
Belmont property lawsuit headed to trial

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BELMONT - A Superior Court judge is scheduled to decide whether the alleged decline in the fair market value of a downtown property was caused by a town meeting vote approving the discontinuance of one of four abutting streets.

A bench trial in a civil suit filed on behalf of William and Carolyn McDonough against the town of Belmont is scheduled to be heard in Merrimack County Superior Court in Concord Dec. 2-3.

In May, Judge Richard McNamara granted the town's motion to dismiss all three counts of the lawsuit that claimed an unconstitutional taking of the property, negligent infliction of emotional distress on the owners and unjust enrichment by the municipality, but also approved the plaintiffs' motion to amend their complaint to add a claim for assessment of damages.

State law allows any person who sustains damages from the discontinuance of a highway, to petition the Superior Court for the assessment of damages within six months after the municipality has voted to approve the change in the status of the road.

In the original suit filed in December

2012, Attorney W. James Doyle of Concord wrote that the McDonoughs formerly owned commercial property known as 1 and 9 Mill St. in Belmont and had rented it to a variety of commercial tenants, providing the elderly couple with an important source of income.

In 2010, the municipality began planning a downtown revitalization project. In 2011, one plan proposed discontinuing and relocating a portion of the Mill Street Extension that bordered the McDonough's property. The plan was endorsed by voters at a special town meeting in August 2012.

The town's plans to change the location of the road and conduct major construction in the area, Doyle claims, deterred tenants, prospective tenants and potential buyers.

As a result of the town's actions, Doyle claims his clients suffered loss of income and devaluation of the real estate and that as a result the McDonoughs attempted to mitigate their damages by selling the property to the town in 2012.

"Although the plaintiffs attempted to reach a final agreement with the defendant to obtain full compensation from the town at the time of the sale, the parties were unable to reach a full resolution of the matter so the plaintiffs conducted a 'fire sale' of the property and reserved their rights to obtain full restitution from this court. Subsequent demand for full compensation has been made to no avail," Doyle wrote.

Attorney Laura Spector-Morgan of the Mitchell Municipal Group of Laconia, who is representing the town, has asked the court to either bar or limit the testimony of the plaintiff's expert.

Proving a claim for damages under the remaining claim, she wrote, is limited to establishing that the fair market value of the property prior to the road being discontinued was greater than its fair market value immediately after; proving what that differential value was; and proving that the drop in value was caused by the road discontinuance.

In a seven-page pleading filed Nov. 8, Spector-Morgan argues that a report prepared by the plaintiff's expert, Louis Manias, a state certified general appraiser fails to address the McDonough's burden of proof to show a before and after drop in value causally related to the change in the status of the road. She maintains the report offers an opinion of value only as of the date the property was transferred to the town on Oct. 15, 2012 and makes no mention of the discontinuance of the road being an influencing factor on value.

In his objection filed Nov. 15, Attorney Doyle wrote that his clients are seeking damages for the devaluation of the property allegedly caused by the discontinuance of the road and that Manias' testimony is necessary to support that claim. The value of the property at the time of the sale is relevant to proving the McDonough's case, Doyle asserts, especially given the short time span between the discontinuance of the road and the sale of the property.

In a pretrial conference order issued Nov. 18, Judge McNamara wrote that he would rule on the issue of expert testimony before hearing testimony from other witnesses in the case and noted that if the town's motion to limit or exclude Mr. Manias' testimony was granted, that the trial would be "shortened significantly."

The parties participated in mediation in an effort to settle the case out-of-court in early October but were unable to reach an agreement.

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