State of New Hampshire

v.

Jean S. Drummond and Northway Bank

Docket No.: 21600-06ED

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 August 2, 2006 and served on the "Condemnees," describing the property rights taken as: a taking in fee simple of 5.91 acres and a temporary construction easement of 1,722 square feet at 564 Stark Road (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 to 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 August 28, 2007 and held the just compensation hearing at the Town of Conway Town Hall on the same day. The Condemnor was represented

by Mark P. Hodgdon, Esq. and "Condemnee" Jean S. Drummond was represented by Randall F. Cooper, Esq.

Laurie A. Gelinas of Bragan Reporting Associates, Inc., Post Office Box 1387, 1117 Elm Street, Manchester, New Hampshire, 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.

Parties' Arguments

Each of the parties submitted appraisals performed by New Hampshire certified general appraisers. The appraisers used somewhat similar methodology in determining the value of the Property in as much as they performed typical "before" and "after" appraisals.

The Condemnor submitted an appraisal performed by Mr. Kevin A. McManus, of McManus & Nault Appraisal Company, Inc. (Condemnor Exhibit No. 2, the "McManus Appraisal"). Mr. McManus separated the Property into various components in determining both its "before" the taking and "after" the taking values. In the before situation, there were two components: 1) the house with three acres of land; and 2) the remaining undeveloped acreage. In the after situation there were two components, with the second component having two parts: 1) the house with three acres; and 2) the "right remainder" with 26.16 acres; and the "left remainder" with 3.93 acres. Mr. McManus initially estimated the total damages to be $101,000; however, he revised that figure to $127,000 during the hearing.

The Condemnee submitted an appraisal performed by Mr. Charles F. Schubert, Jr. of Applied Economic Research (Condemnee Exhibit No. A, the "Schubert Appraisal").

Mr. Schubert estimated total damages to the Property of $310,000 utilizing the same methodology as Mr. McManus, dividing the Property into various components in the before and after situations.

The two appraisers, while employing the same methodology concerning the separating of the Property into multiple components, differed in their methodology of valuing the vacant land component.

Board's Rulings

Based on the evidence the board finds the before and after values and just compensation due the Condemnees are as follows.

Before value of the residence with 3.0 acres:	$ 500,000	
Before value of the remaining 36.0 acres: (36 ac. x $9,300/ac.)	$ 335,000	
Total before value:		**$ 835,000**
After value of the residence with 3.0 acres:	$ 450,000	
After value of the 26.16 acre right remainder:	$ 219,000	
After value of the 3.93 acre left remainder:	$ 1,000	
Total after value:		**$ 670,000**
Total damages:		**$ 165,000**

The board's findings were determined using portions of both appraisals, with some modifications.

The board finds the appraisers' methodology of dividing the Property into various components for valuation purposes is reasonable.

The Property has an early, cape style dwelling, with the original portion built circa 1779. Between 1980 and 2000 the Condemnee made some additions to the original dwelling, but effectively preserved and matched the style of the additions, including the barn and out buildings, to the style of the original house and was able to maintain the early characteristics throughout the improvements. The board viewed the interior and exterior of the dwelling, the additions and the barn and found them to be in keeping with the character and style of the original construction.

The board reviewed the comparable sales and their adjustments contained in both appraisals and finds, on balance, the Schubert Appraisal's sales are more comparable given their location, type of house and older age of the sale properties. The appraisers shared one improved comparable sale located at 375 Hurricane Mountain Road in North Conway. Further, each of the appraisers made somewhat similar adjustments to this comparable sale. The remaining sales used in the Schubert Appraisal, however, were closer in age and more representative of the Property. For these reasons the board finds the $500,000 value determined in the Schubert Appraisal for the component of the house and three acres to be a fair representation of the value before the taking.

In the before situation, the second component has 36 acres of undeveloped land. While the appraisers agreed on the methodology to value the house and three acres, they disagreed on the appropriate method to determine the undeveloped land component.

The McManus Appraisal estimated the value of the undeveloped 36 acre component using a per acre unit of comparison. In contrast, the Schubert Appraisal used the price per potentially developable lot as the unit of comparison. Reviewing the evidence submitted, the board finds the price per acre to be the more appropriate unit of comparison. The Schubert

Appraisal contained a density development map and calculation shown on page 21 of Condemnee Exhibit No. A drawn by Jonathan K. Howe, a New Hampshire water supply and pollution control licensed designer of subsurface disposal systems. The board finds Mr. Schubert's density assumptions made using Mr. Howe's calculations for the number of potentially developable lots to be too speculative on the date of taking given the fact no detailed development plans had been finalized. If more detailed plans had been submitted to the Town and were closer to receiving approvals for a subdivision on the remaining acreage, the per lot unit of comparison may have been more appropriate, but given the circumstances on the date of taking in this appeal, the board finds the per acre unit is more appropriate. Further, some of the comparables used in the Schubert Appraisal may have had some contingencies associated with them which may have affected the selling prices utilized by Mr. Schubert.

Therefore, adopting Mr. McManus' per acre unit of comparison and his per acre value of $9,300, the board finds the value of the second component, before the taking, is $335,000 [39 acres x $9,300/ac. = 334,800 (rounded)].

Combining the value of the first component, containing the house and three acres ($500,000), with the value of the second component, containing 36 acres ($335,000), yields the total value "before" the taking of $835,000.

To determine the amount of just compensation due the Condemnees the board next determined the value of the Property in the "after" situation and subtracted that value from the before value.

Following the same format employed in the before situation, the board finds the before value for the component containing the house and three acres to be $450,000.

The appraisers agreed a reduction to the value of each of the components was warranted in the after situation, based on the presence of the bypass highway. They disagreed, however, on the magnitude of the bypass' impact. In the after situation, Mr. McManus increased the reduction by 5% under the "location" heading in his sales comparison approach grid on page 84 of Condemnor's Exhibit No. 2. In contrast, Mr. Schubert applied a 25% reduction to his comparable sales. Both appraisers based their adjustments on a review of sales in a subdivision in North Conway named Red Stone Quarry Estates. In that subdivision several lots were sold, but only the first lot entering the subdivision (Lot #58, Condemnor Exhibit No. 5) was impacted by the proximity of New Hampshire Route 302. The commercial activity on this busy highway, both heard and seen from Lot #58, reduced its market value and, consequently, its selling price. Based upon the selling prices of other lots in the Red Stone Quarry Estates subdivision compared to Lot #58 with its exposure to Route 302, both appraisers determined Lot #58 had suffered a 25% reduction in value due to its proximity to the state highway.

Although each appraiser determined the same percentage reduction to the comparable sale, they applied different percentage reductions to the components of the Property. Mr. McManus applied a 5% reduction, citing the dwelling's 390 foot distance from the bypass as well as the buffering provided by the wooded area between the dwelling and the bypass, as reasons not to apply the full 25% to the first component of the Property. Mr. Schubert on the other hand, applied the full 25% reduction to the dwelling and associated three acres of land.

Given the newly constructed highway's proximity to the improvements, the noise and pollution emanating from the relocated traffic on the bypass and the impact on the ability to improve the Property's southwesterly views, the board finds a reduction is warranted. The board finds, on balance, a negative 10% adjustment is more representative of the impact of the bypass

highway on the house with three acres. The 390 foot distance between the dwelling and the bypass, the wooded buffer between the dwelling and the highway and the fact the newly constructed roadway will be significantly (approximately 26 feet) below the grade of the dwelling will offset some of the reduction in value calculated using the Red Stone Quarry Estates sales. Applying the 10% reduction to the $500,000 "before" value for the house and three acres component yields a value for the first component in the "after" situation of $450,000.

In the after situation, the value of the second component is actually comprised of two parts; the "right remainder", containing 26.16 acres of developable land behind the house and the 3.93 acre "left remainder", which, in the after situation, becomes a landlocked tract of land to the west of the newly constructed highway (see Condemnor Exhibit No. 1). The board has utilized the same methodology in the after situation for the part of the second component containing the developable vacant land as in the before situation and applied the previously discussed 10% reduction to the per acre unit price. Applying the 10% reduction, causes the after value unit price to be $8,370 per acre ($9,300 x 0.9). This value was then applied to the 26.16 acres of the right remainder, yielding a value of $219,000 for the developable vacant land. To this value must be added the value of the left remainder containing 3.93 acres of landlocked and undevelopable land after the taking. Both appraisers determined this area had nominal value and the board has given the left remainder a nominal $1,000 value. Adding the value of the two parts of $219,000 and the $1,000 yields a value in the after situation for the second component of $220,000.

Combining the value of the first and second components in the after situation yields a total value for the Property after the taking of $670,000.

On the basis of this analysis and a review of all the submissions and testimony provided by the parties the board determined the just compensation due the Condemnees to be $165,000 ($835,000 - $670,000 = $165,000).

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.

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. Interest shall be paid from the taking date to the payment date. See RSA 524:1-b; 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; Tax 210.13 and 201.39. 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. See Fortin, supra, 133 N.H. at 158.

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 of the Board have been mailed, this date, to: Mark P. Hodgdon, Esq., State of New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301-6397, Condemnor's counsel; Randall F. Cooper, Esq., Cooper, Deans & Cargill, P.A., 2935 White Mtn. Highway, North Conway, NH 03860, Condemnee's counsel; and Northway Bank, c/o Marcel Fillion, PO Box 9, Berlin, NH 03570.

Date: October 30, 2007

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Anne M. Stelmach, Clerk