

State of New Hampshire

v.

Mark A. Marino, Paula F. Marino and People's United Bank, N.A.

Docket No.: 27636-15ED

ORDER

This Order addresses the following two pleadings filed by the attorney for “Condemnees”

Mark A. Marino and Paula F. Marino:

- (1) an “Assented-To Motion to Extend Preliminary Objection and RSA 498-A:4, III(b)(5) Election Deadlines” filed on November 2, 2015; and
- (2) an “Initial Protective Answer, Preliminary Objection and RSA 498-A:4, III(b)(5) Election” filed on November 5, 2015.

The board has no authority to “extend” the timeline to file a preliminary objection (to “December 7, 2015”) because the Condemnees have already withdrawn the deposit of damages. As a result, as stated in RSA 498-A:11, III, they are “deemed to have waived all objections and defenses to the action and to the taking of [their] property except for any claim to greater compensation.” (See also the August 21, 2015 Order of Notice, paragraph 4(e) and Tax 210.05(f).) Consequently, whether assented to or not, the Condemnees’ motion to extend is denied.

Insofar as their second pleading attempts to make an election, pursuant to RSA 498-A:4, III(b)(5), the Condemnees misread the statute: no election is required to make the valuation date “the date of filing” of the Declaration of Taking (August 19, 2015). Further, the board denies the Condemnees’ conditional request to “increase the deposit of security” because RSA 498-A:6 provides that “such bond and security shall not be required when the state of New Hampshire is the condemnor.”

In addition, the board grants the “Condemnor’s” November 13, 2015 “Assented-To Motion” for additional time (to January 11, 2016) to respond to the remaining requests in the Condemnees’ pleadings.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

CERTIFICATON

I hereby certify copies of the foregoing Order have been mailed this date, postage prepaid, to: Diane Martin, Esq., State of New Hampshire, Department of Justice, 33 Capitol Street, Concord, NH 03301, counsel for the Condemnor; Mark S. Derby, Esq., Cleveland, Waters & Bass, P.A., P.O. Box 1137, Concord, NH 03302-1137, counsel for the Condemnees; and Kate Smith, Loan Servicing, People's United Bank, P.O. Box 1648, Plaistow, NH 03865, Mortgagee.

Dated: 11/25/15

Anne M. Stelmach, Clerk