State of New Hampshire

v.

James W. Landry, Jr., et al.

Docket No.: 27145-14ED

ORDER

The board has reviewed the "Declaration of Taking" submitted to the board by the "Condemnor" on January 22, 2014 (the "Declaration') and the subsequent "Motion to Accept Declaration of Taking" filed on January 30, 2014 (the "Motion"). The Motion is granted for the reasons stated below.

The Motion reflects disagreements regarding the board's authority, interpretation of the eminent domain statute (RSA ch. 498-A) and the board's rules promulgated thereunder. (See, in particular, RSA 498-A:5, I; Tax 210.02; and Tax 210.03.) The board does not agree with the Condemnor's interpretation of these authorities and its views on the board's role in processing documents submitted for filing, including, in this instance, a declaration of taking pursuant to RSA 498-A:5. See also Tax 102.28 (defining what constitutes a proper filing).[1]

The board did have the authority to review the Declaration for compliance with the filing requirements. One procedural remedy for noncompliance is return of the document to the party

[1] This rule defines "File" to mean "the date a declaration is determined to be in compliance with RSA 498-A:5" and this can occur only "after receipt and review by the board."

submitting it. The board finds the Clerk (based on established board procedures) did not err in returning the Declaration because the board has the requisite authority to return documents that are not in compliance with the requirements established by the legislature for a taking of property for a public purpose

In subsequent correspondence on February 4, 2014, the Condemnor notified the board the Condemnor had already recorded a "Notice of Condemnation" on January 22, 2014 at the Strafford County Registry of Deeds. This recordation occurred one day after the Declaration was *submitted* to the board for filing and *after* the Condemnor was specifically advised by the board that the document was not in compliance with the statutes and the rules governing this process.

The board has considered how best to resolve these procedural issues at this point in the proceedings. The board is concerned about the additional costs and time that would be involved if the board exercised its authority to require the Condemnor to file a new declaration of taking and the possible prejudice and confusion to the many named condemnees that may result from such a process.

In the interests of justice, the Motion is granted. The Declaration is deemed filed as of January 22, 2014 and the board has assigned the docket number shown above.

Further, because lienholders are not condemnees, the board finds the Condemnor should file a motion to amend the Declaration. See numbered paragraph "7" on pp. 3-4 of the Motion, where the Condemnor states it "intends to file a motion seeking an amendment to the [D]eclaration to correct the error in the declaration submitted on January 22, 2014." (This amendment is intended to remove the two "lienholders" 'erroneously' named in the original Declaration by the Condemnor. Cf. Motion, pp. 1 and 5.)

Consequently, the board will issue an Order of Notice to all condemnees listed in the Declaration and will await the filing of a motion to amend by the Condemnor.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Member

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Albert F. Shamash, Member

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Theresa M. Walker, Member

Certification

I hereby certify copies of the foregoing Order have been mailed, this date, to: Brian W. Buonamano, Esq., Department of Justice, 33 Capitol Street, Concord, NH 03301, counsel for the condemnor.

Date: February 12, 2014

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Anne M. Stelmach, Clerk