State of New Hampshire

v.

Gerard Healey, Daniel Drazen, Internal Revenue Service and City of Berlin

Docket No.: 25452-11ED

REPORT OF THE BOARD

This matter arises as a result of RSA 498-A:5 acquisitions 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 ("Declaration") was filed with the board on March 9, 2011, describing the property rights taken as a complete fee taking of eleven hundredths (0.11) of an acre, more or less (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 commenced the hearing and viewed the Property on October 17, 2012 in the City of Berlin and continued the hearing on October 18, 2012 at its offices in Concord. The Condemnor was represented by Stephen G. LaBonte, Esq. None of the Condemnees were present at the hearing. (However, one Condemnee, Daniel Drazen,

requested in a September 24, 2012 letter that the board schedule an RSA 498-A:25 apportionment hearing. A hearing notice is therefore enclosed with this Report.)

Any requests for transcripts should be ordered directly through the clerk of the board. Parties should expect at least four (4) weeks for completion of a requested transcript.

Board's Rulings

The Condemnor has the burden of proving the amount offered is just compensation for the taking. The board finds the Condemnor carried its burden for the following reasons.

The Condemnor relied upon an appraisal prepared by Stephen Bernard, a New Hampshire certified general appraiser employed as a staff appraiser by the New Hampshire Department of Transportation. The "Bernard Appraisal" (Condemnor Exhibit No. 1) estimated the market value of the Property to be $10,000 as of the date of taking (March 9, 2011). Using accepted appraisal methodology, Mr. Bernard relied on the sales comparison approach and found three comparables on which he based his estimate of market value. (See Bernard Appraisal, pp. 2, 29 and 46-51.)

The board finds the Bernard Appraisal is the best evidence of the market value of the Property. As noted above, none of the Condemnees named in the Declaration attended the view or the just compensation hearing and none have disputed Mr. Bernard's $10,000 market value estimate. The board therefore finds the damages from the taking of the Property are $10,000.

If either party seeks to appeal the amount of damages awarded by the board, a petition must be filed in the Coos 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 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 Condemnor is the prevailing party because the board's award does not exceed the Condemnor's offer (or deposit) of damages. See Fortin v. Manchester Housing Authority, 133 N.H. 154, 156-57 (1990). The Condemnor 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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Michele E. LeBrun, 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 for the Condemnor; Gerard Healey, 2 Oak Knoll Road, Meredith, NH 03253, Condemnee; Daniel Drazen, 20 Stonehenge Road, Bedford, NH 03110, Mortgagee; John P. Kacavas, Internal Revenue Service, United States Attorney General for the District of New Hampshire, 53 Pleasant Street, Concord, NH 03301, Eric H. Holder, Jr., Internal Revenue Service, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001 and Debra Dougherty, Internal Revenue Service, P.O. Box 9502, 80 Daniel St, Room 304, Portsmouth, NH 03802, Federal Tax Lien; and City of Berlin, Deborah Patrick and Paul Grenier, City Clerk, 168 Main Street, Berlin, NH 03570.

Date: 11/9/12

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Anne M. Stelmach, Clerk