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## Town of Belmont prevails in building lawsuit

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CONCORD - A judge has ruled in favor of the Town of Belmont, finding that the value of a commercial building that fronted Mill Street Extension was not diminished when the road was discontinued, and as a result the former property owners are not entitled to monetary damages.

Bill and Carolyn McDonough of Franklin filed suit in Merrimack County Superior Court less than two weeks after they finalized the sale of their commercial building at 154 Main St. in downtown Belmont to the town for \$250,000.

During a bench trial - heard by a judge not a jury - Attorney W. James Doyle of Concord claimed the McDonoughs suffered damages when the town engaged in a type of regulatory taking by discontinuing and relocating a portion of one of the four streets that bordered his client'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 asserted, deterred tenants, prospective tenants and potential buyers resulting in loss of income and devaluation of the property. The elderly couple attempted to mitigate their damages by selling the property at a loss, Doyle said.

The McDonough's had purchased the 154 Main St. property that was twice home to a bank, for \$275,000 in January 2009.

In a nine-page ruling dated Feb. 5, Judge Richard B. McNamara found that while discussion of the downtown revitalization may have occurred in 2010, "clear proof at trial" showed that the selectmen did not begin to consider the relocation of Mill Street until early 2012, less than one year prior to the sale by the plaintiffs to the town. The municipality did not express an unequivocal intention to close Mill Street Extension until six months before the sale, McNamara found, ruling that based on those considerations that the plaintiffs' claims for damages could not be maintained.

In his decision, McNamara cited a 1901 case entitled *Cram v. City of Laconia* in which the New Hampshire Supreme Court held that a discontinuance which leaves undisturbed the highway in front of an abutter's premises and leaves him connected with the general system of streets is not a destruction or impairment of any vested right and furnishes no cause of action for damages,

In his ruling, Judge McNamara wrote that the plaintiffs did not present evidence that the value of the property was diminished by the taking. Instead, the McDonough's defense team submitted an analysis of the value of the property as of the date the town purchased it, done by a certified appraiser.

Their expert testified that the value of the property at the date the town bought it was \$300,000.

In his ruling, Judge McNamara wrote that he believed the defense's expert "significantly overvalued the property," because in using an income analysis to set a value on the commercial property, it was unclear whether the appraiser understood that the leases were "triple net."

The court further found that the plaintiff's expert comparable sales analysis was not reliable as the properties he used as comparisons were located on state highways with traffic counts ranging from 8,000 to 15,000 vehicles passing daily, while the subject property in downtown Belmont has, at most, 1,000 cars passing by each day.

The town's expert, Charles Schubert of Applied Economic Research, presented credible testimony that the property's fair market value was \$245,000 prior to the discontinuance of the road, the court found.

"Moreover, the point of Mr. Schubert's testimony is that the town paid more than the fair market value of the subject property prior to the road being discontinued. Obviously, under such circumstances, plaintiffs could not have suffered a diminution of the value of their property as a result of the discontinuance of Mill Street," the ruling concludes.

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