

Waterbury Select Board
U.S. Route 2-Main Street Reconstruction FWWA A FEGC F 013-4 (13)
Condemnation Compensation Proceedings
August 7, 2017
6:30 p.m.
Minutes

Attending: C. Viens, D. Schneider, M. Metayer, Select Board; B. Farr, W. Shepeluk, Staff; C. Nordle, Esq-attorney representing Waterbury Select Board; C. Ferry, review appraiser, K. Thompson, evaluation agent/appraiser trainee, J. Blanchard, negotiator; M. O'Grady, all of the Vermont Agency of Transportation; A. Imhoff, ORCA Media.

Property Owners: R. Boyle, C. Rich, A. Caron; M. Davis, E. Coffey; A. Hunt.

C. Viens, chair of the select board called the hearing to order at 6:35 p.m.

On a motion made and duly seconded (Metayer/Schneider), the board unanimously approved the agenda.

Viens introduced C. Nordle, the town's attorney, and asked him to lead and moderate the meeting. Nordle reminded the board and those present of the process used by the board to find the project "necessary for the public good." He also described the process the board would use to determine the compensation that is due property owners who have not "settled and signed off" on easements that describe temporary or permanent "takings necessary to construct the project", which have been prepared by VTrans.

All prospective witnesses that might present testimony at the hearing this evening were sworn in by C. Nordle.

The first parcel for consideration and discussion by the board is Parcel 26 at 23 S. Main Street and Parcel 108 at 2 Elm Street, the Prohibition Pig and the Prohibition Pig Brewery, respectively, owned by Chad Rich, who was present.

R. Boyle of Randall Street asked to be recognized, wanting to know whether the public could make general comments before the parcel by parcel review took place. C. Viens allowed Boyle to proceed with his comments. Boyle stated that the "Necessity" of the project in question was presently under appeal and he wondered why the select board was proceeding with compensation hearings when "Necessity" was still in question. C. Nordle explained that the statutes allowed broad discretion to the select board in the Necessity and Condemnation process and that it was appropriate for the board to proceed with compensation hearings as no court has enjoined the town from proceeding with the project. Boyle wanted to know whether parties who had agreed to accept an offer or had negotiated and accepted a better offer could participate in the appeal of "Necessity". C. Nordle advised that parties with questions such as that should consult the own attorneys.

The board resumed its hearing on parcels 26 and 108. Charles Ferry, review appraiser for VTrans appeared and described his qualifications and his authority and responsibilities as pertains to the Main Street project. He stated that he and Mr. Keller, another review appraiser for VTrans-not present tonight-had both reviewed the work of Mr. O'Brien, the VTrans appraiser who had assessed the impact of the project on the parcels in question, owned by C. Rich. Ferry explained that it was the job of VTrans to establish fair market value for the properties in order to determine "just compensation" for the "necessary takings" that will allow the project to be constructed at these locations. He reiterated statements made by VTrans representatives at previous meetings that the values established and calculated were for the impacts on real property and that no consideration was given by VTrans appraisers to "business losses" that may occur as a result of the project.

Ferry stated that the property was valued at \$165,000 per acre as of August 2016 and that value is considered the "before project value". The value calculated as "after project value" is \$155,050. The reduction of \$9,950 in value is the result of permanent takings. In addition, temporary rights are needed at the two parcels to allow the construction. The temporary takings are valued at \$200. The total offer made to the owner as appraised by VTrans is \$10,150.

C. Nordle asked if Mr. Ferry could say more about how the before and after analysis was conducted. Ferry complied and stated that there are three approaches that could be used to assign a value to the properties in question: the "cost approach" for improvements on real estate, which is inapplicable to determining land values; the "income approach" where an income stream from commercial properties are analyzed; and the "sales comparison approach". In this instance Ferry stated that the comparison approach was determined to be the best methodology. He stated that sales of properties dating from 2012-2016 in the towns or cities of Hartford, Montpelier, Berlin and Essex were used for the purposed of comparison in the case of the properties in question.

Chad Rich, the owner of the properties in question, appeared before the board. He asked if he could be provided a copy of the VTrans appraisal report. Mr. Ferry answered that it was appropriate for that information to be shared with the property owner and the select board. Mr. Rich asked about being compensated for loss of business. Nordle explained that the burden was on the property owner to provide evidence of the prospective losses and that a form could be obtained from VTrans that could be filed as part of the evidentiary process. Mr. Rich asked if his hearing could be postponed so he could have more time to review the appraisal report being used to determine the compensation due him for impacts to his real estate as well as to have time to provide evidence for his prospective business losses. He suggested August 28th as the date when he could be ready with his presentations. C. Nordle suggested that the board should consider entering deliberative session to consider the request.

The board entered deliberative session at 7:05 after unanimous approval of a motion duly made and seconded (Schneider/Metayer) to enter deliberative session to consider a request for postponement the hearing on parcels 26 and 108.

At 7:15 the board re-entered open session and returned to the issues concerning parcels 26 and 108. C. Viens announced that the board had agreed to postpone the hearing on parcels 26 and

108 to August 28, 2017. C. Nordle told Rich to be prepared to proceed with his testimony at 7:45 that evening. Mr. Ferry of VTrans stated it would be helpful if Rich provided a copy of appraisals done by professionals he employs prior to the date of the hearing. C. Nordle also asked Rich to share any filings related to prospective business losses prior to the hearing date. Rich said he would do so and thanked the board for agreeing to give him more time

Parcel 31, 49 S. Main Street-Waterbury Service Center-owner Albert Caron who was present.

Kamden Thompson, real estate evaluation agent and appraiser in training appeared before the board and explained the “waiver offer” that had been made to Mr. Caron. Thompson explained that properties where minor impacts from construction were expected to occur and where “takings” were “modest” received waiver offers rather than offers based on a full appraisal. He explained that the value of the lot listed on the town’s Listers’ Cards was used to determine a value per square-foot for the permanent or temporary “takings” and that a “nominal” value was assigned for items where a schedule of values could be built, such as water and wastewater disconnections and reconnection where owners were really being compensated for an inconvenience.

Thompson stated a permanent easement in an area of approximately 247 square feet was necessary for removal and replacement of overhead and underground utilities. In addition, a temporary easement to remove and reset a sign, a temporary easements to construct a drive, a temporary easement to extend highway slopes and embankments, in an area of 23 square feet, more or less. In addition, a temporary easement to disconnect and connect sewer and water, if necessary.

Thompson explained that the .14 acre parcel was valued at \$127,800 translating to \$20.96/square foot (44,360 sq ft-1 acre * .14 = 6,098 sq ft in the parcel, \$127,800 land value/6,098 sf = \$20.96/sf). The permanent easement for the utility is be valued by VTrans at 95% of the cost per square foot of the area taken or \$4,918, which was rounded up to \$5,000.

Thompson continued to explain the “nominal” values offered for the less intrusive takings, those that are common to the project. They include: \$200 to disconnect and reconnect water/sewer services; driveway regrading/paving for two driveways at \$100 each; 23 square feet of slope rights for \$300 (20% of the square foot value of \$20.96 for 3 years = \$289.25, rounded to \$300); preparation to remove the sign for the business which is near or in the ROW-\$100. The total of offer for the permanent and tempory takings is \$5,800

Mr. Caron appeared before the board and expressed concerns about the project and its impact on his property and business. He spoke about water that puddled near the sign that was exacerbated by an old concrete wall buried at the edge of his property. He suggested during construction his yard would be smaller and less accessible and that would cause him to store vehicles off site. It would cost him about \$565 per year to cover vehicles in his possession for repair that are stored offsite.

Caron went on to say that he believed the construction project would discourage enough customers away that he would be forced to lay off his employee. That would negatively affect his unemployment insurance premiums. All together he estimated his business loss would be \$21,057.

R. Boyle was recognized and asked if it was ok for the board to consider business losses at a hearing where offers for real estate takings were being considered. C. Nordle answered that it was appropriate for the property owners to raise the issue at this hearing. He stated that the board could deliberate on all evidence and testimony that was introduced and offered at the hearings. He went on to point out that the board had earlier in the evening continued the hearing of Chad Rich to allow him time to gather evidence concerning his business loss.

At this point M. Metayer made a motion to close the evidentiary hearing and testimony on Parcel #31. The motion was seconded by D. Schneider and passed unanimously.

The board then took up issue concerning Parcel 32 at 46 S. Main Street owned by V.L. Perkins.

Barb Farr reported that the owner of the parcel had agreed to an offer that had been negotiated with VTrans earlier in the day and that she had given the signed paperwork to the negotiator. No further action by the board was necessary.

The board then took up issue concerning Parcel 52 at 88 S. Main Street owned by Paul Arnot.

C. Nordle stated that the owner had indicated that he would sign, but the documents had not yet arrived by mail. He recommended the board to go forward with the hearing even though Mr. Arnot is present. As the time for that parcel had not yet come, the board unanimously approved a recess until 8:10 p.m. upon a motion duly made and seconded (Schneider/Meatyer).

The board reconvened the hearing at 8:10 p.m. and took up Parcel #52 as described above.

Mr. Thompson of VTrans explained the necessary takings. They included a permanent easement to remove and bury overhead utility lines. The land in question is valued at \$88,300 and is .29 acres in area. That translates to \$6.99/sq. ft. The necessary easement is 603 sq. ft. in area. The offer is at 95% of the established value or \$4,004.22 ($603 \text{ sf} * \$6.99/\text{sf} * 95\%$), rounded up to \$4,100. Two temporary easements of 217 sf and 776 sf are necessary for utility relocations. The offer is a 20% of the established value for each of the 3 years of the project. The offers for each easement were rounded up to \$1,000 and \$3,300 respectively or ($217 \text{ sf} * 6.99 * .20 * 3$) = \$910, rounded to \$1,000 and ($776 * 6.99 * .20 * 3$) = \$3,254.54, rounded to \$3,300. Thompson explained there were a few "nominal" takings as well, valued as: remove and replace an iron pin-\$200; disconnect and reconnect water and sewer service-\$200; entering the property to remove a tree, plant shrubs, plant a tree, for work on a walk and a stair--\$100 each. The total offer was \$9,300

The board had no questions and no testimony was offered. M. Metayer made a motion to close the hearing on Parcel # 52 and conclude tonight's proceedings. D. Schneider seconded the motion, which passed without dissent.

The select board passed over the item on the agenda to consider a cooperative agreement with the state concerning the Main Street project as the agreement had not yet been finalized.

The board considered an 'Errors and Omissions' letter explaining a change to the grand list recommended by Dan Sweet, town appraiser. It concerned a Veteran's Exemption for James Beverley, for which he was eligible. Mr. Beverley had not applied for the exemption in time for it to be included in the calculation of the Grand List. Mr. Sweet had checked with the state's Division of Veterans Affairs and the Tax Department, both of which stated that the town could choose to approve the exemption now. The exemption will be worth over \$300 to Mr. Beverley as his entire valuation of \$15,800 will be exempted from property taxation. Shepeluk stated the loss of \$300 or so tax dollars would have no impact on the town's finances. Don Schneider made a motion to accept the Errors and Omissions report and approve the exemption. Metayer seconded the motion and it was approved unanimously.

At 8:20 Metayer moved to enter deliberative session to discuss the facts presented during the compensation hearing for the Main Street project. Schneider seconded the motion and it passed unanimously.

The board left deliberative session at 9:00 p.m., having made no decisions. The meeting adjourned at 9:05 p.m.

Respectfully submitted,

William Shepeluk, Municipal Manager

Approved on: September 5, 2017