
Judge weighs decision in Belmont road closure suit

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CONCORD - A Franklin couple is entitled to damages for the alleged diminution in the value of property they sold to the town of Belmont because the municipality's plans to discontinue an adjacent road as part of a downtown revitalization project had a chilling effect on prospective tenants, their legal team argues.

Bill and Carolyn McDonough filed a civil suit in 2012, shortly after townspeople endorsed spending \$250,000 for the property known as 1 and 9 Mill St., claiming they lost money when the town engaged in a type of regulatory taking by discontinuing and relocating a portion of Mill Street. Their lawyers further alleged the elderly couple suffered negligent infliction of emotional distress and that the town was unjustly enriched when it was able to purchase their property at a below market rate.

But last spring, Judge Richard B. McNamara dismissed the claims but allowed the McDonough's to amend their suit so they could seek recovery under a state law that permits an award if damages result from the discontinuance of a highway.

In early December, Judge McNamara heard two days of testimony on the merits of the case and then ordered both parties to submit supplemental pleadings to support their respective positions by Dec. 20.

"Here the testimony was overwhelming that the discontinuance of Mill Street next to the large windows and rental spaces previously used by commercial tenants in the McDonough property was damaging," wrote Attorney Peter Mc-Grath.

He maintains the "unique and peculiar" damage in the case was demonstrated by photographs of the building that show large windows and rental space on the ground level facing out onto what was previously Mill Street. That area now faces a gazebo and has no street traveling along that side of the building.

"Accordingly, the specific harm testified to and shown by the photographs, diagrams and maps as well as testified to by Josh Youseff, Mrs. McDonough, Steve McDonough and others demonstrates the specific damages," McGrath wrote.

But Attorney Laura Spector-Morgan, who represents the town, argued that McGrath focused on evidence that was not properly before the court as the photographs and affidavit he based his pleading on, was marked for identification only and as a result should not be considered by the judge in deciding his ruling.

She additionally argues the McDonoughs' claim for damages is limited to establishing that the fair market value of the property before the road discontinuance was greater than its fair market value immediately after and that the plaintiff's failed to prove their case.

But McGrath alleges that the evidence demonstrated that in 2010 the town distributed public information and published on the Internet, maps, sketches and plans showing Mill Street being entirely removed. Prospective tenants spoke with the McDonoughs and said they would not want to rent because Mill Street was being removed.

His clients should receive statutory damages for the drop in value of the property and lost rental income, McGrath wrote, asserting that the testimony of lay witnesses alone is enough to prove causation and that the casual connection is further buttressed by the supplemental report of their expert, certified real estate appraiser Lou Manias.

"This evidence is all irrelevant to the single issue remaining before the court - were petitioner's damaged by discontinuance of the road, and if so, how much money is required to compensate them for their loss. Petitioners presented no credible evidence on that issue, and this court should therefore dismiss the remaining count and deny all relief sought by the petitioners," Spector-Morgan wrote.

At trial, Manias testified as of the date the town purchased the property he valued it at \$300,000.

In her pleadings, Spector Morgan claims that the appraiser's report is fatally flawed, asserting that in his income analysis he used a triple net formula to determine the value of the leases, when the McDonough's paid the property taxes and heating costs. As a result the rents he figured, were \$2.78 per square-foot too low, inflating his overall value of the property. When that error was combined with a capitalization rate, which was too low given the historic vacancy rate of the property, Spector-Morgan, claims Manias overvalued the property by \$110,000. She also faulted his comparable sales analysis arguing that it failed to make any location adjustment for differences in location between the subject property, which according to trial testimony has at most 1,000 vehicles a day passing by, which the other properties had daily traffic volumes of 8,000 to 15,000.

"Contrary to Mr. Manias's conclusion, the town submitted credible evidence that the property's fair market value was \$245,000 in the summer of 2012," she wrote.

The McDonoughs purchased the property in January 2009 for \$275,000.

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