

State of New Hampshire

v.

FIN-LYN Trust

Docket No.: 26141-12ED

ORDER

The board has reviewed the separate reconsideration motions (“Motions”) filed by “Rt. 111 Windham LLC (Rt. 111)” and “Donald Wilson and the Estate of Alan Wilson” (the “Wilsons”) with respect to the board’s September 19, 2013 Order denying their motions to ‘intervene and stay’ this eminent domain proceeding¹ and the “Objection” to these Motions filed by condemnee FIN-LYN Trust (“FIN-LYN”). The Motions are denied for the reasons discussed below.

The Motions do not satisfy the standards and requirements in the statute and the board’s rules governing rehearing motions in multiple respects. See RSA 541:3; and Tax 201.37. For example, a rehearing or reconsideration motion requires a showing that “the board overlooked or misapprehended the facts or the law and such error affected the board’s decision.”

Tax 201.37(e). No such showing has been made in the Motions.

¹ Rte. 111’s motion is entitled a “Motion to Reconsider” and the Wilsons’ motion is entitled a “Motion for Reconsideration.” Their prior motions are entitled a “Motion to Intervene and Stay Proceedings” and a “Joinder Motion to Intervene and Stay Proceedings,” respectively.

In its Motion (p. 1), Rte. 111, but not the Wilsons, states it did not receive “any formal notice of this proceeding.” Rte. 111 and the Wilsons, however, do not dispute the fact they had actual notice of this eminent domain proceeding for a lengthy period of time. [This fact is discussed further in the Objection (p. 1) and also in the September 19, 2013 Order (p. 2.)] Nor, as noted in the Objection (p. 1), do the moving parties offer any “credible explanation” for their “failure to comply with the [b]oard’s rules or timely file [the] Motion[s].”

Further, “formal notice” under the Eminent Domain Procedure Act is only required for named condemnees. See RSA 498-A:8 (Notice to the Condemnee). The Wilsons’ additional argument (Motion, p. 2) that the “[b]oard should stay the proceedings to allow the Superior Court to determine whether the Condemnor brought this action against the proper party” is flawed because the Condemnor (the State of New Hampshire) is not a party to the superior court proceeding.

When it enacted the Eminent Domain Procedure Act (RSA ch. 498-A), the Legislature gave the board comprehensive authority and jurisdiction in such proceedings. See RSA 498-A:1 (“It is the intent by the enactment of this chapter to provide a complete and exclusive procedure to govern all condemnations of property for public uses”); RSA 498-A:3 (“All condemnation proceedings other than by municipalities acting under RSA 38 or public utilities shall be brought” before the board); and, generally, City of Keene v. Armento, 139 N.H. 228, 234 (1994). The board does not agree with the contention that the board should delay its exercise of authority indefinitely until after other issues (pertaining to alleged trespass and quiet title claims) are fully litigated in the superior court.

The board is required, under the Eminent Domain Procedure Act, after the filing of a declaration of taking by a condemnor pursuant to RSA 498-A:5, to hear evidence, make an

award of just compensation and issue a report thereof (see RSA 498-A:25 and RSA 498-A:26).

After that time, “[a]ny party, condemnee or condemnor[,] aggrieved by the amount of compensation awarded by the board” has 20 days to file a petition in the superior court “to have the damages reassessed.” RSA 498-A:27 (Appeal on Damages). The jurisdiction of the superior court with respect to eminent domain therefore arises only after an award of just compensation by the board in the event a timely appeal (petition) is filed. In other words, the superior court has appellate rather than original jurisdiction.

Consequently, the board does not agree with Rte. 111’s arguments that the board “lacked subject matter jurisdiction” (Motion, p. 2) or that, even aside from the jurisdiction issue (which the Wilsons do not argue), the board should allow intervention and stay these proceedings. The three cases cited in Rte. 111’s Motion (id.) summarize general points of law regarding jurisdiction about which there is no disagreement, but none are on point. None found a lack of subject matter jurisdiction and none involve eminent domain.

For all of these reasons, the Motions are denied. Pursuant to RSA 541:6, any appeal must be filed in the supreme court within thirty (30) days of the date on this Order with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: John J. Conforti, Esq., State of New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301, counsel for the Condemnor; Mark P. Hodgdon, Esq., 18 N. Main Street, Suite 307, Concord, NH 03301, counsel for the Condemnee; Kenneth D. Murphy, Esq., Coughlin, Rainboth, Murphy & Lown, 439 Middle Street, Portsmouth, NH 03801; and Andrew A. Prolman, Esq., Prunier & Prolman, P.A., 20 Trafalgar Square, Suite 626, Nashua, NH 03063-1981.

Dated: 10/8/13

Anne M. Stelmach, Clerk