

Judge finds little legal merit to former bank building owner's claim against Belmont

BELMONT — A Merrimack County judge has dismissed three claims filed against the town of Belmont by the former owners of the old bank building in the village. William and Carolyn McDonough claimed the town cost them money and physical discomfort because it initiated discussions of a village revitalization project that eventually resulted in the abandonment of a public street that abutted their property.

William and Carolyn McDonough agreed to sell the property to the town for \$250,000 and on August 21, 2012 voters agreed to the price.

The McDonough's bought the building in 2009 for \$275,000 and in 2010 the town began discussions regarding the village project that included discontinuing Mill Street Extension which was one of four streets bordering the property.

They claimed the discussions caused them to lose rental income and adversely affected the value of their property.

Judge Richard McNamara said in his ruling issued May 6 that the claim for unjust enrichment is only allowed for instances where there is no contract. The McDonoughs entered into a contract for the sale of the former bank building so he dismissed the complaint.

He also ruled the town could not have known nor should it have known that the sale of the building at a price \$25,000 below what the McDonoughs paid would exacerbate their existing medical conditions, which they claimed.

"The (McDonough's) allegations do not rise to the requisite level of asserting extreme outrageous conduct that is utterly intolerable in a civilized society," he wrote.

As to the final count of inverse condemnation — or the taking by the government of a property but doesn't formally use the power of eminent domain - McNamara ruled for the town.

He ruled that while discussion lasted two-years, the town didn't delay the discussions intentionally to cause harm to the McDonoughs and they had access to their property at all times during the discussions.

McNamara said he would allow the McDonough's to add a complaint asserting a right to an assessment — which is addressed in state laws relevant to discontinued highway by a vote of the town — so the case is not entirely dismissed.

Belmont's attorneys had argued that the additional complaint needed to come within six months of the alleged wrong of August 21, 2012 but McNamara ruled the facts supporting the argument were outlined in the initial pleading, so he allowed the new complaint.