State of New Hampshire

v.

Centercorp-North Conway, LLC, et al.

Docket No.: 19406-02ED

REPORT OF THE BOARD

I. INTRODUCTION

The Declaration of Taking ("Declaration") was filed with the board on November 20, 2002.

The State of New Hampshire (the "Condemnor") is represented by John E. Lucas, Esq. Also appearing at the hearing was Mark Rochon, Project Manager for Larry W. Kohler, Trustee of the Waltham II Realty Trust, one of the named "Condemnees."

The parties waived the provision for a view contained in RSA 498-A:19. The hearing was held and tape recorded on November 18, 2003 at the board's offices, 107 Pleasant Street, Johnson Hall, Concord, New Hampshire 03301. Any requests for transcripts should be ordered directly through the board. Parties should expect at least four (4) weeks for completion of a requested transcript.

This matter arises as a result of an acquisition of property taken for the laying out or alteration of a limited access highway pursuant to RSA 230:45 as shown on a Plan of Conway, STP-OAW-NHS-DPI-T-0153(001), 11339B, as further described in the Declaration.

RSA 498-A:25 authorizes the board to hear evidence relative to eminent domain condemnations and determine just compensation for the takings. In this process, the Condemnor has the burden of proving by a preponderance of the evidence the amount offered will justly compensate the Condemnees. See TAX 210.12 and cases cited therein.

II. NATURE OF THE PROPERTY TAKEN

The property is identified on the Town of Conway tax maps as Map 246, Lot 9. It is further identified in the revised State of New Hampshire Department of Transportation's 11339B plan as Parcel No. 355. The portion taken in fee simple is identified on Exhibit "A" attached to the Declaration and consists of 0.010 hectares. The taking also acquired "all rights of access, light, air and view over, from and to the same from the abutting lands . . ."

III. VALUE OF THE PROPERTY AND THE BOARD'S FINDING OF DAMAGES

The board finds the damages for the property taken to be $9,000 (rounded).

The board finds the best evidence of damages is the Condemnor's appraisal performed by Rauseo & Associates ("Rauseo Appraisal") (Condemnor's Exhibit #1). No contradicting evidence was submitted by any Condemnee. However, the value conclusion on page 97 of the Rauseo Appraisal has been revised to reflect an actual acreage of 0.0247 acres (1 hectare = 2.47 acres) and this acreage has been applied to the per acre value of $370,000. ($370,000 x 0.0247 = $9,139.)

IV. APPEAL OF BOARD'S AWARD

If either party seeks to appeal the amount of damages awarded by the board, a petition must be filed in the Carroll County Superior Court to have the damages reassessed. This petition must be filed within twenty (20) days from the clerk's date below. See RSA 498-A:27.

V. INTEREST

If the board's award exceeds the damage deposit, and if neither party appeals this determination, the Condemnor shall add interest to the excess award. The interest rate is established under RSA 336:1 (Supp. 2001). Interest shall be paid from the taking date to the payment date. See RSA 524:1-b (Supp. 2001); TAX 210.11.

VI. COSTS TO PREVAILING PARTY

If neither party appeals the board's award, Athe board shall award costs to the prevailing party.@ RSA 498-A:26-a; see also RSA 71-B:9; TAX 201.13 and 210.39. In this case, the Condemnees are the prevailing party because the board's award exceeds the Condemnor's offer (or deposit) of damages. See Fortin v. Manchester Housing Authority, 133 N.H. 154, 156-57 (1990). The Condemnees may file a motion for costs within forty (40) days from the date of this Report if neither party appeals the board=s award.

The motion must include the following:

1) an itemization of the requested costs. TAX 201.39;

2) a statement that the prevailing party sought the other party's concurrence in the requested costs. TAX 201.18(b); and

3) a certification that a copy of the motion was sent to the other party. TAX 201.18(a)(7).

If the other party objects to the request for costs, an objection shall be filed within ten (10) days of the motion.

A list of recoverable costs can be found in Superior Court Rule 87. Expert fees are limited to reasonable fees incurred for attending the hearing. No fees are recoverable for preparing to testify or for preparing an appraisal. TAX 201.39(d). Attorney's fees are not awardable as costs. Fortin, supra at 159; cf. In re Land Acquisition, L.L.C., 145 N.H. 492, 497 (2002).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that copies of the foregoing Report have been mailed, this date, to John E. Lucus, Esq., Department of Justice, 33 Capitol Street, Concord, NH, 03301, counsel for the State of New Hampshire, Condemnor; Centercorp-North Conway, LLC, c/o CT Corporation Systems, R. Carl Anderson, Registered Agent, Sulloway & Hollis, PLLC, 9 Capitol Street, Concord, NH 03302, Condemnee; Norwest Bank Minnesota National Association, as Trustee of the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1997-C2, Prentice Hall Corporation Services Lawyers, Inc., Thomas Moore, 14 Centre Street, Concord, NH 03302, GE Capital, as Servicer for Norwest Bank c/o Ed Gass, 1500 City West Blvd., Suite 200, Houston, TX 77042, Condemnee; North Conway CVS, Inc., c/o CT Corporation Systems, R. Carl Anderson, Registered Agent, Sulloway & Hollis, PLLC, 9 Capitol Street, Concord, NH 03302, Condemnee; Waltham II Realty Trust, Larry W. Kohler, Trustee, 882 Lexington Street, 2nd Floor, Waltham, MA 02154, Condemnee.

Dated: December 15, 2003

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Anne M. Stelmach, Deputy Clerk