State of New Hampshire

v.

Alfred P. Baldasaro, et. al.

Docket No.: 20650-05ED

REPORT OF THE BOARD

This matter arises as a result of an RSA 498-A:5 acquisition of property rights taken for an approved highway layout pursuant to authority conferred on the "Condemnor," the State of New Hampshire, by various statutes, including RSA 230:45. A Declaration of Taking (the "Declaration") was filed with the board on June 8, 2005 and served on the "Condemnees," describing the property rights taken as: a fee simple taking of four and eight hundred seventy-four thousandths (4.874) of an acre (the "Property"). 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 viewed the Property on October 30, 2007 and held the just compensation hearing at its offices on October 31, 2007. The Condemnor was represented by Stephen G.

LaBonte, Esq., Assistant Attorney General of the Department of Justice, and the Condemnee, Alfred P. Baldasaro ("Mr. Baldasaro") represented himself.

Michelle McGirr of Bragan Reporting Associates, Inc., Post Office Box 1387, 1117 Elm Street, Manchester, New Hampshire, 03105 (Telephone: (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

The Property, taken for wetland mitigation purposes, consists of 4.78 undeveloped acres of the Condemnees' land. All of the Property taken is within the Town of Londonderry Conservation Overlay District ("CO"). The Condemnees have remaining land, consisting of 1.21 acres, developed with a single family residence and a two-car attached garage.

The Condemnor submitted a complete, self-contained appraisal prepared by Dale M. Gerry, a New Hampshire certified general appraiser of Shurtleff Appraisal Associates, Inc. (the "Gerry Appraisal," Condemnor Exhibit No. 1) and presented his testimony at the October 31, 2007 hearing. The Condemnees did not present any appraisal of their own. Mr. Baldasaro testified on his own behalf (including a written statement as part of the record) and did cross-examine Mr. Gerry.

During the hearing, questions arose regarding the "impact or lack of impact" of the CO. The board therefore directed one of its review appraisers "to make a limited investigation and file a written report." See November 1, 2007 Order. Copies of the November 8, 2007 report (the "Report") filed by Theresa M. Walker, Review Appraiser were mailed to the parties, who were given 20 days to file any written comments. The board has reviewed Mr. Baldasaro's written comments filed with the board on November 26, 2007.

The board finds the Gerry Appraisal is the best evidence of the just compensation damages to be awarded for the taking. The Gerry Appraisal used the sales comparison approach and estimated the damages at $10,000 (based on a before value of $365,000 and an after value of $355,000).

The parties disagree as to whether the site had additional development potential either before or after the taking. Mr. Baldasaro contends he had the ability to "sub-divide" the land, because of the Town water and sewer line connections available on Lori Lane. He stated he purchased the 6.083 acre parcel because of a desire to build two additional residences for his children someday. Mr. Baldasaro therefore contended the Condemnees should be compensated for the value of two additional house lots.

The Condemnor, based on the Gerry Appraisal and Mr. Gerry's testimony, contended no further development was possible because of the existence of the extensive wetlands (over 4 acres) and the CO district, which extends to land "within 100 feet of the edge of wet of said wetlands." See Section 2.6.3.2.1.1 of the Zoning Ordinance, included in Addendum A to the Report. The Gerry Appraisal concludes the single family residence is a legal nonconforming use, and, in light of the "wet soil conditions" and "wetland setback" requirements, the land "will not support further development." See Condemnor Exhibit No. 1, pp. 16 -18 and 26. On the view, the board observed the wetlands and the additional areas encompassed by this 100 foot buffer requirement.

The board finds the Condemnor carried its burden of proof on this key issue. The Report concludes the "majority" of the remaining land (1.21 acres) "is included in the CO" and "all of the taking is included in the CO." Except for "minor accessory structures" of 200 feet or less, no further development is permitted in the CO. See Section 2.6.3.3 of the Zoning Ordinance, id.

Thus, even if, as Mr. Baldasaro argued, no new well or septic system would be required on the land (because of the possibility of hooking up to the existing Town lines "466 feet" away, on Lori Lane), no further residential development appears to be possible either before or after the taking of the Property. The Condemnees are therefore not entitled to any compensation for house lots Mr. Baldasaro would have liked to build on the land in the future.

Mr. Baldasaro expressed repeated suspicions about the evidence presented by the Condemnor, including whether wetlands existed prior to the construction of a dam approximately 50 years ago on neighboring land by the New Hampshire Fish and Game Department who acquired by a 50 year lease the right to construct the dam and inundate certain lands. Mr. Baldasaro asserted that with the expiration of the lease the dam would have been removed and the flooded land would have reverted to developable land. Attached to the Gerry Appraisal is a January 8, 2007 "Gove Report," prepared by Gove Environmental Services, Inc. that is directly to the contrary. The board finds the Gove Report, issued by certified wetlands and soils scientists, is the best evidence on this issue. The Gove Report is an independent "evaluation . . . to identify and locate long-term wetlands verses [sic] potential short-term wetlands and uplands" and concludes "the long-term wetlands identified on the Baldasaro [Condemnees'] Property were wet soils prior to any alteration of the hydrology by man-made structures" and "are a minimum of 100 years old."

Further, the board considered whether the loss of control of the adjoining wetlands due to the taking of the Property should result in an increase in the damage award. The board finds, however, any such speculative effect is likely to be so slight and inconsequential as to make it difficult, if not impossible, to quantify any potential impact on market value. No evidence was presented that would allow the board to quantify and make any award for this factor.

For all of these reasons, the board finds $10,000 is the proper just compensation award.

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

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 copies of the foregoing Report have been mailed, this date, to: Stephen G. LaBonte, Esq., State of New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301, counsel of the Condemnor; and Alfred P. Baldasaro and Marina Baldasaro, 41 Hall Road, Londonderry, NH 03053, Condemnees.

Date: December 24, 2007

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Anne M. Stelmach, Clerk