

State of New Hampshire

v.

**WEC 97A-2 Investment Trust, Wells Fargo Bank Minnesota, N.A.,
NLCA 98A LLC, Maxi Drug, Inc. and Julie Bourgeois**

Docket No.: 19463-03ED

ORDER

As noticed in the board's March 7, 2008 "Order Scheduling Apportionment Hearing", an apportionment hearing (see RSA 498-A:25 and Tax 210.06) was held on July 31, 2008 at 9:00 a.m. at the board's office allowing for parties to participate telephonically or in person. No party was physically present at the board's office for the hearing; however, Attorney Lawrence B. Ordower, representing WEC 97A-2 Investment Trust ("WEC") participated by telephone.

Attorney Ordower stated the fee owner, WEC, and NLCA 98A LLC ("NLCA"), the owner of a right of first refusal, had agreed the deposit with the board should be split equally between those two entities. Attorney Ordower also indicated Wells Fargo Bank Minnesota, N.A., a condemnee with a mortgagee interest, had been contacted and had agreed to the apportionment as proposed by WEC. Julie Bourgeois, a condemnee as a holder of a sewer line easement, had indicated she would not agree with such apportionment. The balance of the condemnees identified in the May 21, 2003 declaration of taking had not responded to Attorney Ordower's requests for consent.

Board's Rulings

The board rules the funds on deposit, plus interest, should be apportioned equally between WEC and NLCA. No other condemnee had submitted any objection in writing or was present to present any contrary testimony. Given the fact the taking is a relatively small partial taking from the entire parcel (only 0.020 hectares taken in fee and a 12 square meter slope easement and two temporary construction easements) and the Bourgeois sewer line easement is not impacted, the board finds the apportionment as requested is reasonable.

Upon receipt of W-9 forms from WEC and NLCA, the board shall release the \$39,700 on deposit and issue a check to each in the principal amount of \$19,850 plus any accrued interest. In addition, and as discussed during the hearing, Attorney Ordower stated the \$5,000 settlement check received from the New Hampshire Department of Justice ("Department") will be returned to the Department and be reissued in keeping with the board's apportionment ruling in this Order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify copies of the above Order have been mailed this date, postage prepaid, to: Mark P. Hodgdon, Esq., Department of Justice, 33 Capitol Street, Concord, NH 03301, counsel for the Condemnor; Lawrence B. Ordower, Esq., Ordower & Ordower, P.C., One N. LaSalle Street, Suite 1300, Chicago, Illinois 60602, counsel for WEC 97A-2 Investment Trust; Wells Fargo Bank Minnesota, NA, Trustee for Legg Mason Mortgage Capital Corporation, Nikora Grooms, 11000 Broken Land Parkway, Columbia, MD 21044; NLCA 98A LLC, Doug Blough, VP, 76 Northeast Boulevard, Suite 38, Nashua, NH 03062, Maxi Drug, Inc., c/o National Corporate Research, Greg Cadrette, Servicing Agent, 63 Pleasant Street, Concord, NH 03301, and Julie Bourgeois, 843 High Street, Candia, NH 03034. Courtesy copies are also being mailed to the following additional individuals whose names and addresses were provided by Attorney Ordower: Janeen Higgs, Wells Fargo Bank Northwest, Corporate Trust Lease Group, 299 S. Main Street, 12th Floor, Salt Lake City, UT 84111; Greg Cadrette, Servicing Agent, National Corporate Research, Maxi Drug, Inc., 50 Service Avenue, Warwick, RI 02886; Emile R. Bussiere, Esq., Bussiere & Bussiere, 15 North Street, Manchester, NH 03104; and Doug Blough, VP, NLCA 98A, LLC, c/o Net Lease Capital Advisors, 1 Tara Blvd., Suite 403, Nashua, NH 03062.

Dated: 8/6/08

Anne M. Stelmach, Clerk