

MEETING MINUTES
SUBJECT TO APPROVAL BY STATE BOARD
NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE
STATE BOARD OF REAL PROPERTY TAX SERVICES

MEETING OF JUNE 14, 2022

A meeting of the State Board of Real Property Tax Services was held via teleconference, as authorized by Chapter 1 of the Laws of 2022 and various successor Orders. The following members and staff were present:

Matthew Rand, *Chairman*
Scott Becker
Samuel Casella

Tim Maher, *Acting Secretary of the State Board and Director of Real Property Tax Services*
Joseph Gerberg, *Legal Advisor to the State Board, Office of Counsel*
Brittany Murphy, *Assistant to the State Board, Office of Real Property Tax Services*
Kayla Goyer, *Assistant to the State Board, Office of Real Property Tax Services*
Brooke Wojdyla, *Assistant to the State Board, Office of Real Property Tax Services*

Geoffrey Gloak, *Communication Manager, Office of Real Property Tax Services*
Maryellen Nagengast, *Tax Audit Administrator 1, Office of Real Property Tax Services*
Edward Martorana, *Auditor 3, Office of Real Property Tax Services*
Rebecca Bellard, *Associate Accountant, Office of Real Property Tax Services*
Jim McGovern, *Real Property Analyst 3, Office of Real Property Tax Services*
David Markey, *Associate Attorney Tax, Office of Counsel*
Tobias Lake, *Senior Attorney, Office of Counsel*
Lillian Bruno, *Office of Real Property Tax Services White Plains*
Samantha Palka, *Office of Real Property Tax Services White Plains*

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Mr. Rand called the State Board of Real Property Tax Services meeting to order at 11:02 A.M. He introduced the Board members and various tax department staff members who were present on the call.

Agenda Item No. I - State Board Administration - Minutes of the January 11, 2022, State Board meeting

On motion of Mr. Casella, seconded by Mr. Becker, Mr. Rand stated that the minutes of the January 11, 2022, Board meeting stand approved and are, hereby, adopted as written.

Agenda Item No. II - State Full Values and Assessment

Mr. Rand asked who will be presenting the resolutions.

Mr. Maher turned the meeting over to Mr. Martorana.

Optical Communications Group, Inc. (OCG)

Mr. Martorana introduced himself. He explained that Optical Communications Group Inc. has filed 2 complaints, complaint numbers 22-1 and 22-2.

Mr. Martorana went on to explain the complaints. This is the third year in a row for this complainant. The information provided is identical to last year's complaint. Both complaints request a 75% reduction in all the municipalities that are affected.

Mr. Martorana went into details about the history of Optical Communications Group, Inc. and the Office of Real Property Tax Services (ORPTS). The complaint states that ORPTS did not adjust for construction costs. However, the company did not provide any costs for adjustment. ORPTS used the methods applied to all similar companies. The company objects to the 5% intangible value that is applied to special franchise value. Mr. Martorana stated that this is outlined in ORPTS procedures and considered reasonable and has been accepted by the courts. The complaint objects to the use of a depreciation floor. The floor is applied in accordance with ORPTS procedures and is applied to all companies of alike kind in all municipalities across the state.

Mr. Martorana explained the complaints state insufficient economic and inadequate functional obsolescence were provided but no economic or functional obsolescence was requested. The complaint also contends that the special franchise value is unlawful, illegal, and unconstitutional. Mr. Martorana stated those were addressed in the Hearing Officer's report and staff recommend no change to the special franchise value determined for this company.

Mr. Rand asked if there were any questions for Mr. Martorana.

Mr. Becker and Mr. Casella stated they did not have any questions.

Mrs. Murphy paused the discussion because a caller joined in, she asks for the caller to identify themselves and the caller disconnects. The hearing continued.

Mr. Becker made a motion to approve resolution 22-22. Mr. Casella seconded the motion.

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Upon the affirmative votes of Messrs. Rand, Becker and Casella, the Board approved and adopted resolution 22-22.

Liberty Utilities (New York Water) Corp. f/k/a NY American Water Corporation, Inc. (Liberty)

Mr. Martorana introduced Liberty Utilities, formerly known as New York American Water. He explained that Liberty Utilities (New York Water) Corp. filed 4 complaints, complaint numbers 22-3, 22-4, 22-6, and 22-7.

Mr. Martorana went on to explain the complaints. This is the fourth year in a row for this complainant, the information provided was identical to last years. The complaints seek a 75% reduction for the various jurisdictions which are involved. The complaints contend that ORPTS improperly uses third-party indices. They have no explanation of the misuse. The third-party indices were applied by ORPTS using longstanding and widely accepted procedures. The complaint states that ORPTS did not adjust for construction costs. However, the company did not provide any costs for adjustment. The company rejects ORPTS use of a 5% intangible value for the use of special franchise property. The use of the intangible value is outlined in ORPTS procedures, is considered reasonable, and is accepted by the courts.

Mr. Martorana stated the complaint contends insufficient economic obsolescence was applied. He explained the economic obsolescence's that were granted. The complaint objects the use of a depreciation floor. Mr. Martorana explained the floor was applied according to ORPTS procedures and is applied to all special franchise values for all companies in every municipality in the state. The complainant also contends that insufficient salvage value was provided. They provided 3 different reports regarding salvage value. He then spoke about the different percentage values the company suggests that ORPTS should use. Liberty Utilities has not been able to provide how they've calculated those values or why the values vary greatly. ORPTS cannot find a reasonable cause to use an alternative method for salvage value than what they use for all other companies of the same nature.

Mr. Martorana explained the complainant contended inadequate functional obsolescence was applied, but the complainant never requested functional obsolesces nor provided any supporting calculations. He stated Liberty Utilities failed to calculate a value from the allegations they made. They also state ORPTS values are unlawful, illegal, and unconstitutional. These matters of law were all addressed by the hearing officer's report.

Mr. Martorana states that staff recommends no change to the special franchise value determined for this company.

Mr. Rand thanked Mr. Martorana and asks if the Board members have any questions.

Mr. Casella stated that he does not have any questions and would move resolution 22-23 this based on that fact that there is no supporting documentation. Mr. Becker seconded the motion.

Mr. Rand asked if there was any other discussion and the Board members said no.

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Upon the affirmative votes of Messrs. Rand, Becker and Casella, the Board approved and adopted resolution 22-23.

Mr. Rand asked Mr. Martorana to proceed with the next resolution.

RCN Telecom Services NY (RCN)

Mr. Martorana introduced RCN Telecom Services NY. They filed one complaint, complaint number 22-17.

Mr. Martorana explained the complaint requests 52% reduction in the borough of Queens and a 70% reduction in the borough of Manhattan. They have infrastructure in the Bronx and Brooklyn, but they are not seeking any reduction to those values. The complaint contends ORPTS improperly uses third-party indices. They have no explanation of the misuse. He stated the third-party indices were applied using ORPTS longstanding and widely accepted procedures. The complaint contests that ORPTS included costs they agreed not to utilize as original cost. Mr. Martorana stated ORPTS has calculated this company in the same manner for several years and there is no agreement to not include certain costs.

Mr. Martorana went on to say the complaint objects to the 5% intangible value. He stated this is outlined in ORPTS procedures and considered reasonable and has been accepted by the courts. The complaint objects to the use of the depreciation floor. The floor is applied in accordance with ORPTS procedures and is applied to all companies of alike kind in all municipalities across the state. The complaint states that insufficient functional obsolescence was applied. Mr. Martorana said 20% functional obsolescence was granted in Manhattan and 63% was granted in Queens. The complaint contends that insufficient economic obsolescence was applied. The complainant never requested economic obsolescence. The complaint contends that the special franchise value is unlawful, illegal, and unconstitutional. Mr. Martorana stated those were addressed in the Hearing Officer's report and that staff recommend no change to the special franchise value.

The Board members stated they did not have any questions for Mr. Martorana.

Mr. Becker made a motion to consider resolution 22-24. Mr. Casella seconded the motion.

Upon the affirmative votes of Messrs. Rand, Becker and Casella, the Board approved and adopted resolution 22-24.

Mr. Rand asked Mr. Martorana to proceed with the next resolution.

Consolidated Edison Company of New York, Inc. (CE).

Mr. Martorana introduced Consolidated Edison Company of New York, Inc. (CE) They filed one complaint, complaint numbers 22-18.

The complaint requests a reduction between 40% to greater than 99% of special franchise values. Mr. Martorana believes there is some errors in the numbers provided, but they were not there to discuss that. The complaint asserts that their values should be accepted, because they are an

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“informed appraisal of its special franchise property provided an anticipation of trial”. They did not provide any explanation or calculations to support this. The said values have not been accepted by the court or ORPTS for the property in question. Additionally, the said appraisal is for property that was in place for the years 2013 through 2016, not the current inventory utilized for the 2022 roll year. He stated staff recommend no change to the special franchise value determined for this company.

Mr. Rand asked if there were any further questions. Mr. Becker and Mr. Casella stated they did not have any.

Mr. Casella stated that, based on the staff comments, he moves 22-25. Mr. Becker seconded that motion.

Mr. Rand asked if there as any further discussion, there was none.

Upon the affirmative votes of Messrs. Rand, Becker and Casella, the Board approved and adopted resolution 22-25.

Agenda Item No. III - Star Exemption Appeals - General Discussion

Mr. Rand turned the meeting over to Mr. Maher to discuss the STAR appeals.

Mr. Maher stated that this agenda item is to streamline the process. In previous meetings ORPTS has included the details of the law and every single appeal response. He stated this would provide an overview of how the Board handles these appeals. Additionally, it would explain why we need to move to executive session to discuss the detail of each appeal.

Mr. Maher then gave a quick overview of the qualifications of the Basic and Enhanced STAR exemptions.

Mr. Maher asked Mr. Gerberg if there was anything he would like to add. Mr. Gerberg said there was not.

Mr. Maher then asked if any of the Board members had questions. There were not questions.

Mr. Rand made a motion to go into executive session to discuss the STAR appeals. Mr. Casella seconded the motion.

Mr. Geber clarified the need for executive session; the Board needed to discuss the financial history of certain individuals.

Agenda Item No. IV - Executive Session - Discussion of Individual STAR Exemption Appeals

Mr. Maher explained resolutions 22-26 through 22-31 to the Board in executive session.

Agenda Item No. V - STAR Exemption Appeals - Action on Resolutions

The meeting returned to public session.

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Mr. Rand stated resolutions 22-26 through 22-30 had been considered and that a vote could take place and 22-31 would be looked at independently.

Mr. Casella made a motion to vote and on resolutions 22-26 through 22-30 as a block. Mr. Becker seconded that motion.

Mr. Rand called a vote on resolutions 22-26 through 22-30.

Upon the affirmative votes of Messrs. Becker, Casella and Rand, the Board approved and adopted resolutions 22-26 through 22-30.

Mr. Rand then opened discussion for resolution 22-31.

Mr. Becker stated, after discussion in executive session, he moved that the Board not approve resolution 22-31.

Mr. Rand then seconded that motion.

Upon the affirmative votes of Messrs. Rand and Becker, and the negative vote of Mr. Casella, the Board did not adopt resolution 22-31.

Mr. Rand then asked Mr. Gerberg if everything was handled accordingly.

Mr. Gerberg stated that it was.

Mr. Rand stated we would be moving into the next agenda item.

VI. Discussion of amendments to the Open Meetings Law

Mr. Gerberg introduced the discussion of amendments to the Open Meetings Law. He stated this was an aftermath of COVID, although COVID is still with us, it changed how public meetings were conducted. During that time, it was permissible to conduct the meetings by teleconference if certain conditions were satisfied. He stated that authorization is still in effect as of today. Once these emergency authorizations expire, Board members will still be able to participate in meetings by videoconference from the Tax Department's regional offices, when necessary, but there might be situations where a member can't make it to a regional office but is willing to participate by videoconference from a private location, such as their home or office. The new amendments make it possible to do so under certain circumstances.

Mr. Gerberg explained the previous requirements around remote attendance. Previously, if members participated remotely, it could only be by videoconference. Additionally, it had to be at a publicly accessible location. He discussed the situations and circumstances that a member would be able to participate remotely. He stated legislature recognized the issue of allowing members of the public into a Board members home or office. The update would allow video conferencing under extraordinary circumstances without the need to allow members of public access to that location.

Mr. Gerberg stated that if the Board would like to explore this new option, they would need to adopt a resolution explaining the extraordinary circumstances allowing a member to participate

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from a private location. The extraordinary circumstances would have to be in the nature of; disability, illness, childcare, and other things that make it essentially impossible for the member to participate from a public location.

Mr. Gerberg stated there were two conditions. One is a resolution adopting this can only be done after a public hearing. Two, is if a member does not to take advantage of this option, the member can participate and vote but cannot be counted toward the quorum.

Mr. Casella ask for clarification on the ability of the Board member to vote remotely but not be part of the quorum.

Mr. Gerberg clarified the reasoning.

Mr. Rand stated his understanding of the policy and asked what would happen if two members were participating remotely and the quorum wouldn't be met.

Mr. Gerberg stated, in that situation, the body couldn't meet and act.

Mr. Rand stated that it would make sense to adopt this resolution to have in place in case of emergency situations.

Mr. Beck and Mr. Casella agreed.

Mr. Gerberg stated the department will work to get a procedure and resolution ready for the July meeting.

Mr. Rand asked if there was anything else for the Board.

Mr. Casella asked if the July meeting was definite.

Mr. Maher stated that it wasn't definite yet, ORPTS had not yet received any equalization rate complaints but there was still time. He said it wasn't too late to change the date if necessary.

Mr. Casella said the scheduled meeting date of July 26th should work.

Mr. Rand asked if the July meeting would be held via teleconference.

Mr. Gerberg stated it would depend on if the governor extends the State of Emergency.

The members confirmed if the State of Emergency was not extended, they would be able to meet in the regional offices, instead of traveling to Albany.

Mr. Rand asked if there was anything else for the Board today.

Mr. Casella made a motion to adjourn the meeting, the motion was seconded by Mr. Becker.

Mr. Casella thanked the Tax Department staff for the easy navigation and organization of the materials.

With no further questions or comments, the Board concluded its meeting at 12:06 P.M.

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Respectfully submitted,

Tim J. Maher
Acting Secretary of the State Board