. Box 309
Auburn, NH 03032



Town Administrator

William G. Herman, CPM
Phone: (603) 483-5052 Ext. 111
Fax: (603) 483-0518
E-Mail:
townadmin@townofauburnnh.com

To: Board of Selectmen

From: Bill Herman, CPM, Town Administrator

Date: August 10, 2018

Re: FairPoint Assessing – Initial Court Decision

Last week we received the attached decision from the Merrimack County Superior Court on the valuation phase of the FairPoint trail. This phase concerns the valuations for telephone poles, conduits and use of the public rights-of-way for property tax purposes. In basic terms, the Judge found the telephone company's expert to be more credible than the analysis presented by the municipalities expert, and adopted FairPoint's methodology to value the telephone property.

This case was initiated in 2012 and involves the property assessments of approximately 100 communities throughout the state including Auburn.

The decision is lengthy and at times confusing. The attorneys representing the various municipalities believe there are multiple errors in the decision which are appealable. As a result, they have submitted the attached Motion to Reconsider, which is the first step in pursuing an appeal. The appeal includes those issues from the first phase of the trial regarding taxability of the use of rights of ways, as well as the issues covered in the attached decision.

As I understand it, there is no expectation the Court is going to make any significant change to its order based on the Motion to Reconsider. FairPoint is not required to file a response to this motion, but it is anticipated that it will. The 30 day appeal period will start to run when the Court issues an order on the motion for reconsideration.

In general terms, there are tens of millions of dollars in assessed valuation statewide at stake in this legal process. The case has two portions to it – one is this first phase which deals with the general valuation process and standards that affects all of the municipalities involved. This is why the court system has bundled all of the individual cases together to be heard in mass at one Court instead of tying up all of the Superior Courts around the state with individual cases. It is also what allows the municipalities to share legal counsels at a significant cost savings to each of us. In Auburn's case, we engaged the Mitchell Group in Laconia, who is representing about 45 communities.

Once the overall valuation standards phase is complete, the second phase will then be individual to each community to defend is specific valuations and the property tax bills that resulted. Each community will be on its own to defend its own work efforts.

There is no immediate action for Auburn to take. The case will be moving towards an appeal in the New Hampshire Supreme Court before there is any finality to the overall valuation process.

Thank you for your consideration.

Attachments

THE STATE OF NEW HAMPSHIRE

Merrimack County Superior Court

163 N. Main St.

P.O. Box 2880

Concord, NH 03301-2880

1-855-212-1234

NOTICE OF DECISION

LEAD FILE 220-2012-CV-100

**Northern New England Telephone Operations, LLC d/b/a FairPoint Communications, NNE
v. Town of Acworth**

Enclosed please find a copy of the Court's Order dated July 20, 2018.

7/25/2018

Tracy A. Uhrin
Clerk of Court

The State of New Hampshire

MERRIMACK, SS

SUPERIOR COURT

**Northern New England Telephone Operations, LLC, d/b/a FairPoint
Communications-NNE**

v.

Town of Acworth

No. 220-2012-CV-100

ORDER

These consolidated cases involve the taxation of telephone poles, appurtenant equipment and rights-of-way used by the Plaintiff Northern New England Telephone Operations, LLC, d/b/a FairPoint Communications (“FairPoint”). These cases began in 2013 when — after emerging from bankruptcy — FairPoint sought an abatement of taxes on telephone poles, conduit and rights-of-way against virtually all the towns in the State of New Hampshire. FairPoint’s cases were transferred to this Court by the Chief Justice of the Superior Court in 2013. FairPoint has brought new cases every year since that time, and cases since that time have either been transferred or stayed, pending this Court’s ruling on the first cases. The cases involve interpretation of unique statutes: RSA 72:8-a and RSA 72:23. A number of cases have settled, one legal issue involving the cases has been determined conclusively by the New Hampshire Supreme Court, but other legal issues can only be appealed after a final order is issued on the valuation of the telephone poles, appurtenant equipment and rights-of-way.

Accordingly, counsel for FairPoint and a number of the Towns chose as test cases the 2011 tax abatement cases for the Towns of Hanover, New Hampshire, Durham, New Hampshire and Belmont, New Hampshire. The manner in which these Towns taxed FairPoint raises all of the issues raised by the other cases, and a final order in these cases will allow the parties to either appeal or accept the Order and obtain guidance on the other cases.

The parties agree that the equalization ratio as determined by the Department of Revenue Administration ("DRA") reflects the general level of market value assessed in each Town. Accordingly, the Court will simply set forth the value of the property found. The parties shall set forth a proposed form of order, within 10 days of the Clerk's notice of the date of decision, applying the equalization ratio to establish the appropriate tax and determine whether or not abatement is due. The Court will then issue a final order.

VALUE OF PROPERTY

TOWNS	Poles	Conduit	ROW Use (Poles) – ROW Use (Conduit)	
Belmont	\$1,077,673	\$644,732	\$116,763	\$6,144
Durham	\$818,650	\$988,910	\$219,869	\$24,883
Hanover	\$797,835	\$2,114,525	\$202,060	\$18,961

BACKGROUND

In a tax abatement case, the taxpayer bears the burden of establishing by a preponderance of the evidence that the town's assessment resulted in it bearing a disproportionate share of the town's burden. Porter v. Town of Sanborn, 150 N.H. 363, 367 (2003). A taxpayer challenging a tax assessment must show that his property is assessed at a higher percentage of fair market value than other assessed properties. See, e.g., Verizon New England, Inc. v. City of Rochester, 151 N.H. 263, 272 (2004). The Superior Court frequently considers such cases and they are usually resolved with expert appraisers applying settled principles of appraisal of real estate, which are then applied to facts involving the particular property. This case is unusual because it involves taxation of property — telephone poles, appurtenant equipment and rights-of-way — which are governed by specific statutes that have not been much discussed in New Hampshire law. See RSA 72:8-a and RSA 72:23.

After the Court issued a lengthy order on the various legal issues that had not been decided by the New Hampshire Supreme Court on April 27, 2016, the Court and the parties determined that the best way to proceed was for the Court to find specific facts in test cases so that a final judgment could enter and the legal conclusions reached by the Court could be appealed, if necessary. Accordingly, discovery proceeded and counsel advised the Court that the issues which would resolve all of the questions in all pending cases but could be considered by a final order in the 2011 cases involving Hanover, New Hampshire, Belmont, New Hampshire and Durham, New Hampshire. Following trial, submission of memoranda and exhibits the Court addresses the issues of valuation of property as follows.

II

TELEPHONE POLES

A. The Parties' Methodology

Both parties relied upon one expert witness. FairPoint's expert witness was Ann Bulkley ("Bulkley") of Concentric Energy Advisors, Inc. ("Concentric"). Bulkley holds a master's degree in economics, a bachelor's degree in economics/finance and according to her resume has served as an expert in valuing utility property for more than 2 decades. The Towns relied upon George E. Sansoucy, P.E., LLC ("GES"). George Sansoucy ("Sansoucy") of GES is a licensed civil engineer who holds a master's degree in sanitary/environmental engineering and has been operating a consulting engineering appraisal firm since 1980. Since 1990, the firm has been actively involved in the evaluation, appraisal, assessment and valuation of public and private utility property of all kinds throughout the United States. The Court finds both experts qualified.

Three methods may be used to value property for tax purposes: the replacement cost approach, the comparable sales approach and the capitalization of income approach. Appeal of Sawmill Brook Development Co., 129 N.H. 410, 413 (1970). In this case, each party's expert relied primarily on the cost approach in valuing the poles/conduit which is particularly applicable where the property being appraised involves relatively unique or specialized improvements for which there exist no comparable properties on the market. Neither expert was able to develop an income approach, based on the pole and conduit property alone, nor were they able to develop a model based on comparable sales of telephone and conduit networks. However, GES did attempt to value the poles by adding income received from the poles to their replacement cost. GES provided no authority for that this methodology is generally accepted by appraisers; an expert must choose either the

replacement cost approach, the comparable sales approach or the capitalization of income approach, but cannot combine them and thereby inflate the value of the property. The Court rejects this approach.

Apart from that variation, each party's expert also followed the same general replacement cost less new depreciation approach ("RCNLD")¹. Both experts also followed the same general way of reaching RCNLD. They both proceeded by taking RCN minus depreciation to a 20% floor, expressed as follows:

$$\text{RCN-Depreciation (to a 20\% floor)} = \text{Total Value}$$

Both experts agreed that depreciation was taken down to 20% because some telephone poles exceed their expected useful life.

One of the primary disputes in the case is just what the useful life of a telephone pole is. Ironically, in cases arising after September 1, 2016, the New Hampshire Legislature has determined that every municipality shall determine the value of poles and conduits by the following formula:

[T]he replacement cost new (RCN) of the telecommunications pole or conduit, less depreciation, calculated on a straight-line basis for a period of 40 years with a residual value of 20%.

RSA 72:8-a.

One of the difficulties in determining value is that telephone poles were installed many years ago, and Court finds that the historical data relating to their costs and the cost of installation is questionably reliable, in part based on the anomalies apparent in the data. Both experts recognized these anomalies and tried to deal with them in different ways; Concentric by grouping data by decade and GES by dropping data it believed anomalous.

¹ This methodology is required by statute in cases arising after 2016. RSA 72:8-c.

Consequently, the analysis of telephone pole RCN by both experts differed significantly. Bulkley took the position that the paucity of FairPoint's installed cost data precluded use of the reproduction cost and meant that it was necessary to perform a replacement cost approach. Using FairPoint's pole data concerning height, location vintage and ownership percentage, Concentric developed a weighted RCN approach that equally weighted: (1) a trended cost approach based on confidential installation cost data received by Bulkley from 6 utilities in New England; and (2) a construction cost estimate derived from RS Means Cost Data ("R S Means"). Tr., Day 1, 33:25-34:2; Tr. Day 1, 27. RS Means is a tool used by utilities to estimate construction costs.

The Towns criticize Bulkley because she used a survey of undisclosed utilities rather than data provided by her client, Fairmont. Concentric refers to this data as Bulkley's New England Utility Survey ("Utility Survey"). Bulkley's response to this criticism was that what historical data was available from FairPoint was not sufficiently detailed. GES also criticized Bulkley because the data upon which she relied was "confidential" and not disclosed to the Towns. As the Towns point out in their post-hearing memo, there is no way for the Court or the Towns to evaluate the accuracy of the Utility Survey data, what exactly Bulkley received for data, the scope of or the specific decisions Bulkley made, and her application of the data because she refused to provide the raw data on the ground that she had promised the parties that she obtained the data from that their information would be kept confidential. (Town's Post Hearing Mem., p. 5.).

As a general rule, an expert is required to provide in discovery all data upon which he or she relies. See RSA 516:29-b. The fact that the data Concentric relies upon has not been disclosed to GES and to the Court could diminish the probative value of the assumption made by Bulkley that the data is reliable. On the other hand, the Towns never

moved to obtain the data, or sought to preclude Bulkley's testimony². It is hard to imagine why the information could not have been produced pursuant to a protective order. The fact that the Towns failed to move to compel production of the data does not suggest lack of diligence on the Towns' part, but rather that they recognize that the data is probably reliable and probative.

Bulkley testified that the data from the New England Utility Survey came from several hundred thousand pole installations and a significant number of conduit miles from utilities in New England, including some in New Hampshire. According to her testimony, the geographical proximity of the pole installations made them useful comparatives related to FairPoint installations. She testified that she has done a significant amount of work in the Midwest, which, unlike New England, tends to have sandy soil and she recognizes the significant difference in New England soils, and the effect that would have on cost. Tr., Day 1, 36.

Bulkley testified that her conclusions were corroborated by Sansoucy's analysis of PSNH cost data. The PSNH cost data (obtained from Sansoucy) came from the Federal Energy Regulatory Commission ("FERC") account 324, the uniform system of accounts used by electrical utilities for regulatory reporting of cost data on utility pole installation. Utilities are required to correctly report that cost data because it forms a part of rate setting and, ultimately, return on investment. Tr., Day 1, 42:23-43:2.

Bulkley's methodology required some assumptions. The majority of the pole survey data came from poles approximately 35 feet and conduit survey information severally came in only 2 categories of sizes. FairPoint's contained the unique characteristics of each

² According to FairPoint the issue of confidentiality was not raised until trial; when it was raised at trial, the Court noted that "if it was important, you could have filed a motion to compel..." (FairPoint Reply Memo, p.2, citing Tr. Day 1 at 71:4-6.).

pole, including its height.

To bring the Utility Survey costs current, Concentric trended the data using the Handy Whitman Index, which is used by most experts who appraise utilities in order to bring past costs to current value. GES also used the Handy Whitman Index. The use of the Handy Whitman Index is not disputed; both experts recognized past costs needed to be brought to present value.

There was a difference in how the parties addressed anomalies in the data. For example, data from 1941 showed that pole installation cost \$5130 per pole and in 1942 \$608. Cost data in this case was presented that went back to the early 20th century and examination of what cost figures exist shows clear outliers. Obviously, given the fragmentary data, anomalies would be expected and would need to be corrected for. GES suggested outliers should simply be identified and removed. Bulkley decided to use a weighted cost by decade, thereby preventing a very small sample or anomaly from undermining the benchmark. Tr., Day 143:7–44:18; 46:2–48:2; Ex. 38 at 16–17. The Court believes that Bulkley's approach is the better one, because removing a particular anomaly requires a subjective decision made on little information, often from a period of time far removed from the present.

GES criticizes Bulkley for not using FairPoint data to determine the actual cost of poles themselves. However, Bulkley testified — and the Towns do not dispute — that no FairPoint data exists for years prior to 1980. Tr., Day 1, 160:2–16. The testimony at trial was that GES was provided information on 3161 pole invoices involving some 37,000 poles. The evidence at trial was that there were approximately 9500 poles in the three Defendant Towns alone — which illustrates that 37,000 poles is a very small sample. Under these circumstances, it was reasonable to use the Survey data instead of the very

small sample of FairPoint poles. While GES purported to rely upon installation data from FairPoint, in fact, GES relied on only 47 work orders that included installation cost for 92 poles. Exhibit BB, Ex. AA. Using this small sample, and a small sample from Littleton Water and Light Department, GES determined that the projected installation cost it had derived from RS Means were reasonable. The Court does not credit this testimony, because the samples it used were too small to provide a reasonable check on the RS Means derived installation costs³.

Both Bulkley and GES used an estimating tool referred to as RS Means to estimate the cost of construction. Ironically, although both parties rely on RS Means, and, according to the testimony, it appears that the New Hampshire Legislature has required that after 2016 municipalities should rely on RS Means in assessing taxes on poles and conduit, both experts criticized RS Means; Bulkley, claiming that RS Means is “often on the higher side” and is often not relied on in the construction industry for bidding purposes, and GES suggesting that RS Means’ understanding of New Hampshire labor rates is flawed. Nonetheless, the Court believes that RS Means is entitled to weight as the testimony from both experts is that it is generally accepted in the utility industry⁴.

B. Calculation of RCN

The fundamental difference between the experts involves the manner in which the parties calculated RCN. Essentially, rather than attempting to reconstruct the actual cost paid by FairPoint by using estimates and extrapolation, Bulkley relied upon data from the Utility Survey, and then attempted to determine if that data could be confirmed by other information such as RS Means, and the PSNH survey introduced into evidence regarding

³ Uncontrolled small sample evidence broaches the logical fallacy of inductive reasoning: “I saw 5 Ford automobiles. They were all red. Therefore, all Ford automobiles are red”.

⁴ In fact, there was testimony at trial that the Department of Revenue Administration requires municipalities to use RS Means in order to provide standard cost data. RSA 72:8-c.

value of Public Service poles in New Hampshire obtained from FERC.⁵ GES, beginning with a sample of FairPoint poles, attempted to construct a model of the cost that Sansoucy believed would be required. The flaw in GES's approach, however, is that it requires numerous assumptions, each of which is subject to variables, and some of which are completely subjective.

GES calculated the unit price per pole as a combination of 8 primary cost components: (1) material and labor site work costs; (2) mobilization costs; (3) guy wire and anchor costs; (4) pole foundation costs in ledge or bedrock; (5), compaction and disposal costs; (6) general contractor overhead and profit; (7) owner's costs (to account for field personnel, engineering, permitting and office overhead); and (8) an allowance for the cost of funds during construction. The fundamental problem with projections by assumption is that assumptions must be built upon assumptions.

For example, GES assumed that mobilization costs would be incurred for every 3 poles installed. There is no historical data detailing how mobilization costs were actually incurred for installing FairPoint's poles and it is reasonable to believe that a distribution system would be reproduced with greater efficiencies than mobilizing 3 poles at a time. This is also illustrated by the much lower Utility Survey costs, which presumably include mobilization cost. Similarly, GES included a general contractor's overhead and profit; however, FairPoint confirmed that company employees install the poles in the Towns and it does not utilize general contractors.

Perhaps most importantly, as addressed in the Motion in Limine, GES's pole cost estimates reflected excavation cost for the poles that included an estimate for installation in ledge or bedrock. GES further assumed that 75% of the bedrock measured in 8.28

⁵ There was evidence that approximately 94% of FairPoint's poles are co-owned by PSNH.

square miles of Durham is more than 6 feet below the surface. Ex. A at 72–73. Sansoucy justified his opinion by saying that if you “walk through Durham there is rock everywhere”. Tr., Hearing Mar. 5, 2018 (motions in limine) 109:1-2. Based on an analysis of subsurface rock in Durham, GES assumed that 10% of the poles in all three Towns would incur similar ledge boring costs. There is no real basis for this conclusion, and during the hearing on the Motion in Limine to exclude the testimony, GES admitted that the ledge boring costs are essentially an extraordinary assumption, within the meaning of USPAP⁶. Since there was no proof of this extraordinary assumption at trial, the Court is not persuaded by the opinion based upon it.

The issue of ledge and bedrock illustrates why the Utility Survey is preferable to an assumption. There is no doubt that pole installation in New England would involve some percentage of bedrock or ledge installation. Any data base involving pole installation in New England — as Bulkley testified the Utility Survey is — would include real world ledge boring costs.

GES also considered the cost of guy wires and anchors as part of the cost of poles. GES estimated that 20% of all poles in each of the Towns required guy wire and anchor installations and 50% of those installations were estimated to be anchored in concrete. However, guy wires and anchors are not subject to taxation, RSA 72:8-a only permits

⁶ EXTRAORDINARY ASSUMPTION: an assumption, directly related to a specific assignment, as of the effective date of the appraisal result, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

USPAP at 3.

taxation for “structures, poles, towers and conduits” and expressly excludes from taxation “other devices and equipment, including wires, fiber optics and switching equipment.” No statute specifically authorizes taxation of guy wires and anchors. It is well settled that the right to tax “must be found within the letter of the law and may not be extended by implication”. Pheasant Lane Realty Trust v. City of Nashua, 143 N.H. 140, 143 (1998). The Department of Revenue Administration (“DRA”) does not include guys and anchors in its pole values. Tr., Day 4, 592:9. Anchors and guys, which do not appear to be justified, add substantially to GES’s values.

The Court finds persuasive the fact that the conclusions reached by Bulkley are essentially consistent with the information obtained from other sources, including GES’s own PSNH pole data study, and that GES’s conclusions based upon estimated costs, are far higher. Pole values calculated by the Utility Survey, by Concentric using an RS Means analysis, from GES’s Public Service data and from the New Hampshire DRA data are all relatively similar, while the GES data, derived *a priori* far exceeds the other data:

	Belmont	Durham	Hanover
Concentric Utility Survey	\$2,471,804	\$2,019,277	\$2,176,248
Concentric: RS Means	\$2,151,608	\$2,051,998	\$1,423,669
GES PSNH Pole Data	\$2,242,515	\$1,878,245	\$1,746,470
NH DRA Data	\$2,322,132	\$1,805,219	\$1,846,527
GES Estimate	\$4,503,606	\$3,663,552	\$3,541,538

An analysis of real world data is preferable to an estimate for the obvious reason that the real world experience may show that it has been possible to resolve an anticipated problem more efficiently than predicted, or that a problem that was anticipated to cause little difficulty did in fact cause great difficulty and expense. The New Hampshire Supreme

Court has recognized that the replacement cost approach tends to inflate fair market value by setting a price that exceeds a level of actual market price negotiations. Manchester Housing Authority v. Reingold, 130 N.H. 598, 602 (1988).

Moreover, the Court is troubled by the fact that GES has been involved in municipal utility taxation for many years and has rendered different opinions involving the same property in different years without adequate explanation. Sansoucy was vigorously and effectively cross examined on contradictory opinions of value of the same poles at issue in this case that he has given at other times. For example, in the Town of Durham in 2011, GES arrived at a unit cost of 30 foot poles of \$1050. Ex. 22. Those costs increased to \$1125 in 2013. Ex. 21. In 2015, 30 foot poles were valued at \$2,731. Ex. 23. The values then fell to \$2,623. In this litigation, GES opines the same 30 foot pole is now worth \$1680. GES did not provide an adequate explanation for these variations, and its failure to do so limits the Court's willingness to accept its conclusions. See FairPoint's Post-Hearing Mem., p. 29–31.

In sum, the Court accepts the values of the poles set forth by FairPoint.

C. Pole Depreciation

Both experts believe that only physical deterioration should be considered in determining depreciation. Neither party introduced any evidence or considered functional or economic obsolescence. FairPoint argues for an average of 30 years for telephone poles. Sansoucy believes the appropriate standard for depreciation is 60 years.

Concentric relies essentially on two methods to determine average service life of the poles and conduit: the 1995 Federal Communications Commission's ("FCC) determination of 25 to 35 years of useful life; and the 40 year life determined by HB 1198 in 2016, currently set forth as RSA 72:8-c. The New Hampshire Legislature requires that after September 1, 2016, a 40 year depreciable life be applied to telephone poles.

FairPoint argues that the FCC determination was the result of a litigated process before the FCC, which engaged in an extensive review of many depreciation studies and input. Tr., Day 1, at 96:5–7. FairPoint argues that the Court should accept the midpoint of the depreciation ranges. However, Bulkley conceded that the 40 year depreciation schedule set forth in the current New Hampshire statute RSA 72: a-8-c, I was reasonable, although “at the higher end”. Tr., Day 1, at 97:14–22.

Sansoucy argues that neither standard, the 25 to 35 year FCC standard, or the 40 year New Hampshire standard is appropriate, because they both referenced book depreciation and “book depreciation cannot be used as a substitute for physical depreciation in the cost approach.” Respondent’s Post-trial Memorandum of Law, page 15 (citing Appeal of New Hampshire Electric Cooperative Inc., 170 N.H. 66, 79 (2017)).

The Court disagrees. It is true that in Appeal of New Hampshire Electric Cooperative, the New Hampshire Supreme Court stated that “book depreciation, unlike actual depreciation, is based on historical cost or another previously established figure that may have no relation to current market value.” Id. at 79. However, the New Hampshire Supreme Court has specifically held that:

[T]he trier of fact may use any one or a combination of five appraisal techniques in valuing public utility property: original cost less depreciation (*rate base or net book*), comparable sales, cost of alternate facilities, capitalized earnings, and reproduction cost less depreciation. Typically all relevant factors must be considered, but a trier of fact need not allocate specific weight to any one of the approaches listed. (Emphasis supplied).

Tennessee Gas Pipeline Co., v. Town of Hudson, 145 N.H. 598, 600 (2000) (emphasis added) (brackets and ellipse omitted) *quoted in* Public Service Company of New Hampshire v. Town of Bow, 170 N.H. 690, 692 (2018).

Sansoucy argued that the poles should be depreciated with a 60 year useful life. He

relied primarily upon pole studies that his firm has done, and a study in the City of Boston and a study of National Grid poles in upstate New York. The Massachusetts Appellate Tax Board found that all of these studies were flawed because they do not consider any retirement data, thereby ignoring an entire segment of poles. Commonwealth of Massachusetts, Appellate Tax Board, docket number F316346 and F319254 (August 11, 2017), appendix 6.

For purposes of determining physical depreciation, it is important to evaluate the retirement of assets — not just the ages of those that remain in service. For example, if 100 poles were placed in service in 1970 and 25 of those polls remain in service in 2011, those poles that remain in service would be 41 years old. However, the information that is not reflected in this example is the average age upon retirement of the other 75 poles that are no longer in service⁷. The Court is therefore not persuaded by the GES analysis.

But the Court is also not persuaded by Concentric's adoption of the FCC depreciation standard of 25 to 35 years. In the first place, although the FCC standard may have been created pursuant to legislative hearings and legislative fact-finding, it was created more than 20 years ago. Second, and more important, the Court can only assume⁸ that the FCC, which established one national standard, considered data from across the country, including data from states with climates far different from New Hampshire. It seems reasonable to suppose, for example, that telephone poles in dry desert climates, such as California, Nevada, Arizona and New Mexico, would be subject to a different rate

⁷ Only focusing on poles that remain in service to estimate the useful service life of all assets is analogous to determining the average life expectancy of human beings by evaluating the age of individuals in a retirement home. For example, the average age of individuals in a retirement home may be 87 years old and since those individuals are still alive, on average those individuals may be expected to live a few additional years. However, this does not, in turn, mean that the average life expectancy of human beings is 87 years or higher. Concentric Rebuttal Report, p. 29, n. 52.

⁸ Neither party has specifically addressed this point.

of physical depreciation than telephone poles in a New England climate.

On the other hand, the determination made by the New Hampshire Legislature that a 40 year depreciable life should be applied was made very recently, and with input from all of those interested in the industry, including the Towns' expert, GES, and doubtlessly focused on the New England climate. The Court finds that the appropriate period of physical depreciation for poles is 40 years. The Court therefore finds the replacement cost less new depreciation for the telephone poles in each town as of the valuation date of April 1, 2011 for the Towns as follows:

Belmont	\$1,077,673
Durham	\$818,650
Hanover	\$797,835

III

Conduit

A. Value

Valuing conduit is even more difficult than valuing telephone poles; as Bulkley noted at trial, the conduit is obviously underground and unlike poles, cannot be inspected. Both parties relied on information about the footage of conduit provided by FairPoint. Tr. Day 1, 85: 6–10.

The basic approach of Concentric and GES to valuing conduit was the same approach the experts took in valuing poles. Concentric relied upon its Utility Survey, and then prepared an estimate using an RS Means analysis to check the reliability of the Survey. As with respect to its pole analysis, GES simply analyzed all of the factors in conduit costs and estimated all costs from RS Means. This led to significant difference between the experts.

GES vigorously challenges Bulkley's analysis because she explicitly dropped certain charges out of the RS Means analysis. As with the pole analysis, Bulkley excluded certain RS Means charges that she believed would unreasonably increase the estimate, specifically, excavation, backfill, and concrete. The Court is not persuaded that simply excluding certain charges is a reasonable way to come to a conclusion of value based upon the supposition that the valuations are high. On the other hand, Concentric's reason for using the RS Means analysis was simply as a check on the Utility Survey. One would expect that the estimates from RS Means would exceed real world costs. Dropping some of those costs is best understood as advocacy and not a principled determination of cost. It does not diminish the probative value of the Utility Survey.

Conversely, the Court is not persuaded by GES's approach, which is based entirely on estimates. GES engaged in a replacement cost analysis of the conduit, using the RS Means data without resort to any actual data. GES found 19 different items that it believed were weighted unit costs or conduit installation. GES Expert Report, Table 17, pg. 81. Some of these items would be necessary in some cases, but plainly, not in every case. See, e.g., GES Expert Report, Table 17, pg. 81, Row 19 "New Grass" and Row 14 "Rock Removal".

The point is not that such charges might not be legitimate, but that there is no real way to estimate how frequently they will be necessary. As the Court noted, in considering different methods of valuing poles, an analysis of real world data is preferable to an estimate for the obvious reason that the real world experience may show that it has been possible to resolve an anticipated problem more efficiently than estimated, or a problem that was anticipated to cause little difficulty did in fact cause great difficulty and expense. It bears repeating that the New Hampshire Supreme Court has recognized that the replacement cost approach tends to inflate fair market value by setting a price that exceeds

a level of actual market price negotiations. Manchester Housing Authority, 130 N.H. at 602. Accordingly, the Court finds the following conduit values, which are Concentric's Utility Survey conduit RCN:

Belmont \$644,732

Durham \$988,910

Hanover \$2,114,525

B. Depreciation

There is less information available on conduit depreciation than on pole depreciation. Because conduit is underground, it is difficult to examine and determine its physical depreciation until it fails. Concentric relied upon the December 17, 1999, FCC study, which states that the average service life of the conduit system is 50 to 60 years. Plaintiff's Exhibit 34.

GES criticized Concentric's analysis because it was based upon "book value." As explained, given the difficulty in valuing utility assets, book value is one of several legitimate factors that can be used to value assets. GES believed that conduit should be assigned a 50 year physical depreciation rate. It noted that while PVC conduit is expected to last much longer than 50 years, the use of PVC has only been common for the last 50 years and there is insufficient data to reliably assign a longer life. GES Expert Report, p. 105.

Effective September 1, 2016, the New Hampshire Legislature has determined that the value of conduit employed in transmission of telephone communications owned in whole or in part by telephone utilities should be calculated on a straight-line basis for a period of 40 years, with a residual value of 20%. RSA 72:8-c, I. But neither expert advocated for a 40 year standard. Rather, both experts in this case reached remarkably

similar conclusions about the useful life of conduit; Concentric believed the useful life is 55 years, and GES believed the useful life was 50 years. Concentric's value is based upon the 1999 determination by the FCC, which as the Court noted is almost 20 years old.

The Court found the FCC's conclusions with respect to poles unpersuasive, in part because the FCC analysis was national in nature. However, while the fact that the FCC study is national, rather than limited to New England in scope, it is less important in the area of conduit, because conduit is buried; weather conditions presumably have less impact on physical depreciation of underground conduit. GES claims that its value is based on its analysis of the New England market. GES Expert Report, p. 105. Given the sharp dispute between the experts regarding pole depreciation, and the lack of persuasive force to either argument, the Court accepted the Legislature's determination that a 40 year depreciable life is appropriate for poles. But in light of the fact that both experts believe the useful life of conduit is between 50 and 55 years, the Court declines to accept the guidance of RSA 72:8-c, I. Concentric's depreciable life of 55 years is longer than the estimate made by GES, and the Court believes that it constitutes a tacit admission. Annot., Valuation for Taxation Purposes as Admissible to Show Value for Other Purposes, 39 ALR 2nd 209 (1955). Furthermore, the Court credits GES's view that, although there is not much reliable data because PVC pipe only began being used in the 1970s, the useful life of PVC pipe probably exceeds 50 years. Accordingly, the Court will apply a 55 year depreciable life to conduit. The values of the conduit, after depreciation (RCNLD) are as follows:

Belmont	\$156,611
Durham	\$271,418
Hanover	\$643,060

IV

Right of Way

Part of the value of the property owned by FairPoint in the Towns is the ability to place conduit and telephone poles in public rights-of-way ("ROW"). Under RSA 72:23, I, real or personal property used or occupied by other than the State or a city, town, school district or village district under a lease or other agreement that provides for the payment of properly assessed real and personal property taxes by the party using or occupying said property is not exempt from taxation. The statute mandates that all leases and other agreements that provide for the "use or occupation" by others of real or personal property must provide for the payment of real estate property taxes. RSA 72:23, I.

A. Expert Approaches to Valuation

The critical issue here is the valuation of FairPoint's use of the ROW attributable to the placement of telephone poles and conduit in the ROW within the relevant Towns. Both experts employed relatively similar approaches to calculating this value and their approaches are comparable to those of the appraisers in Verizon New England, Inc. v. City of Rochester, 2006 WL 3742673 (N.H. Super. November 9, 2006). As the court noted in that case:

Public ways host a variety of "occupations and uses." Citizens use them for travel and occupy them for short and long-term parking. Businesses similarly use and occupy public ways to transport and deliver goods. Utilities use and occupy public ways to deliver their services: telephone, cable, water, sewer, electricity and natural gas.

Verizon, WL 3742673 at * 1.

Both appraisers assumed that FairPoint's poles and conduit occupied a portion of the area adjacent to the public roadways throughout the Towns. Then, each appraiser determined an average fee simple value per acre in the town. Using that fee simple figure, the appraisers made a number of adjustments, recognizing that FairPoint is one of several

users of each pole. Then each appraiser determined the fee simple value of the entire ROW, prior to determining the value of the portion of the utility exclusively occupied. The approach taken by both appraisers is similar to that taken by all of the appraisers who testified in Verizon:

- (1) Calculate the length of Verizon's cables, wires and conduits and under the ground;
- (2) Estimate the extent (width) of the corridor "used and occupied" by Verizon's poles, wires, cables and conduits;
- (3) Multiply items one and 2 to arrive at the total acreage "used and occupied" ;
- (4) Assess value using the "across the fence method," which basically calculates the fair market value of the corridor by using the comparable value of property abutting it; and
- (5) Estimate the percentage of Verizon's use and occupation of the corridor and value accordingly.

Verizon, WL 3742673 at *1.

Concentric characterized the appropriate analysis as the diminution in use of the adjacent property as a result of the easement. Tr., Day 1, 126:21–127:19. Centronic's analysis purported to follow the analyses in Verizon and appears in Plaintiff's Exhibit 38. See also Tr., Day 1, 116–136. GES's analysis appears in Tr., Day 4, 428–450, and Ex X. There was no dispute about the amount of conduit and cable in each of the Towns because that information was available from FairPoint's records. Similarly, there is limited dispute about the number of miles of roads in the Towns.

Bulkley described her approach as an "across the fence" methodology. She explained this methodology as a way of estimating the value of the land by taking into consideration the value of adjacent land. Tr., Day 1, 116:21–25. Because she took the position that the public way "didn't really have a market value," she valued the corridor with respect to value of the property next to it. Tr., Day 1, 117:2–9. She described her approach "at a high level" as determining how many acres that are being valued as part of

the right of way, then, with the value per acre of that right-of-way, calculating separately the diminution in value resulting from the use of the right-of-way by FairPoint. Tr., Day 1, 121–114. From publicly available information, she obtained the amount of miles of roads in each Town, and converted it into acres. She then concluded that a 15 foot right-of-way would be reasonable for poles and 10 feet for conduit. Tr., Day 1, 122:12–23. She then took the value of all of the land by obtaining the value of residential and commercial lands' assessed value, and divided that by the acreage in the community to get the dollar value per acre of residential land and commercial and industrial land. Tr., Day 1, 125:3–10.

Consistent with Judge Morrill's decision in Verizon, Bulkley testified that 10% approximates the diminution in value of the ROW due to use by utilities. Bulkley did not provide any quantitative analysis supporting the 10% diminution in value; she stated only that she "relied on the Verizon decision". Tr., Day 1 126: 21–25. Then, based upon the number of pole attachers, (other utilities and cable companies) the figure was reduced proportionately. Tr., Day 1, 128:24–132.

While GES's approach was similar to Bulkley's, there were several differences. First, the experts differed slightly in the mileage of roads in each town. Bulkley took mileage from New Hampshire Department of Transportation ("DOT") information; GES obtained information from the Towns themselves. Because the DOT obviously has greater resources than towns, the Court accepts the DOT figure,⁹ and finds that there are 75.904 miles of road in Belmont, 100.795 miles of road in Hanover and 62.93 miles of road in Durham.

Bulkley took the position that a 15 foot wide utility corridor for telephone pole ROW's and 10 feet for conduit is appropriate. Sansoucy testified that New Hampshire

⁹ Ironically, the DOT figure, presented by FairPoint's expert, is higher than the figure presented by Hanover and Durham.

Department of Transportation regulations suggest an 8 foot corridor is necessary for utilities. Ex. X; Tr., Day 4, 426:17–429:2. Bulkley’s basis for the 15 and 10 foot corridors is the Verizon decision. In that case, Verizon’s appraiser sought to calculate only the land, air and underground space actually “occupied” by Verizon’s wires, poles and conduits. The Verizon court noted that the analysis “gives no weight to Verizon’s right to ‘use’ the public way,” because the appraiser contended that “this right to ‘use’ the streets and roads is essentially identical to the public’s right”. Verizon, WL 3742673 at *5. The Verizon court rejected this view, because it ignored the Legislature’s intent expressed in RSA 72:23, I to include that portion of public property used *or* occupied as taxable property and noted that use of the conjunction *or* in RSA 72:23, I “has to be presumed intentional”. Id. Judge Morrill reasoned that, “considering the width of Verizon’s trucks, the frequency of their ‘use’ of the public way, the extent and length of their ‘use,’ the court selects a corridor of fifteen feet in width for poles and wires and ten feet in width for buried conduit and wires”. Id.

The Verizon court recognized that utility poles and equipment on those poles must be maintained, repaired or even replaced, and that the utility corridor must be clear. There was substantial evidence in this case about the maintenance, repair and anchoring of telephone poles as well. Sansoucy testified that utility companies maintain and check telephone poles on a regular basis, even boring samples out of them to determine their stage of preservation. Utilities also use a product called “Osmos,” which is injected into the pole to extend its useful life. Sansoucy testified credibly that a significant number of poles required anchors or guys, some of which extend some significant distance from the poles. GES Expert Report, Appendix A, pg. 14–104. Although the anchors and guys are not subject to taxation, their existence as well as the requirements of pole maintenance and

repair and replacement establishes that an 8 foot corridor does not adequately reflect the utility's usage of the ROW.

Bulkley also made a decision to divide the number of attachments by the number of poles to determine the percentage used by FairPoint. GES criticizes this approach because it fails to recognize "that FairPoint's daily use of the corridor's wire is wider than the attaches, because FairPoint uses a width equal to the diameter of the poles it owns, while the attacker's use is limited to the wire/cables attached to the poles". Town's Post Hearing Mem., p. 32. This distinction is not reasonable, because to the extent that the attacker's equipment is on the pole, it uses the pole the same degree as any other user or otherwise its equipment would fall to the ground.

B. Assemblage Costs

GES criticizes Bulkley's failure to include assemblage costs, which it characterizes as the cost of creating the right to use the ROW. Sansoucy testified that this cost constituted "a very low number". Tr., Day 4, 50:5-21. The New Hampshire Supreme Court has specifically left open the issue of whether legal expenses associated with the transfer of property and the costs of surveys and State environmental permits may be considered in determining the value of an easement. Tennessee Gas Pipeline Co. v. Town of Hudson, 145 N.H. 598, 604 (2000). The Court believes that these costs should be associated with the value of the poles and conduit themselves, and not as part of the use of a the ROW, and therefore does not believe they need to be added to the ROW analysis.

C. Allocation of Percentage of Use of the ROW

(i) The Experts' Views

The most significant difference between the parties' experts' valuations was the determination of what portion of the utility corridor of the ROW should be allocated to

FairPoint's use and occupancy based upon the licenses it has from the municipalities.

Bulkley allocated 10% of the ROW's value to FairPoint; GES assigned 70%.

While Bulkley reached the same result as the Verizon court, she did not adopt its analysis precisely:

Q. And why? Why did you think that (the 10% diminution of value of the public ROW) was reasonable?

A. Because the public way has already — so you're basically saying, what is the change in *value to the owners of the land* from adding that public way? [The] public way was already established, it's being used by the community to remove snow from the center of the street; it has fire hydrants in it; and sidewalks in. So that is already in use in place for the public, and *the use to the owner of the land* hasn't changed significantly by the addition of the utilities in the public way. (Emphasis supplied).

Q. And that easement exists whether there is telephone poles or not on it, correct?

A. That's correct. On all of these main roads there would still be this easement, and all of these services for the public would be in the public way.

Tr., Day 1, 127:4–17.

The pole licenses are not easements, although both parties have analogized the licenses to easements. In New Hampshire, an easement is valued by determining the value by which the easement reduces the value of the fee of the servient estate. Lot Lake Colony Association v. Barnstead, 126 N.H. 136, 138 (1985); see also Tennessee Pipe Line Co. v. Town of Hudson, 1997 WL 34613593 (N.H. Super. Nov. 6, 1997), *aff'd* 145 N.H. 598 (2000). "When easements are valued, the value of the easement interest is added to the estate of the easement holder, and a corresponding reduction is made to the value of the underlying fee." Tennessee Pipe Line, 145 N.H. at 603. This is the law in most jurisdictions. 72 Am. Jur.2d State and Local Taxation § 659 (May 2018). Bulkley valued the easement by considering the dominant estate to be the properties of adjacent landowners. In Verizon,

Judge Morrill considered the ROW to be the servient estate and found that the public viatic use of the ROW — the right of the public to travel readily — was only impacted 10% by the utilities. Bulkley's error, however, did not affect her calculation because ultimately the value of the ROW was determined by both experts to be based on the value of the land in the Town; so it does not matter whether she used the value of adjacent land or the value of the ROW.

Some tax must be imposed, because the Legislature has specifically required a tax to be imposed on the occupancy and use of municipal land and FairPoint plainly derives a benefit from its use or occupancy of municipal land. See RSA 72:23, I. Moreover, it is obvious that the benefit FairPoint obtains is substantial; suppose, for example, landowners with no parking area for their vehicles in an urban part of Concord or Manchester, New Hampshire, could obtain a municipal license to park their vehicles in an adjacent public right-of-way. Such a license would have substantial market value.

The Court recognizes that the traditional approach of valuing an easement is not completely apposite. Ordinarily, the relevant consideration is how the existence of the easement reduces the value of the servient estate. But Bulkley testified without contradiction that a utility easement may actually add value to land; that a parcel of land that has utility service may have greater value than a parcel of land that does not have utility service. Tr., Day 1, 128:3–7. It is likely, that utility service enhances the value of the land adjacent to the Town's roads. Unimproved land is of less value for residential or commercial purposes if there is no utility service.

Doubtless FairPoint derives a benefit from use and occupation of the municipal ROWS. In fact, its business model can be said to depend upon the ROWs; without the ROWs, it would not be able to place poles in the ground and provide service to customers.

But both experts testified that they could not value the network of poles and conduit on a sales or income basis. And there is no market for the ability to place objects in municipal rights of way.

Ultimately, despite the fact that the existence of utility service increases the value of the land and renders it difficult to apply the traditional easement valuation analysis, the value of the license can be determined by considering the degree of impairment of the public's use of the right-of-way, taking the value of the land with utility services, without regard to the fact that placement of the poles and conduit, at some point in the past increased the value of the right-of-way by increasing the value of the land served by the right-of-way, which has utility service. The law permits valuation in this way, because taxes are to be assessment as of April 1, and the improvement that increased the value of the land-placement of utility poles to provide utility service, in every case, occurred before that date and therefore need not be considered. See, e.g., Carr v. Town of New London, 170 N.H. 10, 13 (2017).

(ii) The Verizon Approach

In reaching the conclusion that the use of the ROW should be valued at 10% of the total in Verizon, Judge Morrill analyzed the legal rights and duties created by a license. He noted that licenses are temporary, with a term of one year. RSA 231:161, II. Moreover, a license holder is prohibited from ever acquiring any interest in the land. RSA 231:174. Because the primary use and purpose of roads and streets is viatic, any new poles must be erected in a way that will not interfere with the town's free and convenient use of public travel of the highway. RSA 231:168; Verizon, WL 3742673 at *5. For these reasons Judge Morrill concluded that "Verizon's license rights are a long way from fee simple ownership", and treated the corridor used by the utilities as an easement:

Consequently, at best a utility corridor reduces the value of the land that it uses and occupies by ten percent. Or stated another way, after the easement is imposed, ninety percent of the value of the servient estate remains.

Verizon, WL 3742673 at *8.

Although it is true that all licensees only obtain a temporary right to use the ROW, under RSA 231:161, IV-VI, licensees such as FairPoint, after having obtained a permit, are thereafter entitled to reinstall and maintain any poles in approximately the same location. While a municipality may require the licensee to remove the pole from the authorized location, if it does so it is required to provide a substitute location for the pole and notify the licensee of that location when it issues a notice to remove. RSA 231:179, 180; Town's Post Hearing Mem., p.30. But there was no testimony that would suggest that the length of time a utility may maintain its use of the ROW is relevant to taxation in a particular year.

Sansoucy identified the adverse impact a utility corridor would have on the viatic use of the ROW. Tr. Day 3:446:7-11. Once utility poles are placed, nothing can be built in the ROW and the municipality gives up "basically all viatic rights to that corridor. But they do have the right to pass and repass at various angles, etc." Tr., Day 3, 447:6-8. Sansoucy admitted that his opinion of what percentage of the ROW should be determined to have been diminished by the placement of utility poles was based totally on "opinion and judgment". Tr. Day 4, 447-448. He concluded that the use of the utility easement constituted 70% of the value of the ROW. His opinion provides no rationale; it is mere *ipse dixit*.

(iii) Quantification of Value

Based upon the testimony, the Court finds as follows: (1) the use of the utility corridor of the ROW can be valued by averaging the value of the land in the Town in which the ROW is located; and (2) calculating the diminution of the value of the land in the ROW

by the utility's occupation or the excessive use of the land by the utility.

Impairment of value of a ROW by a utility's equipment can be caused by three different factors: (1) physical obstruction of the ROW by objects such as poles; (2) physical obstruction of the ROW caused by maintenance or repair of the poles or conduits; and (3) damage to the ROW by enhanced use of the ROW by utilities maintaining and repairing poles and conduit. The Court credits the approach taken by Bulkley, following Judge Morrill's decision in Verizon, that a 15 foot width for poles and 10 foot width for conduit is a viable utility corridor that recognizes the need for maintenance and repair. The Court also credits Bulkley's approach of dividing the value of the use of the ROW by the number of users utilizing the pole. Sansoucy's approach that "FairPoint's daily use of the corridor is wider than the attachers' because FairPoint uses a width equal to the diameter of the poles it owns, while the attachers' use is limited to the wire/cables attached to the poles," Town's Post hearing Mem., p. 32, is not persuasive for the obvious reason that in order for the user's equipment to remain in the air, it utilizes the diameter of the poles as much as FairPoint does.

Judge Morrill's rationale for finding a 10% use of the utility corridor was based in part upon his recognition that the utility would need a corridor for maintenance, repair or replacement and cutting brush. At least the first step towards quantification of the impairment of the ROW and corroboration of Judge Morrill's rationale is possible by application of the facts found in this case.

For example, since the Court has found the depreciable life to be 40 years for poles and 55 years for conduit, it follows that 2.5% of the poles in any Town will be replaced

every year and .0095% of the conduit in any Town will be replaced in any year¹⁰. This replacement will result in an enhanced use of utility corridor of the ROW. In addition, beginning at 30 years, each pole is inspected and potentially tested or treated with chemicals, which requires further enhanced use of the ROW. Therefore, each year 3% of the poles must be inspected and treated.

This enhanced use of the may be able to be reasonably quantified. It may be possible, for example to analyze specific use of an ROW by a traffic study, which could be done as a small sample, with adequately designed controls. It should also be possible to determine the degree, if any, of damage to land or roadway in the ROW as a result of excavation to repair conduit. See, e.g., Liberty Utilities v. City of Concord, 164 N.H. 14 (2012). Such an analysis has not been undertaken by either party. But the relatively insignificant enhanced use of the ROW by utilities, which has been established by the evidence introduced at trial, provides the Court with guidance.

Judge Morrill concluded that the corridor “interferes little with the primary viatic use of the public ways and detracts little from its value”. Verizon, WL 3742673 at *8. The Court agrees. Given the minimal level of use established by what quantification is possible, and has been undertaken by the Court, the Court can find with confidence that the reduction in value is nowhere near the 70% suggested by GES, without any rationale whatsoever.

(iv) Conclusion

Both experts agreed that the three traditional approaches to valuation — comparable sales approach, income capitalization approach and replacement cost

¹⁰ The Verizon opinion found that “[a]ccording to Verizon’s records, annually 2.4% of its poles are replaced,” which is consistent with a quantitative analysis of a 40 year useful life found by this Court. Verizon, WL 3742673 at *4.

approach — are not useful in determining the value of the utility's occupation of the utility corridor of the ROW. Neither the parties nor the Court has found any authority on the subject apart from the 2006 Superior Court decision by Judge Morrill in Verizon.

The New Hampshire Supreme Court has explicitly recognized the difficulty in establishing fair market value for property owned by a utility: “[T]he search for fair market value is not an easy one, and is akin to a snipe hunt carried on at midnight on a moonless landscape”. Appeal of Pennichuk Waterworks, 160 N.H. 18, 37 (2010) (quotation omitted) (*quoted in* Public Service Company of New Hampshire v. Town of Bow, 170 N.H. 539, 542 (2018)). As the Court recently noted “it is extraordinarily difficult to value public utilities”. Public Service Company, 170 N.H. at 542.

The Court cannot precisely fix the percentage of use of the ROW by reference to any quantitative data. Nonetheless, the factors relating to the value of the occupation enumerated by Judge Morrill in Verizon and incorporated by Bulkley are appropriate and reasonable and recognized by FairPoint itself. There is no doubt that Bulkley's opinion is an approximation, as was Judge Morrill's. But under New Hampshire law, the fact that a valuation of property by an owner is an approximation is not fatal. McNamara v. Moses, 146 N.H. 729, 733 (2001); Phillips v. Verex Corporation, 138 N.H. 240, 247 (1994). Bulkley's opinion is not only probative but admissible as an admission. See Annot., Valuation for Taxation Purposes as Admissible to Show Value for Other Purposes, 39 ALR 2nd 209 (1955) (“[A]n owner's valuation of his own property, or evaluation in which he participated, for tax purposes, is usually held admissible... where the value of the property is in issue, in most instances on the ground that the owner's valuation constitutes an admission against interest...”); 5 Nichols on Eminent Domain, § 18.12[1] (“An owner, simply by virtue of ownership of the property, is considered to have sufficient knowledge of

the value of his or her property to make such owner's opinion competent in his or her favor... There is no requirement that the owner make his or her own computations or employ his or her own formula, or that he or she independently determine the property's value. All that is required for the owner's statement to constitute an admission is that he or she state a value... Even if the owner does not make the... statement, the declaration is admissible if it was made by an authorized agent or if it was adopted by the owner").

Accordingly, based upon the evidence presented, the Court finds the value of the use of the ROWs as follows, by Town¹¹:

Belmont

Poles	\$116,763
Conduit	\$6,144

Durham

Poles	\$219,867
Conduit	\$\$24,833

Hanover

Poles	\$202,060
Conduit	\$\$18,961

The parties shall set forth a proposed form of order, applying the appropriate utilization rate to the values found, within 10 days from the Clerk's notice of decision, so

¹¹ These figures are taken from Plaintiff's Exhibit 54.

that the Court may issue a final Order.

SO ORDERED

7/20/18
DATE

Richard B. McNamara
Richard B. McNamara,
Presiding Justice

RBM/

MERRIMACK, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Northern New England Telephone Operations, LLC
d/b/a FairPoint Communications - NNE

v.

Town of Acworth
(Belmont, Durham and Hanover, test cases)

Consolidated Docket No. 212-2012-CV-100

RESPONDENTS' MOTION FOR RECONSIDERATION

NOW COME the Towns of Belmont, Durham, and Hanover ("the Towns"), by and through their attorneys, the Mitchell Municipal Group, P.A., and in support of their request for reconsideration of the Court's Order, state:

1. The second phase of the trial in this matter, held in April, 2018, addressed the valuation of FairPoint's property which the Court had found to be taxable in Phase I of the trial. The parties submitted evidence as to valuation through their respective expert witnesses, Ann Bulkley, of Concentric Energy Advisors ("Concentric"), on behalf of FairPoint, and George E. Sansoucy, of George E. Sansoucy, P.E., LLC ("GES"), on behalf of the Towns. The Court issued its decision on July 20, 2018, which was noticed on July 25, 2018 ("the Order").

2. A motion for reconsideration is appropriate where the movant believes the court overlooked or misapprehended "points of law or fact[.]" Superior Court Rule 12(e). The Court overlooked or misapprehended the following issues and should reconsider its decision.

FAIRPOINT DID NOT MEET ITS BURDEN OF PROOF - COST

3. The Court erred in not first addressing whether FairPoint had met its burden of proving the Towns' assessments resulted in it bearing a disproportionate share of the respective towns' tax burden. The Court should not adopt a *new* assessed value for FairPoint's property unless it *first* finds that FairPoint proved that the Towns' respective assessments were greater than the equalized fair market value. FairPoint cannot meet its

burden of proof unless it provides a *credible* opinion of the market value of its property. *Appeal of New Hampshire Electric Cooperative, Inc.* (New Hampshire Board of Tax and Land Appeals), 170 N.H. 66, 82 (N.H. 2017)(“*NHEC*”). In an effort to meet its burden of proof, FairPoint presented Ms. Bulkley’s appraisal and testimony, and challenged the credibility of Mr. Sansoucy’s opinion of value. The Towns were not required to present any evidence of value; FairPoint bore that burden alone. *Id.* FairPoint’s criticism of the Towns’ expert’s appraisal “cannot, standing alone, carry [the taxpayer’s] burden of proof.” *Id.* The record cannot support a finding that Ms. Bulkley’s opinion of value is credible.

4. The Court’s factual findings establish that the Court found that Ms. Bulkley’s *opinions of value* were, in fact, *not* credible. Ms. Bulkley utilized two separate approaches to arrive at her final opinion of value of FairPoint’s poles:¹ her Utility Survey and RSMeans. She applied *equal weight* to both approaches. See Order at 6; Ex. 38 at 22 (Concentric Durham Appraisal). Ms. Bulkley calculated an RCN under both approaches, then applied two different depreciation rates, one taken from the FCC and the other from HB 1198. See Ex. 38 at 22. This resulted in four RCNLD indicated values for the poles, which she gave equal weight, with each contributing 25% towards her final opinion of the value of the poles. See Ex. 38 at 36.

5. The Court found that three of the four indicators of values that contributed to Ms. Bulkley’s final opinion of value were not credible. The Court rejected Ms. Bulkley’s RSMeans approach because she arbitrarily chose to exclude taxable costs in an effort to lower the resulting valuations. *Order* at 17. As the result of the Court’s rejection of Ms. Bulkley’s RSM approach, fifty percent of the basis for Ms. Bulkley’s final opinion of value was therefore found to not be credible. The Court also rejected Ms. Bulkley’s decision to use the FCC’s depreciation rate for poles, finding that the rate was not applicable to poles in

¹ The discussion herein focuses on the valuation of poles, with limited discussion of the valuation of conduit as Ms. Bulkley applied the same valuation approach to the conduit as to the poles, and therefore the same arguments apply to both unless specifically noted. As at trial, the discussion focuses on Durham but is equally applicable to Hanover and Belmont.

New Hampshire. Order at 15-16. Due to the Court's finding, another 25% of the basis for Ms. Bulkley's determination of pole value was found not credible.

6. The single leg of Ms. Bulkley's final valuation that the Court left standing was her indication of value based on the Survey data, depreciated pursuant to HB 1198. However, the Court made factual findings which substantially undermine the reliability of the Survey data and prevent a finding that her remaining opinion of value is credible. The Court found that it could not evaluate the accuracy of the Survey data, what the data contained, the scope of decisions Ms. Bulkley made or even what decisions were made, or how she applied the data, because the raw Survey data was not disclosed to the Court. Order at 6. The Court found that Ms. Bulkley's refusal to disclose *to the Court* the data upon which the Survey was based "could diminish the probative value of the assumption made by Ms. Bulkley that the data is reliable." Order at 6. The Court tried to avoid the resulting adverse impact on the credibility of the Survey data by assuming the Towns must have thought the data credible or they would have sought disclosure during discovery. Order at 7. This assumption constitutes error and should be reconsidered by the Court.

7. First, there are no facts in the record to support the assumption that the Towns "recognized" the data was reliable. Instead, the Towns vigorously challenged the credibility of the Survey data through cross-examination of Ms. Buckley, rebuttal testimony by Mr. Sansoucy, and its arguments in their Post Trial Memorandum and Reply Memorandum. Second, the Court's assumption impermissibly transfers FairPoint's burden of proof to the Towns. The factual issue which was before the Court was whether the Survey data was reliable and probative. As the Court pointed out, a protective order could have been obtained and the data disclosed to the Court. Order at 7. The *Towns* did not bear the burden of seeking a protective order for FairPoint's data, it was FairPoint that bore the burden of producing evidence that the data was reliable. It chose not to obtain a protective order and not to produce a shred of evidence regarding the reliability of the survey data.

The Towns' decision not to seek disclosure of the data during discovery has no relevance to

FairPoint's decision not to disclose the data *to the Court* during trial and the law does not provide that the Towns' decision validates the undisclosed data. The Court's inability to judge the reliability of the data itself or the credibility of Ms. Bulkley's assumptions based on that data was created solely by *FairPoint's* decision not to disclose the survey data. The Towns urge the Court to revisit its assumption that the Towns recognized the survey data as being credible and therefore also reconsider its decision that the data was reliable.

8. The Court found that Ms. Bulkley's approach to addressing the wide variations in her survey data, even after trending, was preferable to Mr. Sansoucy's suggested approach. Order at 8. The Court does not know the number of poles or heights of the poles involved in each year which Ms. Bulkley identified as having "anomalies," does not know the averaged costs per pole in each year, and does not know the weighing factors Ms. Bulkley applied to "smooth" the data. In short, there are no facts in the record to support the Court's finding that Ms. Bulkley's treatment of the anomalies was reasonable. The Court should reconsider its finding.

9. The Court misconstrued the evidence in finding that Ms. Bulkley referenced other data to verify the reliability of her Survey RCN result. Order at 9. She did not seek to confirm her Survey results through RSMeans but instead used RSMeans to provide a second indication of value and then gave equal weight to both approaches. Order at 6; Ex. 38 at 20, 22. Ms. Bulkley did not utilize the GES PSNH survey to check her Survey RCN while conducting her valuation analysis; that data was only available to her *after* she prepared her appraisal. Ms. Bulkley did not identify *any* sources in her appraisals that she referenced to corroborate her analysis. The Court should reconsider its finding that Ms. Bulkley verified her Survey RCN through other sources.

10. The Court found Ms. Bulkley's RCN based on the Utility Survey to be credible in part because it found that the RCN was "essentially consistent" with other sources, specifically Ms. Bulkley's RCN derived from RSMeans, the GES PSNH Pole Survey and the NHDRA data. Order at 12. The record does not support the Court's finding. The Court rejected Ms.

Bulkley's RSMeans analysis because it did not contain all includable property and was artificially low; therefore, it cannot be used to validate her Survey RCN. Mr. Sansoucy testified without contradiction that the PSNH Pole Data did not contain all taxable property, TR Day IV, 717/15 – 718/5, and therefore it cannot be consistent with a credible opinion of value of all taxable property unless the omissions are added in. FairPoint submitted no evidence as to what taxable property was included in the NH DRA costs, how the DRA utilized RSMeans to arrive at the costs, or other evidence to support the use of the DRA costs to verify Ms. Bulkley's costs. The Court should reconsider its finding.

11. The Court made several assumptions as to what costs were included in the Survey data, none of which are supported by facts in the record. The Court acknowledged that it does not know whether the Survey data included mobilization costs and instead presumed that it did. Order at 10. The Court's assumption is inconsistent with another of its assumptions regarding mobilization - that reproduction of an entire distribution system would have "greater efficiencies" than mobilizing three poles at a time. There are no facts in the record as to whether mobilization costs were included in the Survey data or, if they were, whether those costs were for three, ten, twenty poles at time or a whole distribution system at once. Further, the Court did not identify whether the "entire distribution system" it referenced was located in a single town or state, or was an interstate wide distribution system. The Court's finding that mobilization costs should be based on the replacement of a distribution system as a whole is contrary to the evidence; all valuation testimony related to the cost to replace one pole at a time, not a whole distribution system. The Court should reconsider its assumption that the Utility data includes reliable and appropriate mobilization costs.

12. The only evidence in the record as to the amount of bedrock in each individual Town and the cost to install poles and conduit in bedrock was offered by Mr. Sansoucy. The Court's finding that Mr. Sansoucy's estimates of the occurrence of bedrock were not fact based, a finding the Towns believe was erroneous, does not render the *Survey data* reliable

for the purpose of establishing the amount of bedrock or reliable bedrock installation costs in each Town. FairPoint bore the burden of proving the Survey data included bedrock costs appropriate to the individual towns; it chose not to do so. With no evidence in the record, the Court *assumed* that the Survey data included “real world ledge boring costs” which provided an appropriate approximation of the costs in each town. Order at 11. The Court criticized Mr. Sansoucy for assigning the same percentage of bedrock to Belmont and Hanover based on his analysis of Durham; however, Ms. Bulkley and the Court assigned the same supposed Survey data percentage to each town with no calculation of or consideration for the actual amount of bedrock in each town. The Court should reconsider its assumptions that the Survey data included reliable and appropriate bedrock installation costs.

13. The Court did not address the Towns’ argument that the Survey data did not include all taxable costs and therefore the RCN calculated from the data allowed property to escape taxation. Trial Memorandum, p. 7. The Court rejected Ms. Bulkley’s RSMeans approach because taxable costs were not included, resulting in an artificially low RCN, Order at 17; her Survey approach should be rejected for the same reason. The Court should reconsider its determination that the use of Survey data would result in a reliable opinion of value of FairPoint’s taxable property given that taxable costs were excluded from the data.

FAIRPOINT’S BURDEN OF PROOF - DEPRECIATION

14. The Court’s determination that the pole depreciation rate established in HB 1198 was credible was based on the Court’s assumption that the Legislature had “doubtlessly focused on the New England climate” when arriving at forty percent. Order at 16. The record does not support the Court’s assumption. FairPoint did not offer any evidence as to what the Legislature considered when adopting HB 1198. Mr. Sansoucy testified without contradiction that HB 1198 was not based on any particular determination that one methodology would result in an accurate determination of fair market value, but rather was based on a Legislatively negotiated resolution. Mr. Sansoucy’s testimony is corroborated by the Legislature’s decision to exclude the methodology set forth in RSA 72:8-c from the

definition of Market Value in RSA 75:1. If the Legislature believed that the depreciation rate in HB 1198 reflected a market depreciation rate, it would not have excluded RSA 72:8-c from the definition of Market Value. FairPoint bore the burden of establishing that the depreciation rate set forth in HB 1198 would result in fair market value and it failed to do so. The Court did not address the Towns' statutory construction argument that the full text of HB 1198 establishes that the depreciation rate was not intended to result in a fair market valuation. Trial Memorandum, pp. 16-17. The Court should reconsider its assumption that the forty year depreciation rate in HB 1198 was based on the actual life of poles in New England and address the Towns' statutory construction argument when determining whether FairPoint met its burden of proving a forty year depreciation rate results in an opinion of fair market value.

15. The Court based its finding that the Survey data was reliable on its findings that the data constitutes "real world data" and that "the analysis of real world data" is preferable to using an "estimate." Order at 12. The Court criticized Mr. Sansoucy's use of RSMeans because RSMeans does not provide "actual data." Order at 17. This finding is inconsistent with the Court's finding that it is *appropriate* to use RSMeans to value the property. Order at 9. The Court misapprehends both the data reported in RSMeans and the role of estimating in appraisal work. As Ms. Bulkley and Mr. Sansoucy both testified, RSMeans obtains cost information from utilities nationwide, "real world data," and compiles the data into the RSMeans resource for appraisers to use to estimate costs. TR Day 1, 67/23 – 68/20; Day 2, 299/14 – 300/11. Ms. Bulkley considered *her* valuations to be *estimates*. See Ex. 38, p. 13, 14, 19, 30, 32. The Court's criticism of Mr. Sansoucy's RCN values because it found them to be "estimates" would therefore be equally applicable to Ms. Bulkley's opinions of value. Appraisals are, by definition, *estimates* of fair market value. The Court should reconsider its findings that RSMeans does not provide "real world data" and that Mr. Sansoucy's opinions of value are not reliable because they were based on "estimates."

16. Ms. Bulkley adopted the approach to valuing the ROW which was enunciated by Judge Morrill in *dicta* in *Verizon New England, Inc. v. City of Rochester*, 2006 WL 3742673 (NH Super. November 9, 2006). Judge Morrill estimated the width of the ROW used by utilities (the "utility corridor"), the value of the utility corridor, and the percentage of the utility corridor used by FairPoint. The Court herein found this approach to be credible, and Ms. Bulkley's decision to adopt the specific widths and percentages of use Judge Morrill applied to be probative. Order at 31. Yet there is no evidence in the record to support the Court's finding that applying Judge Morrill's findings result in a credible opinion of market value in *this* case. The Court found that the facts in evidence only supported adopting a portion of Judge Morrill's analysis and that the parties had not provided any evidence upon which it could determine whether the amounts Judge Morrill assigned to the width of the utility corridor and percentage of its use were appropriate in this case. The Court provided several examples of methods through which data *could* have been obtained and provided to the Court. Order at 30. FairPoint bore the burden of providing facts to support its position that the facts in *Verizon* were substantially the same as the facts in this case such that adoption of Judge Morrill's utility corridor width and percentage of use resulted in a reliable and credible valuation of the ROW. FairPoint chose not to; without any facts in evidence, the Court assumed that the number of poles and conduit replaced annually in the Towns would be the same as in the *Verizon*. The Court *assumed* a number of poles that would be inspected and treated each year in the Towns without consideration of the age of the poles in the Towns or evidence as to the number inspected and treated each year in each individual towns. The Court should reconsider its finding that the facts in evidence support the adoption of the values Judge Morrill assigned to the width of the utility corridor and allocation of use of the utility corridor.

17. The Court's finding that the use of the utility corridor should be evenly divided between all attachers and FairPoint is not supported by the record. The Court's finding that the utility corridor is 25 feet wide was based in large part on FairPoint's need to maintain,

repair, inspect, treat and replace the poles and conduit. Order at 29-30. There was no evidence that attachers bear any responsibility for those tasks or that they would utilize more than the portion of the ROW occupied by their wires. The Court should reconsider its finding that the use of the utility corridor should be allocated equally between FairPoint and all attachers.

18. The Court cannot find that FairPoint met its burden of proof that it bore a disproportionate share of the Towns' tax burdens unless it first finds that Ms. Bulkley presented a credible opinion of value; it cannot do so on this record. The Court rejected 75% of the basis for Ms. Bulkley's opinion of value of the poles and conduit. The Court made multiple findings that are inconsistent with finding the Survey/HB1198 RCNLD is reliable. Ms. Bulkley admitted she did not know the factual basis for the depreciation rate she adopted from HB 1198 and applied to the Survey RCN. The facts in the record do not support a finding that Ms. Bulkley provided a credible opinion as to the width of the utility corridor or percentage of use by FairPoint, rendering her opinion of the value of the use of the ROW not credible. The record and factual findings of the Court do not support the factual conclusion that Ms. Bulkley provided a credible opinion of value. Therefore, the Court should find that FairPoint did not meet its burden of proof and dismiss its appeals.

ATTACHER INCOME, GUYS AND ANCHORS, AND ASSEMBLAGE COSTS

19. FairPoint obtains rental income from the attachers to its poles, which Mr. Sansoucy added to his valuation of the poles and Ms. Bulkley did not. Order at 5. Neither the Court nor FairPoint disputed that the attacher income adds value to the poles or that such added value is taxable. The Court should reconsider its decision, render a finding that the attacher income adds taxable value to the poles, and order that the value be added to the valuation of the poles.

20. The Court did not address the Towns' statutory construction argument in ruling that guys and anchors are not taxable. Order at 11-12; Post Trial Memorandum, pp. 37-40. The legal question is whether guys and anchors are within the scope of poles and or/structures

as the words are used in RSA 72:3-a. The Court should address the argument and reconsider its ruling.

21. Mr. Sansoucy included the costs to assemble the right to use the ROW within the valuation of the ROW. The Court determined that these assemblage costs should instead be included within the valuation of the poles and conduit. Order at 24. The Court should reconsider its Order and find that the assemblage costs must be added to pole and conduit valuations so the value does not escape taxation.

22. The Towns believe the Court erred to the extent its findings of facts and conclusions of law are inconsistent with the issues addressed in the Towns' Trial Memorandum and Reply Memorandum, and reserve all rights to appeal.

WHEREFORE, the Towns of Belmont, Durham and Hanover respectfully request that the Honorable Court:

- A. Grant this within motion to reconsider;
- B. Reconsider each aspect of its decision addressed herein;
- C. Find that FairPoint did not meet its burden of proof and dismiss FairPoint's appeals;
- D. Grant such other and further relief as is just and equitable.

Respectfully submitted,

**TOWNS OF BELMONT, DURHAM AND
HANOVER**

By Their Attorneys

MITCHELL MUNICIPAL GROUP, P.A.

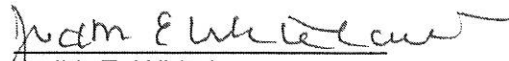
Date: 8/6/2018

By: 
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CERTIFICATE OF SERVICE

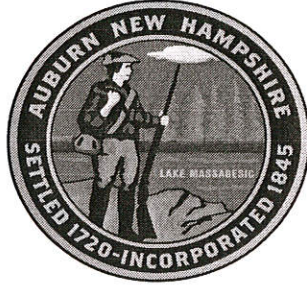
I hereby certify that a copy of the foregoing has been sent via electronic mail to Daniel E. Will, Esquire and Joshua M. Wyatt, Esquire, counsel for plaintiff, and all other counsel of record.

Date: 8/6/2018


Judith E. Whitelaw

Town of Auburn

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Town Administrator

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To: Board of Selectmen

From: Bill Herman, CPM, Town Administrator

Date: August 8, 2018

Re: Parks & Recreation Structure and Operations

Earlier in the year, the Board began to discuss and consider the overall operation and structure of the Parks & Recreation Commission, program offerings and functions. The Board had decided to put those discussions on hold until a community outreach effort was conducted to gather some overall input from the community at large.

During the months of April through June, this engagement was undertaken largely through the efforts of Amy Lachance and consisted of the holding of a number of small focus group discussions with stakeholders; an online community survey, and a facilitated discussion event. Attached are the reports from those efforts that had previously been shared with the Board.

With this work effort completed, it is appropriate for the Board to pick-up its discussions and considerations on the way forward and how they would want things to take shape. This was one of the goals for 2018 set by the Board of Selectmen.

Among the items the Board had been discussing or had been recommendations included in the MRI Operational Review of Town Hall functions included:

- Composition of the Parks & Recreation Commission and whether Commissioners should also be able to be vendors or employees engaged by the Commission. The Board refrained from acting on Commission appointments in March due to this concern.
- Designating the Parks & Recreation Coordinator as the supervising department head for other part-time Parks & Recreation positions.
- Formally designating the Parks & Recreation Coordinator as the administrative individual responsible for management of the Parks & Recreation budget and coordinator of projects & purchases.
- The overall financial standing of events sponsored through the Parks & Recreation Commission, such as the Old Home Day program. I believe there was a sense that all income and expenses should go through the P&R Commission and not have the Town pay the expenses of the event with all revenue going to other entities.
- What should the Parks & Recreation budget cover with taxpayer funds versus a pay-as-you-go fees for events or programs managed through the Recreation Revolving Fund.

I am sure there are other items for consideration. These are main items I culled from the previous conversations for a start.

Thank you for your consideration.

Attachments

The Future of Parks and Recreation



PARKS AND RECREATION

Final Budget Request 1992

Summer Program - 6 weeks
Olde Home Day
Seasonal Events (Halloween, Fall Festival)

Soccer Program
Soccer Program Instructional
continue program
Field and Equipment Maintenance
Senior Citizens Program
Signs (Appletree Park and Ice Rink)
Open Gym
Appletree Park: Improvements
Mowing
Garbage Removal

Ice Rink: Upgrading lighting
Plowing
Ski Program (in/out item)
Recreation Area:
Bleaches. 2

Parks and Recreation 2018

Programs

- Senior Dinner in January
- 2 Senior Trips
- Summer Senior BBQ
- 2 Summer Concerts & Fall Coffee House Concert
- Old Home Day
- Winter Carnival
- Ski Program

Self Funded Programs

- Fast Track Running Program
- Town-Wide Yard Sale
- Playdate in the Park
- Trunk or Treat
- Certified Babysitting Classes
- Lil' Yogis
- Little and Junior Chefs
- Adventure Camp

P&R Facilities

- Wayne Eddows Fields
- Safety Complex Field
- Circle of Fun Playground
- Appletree Playground
- Bicentennial Park
- Ice Skating Rinks
- Basketball Courts at Safety Complex





“Determine the future
of Parks and Recreation
in Auburn”

The Future of Parks and Recreation: **Needs Assessment**

1. Small Group Discussions
2. Online Survey
3. Facilitated Discussion



Massabesic Seniors

- Fitness classes (“Movement and Music”, “Brains, Bones and Balance” and Thai Chi)
- Walking Club
- Cooking classes with a nutritionist
- Game day
- Technology classes (computers, smart phones and internet)
- Meals on the Road/Lunch Club
- Suggestions on senior trips
- Discussion about senior/community center for all these programs vs. using the Safety Complex room, space at the school or local churches.



Parks and Recreation Commission

- Rebranding Parks and Recreation
- Storage facility
- Parks & Rec do own mowing
- Community Center



Auburn Parents

- Pinkerton students involved in volunteering in town (Youth Council)
 - Adult volunteering committee
- Family sports events (going to games and participating in games)
- Family camping night
- Hiking group/Outdoor programs
- Middle school photo scavenger hunt
- Adult yoga and health classes



Sports Leaders

- How to best use what we already have
 - Lights at soccer field at Wayne Eddows
 - Change 90' baseball field to another type of field
- Wayne Eddows needs upgrades
 - Walkway needs to be redone
 - Roof of fieldhouse need to be repaired.
- Basketball program is self sufficient



Question 1

Below is a list of recreation facilities/amenities that might be of interest to you. Please rate the following recreation facilities/amenities based on their level of importance, their availability to you, and how well they meet you and your family's recreation needs.

This is important, available, and what we have meets my needs.

- Undesignated green space for passive or active drop-in recreation
- Playgrounds
- Outdoor Basketball Courts
- Outdoor Ice Skating Area
- Outdoor Bandstand

This is important but is unavailable to me

- Teen Youth Center

This is not important to me

- Outdoor Swimming Pool
- Outdoor Tennis Courts
- Pet/Dog Park

Question 2

Below is a list of recreation programs or activities that might be of interest to you. Please rate the following recreation programs and activities based on their importance, availability, and how well they meet you and/or your household's recreation needs.

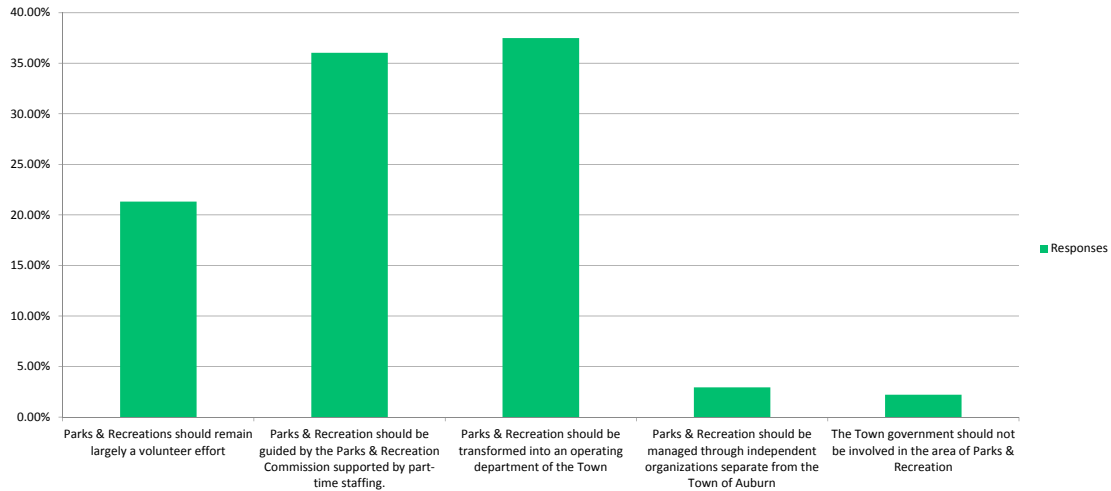
This is important, available, and what we have meets my needs.

- Musical Concerts and Performances
- Holiday/Special Events
- Youth Recreational Sports (e.g. soccer, basketball, tennis, softball)

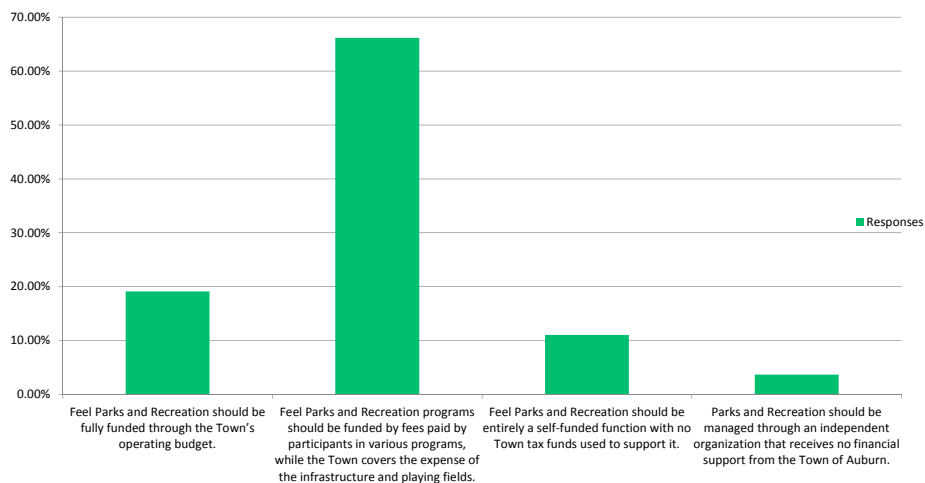
This is not important to me

- Running Events/Activities
- Sports Instruction (e.g. golf or tennis lesson)
- Adult Recreational Sports (e.g. soccer, baseball/softball, lacrosse)

Auburn Parks and Recreation has largely been a volunteer function over the years lead by a Parks and Recreation Commission (who are volunteers themselves) with assistance from part-time employees in recent years. As the Town grows and the recreations needs, interests and demands change, we want to structure Parks and Recreation to suit the needs and expectations of the people of Auburn. To help us understand the community sentiment in this area, please choose from the selections below:



No matter the level of volunteer support for any undertaking, there will always remain costs associated with the offering and hosting of programs; providing of services; the care and maintenance of property and infrastructure, and the like. To provide for the level of Parks and Recreation programs and activities you feel is appropriate, please tell us if you:



Thank You



Working together is success.
— Henry Ford



Community Facilitation for the
Town of Auburn and
Parks and Recreation Program

June 19, 2018



Promoting Excellence in the Public Sector

Purpose of the Session

The Town of Auburn invited Primex³ to assist in facilitation of a discussion regarding the future of Parks and Recreation in the Town. The session took place June 19, 2018 from 6-8 pm.

Who is Primex³

Founded in 1979, the New Hampshire Public Risk Management Exchange (Primex³) is a public entity risk pool organized and operating as a trust on behalf of member municipalities, schools, counties and other governmental entities. Primex³ is your premier risk management partner by delivering superior coverage programs, trainings and services that create extraordinary value for our members.

The exercise was facilitated by:

Rick Alpers, Risk Management Consultant, Primex³

Shelley Walts, Member Services Consultant, Primex³

Participants

Members of the community, boards, departments and elected officials were invited to participate to insure a solid cross section of the community is represented. Participants were further divided into three smaller groups for small group discussion. The following are the three small groups and their members:

Group A

Keith Leclair, Select board

Alan Villeneuve, School Board

Pat Kelly, Soccer League

David Nye, Parks and Rec Commission

Jeff Porter, Conservation Commission

Kim Lufkin, former Parks and Rec Commission

Peter Miles, Budget Committee Chair

Group B

Samantha Belcourt, School Board

Lisa Canavan, Parks and Rec Commission

Pat Clement, Duck Race and Library Friends

Patrick Glennon, Auburn Fire

Jennifer Anderson, Parent

MB Lufkin, Budget Committee

Mike Dobmeier, Parks and Rec Maintenance

Mary Royer, Citizen

Amy Lachance, Parks and Rec Coordinator

Group C

Jim Headd, Select Board Chair

Barbara Carpenter, School Board

Margie McEvoy, Parks and Rec Commission

Michel O'Rourke, AVS Assistant Principal

Walter Milne, Town Treasurer

Bill Herman, Town Administrator

Patti Allard, Trustee of Trust Funds

Jamie L'Italien, Parent

Setting the Stage

Jim Headd, Select Chair, began the evening with brief comments regarding the facilitation.

- For a number of years now, there has been various processes and discussions as to what is the future of Parks & Recreation in Auburn.
- Auburn has grown from a small rural community where almost everything was completed by volunteers.
- One of the goals set by the Board of Selectmen for 2018 was to have a community discussion to help the Selectmen and other officials determine what the proper direction is for Parks & Recreation in Auburn.
- Should we remain a Commission of volunteers supported by part-time employees or should it become a more formal department of the Town.

Amy Lachance, Parks & Recreation Coordinator then provided a brief power point presentation on the department as it currently stands today. This included data collected through small group meetings, an online survey, and finally, this facilitation session.

Question 1

Participants shared their reasons in small assigned groups. Once each group completed their assignment, a group spokesperson was chosen to represent and share the group's thoughts to all the facilitation participants. The following are the small groups results to the question:

What Do You Want from Your Parks & Recreation Program?

Group A

- New indoor facility / multi-purpose
- Storage
- Lights on soccer and softball fields
- Centralized Administration
- Partnership with other Towns
- In need of additional staff
- Programming to stay current with popular activities
- Location other than Wayne Eddows?

Group B

- Community Center
 - ✓ Storage
 - ✓ Parking
 - ✓ Kitchen
 - ✓ Meeting rooms
- Adult programs
 - ✓ Additional Senior programs
 - ✓ Sports
 - ✓ Education
- Special Needs Programs
- Recreation vehicle for staff use
- Partnering with other Towns for programs such as swimming lessons
- Fundraising
- Dedicated Parks & Recreation maintenance person and other full-time positions
- Community dances
- Fix the ice rinks

Group C

- Maintenance Facility
- Add Pickle Ball to the programming
- A desire to grow the program
- Town facility
- Community Center
 - ✓ Seniors
 - ✓ Teams
 - ✓ All others - need for 13-16 year olds
- Walking path behind Circle of Fun
 - ✓ Boardwalks
 - ✓ Scout Project
- Skate Park - unsuccessful
- Wall Ball
- Sailing lessons
- Kayak / Crew

Question 2

The following are the small groups results to the question:

How Does the Town of Auburn Envision Providing These Continued Services and Wanted Additional Services?

Group A

- Partnership with Manchester Water Works
- Self-funding activities - user fees
- Involvement of Auburn Youth Athletic Association
- Expand role of Parks & Recreation Coordinator to accommodate facility use

Group B

- Partnerships
- Sponsors (corporate)
- Land / Location
- Volunteers - Teens, involve more Town groups
- Ultimately it comes to managing taxes
- Combine Library / Community Center

Group C

- Need for more paid positions?
- Location, location, location - convenient and central
- Is there a way to have the Community Center fund itself?
- Partnership with Library
- Partner with Scouts
- Partner with Manchester Water Works
- Pursue sponsorships/ donors
- Research other Town Community Centers
- Committee of members from Town groups to research

Findings and Suggested Next Steps

There is clearly an interest in expanding the Parks and Recreation program within the Town of Auburn. Each group spoke of a Community Center which would accommodate all ages in Town. The location and cost will need to be determined, but there are a few ideas in this report. The formation of a committee to visit other communities for ideas on programming, Community Centers and funding is recommended as the next step for further review and clarity on what the Town of Auburn wants from its program.

Conclusion

It was a pleasure working with the Auburn community and *assisting with this very important discussion.*

Respectfully submitted,

Shelley Walts

Rick Alpers

Center for
Public Sector
A d v a n c e m e n t



Bow Brook PLace
46 Donovan Street
Concord, NH 03301

603-225-2841
800-698-2364

www.nhprimex.org

Trust. Excellence. Service.

Memo

March 19, 2018

Board of Selectmen.

I would like to suggest that the Selectmen hold off on appointing members to the Parks and Recreation Commission until the Selectmen can determine the direction they would like to see the Department take in 2018. Maybe this could be one of the first goals to be addressed in the upcoming year. In the past, some appointed members have also worked for the Parks and Recreation Department, causing a conflict of interest. This is similar to Cemetery trustees not being allowed to work for the Cemetery

There is no question that these same individuals have been a real asset to the Town and work tirelessly for the Parks and Recreation Department, but there needs to be some separation. It has been said that there is a lack of people willing to work on the Commission and thereby causing the Commissioners to also be the workers. Maybe with Selectmen's help, this dilemma can be resolved.

Thank you for your consideration.

Adelle A. Fusella

**Town of Auburn
Board of Selectmen
July 30, 2018
7:00 p.m.**

Selectmen Present: James Headd, Richard Eaton and Keith Leclair

Others Present: Paula Marzloff, Dale Phillips, Mickey Rolfe, Mike Dross, Road Agent, Linda Dross, Russell Sullivan, Sergeant Kevin Cashman, Mike DiPietro, Susan Goodhue, Melissa Gates, William Herman, Town Administrator and Nancy Hoijer, Recording Secretary

Call to Order – Pledge of Allegiance

Mr. Headd called the meeting to order at 7:00 pm and led with the Pledge of Allegiance.

Approval of Payroll for the Week of July 23, 2018 - \$45,264.13

Mr. Eaton motioned to approve the Payroll for the Week of July 23, 2018 in the amount of \$45,264.13. Mr. Leclair seconded the motion, with all in favor the motion passed unanimously.

Approval of Accounts Payable for the Week of July 30, 2018

Mr. Eaton motioned to approve the Accounts Payable for the Week of July 30, 2018 in the amount of \$1,160,214.94. Mr. Leclair seconded the motion, with all in favor, the motion passed unanimously.

Approval of Consent Agenda for the Week of July 30, 2018

Mr. Headd read out loud and offered for inspection a copy of the Consent Agenda for the Week of July 30, 2018 some of which included: one (1) Cemetery Deed/Auburn Village Cemetery, two (2) Abatement/Refund Requests, two (2) Application of Property Tax Credit Exemptions – Veteran's Credit, one (1) NH Retirement System/Group II Position Certification Form, and (1) Void Check Manifest.

Mr. Eaton motioned to approve the Consent Agenda for the Week of July 30, 2018. Mr. Leclair seconded the motion, with all in favor, the motion passed unanimously.

Appointments with the Board

Melissa Gates – Town's Health Insurance

Ms. Gates appeared before the Board to present a letter dated July 29, 2018 in which she requested that town employees be notified of upcoming changes that affect town employees and that if the other employees were in agreement, to consider changing the insurance carrier back to CIGNA, citing that she was very pleased with the benefit, out of pocket costs and "top notch" customer service and ease of use, she had experienced with them.

Mr. Herman advised the policy was reviewed in December or January for the period effective July 1 – June 30th. Mr. Herman advised employees in the Police Department had been provided all the information the Board had at the same time the Board was provided it, and they

were invited to the meeting when the insurance coverage would be discussed. No one attended. The Board members indicated whenever another policy review is considered, departmental notifications would be provided.

New Business

Parking Concerns on Rockingham Road

Mr. Headd advised the Board had received complaints about parking during the hours of operation for the *Auburn Pitts* from the immediate abutter at 175 Rockingham Road, and asked Road Agent Dross and Sergeant Cashman if they had any suggestions as driveways were being boxed in and it was difficult for residents to enter and exit their driveways safely as they could not see past all of the parked cars.

Mr. Dross advised he could get some signs, but expressed concern about how to choose which driveways got the signs and which didn't, as they couldn't post them in front of every driveway. Sergeant Cashman agreed signs do work and the cars could be ticketed for the violations. Mr. Sullivan added that the off-site parking and number of patrons inside and outside of the business was likely a violation of their Site Plan approval which was for a smaller venue and on-site parking. He suggested Planning and the Fire Department should both be notified for a review. Ms. Marzloff agreed if they were brought in before the Planning Board they would need to be noticed.

Mr. Leclair advised the Planning Board meets on Wednesday. Mr. Herman will notify them.

Mr. Leclair added he had seen a sign posted offering the use of a shuttle bus but wasn't sure what that was all about. Mr. Leclair was uncertain whether it was sponsored by the business or some individual wanting to make some extra money.

Mr. DiPietro agreed it was a safety concern and he would and he would put it on the agenda for the next Highway Safety Committee meeting.

Compliance with GASB #75

Mr. Herman provided copies of a report from Finance Director Frisella concerning two proposals she had received to comply with Governmental Accounting Standards Rule #75 which is to report on post-employment benefits (other than pensions) effective January 1, 2018.

Mr. Herman advised post-employment benefits are basically insurance benefits that are connected to the Town through its retired employees. For Auburn, that would be full-time employees who retire from the fire and police department.

Ms. Frisella advised the lowest cost was \$3,500 with KMS of Manchester, while only \$2,000 had been budgeted. Mr. Eaton noted this would be an ongoing expense to remain in compliance.

Mr. Headd asked what the penalty would be for not contracting these outside services. Mr. Herman advised the penalty to the Town would be the Town would not receive a "clean" opinion from the auditors as to the state of the Town's financial affairs in the annual audit.

Mr. Herman advised the number of retired employees connected to the Town's insurance were relatively low at this time, but will increase in years to come as employees retire from service.

Mr. Herman added the school district has likely already done this as teacher positions would also be affected by this standard.

Mr. Headd suggested the reporting could wait then until the Town needed to borrow money. Mr. Eaton and Mr. Leclair agreed the ongoing cost to report on benefits for two participating employees did not justify the expense at this time and to have Ms. Frisella keep them posted.

Quarterly Meeting with School Board & Possible Special Meeting

Mr. Herman reported the next quarterly meeting of the Selectmen and School Board should be held in August at the School Board meeting. Unfortunately, that schedule is already full and the September meeting conflicts with the September State Primary Election the Selectmen are already committed to. As many of the proposed dates conflicted with the Board of Selectmen's schedule, Mr. Herman suggested a potential site-walk at the access roadway area for the Town & School District at 5:30 PM prior to the August 27th regular meeting, and the School Board can meet with the Selectmen at Town Hall after the site-walk.

Federal Firefighters Grant for SCBA Equipment

Mr. Herman advised the Towns of Auburn, Chester and Sandown had been approved for the federal Assistance to Firefighters grant to acquire new SCBA breathing apparatus. Auburn's share of the total grant is approximately \$200,000 with the Town needing \$9,500 as its match. The Fire Department budget currently has \$6,400 already in the budget, after paying Auburn's share of the grant writer used for this effort. The Department is looking within its budget to secure the needed balance. Mr. Herman advised Chester will do most of the administrative work required for the grant.

Old Business

Update on Transportation Alternatives Program Grant Process

Mr. Herman presented an update on the proposed Multi-Use Path Project funding through the TAP grant process. Mr. Herman did not foresee any difficulties in submitting the application by the September 7th deadline.

Mr. Herman advised 45 Letters of Intent had been submitted compared to 54 in 2016. One project would be selected per Regional Planning Commission territory, so Auburn's real competition is with Bedford, Hooksett, Londonderry and Manchester who are also submitting project applications. In 2016 Auburn was deemed the second-best project of six in the Southern NH Planning Commission region and 18th overall statewide, with the first 12 being funded.

Mr. Herman advised Dan Tatem was waiting for the Board to select the style of the bridge. Mr. Eaton preferred the Brazilian hardwood. Mr. Headd agreed. Mr. Leclair agreed the bridge would be front and center visible and that they would be saving \$130,000 from the lights which would offset that increase. Mr. Eaton added that they could downgrade to the basic pressure treated model later on, if costs became a concern.

Mr. Eaton will try to get out to Hooksett and look at that model bridge next week.

Update on FEMA Snow Emergency Declaration

Mr. Herman advised the Town expects to recover 75% of approximately \$40,000 identified as eligible expenses from the March 13th winter snowstorm. This would result in a reimbursement of approximately \$30,000 sometime after the close-out of the application, which is expected by the end of August.

Rate of Pay for Road Agent Position/Purchase Policy Review

Mr. Herman provided the detail of hours worked which was requested at the last meeting to consider the request of the Road Agent for an hourly rate increase for his supervisory time which has not increased since 2006.

Mr. Eaton asked about the Town's Purchase Policy. Mr. Herman advised the rate set forth in that policy was specific to the labor rate of the Road Agent.

Mr. Leclair asked Mr. Herman to retrieve a copy of the Policy to see what the agreed labor rate was for other personnel. Mr. Herman departed the meeting at 7:25 pm and returned at 7:27 pm with the Policy which Mr. Leclair reviewed.

Road Agent Dross explained the Town did not have separate laborers as most of the heavy equipment operators were willing to get out of their trucks and work if something was required. It did not make sense to have to pay two people if the time for the trucks was already being incurred and the operators were willing.

Mr. Leclair as an example, supplied invoices from one contractor who had outsourced two additional laborers for four hours each in addition to the tri-axel and excavator used for storm damage on Rattlesnake Rd. Mr. Dross and Mr. Rolfe agreed most operators were willing to jump out of the truck and do what needed to be done while they couldn't expect that all of them to. The drivers do the labor, the Town has no laborers and if they did hire them they would have to pay them for their time to stand around when they weren't needed, and they don't need them every day.

Mr. Eaton suggested the rate of pay for other laborers should be specified in the Town's Purchasing Policy. Mr. Headd and Mr. Leclair agreed but felt time should be taken to consider and establish what that rate should be.

Mr. Rolfe explained about flaggers and the extra costs for separate laborers due to worker's compensation and unemployment insurance contributions factoring in.

Mr. Headd advised that could be discussed at a future meeting, but they could vote whether to approve Mr. Dross' request today with the figures Mr. Herman provided.

Mr. Leclair motioned to approve the Road Agent's hourly fee increase from \$25.00 to \$27.38 effective August 1, 2018. Mr. Eaton seconded the motion, with all in favor, the motion passed unanimously.

Other Business

Road Agent Dross advised that Lover's Lane was going well and road reconstruction funds could be used to pave Walnut Drive and Acorn Avenue. Mr. Eaton requested the Road Agent contact Advance Paving to obtain a price for paving those two roads.

Minutes

- July 16, 2018 Public Meeting

Mr. Leclair motioned to approve the July 16, 2018 Public Meeting Minutes, as written. Mr. Eaton seconded the motion, with all in favor, the motion passed unanimously.

- July 16, 2018 Non-Public Sessions (x2)

Mr. Leclair motioned to approve the two (2) July 16, 2018 Non-Public Meeting Minutes, as written. Mr. Eaton seconded the motion, with all in favor, the motion passed unanimously.

Non-Public Session pursuant to RSA 91-A: 3, II, (a) Compensation of three public employees

Mr. Headd motioned to go into Non-Public Session pursuant to RSA 91-A: 3, II (a) - compensation of three public employees. Mr. Eaton seconded the motion. A roll call vote was taken: Mr. Headd – yes; Mr. Eaton – yes; Mr. Leclair – yes. All were in favor, the motion passed unanimously.

The meeting room was closed to the public at 7:41 pm.

Mr. Eaton motioned to come out of Non-Public Session, seconded by Mr. Leclair. A vote was taken, all were in favor, the motion carried unanimously.

The meeting room was reopened to the public at 7:58 pm.

Mr. Leclair motioned to approve a step increase for the Parks & Recreation Coordinator from a Labor Grade 4, Step 7 to a Labor Grade 8, Step 8 based on a positive performance evaluation. Mr. Eaton seconded the motion, with all in favor, the motion passed unanimously.

Mr. Leclair motioned to approve a step increase for the Parks & Recreation Maintenance Manager from a Labor Grade 9, Step 3 to a Labor Grade 9, Step 4 based on a positive performance evaluation. Mr. Eaton seconded the motion, with all in favor, the motion passed unanimously.

Mr. Leclair motioned to approve a step increase for the Parks & Recreation Maintenance Worker from a Labor Grade 5, Step 7 to a Labor Grade 5, Step 8 based on a positive performance evaluation. Mr. Eaton seconded the motion, with all in favor, the motion passed unanimously.

Mr. Leclair advised the Board needed to meet to review the surveys and recommendations to see where Parks & Recreation is headed. Mr. Herman agreed to schedule that for a Board discussion. Mr. Headd advised the Parks & Recreation budget would be presented in a couple of weeks.

Adjourn

Mr. Eaton motioned to adjourn the meeting at 7:59 pm. Mr. Headd seconded the motion, with all in favor, the motion passed unanimously.

Respectfully submitted,

Nancy J. Hoijer,
Recording Secretary

**Town of Auburn
Board of Selectmen
August 6 2018
5:30 p.m.**

Selectmen Present: James Headd, Richard Eaton and Keith Leclair

Others Present: Lauren Fanning, Tax Collector Susan Jenkins, Acting Fire Chief Bob Seling, Captain James Saulnier, Lt. Patrick Glennon, and William Herman, Town Administrator

Call to Order

Mr. Headd called the meeting to order at 5:30 pm.

Non-Public Session pursuant to RSA 91-A: 3, II, (b) Consideration of hiring an individual as a public employee

Mr. Headd motioned to go into Non-Public Session pursuant to RSA 91-A: 3, II (b) – consideration of hiring an individual as a public employee. Mr. Eaton seconded the motion. A roll call vote was taken: Mr. Headd – yes; Mr. Eaton – yes; Mr. Leclair – yes. All were in favor, the motion passed unanimously.

The meeting room was closed to the public at 5:31 pm.

Tax Collector Susan Jenkins introduced Lauren Fanning of Auburn to the Board. She reported the Town had advertised to fill the vacant Deputy Town Clerk and Deputy Tax Collector positions and received a total of 11 applications. Following interviews of a number of applicants, Town Clerk Kathleen Sylvia and the Tax Collector were jointly nominating Lauren Fanning for the two positions and seeking the Board's approval of the appointment.

Mrs. Jenkins indicated the positions will generally offer two days per week, in addition to covering for vacations, trainings, etc. She indicated time will initially be spent with the Town Clerk as motor vehicles is a more intensive training process, while she will begin tax collector training in September.

Mrs. Fanning is recommended to be appointed initially as a Labor Grade 4, Step 2 at \$15.08 per hour, with consideration of moving to a Labor Grade 4, Step 3 at \$15.38 per hour after six months.

Mr. Leclair motioned to come out of Non-Public Session, seconded by Mr. Eaton. A vote was taken, all were in favor, the motion carried unanimously.

The meeting room was reopened to the public at 5:45 pm.

Mr. Leclair motioned to appoint Lauren Fanning of Auburn as Deputy Town Clerk and Deputy Tax Collector effective August 7, 2018 and to initially set the position as a Labor Grade 4, Step 2 on the Town of Auburn Wage Scale. Mr. Eaton seconded the motion, with all in favor, the motion passed unanimously.

Non-Public Session pursuant to RSA 91-A: 3, II, (b) Consideration of hiring an individual as a public employee

Mr. Headd motioned to go into Non-Public Session pursuant to RSA 91-A: 3, II (b) – consideration of hiring an individual as a public employee. Mr. Eaton seconded the motion. A roll call vote was taken: Mr. Headd – yes; Mr. Eaton – yes; Mr. Leclair – yes. All were in favor, the motion passed unanimously.

The meeting room was closed to the public at 5:47 pm.

Mr. Leclair motioned to come out of Non-Public Session, seconded by Mr. Mr. Eaton. A vote was taken, all were in favor, the motion carried unanimously.

The meeting room was reopened to the public at 8:30 pm.

Mr. Headd motioned to seal the minutes of the Non-Public Session, seconded by Mr. Eaton. A vote was taken, all were in favor, the motion carried unanimously.

Adjourn

Mr. Headd motioned to adjourn the meeting at 8:33 pm. Mr. Eaton seconded the motion, with all in favor, the motion passed unanimously.

Respectfully submitted,

William G. Herman
Town Administrator