

State of New Hampshire

v.

Chester L. Comeau and New Hampshire Electric Cooperative, Inc.

Docket No.: 19458-03ED

REPORT OF THE BOARD

This matter arises as a result of an RSA 498-A:5 acquisition of property rights taken for the laying out or alteration of New Hampshire Route 175A in the Town of Holderness pursuant to authority conferred on the “Condemnor” by various statutes, including RSA Ch. 231. A Declaration of Taking (“Declaration”) was filed with the board on May 7, 2003.

The complete taking of the “Condemnees” “Property” consisted of 0.45 acres more or less with a mixed use building containing a used furniture retail business in the lower level and an owner-occupied apartment above, as well as a garage used for storage. See Exhibit A to the Declaration.

RSA 498-A:25 authorizes the board to hear evidence relative to an eminent domain condemnation and determine just compensation for the taking. 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.

The board held the just compensation hearing at the Plymouth District Court on October 5, 2004. The Condemnor was represented by Lynmarie Cusack, Esq., State of New Hampshire, Department of Justice. The Condemnee appeared pro se. Pursuant to RSA 498-A:19, the board took a view of the Property.

Ms. Michelle J. Perrier of Bragan Reporting Associates, Inc., Post Office Box 1387, 55 Bridge Street, Manchester, New Hampshire 03105-1387, (603) 669-7922, took the stenographic record of the hearing. Any requests for transcripts should be ordered directly through the reporter. Parties should expect at least four (4) weeks for completion of a requested transcript.

Board's Rulings

Based on the Condemnor's appraisal performed by Mr. Scott D. Heath (the "Heath Appraisal") and his testimony, the board concludes the damages as a result of the total fee taking are \$187,000. The Heath Appraisal was dated July 28, 2003 with an effective date of valuation of May 7, 2003, the date of the Declaration. The Condemnee did not present an appraisal or any other credible, independent evidence of the Property's market value but only his own subjective belief of a higher value. The Heath Appraisal utilized the sales comparison approach to value the Property and the board finds this approach to be the most appropriate in this case. Mr. Heath took into account the various unique characteristics of the Property comparing it to three comparable sales to estimate the Property's market value. Because the taking was a total taking, the Property's market value becomes the estimate for the just compensation determination. The board finds this approach is a reasonable method for estimating the damages and, thus, awards the \$187,000 determined in the Heath Appraisal to Chester L. Comeau, owner of the Property. Said Property is subject to an easement held by New Hampshire Electric Cooperative, Inc., Plymouth, New Hampshire.

If either party seeks to appeal the amount of damages awarded by the board, a petition must be filed in the Grafton 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.

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. 2003). Interest shall be paid from the taking date to the payment date. See RSA 524:1-b (Supp. 2003); TAX 210.11.

If neither party appeals the board's award, the board shall award costs to the prevailing party. RSA 498-A:26-a; see also RSA 71-B:9 (Supp. 2003); TAX 210.13 and 201.39. In this case, the Condemnee is 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 Condemnee 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. See Fortin, *supra*, 133 N.H. at 158.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify copies of the foregoing Report have been mailed, this date, to: Lynmarie C. Cusack, Esq., State of New Hampshire, Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301-6397, counsel for the State of New Hampshire, Condemnor; Chester L. Comeau, 627 North Ashland Road, Ashland, New Hampshire 03217-4111, Condemnee; New Hampshire Electric Cooperative, Inc., William MacLean - Accounting Supervisor, 579 Tenney Mountain Highway, Plymouth, New Hampshire 03264, Easement Holder.

Date: November 1, 2004

Anne M. Stelmach, Deputy Clerk