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Appeal lost

Belmont building once considered for doctors' offices ruled not undervalued at sale

By BEA LEWIS | May 07, 2015

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CITIZEN FILE

BELMONT OFFICIALS announced in January they were in talks with Lakes Region General Hospital to move doctors offices from the Belmont Mill into this building. That plan is seemingly in limbo after talks came to a halt after an initial meeting between town and hospital officials earlier this year.

LACONIA — The former owners of a commercial building in the heart of downtown Belmont had alternate access to their property even though the town discontinued an abutting road and can't sue for damages, the New Hampshire Supreme Court has ruled.

Bill and Carolyn McDonough of Franklin appealed after a Merrimack County Superior Court judge ruled in favor of the town, finding that the McDonough's property at 154 Main St. was not devalued when as part of a revitalization project, townspeople voted to discontinue and relocate a portion of one of the four roads that bordered it.

The Main Street building once housed a post office branch, Provident Bank and Northway Bank prior to being acquired by the McDonough family.

The town announced in January it was in talks with Lakes Region General Hospital to move doctors offices from the Belmont Mill into the building. That plans is seemingly in limbo after talks came to a halt after an initial meeting between town and hospital officials earlier this year.

During a bench trial – heard by a judge not a jury – attorney W. James Doyle of Concord claimed the McDonoughs' lost rental income and suffered a diminution in value of their property as a result of the discontinuance.

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

The McDonoughs' bought the property in January 2009 for \$275,000 and rented it to commercial tenants. Later that year, they attempted to sell the property to the municipality, but voters rejected the proposal at Town Meeting.

In 2010, the town began developing plans with the goal of sparking a renaissance of the village, and in 2011, a proposal was made to discontinue and relocate a portion of Mill Street Extension. Local leaders had told the McDonoughs' the road might be closed, at which time the couple again offered to sell the property to the town. Voters approved the road discontinuance and relocation proposal in August 2012. Less than two months later, the town agreed to purchase the property for \$250,000.

At trial, the defense expert testified that, in his opinion, the fair market value of the property was \$300,000 at the time the town bought it. But Judge Richard McNamara found that the analysis of the plaintiffs' expert was flawed and did not address the issue of loss of value.

On appeal, the plaintiffs challenged the lower court's decision to dismiss their claim seeking damages for inverse condemnation.

To make such a case, the justices wrote that governmental interference with a property has to be more than mere inconvenience or annoyance. Just discussing and planning by a governmental body in anticipation of taking land for a public use and even launching initial actions to do it, does not, in itself, constitute a taking, says the order issued by the court last month.

"Based upon the trial court's findings, we are not persuaded that the alternative access was unreasonable. The plaintiffs' land still abutted three other roads, leaving them reasonable access to their property," the order reads.

Attorney Peter McGrath of Concord presented oral arguments for the McDonoughs' on Feb. 19. Attorney Laura Spector-Morgan of the Mitchell Municipal Group represented the town.

Chief Justice Linda Dalianis, Senior Associate Justice Gary Hicks and Associate Justices Carol Ann Conboy, Robert Lynn and James Bassett concurred.

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