

State of New Hampshire

v.

Stephen G. Minasian, Robert P. Barsamian and Philip J. Scuderi

Docket No.: 26098-12ED

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 (“Declaration”) was filed with the board on March 7, 2012, describing the property rights taken as four hundredths (0.04) of an acre, more or less, limitation of access with one point reserved along NH Route 125, a permanent slope easement containing 21,800 square feet and a temporary construction easement containing 350 square feet to expire on January 1, 2033 or one (1) year after completion of the construction of the project, whichever comes first (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 April 23, 2013 in the Rockingham County Superior Court. The Condemnor was represented by Kevin H. O’Neill,

Esquire, Assistant Attorney General. The Condemnees failed to attend the hearing; however, pursuant to Tax 210.08 the board heard the Condemnor's evidence and reviewed all documents in the board's file.

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 \$20,000.

The Condemnor relied upon an appraisal prepared by Martin S. Doctor of Fulcrum Appraisal Services. The "Fulcrum Appraisal" (Condemnor Exhibit No. 1) estimated the market value of the Property, relying on the sales comparison approach, before the taking to be \$1,360,000 based on its highest and best use as commercial development. The Fulcrum Appraisal found no difference between the before and after market value of the Property which resulted in \$0 diminution in value.

Because Mr. Doctor determined the impact of the taking on the value of the Property by conventional appraisal methods was immeasurable, he assigned a \$20,000 value based on a pro-rata calculation of the fee acquisition and the easements and in compliance with the State of New Hampshire Department of Transportation's limitation of pro-rata payments (Condemnor Exhibit No. 3).

Based on its view of the Property and the evidence submitted at hearing, the board concludes the testimony to be credible and the estimate of just compensation to be reasonable.

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.

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. 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

Michele E. LeBrun, Member

Theresa M. Walker, Member

Certification

I hereby certify copies of the foregoing Report have been mailed, this date, to: Kevin H. O'Neill, Esq., State of New Hampshire, Department of Justice, 33 Capitol Street, Concord, NH 03301, Condemnor; Stephen G. Minasian, Robert P. Barsamian, and Philip J. Scuderi, 54 Jaconnet, Suite 202, Newton, MA 02461, Condemnees.

Date: 5/30/13

Anne M. Stelmach, Clerk