
Town calls in appraiser for property suit

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BELMONT — A certified real estate appraiser hired by the town of Belmont testified on Tuesday that the property at 154 Main St. as it existed on July 19, 2012 was worth \$245,000 and that his opinion was supported by several different valuation methods.

The testimony of Charles Schubert of Applied Economic Research of Laconia came during the second-day of a bench trial in a civil case that has pitted the former owners of the property Bill and Carolyn McDonough against the municipality.

Attorney W. James Doyle of Concord arguing on behalf of the McDonoughs claims his clients suffered damages when the town engaged in a type of regulatory taking by discontinuing and relocating a portion of Mill Street that bordered the McDonough's property, as part of a downtown revitalization project.

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 resulting in his client's suffering loss of income and devaluation of their real estate. The elderly couple attempted to mitigate their damages by selling the property to the town in 2012 for \$250,000. Their legal team argues the sale was made "under duress" and that the McDonoughs, who were represented by counsel during the transaction, "reserved the right to pursue legal remedies."

"These were elderly people, were pressured and agreed to a sales price, but weren't happy," Doyle said.

Belmont Town Administrator Jeanne Beaudin testified that Mr. McDonough approached the town in the summer of 2012 about buying the property and was reminded that residents at Town Meeting has voted against the purchase for \$300,000 and for \$275,000.

Judge Richard McNamara, who is presiding over the case, commented Tuesday that damages for a discontinuance of a road are essentially a subset of eminent domain. This spring, the court 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 on behalf of the town, but allowed the plaintiff's to amend their suit to include a claim for assessment of damages allegedly caused by the discontinuance of the road.

On Monday, the plaintiff's expert, Louis Manias, a state certified general appraiser testified in essence that the McDonough property became less desirable after the discontinuance of the road.

During questioning on Tuesday, by the town's Attorney Walter Mitchell, Schubert testified that economists have declared the recession occurred from December 2007 to June 2009 and that the McDonoughs bought the property for \$275,000 in January 2009, at a time when the real estate market was continuing to drop value at 5 percent per year. He estimated that during the McDonough's ownership the property saw an 18.75 percent decline in value or a \$51,563 loss, resulting in a value of \$223,438.

During the plaintiff's ownership the property was collectively on the market for about two years and was always listed at under \$300,000. In 2011 when the last sales listing expired the asking price was \$274,900 according to Schubert.

Factors that adversely affect the value of the property, Schubert said, is its location, which is off the beaten path.

"The old real estate adage is location, location, location. This pretty much defines it. What you want is wallets driving by," he said.

In using a sales-based approach to value the property, the appraiser said, he used three properties in Gilford and one on the Meredith end of Laconia as comparisons, but noted that, while the other properties had traffic counts recorded by the state ranging from 8,000 to 15,000 vehicles per day, neither the town nor the N.H. Department of Transportation had traffic count data for the area near the McDonough's former property.

In his opinion, Schubert said, the best use for the subject property would be for it to be owner occupied, noting its longest periods of occupancy occurred when it was twice used as a bank and prior to that as a post office. When Schubert valued the property based on an income approach he said he relied on cost figures provided by Mrs. McDonough and determined that total expenses, which included property taxes, insurance and kerosene for the heating system amounted to \$12,392 and that income totaled \$16,678. Based on those figures and an income capitalization approach in his opinion the property as a three-unit, multi-tenant buildings was valued at \$189,638, which he rounded to \$190,000.

The biggest different between the two appraisers' value reports, according to Schubert, is that Manius used a net lease scenario in which tenants jointly share expenses including taxes, insurance and utilities which wasn't being done resulting in \$110,000 of what Schubert called "overstated value."

The trial in being held in Merrimack County Superior Court because the plaintiff's reside in Franklin.

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