



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

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JEFF BRILLHART, P.E.
ACTING COMMISSIONER

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

Bureau of Right-of-Way
March 16, 2015

REQUESTED ACTION

The Department of Transportation, Bureau of Right-of-Way, requests authorization to pay property owners \$433,930.00 as documented in the Contemplated Awards List for amounts greater than \$5,000.00 for the period extending from January 27, 2015 through March 10, 2015, effective upon approval by Governor and Council.

Funding is available based on the
source of funds for each particular project.

FY 2015
\$433,930.00

EXPLANATION

These contemplated award payments are being submitted for approval to compensate property owners, tenants and/or claimants for impacts resulting from Transportation Improvement Projects. The Department certifies that all payments will be made in accordance with all applicable State and Federal regulations as they relate to property acquisition and relocation.

Respectfully,


David J. Brillhart
Acting Commissioner

DJB/CRS/dd
Attachments



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



JEFF BRILLHART, P.E. ACTING
COMMISSIONER

CONTEMPLATED AWARDS

Project: LEBANON; X-A000(141); 13951
(Bridge Replacement over Mascoma River. Bridge
188/126)

OWNER: [Parcel #009] GREEN MOUNTAIN INTERNATIONAL TRADE
AND INVESTMENT LLC

OUT OF COURT SETTLEMENT PRIOR TO A HEARING \$8,325.00
BEFORE THE NHBTLA BETWEEN THE ATTORNEY GENERALS
OFFICE AND THE LAND OWNER IN THE AMOUNT OF \$9,925.00

8/28/2013 - AWARDED \$1,600.00 AND REFUSED
9/4/2013 - DEPOSIT OF DAMAGES WITH CLERK NHBTLA IN
AMOUNT OF \$1,600.00
BALANCE FOR APPROVAL...\$8,325.00

(PURCHASE OF LAND AND RESULTANT DAMAGES-REGULAR)

OWNER: [Parcel #010] GREEN MOUNTAIN INTERNATIONAL TRADE &
INVESTMENT LLC

OUT OF COURT SETTLEMENT PRIOR TO A HEARING BEFORE \$8,325.00
THE NHBTLA BETWEEN THE ATTORNEY GENERALS OFFICE AND
THE LAND OWNER IN THE AMOUNT OF \$11,325.00

8/28/2013 - AWARDED \$3,000.00 AND REFUSED
9/4/2013 - DEPOSIT OF DAMAGES WITH CLERK NHBTLA IN
AMOUNT OF \$3,000.00
BALANCE FOR APPROVAL...\$8,325.00

(PURCHASE OF LAND AND RESULTANT DAMAGES-REGULAR)

Project: PELHAM; X-A000(415); 14491
(NH 111A, improvements to two intersections, Main
St/Nashua Rd & Bridge St/Common St)

OWNER: [Parcel #014] MARK HODGDON ESQ & JAMES LAMONTAGNE

OUT OF COURT SETTLEMENT PRIOR TO A HEARING BEFORE \$25,000.00
THE NHBTLA BETWEEN THE ATTORNEY GENERALS OFFICE AND
THE LAND OWNER IN THE AMOUNT OF \$100,000.00

5/4/2012 - AWARDED \$75,000.00 AND REFUSED
5/16/2012 - DEPOSIT OF DAMAGES WITH CLERK NHBTLA IN
AMOUNT OF \$75,000.00
BALANCE FOR APPROVAL...\$25,000.00

(PURCHASE OF LAND AND RESULTANT DAMAGES-REGULAR)

Project: SALEM TO MANCHESTER; IM-IR-0931(174); 10418C
(RECONSTRUCT & WIDEN MAINLINE, EIS & FINAL DESIGN -
MA. S/L IN SALEM TO I-293 IN MANCHESTER-PE & ROW)

OWNER: [Parcel #W032A] MARK HODGDON ESQ & FIN-LYN TRUST

OUT OF COURT SETTLEMENT PRIOR TO A HEARING BEFORE THE NHBTLA BETWEEN THE ATTORNEY GENERALS OFFICE AND THE LAND OWNER IN THE AMOUNT OF \$50,000.00 \$40,000.00

6/15/2012 - AWARDED \$10,000.00 AND REFUSED
6/20/2012 - DEPOSIT OF DAMAGES WITH CLERK NHBTLA IN AMOUNT OF \$10,000.00
BALANCE FOR APPROVAL...\$40,000.00

(PURCHASE OF LAND AND RESULTANT DAMAGES-REGULAR)

OWNER: [Parcel #W034] MARK HODGDON ESQ & PROLYN CORPORATION & PELHAM PLAZA CORPORATION & CORBETT REALTY TRUST

OUT OF COURT SETTLEMENT PRIOR TO A HEARING BEFORE THE NHBTLA BETWEEN THE ATTORNEY GENERALS OFFICE AND THE LAND OWNER IN THE AMOUNT OF \$670,000.00 \$335,000.00

5/4/2012 - AWARDED \$335,000.00 AND REFUSED
5/9/2012 - DEPOSIT OF DAMAGES WITH CLERK NHBTLA IN AMOUNT OF \$335,000.00
BALANCE FOR APPROVAL...\$335,000.00

(PURCHASE OF LAND AND RESULTANT DAMAGES-REGULAR)

Project: SEABROOK; X-A002(762); 16444
(WIDEN US 1 FROM NH107 INTERSECTION SOUTHERLY APPROXIMATELY 2000 FT)

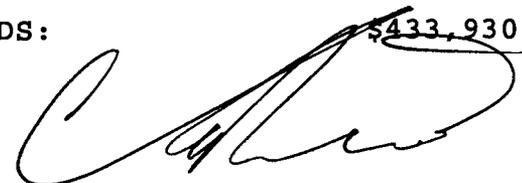
OWNER: [Parcel #007] KONIARES REALTY LLC

150 SF DRIVEWAY EASEMENT \$17,280.00
125 SF SLOPE EASEMENT
.02 AC COMMERCIAL LAND W/BLDG

(PURCHASE OF LAND AND RESULTANT DAMAGES-REGULAR)

TOTAL CONTEMPLATED AWARDS:

\$433,930.00



CHARLES R. SCHMIDT, PE
ADMINISTRATOR

FEB 20 2015

RECEIVED

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



JOSEPH A. FOSTER
ATTORNEY GENERAL

ANN M. RICE
DEPUTY ATTORNEY GENERAL

February 19, 2015

David J. Brillhart, Acting Commissioner
NH Department of Transportation
PO Box 483
Concord, NH 03302-0483

Re: State of New Hampshire v. Green Mountain International Trade and Investment, LLC
Project: Lebanon, X-A000(141), 13951, Parcel 9
BTLA Docket No. 26990-13ED

Dear Acting Commissioner Brillhart:

The above-captioned eminent domain case has been settled with the condemnee prior to a hearing before the Board of Tax and Land Appeals. The taking occurred on September 4, 2013. The tender of damages was based upon an appraisal report originally completed on February 19, 2013 by Peter I. Nault and was in the amount of \$1,600.00. The case was settled for a total of \$9,925.00.

Given the specific facts of the case, it was decided that it was more efficient to settle the case rather than expend the resources associated with a hearing, as well as risking a potential appeal.

Therefore, would you kindly have drawn and sent to me a check in the amount of \$8,325.00, made payable to "Green Mountain International Trade and Investment, LLC."

Very truly yours,

A handwritten signature in cursive script that reads "Dianne Martin".

Dianne Martin
Assistant Attorney General
Transportation & Construction Bureau
(603) 271-3675

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



JOSEPH A. FOSTER
ATTORNEY GENERAL

DEPT. OF TRANSPORTATION
RIGHT-OF-WAY

FEB 20 2015

RECEIVED

ANN M. RICE
DEPUTY ATTORNEY GENERAL

February 19, 2015

David J. Brillhart, Acting Commissioner
NH Department of Transportation
PO Box 483
Concord, NH 03302-0483

Re: State of New Hampshire v. Green Mountain International Trade and Investment, LLC
Project: Lebanon, X-A000(141), 13951, Parcel 10
BTLA Docket No. 26997-13ED

Dear Acting Commissioner Brillhart:

The above-captioned eminent domain case has been settled with the condemnee prior to a hearing before the Board of Tax and Land Appeals. The taking occurred on September 4, 2013. The tender of damages was based upon an appraisal report originally completed on February 19, 2013 by Peter I. Nault and was in the amount of \$3,000.00. The case was settled for a total of \$11,325.00.

Given the specific facts of the case, it was decided that it was more efficient to settle the case rather than expend the resources associated with a hearing, as well as risking a potential appeal.

Therefore, would you kindly have drawn and sent to me a check in the amount of \$8,325.00, made payable to "Green Mountain International Trade and Investment, LLC."

Very truly yours,

A handwritten signature in cursive script that reads "Dianne Martin".

Dianne Martin
Assistant Attorney General
Transportation & Construction Bureau
(603) 271-3675

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



JOSEPH A. FOSTER
ATTORNEY GENERAL

DEPT. OF TRANSPORTATION
RIGHT-OF-WAY

FEB 23 2015

RECEIVED

ANN M. RICE
DEPUTY ATTORNEY GENERAL

February 20, 2015

David J. Brillhart, Acting Commissioner
Department of Transportation
7 Hazen Drive
Concord, New Hampshire 03301

Re: State of New Hampshire v. James Lamontagne, et al
Project: Pelham, X-A000(415), 14491, Parcel 14
BTLA No. 26122-12ED

Dear Acting Commissioner Brillhart:

The Board of Tax and Land Appeals ("BTLA") has issued a decision on the merits in the above-captioned eminent domain case and neither party has elected to appeal to the Superior Court, thereby rendering the decision final. This taking occurred on May 16, 2012, in connection with the above-captioned project and consisted of an acquisition of 10,210 square feet and a temporary construction easement consisting of 975 square feet. The State's initial tender of damages was in the amount of \$75,000.00 and was based upon an appraisal, dated June 14, 2011, prepared by Jessie C. Tichko. This appraisal report was later updated by Ms. Tichko as of the date of taking and reflected the same amount as the initial tender of \$75,000.00.

The BTLA took the matter under advisement and has issued its decision awarding just compensation in the amount of \$100,000.00, based, in part, on an "as is" market value opinion of approximately \$150,000 for the potential one-acre lot, and adjusted downward to account for hard and soft subdivision, marketing and holding costs. While the Department does not agree with this analysis, in light of the limited additional award, the Department elected not to appeal.

Therefore, would you kindly have issued and forwarded to me a check in the amount of **\$26,498.80** made payable to "**Mark P. Hodgdon, Attorney for James Lamontagne**".

\$100,000.00	Board Award
- 75,000.00	Original Tender
<u>25,000.00</u>	
<u>1,498.80</u>	Interest
\$26,498.80	Total Due

David J. Brillhart, Acting Commissioner
February 20, 2015
Page 2

If you have any questions, please do not hesitate to contact me. Thank you.

Very truly yours,



Rebecca L. Woodard
Assistant Attorney General
Transportation & Construction Bureau
(603) 271-3675

RLW/mce

cc: Charles Schmidt, Administrator, Dept. of Transportation Bureau of Right-of-Way ✓
Stephen Bernard, Chief Right-of-Way Appraiser, Dept. of Transportation
Jamie Sikora, Special Programs Manager, U.S. Dept. of Transportation

1159411

Project Name Pelham
Project Number 14491
Checked by Jupe Date 3/3/15
Nancy L. Spaulding 3/5/15

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL



DEPT. OF TRANSPORTATION
RIGHT-OF-WAY

FEB 05 2015

RECEIVED

ANN M. RICE
DEPUTY ATTORNEY GENERAL

February 4, 2015

David J. Brillhart, Acting Commissioner
NH Department of Transportation
P. O. Box 483
Concord, New Hampshire 03301

Re: FIN-LYN Trust v. State of New Hampshire
Rockingham County Superior Court- Docket No. 218-2014-CV-224
Project: Salem-Manchester, 13933-I, (Parcel W-32A) 10418C

Dear Acting Commissioner Brillhart:

The above-captioned case has been settled with the Plaintiff/Condemnees prior to the upcoming trial of this matter. This case involves the fee taking of 4,885 square feet from a remnant parcel along Route 111 in Windham. This property was acquired in connection with the realignment of Route 111 at the Route 93 Exit 3 interchange. Based on the appraisal of Jeffrey Leidinger, the State offered the Condemnees \$10,000 for the property. The Condemnees rejected the offer and obtained their own appraisal determining the value of the taking to be \$202,000. The Board of Tax and Land Appeals conducted a hearing on this case in 2013 and assessed damages at \$17,000. The Condemnees appealed this decision to the Superior Court.

This case is complicated by the fact that the land being acquired contains an encroachment in the form of a driveway to the Shaw's Supermarket which sits behind the remnant parcel on Route 111. Prior to this project, the State had transferred the subject parcel to Shaw's. Of note, the State erroneously relied on a Shaw's survey plan which showed that the State owned the subject parcel and sold the land to Shaw's prior to this project. Only at the time of condemnation did it become clear that the Condemnees were the actual owners of the land and that the State did not have the right to convey the property to Shaw's.

The Condemnees argued that because Shaw's was essentially blocked from Route 111 without the remnant parcel, the land had a greater value than most remnants. The State contended that the driveway was an encroachment that should not be considered in the value. While the State's argument carried weight with the BTLA, there was significant risk that a jury

would find that Shaw's, as the only potential buyer for this property, would pay over \$100,000 for the access to Route 111.

In light of the factors listed above, this office in consultation with Charles Schmidt and William Cass entered into an agreement with the Plaintiff/Condemnees to pay an additional \$40,000 in compensation for a total compensation of \$50,000. It is felt that this settlement is fair and reasonable in light of the risks presented by a trial in this matter and the potential that a jury would award well in excess of \$100,000 in damages as well as costs and interest.

Therefore, kindly have drawn and sent to me a check in the amount of \$40,000.00, made payable to "**Mark Hodgdon, Esq. as Attorney for the FIN-LYN Trust.**" Please do not hesitate to contact me if you have any questions or concerns. Thank you.

Very truly yours,



John J. Conforti
Assistant Attorney General
Transportation & Construction Bureau
(603) 271-3675

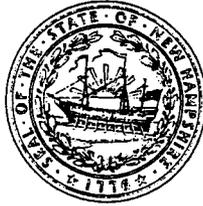
cc: Charles Schmidt, Administrator, Bureau of Right-of-Way, Dept. of Transportation

Project Name Salem man
Project Number 10418C (10418X)
Checked by Jye L Date 3/4/15
Approved by: Nancy L Spaulding Date: 3/5/15

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL



DEPT. OF TRANSPORTATION
RIGHT-OF-WAY

FEB 05 2015

RECEIVED

ANN M. RICE
DEPUTY ATTORNEY GENERAL

February 4, 2015

David J. Brillhart, Acting Commissioner
NH Department of Transportation
P. O. Box 483
Concord, New Hampshire 03301

Re: Prolyn Corporation, et al. v. State of New Hampshire
Rockingham County Superior Court- Docket No. 218-2014-CV-223
Project: Salem-Manchester, 13933-I, (Parcel W-34) 10418C

Dear Acting Commissioner Brillhart:

The above-captioned case has been settled with the Plaintiffs/Condemnees prior to the upcoming trial of this matter. This case involves the fee taking of 3.03 acres of property and encumbering 67,350 square feet of property with a permanent drainage easement. The subject parcel is an approximately 28 acre vacant commercial property located at the intersection of Route 111 and Wall Street in Windham. This property was acquired in connection with the realignment of Route 111 at the Route 93 Exit 3 interchange. Based on the appraisal of Jeffrey Leidinger, the State offered the Condemnees \$335,000 for the property. The Condemnees rejected the offer and obtained their own appraisal determining the value of the taking to be \$910,000. The Board of Tax and Land Appeals conducted a hearing on this case in 2013 and assessed damages at \$630,000. The Condemnees appealed this decision to the Superior Court.

The central issues in this litigation are the per-acre value of the subject parcel and the value deducted from the property as a result of the drainage easement. Of note, the drainage easement sits at the reconfigured intersection of Wall Street and Route 111 on the most visible portion of the property. The State's case had two significant weaknesses. First, the State's appraiser relied on the sale of State properties to ascertain the value of the subject parcel. The BTLA rejected this approach noting that the State's sale of property is not the same as private transactions. Additionally, the State's appraiser ascribed only nominal value (\$5,000) to the 1.5 acre drainage easement. The Condemnees would have been able to introduce evidence that the easement area could have been developed before the taking and that it is of no use after the condemnation.

In light of the factors listed above, this office in consultation with Charles Schmidt and William Cass entered into an agreement with the Plaintiffs/Condemnees to pay an additional \$350,000 in compensation for a total compensation of \$670,000. It should be noted that this payment only exceeds the BTLA award by \$40,000. It is felt that this settlement is fair and reasonable in light of the risks presented by a trial in this matter and the potential that a jury would award well in excess of \$750,000 in damages as well as costs and interest.

Therefore, kindly have drawn and sent to me a check in the amount of \$335,000.00, made payable to "**Mark Hodgdon, Esq. as Attorney for Prolyn Corporation, Pelham Plaza Corporation and Corbett Realty Trust.**" Please do not hesitate to contact me if you have any questions or concerns. Thank you.

Very truly yours,



John J. Conforti
Assistant Attorney General
Transportation & Construction Bureau
(603) 271-3675

cc: Charles Schmidt, Administrator, Bureau of Right-of-Way, Dept. of Transportation

Project Name Salt March
Project Number 10418CC10418X
Checked by Jupe Date 3/4/15
Approved by: Nancy L. Spaulding Date: 3/5/15