THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2013 TERM

NOVEMBER SESSION

2013-0504

COOS COUNTY COMMISSIONERS

on behalf of the

Unincorporated Places of DIXVILLE, N.H. and MILLSFIELD, N.H.

v.

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION

RULE 10 APPEAL FROM AN ADMINISTRATIVE AGENCY
(PETITION FOR WRIT OF CERTIORARI
UNDER SUPREME COURT RULE 10 (1) (C) AND N.H. RSA 71-B: 5, II)

PETITIONER'S BRIEF (RULE 10)

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II. **Whether or not the BTLA erred in determining that the Petitioner could not use the valuation of the Windpark, as previously stated in 2007 by DRA and as incorporated by Petitioner into the Payment in Lieu of Taxes agreement, in order for the Petitioner to meet its burden of proof on the issue of whether or not the Total Equalized Valuation was calculated erroneously.** See, Petitioner's Appeals filed with BTLA, Appendix to Notice of Appeal at pp. 18-47; Decision at page 3, Appellant App. at p. 39.

III. **Whether or not the BTLA erred in not analyzing the appropriateness of the analysis conducted by DRA Director Hamilton, as stated on the record, that he gave "no weight" to the prior actions of DRA and the written requests of the Petitioners, when calculating the equalized valuations of Dixville and Millsfield, per his statutory duties under N.H. RSA 21-J: 3. XIII.** See, Transcript of Hearing, Testimony of Director Stephen Hamilton, at pp. 139 – 151, 167 – 168.

IV. **Whether or not the BTLA erred in denying the Petitioners a continuance, based upon the unusual procedural circumstances and newly discovered evidence, which was**

presented to the Petitioners just nine (9) days before the hearing on the merits. See, Petitioner's Motion to Continue, Appendix to Notice of Appeal at p. 50.

V. Whether or not the BTLA erred in denying Petitioner's Motion to Compel, which sought disclosure of the DRA's appraisal of the Windpark, which had been prepared under the authority of N.H. RSA Chapter 83-F, in agreeing with DRA that no exception allowing disclosure applied to the situation, and by not ordering DRA to disclose whether or not the Windpark had filed an abatement of its utility tax assessment under N.H. RSA 83-F: 8, when this request was made as part of direct examination of DRA officials. See, Petitioner's Motion to Compel, Appendix to Notice of Appeal at p. 55; see also, Transcript of Hearing, Testimony of Director Stephen Hamilton, at pp. 110 – 111, 182 – 185; Testimony of Scott Dickman, at pp. 193 – 211.

VI. Whether or not the BTLA erred in not allowing counsel for Petitioner to inquire into and cross-examine the DRA's utility property appraiser and expert witness (Scott Dickman), as to the appraisal methods used and the extent of studies conducted, and whether or not those methods and studies included certain considerations that would likely have an effect (downward in value) upon the conclusions he reached in determining the appraised value of the Windpark. See, Transcript of Hearing, Testimony of Scott Dickman, pp. 186 – 230, and specifically, pp. 193 – 211.

VII. Whether or not the BTLA erred in not allowing an expert witness proffered by the Petitioner (Brian Fogg) to testify during the hearing on the merits, and further, by refusing

to accept – into the record – any statements as to the ultimate opinions that this expert witness would have provided as part of his testimony, so that such opinions could possibly be considered by this Court, in the event that this Court holds that the BTLA ruling excluding this testimony is overturned as part of this appeal. See, Transcript of Hearing, Proffered Testimony of Brian Fogg, and Arguments by Attorney Waystack related thereto, pp. 231- 247.

PERTINENT STATUTES

N.H. Constitution, Part I, article 8 – Accountability of Magistrates and Officers; Public's Right to Know:

All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.

N.H. Constitution, Part I, article 12; Protection and Taxation Reciprocal:

Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

RSA 21-J:3, XIII – Department of Revenue Administration, Duties of Commissioner:

In addition to the powers, duties, and functions otherwise vested by law, including RSA 21-G, in the commissioner of the department of revenue administration, the commissioner shall:

VI. Confer with, advise, and give the necessary instructions and directions to local assessing officers throughout the state as to their duties, and to that end to call meetings of such assessing officers, to be held at convenient places, for the purpose of receiving instructions from the commissioner as to the laws governing the assessment and taxation of all classes of property.

XIII. Equalize annually by May 1 the valuation of the property as assessed in the several towns, cities, and unincorporated places in the state including the value of property exempt pursuant to RSA 72:37, 72:37-b, 72:39-a, 72:62, 72:66, and 72:70, property which is subject to tax relief under RSA 79-E:4, and property which is the subject of a payment in lieu of taxes under RSA 72:74 by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes or payments in lieu of taxes as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just. In carrying out the duty to equalize the valuation of property, the commissioner shall follow the procedures set forth in RSA 21-J:9-a.

RSA 21-J:9-a, IV – Department of Revenue Administration, Equalization Procedure:

The following procedures shall apply in determining the equalization of property within the cities, towns, and unincorporated places as required by RSA 21-J:3, XIII, but shall not affect a municipality's requirements for inventory of property and assessment of taxes as of April 1:

IV. The commissioner may use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.

RSA 21-J:11 – Department of Revenue Administration, Appraisals of Property for Ad Valorem Tax Purposes:

II. The commissioner, at no expense to the municipality, shall monitor appraisals of property and supervise appraisers as follows:

(a) Assure that appraisals comply with all applicable statutes and rules;

(b) Assure that appraisers are complying with the terms of the appraisal contract or agreement;

(c) Review the accuracy of appraisals by inspection, evaluation, and testing, in whole or in part, of data collected by the appraisers; and

(d) Report to the governing body on the progress and quality of the municipality's appraisal process.

RSA 21-J:14, V(c) – Department of Revenue Administration, Confidentiality of Department Records:

I. Notwithstanding any other provision of law, and except as otherwise provided in this chapter, the records and files of the department are confidential and privileged. Neither the department, nor any employee of the department, nor the legislative budget assistant or any expert consultants, including certified public accountants, hired by the legislative budget assistant to assist in the carrying out of his or her duties, nor any other person charged with the custody of such records or files, nor any vendor or any of its employees to whom such information becomes available in the performance of any contractual services for the department shall disclose any information obtained from the department's records, files, or returns or from any examination, investigation or hearing, nor may any such employee or person be required to produce any such information for the inspection of any person or for use in any action or proceeding except as hereinafter provided.

V. The following exceptions shall apply to this section:

(c) Disclosure of department records, files, returns, or information in a New Hampshire state administrative proceeding or any judicial proceeding pertaining to state tax administration where the information is directly related to a tax issue in the proceeding, or the taxpayer whom

the information concerns is a party to such proceeding, or the information concerns a transactional relationship between a person who is a party to the proceeding and the taxpayer.

RSA 71-B:5, II(a) – Taxation, Authority; Duties:

It shall be the duty of the board and it shall have power and authority:

II. (a) To hear and determine appeals by municipalities relating to the equalized valuation of property determined by the commissioner of revenue administration pursuant to RSA 21-J:3, XIII. Any municipality aggrieved by its own equalized valuation as determined by the commissioner of revenue administration must appeal to the board in writing within 30 days of notice of its final equalized valuation by the commissioner. The board shall hear and make a final ruling on such appeal within 60 days of its receipt by the board. The board's decision on such appeal shall be final pending a decision by the supreme court. Such appeal shall be filed with the clerk of the supreme court within 20 days after the date the decision is mailed by the board to the municipality. The supreme court shall give any appeal under this section priority in the court calendar.

RSA 72:74, I, II – Taxation, Payment in Lieu of Taxes:

I. The owner of a renewable generation facility and the governing body of the municipality in which the facility is located may, after a duly noticed public hearing, enter into a voluntary agreement to make a payment in lieu of taxes. A lessee of a renewable generation facility which is responsible for the payment of taxes on the facility may also enter into a voluntary agreement with the municipality in which the facility is located to make a payment in lieu of taxes, provided the lessee shall send by certified mail to the lessor written notice which shall state that the property of the lessor may be subject to RSA 80 should the lessee fail to make the payments required by the agreement. A copy of such notice shall be provided to the municipality in which the facility is located.

II. A renewable generation facility subject to a voluntary agreement to make a payment in lieu of taxes under this section shall be subject to the laws governing the utility property tax under RSA 83-F. Payments made pursuant to such agreement shall satisfy any tax liability relative to the renewable generation facility that otherwise exists under RSA 72. In the absence

of a payment in lieu of taxes agreement, the renewable generation facility shall be subject to taxation under RSA 72.

RSA 83-F:2 – Utility Property Tax, Tax Imposed:

For taxable periods beginning April 1, 1999, a tax is imposed upon the value of utility property at the rate of $6.60 on each $1000 of such value, to be assessed annually as of April 1, and every year thereafter, and paid in accordance with this chapter.

RSA 83-F:3 – Utility Property Tax, Determination of Value:

On or before December 1 of the tax year, the commissioner shall determine the market value of utility property for the purposes of this chapter by utilizing generally accepted appraisal methods and techniques. Market value means the property's full and true value as defined under RSA 75:1. In the case of regulated public utilities as defined in RSA 362:2, the commissioner shall hold a single public hearing annually prior to performing assessments, in order to receive public input on assessments under this chapter. Notice of such determination shall be given to the taxpayer within 15 days of the commissioner's determination.

STATEMENT OF THE CASE

By way of correspondence dated April 29, 2013, the Department of Revenue Administration notified the Coos County Commissioners of the 2012 Total Equalized Valuation for the unincorporated places of Dixville and Millsfield. See, Petitioner's Exhibits 12 & 13, Appellant App. at pp. 97-98. This notification is part of the DRA's statutory mandate under N.H. RSA 21-J: 3, XIII. On or about May 23, 2013, pursuant to N.H. RSA 71-B: 5, II, the Commissioners filed timely appeals of the 2012 Total Equalized Valuation for Dixville and Millsfield, respectively, with the New Hampshire Board of Tax and Land Appeals. Because of common issues of law and fact, the two appeals were consolidated by order of the Board and

agreement of the parties. After some brief discovery, a Hearing on the Merits was held on June 28, 2013, in which the BTLA ruled that the Commissioners had not met their burden of proof on the statutory appeal. This appeal followed.

STATEMENT OF THE FACTS

This case relates to the application of several State taxation statutes to the renewable energy facility known as the Granite Reliable Windpark ("the Windpark"), and the effects of such application on both the municipalities responsible for collecting taxes and the individual taxpayers. The Windpark is located in the unincorporated places of Millsfield and Dixville, as well as the town of Dummer, in Coos County, New Hampshire. The large, undeveloped acreage within Millsfield and Dixville is primarily used for timber harvesting and outdoor recreation. Currently, there are only twenty-five residents in Millsfield and one resident in Dixville. In New Hampshire, the Coos County delegation is the legislative body for these unincorporated areas. (See Trans. 24:15.) In this case, the appellant, the Coos County Commissioners ("CCC"), serves as the executive body for the areas of Dixville and Millsfield, with its duties including the administration of planning and zoning laws, as well as local real estate taxation.

As is well known, unless exempted, all New Hampshire real estate, including the Windpark at issue here, is subject to the Local Property Tax. RSA 72:6. This tax is imposed and collected in the following way: first, the local selectmen (or county commissioners) inventory taxable property within their municipalities and appraise such properties for their market values (see RSA 73:1, RSA 72:6, :12, RSA ch. 75, RSA ch. 76); second, the Department of Revenue Administration ("DRA") "equalizes" the local assessed valuations to determine the full and true market value of each municipality (see RSA 21-J:3, XIII); third, local public taxes are

apportioned to each taxpayer, using the DRA's equalized valuation of that municipality, and such taxes are collected by the municipalities themselves (see RSA ch. 76).

Historically, since the unincorporated places of Millsfield and Dixville do not receive many government services (e.g., there are no town roads, schools, fire, or police services, etc.), the residents' Local Property Taxes (i.e., their *County* taxes, since the County governs the unincorporated places) have been very low or non-existent. This is also true because the collection of the Timber Taxes for the harvesting of trees within these areas often generates sufficient revenue to offset the need to collect a Local Property Tax. In other words, during the years when many trees are harvested from these areas by private timber companies, the residents of Millsfield and Dixville have not been required to pay any Local Property Tax. (See Trans. 52:5–11.)

In addition to the Local Property Tax, however, utility property owners in New Hampshire must also pay a Utility Property Tax. RSA chapter 83—F. This tax is a separate tax from the Local Property Tax and it is assessed and collected from owners of utility property based on an entirely separate set of statutes than those described above. Under RSA chapter 83-F, the DRA appraises and taxes a utility property at a rate of $6.60 per $1,000 of value of a utility property. This tax is only assessed and collected after the utility is operational and selling power. Note that the DRA conducts a specific appraisal for the purposes of RSA chapter 83-F for the Utility Property Tax, as opposed to the local valuations under RSA chapters 72 and 75 that are conducted by municipalities for the purpose of the Local Property Tax.

Starting in 2006, the State of New Hampshire encouraged the CCC to authorize the construction of the Windpark in the unincorporated areas, as part of Governor Lynch's 25 x '25 Renewable Energy Initiative, which sets forth a goal for New Hampshire to obtain twenty-five

percent of its energy from clean, renewable sources by the year 2025. (Trans. 75:13–76:3; see also nh.gov, "*energy initiatives*".) To further encourage the construction of renewable energy facilities, on June 15, 2006, Governor Lynch signed into law RSA 72:74, which provides for voluntary payment-in-lieu-of-tax ("PILOT") agreements for renewable generation facilities. (Id.) This law allows a renewable energy facility and the municipality in which the facility is located to negotiate and enter into a voluntary agreement to make payments in lieu of the Local Property Taxes. RSA 72:74. Agreements under RSA 72:74 do not exempt the utility from the separate Utility Property Tax under RSA chapter 83-F, which will still be assessed and collected by the DRA. RSA 72:72, II.

It was in this political atmosphere in 2007 that the CCCs considered entering into a PILOT agreement with the Windpark. (Trans. 75:13–76:3.) As stated on its website, the DRA's "Property Appraisal Division assists and educates municipalities with the methods of appraisal and assessment of real property . . . and reviews assessing contracts and makes recommendations thereon to municipalities under RSA 21-J:11." (See revenue.nh.gov, *Property Appraisal Division.*) As such, the then-Coos County Administrator, Suzanne Collins, invited representatives from the DRA to meet with the CCC for assistance in valuing the Windpark for a proposed PILOT agreement. (Trans. 45:15–46:11; 213:1–5; Appellant App. 52-55.)

In attendance at this meeting in December 2007 were the three county commissioners; the County Administrator, Suzanne Collins; a DRA appraiser, Scott Dickman; and the then Director of the DRA Property Appraisal Division, Guy Petell. (Id., see also Trans. 213:11–12.) Before the meeting, Ms. Collins had independently researched the projected value of the Windpark and estimated its value at $150,000,000. (Appellant App. 54; Trans. 217:3–19.) At the meeting, several calculations were performed, and the DRA representatives informed Ms.

Collins and the CCC that their estimation of $150,000,000 was "high," and that the Windpark's value will be considerably lower, and closer to $113,000,000. (Appellant App. 52-55; Trans. 73:12–23; 74:1–23; 217:18.)

As a direct result of this meeting, the CCC entered into a PILOT agreement using $113,000,000 as the value of the Windpark. (Trans. 73:21–74:17.) In December of 2012 (its first year of operation), the Windpark started paying taxes to the CCC based on the PILOT agreement. Prior to that, from 2008 through 2011, the DRA, when calculating the total equalized value of Dixville and Millfield, excluded entirely the value of the Windpark, because it was still under construction. (Appellant App. 85–86.) In these years, because the DRA had not assessed and included a value for the Windpark that was significantly greater than the PILOT value of $113,000,000, the residents of the unincorporated areas did not incur any net tax increase because of the location of the Windpark.

However, in 2012, the Windpark became operational and began selling power. As such, the DRA was required to appraise the value of the Windpark for the Utility Property Tax under RSA chapter 83-F. In 2012, Scott Dickman, the same appraiser who attended the CCC's 2007 meeting, was tasked with conducting the appraisals of the utility properties under RSA chapter 83-F. (Trans. 191:6–17.) His 2012 appraisal under RSA chapter 83-F valued the Windpark at $228,935,438—over one-hundred million dollars greater than the value of $113,000,000 he gave to the CCC in 2007. See, Exhibits 12 & 13, Appellant App. at pp. 97-98; see also, Appendix to Notice of Appeal at p. 14.

Even though the DRA is not required by rule or statute to use its RSA chapter 83-F appraisal when equalizing Local Property Taxes under RSA chapter 21-J:3, the DRA did choose to use this value in 2012 when equalizing Millsfield and Dixville's taxes. (Trans. 181:16–18

(quoting the DRA's Director of Municipal and Property Division stating "Absolutely. There's nothing that mandates I use the 83-F value"; see generally RSA 21-J:9-a.) Because the DRA used the significantly higher RSA chapter 83-F value when equalizing the Windpark in 2012, the amount of taxes the CCC must collect from these areas in 2013 has nearly doubled over the course of one year. (Appellant App. 100; Trans. 53:5–6, p.52–54.) Unfortunately, because of the PILOT agreement, which sets the amount of Local Property Taxes paid by the Windpark for a term of ten years, the CCC cannot "make up the difference" by collecting higher payments-in-lieu-of taxes from the Windpark. As such, either the twenty-five residents of Millsfield and the single resident of Dixville (and all other non-resident property owners, including the owners of The Balsams Hotel) will be forced to pay exponentially higher Local Property Taxes to make up the difference—or the CCC will have to deplete its reserve funds. (Trans. 163, 175, 179.)

One way to describe the effect on local residents' taxation is as follows: given the 2012 Total Equalized Valuations for Dixville and Millsfield, as calculated by the DRA, the denominator in the calculation of Dixville and Millsfield's share of county taxes has projected to increase by over $228 million (DRA's appraised value), but the numerator is only projected to increase by approximately $113 million (the PILOT value), and the shortfall in this calculation will be projected to be "made up" by the individual taxpayers, absent any "stopgap" measures.

By way of correspondence dated March 20, 2013, the CCC requested that DRA not use its appraised utility value for the Windpark. (Appellant App. 87-90, 93-94.) Instead, the CCC asked the DRA to employ its statutory discretion, and use the CCC's PILOT value of $113,000,000. In response to the CCC's request, the DRA declined to use the PILOT value. (Id.) In fact, even though the DRA has the discretion to consider any relevant evidence when performing its duties under RSA 21-J:3, XIII (Trans. 145:8–12), the DRA gave no weight at all

to the PILOT value when determining the 2012 equalized value of Dixville and Millsfield (Trans. 147:4 ("I gave it no weight."); Trans. 168:10; Appellant App. 91–92.)

SUMMARY OF THE ARGUMENT

I. Total Equalized Value Under RSA 21-J:3, XIII

The Department of Revenue Administration's ("DRA") 2012 equalized valuation for Dixville and Millsfield is not representative of the "true and market value" of the properties within Dixville and Millsfield, as required under RSA 21-J:3, XIII. The equalized valuation is disproportionately high because the DRA's appraised value of the Granite Reliable Windpark ("Windpark") is higher than its "true and market value." Id. In 2012 the DRA assigned a value of $228,935,438 to the Windpark when determining the equalized valuation of Dixville and Millsfield under RSA 21-J:3. The DRA arrived at this value for the Windpark as part of its appraisal process conducted for the purpose of the State Utility Tax under RSA chapter 83-F. (Trans. 127:7–14.)

At the hearing before the BTLA, the appellant, Coos County Commissioners ("CCC") presented evidence that the market value of the Windpark is closer to $113,000,000.00 than to $228,935,438.00. When researching the value of the Windpark before entering into a PILOT agreement, the CCC invited representatives of the DRA to review their valuation of the Windpark. Before the meeting, the County Administrator, Ms. Collins, had independently researched the projected value of the Windpark and estimated its value at $150,000,000. (Appellant App. at pp. 52-55; Trans. 217:3–19.) At the meeting, several calculations were performed, and the DRA representatives informed Ms. Collins and the CCC that their estimation of $150,000,000 was "high," and that the Windpark's value will be considerably lower, and

closer to $113,000,000. (Trans. 73:12–23; 74:1–23; 217:18.) Ms. Collins's research; the advice of the DRA's qualified representatives; and the PILOT agreement itself is evidence that the Windpark's fair and true market value is significantly lower than the number used by the DRA when calculating its 2012 Total Equalized Valuation.

The DRA should have considered the above described evidence regarding the market value of the Windpark when carrying out its duties under RSA 21-J:3, XIII, but failed to do so. See RSA 21-J:9-a, IV (directing the DRA to "consider such other evidence as may be available" when determining the equalized value of property). However, the DRA refused to consider the CCC's PILOT value as evidence. (Trans. 147:4 ("I gave it no weight."); Trans. 168:10; Appellant App. 91–92).) Because the DRA refused to consider the above-discussed relevant evidence, the DRA failed to fairly assess the market value of property within Dixville and Millsfield, as required under RSA 21-J.

Instead, the DRA relied solely on the its appraisal of the Windpark conducted for the purposes of RSA chapter 83-F as evidence of the Windpark's value, even though nothing under RSA 21-J requires the DRA to use its RSA chapter 83-F utility appraisal in calculating the equalized value of an unincorporated place. (See RSA 21-J:3; RSA 21-J:9-a; and Trans. 181:16–18 (quoting the DRA's Director of Municipal and Property Division stating "Absolutely. There's nothing that mandates I use the 83-F value").)

Further, the BTLA had insufficient evidence to find that the DRA's 83-F appraisal fairly represented the Windpark's true market value. The DRA did not introduce its appraisal report into evidence, claiming that its appraisal was "confidential." (Appellant's Notice Appeal App. 64.) Additionally, the DRA's appraiser, Scott Dickman, was not permitted to testify as to his appraisal methods. (Trans. 193–196.) As such, there was no appraisal report or testimony

presented at the hearing, by the DRA, to support a finding that its RSA chapter 83-F appraisal was conducted pursuant to accepted appraisal methods and that it is a fair assessment of the utility's market value. See Appeals of Bow, Newington & Seabrook, 133 N.H. 194, 201 (1990) (noting that the DRA's value under RSA 21-J:3 must represent, "pursuant to accepted appraisal standards, 'the true and market value' of the property").

In addition, the DRA failed to calculate the equalized value of the "properties [in such a way] that public taxes [could] be apportioned among the . . . municipalities in an equal and just manner." Id. at 201; RSA 21-J:3, XIII. Under the relevant statute, the DRA is not only directed to determine the market value of properties, but also to "[make] such adjustments in the value of other property from which the . . . unincorporated places receive taxes or payments in lieu of taxes as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just." RSA 21-J:3, XIII. In this case, the DRA failed to make any adjustments in its calculated value of the Windpark, and as a result Dixville and Millsfield's equalized valuation increased approximately ***$211,677,845.00*** from the prior year! Dixville and Millsfield will be forced to collect and pay more than their fair share of the county taxes, which cannot be offset by increased payments from the Windpark because of the PILOT agreement. As a result, the individual residents of Dixville and Millsfield will likely suffer an unjust and disproportionate increase in taxes, in violation of RSA 21-J:3, XIII.

II. The BTLA Failed to Conduct a Fair Hearing

The BTLA erred by holding that the DRA's Windpark appraisal is protected by RSA chapter 21-J:14 because the exception set forth under RSA 21-J:14, V(c) applies: the CCC's request relates to (1) the disclosure of department records in an administrative proceeding, (2)

pertaining to state tax administration, (3) and the appraisal is directly related to a tax issue in the proceeding. (See BTLA Decision 3; Appellant Notice Appeal App. 5.) The BTLA also would not permit the CCC to inquire, in any way, into the methods used by the appraiser to determine the value of the Windpark during direct examination. (Trans. 198–200.) It was a violation of due process and fundamental fairness to force the CCC to accept an equalized valuation from the DRA that is based upon a utility appraisal that the CCC could not review, in any manner. See generally N.H. Constitution, Part I, article 12; see also N.H. Constitution, Part I, article 8.

The BTLA also denied the CCC request to continue the hearing for an opportunity to review evidence that was recently disclosed by the DRA. (BTLA Decision 3; Appellant Notice Appeal App. 5.) Lastly, the DRA denied the CCC the opportunity to present the testimony of their expert witness because the CCC did not timely disclose this witness, even though, as explained below, such testimony would not have unfairly prejudiced the DRA. For all of these reasons, the BTLA hearing was unjust and unreasonable under RSA 541:13.

III. The BTLA's Decision Violates Public Policy

The State of New Hampshire has sought to promote the construction and orderly taxation of renewable energy generation facilities, by virtue of its enactment of RSA 72:74 (which provides for PILOT agreements). Given the State's clear public policy initiative to promote the construction and taxation of renewable energy facilities in this manner, communities that enter into PILOT agreements should be able to rely upon the DRA to use the appraised values determined by the communities themselves in entering into these PILOT agreements when calculating the Total Equalized Valuation for each municipality in the state pursuant to RSA 21-J:3.

In addition, the procedural and/or evidentiary rule employed by the BTLA, specifically that the PILOT agreement valuation, without more, is insufficient to allow the CCC to meet its burden of production at a hearing under RSA 71-B:5, is inconsistent with the expressed policy of the legislative and executive branches. The existence of the PILOT agreement, and its legal and evidentiary effect upon the CCC's burden of production in an appeal under RSA 71-B:5, was ignored by the BTLA despite the clear public policy concerns to the contrary.

IV. The DRA Should be Estopped from Increasing the Assessed Value of the Windpark

The DRA should be estopped from denying the accuracy of the PILOT Assessment because of its actions in December 2007. The DRA, at the 2007 meeting, represented that the value of the Windpark was $113,000,000, and did not advise the CCC to obtain an independent appraisal. (Appellant App. 52-55.) Two County officials testified at the BTLA hearing of their specific recollections that the DRA appraiser, Mr. Dickman, advised them that the County Administrator's estimation of $150,000,000 was too high, and that the true value was closer to $113,000,000. (Appellant App. 52-55; Trans. 53–54; Trans. 73.)

Given these circumstances, the DRA should be estopped from denying that the PILOT value is evidence of the market value of the property because: (1) the DRA represented, to the CCC, that $113,000,000 is the value of the Windpark; (2) the CCC were not aware and could not have reasonably anticipated that the DRA would later refuse to credit the PILOT value as evidence of market value under RSA 21-J:3; (3) in 2007, the DRA was aware that the CCC were relying on their advice for the purposes of entering into a PILOT agreement (Appellant App. 56-57); and (4) the CCC reasonably relied on such representations, to its detriment. Concord v. Tompkins, 124 N.H. 463, 467–69 (1984).

ARGUMENT

I. The DRA's Equalized Valuation of Dixville and Millsfield is Disproportionate and Unjust Under RSA 21-J: 3 Because its Assessed Value of the Windpark is Greater than Fair Market Value

The Department of Revenue Administration's ("DRA") 2012 equalized valuation for Dixville and Millsfield is not representative of the "true and market value" of the properties within Dixville and Millsfield, as required under RSA 21-J:3, XIII. The equalized valuation is disproportionately high because the DRA's appraised value of the Granite Reliable Windpark ("Windpark") is higher than its "true and market value." Id. The Court should reverse the Bureau of Tax and Land Appeals' ("BTLA") ruling and order the DRA to decrease Dixville's and Millsfield's 2012 Total Equalized Valuation, using the Coos County Commissioners' ("CCC") PILOT valuation for the Windpark instead of the DRA's RSA chapter 83-F appraised utility tax valuation.

Under RSA 21-J:3, XIII, the DRA must calculate the equalized value "of the property as assessed in the several towns, cities, and unincorporated places in the state . . . by adding to or deducting from the aggregate valuation of the property in [these municipalities] such sums as will bring such valuations to the true and market value of the property." In addition, the DRA is directed to "[make] such adjustments in the value of other property from which [these municipalities] receive taxes or payments in lieu of taxes as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just." Id. In other words, the DRA has two distinct obligations under RSA 21-J:3, XIII when calculating an equalized value: (1) to determine the market value of the property within these municipalities

and (2) to make such adjustments to the market value as is necessary so that taxes may be apportioned in an equitable and just manner.

(a) Market Value

At the hearing, the CCC argued that the true market value of the Windpark was $113,000,000, whereas the DRA took the position that the true market value of the Windpark was much higher, in excess of $228,000,000, and sufficient to justify its 2012 Total Equalized Valuation calculations for Dixville and Millsfield. The CCC presented evidence supporting its determination of value, noting that the CCC arrived at this value through independent study by the CCC, as well as considering the advice of the DRA's experts. (Trans. 72:14–19; 53:21–22.) The DRA arrived at its value by relying on its own, confidential appraisal, conducted for the purposes of assessing the utility tax under RSA chapter 83-F. However, nothing under RSA 21-J requires the DRA to use its RSA chapter 83-F utility appraisal in calculating the equalized value of an unincorporated place. (Trans. 181:16–18 ("There's nothing that mandates [the DRA] use the 83-F value"); see also Appeals of Bow, Newington & Seabrook, 133 N.H. at 196.

As noted above, in December 2007, the CCC was considering the possibility of entering into a ten-year PILOT agreement with the Windpark under RSA 72:74. As part of their pre-agreement research, the CCC invited the DRA to meet and discuss the value of the Windpark. Before the meeting in December 2007, the County Administrator, Ms. Collins, had independently researched the projected value of the Windpark and estimated its value at $150,000,000. (Appellant App. 52-55; Trans. 217:3–19.) At the meeting, several calculations were performed, and the DRA representatives informed Ms. Collins and the CCC that their

estimation of $150,000,000 was "high," and that the Windpark's value will be considerably lower, closer to $113,000,000. (Appellant App. 52-55; Trans. 73:12–23; 74:1–23; 217:18.)

After the 2007 meeting, the CCC continued to conduct their due diligence before entering into the PILOT agreement. Ms. Collins spoke via telephone with representatives from the DRA on several occasions and, each time, the DRA advised the CCC that it would consider the PILOT value as evidence of market value under RSA 21-J:3. (Appellant App. 56-57.) The minutes of the 2007 meeting and the County Administrator's subsequent memo demonstrate that the CCC understood that the DRA's representatives' estimated value took into consideration the fact that the PILOT agreement was a ten-year agreement. (Appellant App. 52-55, 56-57.)

The DRA should have considered the above-cited relevant evidence regarding the market value of the Windpark when carrying out its duties under RSA 21-J:3, XIII, but failed to do so. Under RSA 21-J:3, XIII, the DRA "must calculate the equalized value of the properties in the towns, cities, and unincorporated places in any way such that the result enables public taxes to be apportioned among the towns, cities, and municipalities in an equal and just manner." Appeals of Bow, Newington & Seabrook, 133 N.H. 194, 201 (1990). In fact the statute specifically provides the DRA with discretion to "consider such other evidence as may be available." RSA 21-J:9-a, IV. In sum, Ms. Collins's research; the advice of the DRA's qualified representatives; and the PILOT agreement itself are all evidence that the Windpark's fair and true market value is significantly lower than the number used by the DRA when calculating its 2012 Total Equalized Valuation.

Additionally, in performing its duties of assessing and collecting taxes, the DRA should consult with and incorporate the input of the Commissioners in determining the fair market value of taxable property. Specifically, the DRA shall "[c]onfer with, advise, and give the necessary

instructions and directions to local assessing officers throughout the state as to their duties, and to that end to call meetings of such assessing officers, . . . for the purpose of receiving instructions from the commissioner as to the laws governing the assessment and taxation of all classes of property." RSA 21-J:3, VI. As cited above, the DRA's website states that its "Property Appraisal Division assists and educates municipalities with the methods of appraisal and assessment of real property . . . and reviews assessing contracts and makes recommendations thereon to municipalities." (See revenue.nh.gov, *Property Appraisal Division.*)

Therefore, nothing under these statues prohibits the DRA from using the PILOT appraisal, so long as it is a fair assessment of the utility's market value. However, despite the statute's directive that the DRA should "consider such other evidence as may be available" when valuing property, the DRA refused to consider the CCC's evidence of the Windpark's value. (Trans. 147:4 ("I gave it no weight."); Trans. 168:10; Appellant App. 91–92).)

Instead of considering the CCC's evidence of value, the DRA elected to rely solely on its appraisal conducted under RSA chapter 83-F, which, as explained above, is conducted for the purposes of collecting an entirely different tax (the Utility Property Tax under RSA chapter 83-F, as opposed to the Local Property Tax). As noted above, nothing under RSA 21-J requires the DRA to use its RSA chapter 83-F utility appraisal in calculating the equalized value of an unincorporated place. (Trans. 181:16–18 ("There's nothing that mandates [the DRA] use the 83-F value"); see also Appeals of Bow, Newington & Seabrook, 133 N.H. at 196 ("[A]lthough the DRA must find the 'true and market value' of the property in each municipality so that it can equalize assessed valuations by adding to or subtracting from assessed valuations, it is not required to appraise each parcel of land in a municipality individually.").) Nonetheless, the

DRA, in this case, relied solely on its 83-F appraisal for the value of the Windpark when equalizing the values of Dixville and Millsfield under RSA 21-J:3. (Trans. 127, 173.)

Lastly, the BTLA had insufficient evidence to form a basis for its finding that the DRA's 83-F appraisal fairly represented the Windpark's true market value. The DRA failed to present any objective evidence supporting that its appraisal represents "pursuant to accepted appraisal standards, 'the true and market value' of the property." Appeals of Bow, Newington & Seabrook, 133 N.H. at 201; RSA 21-J:3, XIII. The DRA failed to introduce its appraisal report into evidence, claiming that it was "confidential." (Appellant Notice Appeal App. 64.) Additionally, the DRA's appraiser, Scott Dickman, was not permitted to testify as to his appraisal methods. (Trans. 193–196.) As such, there was no DRA appraisal report or testimony presented at the hearing to support a finding that its RSA chapter 83-F appraisal is a fair assessment of the utility's market value, and therefore no evidence to form a basis for the BTLA's findings under RSA 21-J:3, XIII.

The BTLA erroneously assumed that simply because the DRA is under a statutory duty under RSA chapter 83-F to appraise utility property values for fair market value, that such appraisal does in fact fairly represent the Windpark's true market value. (BTLA Decision 8; Appellant Notice of Appeal App. 10.) This assumption is impermissible under New Hampshire law. It is true that under both RSA chapter 83-F and RSA 21-J:3, XIII, the DRA is obligated to assess property for its fair market value. However, in recognition that the DRA appraisers may not always accurately fulfill their statutory duties, the legislature enacted the appeals process under RSA 71-B:5, II(a), providing for appellate review of whether the DRA's valuation represents "pursuant to accepted appraisal standards, 'the true and market value' of the property." Appeals of Bow, Newington & Seabrook, 133 N.H. at 201; RSA 21-J:3, XIII. As

such, in order to conclude the 83-F appraisal satisfied these requirements, the BTLA should have examined more than just the appraisal's conclusions, but also the information, data, analysis, and methodology leading to the DRA's determination that a figure in excess of $228,000,000.00 is the fair market value of the Windpark.

Given the evidence outlined above, the Court should reverse the BTLA's findings and hold that the DRA's 2012 equalized valuation for Dixville and Millsfield is not representative of the "true and market value" of the properties within Dixville and Millsfield, as required under RSA 21-J:3, XIII, because the true market value of the Windpark was in fact closer to $113,000,000.

(b) Adjustments for Just and Equitable Taxation

In addition, the DRA failed to adjust the equalized value of the properties in Millsfield and Dixville "[in such a way] that public taxes [could] be apportioned among the . . . municipalities in an equal and just manner," as is required under RSA 21-J:3, XIII. Appeals of Bow, Newington & Seabrook, 133 N.H. at 201. Under the relevant statute, the DRA is not only directed to determine the market value of properties, but also to "[make] such adjustments in the value of other property from which the . . . unincorporated places receive taxes or payments in lieu of taxes as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just." RSA 21-J:3, XIII.

Because of the DRA used its RSA chapter 83-F appraised value, instead of the PILOT value, the total equalized valuation for Dixville and Millsfield combined increased approximately $211,677,845.00 from the prior year. (Appellant App. 100.) Dixville and Millsfield will be forced to collect and pay more than their fair share of the county taxes, which

are allocated to each town based on the total of equalized assessed valuation of property in each town. This drastic increase in the amount of taxes these unincorporated places must collect cannot be offset by increased payments from the Windpark because of the PILOT agreement. As a result, the individual residents of Dixville and Millsfield will likely suffer a dramatic and disproportionate increase in taxes. (Trans. 58:21–59:19; Appellant App. 100.)

For the reasons outlined above, the BTLA erred in determining that the DRA's appraisal, and ultimately its equalized valuation, is equal and just under RSA 21-J:3. It is simply the antithesis of justice to double the value of a property subject to a PILOT agreement in a municipality that only has 25 residents (in the case of Millsfield), or a single resident (in the case of Dixville), who will bear the burden of the drastic increase in taxation. This is especially true when the municipalities themselves first seek the assistance of the DRA before entering into the PILOT agreement. See, infra, § IV. Estoppel (explaining that neither the minutes, nor the testimony of the CCC reflect that the DRA representatives qualified their estimate of the value of the Windpark by advising them to obtain an independent appraisal).

Such a result directly conflicts with the purpose of RSA 21-J, which is that the DRA should "consider such other evidence as may be available" (RSA 21-J:9-a, IV) and "mak[e] such adjustments in the value of other property . . . so that any public taxes that may be apportioned among them **shall be equal and just**." RSA 21-J:3, XIII. Because the DRA's assessment of the Windpark is more than its market value, and results in a disproportionate and unjust taxation of the residents of Dixville and Millsfield, the Court should find the BTLA's decision is unreasonable and unlawful under RSA 541:13.

II. The BTLA Failed to Conduct a Fair Hearing

Alternatively, the Court should reverse the BTLA's ruling and remand for a fair hearing, providing the CCC the opportunity to inspect the DRA's appraisal under RSA 21-J:14, V(c) and to present the testimony of their expert appraiser.

The BTLA erred in holding that the DRA's Windpark appraisal is protected by RSA 21-J:14 because the exception set forth under RSA 21-J:14, V(c) applies. (BTLA Decision 3; Appellant Notice Appeal App. 5.) The CCC attempted, unsuccessfully, to obtain a release from the Windpark to obtain a copy of the DRA Windpark appraisal. (Appellant App. 99.) The CCC also unsuccessfully attempted to obtain a copy of this appraisal from the DRA via a Right to Know Request under RSA 91-A. One week before the BTLA hearing, the CCC filed a Motion to Compel the release of the DRA's appraisal, citing RSA 21-J:14, V(c). (Appellant Notice Appeal App. 56 ¶ 7.) The BTLA denied this request, holding that "the Windpark appraisal is protected by RSA 21-J:14 and no exception applies that would allow the DRA to disclose it without the consent of the Windpark." (BTLA Decision 3–4; Appellant Notice Appeal App. 5–6.)

The BTLA's ruling is an error of law because the exception set forth under RSA 21-J:14, V(c) applies: the CCC's request relates to (1) the disclosure of department records in an administrative proceeding, (2) pertaining to state tax administration, (3) and the appraisal is directly related to a tax issue in the proceeding. The CCC argue that it was a violation of due process and fundamental fairness to force the CCC to accept an equalized valuation from the DRA that is based upon a utility appraisal that the CCC could not review, in any manner. See generally N.H. Constitution, Part I, article 12; see also N.H. Constitution, Part I, article 8.

In its objection to the Motion to Compel, the DRA argued that the equalization procedure is not related to tax administration. (Appellant Notice Appeal App. 66 ¶ 8.) The definition of "administration" is:

> Management or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like. In public law, the administration of government means the practical management and direction of the executive department or of the public machinery or functions, or of the operations of the various organs or agencies. Direction or oversight of any office, service, or employment. The term 'administration' is also conventionally applied to the whole class of public functionaries, or those in charge of the management of the executive department.

Blacks Law Dictionary, 44 (Sixth Edition 1990). The DRA's determination of an equalized value under RSA 21-J:3 is directly related to the "management or conduct of an office" as well as "the performance of executive duties." As set forth in greater detail above, the administration of local property taxes involves three primary procedures: (1) the municipalities' inventorying of properties; (2) the DRA's equalization of the local assessed values under RSA 21-:3; and (3) as a direct result of such equalization, the apportionment to each taxpayer of the local public taxes, using the DRA's equalized valuation of that municipality, and the collection of such taxes by the municipalities (see RSA ch. 76). As such, the equalization procedure is directly related to tax administration and the exception under RSA 21-J:14, V(c) applies. The BTLA erred in finding the 83-F appraisal confidential.

Further compromising the fairness of the hearing, the BTLA refused the CCC every opportunity to conduct a meaningful direct examination of the DRA's appraiser. (Trans. 198–200.) The BTLA would not permit the CCC to inquire, in any way, into the methods used by the appraiser to determine the value of the Windpark. (Id.) Even assuming that the DRA appraisal is confidential under RSA 21-J:14 – which, as argued above, it is not – the exclusion of even basic testimony related to the appraiser's usual methodologies in conducting appraisals is unsupported

by RSA 21-J:14, which, by its terms, applies only to "records and files of the department," and does not extend to general testimony regarding the methodology of the appraiser. (See Trans. 193, 196.) As such, the BTLA's rulings on this issue were unlawful and unjust.

The BTLA also denied the CCC's request to continue the hearing. On May 23, 2013, the CCC appealed the DRA's total equalized assessment calculation to the BTLA. Pursuant to RSA 71-B:5, II(a), the BTLA is required to hear and decide the appeals within sixty (60) days. On June 21, 2013, the CCC filed a motion requesting a continuance of the June 28, 2013 hearing. In its motion, the CCC stated that they "are aware that the Board has deadlines in which to make a decision . . . . Petitioner and counsel nonetheless request this continuance, in good faith . . . . Counsel for Petitioner is currently available on any date during the entire weeks of July 8 and July 15." (Appellant Notice Appeal App. 51 ¶ 11.) The CCC requested this continuance for additional time to review and analyze new, highly relevant information recently disclosed by the DRA and to allow additional time to negotiate for the disclosure of the DRA appraisal. (Appellant Notice Appeal App. 50 ¶ 4 (asking for a continuance to analyze a spreadsheet prepared by the DRA with new equalized valuation calculations); id. at 53.)

As outlined above, the BTLA had additional time within its sixty day deadline to allow this continuance. Instead, the BTLA denied the Motion to Continue because it "found no good cause existed for granting the continuance." (BTLA Decision 4; Appellant Notice Appeal App. 6.) The BTLA's denial of the Motion to Continue was unjust and unreasonable because the Commissioners motion *did* set forth good cause for the continuance, as set forth above.

Additionally, the CCC attempted to call an expert appraiser, Brian Fogg, as a witness at the hearing. Appraiser Fogg would have provided his expert opinion that the methods apparently used by the DRA appraiser are flawed and unlikely to arrive at the fair market value of the

Windpark. (Trans. 231, 242–46.) At the hearing the BTLA excluded any testimony or evidence of the CCC's expert on the issue of fair market value. (Id.) The BTLA's ruling was based on its rules, which require the CCC to disclose experts two weeks before the hearing (Trans. 237.) While the CCC concede that their disclosure of this witness was less than two weeks before the hearing, in the interests of due process and fundamental fairness, the BTLA should have permitted the CCC's expert testimony, particularly because permitting CCC's expert to testify would not have caused any undue prejudice for the DRA. The DRA had its own appraisal report that it refused to disclose, and the DRA would have had a full and fair opportunity to cross examine this witness, especially with its own expert appraiser—Scott Dickman—present at the hearing. In the context of a hearing where the BTLA and DRA have refused to permit the CCC an opportunity to inspect the DRA's appraisal, or to permit a direct examination that includes inquiry of its appraiser as to his methods, the principals of fairness dictate that the CCC should have been permitted to present the testimony of their expert.

Also troubling was the decision of the BTLA, within the hearing, to not even allow Mr. Fogg to make a "proffer" as to what his expert testimony on valuation would be, in the event that the BTLA's decision to exclude his testimony was reversed on appeal. This procedural decision prevents this Court from having a meaningful opportunity to review the proffered evidence, and arrive at an appropriate decision and outcome, based on that particular evidence.

In conclusion, due to the procedural rulings outlined above, every objective measure of fair market value was excluded from evidence other than the PILOT agreement (i.e., the DRA's appraisal, testimony from the DRA's appraiser, and the CCC independent expert were all excluded). As such, these rulings left the BTLA with essentially no evidence upon which to evaluate the central issue in this appeal: i.e. what is the true and fair market value of the

Windpark under RSA 21-J:3, XIII; see also Appeals of Bow, Newington & Seabrook, 133 N.H. at 201.

For all of the reasons set forth above, the BTLA hearing was fundamentally unjust and unreasonable under RSA 541:13.

III. In the Interests of Public Policy, the DRA should have Credited the PILOT Value as Evidence of Market Value, Due to the Legislative Policies Set Forth Under RSA 72:74

As noted above, the CCC entered into a PILOT agreement with the owner of the Windpark in 2008. The CCC solicited the input and assistance of the DRA in 2007 when evaluating the value of the Windpark, before entering into the PILOT agreement. The State of New Hampshire has sought to promote the construction and orderly taxation of renewable energy generation facilities, by virtue of its enactment of RSA 72:74 (which provides for PILOT agreements). Given the State's clear public policy initiative to promote the construction and taxation of renewable energy facilities in this manner, communities which enter into PILOT agreements should be able to rely upon the DRA to use the appraised values determined by the communities themselves in entering into these PILOT agreements when calculating the Total Equalized Valuation for each municipality in the state pursuant to RSA 21-J:3.

The DRA's method of equalizing assessed valuation for public utility property subject to PILOT agreements is unreasonable, disproportionate, and against public policy. In this case, the DRA apparently attempted to assess the true market value of the Windpark without any consideration given to the fact that it is subject to a PILOT agreement. This method is unjust, unconstitutional, and inconsistent with the laws of New Hampshire, which encourage both (1) communities to enter into these agreements and (2) the DRA to consider the existence of PILOT agreements, and adjust valuations accordingly, when equalizing assessed valuations. See RSA

21-J:3, XIII (directing the DRA to "mak[e] such adjustments in the value of other property [that is subject to PILOT agreements], so that any public taxes that may be apportioned among them shall be equal and just"). Similarly, the actions of Director Hamilton in refusing to give any weight to the PILOT value is inconsistent with the expressed policy of the State legislature and executive branch, both of which seek to promote the development of renewable energy facilities through PILOT agreements. RSA 72:74.

Finally, the procedural and/or evidentiary rule employed by the BTLA, specifically that the PILOT agreement valuation, without more, is insufficient to allow the CCC to meet its burden of production at a hearing under RSA 71-B:5 (and where the DRA has failed offer any evidence to support the basis for its appraisal's valuation) is inconsistent with the expressed policy of the legislative and executive branches. As a legal proposition, the CCC's position before the BTLA was that it could meet its burden of production by virtue of the fact that it had entered into a PILOT agreement, and that the CCC entered the PILOT agreement into evidence for that purpose. Additionally, the existence of the PILOT agreement—and the CCC's reasonable reliance upon it—was the factual basis (i.e., historical explanation) upon which the CCC had not hired an independent appraiser earlier in the process to contest the DRA's total equalized valuation. The existence of the PILOT agreement, and its legal and evidentiary effect upon the CCC's burden of production in an appeal under RSA 71-B:5, was ignored by the BTLA, despite the clear public policy concerns to the contrary.

IV. The DRA should be Estopped from Denying the Accuracy of the PILOT Valuation because of its Actions in December 2007

Lastly, the DRA should be estopped from denying the accuracy of the PILOT valuation because of its representations at the December 2007 meeting. There are four elements of

estoppel: (1) a party, in this case the DRA, makes a representation of material facts; (2) the party to whom the representation was made, in this case the CCC, was ignorant of the truth of the matter; (3) the representation was made with the intention of inducing the other party to rely on it; and (4) the receiving party reasonably relied on such representation, to its detriment. Concord v. Tompkins, 124 N.H. 463, 467–69 (1984). Reliance is reasonable if the CCC neither knew nor should have known that the conduct or representation of the DRA was either improper, materially incorrect, or misleading. Id. at 468. Estoppel against the government is appropriate when the official making such representations was acting within his prescribed sphere of functions. Id. at 468–69.

In this case, estoppel is appropriate. It is clear that the DRA, at the 2007 meeting, represented that the value of the Windpark was $113,000,000, and did not advise the CCC to obtain an independent appraisal. (Appellant App. 52–55.) Scott Dickman, the DRA appraiser who provided the $113,000,000 estimate at the 2007 meeting, does not deny making this statement. (Trans. 217:12–18.) The minutes of the meeting reflect that Mr. Dickman made this valuation, and, additionally, two County officials testified at the BTLA hearing of their specific recollections that Mr. Dickman advised them that Ms. Collins's estimation of $150,000,000 was too high, and that the true value was closer to $113,000,000. (Appellant App. 54; Trans. 53–54; Trans. 73.) Neither the minutes, nor the testimony before the BTLA, reflect that Mr. Dickman qualified his estimates by advising CCC to obtain an independent appraisal. (Appellant App. 54; Trans. 53:17–53:10 (quoting County Treasurer Fred King as "[A]n expert for the state of New Hampshire said that wind farm is worth $113 million. The County had already done some study and they thought $150 million. [The State] said no, it's $113 million."; Trans. 72:14–19, 75:1–16 (quoting Commissioner Brady that the DRA representatives never indicated that it could use a

different value for Windpark when calculating the total equalized valuation for Dixville and Millsfield).) In fact, during Mr. Dickman's BTLA testimony, he never once stated that he affirmatively remembered qualifying his estimate by saying that the CCC should conduct more research, including an independent appraisal. (Trans. 187–229.) At most he says that he would have "hoped" he advised the CCC in this way. (Trans. 225:9–11 ("The intent was to educate them and I trust that we tried to leave them with a message that this indeed was a complicated process."); Trans. 225:1–226:16; Trans. 221:17–223:4.)

Regarding the second element, it is clear from the testimony cited in the previous paragraph, and the minutes from the 2007 meeting, that the CCC were ignorant of the truth of the matter. They had far less experience than the DRA's appraiser and its director in valuing utility properties. This is directly evidenced by Commissioner Brady's testimony that he "never" would have "signed that agreement and entered into that agreement" if he had been aware that it would increase the taxes for residents of Millsfield or Dixville. (Trans. 73:21–74:17.)

Concerning the third element, Mr. Dickman made his representations with the intention of inducing the CCC's reliance. He knew he was at that meeting to educate the CCC regarding the value of the Windpark for a PILOT agreement (Trans. 213:1–5; 214:1–14), he affirmatively told the CCC that the value of $151 million was "too high" and that the value of $113 million was more accurate (Trans. 217:18, 218:2–3); and failed to sufficiently caution the CCC as to the implications of relying on his statements without conducting an independent appraisal (Trans. 72:14–19, 75:1–16; Trans. 225:9–11, 226:15–16).

Lastly, the CCC reasonably relied on the DRA's statements to its detriment. Both County officials who testified stated that they relied on the DRA's valuation of $113 million and felt assured that they would "be okay for ten years." (Trans. 54:23; see also Trans. 52–55; and

72–74.) Such reliance was justified because the DRA's property appraisal division is statutorily obligated to provide education and guidance to municipalities in these areas. (See RSA 21-J:3, VI; see also Trans. 213:1–5; 214:1–14.) As stated on its website, the DRA's "Property Appraisal Division assists and educates municipalities with the methods of appraisal and assessment of real property . . . and reviews assessing contracts and makes recommendations thereon to municipalities under RSA 21-J:11." (See revenue.nh.gov, *Property Appraisal Division*, Oct. 27, 2013.)

In sum, the CCC relied upon insight and analysis performed by authorized[1] representatives of the DRA when determining the value of the Windpark at the time they entered into the PILOT agreement. The DRA should not participate in and facilitate a process that allegedly helps local communities, but then choose not to rely upon those estimations at a later date, to the detriment of the communities and taxpayers therein. Under the above-described circumstances, the Court should estop the DRA from denying that the fair market value of the Windpark is around $113,000,000.

CONCLUSION

This Court should reverse the ruling of the BTLA, and order that the value of the Windpark for purposes of the 2012 Total Equalized Valuation calculations for Dixville and Millsfield, be determined to be $113,000,000.00, consistent with the terms of the PILOT agreement entered into under N.H. RSA 72:74.

[1] The DRA representatives at the December 2007 meeting was a DRA utility appraiser, Scott Dickman, and the then Director of the DRA Property Appraisal Division, Guy Petell. (Id., see also Trans. 213:11–12.)

RULE 16 (3) (i) CERTIFICATION

I hereby certify that the appealed decision is in writing and is appended to the brief.

Dated: November 12, 2013

Respectfully submitted,
Coos County Commissioners
By and through their attorneys,
Waystack Frizzell, Trial Lawyers

Jonathan S. Frizzell, NH Bar #12090
Attorney for Appellant

Sandra L. Cabrera, NH Bar #20067
Attorney for Appellant

REQUEST FOR ORAL ARGUMENT

Appellant requests that oral argument be scheduled in this matter. Oral argument will be presented on behalf of the Appellant by Attorney Jonathan S. Frizzell. Appellant estimates oral argument to be 15 minutes or less.

Dated: November 12, 2013

Jonathan S. Frizzell, NH Bar #12090
Attorneys for Appellant

RULE 16 (10) CERTIFICATION

I, Jonathan S. Frizzell, certify that two (2) copies of the foregoing Brief have this 12th day of November, 2013 been sent by first class mail, postage pre-paid, to counsel for Appellee, Kathryn Skouteris, Esquire.

Jonathan S. Frizzell, NH Bar #12090
Attorney for Appellant

APPENDIX

TABLE OF CONTENTS

[2] The copies of exhibits included as part of the Appendix are all full exhibits. See, Hearing Transcript at pages 45 and 253. Most of the attached copies have exhibit stickers that still have the "ID" mark on them, however, as stated, these documents were full exhibits at the BTLA hearing.

State of New Hampshire

Board of Tax and Land Appeals

Governor Hugh J. Gallen
State Office Park
Johnson Hall
107 Pleasant Street
Concord, New Hampshire
03301-3834

Coos County Commissioners on behalf of the Unincorporated Place of Dixville, NH

v.

Department of Revenue Administration
Docket No.: 26676-13ER

* * *

Coos County Commissioners on behalf of the Unincorporated Place of Millsfield, NH

v.

Department of Revenue Administration
Docket No.: 26677-13ER

DECISION

On June 28, 2013, the board held a consolidated hearing in the above equalization appeals filed by the Coos County Commissioners ("CCC") on May 23, 2013 against the department of revenue administration ("DRA"). CCC represents the interests of two 'unincorporated places' within Coos County: Dixville and Millsfield. Pursuant to RSA 71-B:5, II(a), the board is required to hear and decide these appeals within sixty (60) days.

The board processed each appeal and held a telephone conference with the parties on June 6, 2013 to establish discovery timelines and a hearing date. (See Tax 211.03.) As stated in the June 7, 2013 Structuring Order and Hearing Notice, the parties at this conference agreed to meet prior to the hearing on the merits, to exchange various documents and to be ready for a

hearing on the merits on June 28, 2013. CCC's attorney (Jonathan S. Frizzell) stated he wished to obtain a copy of the "DRA Windpark appraisal (prepared pursuant to RSA ch. 83-F)" and "would either obtain a 'release' from the Granite Reliable Windpark ('Windpark') or file an appropriate motion" with the board to compel its production by the DRA. (Id. at p. 2.)

Attorneys Philip R. Waystack and Attorney Frizzell of Waystack Frizzell represented CCC and Attorney Kathryn E. Skouteris represented the DRA in these appeals. In light of the similar facts and issues, and with the consent of these attorneys, the board consolidated the appeals for hearing and decision. The following individuals testified at the June 28, 2013 hearing on the merits: Frederick King, Coos County Treasurer; Tom Brady, Coos County Commissioner; Jennifer Fish, Coos County Administrator; and Stephan W. Hamilton and Scott Dickman of the DRA. In addition, the parties presented various documents as evidence. (CCC Exhibit Nos. 1-19 and DRA Exhibit A.)

At the conclusion of the hearing, the DRA submitted "Requests for Findings of Fact and Rulings of Law" which the board has responded to in accordance with Tax 201.36: see Addendum A attached hereto.

Board's Rulings

In these appeals, CCC asks the board to "[o]rder DRA to reconsider and revise downward the 2012 Total Equalized Valuation" in each unincorporated place: these valuations were "$54,453,216.00" for Dixville and "$180,342,176.00" for Millsfield. (See p. 4, paragraph A and p. 2, paragraph 7 of each appeal document; and the "4/29/2013" DRA letter attached thereto.) CCC argues these amounts are too high because they value the Windpark at more than the $113 million estimate mentioned by a DRA employee at a meeting with CCC officials held on December 18, 2007 prior to the time the Windpark was approved for development.

CCC alleges (in paragraph 12 of each appeal document) that it "asked" the "DRA to use the Commissioners' own appraised value for the Windpark of $113,000,000" in a March 20, 2013 letter (attached to each appeal document; emphasis added). The DRA declined to do so (for the reasons explained in its April 2, 2013 letter to CCC's attorney, also attached to the appeal document). This denial culminated in the filing of these appeals.

CCC asserts it 'relied upon' the $113 million value when it entered into the "2008 PILOT Agreement" (CCC Exhibit No. 4, a March 12, 2008 Agreement for Payments in Lieu of Taxes) with Granite Reliable Power, LLC, the owner of the Windpark. The 2008 PILOT Agreement references RSA 72:74 and specifies what this company is obligated to pay in lieu of "ad valorem real estate taxes or assessments of any kind" on the Windpark for a ten year term. (See Article II of the 2008 PILOT Agreement; and DRA Finding No. 10.) CCC contends (on page 4 of each appeal document) that allowing the DRA to use a higher appraised value for the Windpark in 2012 for purposes of equalization "is unreasonable and disproportionate" and should be remedied. (See each appeal document, p. 4, paragraph 22.d.)

The board does not agree with CCC's interpretation of the facts presented or its conclusion that it is entitled to a remedy in these appeals. In Section A, the board will confirm its prior oral rulings on several procedural issues raised by CCC. Section B states the board's reasons for finding CCC did not meet its burden of proof, resulting in the denial of each appeal.

A. Procedural Rulings (On CCC's Motion to Compel and Motion for Continuance)

Just one week before the June 28, 2013 hearing, CCC filed two motions: a "Motion to Compel" the production of the DRA Windpark appraisal; and a "Motion to Continue" the hearing date. After review of these June 21 pleadings and the "Objections" filed by the DRA on June 26, the board denied both motions and orally notified the parties (on June 27) the June 28 hearing on the merits would proceed as scheduled.

An issue central to each motion is whether CCC has the right to compel the DRA to produce the Windpark appraisal. That appraisal was prepared by the DRA in 2012 based on information submitted by the Windpark as a taxpayer subject to the tax prescribed in RSA ch. 83-F (Utility Property Tax).

CCC acknowledged to the board that it was unable to obtain the Windpark's consent for disclosure of the DRA appraisal. As noted in DRA's Objection, the confidentiality of the Windpark appraisal is protected by RSA 21-J:14 and no exception applies that would allow the DRA to disclose it without the consent of the Windpark.[1] Thus, the board denied the Motion to Compel.

For related reasons, the board denied CCC's Motion to Continue the June 28 hearing. The board found no good cause existed for granting the continuance. Cf. Tax 201.26(a) (stating the "accident, mistake or misfortune" requirement for granting a continuance).

B. Rulings on the Merits of These Appeals

The board has heard prior equalization appeals under RSA 71-B:5, II(a). See, e.g., Appeals of Towns of Bow, Newington and Seabrook, 133 N.H. 194 (1990) (upholding the DRA's equalized assessed valuation determinations and allocations for public utility property

[1] The record further reflects CCC made an RSA ch. 91-A "Right to Know Law" request to obtain a copy of the appraisal. When the DRA denied this request (at a time prior to the filing of these appeals), CCC took no steps to challenge the denial by using the process prescribed in RSA 91-A:7. (Cf. paragraph 22 of each appeal document.)

and affirming the board's rulings on those issues).[2] In such appeals, the plaintiff/appellant (CCC here) has the burden of proving "the DRA erred in calculating the equalized valuation." (Cf. Tax 211.04; and DRA Ruling No. 1.) The parties do not dispute this burden rests with CCC. Upon review of all of the testimony and documents presented, the board finds CCC did not meet its burden of proof.

The sole DRA determination challenged by CCC is the valuation of the Windpark. The Windpark owns property in the unincorporated places of Dixville and Millsfield and in the Town of Dummer, all within Coos County. (See DRA Finding No. 8.) Dummer has not appealed the DRA's equalized valuation (or otherwise questioned the Windpark value).

As noted above, CCC, on behalf of Dixville and Millsfield, alleges it "relied upon" a lower estimate of the value of the Windpark ($113 million) mentioned at a non-public "educational session" held in Lancaster, New Hampshire on December 18, 2007 and the DRA should be bound by this value in the 2012 equalized valuations. According to CCC, a DRA employee (Scott Dickman) responsible for utility valuations mentioned this value at the educational session with Coos County officials. Three commissioners (Burnham Judd, Paul Grenier and Thomas Brady), the County Administrator (Suzanne Collins) and an elected representative (Fred King) attended this meeting, as did Guy Petell, another DRA employee.

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[2] In those appeals, the supreme court quoted the DRA's statutory responsibilities ("duty") under RSA 21-J:3, XIII to:

> Equalize annually the valuation of the property in the several towns, cities and unincorporated places in the state by adding to or deducting from the aggregate valuation of the property as assessed in towns, cities and unincorporated places such sums as will bring such valuations to the true and market value of the property . . .

Id. at 195-96. The supreme court explained "[t]he equalized assessed valuation found by the DRA for each municipality is used to determine the proportion of county taxes that each municipality must pay under RSA 29:11." Id. at 196. The supreme court found the municipalities had not met their burden of proving the DRA's determinations were "clearly unreasonable or unlawful," noting that the board's findings: "shall be deemed to be prima facie lawful and reasonable" and the board's decision "shall not be set aside or vacated except for errors of law, unless the [supreme] court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable. [Quoting from RSA 541:13.]" Id. at 199.

Ms. Collins prepared minutes of that December 18, 2007 meeting, presented as Taxpayer Exhibit No. 1.

At the hearing, the board heard testimony from Mr. King, who is now the Coos County Treasurer, Commissioner Brady and Mr. Dickman regarding what they recalled about the meeting. (Ms. Collins, the former CCC administrator who drafted the minutes, was not called as a witness.)

Upon review of the meeting minutes and this testimony, the board finds what occurred and what was said at that 2007 meeting does not support CCC's theory that DRA is obligated to reduce the equalized values computed for Dixville and Millsfield in 2012. Consequently, CCC has not met its burden of proving the 2012 equalized valuations are "unreasonable and disproportionate" and must be set aside for the following reasons.

First, a fair reading of the minutes at face value indicates no "representation" by the DRA on which CCC could reasonably rely that the value of the Windpark would be fixed at $113 million for all intents and purposes and for any period of time. At the time of this meeting (December 2007) the Windpark had not yet been approved for construction, let alone built and operated. It defies logic to conclude that an estimate of value stated by one DRA employee in response to an invitation to attend an educational session should bind this state agency in discharging its statutory obligations to equalize the Windpark property in 2012 in accordance with RSA 21-J:3, XIII. (See DRA Ruling No. 1.) In addition, of course, the DRA had an obligation to assess the Windpark at its market value under RSA ch. 83-F for purposes of the utility property tax.

Second, the minutes indicate Ms. Collins did an analysis of her own ("prepared a worksheet") which estimated a higher value ("$150 million") for the Windpark. CCC could have used her number when it negotiated the PILOT Agreement with the Windpark.

Alternatively, or in addition, as noted by the DRA at the hearing, CCC could have obtained an appraisal or done further work to ascertain an appropriate value for the Windpark. At the time of this meeting and thereafter, CCC had counsel of its own (Attorney Frizzell) who was able to advise CCC of the legal ramifications that might flow from entering into the 2008 PILOT Agreement.

As the DRA further noted, statutory responsibility for appraising the Windpark for property tax purposes rests with CCC (on behalf of Dixville and Millsfield), not the DRA. (See DRA Ruling Nos. 7-11.) The fact that CCC decided to use the number mentioned by Mr. Dickman (apparently using some rough formula for estimating value based on anticipated energy output) without doing additional investigation and without CCC obtaining an appraisal of its own is not something for which the DRA should have any legal responsibility. In this regard, the board notes one paragraph from Ms. Collins' minutes confirms the limited input given by the DRA at the December 18, 2007 meeting and its guidance that care should be exercised: "Guy Petell cautioned the Commissioners that the equalized value of each unincorporated place where the wind park [sic] is located will go up a lot and this will have the effect of raising the county tax in those places." (CCC Exhibit No. 1, unnumbered p. 3.)

Third, even if the board were to assume the educational session with the DRA influenced CCC to enter into a 10-year PILOT Agreement,[3] CCC has cited no legal authority to support, let alone establish, it is entitled to a remedy in these appeals. CCC has not even alleged the elements necessary to state a claim of promissory estoppel. Nothing in the minutes of the December, 2007 meeting or anything that occurred thereafter indicates an express or implied promise by the DRA that the Windpark would be valued at any fixed and unchanging amount (such as $113 million) for any purpose or any length of time.

[3] The board notes the 10-year term was five years longer than required by the statute. (See RSA 72:74, VI and VII.)

Fourth, the board finds no basis for concluding the DRA erred in estimating a different market value for the Windpark in tax year 2012 pursuant to the DRA's RSA ch. 83-F responsibilities and then using that value to calculate the "2012 Total Equalized Valuation" for Dixville and Millsfield. If the DRA had not done so, it would have been derelict in its statutory duties under RSA 21-J:3, XIII. As the supreme court has noted:

> A taxpayer is disproportionately taxed if it is assessed at a greater proportion of its property's true value than are other taxpayers. Bemis etc. Bag Co. v. Claremont, 98 N.H. 446, 450-51, 102 A.2d 512, 516 (1954). Here, all municipalities are required by statute to be assessed at "true and market value." RSA 21-J:3, XIII. . . .
>
> The Board correctly stated:
>
> > "The DRA may equalize properties in any way such that the result enables public taxes to be apportioned among the towns, cities, and municipalities in an equal and just manner. . . . To comply with RSA 21-J:3, XIII, the DRA's total equalized valuation for the [Towns] must merely represent, pursuant to accepted appraisal standards, 'the true and market value' of the property within the Town."

Appeals of Towns of Bow, Newington and Seabrook, 133 N.H. at 199 and 201. DRA's statutory obligation is to value the Windpark at its "full and true value" in each tax year for purposes of assessing the utility property tax. (See RSA 83-F:3 and F:2.) To value the Windpark for anything less than its market value in 2012 would increase, rather than reduce, disproportionality within Coos County.

Fifth, CCC has presented no evidence that would allow a fact finder to determine what the market value of the Windpark actually was in 2012. Without such evidence, there is no basis for finding the DRA erred or that the equalized valuations should be reduced to some unspecified amount.

Sixth, there was conflicting evidence presented regarding whether any taxpayer in either Dixville or Millsfield has yet suffered any actual harm or been "aggrieved" (cf. RSA 76:16) as a result of the DRA's equalized valuations. The board heard testimony that Dixville has only one

taxpayer (The Balsams Grand Resort Hotel, now in the process of renovation) and that Millsfield has only about twenty-five (25) property owners (not all of whom presently pay taxes). The testimony of CCC's witnesses (King and Fish) indicated their belief that at some point in the future (not necessarily in 2013) the tax liability of Dixville and Millsfield property owners would rise "exponentially" as a result of the DRA equalized values.

On cross-examination, however, these CCC witnesses admitted no calculations had yet been performed to document how or when any property owner's tax burden would change as a result of the DRA's 2012 equalized valuation. Indeed, the board learned in the course of the hearing that some property owners in these unincorporated places do not receive any assessments on their property at the present time and that a financial cushion exists within CCC's budget to absorb any anticipated impact of the DRA's equalized valuation. (See DRA Finding No. 13.)

The board is mindful of the impact of the annual equalized valuation process conducted by the DRA on municipalities. The outcome of this process is very much a "zero sum game," so to speak, because lowering the valuation in one municipality (presumably a positive impact) will invariably have offsetting negative impacts on others. To keep the playing field level for all municipalities, the DRA is charged with the responsibility under RSA 21-J:3, XIII to use the one yardstick prescribed by the legislature: "true" market value. No evidence was presented that would allow the board to find the DRA did not do so in this instance. (See Appeals of Towns of Bow, Newington and Seabrook, cited and quoted above.)

At the June 28 hearing, CCC renewed its argument that production of the DRA Windpark appraisal should be compelled and that CCC was entitled to question the DRA employee who prepared this appraisal (Scott Dickman) regarding its content and conclusion. The only authority cited by CCC is a February 2, 2013 Order issued by the Grafton County Superior Court in tax abatement appeals (Docket Nos. 11-CV-375, 377, 378 and 379) filed by New Hampshire Electric

Cooperative, Inc. (See Taxpayer Exhibit No. 17.) The board finds that Order is not helpful to CCC's position in that the taxpayer in those appeals (an electric coop) waived any claim to confidentiality of the DRA appraisal and sought to introduce it as evidence.[4]

C. Summary

In summary, the board finds CCC did not meet its burden of proof in these equalization appeals and they are therefore denied. As stated in RSA 71-B:5, II(a), the Decision by the board is "final," subject to appeal to the supreme court. The statutory timeline for any such appeal is "within 20 days after the date the [D]ecision is mailed by the board to the municipality."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

[4] In those circumstances, the superior court concluded Mr. Dickman could be deposed regarding his RSA ch. 83-F appraisals (by the municipalities defending their own assessments), but could not be compelled "to produce his 'work papers'." (Id. at pp. 7-8.) In marked contrast, the Windpark has not waived its claims of confidentiality to the DRA Windpark appraisal and therefore the board finds no basis for compelling either the production of that appraisal or to compel Mr. Dickman to testify regarding it. The board therefore sustained the DRA's objections to this line of questioning by CCC's attorneys.

Addendum A

The "Requests" received from the parties are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the board's responses, "neither granted nor denied" generally means one of the following:

a. the request contained multiple findings; or

b. the request contained words, especially adjectives or adverbs, that made the request overly broad or narrow so that the request could not be granted or denied;

c. the request contained matters not in evidence or not sufficiently supported to grant or deny;

d. the request was irrelevant; or

e. the request is specifically addressed in the Decision.

See Tax 201.36(b): "Requests for findings and rulings shall consist of separately numbered paragraphs with only one finding or ruling per paragraph. Requests that contain multiple findings or rulings shall be marked "neither granted nor denied."

Department of Revenue Administration's Requests for Findings of Fact and Rulings of Law

I. FINDINGS OF FACT

1. The Petitioners are the unincorporated places of Dixville, New Hampshire ("Dixville") and Millsfield, New Hampshire ("Millsfield") (collectively referred to as "Petitioners"). The Board of Commissioners for Coos County brings these appeals on their behalf as their Governing Body ("Commissioners"). See Petitioners' Appeals, ¶¶ 2.

Neither granted nor denied.

2. On April 29, 2013, the Department notified Dixville of its 2012 total equalized valuation. Dixville's 2012 total equalized valuation including utility valuation and railroad monies reimbursement is $54,453,216. Dixville's 2012 total equalized valuation not including utility valuation and railroad monies reimbursement is $8,254,416. See Dixville's Appeal, Exhibit 1.

Neither granted nor denied.

3. On April 29, 2013, the Department notified Millsfield of its 2012 total equalized valuation. Millsfield's 2012 total equalized valuation including utility valuation and railroad monies reimbursement is $180,342,176. Millsfield's 2012 total equalized valuation not including utility valuation and railroad monies reimbursement is $8,914,316. See Millsfield's Appeal, Exhibit 1.

Neither granted nor denied.

4. Equalization is the annual process by which the Department makes adjustments to each community's locally assessed values. These adjustments are made in order to compensate for the difference between unadjusted locally assessed value and market value. Typically, it begins with a full understanding of the sum of locally assessed value. The adjustment is calculated by understanding the ratio between assessments and selling prices. The sum of locally assessed value is then divided by the ratio to reveal a total market value estimate of each jurisdiction. See Testimony of Stephan W. Hamilton.

Neither granted nor denied.

5. A utility property located in the Petitioners' jurisdictions is a renewable generation facility known as the Granite Reliable Windpark ("Windpark"), which went into production in 2012 and which the Department appraised and valued at $228,935,438 ("2012 Appraisal") for RSA 83-F purposes. The 2012 Appraisal is the first time that the Department has appraised and valued the Windpark. See Testimony of Stephan W. Hamilton.

Neither granted nor denied.

6. In their annual MS-1 Reports to the Department to report the appraised value of all property in their communities, both Petitioners reported a value of zero for the Windpark, as the Petitioners did not appraise and value the Windpark. See Testimony of Stephan W. Hamilton.

Granted.

7. The Petitioners have failed to properly inventory and appraise all of the property within their respective unincorporated places, especially the Windpark. Therefore, when equalizing the locally assessed values in the Petitioners' communities, the Department used its appraised value for the Windpark that it had determined for RSA 83-F purposes. See Testimony of Stephan W. Hamilton.

Neither granted nor denied.

8. The Windpark is also located in the Town of Dummer ("Dummer"), which is not part of this appeal. See Testimony of Stephan W. Hamilton.

Granted.

9. As part of its valuation of utility property for purposes of the utility property tax, the Department also apportions the utility property's value amongst the communities within which it is located. The Department apportioned the value of the Windpark as follows: Dixville ($46,107,655), Millsfield ($171,381,281), and Dummer ($11,446,502). See Testimony of Stephan W. Hamilton.

Neither granted nor denied.

10. In 2008, the Petitioners, but not Dummer, entered into payment in lieu of taxes ("PILOT") agreements with the Windpark, pursuant to RSA 72:74, where Dixville would receive $104,990 and Millsfield would receive $390,010 (for a total payment of $495,000) per year. See Exhibit A (MS-5 Report for Dixville dated June 5, 2013) and Exhibit B (MS-5 Report for Millsfield dated June 5, 2013).

Granted.

11. On December 19, 2012, the Commissioners signed a warrant for a total of $334,365.60 to seek to assess and collect the Land Use Change Tax ("LUCT") from the Windpark. On January 18, 2013, the Commissioners collected the LUCT on behalf of the Petitioners. See Testimony of Stephan W. Hamilton.

Neither granted nor denied.

12. The revenue received from the LUCT was attributed to Dixville in the amount of $71,369 and Millsfield in the amount of $262,825. However, the Petitioners did not report this LUCT revenue on their MS-5 Reports. See Exhibits A and B (Acct #3210, p. 5) and Testimony of Stephan W. Hamilton.

Neither granted nor denied.

13. A review of the Petitioners' MS-5 Reports and the amount of LUCT revenue received from the Windpark that the Petitioners failed to report on their MS-5 Reports reveals that the Petitioners possess significant unreserved retained fund balances and can anticipate total revenue sufficient to meet the county apportionment obligation. See Testimony of Stephan W. Hamilton.

Granted.

II. RULINGS OF LAW

1. The Petitioners shall have the burden to prove the DRA erred in calculating the equalized valuation. See Tax 211.04.

Granted.

2. The DRA shall
Equalize annually by May 1 the valuation of the property as assessed in several towns, cities, and unincorporated places in the state including the value of property exempt pursuant to RSA 72:37, 72:37-b, 72:39-a, 72:62, 72:66, and 72:70, and property which is the subject of a payment in lieu of taxes under 72:74 by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places such sums as will bring such valuations to the true and market value of the property…

See RSA 21-J:3, XIII.

Granted.

3. "The owner of a renewable generation facility and the governing body of the municipality in which the facility is located may, after a duly noticed public hearing, enter into a voluntary agreement to make payment in lieu of taxes." See RSA 72:74, I.

Granted.

4. The Windpark is a renewable generation facility that entered into a PILOT agreement with both Dixville and Millsfield. See RSA 72:73 and 72:74.

Granted.

5. RSA 21-J:3, XIII provides that the DRA shall equalize "property which is the subject of a payment in lieu of taxes under 72:74" at its "true and market value."

Granted.

6. For 2012, the DRA properly equalized the valuation of the property as assessed in Dixville and Millsfield in accordance with its statutory obligation, pursuant to RSA 21-J:3, XIII.

Granted.

7. "The selectman of each town shall annually make a list of all the polls and shall take an inventory of all the estate liable to be taxed in such town as of April 1." See RSA 74:1.

Granted.

8. "At the time of making the list of polls and the inventory of estate liable to be taxed the selectman shall also make an inventory of all lands, buildings and structures which, but for the tax exemption laws of the state, would be taxable as real estate…" See RSA 74:2.

Granted.

9. "Upon the return of such inventory, the selectman shall assess a tax against the person or corporation in accordance with their appraisal of the property therein mentioned, unless they shall be of the opinion that it does not contain a full and true statement of the property for which such person or corporation is taxable." See RSA 74:11.

Granted.

10. Despite RSA 74:11, the Petitioners did not appraise the Windpark.

Granted.

11. Without an appraisal of all property inventoried to challenge, the Petitioners have failed to meet their burden of proof in proving that the Department erred in its total equalized value for both Dixville and Millsfield and the Petitioners' appeals should be DISMISSED. See Tax 211.04.

Neither granted nor denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Philip R. Waystack, Esq. and Jonathan S. Frizzell, Esq., Waystack Frizzell Trial Lawyers, P.O. Box 137, Colebrook, NH 03576, counsel for the Coos County Commissioners on behalf of Dixville and Millsfield, Appellants; and Kathryn E. Skouteris, Esq., 109 Pleasant Street, P.O. Box 457, Concord, NH 03301, counsel for DRA.

Date: July 17, 2013

Anne M. Stelmach, Clerk

Non-Public

EXHIBIT
1 ID

COÖS COUNTY COMMISSIONERS MEETING
December 18, 2007
North Country Resource Center, Lancaster

Present: Commissioners Burnham Judd, Paul Grenier and Thomas Brady; County Administrator Suzanne Collins; Scott Dickman, DRA Real Estate Appraiser; Guy Petell, DRA; Representative Fred King.

Commissioner Judd stated that the purpose of this meeting was to conduct an educational session for Board members on utility assessment. The Board is charged with evaluating a proposed agreement by Granite Reliable Power, LLC for Payments in Lieu of Taxes (PILOT).

Commissioner Grenier made a motion to enter into non-public session. The motion was seconded by Commissioner Brady. All voted in favor.

Scott Dickman distributed copies of RSA 72:74 that was amended effective August 10, 2007. He noted that previous to the change in statute that if a utility signed a PILOT agreement, the state had no authority under RSA 83-F. The statutory change now gives the State the authority to tax utilities with PILOTs a $6.60/$1,000 education tax. The amount levied is paid directly by the utility to the State of NH. Section VI of the law originally had a 5-year limitation on PILOT agreements but the new Section VII gives additional flexibility.

Scott stated that he would address how the State develops an opinion on establishing the value of a wind farm. There are 3 bases for appraisal: cost, income and sales comparisons. There are complex calculations involved, analysis of cash flow involved.

The sales comparison model is almost impossible to use in appraising utilities. They rarely sell and when they do, the negotiated price is based on complex accounting issues. This makes the sales comparison method unreliable.

The cost approach model is good at the beginning. An appraiser can find out how much was invested in developing the utility. Developers must go to the banks for financing so they have done some revenue forecasting too. In the middle of the project life though, the cost approach dwindles in reliability as the utility depreciates.

Therefore, the income approach becomes the most reliable model for establishing the value of a utility. Although there is always the potential for some unknowns, 15 years is a reasonable period of time to estimate the economic life of a facility.

The time-value of money is incorporated into the income projections.

Rep. King stated that GMO's land will presumably be taxed higher because the tract of land used for the wind farm will have to be taken out of current use and become taxed as developed land.

Guy Petell cautioned the Board to remember that the unincorporated places where the wind farm is located are apt to incur more local costs for services such as ambulance, fire suppression etc. Rep. King suggested that the Commissioners have Granite Reliable Power agree that any new services associated with the wind farm will get billed to them directly.

Commissioner Judd stated that the developers will need to build or upgrade roads. Scott replied that this is a cost to the developer. Commissioner Judd asked Scott if he would take the value of road development into account when establishing a value for the wind park. Scott replied that with the cost approach he would but he is more apt to be using the income approach where the costs of road development are not a factor.

Sue asked about the wind farm currently being permitted in Lempster and whether any work has been done on establishing the value of that wind farm. Scott replied that the Lempster project will involve twelve 2-megawatt turbines and it is estimated that the value will be about $32,000,000.

Rep. King added that he visited the Noble installations in New York and although the installation costs in New York are lower than here due to the location, the wind resource here is much better.

Scott stated that the cost approach and the income approach at the very beginning of a project should be very, very close.

Rep. King stated that he understood why Noble wants to make a PILOT as that cost of operations will be a known factor for a defined period of time where the property tax could fluctuate vastly from year to year.

Commissioner Grenier stated that if the development of this wind farm meets with no political resistance, it may attract other alternative energy developers to locate in Coös County.

Commissioner Judd stated that in reviewing the proposed agreement he was hesitant to support a PILOT for 16 years; however, he had recommended to Noble a 10 year agreement and if all goes well, then a future Board could negotiate a successor 10 year agreement.

Rep. King asked the Commissioners if they had proposed an escalator clause in each year of the PILOT. Sue Collins replied that it was mentioned in a meeting with Attorney Patch and Pip Decker but it did not go anywhere.

Scott advised that the Board should stipulate that the point of departure is no less than year 10. Rep. King stated that if there is no escalator clause or cost of service clause, then the cost of any new services over the next 10 years will not affect Granite Reliable Power.

Commissioner Grenier suggested that during the annual UP budget development the Commissioners should set aside a contingency for services in each unincorporated place affected by the wind park.

Guy Petell cautioned the Commissioners that the equalized value of each unincorporated places where the wind park is located will go up a lot and this will have the effect of raising the county tax in those places.

Sue Collins stated that she had prepared a worksheet for the Board to show the county tax impact of the wind park on each town and city. She stated that she had estimated a total wind park value of $150 million and asked Scott if that was a reasonable assumption. Scott estimated an value closer to $113 million. Sue stated that she would recalculate the worksheet based on the $113 million.

Scott Dickman and Guy Petell left the meeting and there was a short break.

Rep. King thanked the Board for allowing him to attend the educational session. He asked to meet with the Board on the issue of Corrections.

He stated that since December 2003 he has had a keen interest in seeing if the County and the State of NH could work together in building a facility in Berlin that would house both State and county inmates. During the last session of the legislature he sponsored a bill that became law. The new law no longer requires a county to have its own jail. Counties can do business with other counties or the State.

Rep. King said that he understands that NH Commissioner of Corrections Wrenn has received a $200,000 appropriation to plan a 150-bed facility outside the wall of the Northern NH Corrections Facility. *(Actually the Governor and Council approved a contract for $463,310 for professional services to develop the Master Plan for the NH Department of Corrections).* Rep. King stated that he has spoken with the County Commissioners about this idea before and is here today to determine if the Board is still interested in the concept. He stated that Commissioner Wrenn is interested as is the warden of the Berlin prison. Rep. King stated that the county will most probably be hearing from the consultant as the plan is due by the end of April 2008. Rep. King said that he first mentioned this idea at a County Budget Public Hearing in December 2003. He believes that even though population projections show no growth in Coös County, someday the county will need a new facility. He stated that he does not want to do or say anything about a Coös County-State of NH joint venture without the Board of Commissioners being aware and on board.

Rep. King stated that the last time he calculated it, the Coös County per diem cost at Corrections was $106 per day; the State of NH cost is $35 per day. If the County pays the state its cost per inmate, the State will make money because they will need little, if any, additional personnel.

Commissioner Grenier was concerned about what would happen to Coös County Department of Corrections employees. Rep. King stated that in his discussions with the State he had made it clear that this type of arrangement would only be considered by the Commissioners if the State agreed to hire county corrections personnel as state employees. Commissioner Grenier stated that the employees would need a guarantee to be employed in order for him to continue his support of this plan.

Rep. King stated he had mentioned the idea of the Coös County-Northern NH Correctional Facility arrangement to Governor Lynch last summer and the Governor stated that it was a concept he could support. Rep. King stated that as far as he knows, an architect would develop two designs – a 150 bed state-only facility and a 200 bed joint facility that would also have separate housing for pre-trial inmates.

Commissioner Judd wondered about past talks about converting the abandoned Merrimack County facility as a women's prison.

The Commissioners were unanimous in their support that Rep. King and the Commissioners keep pursuing this.

Commissioner Grenier made a motion to come out of non-public session. Commissioner Brady seconded the motion and all were in favor.

Respectfully submitted,

Suzanne Collins
County Administrator

EXHIBIT
2 ID

COÖS COUNTY

P.O. Box 10
W. Stewartstown, NH 03597

MEMORANDUM

Date: January 17, 2008
To: Coös County Commissioners
From: Sue Collins
Subject: County Tax Projections & Granite Reliable Power PILOT

Dear Commissioners:

The following materials are attached for your review:

1. 10-Year County Tax Projection 2008-2017 assuming the average 7.5% annual growth in county tax that occurred in the 1999-2007 period.
2. County Tax Trend Line for the Period 1999-2007 (graphic illustration of the 1999-2007 county tax data).
3. Worksheet with the current equalized value and the current 2007 county tax projected out to 2017 with the following assumptions:
   a. The Windpark is valued at $113,000,000.
   b. The proposed PILOT states that this Windpark will be located in Dixville, Millsfield and Erving's Grant. The turbine string begins at Dixville Peak on the northern end so I assumed 34% of the value in Dixville. The majority of the turbines are in Millsfield on Owlshead Mountain and Mount Kelsey so I assumed 65% of the value in Millsfield. New service roads are being constructed in Erving's Grant so I assumed 1% of the value there. Regardless of the allocation of value, the total value of the Windpark in these 3 unincorporated places is $113,000,000. Much to my surprise Odell is not mentioned as a turbine site in this document so I reviewed the Planning Board's Building Permits for MET Towers (Meteorological Towers) and found that the permitted MET500 is in the Trio Ponds area in Odell. I presume this is the site being evaluated for the 146 Megawatt Wind Park that Noble/Granite Reliable Power has in the New England ISO queue. I may be wrong about this - perhaps Odell is included in this particular project.
   c. I assumed a growth rate in the county tax of 7.5% a year which is the average growth in the years 1999-2007.
   d. I assumed that the equalized value in each municipality will remain the same. We know that it has never remained the same from year to year but without a crystal ball, it is not possible to predict how these values will change.

4. Based on these assumptions, the $500,000 would cover the effects of adding $113M in value to the County's tax base until 2012 if the project were to begin making PILOT payments in 2008. I do not anticipate that would happen until 2010 if GRP gets Site Evaluation Committee approval this year. The average of the 10 county tax payments on the worksheet is $523,688 – not far from the offering PILOT payment of $500,000 annually.
5. There are so many variables that make this analysis more of a guesstimate than a projection:
    a. If current or future property owners do large timber cuts in Dixville or Millsfield, then the yield tax payments could very likely result in a negative municipal tax that would offset some of the county tax;
    b. The county may have to budget additional funds in each of these unincorporated places for unanticipated costs related to the wind park such as ambulance, fire, etc.
    c. If Millsfield experiences unprecedented development due to the influx of workers at the federal correctional facility in Berlin, there could be an increase in tuition and transportation costs as well as other municipal costs that result from people moving into an area. Dixville could also change if second home development occurs similar to what is happening at the Mt. Washington Hotel.

In addition:

I have spoken with Linda Kennedy at DRA and she verified that DRA absolutely does equalize any payment in lieu of tax. Any PILOT would be equalized and added to an unincorporated place's equalized value. This equalization amount is determined by the amount of the PILOT divided by the tax rate in the unincorporated place. So, the equalization will be different every year. This equalization figure tells you how much value we would have needed to raise $500,000 or the pro-rated amount in each UP depending on the value of the Windpark assets in that UP.

I spoke with Attorney Jonathan Frizzell and he is willing to be of counsel to the Board in its further analysis of the PILOT.

Also of interest is that the latest version of the PILOT transmitted by Pip Decker in his e-mail on 12/21/07, the installed capacity has changed from 102 megawatts to 99. You may not even want the language with the $50,000 advance payment as it was originally proposed for a certain purpose.

No matter how you analyze the data, only one thing is certain and measurable – 99 megawatts of installed capacity @$5,000 per megawatt yields a PILOT of $495,000 for 10 years. County taxes, municipal tax rates, equalized values, annual costs and revenues are all variables.

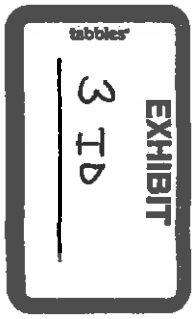
If you have any questions that I can look into prior to your meeting on January 23rd please let me know.

PUBLIC HEARING ON COÖS COUNTY/GRANITE RELIABLE POWER PILOT AGREEMENT
March 8, 2008

The following is a chronology of events leading up to a series of meetings between the Coös County Commissioners and representatives of Noble Environmental Power and its subsidiary, Granite Reliable Power, LLC.

November 2007	Based on a review of NH Revised Statutes Annotated, County Attorney provided opinion that Coös County does have the authority to enter into a voluntary Payment In Lieu Of Tax (PILOT) agreement with a renewable generation facility.	RSA 72:73 RSA 72:74 RSA 374-F:3,V(f)(3) RSA 81:1 RSA 23:1 RSA 28:7-a RSA 21:48
December 2007	Granite Reliable Power, LLC submitted to Coös County a proposed PILOT agreement.	
December 8, 2007	Public Hearing held on preliminary PILOT concept. The public was informed that this hearing was the **beginning** of the voluntary process to negotiate a probable final agreement. The minutes of that Public Hearing state, "*Once the Commissioners are ready to make a decision another public hearing/meeting should be held to inform the public and County Delegation of their decision.*"	Delegation resolves at its meeting that "*Effective this 8th day of December2007 the undersigned members of the Coös County Delegation respectively request that the County Commissioners continue to negotiate the draft of the proposed Payment In Lieu of Taxes (PILOT) agreement between Coös County and Granite Reliable Power, LLC (GRP) and report back to the Delegation their recommendation of whether or not it should be supported by the County Delegation." All approved 9-0.*
December 12, 2007	Negotiations on PILOT between Coös County and Granite Reliable Power commenced.	A summary of the negotiated items follows.

Beginning December 12, 2007 the Coös County Commissioners met on several occasions with legal counsel to work out an agreement that would benefit Coös County and the Unincorporated Places which they represent. Serving as Legal Counsel for Coös County is Attorney Jonathan Frizzell, Waystack & Frizzell located in Colebrook. Serving as Legal Counsel for Granite Reliable Power is Attorney Douglas Patch, Orr & Reno, located in Concord.



PUBLIC HEARING ON COÖS COUNTY/GRANITE RELIABLE POWER PILOT AGREEMENT
March 8, 2008

During its review the Board of County Commissioners also sought expert advice from the NH Department of Revenue Administration.

The following chart shows the items that were amended from the original proposal received in December 2007 and added to the current proposal as recommended by the Board.

	Original Proposal	Amended Proposal
Recitals	GRP is the lessee of certain parcels of land situated in the Unincorporated Places of Dixville, Erving's Location, Millsfield and Odell	No changes were made to Recitals and on February 14, 2008 Coös County was provided by certified mail a copy of the written notice to the underlying landowners on which the premises are located of this Agreement and the lessors' liability under RSA 80 should the lessee fail to make the PILOTs. Lessors are Kennebec West Forest, LLC and Bayroot, LLC.
Article II – Covenants and Agreements (a) Payment in Lieu of Taxes Time of Payment	Payments to the County in lieu of taxes annually on or after January 1 following the date of first commercial operation…in an amount totaling $5,000 per each megawatt of installed capacity…	Payments to the County in lieu of taxes annually on or before February 1 following the date of first commercial operation…in an amount totaling $5,000 per each megawatt of installed capacity…*PILT will be credited to UP's in which Windpark is located.*
Article II – Covenants and Agreements (b) Notice of PILOTS		Right to Contest Method of Valuation: County added language "In the event that County disputes the estimated amount of the PILOT, the County shall be entitled to inspect the premises of the Project and the records of GRP related to the operating nameplate capacity of the Project at the County's own expense.
Article II – Covenants and Agreements (d) Advance Payment	GRP agrees to make an advance payment of $50,000 to the County within 15 days of the effective date of this Agreement.	GRP agrees to make a one time payment of $75,000 to the County within 15 days of the effective date of this Agreement.
		Continued Next Page

PUBLIC HEARING ON COÖS COUNTY/GRANITE RELIABLE POWER PILOT AGREEMENT
March 8, 2008

Article II – Covenants and Agreements Section 2.2 Term of Agreement	The term shall commence on the effective date thereof and shall terminate on the 16th anniversary of the first payment…	The term of this Agreement shall commence on the effective date thereof and shall terminate on the 10th anniversary of the first payment…provided that the parties may extend this Agreement for an additional ten (10) years beyond the termination date…the amount of the PILOT may be further negotiated at that time. GRP represents, and the County acknowledges, that this term exceeds five (5) years and is necessary for the financing of the project.
New Section 2.3 *Timber Tax – timber tax is credited to the Unincorporated Place in which it is collected.*		Scope of Agreement as to Timber Tax added. Nothing in the Agreement precludes County from assessing and collecting any and all timber tax due and owing to the County pursuant to RSA 79:3 as a result of timber harvesting that occurs with or as a result of the Project.
New Section 2.4 *Land Use Change Tax – land use change tax is credited to the Unincorporated Place in which it is collected.*		Scope of Agreement as to Land Use Change Tax added. Nothing in the Agreement shall preclude the County from assessing and collecting any and all land use change taxes due and owing to the County pursuant to RSA 79-A:7 arising out of the actions of GRP which the parties agree creates the imposition of land use change taxes.
New Section 2.5 Site Evaluation Committee		Site Evaluation Committee Process added. To protect the County's rights to participate in, and if dissatisfied to object to, any part of GRP's application to the NH Site Evaluation Committee and the process for approval of the application.
Article III Nature of Obligation of the Parties New Section Added		Decommissioning. GRP agrees to discuss with the County a proposal for establishing a decommissioning fund sufficient to decommission the facility at the end of its useful life.

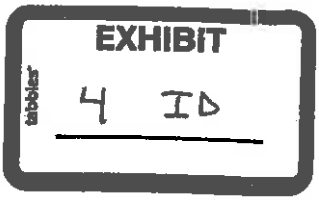
PUBLIC HEARING ON COÖS COUNTY/GRANITE RELIABLE POWER PILOT AGREEMENT
March 8, 2008

Article IV Events of Default Section 4.2 Force Majeure		This section describes the grounds upon which GRP can delay making payments that are otherwise due. Language was added that in the event that GRP invokes the language in this section, that in addition to the initial notification to the County, GRP will update the County in writing every 30 days of the steps that GRP has taken and will be taking to remedy the effect of force majeure.
Article IV Events of Default Section 4.3 Default Remedies		Added language that in the event of default, nothing in this Agreement abrogates or diminishes the County's rights pursuant to RSA 72:74, IV and RSA Chapter 80 (Collection of Taxes).
Exhibit A	102 Megawatt Capacity 34 turbines located in Dixville and Millsfield	99 Megawatt Capacity 33 turbines located in Dixville (8) and Millsfield (25).
	Service & access roads in Odell, Erving's Location, Dixville and Millsfield	Service & access roads in Odell, Erving's Location, Dixville and Millsfield
	Substation and Operation/Maintenance Building in Dummer (information only).	Substation and Operation/Maintenance Building in Dummer (information only).

The Board of Commissioners supports the current draft agreement between Coös County and Granite Reliable Power. It is recommended that the Coös County Delegation further resolve to support the Agreement.

Burnham A. Judd, Chairman – Coös County Commissioners
Paul R .Grenier, Vice Chairman – Coös County Commissioners
Thomas M. Brady, Clerk – Coös County Commissioners

Dated: March 8, 2008



GRANITE RELIABLE POWER, LLC

AND

COÖS COUNTY, NEW HAMPSHIRE

AGREEMENT

FOR PAYMENTS IN LIEU OF TAXES

AGREEMENT
FOR PAYMENTS IN LIEU OF TAXES

This agreement for payments in lieu of taxes (hereinafter "PILOT Agreement" or "AGREEMENT"), dated this 19th day of March, 2008, is by and between Granite Reliable Power, LLC (hereinafter "GRP"), and the County of Coös, New Hampshire, a body corporate pursuant to RSA 23:1 (hereinafter "COUNTY").

RECITALS

WITNESSETH:

WHEREAS, GRP is the lessee of certain parcels of land situated in the unincorporated places of Dixville, Ervings Location, Millsfield and Odell, all of which are located in Coös County, New Hampshire, (hereinafter "Premises") on which it intends to construct an electric generating facility powered by wind; and

WHEREAS, GRP intends to erect certain structures, buildings, machinery and associated and necessary equipment and appurtenances used for the purpose of generating electrical power for sale by the use of windpower (hereinafter "Facility" or "Project"), (the Premises and Facility hereinafter referred to as the "Granite Reliable Power Windpark") ; and

WHEREAS, GRP intends to seek a certificate of site and facility from the New Hampshire Site Evaluation Committee pursuant to RSA 162-H:1 et seq. to be authorized to own and operate the Granite Reliable Power Windpark as a renewable energy facility; and

WHEREAS, GRP will be responsible for property taxes on the Facility; and

WHEREAS, the Granite Reliable Power Windpark qualifies as a renewable generation facility under RSA 72:74 of the New Hampshire Revised Statutes Annotated; and

WHEREAS, pursuant to RSA 72:74, the owner of a renewable generation facility and the municipality wherein the renewable generation facility is situated may enter into an agreement to make payments in lieu of property taxes; and

WHEREAS, in unincorporated areas of the State, the COUNTY has the powers of a municipality, including the power to assess and collect property taxes and the power to enter into an agreement to make payments in lieu of property taxes; and

WHEREAS, GRP and the COUNTY have agreed to make and receive, respectively, payments in lieu of property taxes for the Facility; and

WHEREAS, the COUNTY held public hearings on December 8, 2007 and March 8, 2008 as required by RSA 72:74, and these hearings were duly noticed by postings in two public places and publication in newspapers of general circulation in Coös County; and

WHEREAS, the Coös County Commissioners have voted to enter into this PILOT Agreement, and the members of the Coös County delegation have resolved to support this PILOT Agreement; and

WHEREAS, GRP has sent written notice by certified mail to the lessors of the property on which the Premises are located of this AGREEMENT and the lessors' liability under RSA 80 should the lessee fail to make the payments required by this AGREEMENT, in accordance with RSA 72:74.

NOW THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GRP and the COUNTY do hereby agree as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.1 Representations and Warranties

(a) The COUNTY represents and warrants as follows:

(i) It is a body corporate pursuant to RSA 23:1, duly established under the laws of the State, and it has the power to enter into this PILOT Agreement and the transactions contemplated hereby and to carry out its obligations hereunder.

(ii) This PILOT Agreement constitutes a valid and legally binding obligation of the COUNTY, enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights and subject to general equitable principles.

(iii) It has duly authorized the execution, delivery and performance of this PILOT Agreement and the consummation of the transactions herein contemplated.

(iv) Neither the execution and delivery of this PILOT Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this PILOT Agreement will conflict with or result in a breach by the COUNTY of any of the terms, conditions or provisions of any law or any order, judgment, agreement or instrument to which it is a party or by which it is bound, or will constitute a default by it under any of the foregoing.

(v) It is not prohibited from entering into this PILOT Agreement and performing all covenants and obligations on its part to be performed under

and pursuant to this PILOT Agreement by terms, conditions, or provisions of any law, order, judgment, agreement or instrument to which it is a party or by which it is bound.

(vi) No consent, approval, or authorization of, or filing, registration, or qualification with, any governmental or public authority on the part of it (which has not been obtained or completed) is required as a condition to the execution, delivery, or performance of this PILOT Agreement by it.

(b) GRP hereby represents and warrants as follows:

(i) It is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified and authorized to do business in New Hampshire, and has the power to enter into this PILOT Agreement and to carry out its obligations hereunder. This PILOT Agreement and the transactions contemplated hereby have been duly authorized by all necessary action on the part of GRP or its successor.

(ii) Neither the execution and delivery of this PILOT Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this PILOT Agreement will require consent (which has not been heretofore received or which is not likely to be obtained in the ordinary course of business) under any restriction, agreement or instrument to which it is a party or by which it or any of its property may be bound or affected, or to the best of its knowledge, require consent (which has not been heretofore received or which is not likely to be obtained in the ordinary course of business) under, conflict with or violate any applicable law

(iii) This PILOT Agreement constitutes a valid and legally binding obligation of GRP, enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights and subject to general equitable principles.

(iv) GRP is not prohibited from entering into and discharging and performing all covenants and obligations on its part to be performed under this PILOT Agreement by (and the execution, delivery, and performance of this PILOT Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this PILOT Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions, or provisions of its organizational documents or agreements or any other restriction of law, rule, regulation, or order of any court or other agency or authority of government, or any contractual limitation or restriction or outstanding indenture, deed of trust, mortgage, loan agreement, or other evidence of indebtedness or any other

agreement or instrument to which it is a party or by which it or any of its property is bound.

(v) GRP has a good and valid fee simple interest, leasehold interest, and/or leasehold or easement right, as applicable, in the Premises and good and valid title to the remainder of the Facility that exists on the effective date of this AGREEMENT, free and clear from all liens.

ARTICLE II

COVENANTS AND AGREEMENTS

Section 2.1 Payment; Notice and Method

(a) Payment in Lieu of Taxes. During the term of this AGREEMENT, GRP will not be subject to ad valorem real estate taxes or assessments of any kind which would have or could be levied and assessed against the Facility (collectively or separately) by the COUNTY under any law, regulation or ordinance. Instead, GRP, its successors and assigns, shall make payments to the COUNTY in lieu of taxes annually on or before February 1 following the date of first commercial operation (which shall be defined as the first day on which the Project produces electricity that is sold to a third party) of the Facility, , and each February 1 thereafter for the term of this Agreement, in an amount totaling $5,000 per each megawatt of installed capacity, which shall mean the maximum capacity, in megawatts, of the wind turbine generators constituting the Facility that are actually installed and either (i) generating energy, or (ii) capable of generating energy and permitted to generate energy as required by applicable law. A description of the Granite Reliable Power Windpark is attached as Exhibit A hereto, and will be revised by GRP, its successors or assigns, as necessary to conform to the actual Granite Reliable Power Windpark as built.

(b) Notice of PILOTS. By no later than December 1 of each year, GRP shall provide a statement to the COUNTY setting forth the estimated amount of the PILOT to be made on the following January 1 calculated in accordance with Section 2.1(a) together with a statement setting forth such calculation. In the event that the COUNTY disputes the estimated amount of the PILOT set forth in such notice, GRP and the COUNTY shall meet within fifteen (15) business days of receipt of such notice by the COUNTY to attempt in good faith to resolve such dispute. In the event that the parties cannot resolve the dispute by January 1, GRP shall make the PILOT in accordance with the procedure set forth herein in the amount that GRP believes to be due and payable hereunder and the parties shall be entitled to pursue all available remedies in order to resolve the dispute. In the event that COUNTY disputes the estimated amount of the PILOT, the COUNTY shall be entitled to inspect the premises of the Project and the records of GRP related to the operating nameplate capacity of the Project, at the COUNTY'S own expense.

(c) Method of Payment. All payments hereunder shall be paid by check made payable to the COUNTY or in immediately available funds, in each case in then lawful money of the United States of America.

(d) One Time Payment. GRP agrees to make a one time payment of $75,000.00 to the COUNTY within 15 days of the effective date of this Agreement ("One Time Payment").

(e) First Payment. The first payment GRP makes under paragraph (a) of this section shall be reduced by $75,000.

Section 2.2 Term of Agreement; Extension of Term

(a) Term. The term of this Agreement shall commence on the Effective Date hereof and shall terminate on the tenth (10^{th}) anniversary of the first payment under Section 2.1 of this Agreement, provided, however, that the parties may extend this Agreement in accordance with paragraph (b) of this section. This Agreement shall be effective as of the date first written above and shall not be terminated except as otherwise set forth herein or upon mutual written agreement of the Parties. Per N.H. RSA 72:74, VII, GRP represents, and COUNTY acknowledges, that this term exceeds five (5) years, and is necessary for the financing of the Project.

(b) Extension. The Parties may agree to extend this Agreement for an additional ten (10) years beyond the termination date provided in paragraph (a) of this section, such extension to begin immediately after the term described in paragraph (a) of this section, upon the same terms and conditions of this Agreement, except that the term shall be modified as provided in this paragraph. Further, the amount of the PILOT may be further negotiated at that time. GRP shall give written notice to the COUNTY of its desire to extend this Agreement at least on hundred eighty (180) days prior to the expiration of the term described in paragraph (a) of this section. The COUNTY shall respond in writing to GRP's written notice within 30 days of receiving such notice indicating whether it agrees to extend the term. In the event the Parties agree to extend the term as provided in this paragraph, the Parties shall sign an amendment in accordance with Section 5.1 making such change.

Section 2.3 Scope of Agreement as to Timber Tax

Notwithstanding any other language in this AGREEMENT to the contrary, nothing herein shall preclude the COUNTY from assessing and collecting any and all timber tax due and owing to the COUNTY pursuant to RSA 79:3 as a result of timber harvesting that occurs in connection with or as a result of this Project.

Section 2.4 Scope of Agreement as to Land Use Change Tax

Notwithstanding any other language in this AGREEMENT to the contrary, nothing herein shall preclude the COUNTY from assessing and collecting any and all land use change tax due and owing to the COUNTY pursuant to RSA 79-A:7 arising out of the actions of GRP, as described in Exhibit A, which the parties agree creates the imposition of land use change taxes.

Section 2.5 Site Evaluation Committee Process

Notwithstanding the COUNTY'S support, in general terms, of the project described in Exhibit A hereto, nothing herein shall be interpreted to be a waiver of the COUNTY'S rights to participate in, and if dissatisfied to object to, any part of GRP'S application to the State of New Hampshire Site Evaluation Committee, and the process for approval of said application, pursuant to N.H. RSA Chapter 162-H.

ARTICLE III

NATURE OF OBLIGATIONS OF THE PARTIES

Section 3.1 Obligations of GRP

(a) General Obligations; No Right to Set-Off. The obligations of GRP to make the payments required under this PILOT Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of GRP and shall be absolute and unconditional irrespective of any right of set-off, recoupment, counterclaim, or abatement that GRP may otherwise have against the COUNTY.

(b) Authority to Cancel. GRP may elect to voluntarily cancel this PILOT Agreement upon thirty (30) days written notice to the COUNTY upon the occurrence of which the Facility will no longer be exempt from Real Estate Taxes. If the gross revenues of the Facility decrease due to: (a) operational restrictions arising from changes in law, regulation or ordinance; (b) the technical obsolescence of the Facility, or (c) GRP permanently ceasing its operation of the Facility, then GRP may terminate this Agreement or seek renegotiation of the payments to be made hereunder upon 60 days prior written notice to the COUNTY. If this Agreement is terminated during any calendar year of the term hereof, then the payment due for that calendar year as set forth in Section 1 and 3 of this Agreement shall be the entire obligation of GRP to the COUNTY for that calendar year and tax year.

(c) No Recourse. All covenants, stipulations, promises, agreements and obligations of GRP contained in this PILOT Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of GRP, not of any parent, officer,

agent, servant or employee of GRP, and no recourse under or upon any obligation, covenant or agreement contained in this PILOT Agreement, or otherwise based or in respect of this PILOT Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future parent, officer, agent, servant or employee, as such of GRP or any successor thereto. It is expressly understood that no such personal liability whatever shall attach to, or is or shall be incurred by, any such parent, officer, agent, servant or employee by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom. Any and all such liability of, and any and all such rights and claims against, every such parent, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this PILOT Agreement.

(d) Decommissioning. GRP agrees to discuss with the COUNTY, and other parties as necessary, a proposal for establishing a decommissioning fund sufficient to decommission the Facility at the end of its useful life and to establish such a decommissioning fund as part of the New Hampshire Site Evaluation Committee process.

Section 3.2 Obligations of the COUNTY

(a) Nature of Obligations. The obligations of the COUNTY under this PILOT Agreement shall be absolute, unconditional, and irrevocable, provided that nothing in this Section shall be construed to constitute a waiver by the COUNTY of any of its rights under this PILOT Agreement arising from the occurrence and continuance of a default hereunder.

(b) No Recourse. All covenants, stipulations, promises, agreements and obligations of the COUNTY contained in this PILOT Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the COUNTY and not of any member, officer, agent, servant or employee of the COUNTY in his or her individual capacity, and no recourse under or upon any obligations, covenant or agreement contained in this PILOT Agreement, or otherwise based or in respect of this PILOT Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent, servant or employee, as such, of the COUNTY, or any successor public benefit corporation. It is expressly understood that this PILOT Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent, servant or employee of the COUNTY or of any successor public benefit corporation. Any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this PILOT Agreement.

(c) Consent to Assignment. The County agrees to enter into a Consent to Assignment in substantially the same form as included in Exhibit B to this Agreement whenever GRP or its transferee assigns this Agreement.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1 Nature of Events

The occurrence of any one or more of the following events shall constitute a default or event of default under this PILOT Agreement and a "*Default*" or "*Event of Default*" shall mean, whenever and wherever used in this PILOT Agreement, any one or more of the following events:

(a) Payment Defaults. GRP fails to pay when due any amount due and payable by GRP pursuant to this PILOT Agreement, and such failure continues for a period of sixty (60) days.

(b) Covenant Defaults. GRP fails to perform or observe any covenant, condition, or agreement (other than the agreement to make any payments under this PILOT Agreement) contained in this PILOT Agreement and such failure continues for more than one hundred eighty (180) days after written notice of such failure has been given to GRP by the COUNTY; provided, however, that if such default is capable of cure but cannot be cured within such one hundred eighty (180) day period, the failure of GRP to cure within such one hundred eighty (180) day period shall not constitute an Event of Default if GRP institutes corrective action within such one hundred eighty (180) day period and thereafter prosecutes the same with due diligence and, in any event cures such default within one hundred eighty (180) days after such written notice is given; provided further, that, in the event the default cannot be cured within such 180-day period for reasons not within GRP's control, GRP shall be granted such additional time as may reasonably be required to cure the default without any such delay constituting an Event of Default.

(c) Warranties or Representations. Any warranty, representation or other statement by GRP contained in this PILOT Agreement is false or misleading in any material respect and it is not corrected for a period of sixty (60) days after written notice of such failure has been given to GRP by the COUNTY; provided, that if by reason of the nature of such default the same cannot be cured within sixty (60) days, GRP fails to proceed promptly to cure the same and prosecutes the curing of any such default with due diligence and, in any event cures such default within one hundred eighty (180) days after such written notice is given; provided further, that, in the event the default cannot be cured within such 180-day period for reasons not within GRP's control, GRP shall be granted such additional time as may reasonably be required to cure the default without any such delay constituting an Event of Default.

Section 4.2 Force Majeure.

Notwithstanding the provisions of Section 4.1 hereof, if by reason of force majeure (as hereinafter defined), the delayed party shall be unable, in whole or in part, to carry out its obligations under this PILOT Agreement and if the delayed party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the delayed party's obligations under this PILOT Agreement so far as they are affected by such force majeure shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this Section 4.2 shall not be deemed an Event of Default under Section 4.1.

The term "*force majeure*" as used herein shall include acts outside of the control of the delayed party, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, or other weather related events, or arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission lines, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

In the event that GRP invokes or otherwise relies upon the language in this Section as a result of the effect of a force majeure, GRP agrees that, in addition to the initial notification to the COUNTY as described above, GRP will update the COUNTY, in writing, every thirty (30) days after the date of the initial notification, as to the steps that GRP has taken and will be taking in order to remedy the effect of the force majeure, in order to accomplish the removal of said effect, and to discontinue the suspension of the obligations of GRP hereunder.

Section 4.3 Default Remedies

If an Event of Default exists, the COUNTY may proceed, to the extent permitted by law, to enforce the provisions hereof available for its benefit and to exercise any and all rights, powers and remedies available to the COUNTY at law or in equity, hereunder. Nothing herein shall abrogate or diminish the COUNTY'S rights pursuant to N.H. RSA 72:74, IV and N.H. RSA Chapter 80.

Section 4.4 Remedies; Waiver and Notice

(a) No remedy herein conferred upon or reserved to the COUNTY is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this PILOT Agreement or now or hereafter existing at law or in equity or by statute.

(b) No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) In the event any provision contained in this PILOT Agreement should be breached by GRP and thereafter duly waived by the COUNTY, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(d) No waiver, amendment, release or modification of this PILOT Agreement shall be established by conduct, custom or course of dealing.

(e) No payment by GRP of a lesser amount than the correct amount or in a manner of payment different from the manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and any checks or payments may be accepted as made without prejudice to the right to recover the balance or pursue any other remedy in this PILOT Agreement or otherwise at law or equity.

ARTICLE V

MISCELLANEOUS

Section 5.1 Amendment of PILOT Agreement

This PILOT Agreement may not be amended, changed, modified, altered or terminated, unless such amendment, change, modification, alteration or termination is in writing and signed by the COUNTY and GRP.

Section 5.2 Assignment

GRP may assign this Agreement without consent. GRP will provide COUNTY with fifteen (15) days notice of any such assignment. Notwithstanding the foregoing, upon request by GRP, its successor in interest, or its assignee, COUNTY shall provide a Consent to Assignment substantially in the form attached as Exhibit B hereof whenever GRP or its transferee assigns this Agreement.

Section 5.3 Notices

All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed received, served or noticed, as applicable, when delivered or when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the COUNTY and GRP, as the case may be, addressed as follows:

To GRP: Granite Reliable Power, LLC
8 Railroad Avenue, Suite 8
Essex, Connecticut 06426
Attention: General Counsel

To the COUNTY: Coös County
County Government Offices
136 County Farm Rd., P.O. Box 10
W. Stewartstown, NH 03597-0010

GRP and the COUNTY may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 5.4 Binding Effect

This PILOT Agreement shall inure to the benefit of the COUNTY and GRP, and shall be binding upon the COUNTY and GRP, and their respective successors and assigns.

Section 5.5 Severability

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

Section 5.6 Counterparts

This PILOT Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.7 Applicable Law

This PILOT Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

Section 5.8 General

All titles, subject headings and similar titles are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this AGREEMENT. The terms and provisions contained in this AGREEMENT constitute the entire AGREEMENT and shall supersede all previous communications, representations or agreements, either verbal or written, between the parties with respect to this AGREEMENT.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed as of the date first above written.

COÖS COUNTY, NEW HAMPSHIRE

Commissioner

Commissioner

Commissioner

GRANITE RELIABLE POWER, LLC

BY: _____

Title: VICE PRESIDENT

EXHIBIT "A"

The Granite Reliable Power Windpark ("Windpark") to be constructed by Granite Reliable Power, LLC, is proposed to be installed on private land in the central portion of Coös County in northern New Hampshire. Project components, including wind turbines, access roads, and electrical interconnection facilities, will be located in the unincorporated places of Dixville, Ervings Location, Millsfield, and Odell, and the incorporated town of Dummer. Geographically, the northernmost point of the project, the Wind Turbine String on Dixville Peak, is located approximately 1.6 miles south of NH Route 26 where the highway courses northwesterly from Errol though the Dixville Notch (including the Dixville Notch State Park and the Balsams Resort) to NH Route 3 in Colebrook.

The Windpark is primarily a linear project with wind turbines installed along the north-south oriented ridges in the region; geographic groups of the wind turbines are referred to as "Wind Turbine String(s)". To electrically connect these turbines to the grid, a substation will be constructed near the southernmost Wind Turbine String along the high point of Dummer Pond Road. A new maintenance building and lay down area will be constructed in the vicinity of the substation as part of the Windpark.

In its longest dimension the Project components will span a number of miles from the northernmost Wind Turbine String to the existing transmission line located in the south. The northern extent of the Project Site includes the upper reaches of Dixville Peak. Extending south from Dixville Peak, the Wind Turbine Strings will be constructed on the named summits of Mount Kelsey, Owlhead Mountain, and unnamed lower elevation ridges that terminate to the north of Dummer Ponds.

All of the Project components are located on two privately-owned land tracts. Granite Reliable Power has entered into long-term land use agreements with the landowners that will allow the Windpark to be constructed and operated over the long-term. The two parcels are often referred to as the Phillips Brook Tract, and the Bayroot Parcel. These two properties share a common boundary that roughly forms the height of land south of Dixville Peak along which the Wind Turbine Strings are located.

The Granite Reliable Power Windpark will be powered by an expected 33 wind powered turbines, along approximately 6.5 miles of ridgeline. Each turbine will have a rated nameplate capacity of approximately 3.0 megawatts, for a total installed nameplate capacity of approximately 99 megawatts. Power from the wind is transferred from the rotor blades through a main shaft into a gearbox, with

increased rotational speed to the connected asynchronous generator to produce electricity.

The Project also includes the construction of substation and switchyard facilities; a lay-down area and a number of miles of electrical collection lines, as well as a new 115 kilovolt (KV) power line to serve as a generator lead to the existing transmission line that runs between Milan and Groveton. Where possible, the Project will utilize existing roads, upgrading these roads as necessary. The existing roads that will be used in this project include a number of miles of the Dummer Ponds Road to provide access from Route 16 in the southeast of the Project Site, and the Phillips Brook Road to provide access to the northern end of the Project Site from Route 26 The Project will also involve constructing new service roads to gain access to the Wind Turbine Strings and other facilities.

The wind turbines will be located within the boundaries of the unincorporated places of Dixville and Millsfield. The remaining plant, including the new electric power line, and electrical interconnection facilities, will be located in the town of Dummer. There is an extensive network of all-season logging roads extending throughout the properties that will be used to gain access to areas where the Project will be built. New service roads will be constructed in Erving's Location and Dummer.

The wind turbines proposed for the Granite Reliable Power Windpark are the "V90" series or a model of similar design. Each wind turbine is comprised of three major components: the tower, the nacelle (the housing for the generating components), and the rotor blades. A similarly designed turbine may be used depending on final siting requirements.

The turbines are supported by a conical steel tower, which is widest at the base, approximately 16 feet in diameter, and tapers to approximately 9 ft. in diameter just below the nacelle. The tower's top will be high enough to position the center of the rotor blades 262 ft. above the ground. The foundation provides the tower with a firm anchor to the ground. During geotechnical testing early in the construction phase, appropriate foundations will be engineered depending on the soil type found at each wind turbine site. A working assumption is that the underlying rock does not have the integrity to support the wind turbine and that spread concrete foundations will be used. Typically, these foundations are almost completely buried with a small concrete pedestal protruding from the ground where the tower base is attached.

The nacelle is fixed to the top of the tower and houses the main mechanical components of the wind turbine, including a variable speed generator, transmission, and yaw drive. The nacelle is approximately 16 feet high, by 16 feet wide by 22 feet long. The rotor hub connects to the transmission through one end of the nacelle, and the rotor is then connected to the hub. The V-90 uses a three-bladed rotor in an upwind configuration with an active yaw system in the nacelle to keep the wind turbine facing into the wind.

Power will be generated by the wind turbines, then converted using an onboard transformer to 34.5 KV AC. It will then be delivered to the collection system at the base of each turbine. Power from all turbines will be collected by the underground collection circuit which will be buried under the new service road in the vicinity of the wind turbines, then will run atop roadside poles to the substation. The collection circuit will run to a new fenced and gated substation that will contain 34.5 KV circuit breakers, a 34.5 to 115 KV power transformer, and associated safety and switch gear. A new 115 KV interconnection power line will be constructed to run between the substation and the existing Public Service Company of New Hampshire transmission line at the southern end of the Project Site. The interconnecting power line will run through a cleared corridor, approximately 100 feet wide. Where practical, it will follow the existing Dummer Pond Road, approximate 6 miles to the switchyard location near the junctions of Dummer Pond Road and NH Route 16. Access to the substation and switchyard will be from Dummer Pond Road.

The Project will include an operation and maintenance building that will be used to store tools and associated materials necessary for the maintenance of the Project, project vehicles, and spare parts for the wind turbines and associated equipment. The building will function as an office for the Project's operational management.

EXHIBIT "B"

CONSENT TO ASSIGNMENT

This Consent to Assignment (this "Consent") is entered into as of _____, by the County of Coös, a body corporate in the State of New Hampshire, (the "Consenting Party"), Granite Reliable Power, LLC (the "Assignor"), and _____, as administrative agent (hereinafter in such capacity, together with any successors thereto in such capacity referred to as ("Administrative Agent") pursuant to the Financing Agreement, dated as of ____, 200 among Granite Reliable Power, LLC, the Administrative Agent, the financial institutions from time to time parties thereto, _____ as Lead Arranger, Co-Lead Underwriter, Technical and Documentation Agent, Co-Syndication Agent, and _____ as Co-Lead Arranger, Co-Lead Underwriter, Technical and Documentation Agent, Co-Syndication Agent (as the same may be amended, modified or supplemented from time to time, the "Financing Agreement").

RECITALS

WHEREAS, the Consenting Party and Assignor have entered into the Payment in Lieu of Tax Agreement, dated as of _____ (as the same may be amended, modified or supplemented from time to time, the "Assigned Agreement"); and

WHEREAS, Assignor has assigned or will assign to Administrative Agent for the benefit of the Secured Parties (as defined in the Financing Agreement and referred to herein as "Assignee") all of its rights, title and interest in, to and under the Assigned Agreements as a condition precedent to and security for Assignor's obligations under the Financing Agreement; and

WHEREAS, the Consenting Party is willing to consent to such assignment and the grant of a security interest by Assignor in favor of Assignee as described above.

NOW THEREFORE, in consideration of the premises and other valuable consideration, the parties hereto agree as follows:

1. Assignment and Security Interest.

As security for the performance and payment of all of Assignor's obligations under the Financing Agreement, Assignor has assigned or will assign to Assignee as collateral security, all of Assignor's rights in, to and under the Assigned Agreement upon the terms set forth in the Security Agreement (as defined in the Financing Agreement).

2. Consent.

The Consenting Party hereby (i) irrevocably consents to the assignment specified in paragraph 1 of this Consent and to any subsequent assignments by Assignee upon and after Assignee's exercise of its rights and remedies under the Security Agreement upon the occurrence and during the continuance of any Event of Default (as defined in the Financing Agreement) and (ii) agrees that, following the assumption of the Assigned Agreement by Assignee or its nominee, designee or assignee, all representations, warranties, indemnities and agreements (other than those representations and warranties expressly made only as of an earlier date) made by the Consenting Party under or pursuant to the Assigned Agreement shall inure to the benefit of such party and shall be enforceable by such party to the same extent as if such party were originally named in the Assigned Agreement. The Assignee shall provide to the Consenting Party and the Assignor notice of any such assumption.

3. Default and Cure.

(a) If Assignor defaults under any of the terms of the Assigned Agreement, the Consenting Party shall, before terminating the Assigned Agreement or exercising any other remedy, give written notice to Assignee specifying the default and the steps necessary to cure the same and Assignee shall have one hundred and twenty (120) days (thirty (30) days in the case of a default in payment by Assignor) after the receipt of such notice to cure such default or to cause it to be cured. If Assignee fails to cure, or cause to be cured, any such default within the appropriate period set forth above, the Consent Party shall have all of its rights and remedies with respect to such default as set forth in the Assigned Agreement and at law or in equity.

(b) In the event that the Assigned Agreement is terminated by rejection, or otherwise, during a case in which the Assignor is the debtor under Title 11, United States Code, or other similar federal or state statute, then the Consenting Party shall, at the option of Assignee and so long as all existing payment defaults by Assignor under the Assigned Agreement are cured by Assignee or its nominee or designee, enter into a new agreement with Assignee or (at the direction of Assignee) its nominee or designee having terms substantially identical to the Assigned Agreement, pursuant to which Assignee or its nominee or designee shall have all of the rights and obligations of Assignor under the Assigned Agreement.

(c) If Assignee notified the Consenting Party in writing that an Event of Default has occurred and is continuing under the Financing Agreement and requests that the Consenting Party continue performance under the Assigned Agreement, the Consenting party shall thereafter perform under the Assigned Agreement in accordance with its terms, so long as all existing defaults by Assignor under the Assigned Agreement that are susceptible to cure are cured by Assignee or its nominee or designee within the time periods prescribed in Section 3(a) above and the obligations of Assignor thereunder shall continue to be paid and performed by Assignor, Assignee or its nominee or designee.

4. Delivery of Notices.

The Consenting Party agrees that it will promptly notify Assignee of any event of default or material default under the Assigned Agreement and will deliver to Assignee simultaneously with the delivery thereof to Assignor (i) any notices regarding any default or event of default under the Assigned Agreement delivered to Assignor pursuant to the Assigned Agreement or otherwise and (ii) all material invoices, budgets, plans and reports delivered to Assignor pursuant to the Assigned Agreement.

5. Liability of Assignee.

The Consenting Party acknowledges and agrees that Assignee has not assumed and does not have any obligation or liability under or pursuant to the Assigned Agreement, and that the exercise by Assignee of its rights and remedies under the Security Agreement shall not constitute an assumption of Assignor's obligations under the Assigned Agreement (except to the extent any such obligations shall be expressly assumed by an instrument in writing executed by the Assignee).

6. Amendment or Termination of Assigned Agreements.

The Consenting Party covenants and agrees with Assignee that without the prior written consent of Assignee (i) the Consenting Party will not (A) amend, modify or terminate (prior to the expiration of the applicable cure periods in Section 3 hereof) the Assigned Agreement, except as permitted by the Assigned Agreement, and any purported disposition without such consent shall be void, and (ii) not waiver by Assignor of any of the obligations of the Consenting Party under the Assigned Agreement, and no consent, approval or election made by Assignor in connection with the Assigned Agreements shall be effective as against Assignee, except as permitted by the Financing Agreement.

8. Representations and Warranties.

As of the date hereof, the Consenting Party hereby represents and warrants to Assignee as follows:

(a) The Consenting Party is a duly formed and validly existing body corporate of the State of New Hampshire. The Consenting Party has the requisite power, authority and legal right necessary to incur the obligations provided for in this Consent and the Assigned Agreement.

(b) The execution, delivery and performance by the Consenting Party of this Consent and the Assigned Agreement have been duly authorized by all necessary action on its part.

(c) The Assigned Agreement is in full force and effect and has not been amended except as permitted by the Financing Agreement, and neither Consenting Party, nor to the knowledge of Consenting Party, Assignor, is in default in any material respect under the Assigned Agreement and no event or condition exists and is continuing which with the lapse of time, the giving of notice, or both would constitute such a default under the Assigned Agreement.

(d) Each of this Consent and the Assigned Agreement constitutes the legal, valid and binding obligations of the Consenting Party enforceable against the Consenting Party in accordance with its terms, except as enforceability may be limited by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law) and by applicable bankruptcy, insolvency, moratorium or similar laws affecting creditor's rights generally.

(e) All representations and warranties made by the Consenting Party in the Assigned Agreement were true and correct in all material respects on and as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects on and as of the date of this Consent.

(f) No material consent, approval, order or authorization of or registration, declaration of a filing with, or giving of notice to, obtaining of any license or permit from, or taking any other action with respect to, any federal, state or local government or public body, authority or agency is required in connection with the valid authorization, execution, delivery and performance of this Consent or the Assigned Agreements by the Consenting Party which has not been obtained or which could not reasonably be expected to be timely obtained in the ordinary course.

(g) There is no litigation, action, suit, investigation or proceeding pending, or to the knowledge of the Consenting Party, threatened against the Consenting Party, before or by any court, administrative agency, arbitrator or governmental authority, body or agency, which could materially and adversely affect the performance by the Consenting Party of its obligations hereunder or under the Assigned Agreement or which questions the validity, binding effect or enforceability hereof or thereof or any of the transactions contemplated hereby or thereby.

(h) The Consenting Party is not in material violation of its constitutive documents. The execution, delivery, and performance by the Consenting Party of this Consent and the Assigned Agreement, and the consummation of the transactions contemplated hereby and thereby, does not result in (i) any violation of any term of its constitutive documents or of any material contract or agreement applicable to it (ii) any violation of any license, permit, franchise, decree, writ, injunction, order, charter, law, ordinance, rule or regulation applicable to it or any of its properties or to its knowledge any obligations incurred by it or by which it or any of its properties may be bound or affected, or of any determination or award of any arbitrator applicable to it, or (iii) the creation of any lien upon any of its properties or assets, that in each of the circumstances and scenarios described in clauses (i), (ii), and (iii), could have a material adverse effect on the Consenting Party's ability to perform under this Consent or under the Assigned Agreement.

(i) The Consenting Party has not received notice of, or consented to the assignment of, any of the Assignor's right, title, or interest in the Assigned Agreement, to any person or entity other than Assignee.

9. Notices.

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Assignee:

Telephone:
Facsimile:
Attn:

If to Assignor:

Granite Reliable Power, LLC

Telephone:
Facsimile:

If to the Consenting Party, as appropriate:

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person; (b) is sent by reputable overnight delivery service (including Federal Express, ETA, Emery, DHL, Air Borne and other similar overnight delivery services); (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified mail with return receipt requested; or (d) if sent by telecopy confirmed by telephone. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4 p.m. recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving of thirty (30) days written notice to the other parties in the manner set forth herein above.

10. Governing Law.

This Consent shall be governed by, and construed under, the laws of the state of New Hampshire, applicable to contracts made and to be performed in such state and without reference to conflicts of laws.

11. Successors and Assigns.

This Consent shall be binding upon and inure to the benefit of the parties and their respective successors and assigns (which assigns, in the case of Assignee, shall include, without limitation, any nominee or designee of Assignee and any purchaser of all or any portion of its

rights under the Assigned Agreement in connection with the enforcement of remedies upon the occurrence and during the continuance of an Event of Default under the Financing Agreement).

12. Waiver.

No amendment or waiver of any provision of this Consent shall be effective unless the same shall be in writing and signed by each of the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

13. Counterparts.

This Consent may be executed in one or more counterparts and by facsimile and when signed by all of the parties listed below shall constitute a single binding agreement.

14. Further Assurances.

The Consenting Party will, upon reasonable written request of Assignee, execute and deliver such further documents and do such other acts and things necessary to effectuate the purposes of this Consent.

15. Conflicts.

In the event of a conflict between any provision of this Consent and the provisions of the Assigned Agreement, the provisions of this Consent shall prevail.

16. Termination.

This Consent and the rights of the Assignee hereunder shall terminate upon the payment in full of the obligations under the Financing Agreement. The Assignee shall notify promptly the Consenting Party and the Assignor upon termination of this Consent.

IN WITNESS WHEREOF, each of the undersigned has duly executed this Consent as of the date first above written.

COÖS COUNTY

By: _____
Name:
Title:

GRANITE RELIABLE POWER, LLC

By: _____
Name:
Title:

Accepted:

_____, as Administrative Agent

By: _____
Name:
Title:

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State of New Hampshire
Department of Revenue Administration

109 Pleasant Street
PO Box 1313, Concord, NH 03302-1313
Telephone (603) 230-5950
www.nh.gov/revenue

Kevin A. Clougherty
Commissioner

Margaret L. Fulton
Assistant Commissioner

April 30, 2012

PROPERTY APPRAISAL DIVISION
Stephan W. Hamilton
Director

David M. Cornell
Assistant Director

COOS COUNTY / DIXVILLE
OFFICE OF SELECTMEN
PO BOX 10
WEST STEWARTSTOWN NH 03597

EXHIBIT
5 ID

Dear Assessing Officials:

Earlier in 2012, you were notified of your town's 2011 sales-assessment weighted mean ratio. Since that time, the Department of Revenue Administration has completed the process of calculating the total equalized values for each municipality and unincorporated places throughout the state pursuant to RSA 21-J:3 XIII.

Two total equalized figures were calculated for each municipality: The "Total Equalized Valuation **Including** Utility Valuation and Railroad Monies Reimbursement" will be used to calculate your municipality's portion of the county tax and cooperative school district taxes, if applicable. The "Total Equalized Value **Not Including** Utility Valuation and Railroad Monies used to calculate each municipality's portion of the state education property tax.

In order to fulfill the requirements of RSA 21-J:3 XIII, adjustments have been made to the modified assessed valuation to bring such valuation to true and market value. Enclosed with this letter are informational sheets that summarize how each of the following figures was calculated.

Town Name: DIXVILLE	**Including** Utility Valuation and Railroad Monies Reimbursement	**Not Including** Utility Valuation and Railroad Monies Reimbursement
2011 Modified Local Assessed Valuation	16,691,185	16,612,377
+ D.R.A. Inventory Adjustment	0	0
= 2011 Equalized Assessed Valuation	16,691,185	16,612,377
+ Equalized Payment in Lieu of Taxes	6,462	6,462
+ Equalized Railroad Tax	0	0
= 2011 Total Equalized Valuation	16,697,647	16,618,839
2011 Equalized Assessed Valuation	16,691,185	
+ Adjustment RSA 31-A (Shared Revenues)	0	
= Base Valuation for Debt Limits	16,691,185	

This letter is official notification of your 2011 Total Equalized Valuation(s). You have the right to appeal these valuations to the N.H. Board of Tax and Land Appeals pursuant to RSA 71-B:5 II. The appeal period is not extended due to any communication, either verbal or written, between the D.R.A. and a municipality regarding the total equalized valuations.

If you have any questions regarding the computation of your total equalized assessed valuation(s), please contact this office at 230-5950.

Sincerely,

Linda C. Kennedy

Linda C. Kennedy, Manager
Equalization Bureau

TDD Access: Relay NH 1-800-735-2964

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Department.

State of New Hampshire
Department of Revenue Administration

109 Pleasant Street
PO Box 1313, Concord, NH 03302-1313
Telephone (603) 230-5950
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Kevin A. Clougherty
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PROPERTY APPRAISAL DIVISION
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Director

David M. Cornell
Assistant Director

April 30, 2012

COOS COUNTY / MILLSFIELD
OFFICE OF SELECTMEN
PO BOX 10
WEST STEWARTSTOWN NH 03597

EXHIBIT
tabbies 6 ID

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Earlier in 2012, you were notified of your town's 2011 sales-assessment weighted mean ratio. Since that time, the Department of Revenue Administration has completed the process of calculating the total equalized values for each municipality and unincorporated places throughout the state pursuant to RSA 21-J:3 XIII.

Two total equalized figures were calculated for each municipality: The "Total Equalized Valuation **Including** Utility Valuation and Railroad Monies Reimbursement" will be used to calculate your municipality's portion of the county tax and cooperative school district taxes, if applicable. The "Total Equalized Value **Not Including** Utility Valuation and Railroad Monies used to calculate each municipality's portion of the state education property tax.

In order to fulfill the requirements of RSA 21-J:3 XIII, adjustments have been made to the modified assessed valuation to bring such valuation to true and market value. Enclosed with this letter are informational sheets that summarize how each of the following figures was calculated.

Town Name: MILLSFIELD	**Including** Utility Valuation and Railroad Monies Reimbursement	**Not Including** Utility Valuation and Railroad Monies Reimbursement
2011 Modified Local Assessed Valuation	6,426,362	6,387,827
+ D.R.A. Inventory Adjustment	0	0
= 2011 Equalized Assessed Valuation	6,426,362	6,387,827
+ Equalized Payment in Lieu of Taxes	0	0
+ Equalized Railroad Tax	0	0
= 2011 Total Equalized Valuation	6,426,362	6,387,827
2011 Equalized Assessed Valuation	6,426,362	
+ Adjustment RSA 31-A (Shared Revenues)	0	
= Base Valuation for Debt Limits	6,426,362	

This letter is official notification of your 2011 Total Equalized Valuation(s). You have the right to appeal these valuations to the N.H. Board of Tax and Land Appeals pursuant to RSA 71-B:5 II. The appeal period is not extended due to any communication, either verbal or written, between the D.R.A. and a municipality regarding the total equalized valuations.

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Sincerely,

Linda C. Kennedy, Manager
Equalization Bureau

TDD Access: Relay NH 1-800-735-2964

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Department.

Waystack Frizzell
TRIAL LAWYERS
www.waystackfrizzell.com

251 Main Street - Post Office Box 137
Colebrook, New Hampshire 03576
(603) 237-8322 ♦ (800) 479-3884
Facsimile: (603) 237-5002
info@waystackfrizzell.com

PHILIP R. WAYSTACK
JONATHAN S. FRIZZELL

EXHIBIT
tabbies 7 ID

March 20, 2013

Kevin Clougherty, Commissioner
Department of Revenue Administration
109 Pleasant Street, P.O. Box 457
Concord, NH 03302-0457

Re: County of Coös, Unincorporated Places

Dear Commissioner Clougherty:

Please be advised that this law firm represents the Commissioners of the County of Coös, who act as the local executive body for the Unincorporated Places in the County. I have been authorized by the Commissioners to act on their behalf in communicating with you about this matter.

I am writing to you with respect to the taxation of the Granite Reliable Power windpark facility, located in the Unincorporated Places of Dixville and Millsfield. The GRP windpark consists of thirty-three (33) windmills with a rated capacity of three megawatts (3 MW) each, for a total rated capacity of ninety-nine megawatts (99 MW).

In 2008, acting pursuant to N.H. RSA 72:74, the Commissioners entered into a Payment in Lieu of Taxes agreement with Granite Reliable Power. As part of its due diligence in researching many variables before entering into the PILOT agreement, the Commissioners learned that your department had placed an initial appraised value on the windpark in the amount of $113,000,000.00. This figure was calculated by your property appraisal division, in anticipation of eventual taxation of the windpark by the State under N.H. RSA Chapter 83-F ("the Utility Property Tax"). **After much consultation with your department, the Commissioners relied upon this valuation in determining and negotiating the appropriate amount of the payment in lieu of tax that would be paid by Granite Reliable Power, which was agreed upon in the amount of $495,000.00 per year.**

Then, in late 2012, your property appraisal division acted pursuant to its statutory duty under N.H. RSA 83-F: 3. Under that statute,

> [o]n or before December 1 of the tax year, the commissioner shall determine the market value of utility property for the purposes of this chapter by utilizing

> generally accepted appraisal methods and techniques. Market value means the property's full and true value as defined under RSA 75:1. In the case of regulated public utilities as defined in RSA 362:2, the commissioner shall hold a single public hearing annually prior to performing the assessments, in order to receive public input on assessments under this chapter. Notice of such determination shall be given to the taxpayer[1] within 15 days of the commissioner's determination.

The Commissioners have learned, upon information and belief, that your property appraisal division has now placed an appraised value on the windpark facility in the amount of $217,000,000.00, which represents an increase in the appraised value of over One Hundred Million Dollars.

Further, the Commissioners have learned, as a result of conversations with employees of your department, that you intend to use this increased appraised value (determined for purposes of the state utility tax under RSA 83-F), when determining the equalized valuation of the taxable properties within the Unincorporated Places of Dixville and Millsfield. **The purpose of this letter is to request formally that you do not use this increased appraisal value.**

Pursuant to N.H. RSA 21-J: 3, XIII (Supp.), you have the legal obligation to:

> [e]qualize annually by May 1 the valuation of the property as assessed in the several town, cities, and unincorporated places in the state including the value of property exempt pursuant to RSA 72:37, 72:37-b, 72:39-a, 72:62, 72:66, and 72:70, property which is subject to tax relief under RSA 79-E:4, ***and property which is the subject of a payment in lieu of taxes under RSA 72:74*** by adding to or deducting from the aggregate valuation of the property in towns, cities, and unincorporated places ***such sums as will bring such valuations to the true and market value of the property***, and by making such adjustments in the value of other property from which the towns, cities, and unincorporated places receive taxes or payments in lieu of taxes ***as may be equitable and just, so that any public taxes that may be apportioned among them shall be equal and just.*** In carrying out the duty to equalize the valuation of property, the Commissioner shall follow the procedures set forth in RSA 21-J: 9-a.

(emphasis added).

N.H. RSA 21-J: 9-a sets forth the procedures that you must follow in determining the equalized valuation. The applicable provision of that statute, Section III, states that:

---

[1] Please note that the appraisal determination is transmitted by statute to the property owner/taxpayer, presumably to both notify the taxpayer but also to allow for a timely appeal by the taxpayer , if the taxpayer so chooses. The statute does not include a requirement that the appraisal determination be transmitted to the underlying municipality, nor does RSA 83-F provide any appeal or abatement procedure by the municipality, only by the taxpayer under RSA 83-F: 8.

If less than 2 percent of the total taxable parcels in a city, town or unincorporated place has been transferred by an arm's length sale or transfer during the 6 months prior to and 6 months following April 1 of the tax year for which such equalization is made or the commissioner determines the sales are unrepresentative of the property within the municipality, the commissioner may choose one or more of the following options:

(a) Include appraisals of any of the taxable property of such city, town, or unincorporated place in the sales-assessment ratio study. Such appraisals shall be based on full and true value pursuant to RSA 75:1 and shall be performed by department appraisers. The property to be appraised shall be selected by the commissioner.

(b) Include arm's length sales or transfers in the city, town, or unincorporated place, within 2-½ years preceding April 1 of the year preceding the tax year for which such equalization is made.

(c) Consider recent equalization ratio activity in adjoining cities, towns, or unincorporated places.

(emphasis added). I am assuming, without other knowledge, that your department's stated intent to use the windpark appraisal – conducted for purposes of the utility tax – as part of the equalized valuation assessment determination, comes from subparagraph (a), stated above.

On behalf of my client, I would call your attention to another part of the applicable statute, in particular, N.H. RSA 21-J: 9-a, IV. In that provision, "[t]he commissioner may use the inventory of property transfers authorized by RSA 74:18 in determining the equalized value of property **and may consider such other evidence as may be available to the commissioner on or before the time the final equalized value is determined.**" (emphasis added).

Pursuant to this section, my client would request that the Commissioner recognize the exigent circumstances that are presented by this unusual set of facts, and consider as "other evidence" available to you, specifically, the lower appraised value that had been determined back in 2007, at the time that my client entered into the PILOT agreement with Granite Reliable Power.

Without this exercise of discretion, the taxpayers in Dixville and Millsfield will face an unprecedented spike in the equalized valuation of those Unincorporated Places. Consequently, those taxpayers will also face an increased tax assessment, when the time comes for them to pay their property taxes to my client, for eventual remittance of the State Education Tax to the State Treasurer. This increased tax assessment to them, my client submits, is disproportionate, inequitable, and unfair, and would also constitute an unconstitutional tax on the taxpayers in Dixville and Millsfield.

My client is making this request of your department in the interests of fundamental fairness to the taxpayers in Dixville and Millsfield. The Commissioners in 2007 agreed to the development of a renewable energy facility, and toward that end entered into a PILOT agreement under RSA 83-F, in furtherance of a clear policy mandate from the State of New Hampshire to encourage such facilities. Now, the tax assessment consequences of that policy choice – *a policy choice clearly encouraged by the State of New Hampshire* – should not have to be borne in such a disproportionate manner by the taxpayers in Dixville and Millsfield.

As part of RSA 21-J: 9-a, IV, it would appear that you have the discretion to consider and grant this request, and that this choice on your behalf would not exceed your statutory discretion.

If communications with the Attorney General's office would be necessary in order for you to further consider this request, please understand that the Coös County Commissioners and myself will take any and all such action as may be necessary to facilitate and participate in such communications.

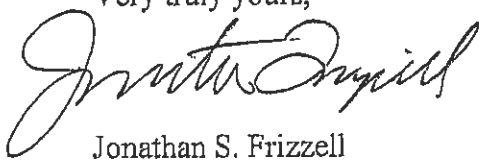
If statutory amendments are needed to clarify the intent of the statutes, and to emphasize that municipalities should not have to unfairly bear an added tax burden by virtue of the PILOT agreements encouraged by the State under RSA 83-F, then my client will act to facilitate those amendments, whether as part of this Legislative Session or as part of the next session in 2014.

In closing, let me add that this request is being submitted to you well in advance of the May 1 statutory deadline set forth in N.H. RSA 21-J: 3, XIII. My client is prepared to continue to communicate with you and your department in order to attempt to arrive at a workable solution in place before that deadline, specifically a workable solution that allows you to fulfill all of your statutory duties, but which also does not create an unfair and potentially unconstitutional taxation result upon the taxpayers of Dixville and Millsfield.

This letter does not waive any or all of my client's rights, claims, and defenses.

Thank you for your time and consideration.

Very truly yours,



Jonathan S. Frizzell

JSF/lbj
Cc: Coös County Commissioners
Steve Hamilton, Director of Property Appraisal Division

State of New Hampshire
Department of Revenue Administration

109 Pleasant Street
PO Box 487, Concord, NH 03302-0487
Telephone (603) 230-5950
www.nh.gov/revenue

REVENUE
EXHIBIT
tabbies 8 ID

PROPERTY APPRAISAL DIVISION
Stephan W. Hamilton
Director

Margaret L. Fulton
Assistant Commissioner

David M. Cornell
Assistant Director

April 2, 2013

RECEIVED
APR 4 2013
WAYSTACK FRIZZELL

Jonathan S. Frizzell, Esquire
Waystack Frizzell Trial Lawyers
251 Main Street
P.O.Box 137
Colebrook, NH 03576

Dear Attorney Frizzell:

Thank you for your recent correspondence regarding the County of Coos, Unincorporated places. I have thoroughly reviewed the letter and researched the issues that were raised therein, and I am prepared to answer the substantive issues.

The department has never to its knowledge provided any appraisal or valuation of this property prior to the Determination of Value pursuant to RSA 83-F:3, on or about December 1, 2012. The department was invited to and attended a meeting on December 18, 2007 to discuss the potential development of this project. In addition to that meeting, the Department received several telephone calls on the issue through August 2008, from both the County and the Taxpayer.

An appraisal of the property would have to be constructed upon knowledge of financial details then known only to the developer of the project. At the time of the meeting, the Department did not possess the kind of detailed information that would have been necessary in order to make a certain valuation determination or appraisal.

At no time in any of these meetings or calls, or at any time subsequent thereto, did the Department appraise the property or provide speculative appraisals of the property. There clearly had been some informal dialogue between the County and the Department about some simple, common arithmetic utilizing a very simplistic unit value. It is unclear as to the source of the numbers that were discussed.

The department is very concerned about the letter as produced, particularly in regard to the assertion that it provided an appraisal of the property in 2007 and or 2008. To the knowledge of the Department, the first appraisal that we made of this property began in the summer of 2012, was not completed until the end of 2012, and had an effective date of April 1, 2012. If you have any documentation of an appraisal prepared by the Department from 2007 or 2008, please provide it to us as soon as possible.

The process of equalization is well regulated by a series of laws, rules, and an equalization manual that was published by the Equalization Standards Board. The process does encourage assessing officials to introduce evidence that they believe is relevant to the calculation of the total equalized value. The opportunity for the introduction of additional information or alternative ratio methodology is outlined in Rev 2804.01. Appeal of equalized valuations are to the New Hampshire Board of Tax and Land Appeals pursuant to RSA 71-B:5, II. These are to be heard in an expedited manner.

If there are other items that you wish the Department to consider, please forward them at your earliest convenience.

Sincerely,

Stephan W. Hamilton, Director
Property Appraisal Division

Cc: Margaret L. Fulton, Acting Commissioner

Waystack Frizzell
TRIAL LAWYERS
www.waystackfrizzell.com

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Colebrook, New Hampshire 03576
(603) 237-8322 ♦ (800) 479-3884
Facsimile: (603) 237-5002
info@waystackfrizzell.com

PHILIP R. WAYSTACK
JONATHAN S. FRIZZELL

EXHIBIT
tabbies 9 ID

April 17, 2013

Stephan W. Hamilton, Director – Property Appraisal Division
Department of Revenue Administration
109 Pleasant Street, P.O. Box 487
Concord, NH 03302-0487

Re: County of Coös, Unincorporated Places

Dear Director Hamilton:

In response to your letter dated April 2, 2013, I am sending you copies of the following:

1. 12/18/07 Minutes of a Non-Public Meeting of the Coös County Commissioners, at which meeting representatives of DRA were present; and,

2. 01/17/08 Memorandum prepared by the Coös County Administrator, which memo was circulated to the Commissioners.

Although these documents were authored by Ms. Suzanne Collins, who is now retired from her position as County Administrator, the substantive content of these documents can be fully corroborated by two of the current board of Commissioners (Chairman Tom Brady and Commissioner Paul Grenier), both of whom have specific recollection of the events and analyses that are described in these documents.

These documents are being provided to you in response to your comment that "[a]t no time in any of these meetings or calls, or at any time subsequent thereto, did the Department appraise the property or provide speculative appraisals of the property." My clients acknowledge that no formal appraisals occurred, however, it is their position that the County specifically relied upon the Department's comments and input as to the ***methodology*** of the appraisal process, and more importantly, upon the ***consequences*** of the appraisal process (i.e., the way in which the PILOT valuation affects the overall equalization process under N.H. RSA 21-J: 3, XIII).

We understand that the Department's interpretation of these events, here in 2013, is that they were merely part of "informal dialogue ... about some simple, common arithmetic utilizing a very simplistic unit value." The Commissioners do not share in that

interpretation, because their good-faith actions since 2007 demonstrate that there was justifiable reliance upon the Department's input, which is now in jeopardy of being used to the County's detriment.

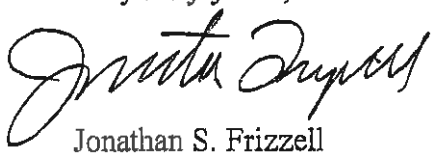
My clients continue to investigate and research all of their legal options at present. They do, however, certainly thank you and the Department for your recent correspondence, stating the Department's position.

In closing, let me repeat and/or re-state one of the positions from my previous letter. My clients fail to see the statutory or regulatory authority for the legal conclusion that an appraisal conducted under the auspices of N.H. RSA Chapter 83-F must – **by necessity** – be used for purposes of the equalization process under N.H. RSA 21-J: 3, XIII. Perhaps that appraisal can be used; we fail to see the authority for the proposition that it must be used. My clients' position is that it would be inequitable to do so, under these circumstances.

This letter waives none of my clients' rights, claims, and/or defenses.

Thank you for your ongoing cooperation.

Very truly yours,



Jonathan S. Frizzell

JSF/lbj
Enclosures
Cc: Coös County Commissioners

Waystack Frizzell
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PHILIP R. WAYSTACK
JONATHAN S. FRIZZELL

EXHIBIT
tabbies 10 ID

April 17, 2013

Stephan W. Hamilton, Director – Property Appraisal Division
Department of Revenue Administration
109 Pleasant Street, P.O. Box 487
Concord, NH 03302-0487

Re: County of Coös, Unincorporated Places

Dear Director Hamilton:

I am writing to request copies of two items under N.H. RSA 91-A ("the Right-to-Know Law"), specifically the following:

1. The 2013 edition of the "New Hampshire Equalization Manual", referenced in Rev 2802.01; and,

2. A complete copy of the Department's appraisal of the Granite Reliable Windpark facility, prepared and completed under the auspices of N.H. RSA Chapter 83-F, which appraisal is referenced in your correspondence to me dated April 2, 2013.

If anything further is needed from me or my clients in order to process this request, please advise. Thank you for your cooperation.

Very truly yours,

Jonathan S. Frizzell

JSF/lbj
Cc: Coös County Commissioners

State of New Hampshire
Department of Revenue Administration

109 Pleasant Street
PO Box 487, Concord, NH 03302-0487
Telephone 603-230-5000
www.nh.gov/revenue

EXHIBIT
tabbies 11 10

Margaret L. Fulton
Assistant Commissioner

RECEIVED
APR 24 2013

April 22, 2013

Jonathan S. Frizzell, Esquire
Waystack Frizzell Trial Lawyers
251 Main Street
P.O.Box 137
Colebrook, NH 03576

Dear Attorney Frizzell:

I have received your recent request for the production of documents pursuant to Chapter RSA 91-A.

Your first request is for a copy of the copy of the Equalization Manual. The most recently adopted version of the manual was published in 2006. The manual is available online at http://www.revenue.nh.gov/munc_prop/equalization/2006/documents/equalization_manual_2006.doc and I have included a hard-copy as well.

The second request is for an appraisal report prepared for the administration of the Utility Property Tax under Chapter RSA 83-F. Pursuant to the requirements of RSA 21-J:14, the appraisal is a confidential and privileged document, and may not be released. No exemption from the non-disclosure requirements of RSA 21-J:14 exists for Utility Property Tax administration. Disclosure of confidential and privileged information carries civil and criminal penalties.

If there are other items that you wish the Department to provide, please forward them at your earliest convenience.

Sincerely,

Stephan W. Hamilton, Director
Property Appraisal Division

Cc: Margaret L. Fulton, Acting Commissioner

State of New Hampshire
Department of Revenue Administration

109 Pleasant Street
PO Box 1313, Concord, NH 03302-1313
Telephone (603) 230-5950
www.nh.gov/revenue

Kevin A. Clougherty
Commissioner

Margaret L. Fulton
Assistant Commissioner

PROPERTY APPRAISAL DIVISION
Stephan W. Hamilton
Director

David M. Cornell
Assistant Director

4/29/2013

COOS COUNTY / DIXVILLE
OFFICE OF SELECTMEN
PO BOX 10
WEST STEWARTSTOWN NH 03597

EXHIBIT
tabbies 12 ID

Dear Assessing Officials:

Earlier in 2013, you were notified of your town's 2012 sales-assessment weighted mean ratio. Since that time, the Department of Revenue Administration has completed the process of calculating the total equalized values for each municipality and unincorporated places throughout the state pursuant to RSA 21-J:3 XIII.

Two total equalized figures were calculated for each municipality: The "Total Equalized Valuation **Including** Utility Valuation and Railroad Monies Reimbursement" will be used to calculate your municipality's portion of the county tax and cooperative school district taxes, if applicable. The "Total Equalized Value **Not Including** Utility Valuation and Railroad Monies used to calculate each municipality's portion of the state education property tax.

In order to fulfill the requirements of RSA 21-J:3 XIII, adjustments have been made to the modified assessed valuation to bring such valuation to true and market value. Enclosed with this letter are informational sheets that summarize how each of the following figures was calculated.

Town Name: DIXVILLE	**Including** Utility Valuation and Railroad Monies Reimbursement	**Not Including** Utility Valuation and Railroad Monies Reimbursement
2012 Modified Local Assessed Valuation	8,345,561	8,254,416
+ D.R.A. Inventory Adjustment	46,107,655	0
= 2012 Equalized Assessed Valuation	54,453,216	8,254,416
+ Equalized Payment in Lieu of Taxes	0	0
+ Equalized Railroad Tax	0	0
= 2012 Total Equalized Valuation	54,453,216	8,254,416
2012 Equalized Assessed Valuation	54,453,216	
+ Adjustment RSA 31-A (Shared Revenues)	0	
= Base Valuation for Debt Limits	54,453,216	

This letter is official notification of your 2012 Total Equalized Valuation(s). You have the right to appeal these valuations to the N.H. Board of Tax and Land Appeals pursuant to RSA 71-B:5 II. The appeal period is not extended due to any communication, either verbal or written, between the D.R.A. and a municipality regarding the total equalized valuation

If you have any questions regarding the computation of your total equalized assessed valuation(s), please contact this office at 230-5950.

Sincerely,

Linda C. Kennedy, Manager
Equalization Bureau
TDD Access: Relay NH 1-800-735-2964

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Department.

State of New Hampshire
Department of Revenue Administration

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Kevin A. Clougherty
Commissioner

Margaret L. Fulton
Assistant Commissioner

4/29/2013

PROPERTY APPRAISAL DIVISION
Stephan W. Hamilton
Director

David M. Cornell
Assistant Director

EXHIBIT
number 13 1D

COOS COUNTY / MILLSFIELD
OFFICE OF SELECTMEN
PO BOX 10
WEST STEWARTSTOWN NH 03597

Dear Assessing Officials:

Earlier in 2013, you were notified of your town's 2012 sales-assessment weighted mean ratio. Since that time, the Department of Revenue Administration has completed the process of calculating the total equalized values for each municipality and unincorporated places throughout the state pursuant to RSA 21-J:3 XIII.

Two total equalized figures were calculated for each municipality: The "Total Equalized Valuation **Including** Utility Valuation and Railroad Monies Reimbursement" will be used to calculate your municipality's portion of the county tax and cooperative school district taxes, if applicable. The "Total Equalized Value **Not Including** Utility Valuation and Railroad Monies used to calculate each municipality's portion of the state education property tax.

In order to fulfill the requirements of RSA 21-J:3 XIII, adjustments have been made to the modified assessed valuation to bring such valuation to true and market value. Enclosed with this letter are informational sheets that summarize how each of the following figures was calculated.

Town Name: MILLSFIELD	**Including** Utility Valuation and Railroad Monies Reimbursement	**Not Including** Utility Valuation and Railroad Monies Reimbursement
2012 Modified Local Assessed Valuation	8,960,892	8,914,316
+ D.R.A. Inventory Adjustment	171,381,284	0
= 2012 Equalized Assessed Valuation	180,342,176	8,914,316
+ Equalized Payment in Lieu of Taxes	0	0
+ Equalized Railroad Tax	0	0
= 2012 Total Equalized Valuation	180,342,176	8,914,316
2012 Equalized Assessed Valuation	180,342,176	
+ Adjustment RSA 31-A (Shared Revenues)	0	
= Base Valuation for Debt Limits	180,342,176	

This letter is official notification of your 2012 Total Equalized Valuation(s). You have the right to appeal these valuations to the N.H. Board of Tax and Land Appeals pursuant to RSA 71-B:5 II. The appeal period is not extended due to any communication, either verbal or written, between the D.R.A. and a municipality regarding the total equalized valuation

If you have any questions regarding the computation of your total equalized assessed valuation(s), please contact this office at 230-5950.

Sincerely,

Linda C. Kennedy

Linda C. Kennedy, Manager
Equalization Bureau

TDD Access: Relay NH 1-800-735-2964

Individuals who need auxiliary aids for effective communication in programs and services of the Department of Revenue Administration are invited to make their needs and preferences known to the Department.

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PHILIP R. WAYSTACK
JONATHAN S. FRIZZELL

EXHIBIT
tabbies 14 ID

June 19, 2013

Andew Bender, Esquire
Brookfield Renewable Energy Group
200 Donald Lynch Blvd., Suite 300
Marlborough, MA 01752

Re: County of Coos / Granite Reliable Power

Dear Attorney Bender:

The purpose of this letter is to follow up on my telephonic request to you of last week. On behalf of my client, the Coos County Commissioners, I am requesting that Brookfield grant permission to the New Hampshire Department of Revenue Administration ("DRA") for the release of the Granite Reliable Windpark appraisal, performed by DRA pursuant to N.H. RSA 83-F.

I requested the appraisal directly from DRA. The request was denied, but I was told that if a release from Brookfield was obtained, then my request would be granted.

Thank you.

Sincerely,

Jonathan S. Frizzell

Cc: Jennifer Fish, County Administrator
Stephan Hamilton, Director – N.H. Department of Revenue Administration

507	COOS	ATKINSON & GILMANTON	747,203.00	0.0265%	3,737	692,446.00	0.0233%	3,293.86	(442.83)	
033	COOS	BEAN'S GRANT	462.13	0.0000%	2	568.00	0.0000%	2.70	0.39	
035	COOS	BEAN'S PURCHASE	20,650.00	0.0007%	103	20,650.00	0.0007%	98.23	(5.04)	
045	COOS	BERLIN	333,119,633.45	11.7949%	1,665,901	319,941,891.54	10.7754%	1,521,916.28	(143,985.03)	
065	COOS	CAMBRIDGE	8,318,771.55	0.2945%	41,601	8,378,805.73	0.2822%	39,856.74	(1,744.69)	
075	COOS	CARROLL	310,495,189.35	10.9938%	1,552,758	319,351,096.46	10.7555%	1,519,105.95	(33,652.54)	
079	COOS	CHANDLER'S PURCHASE	49,152.22	0.0017%	246	49,548.03	0.0017%	235.69	(10.11)	
093	COOS	CLARKSVILLE	45,693,649.89	1.6179%	228,510	45,050,941.03	1.5173%	214,300.67	(14,209.16)	
095	COOS	COLEBROOK	168,678,229.44	5.9724%	843,545	153,939,496.71	5.1846%	732,267.43	(111,277.22)	
097	COOS	COLUMBIA	76,463,194.04	2.7074%	382,386	75,816,897.92	2.5535%	360,649.77	(21,735.78)	
105	COOS	CRAWFORD'S PURCHASE	162,456.74	0.0058%	812	162,527.41	0.0055%	773.12	(39.31)	
501	COOS	CUTT'S GRANT	0.00	0.0000%	-	0.00	0.0000%	-	-	
109	COOS	DALTON	82,681,816.65	2.9275%	413,484	79,096,775.28	2.6639%	376,251.67	(37,232.66)	
503	COOS	DIX GRANT	926,086.00	0.0328%	4,631	872,812.00	0.0294%	4,151.84	(479.44)	
121	COOS	DIXVILLE	16,697,646.90	0.5912%	83,503	54,453,215.96	1.8339%	259,025.90	175,522.47	104,990.00
129	COOS	DUMMER	44,207,497.76	1.5653%	221,078	53,977,982.00	1.8179%	256,765.28	35,687.56	NO PILT
151	COOS	ERROL	81,818,412.06	2.8970%	409,167	80,166,704.44	2.7000%	381,341.16	(27,825.35)	
505	COOS	ERVING'S GRANT	76,880.00	0.0027%	384	67,581.00	0.0023%	321.47	(63.00)	
177	COOS	GORHAM	251,562,872.30	8.9072%	1,258,043	250,272,146.60	8.4290%	1,190,507.60	(67,535.68)	
187	COOS	GREEN'S GRANT	4,205,112.26	0.1489%	21,029	4,162,269.11	0.1402%	19,799.30	(1,230.09)	
509	COOS	HADLEY'S PURCHASE	0.00	0.0000%	-	0.00	0.0000%	-	-	
235	COOS	JEFFERSON	124,377,095.00	4.4039%	621,999	122,633,917.03	4.1302%	583,351.41	(38,647.24)	
241	COOS	KILKENNY	11,747.01	0.0004%	59	14,140.98	0.0005%	67.27	8.52	
247	COOS	LANCASTER	239,707,690.15	8.4874%	1,198,757	225,415,634.36	7.5919%	1,072,268.85	(126,487.74)	
273	COOS	LOW & BURBANK GRANT	0.00	0.0000%	-	0.00	0.0000%	-	-	
291	COOS	MARTIN'S LOCATION	36,617.71	0.0013%	183	44,151.02	0.0015%	210.02	26.90	
301	COOS	MILAN	106,421,157.80	3.7681%	532,203	114,245,095.17	3.8477%	543,447.03	11,244.40	
305	COOS	MILLSFIELD	6,426,361.80	0.2275%	32,138	180,342,175.97	6.0738%	857,861.07	825,723.41	390,010.00
347	COOS	NORTHUMBERLAND	108,739,969.71	3.8502%	543,799	99,260,928.62	3.3430%	472,169.56	(71,629.24)	
513	COOS	ODELL	2,180,938.00	0.0772%	10,907	2,045,630.00	0.0689%	9,730.76	(1,175.92)	
367	COOS	PINKHAM'S GRANT	3,002,406.94	0.1063%	15,015	2,969,369.71	0.1000%	14,124.85	(889.91)	
369	COOS	PITTSBURG	270,559,024.05	9.5798%	1,353,041	251,138,174.07	8.4582%	1,194,627.17	(158,414.16)	
381	COOS	RANDOLPH	63,370,164.69	2.2438%	316,908	67,628,199.25	2.2777%	321,697.35	4,788.86	
497	COOS	SARGENT'S PURCHASE	1,852,720.00	0.0656%	9,265	1,852,720.00	0.0624%	8,813.12	(452.17)	
515	COOS	SECOND COLLEGE GRANT	1,434,022.00	0.0508%	7,171	1,312,002.00	0.0442%	6,241.00	(930.42)	
413	COOS	SHELBURNE	69,684,461.42	2.4673%	348,486	66,951,470.59	2.2549%	318,478.25	(30,007.47)	
421	COOS	STARK	64,690,331.81	2.2905%	323,511	58,080,661.80	1.9561%	276,281.12	(47,229.41)	
423	COOS	STEWARTSTOWN	90,970,753.86	3.2210%	454,937	85,024,149.08	2.8636%	404,447.31	(50,489.24)	
429	COOS	STRATFORD	57,020,795.52	2.0190%	285,156	55,573,616.98	1.8717%	264,355.48	(20,800.39)	
517	COOS	SUCCESS	10,962,813.14	0.3882%	54,824	10,892,344.39	0.3668%	51,813.27	(3,010.77)	
447	COOS	THOM & MES PURCHASE	6,043,498.87	0.2140%	30,223	5,761,136.52	0.1940%	27,404.87	(2,818.12)	
477	COOS	WENTWORTH LOCATION	9,343,595.33	0.3308%	46,726	9,250,384.63	0.3115%	44,002.71	(2,723.77)	
481	COOS	WHITEFIELD	161,511,903.57	5.7187%	807,706	162,266,524.59	5.4650%	771,877.87	(35,828.62)	
			2,824,272,984.12	1.00	14,123,935	2,969,176,781.97	1.00	14,123,935.00		495,000.00

2,824,272,984.12

DIXVILLE & MILLSFIELD SHARE OF CT T.	1,116,886.97	1,001,245.88

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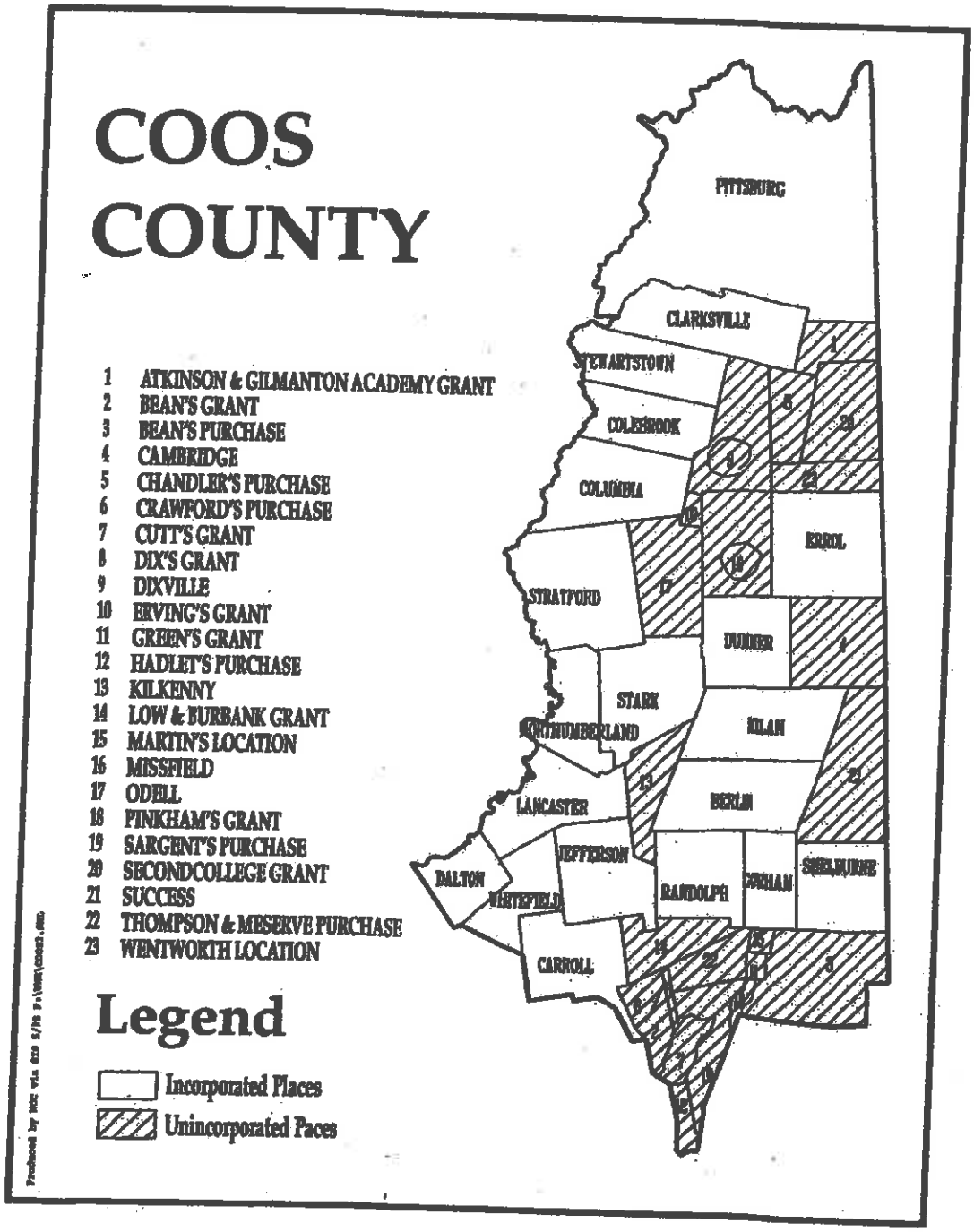
As the following map illustrates, there are twenty-three Unincorporated Places in Coös County.



THE STATE OF NEW HAMPSHIRE

GRAFTON, SS. **SUPERIOR COURT**

New Hampshire Electric Cooperative, Inc.
v.
Town of Rumney, Docket No. 11-CV-375
Town of Lincoln, Docket No. 11-CV-377
Town of Haverhill, Docket No. 11-CV-378
Town of Canaan, Docket No. 11-CV-379

ORDER

The petitioner, New Hampshire Electric Cooperative, Inc. ("NHEC"), seeks abatement of taxes levied on it by the respondents ("Towns"). The case is before the Court to determine whether a state-issued appraisal report of the market value of NHEC's property in the Towns is admissible. The Court held a hearing on November 29, 2012. After considering the pleadings, the arguments of the parties, and the applicable law, the Court finds and rules as follows.

I. Facts

NHEC is a member-owned, non-profit rural electric cooperative that provides electric utility distribution service to approximately 80,000 members in 115 communities throughout New Hampshire. NHEC owns property located within the geographic borders of the Towns. The Towns assessed taxes on the properties that NHEC owns in each. NHEC disputed the assessment of its real estate by the Towns and sought abatement. The Towns did not respond to NHEC's abatement requests, and subsequently NHEC filed the present appeal.

NHEC seeks to admit several state-created appraisals of the market value of NHEC property in the Towns. The Department of Revenue Administration ("DRA") conducts annual appraisals to determine the value of NHEC's properties and allocate its aggregate value to the 115 communities served by NHEC. The DRA issues the appraisal reports to NHEC pursuant to RSA 83-F:4 ("DRA

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Reports"). The DRA provides NHEC with a copy of the DRA Reports and informs all 115 communities, including the Towns, of the allocated results of its appraisal. The DRA Reports at issue are for tax years 2010 and 2011. (See NHEC Mem., Ex. B.)

In relevant part, the statute states that the DRA "shall determine the market value of utility property for the purposes of this chapter by utilizing generally accepted appraisal methods and techniques. Market value means the property's full and true value as defined under RSA 75:1." RSA 83-F:3. RSA 75:1 in turn provides:

> The selectmen shall appraise . . . [NHEC's] taxable property at its market value. Market value means the property's full and true value as the same would be appraised in payment of a just debt due from a solvent debtor. The selectmen shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

In the presently pending motions, the Towns seek to depose Scott E. Dickman, a utility appraiser for the DRA, and subpoena his records used in preparation the DRA Reports. The Towns argue that if the DRA Reports are admitted, the Towns must have the opportunity to depose Mr. Dickman about the contents of the Reports and his appraisal methods. The Towns also seek to discover any documents on which Mr. Dickman relied or those he created while producing the DRA Reports. The DRA and Mr. Dickman moved to quash the subpoena and deposition arguing that the requested DRA files and Mr. Dickman's appraisal methodologies are confidential. On October 25, 2012, the Court granted DRA's motion to quash the subpoena without prejudice.

NHEC takes the position that the DRA Reports are independently admissible under two hearsay exceptions of the New Hampshire Rules of Evidence. NHEC argues that it has not retained Mr. Dickman as an expert and that the DRA Reports are not expert reports. NHEC explains that it has retained its own expert, George Lagassa of Mainstream Associates, a real estate appraiser, who will provide appraisal reports regarding the value of NHEC's properties in the Towns. NHEC has

also retained another expert, Russell W. Thibeault of Applied Economic Research, another real estate appraiser, to review the assessment of NHEC's land interests. NHEC reserves the right, however, to call Mr. Dickman at trial to authenticate the DRA appraisals and to testify to factual matters concerning the appraisals.

II. Discussion

First, the Court notes that the parties appear to agree that the DRA Reports are relevant to NHEC's tax abatement claim. (See NHEC Mem. at 7; see generally Towns Mem.) The Court finds that the DRA Reports are relevant because they go directly to NHEC's claim regarding the market value of its properties. See NH.Ev.R. 401 ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); State v. Pelkey, 145 N.H. 133, 135 (2000) ("The determination of the relevance of evidence is a matter within the trial court's sound discretion.").

Next, the Court considers whether the DRA Reports are confidential within the meaning of RSA 21-J:14. In relevant part, the statute provides:

> Notwithstanding any other provision of law, and except as otherwise provided in this chapter, the records and files of the department are confidential and privileged. Neither the department, nor any employee of the department, nor the legislative budget assistant or any expert consultants, including certified public accountants, hired by the legislative budget assistant to assist in the carrying out of his or her duties, nor any other person charged with the custody of such records or files, nor any vendor or any of its employees to whom such information becomes available in the performance of any contractual services for the department shall disclose any information obtained from the department's records, files, or returns or from any examination, investigation or hearing, nor may any such employee or person be required to produce any such information for the inspection of any person or for use in any action or proceeding except as hereinafter provided.

RSA 21-J:14, I. The statute provides several exceptions, including for "[d]elivery to a taxpayer or his duly authorized representative of a copy of any return or other papers filed by the taxpayer."

RSA 21-J:14, V(a). NHEC argues that this exception releases the DRA from the confidentiality requirements with respect to the DRA Reports.

The Court need not decide whether this exception applies in the present case because once the DRA provided the Reports to NHEC, it, as the owner of the property that is the subject of the DRA Reports, was free to choose whether to waive confidentiality. As the holder of the privilege, NHEC chose to waive the privilege and make the DRA Reports public. Nothing in the statute prohibits NHEC from doing so. Because NHEC has voluntarily waived confidentiality of the DRA Reports by seeking to introduce them, the admissibility of the DRA Reports is not barred by RSA 21-J:14. See, e.g., In re State, 162 N.H. 64, 69 (2011) ("We have held that a party waives the privilege by putting the confidential communications at issue by injecting the privileged material into the case."); Desclos v. Southern New Hampshire Medical Center, 153 N.H. 607, 612 (2006) (explaining both the attorney-client and psychotherapist-patient privileges are waived when client/patient puts the privileged material at issue by injecting it into the case). The Court rules that the NHEC is not barred by RSA 21-J:14 from introducing the DRA Reports into evidence.

Because the Court determined that the DRA Reports are highly relevant to NHEC's claims, the Court now turns to the question of how the DRA Report are to be admitted. NHEC claims that the DRA Reports are independently admissible under either the business records exception or public records exception to hearsay and therefore do not require Mr. Dickman's testimony. The Towns argue that the DRA Reports are expert reports, requiring Mr. Dickman's deposition. The Towns also argue that the DRA Reports are alternatively inadmissible under the hearsay exceptions.

The purpose of the hearsay rules is to prevent the admission of unsworn testimony that is not subject to cross-examination. See Anderson v. United States, 417 U.S. 211, 219–20 (1974) (explaining that the reason behind excluding evidence based upon the hearsay rule is that a party

does not have the opportunity to cross-examine an out-of-court witness). The purpose of the business and public records exceptions to the hearsay rule is to allow certain documents into evidence without a sponsoring witness. The law requires that the documents are not untrustworthy before they may be admitted. See N.H.R.Ev. 803(6) (explaining that "the source of information or the method of circumstances of preparation [must not] indicate lack of trustworthiness"); N.H.R.Ev. 803(8) (explaining that the source of the information sought to admitted must not "indicate lack of trustworthiness"); State v. Brooks, __ N.H. __, __ (Oct. 30, 2012); 56 A.3d 1245, 1253 (N.H. 2012) ("If the primary purpose of creating the [business or public] record[s] is not to prove a fact at trial, the admissibility of the records is the concern of state and federal rules of evidence[.]").

The Court determines that the DRA Reports are not evidence of the nature that is admitted under the hearsay exceptions. See State v. Stetson, 135 N.H. 267, 269 (1992) ("A decision on the admissibility of evidence under an exception to the hearsay rule is within the sound discretion of the trial court and will not be disturbed unless clearly erroneous."); Brown v. Bonnin, 132 N.H. 488, 491 (1989) ("The admissibility of evidence is generally within the discretion of the trial court[.]") Although NHEC does not identify the DRA Reports as expert reports, or consider Mr. Dickman its expert, DRA Reports provide expert information because they consist of Mr. Dickman's professional opinions and conclusions about the market value of the subject property.

Each DRA Report was "prepared for the purpose of forming an opinion of the market value of the fee simple interest in the subject property." (NHEC Mem., Ex. B at 5.) The DRA Reports are expert conclusions, necessitating, in the Court's view, the opportunity for the Towns to inquire of Mr. Dickman about his appraisal methods. See, e.g., Simpson v. Calivas, 139 N.H. 1, 12–13 (1994) ("Parties seeking to introduce probate appraisals should have to overcome a strong presumption of unreliability, but ultimately, and on a case-by-case basis, the trial court must determine if that

presumption has been overcome."); Holmes v. State, 109 N.H. 319, 321 (1969) (finding that a probate inventory and appraisal was not reliable where "[t]he appraiser[, an attorney not a real estate appraiser,] had not seen the property, was not familiar with market values in the town in which the property was located and did not discuss the appraisal with the plaintiffs").

Each DRA Report is approximately 40 pages, consisting of approximately 10 pages of introduction, including the purpose of the appraisal, and definitions; and approximately 20 pages of different valuation approaches, reconciliation, and the final opinion of value. The Towns should be allowed to question the creator of the DRA Reports before NHEC uses them to show that the Towns disproportionately assessed taxes against NHEC. See, e.g., Communications Corp. v. United States, 608 F.2d 485, 510 (Ct. Cl. 1979) ("Rule 803(6) . . . should not be construed to allow the introduction of expert opinions without opportunity to ascertain the qualifications of the maker, the extent of his study or for other reasons to cross-examine him. Otherwise, the report of every appraiser would be admissible upon the mere showing that the preparer was in the business of making such appraisals, without more."). Therefore, the Court concludes that the DRA Reports are not admissible under the hearsay exceptions, but are admissible as expert reports necessitating deposition of the sponsoring expert.

Superior Court Rule 35 sets out the general provisions governing discovery. The rule indicates that a court may order a deposition of an expert retained in "preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means." Super. Ct. R. 35 b(3)(b). Although, Mr. Dickman was not retained by NHEC for trial, he is an expert, and NHEC seeks to introduce his report into evidence and reserves the right to call him at trial. The Court determines that it is fair and in the best interest of justice to

allow the Towns to depose Mr. Dickman about the DRA Reports, if such Report will be presented as evidence against the Towns at trial. See State v. Bennett, 144 N.H. 13, 24 (1999) (Thayer, J., concurring) (noting that "hearsay statements are subject to a Rule 403 balancing test"). As determined in the above analysis, the DRA Reports are compilations of data, facts, and the expert opinions. Because NHEC intends to admit the DRA Reports, the Towns are entitled to depose Mr. Dickman about his reports.

Moreover, New Hampshire law promotes liberal and broad discovery. Discovery is proper as long as the information sought "appears reasonably calculated to lead to the discovery of admissible evidence." Breagy v. Stark, 138 N.H. 479, 482 (1994) (quoting Super. Ct. R. 35(b)(1)). "Absent a claim of privilege or irrelevance, a party may not limit the scope of an adverse party's discovery request." Breagy, 138 N.H. at 482; see also Barry v. Horne, 117 N.H. 693, 695 (1977). Thus, disallowing a party to depose an expert, whose expertise the opposing party will rely on to prove its case is generally inconsistent with New Hampshire law of broad discovery. As discussed above, the DRA Reports are not privileged and the Towns may depose Mr. Dickman in regards to them. Admitting the DRA Reports without allowing the Towns the opportunity to depose Mr. Dickman would be unfairly prejudicial to the Towns.

The Towns may depose Mr. Dickman regarding the DRA Reports only. They cannot compel Mr. Dickman to produce his "work papers." The Towns may ask Mr. Dickman about the DRA Reports and his appraisal methods as relevant to those DRA Reports. The Towns, however, may not require Mr. Dickman to produce or discuss any internal DRA documents. Any such information is related to internal DRA process of assessing property and is protected under RSA 21-J:14. DRA work papers are confidential under the statute, and the Towns have not demonstrated a substantial need for their production. Wheeler v. School Administrative Unit 21, 130 N.H. 666, 670 (1988)

(ruling that "where the plaintiff has failed to carry his burden of proof under Rule 35.b(3)(b), [there was] . . . no abuse of discretion in the trial court's denying the motion to depose the expert witness); see also Super. Ct. R. 35(b)(2); Aranson v. Schroeder, 140 N.H. 359, 370 (1995). The only documents not so protected are the DRA Reports because NHEC has chosen to waive confidentiality. Moreover, NHEC indicated that the documents that the DRA required to create the Reports have already been provided to the Towns through discovery. Also, NHEC represents that any follow-up information that the DRA needed to create the Reports has been provided. Because all unprivileged documents related to DRA's formation of the Reports have already been disclosed, this limited deposition is proper.

III. Conclusion

Accordingly, the DRA Reports are admissible and the Towns may depose Mr. Dickman in connection to those Reports.

SO ORDERED.

Dated: 2/13/2013

Timothy J. Vaughan
Presiding Justice