State of New Hampshire

v.

David Poulin

Docket No.: 25465-11ED

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 230:14. A Declaration of Taking ("Declaration") was filed with the board on April 13, 2011, describing the property rights taken as one tenth (0.1) of an acre, more or less, and improvements thereon (the "Property," also known as Parcel 117, 26 Wight Street). 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.

The board commenced the hearing and viewed the Property's location and the comparable sales 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., and the Condemnee represented himself.

The hearing was digitally recorded by the board pursuant to RSA 498-A:20. 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 board finds the evidence submitted supports a just compensation award of $60,000.

The Condemnor relied upon an appraisal prepared by Pollyann Printy, a Right of Way Appraiser II employed by the New Hampshire Department of Transportation. The "Printy Appraisal" (Condemnor Exhibit Nos. 1 and 2[1]) estimated the market value of the Property to be $42,000 as of the date of taking (April 13, 2011).

The Condemnee relied upon an appraisal prepared by Tammy M. McManus of Valley Appraisals, LLC. The "Valley Appraisal" (Condemnee Exhibits A and B[2]) estimated the market value of the Property to be $70,000 as of December 21, 2010. The board took an extensive view of the location of the Property (as well as the photographs of the house and garage on the Property as it had already been demolished by the State) and also viewed all of the comparable sales utilized by both appraisers.

The board finds damages in the amount of $60,000 as a result of the taking for the reasons that follow. The Property, a single family residence, was in average condition as of the date of taking with "some missing/damaged roof asphalt shingles, exterior asbestos siding on the house and damaged wood siding on the garage." (See Printy Appraisal at p. 27.) The Condemnee, Mr. Poulin, purchased the Property for $16,900 in March 2009 from a bank after it was listed on the open market by a real estate agency. The heating system was replaced and the

[1] Condemnor Exhibit No. 2 is a color copy of Condemnor Exhibit No. 1.
[2] Condemnee Exhibit B consists of color copies of the photographs in Condemnee Exhibit A.

Property was then listed for sale for $109,900 until January 2011. An offer to purchase for $70,000 was refused by Mr. Poulin. Ms. Printy indicated her research of "knowledgeable realtors considered this potential offer a reasonable offer." (Id. at p. 28).

The Printy Appraisal utilized four comparable sales in arriving at an estimate of value of the Property. (Id. at p. 41) The board notes Ms. Printy utilized an incorrect date of value (9/17/2010) when the actual date of taking was April 13, 2011; thus, the time adjustments made to the comparable sales are incorrect. Of these four sales, the board has given no weight to comparable S-2, located at 80 Hillside Avenue, in a very busy intersection on the east side of Berlin. 80 Hillside Avenue suffers from functional obsolescence as a result of the layout of the bedrooms, an "odd" downstairs ½ bath and a long, narrow room on the second floor. Further, this sale took place 23 months prior to the date of taking and other, more recent sales were utilized by Ms. Printy and Ms. McManus which the board found more appropriate to consider.

The board has also given no weight to comparable S-4 in the Printy Appraisal. This comparable is located at 287 High Street, on a very small (0.06 of an acre) corner lot and has no on site garage or parking. The City of Berlin has a parking ordinance beginning in November of each year which restricts parking for this property during the winter months, making the lack of on-site parking a detriment.

The Valley Appraisal estimated the value of the Property as of December 21, 2010 and no time adjustments were made by the appraiser either to the date of value or the date of taking. Further, Ms. McManus utilized two listings in arriving at her value which the board has not considered in arriving at a market value. As Ms. McManus stated in her report, comparable sales 1 and 3 were given the least amount of weight in her analysis. Therefore, the board has considered only comparable sale number 2, 98 State Street, in its analysis of the evidence.

Based on all of the evidence submitted, the board finds the best comparable sales to be Printy sales S-1 and S-3 and McManus sale 2. The board has made appropriate adjustments to these sales, including a 6% downward adjustment per year for time, and has adjusted the sales for other features such as room count, location, condition and lot size. No adjustment for garage was necessary because all three comparable sales have garages. The board's analysis arrived at an indicated range of value of $58,011 to $62,720 resulting in the board's finding of just compensation in the amount of $60,000.

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 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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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, Condemnor; and David Poulin, 120 Enman Hill Road, Berlin, NH 03570, Condemnee.

Date: March 19, 2013

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Anne M. Stelmach, Clerk