

**State of New Hampshire**

**v.**

**Skip Fern Trust V**

**Docket No.: 23324-07ED**

**REPORT OF THE BOARD**

This matter arises as a result of an RSA 498-A:5 acquisition of property rights taken for highway purposes pursuant to authority conferred on the “Condemnor” by various statutes, including RSA 230:45. A Declaration of Taking (the “Declaration”) was filed with the board on October 10, 2007, describing the property rights taken as a 2.66 acre parcel improved with a commercial building with a walk-out basement (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 Condemnee. See Tax 210.12 and cases cited therein.

On July 29, 2008, the board viewed the Property and held the first day of the just compensation hearing at the Londonderry Town Hall. The second day of the hearing, July 31, 2008, was held at the board's offices in Concord. The Condemnor was represented by Edith L. Pacillo, Esq., Assistant Attorney General with the New Hampshire Department of Justice, and the Condemnee was represented by Jack B. Middleton, Esq. and Jennifer L. Parent, Esq. of McLane, Graf, Raulerson & Middleton, P.A.

Ms. Laurie A. Gelinas of Bragan Reporting Associates, Inc., Post Office Box 1387, 1117 Elm Street, Manchester, New Hampshire, (603) 669-7922 took the stenographic record of the July 29<sup>th</sup> hearing while the July 31<sup>st</sup> hearing was recorded by board staff. Any requests for transcripts should be directed to the board's Clerk, Ms. Anne M. Stelmach. Parties should expect at least four (4) weeks for completion of a requested transcript.

The taking was a complete taking of the Property. The Property is located on Rte. 111 between the north and south bound corridors of I-93 at Exit 3. The total parcel size is 2.66 acres, with approximately 1.20 acres usable and the balance unusable due to wetlands and the configuration of the lot. The commercial building was completely rebuilt in 2000 after a fire and consists of a space fit-up for a Dunkin Donuts restaurant of 2,856 to 2,876 square feet and two smaller retail spaces of approximately 1,000 and 1,150 to 1,250 square feet. The building was built into the sloping terrain of the lot which accommodates a walk-out basement. In addition to the building, the lot is improved with approximately 30,000 square feet of paving (47 parking spaces) and with on-site well and septic facilities.

The Condemnor estimated the market value of the Property, as of the date of taking, at \$1,800,000 based on an appraisal prepared by Martin S. Doctor of Fulcrum Appraisal Service

(the “Fulcrum Appraisal”). The Fulcrum Appraisal estimated the Property’s market value using the cost and income approaches but placing most weight on the income approach. The Condemnor’s income approach was based on the contract rent of \$11,000 per month for the Dunkin Donuts space and \$20.00 per square foot for the two smaller retail spaces. The Condemnor argued the base fixed rent for the Dunkin Donuts space relates solely to the real estate while the percentage rent basis utilized by the Condemnee entails some value attributable to the business or franchise that is not compensable.

The Condemnee estimated the Property’s market value at \$2,600,000 based on an appraisal performed by Peter E. Stanhope of The Stanhope Group (the “Stanhope Appraisal”). The Stanhope Appraisal also used the cost and income approaches, giving most weight to the income approach indication of value. The Condemnee’s income approach based the rental income for the Dunkin Donuts space on a 10% “percentage rent” calculation of the 2007 gross sales receipts (net of taxes). The two other rental spaces were estimated to have a market rent of \$16.00 per square foot and a portion (3,200 sf) of the basement rentable at \$7.00 per square foot. The Condemnee argued the percentage rent at 10% of gross sales was the market standard for calculating the market rent of a Dunkin Donuts space and it did not capture any business value. The Condemnee also argued the contract rent was below market rent because when the lease was renegotiated at the time of the fire in 2000 and the impending taking had the affect of lowering the rent so as to allow the Dunkin Donuts tenant to recoup its fit-up costs sooner.

### **Board’s Rulings**

The board has undertaken an extensive review and analysis of the Fulcrum and Stanhope appraisals and the testimony and other evidence presented at the just compensation hearing. The board’s key conclusions, detailed below, are that the Condemnor failed to meet its burden of

proving a much lower value (\$1.8 million estimated in the Fulcrum Appraisal) and that the evidence, considered as a whole, supports the finding that the market value of the Property as of the date of taking is \$2,400,000.

#### The Condemnor's Appraisal Evidence

For several reasons, the board finds the Condemnor failed to carry its burden of determining just compensation by relying on the Fulcrum Appraisal for its estimate of damages.

The Fulcrum Appraisal's cost approach significantly underestimates the land value for two reasons. First, there is no recognition of the Property's prime location and excellent exposure to traffic vis-à-vis the comparable sales' locations. While not highly visible from I-93, the Property's unique location at the full interchange of Exit 3 and between the north and south bound corridors provides significantly higher traffic exposure than the comparables. It is clear by back calculating the "captured" traffic from the Dunkin Donuts gross income and the average sales transaction (see Stanhope Appraisal, p. 50) that the location pulls significant traffic from I-93 that is not reflected in the department of transportation's traffic counters on Rte. 111 on the east and west sides of I-93. The board agrees with the Condemnee that the sale at 30 Indian Rock Road (purchased by one of the related realty entities of the Cafua family) is a significantly inferior location nearly two miles west of Exit 3. That property, as testified to by Mark Cafua, was not intended to be a replacement for the Property but rather an additional Dunkin Donuts location. Its Rte. 111 location has less traffic (16,000 vpd) than the traffic counters on Rte. 111 on either side of the Property and, due to its distance from I-93, is unlikely to draw any significant traffic from the interstate. The Fulcrum Appraisal made no locational adjustments in the land sales comparison grid to take these factors into account.

Second, sales L-2 and L-3 were deemed superior in topography and usable area to the Property and their sale prices were reduced 15%. The board finds the Property's effective lot size, estimated at 1.20 acres, while sloping, has been developed to provide full access to the rear of the building and thus has good utility. Sale L-2, 30 Indian Rock Road, is not level but also has sloping grades that will likely either be leveled through a "cut and fill" operation or will be developed incorporating the sloping topography in a fashion similar to the Property. L-3, 7 Rockingham Road, while generally level, does not offer significantly superior utility than the Property's site as it has been developed, which is the condition that must be valued as of the date of taking.

The Fulcrum Appraisal (p. 21) in the income approach determined the contract fixed rent of \$11,000 per month "is more or less indicative of a reasonable market rent...." We find this estimate is significantly below market for several reasons. First, there was consistent and unrefuted testimony that the rent was negotiated as a fixed rent after the building was rebuilt in 2000 (after a fire) because it was public knowledge that condemnation for the widening of I-93 was pending and the lessee was concerned about recouping its fit-up costs over a potentially shorter term.

Second, the Property before the fire and the threat of eminent domain had the Dunkin Donuts space leased on a base plus percentage basis. Testimony of Mr. Cafua and Mr. Quinn, owners of other rental property and Dunkin Donuts franchises, indicated that in most instances such space is not leased on a fixed basis but rather on a base plus percentage (usually 10% of gross sales) with the expectation in most cases that the percentage rent will be operative for the rent.

Third, the comparable lease rents contained in the Fulcrum Appraisal at page 21 reflect the base amount stated in the leases. Condemnee Exhibit L (Fulcrum page 21 lease data marked up and corrected by Mr. Quinn) reflect the actual annual rent received under these leases. This exhibit indicates the two Mass Pike locations received significantly higher actual rent than the stated amount for the fixed portion of the lease and the other two locations (Hillsboro, N.H. and Andover, MA.) were generally inferior locations with fixed leases (term of 25 years with set increases every 5 years). Based on this evidence, we conclude the Fulcrum Appraisal analysis does not adequately reflect the motivational underpinnings of the Property's contract rent nor the general market rent provisions of the comparables relied upon to reach the Dunkin Donuts rental estimate.

On a related matter, the Condemnor filed a July 11, 2008 motion before the hearing to exclude evidence of business enterprise income (the "Motion") and the Condemnee filed an objection to the Motion on July 16, 2008. The Motion asserted the use of a percentage based rent, as that calculated in the Stanhope Appraisal, results in the amount above the fixed base rate being business enterprise income which is not compensable. We disagree. The evidence submitted into the record was that market rent for the real estate leased by a Dunkin Donuts lessee, whether from the Dunkin Donuts corporate entity or otherwise, was customarily calculated as a percentage (usually 10%) of the gross sales. Mr. Cafua and Mr. Quinn stated that in all their extensive experience, both as owners of the real estate and of a number of franchises, the rental payments were separate and distinct from any franchise or advertising fees to Dunkin Donuts. The board notes this is different from the combined payments of rent, franchise fee and advertising that may be customary with other fast food entities such as McDonalds. See, e.g.,

McDonald's Restaurant v. Town of Goffstown, BTLA Docket Nos.: 21279-04PT/22356-05PT  
(August 11, 2008).

Further, the Condemnor argued both in the Motion and at hearing that A. G. Davis Ice Company, Inc. v. United States of America, 362 F.2d 934, 936 (1<sup>st</sup> Cir. 1966) and the "Uniform Appraisal Standards for Federal Land Acquisitions" (2000) (commonly known as the "Yellow Book") at Sec. B-7, p. 43 support its assertion. Again, we disagree. Both cites provided in the Motion recite the general proposition, but further discussions in both documents are more on point with the market evidence received in this case.

In A.G. Davis Ice Co., 362 F.2d at 936, the court noted:

However, the rule is not without exception and qualification. "Where the character of the property is such \* \* \* that, independently of the labor, skill or knowledge of its owner, it lends itself peculiarly to a particular use, a business

based upon such use and then the profits there from may be considered in ascertaining the market value of the land." 4 Nichols on Eminent Domain § 13.3(2).

For its part, the Yellow Book (at pp. 43-44) states:

It is not improper, however, to consider the uses to which a property can be put, including the character and extent of the business carried on, as distinguished from the profits from that business, the facilities for doing business, and location of the property as a point commanding trade from the surrounding area, or otherwise. Therefore, when valuing property that typically sells on the basis of income production, it is appropriate to consider the amount of business conducted on site.... Also, of course, many commercial properties will be rented based on a percentage of the gross sales of the business located on the property. In these situations, business volumes may be considered but with the sole reference to the market value of the land."

(Emphasis added.)

It is clear from the evidence and the cited authorities that estimating the Dunkin Donuts space rent as a percentage of gross sales can be a proper means of valuing the real estate and not

business value of the franchisee. The combination of the standardized Dunkin Donuts' franchisee business operations and the existence in many of the rental arrangements of a base rent in the event the percentage rent is not achieved minimize any significant disparity in rental rates due to any varying managerial skills of the franchisee owner. Thus the board concludes the rent calculated based on gross income for space such as that occupied by Dunkin Donuts will not vary significantly due to differing management skills and is reflective of its real estate rental income and not business income.

#### Use of the Cost and Income Approaches to Estimate and Reconcile Market Value

To arrive at the just compensation award of \$2,400,000 for the complete taking of the Property, the board made a number of modifications and adjustments to the cost and income approaches in the Fulcrum and Stanhope Appraisals, which are explained below.

##### A. The Cost Approach

The Stanhope and Fulcrum Appraisals' replacement cost new of the improvements estimates are quite similar, being within approximately 5% of each other (Fulcrum Appraisal replacement cost new of \$1,388,511 and Stanhope Appraisal \$1,462,161). In fact, the depreciated replacement cost of the improvements are nearly identical with the Fulcrum Appraisal arriving at an estimated depreciated value of \$1,249,660 while the Stanhope Appraisal depreciated improvement value was \$1,250,000. Thus the cost approach differences break down to two remaining factors: the land value and any entrepreneurial or developer's profit.

The board recognizes the Property's unique location, as discussed previously, presents a difficult appraisal assignment to find comparables that have similar interstate and secondary highway exposure of 27,000 to 30,000 cars per day. (This is a combination of the traffic counters' numbers on either side of the interstate on Rt. 111 of approximately 23,000 vehicles

per day and an estimated number of vehicles, not measured by the counters, exiting interstate 93 based on the evidence of approximately a 5% capture rate and the average sale prices as shown on Stanhope Appraisal at page 50). As previously discussed, the board places no weight on the Fulcrum Appraisal's land comparables due to the lack of comparability and adjustments noted earlier.

Despite a concern about the lack of adjustments to the comparable land sales in the Stanhope Appraisal (see pages 42 and 43), the board finds the resulting estimated land value of \$935,000 is more reflective of the site's excellent location than the \$515,000 estimate in the Fulcrum Appraisal and in keeping with the board's knowledge and experience of good commercial sites in the southern tier of New Hampshire.

The Fulcrum Appraisal added a 5% entrepreneurial profit estimate to the depreciated replacement cost while the Stanhope Appraisal added no entrepreneurial profit but did note on page 58 that the difference between the cost and the income approach indicated a 13.68% entrepreneurial profit. Entrepreneurial or developer's profits is the expected financial return that the individuals planning and executing such a development would expect to be rewarded for their risks in, and return on, the investment involved in bringing a property to a marketable condition. The board concludes the Fulcrum 5% estimate is too modest. Based on the board's experience, we find entrepreneurial profits for such a Property in the 10-15% range is appropriate. Adding a 15% entrepreneurial profit to the Stanhope Appraisal's total replacement cost of the improvements of \$1,462,161 (see pages 46-47) indicates an additional \$220,000 should be added to the indicated cost approach of value of \$2,185,000 (\$935,000, land plus \$1,250,000, improvements) or a total of \$2,405,000.

B. The Income Approach

Again, as noted earlier, the board finds the Fulcrum Appraisal potential gross income was understated due to reliance upon the contract rent as opposed to the evidence of market rent for the Dunkin Donuts space being 10% of gross sales. Consequently, the board has placed most reliance on the Stanhope Appraisal calculation for the gross potential income with the following modifications. The Stanhope Appraisal utilized the 2007 reported average sales of \$1,902,000 (see page 50) and while such a number is not disregarded outright, it contains future information that would not have been available at the time of the October 10, 2007 date of taking.

Calculating a likely percentage increase from the 2006 gross sales based on the historical increase in gross sales, the board estimates a 2007 gross income of \$185,000 for the Dunkin Donuts space could have reasonably been expected by any prospective purchaser. The board has utilized the Fulcrum Appraisal's \$20.00 per square foot estimated rent for the other two leased spaces. The board concludes the basement area would unlikely be rentable separately due to its poor highway visibility but that it would have some contributory value for the first floor tenants as assumed in the Fulcrum Appraisal rental rate.

The board has estimated a vacancy rate of 5%. The Stanhope Appraisal estimate of 6.5% is not unreasonable but the board finds that in doing a *pro forma* income approach, unless there is specific and detailed market evidence, vacancy and collection of losses estimated to the nearest 5% is reasonable. The board finds the Stanhope Appraisal properly calculated the rent as a triple net rent and thus, the nominal \$2,600 deduction for any vacancy related expenses that the landlord might bear is appropriate. Both parties agreed that management and reserve for replacements should be 3% and 4% of effective gross income respectively. The board's modified income approach estimate can be summarized as follows.

Potential gross income of Dunkin Donuts space	\$185,000
Two rental spaces at \$20.00 per square foot	\$ 45,100
Total potential gross income	\$230,100
Vacancy and collection loss - 5%	x .95
Effective gross income (EGI)	\$218,595
<b>Expenses:</b>	
NNN Vacancy Expenses	\$ -2,600
Management - 3% of EGI	\$ -6,558
Reserve for replacements - 4% of EGI	\$ -8,744
Net operating income (NOI)	\$200,693

The board has reviewed the Stanhope and Fulcrum Appraisals' discussions of the capitalization rates and has relied upon the Fulcrum Appraisal's rate of 8.4% derived by the mortgage equity technique and the debt coverage ratio method. The board finds the higher capitalization rate is appropriate inasmuch as the Stanhope Appraisal's assumptions, which the board has largely adopted, is based upon a percentage rent for the Dunkin Donuts space without any base rate as testified to by Mr. Stanhope. The board finds such an assumption increases the risk to the landlord to some extent and should be recognized in the capitalization rate. Dividing the NOI of \$200,693 by the capitalization rate of 8.4% produces an indicated market value by the income approach of \$2,389,202.

The board finds its revised cost and income approaches correlate closely to a conclusion of damages of \$2,400,000.

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.

The board's award exceeds the damage deposit. 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 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.

Attached as Addendum A hereto are the board's responses to the Condemnee's Proposed Findings of Fact and Rulings of Law.

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

**Addendum A**

The “Requests received from the Condemnee are replicated below in the form submitted without any changes, typographical or otherwise, made by the board. In these responses “neither granted nor denied” generally means one of the following:

- a. the Request contained multiple requests for which a consistent response could not be given;
- b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the Request was irrelevant; or
- e. the Request is specifically addressed in the Report.

**CONDEMNEE’S PROPOSED FINDINGS OF FACT AND RULINGS OF LAW**

1. This Eminent Domain proceeding concerns property owned by the Skip Fern Trust V ("Skip Fern"), Michael Quinn and Fernando Cafua as Trustees, located at State Route 111, 98 Indian Rock Road in Windham, New Hampshire (the "Property").

**Granted.**

2. The date of Taking is October 10, 2007.

**Granted.**

3. It is settled law in New Hampshire that "in eminent domain proceedings the owner of land condemned is entitled to damages for the taking measured by the difference between the value of his land after the taking, and what it would have been worth on the day of the taking if the taking had not occurred." *EdgcombSteel Co. v. State*, 100 NH 480, 486-87 (1957); *Daly v. State*, 15 NH 277 (2003); *State v. 3M Nat'l Advertising Co.*, 139 NH 360, 362 (1995). In determining value, the condemnee is entitled to have the property appraised at the most profitable or advantageous use to which it could be put on the day of the taking and the value to be ascertained is fair market value, which is "the price which in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy, taking into account all considerations that fairly might be brought forward and reasonably be given substantial weight in such bargaining." *EdgcombSteel*, 100 NH at 487 (quotation omitted).

**Granted.**

4. The Condemnor has the burden of proving, by a preponderance of the evidence, that the amount offered will justly compensate the Condemnee.

**Granted.**

5. The Highest and Best Use of the subject property is for a commercial building with a Dunkin Donuts shop or "as is."

**Granted.**

6. The subject Property, 2.66± acres, is located on State Route 111, Indian Rock Road and in a unique location in that the Property sits 4/10<sup>th</sup> mile west of the northbound lane of Interstate 93 and 1/10<sup>th</sup> mile east of the southbound lane of Interstate 93.

**Granted.**

7. The Property is located on a median strip of Interstate 93 where the northbound and southbound lanes diverge. There is a full interchange at Exit 3, which gives the site unique access to traffic entering and existing Interstate 93.

**Granted.**

8. The traffic count as provided by NHDOT for Route 111 east of Interstate 93 was 23,000 vehicles per day in 2005 and west of Interstate 93 was 23,000 vehicles per day in 2004. Traffic on Interstate 93 both northbound and southbound in 2006 was 77,000 vehicles per day in 2006.

**Granted.**

9. Total rentable area of the subject building is 8,386± sf. The first level of the building consists of three rentable units. Unit 1 is a Dunkin Donuts shop of 2,856± sf with interior fit up and a drive through window which is grandfathered. Unit 2 is 1,000± sf. Unit 3 is 1,150± sf. The basement area consists of 3,200± sf of rentable space.

**Denied.**

10. After the fire, the pending eminent domain taking by the State made it difficult to attract tenants to an otherwise modern and well located high traffic location. The pending taking of the Property was well known in the market as a number of public hearings had been held for years and newspapers published articles concerning the widening of Interstate 93.

**Granted.**

11. Under the Cost Approach to valuation, location and traffic count are the prime determinants of value for retail sites.

**Granted.**

12. The Stanhope Appraisal's estimated market value of the land of the subject site as vacant as \$935,000 is reasonable.

**Granted.**

13. The Stanhope Appraisal estimated valuation of the Property under the Cost Approach as \$2,185,000 is reasonable.

**Neither granted nor denied.**

14. The State's appraisal's comparables are inferior to the subject Property as to location and traffic count and no adjustments are made by the State's appraiser to reflect this factor of value and therefore the State's appraisal undervalues the land value of the subject Property.

**Granted.**

15. The State's appraisal makes no adjustment for the cost for holding the comparable properties until commercial development or for demolition costs of the older single family homes located on the comparable properties chosen and therefore the State's appraisal undervalues the land value of subject Property.

**Neither granted nor denied.**

16. As shown by the Stanhope Appraisal, the estimated market value under the Income Approach as \$2,800,000 is reasonable.

**Denied.**

17. Dunkin Donuts shops typically pay rent based on a minimum fixed dollar amount or rent based on a percentage of sales if that rent exceeds the base for any month.

**Granted.**

18. In the case of Dunkin Donuts shops, the percentage is commonly 10% of sales and the base rent is typically 80% to 90% of projected sales. The leases are net leases.

**Granted.**

19. The original lease for the subject property was a percentage lease on 12% sales (excluding sales tax). The lease negotiated after the fire called for fixed rents of \$10,500 per month for years 1-5 and \$11,000 per month for years 6-10.

**Granted.**

20. The Dunkin Donut lease terms were affected after the fire by the public knowledge of the pending eminent domain taking.

**Granted.**

21. Considering the market lease rate of 10% and using actual sales for the subject location in 2007 of \$1,902,000 to determine the market Dunkin Donut lease at \$190,200 per year is reasonable.

**Neither granted nor denied.**

22. The Stanhope Appraisal properly examines the actual sales at the location in order to determine the market rental amounts which would have been paid on a typical lease for the property. The Stanhope Appraisal appropriately incorporates these calculations with comparable retail rents in the area to determine an estimation of value for the Property and does not attempt to include business losses in its appraisal, but instead determines the market rent for the property in order to utilize the well-accepted income capitalization approach to value.

**Denied.**

23. The State's appraisal undervalues the market rent because it measures the rental income by using the contract lease rate rather than the market lease rate and it only considers the base rent and fails to include the percentage rent under the comparable Dunkin Donut shop leases used by the State's appraiser.

**Granted.**

24. Under the Stanhope Appraisal, the estimated value of the subject property of \$2,800,000 under the Income Approach is reasonable.

**Denied.**

25. Just compensation due for the Taking of the Property as of October 10, 2007 is \$2,600,000.

**Denied.**

### **Certification**

I hereby certify copies of the foregoing Report have been mailed, this date, to: Edith L. Pacillo, Esq., State of New Hampshire, Department of Justice, 33 Capitol Street, Concord, NH 03301, counsel for the Condemnor; and Jack B. Middleton, Esq., and Jennifer L. Parent, Esq., McLane, Graf, Raulerson & Middleton, P.A., 900 Elm Street, P.O. Box 326, Manchester, NH 03105, counsel for the Condemnee.

Date: 10/15/08

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Anne M. Stelmach, Clerk