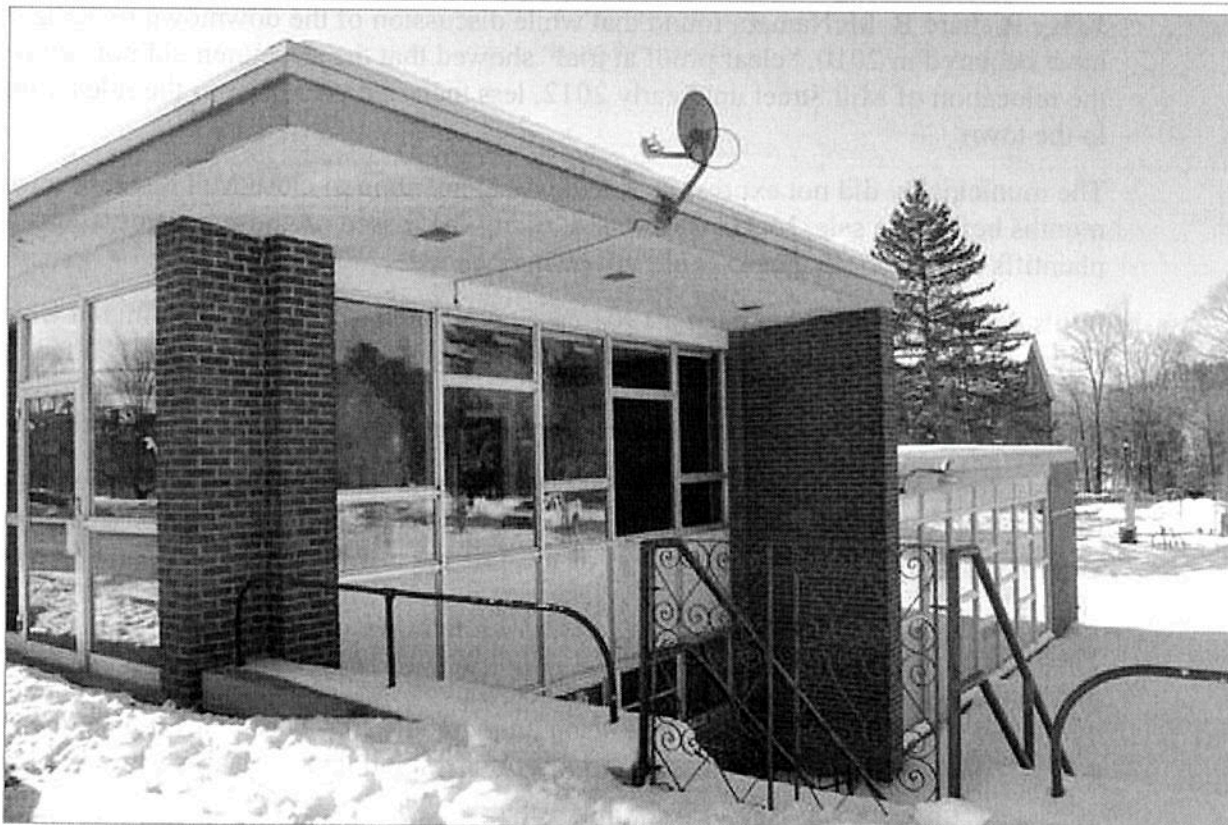


Belmont dispute goes to Supreme Court

By BEA LEWIS | Feb 18, 2015

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IN DISPUTE — The former owners of this Belmont building have appealed a Superior Court judge's ruling that found the town paid more than the fair market value for the property at 154 Main St., prior to the discontinuance of Mill Street Extension. And as a result, Bill and Carolyn McDonough, who sold the property to the town for \$250,000, did not suffer a diminution in the real estate's value as a result of the street closure and were not entitled to damages. The New Hampshire Supreme Court will hear oral arguments on Feb. 19.

LACONIA — The New Hampshire Supreme Court is scheduled to hear oral arguments Thursday in a case that pitted a Belmont property owner against the town.

Last February, a Superior Court judge ruled in favor of the town finding that the value of a commercial building that fronted Mill Street Extension was not reduced when the road was discontinued, and as a result the former property owners are not entitled to monetary damages.

This is the same property that the town and Lakes Region General Hospital are in talks about regarding moving doctors' offices into.

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 lost money when the town engaged in a type of regulatory taking by discontinuing and relocating a portion of one of the four streets that border 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 McDonoughs purchased the property that was twice home to a bank, for \$275,000 in January 2009.

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 concluded.

The high court will hear the appeal Thursday with Attorney Peter McGrath of Concord will present arguments for the McDonoughs. Attorney Laura Spector-Morgan of the Mitchell Municipal Group is representing the town.

The court ruling will not affect the building, its ownership or use in the future.