

Waterbury Select Board Meeting
&
U.S. Route 2-Main Street Reconstruction FWWA A FEGC F 013-4 (13)
Condemnation Compensation Proceedings
August 14, 2017
6:30 p.m.
Minutes

Attending: C. Viens, D. Schneider, M. Metayer, Select Board; B. Farr, W. Shepeluk, W. Woodruff, Staff; C. Nordle, Esq-attorney representing Waterbury Select Board; M. O'Grady, appraisal chief, C. Ferry, review appraiser, L. Gluck negotiator, all of Vermont Agency of Transportation.

Property Owners/Visitors: R. Boyle; Susan Bettman, ORCA-TV

Public: E. Coffey, L. Sayah.

C. Viens, Chair of the Select Board called the meeting to order at 6:39 p.m.

D. Schneider made a motion to approve the agenda, which was seconded by M. Metayer. The motion was approved unanimously.

C. Viens asked W. Shepeluk to proceed with the "Manager's Items" that were on the agenda.

W. Shepeluk reported that Paul O'Kane had requested a refund for the \$600 (\$75/week) fee he paid for his son's enrollment in the summer recreation program. Shepeluk explained that the child had special needs that had not been made known to the Town. The child had to be dismissed from camp into the third week of attendance. **Schneider made a motion to make a "pro-rata refund" for the 6 weeks the child did not attend. Metayer seconded the motion and it was approved unanimously.**

Shepeluk reported to the Board that LeeAnne Viens, Bookkeeper, has indicated she will be retiring at the end of January 2018. She started work with the municipalities in 1982. He suggested a joint meeting with the Trustees in September to discuss filing the position and potential changes to the job description. He also reported that Deb Fowler, Recreation Director has indicated she will be resigning for family reasons sometime in the spring of 2018. Shepeluk expressed understanding of the decisions but also his disappointment about losing two quality employees.

At 6:52 p.m. Viens convened the compensation hearing for the Main Street Reconstruction Project, as all expected to be in attendance for the 6:55 agenda item were present and no one objected to starting a bit early.

The Chair asked C. Nordle, the Town's attorney 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.

Nordle “swore in” all who expected to provide testimony and all who swore so agreed to tell the truth for the full duration of the hearing concerning the properties under consideration in the evening’s proceedings.

The first parcel for consideration and discussion by the board was Parcel 112 at 1 Randall Street, owned by Richard Boyle, Jr. & Amy Chorey, husband and wife. Mr. Boyle was present at the hearing.

Mark O’Grady identified himself as a Right of Way Appraiser for VTrans, employed there for the last 15 months. He offered that he has 15 years of appraisal experience in Vermont and that he formerly served as a principal in two different appraisal firms located in S. Burlington.

Mr. O’Grady explained that a “waiver valuation approach” was applied for the takings at Parcel 112. This type of valuation is used for this project “when takings are uncomplicated and if the compensation recommended is less than \$25,000”. He described the property as a 7-unit apartment building on .34 acres of land situated in the “Village Residential District. It is a pre-existing, non-conforming use. The property is in a mapped 100 year flood zone where there is a 1% chance per year that a flood occurs. He described the takings necessary at this property as “a permanent easement to install and maintain a guy wire and anchor” (for a utility pole). He stated that the easement was within the front yard setback which is 40 feet. He estimated the total area involved for the permanent easement was 5 square feet. He stated that \$500 was the “nominal value” offered when only one taking is involved at a particular property.

Richard Boyle Jr. requested an opportunity to ask some questions of Mr. O’Grady. The board agreed to allow him to ask questions, provided he would let O’Grady answer and that the questions would not be considered as part of his own testimony.

Boyle asked if O’Grady stated that the easement was within the 40 foot front setback. O’Grady said, “Yes”. He offered, because no structures could be placed in the setback by the owner, no diminishment of value would occur. Boyle asked if loss of value would occur if the easement caused a loss of use of a parking space on the property. O’Grady said it may and if loss of parking was resulting that the issue of the value for the easement would have to be revisited. Boyle asked if a waiver appraiser visited the property as he had never seen one there. O’Grady said a site visit was made by an appraiser in December of 2015. Boyle wanted to know if appraisers took into consideration the historic nature of the neighborhood when setting values for easements. O’Grady said yes. He also stated that utility poles are a common element in historic neighborhoods like this.

Nordle tried to redirect the discussion: He stated the test to determine value for an easement is its reasonableness given the public’s need for the improvements included in the project’s scope.

Boyle stated that it was important to him that there was no pole present in front of the house when he bought the property. He asked O'Grady if it wasn't more common for poles to be placed to the side of a particular house, generally on a property line rather than directly in front of a home. O'Grady said that he could not agree to that categorical statement and that he does not know how common it is for poles to be placed in any particular location in relation to houses.

Boyle asked O'Grady how the value of the waiver offer was determined. O'Grady re-stated that when only one "nominal taking" is involved for a parcel in this project, the practice is to offer \$500, significantly more than the easement would appraise for, providing some compensation to the owner for inconveniences involved. He stated that Boyle's land is valued at \$73,000 by the town for tax purposes. That value is divided by the Common Level of Appraisal (CLA), which is a factor applied by the state's tax department to insure that the value is in close approximation to its proper "Fair Market Value". As Waterbury's CLA is virtually "1", tax values in Waterbury are listed at very close to 100% of Fair Market Value. At \$73,000 of value for .34 acres, the square foot value is \$4.93/ square foot. The area for the easement for the guy wire and anchor is estimated at 5 square feet and its value would be far lower than the \$500 offered.

Boyle asked why a sales comparison approach for determining the value was not used. O'Grady said that approach is used only when the takings and resulting offer are far more complex and numerous. Boyle stated that the parking on his property would be negatively impacted by the placement of the anchor and that it and the guy wire would be in the way of pedestrians and his children while they were playing.

Metayer asked O'Grady to define "nominal offers". O'Grady stated if there was only one taking, permanent easements generated offers of \$500. If the easement was temporary, \$100-\$200 would be offered.

Viens asked if the easement in question allowed the utility company to access the property for repair or replacement of the guy and anchor. Nordle explained that the easement's language contained a provision to allow for maintenance and replacement.

Schneider asked for "clarity on the parking issue that Mr. Boyle just brought up". Nordle asked O'Grady to describe the easement and its location. He described that the easement would allow the placement of an anchor, taking up no more than a square foot several feet behind the sidewalk. He stated that he could not speak to its potential impact on parking as he was not "intimately familiar with the parking" at the site.

O'Grady had no more testimony to provide and Nordle told him no additional testimony is required.

To answer Schneider's question, Nordle showed Boyle a copy of a photo of the site, asking him to describe the parking spaces. Boyle pointed out features of the site and stated that the parking was already constricted by the cedar hedge. He pointed to where the guy wire and anchor would be located and said as snow would be piled around the anchor, more pressure would be put on the space to accommodate his tenants' vehicles. Nordle also showed him the site plan that had been drawn for the project. Boyle agreed, "in general, the plan is a good depiction of the site".

Nordle stated that the plan showed the “gravel drive ends inside of the cedar hedge”. Boyle agreed, but said the trash cans are moved away from that location in winter, allowing more room for snow removal, to expand the parking area in winter.

Schneider’s curiosity was satisfied and the board had no more questions. Nordle recommended the board to take into the evidence record the site plan and the photograph. **Metayer moved to take into evidence the site plan, marking it #1 (hearing dated 8.14.17) and the copy of the photo, marking it #2 (hearing dated 8.14.17). Schneider seconded the motion and it was approved unanimously.**

Boyle stated for the record that he wanted to express thanks to the board for taking the time to conduct the hearing and to all involved in moving the project toward construction and completion. He stated, “This is a good project that is long overdue. Compensation is not his major issue. He is “seeking dialogue” and “wants a compromise to get the best project in place”. He stated he is “not looking for dollars”, but many property owners (impacted by the project) believe there has been no dialogue. He simply wants to talk to the engineers about a solution to his concerns. He believed progress was being made and then solutions that seemed practicable “were pulled away”.

Boyle stated that he is not “waiving any of his rights to appeal the determination of ‘necessity’ for the project or any decision made here concerning compensation. He stated that the decision made by VTrans that the “taking of my property was ‘not complicated’ and therefore entitling him and his wife to a nominal waiver offer “does not do me justice”. He described the house as designed by a famous architect, William Deal, for William Cooley, an historic Waterbury industrialist, as a valuable historic structure. He said he wanted to open up the front of the property for better viewing of the structure, but the proposed pole and guy wire will detract from the aesthetics of the structure and will diminish its value.

Boyle stated that he has contacted realtors-Century 21 in Waterbury and Caldwell Banker in Stowe-to ask them to determine the impact on the value of his property. He was told that was a difficult question to answer. In addition, he has reached out to landscapers to help determine how much it might cost to provide proper screening, which may involve removal of some of the cedar hedges, trimming or removal of a tree and sod work. It seems this work may have to be performed by more than a single contractor. For all these reasons Boyle asked the board to provide more time for him to determine the costs of impacts to his property from this project.

Nordle told him the board will deliberate after the hearings close tonight. It is not likely they will make public decisions on this matter tonight. The board can consider the request for additional time for the submission of additional evidence. However, he stated, the board is limited in its ability to consider these additional requests as it has authority in these proceedings to determine proper compensation for the takings described by the easement written by VTrans. Nordle recommended to the board that the evidentiary hearing for this parcel be closed, with the understanding there is a request by the property owner to re-open it at a later date.

Schneider made a motion to provisionally close the hearing on Parcel 112, leaving a possibility for re-opening for further evidence and testimony at a later date. Metayer seconded the motion and it passed unanimously.

The next parcel for consideration was Parcel 105, CV Properties Incorporated—the railroad corridor proximate to the so-called Dry Bridge at Stowe Street. The owner did not send a representative to the hearing. The necessary easement described by Mr. O’Grady is 2,224 square feet for the removal and replacement of overhead utilities and the perpetual right to cut and trim all trees, shrubs, brush etc... to maintain those utility lines.

O’Grady stated that Ed Pierce, Right of Way Agent for VTrans, completed the valuation of the property and the easement by comparing it to adjacent properties, Parcel 104 and Parcel 106. Parcel 104 was valued at \$5.31/square foot and Parcel 106 at \$6.20/sf. The average of \$5.76/sf was applied to Parcel 105, the property being discussed. The waiver offer calculated by Mr. Pierce was at 50% of valuation or \$6,405 (2,224 square feet * \$5.76 sf * 50% = \$6,405.12).

There were no other comments or questions. **Metayer voted to close the evidentiary hearing for Parcel 105. It was seconded by Schneider and it passed without dissent.**

M. Metayer then moved to close the public portion of the hearing and to enter deliberative session to consider the evidence and testimony that had been presented. Schneider seconded the motion. It passed 3-0 and the board entered deliberative session at 9:31

The board re-entered public session at 9:50 and by consensus agreed to cancel the regular select board meeting scheduled for August 21, 2017.

Respectfully submitted,

William Shepeluk, Municipal Manager

Approved on: September 5, 2017