

No. A09-1961

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STATE OF MINNESOTA  
IN SUPREME COURT

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City of North Oaks,

Appellant,

vs.

Rajbir S. and Carol L. Sarpal,

Respondents.

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**BRIEF OF AMICUS CURIAE RSI RECYCLING, INC.**

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## Table of Contents

Introduction .....	1
Identification of Amicus Curiae .....	2
Argument.....	2
I.    Erroneous Government Advice Such as that Provided to the Sarpals Satisfies the Wrongful-Conduct Element of an Equitable Estoppel Claim. ....	2
II.   There are Strong Public Policy Reasons for Allowing Citizens to Rely on Government Advice Provided by Zoning Officials. ....	7
Conclusion.....	9

## Table of Authorities

### Cases

Bond v. Commissioner of Revenue Bond v. Commissioner of Revenue, 258 N.W.2d 877 (Minn. 2005).....	5, 6
Brown v. Minnesota Department of Public Welfare, 368 N.W.2d 906 (Minn. 1985).....	4
In the Matter of the Petition of Mesaba Aviation Division, 258 N.W.2d 877 (Minn. 1977).....	3
Interstate Power Company v. Nobles County Board of Commissioners, 617 N.W.2d 566 (Minn. 2000).....	4
Kmart Corp. v. County of Stearns, 710 N.W.2d 761 (Minn. 2006).....	6
Northwest Airlines, Inc. v. County of Hennepin, 632 N.W.2d 216 (Minn. 2001) .....	5
Ridgewood Devel. Co. v. State of Minnesota, 294 N.W.2d 288 (Minn. 1980.).....	passim

### Rules

Minn. R. Civ. App. 129.03 .....	1
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## Introduction<sup>1</sup>

With respect to one of the issues presented in this case, the task before the Court is far simpler than the lengthy briefing would suggest. That task is confirming the proper scope of the “wrongful conduct” element of an equitable-estoppel claim made against a government entity. The Court made clear in its 1980 *Ridgewood* decision that one example of such “wrongful conduct” is provision by the government of improper advice. That aspect of *Ridgewood* remains good law, since the Court has not heard a single estoppel case involving government advice since then.

The City of North Oaks and amicus curiae League of Minnesota Cities invite the Court to apply a stricter wrongful-conduct standard that they derive from other, post-*Ridgewood*, government estoppel cases. But because all of the Court’s post-*Ridgewood* estoppel decisions involved very different government conduct—not one addresses government advice—those decisions cannot and do not alter *Ridgewood*’s teaching that erroneous government advice constitutes “wrongful conduct” for estoppel purposes.

In this brief, amicus curiae RSI Recycling, Inc., summarizes the Court’s post-*Ridgewood* caselaw and in so doing goes beyond the bare, contextless quotations that the City and the League rely on in arguing that the *Ridgewood* standard regarding government advice has been modified over the past 30 years. Consideration of the facts and actual holdings of those cases shows that each is readily distinguishable from the

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<sup>1</sup> Pursuant to Minn. R. Civ. App. 129.03, amicus curiae RSI Recycling, Inc., certifies that no counsel for a party to this matter authored this brief, in whole or in part, and no person other than the amici curiae made a monetary contribution to the preparation or submission of this brief.

instant case, and none provides any guidance at all on the application of estoppel law in cases involving erroneous government advice.

In the second part of this brief, RSI Recycling demonstrates that there are strong policy reasons that support an application of *Ridgewood's* “improper advice” standard in cases involving erroneous government advice.

### **Identification of amicus curiae**

RSI Recycling, Inc., owns property in the City of Bloomington on which it operates a metal-processing business. RSI has recently commenced an action in Hennepin County District Court in which it alleges that the City of Bloomington should be equitably estopped from requiring RSI to obtain a conditional-use permit because the City told RSI before it purchased the property and commenced business operations that no conditional-use permit was necessary for its business.

### **Argument**

#### **I. Erroneous government advice such as that provided to the Sarpals satisfies the wrongful-conduct element of an equitable estoppel claim.**

In its landmark *Ridgewood* decision in 1980, the Court adopted the rule that a party seeking to estop a government agency must demonstrate “wrongful conduct” on the part of the government.<sup>2</sup> The plaintiff developer in that case had sought a declaration that a legislative amendment to a bond-financing statute could not be applied to it because the developer had already received bond approval for a project and had made initial development investments based on that approval. The Court rejected that argument and

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<sup>2</sup> *Ridgewood Devel. Co. v. State of Minnesota*, 294 N.W.2d 288, 293 (Minn. 1980.)

concluded that the plaintiff had not demonstrated the requisite wrongful conduct. The Court did not define the outer limits of “wrongful conduct,” but did indicate that “improper advice” would be one example of such conduct:

[T]he court must first look for the government’s wrongful conduct. Only if it is found to exist does the balancing begin. ***Here there is no wrongful governmental conduct; no governmental official has given improper advice.*** Instead, what is being challenged is merely a classification of governmental policy towards the use of tax-exempt bond financing of housing developments. The actions of elected representatives taken to ensure that legislation is applied in conformity with its underlying purpose can hardly be characterized as ‘wrongful conduct.’ Thus, the most important element of equitable estoppel is missing.<sup>3</sup>

The Court’s treatment of erroneous government advice in *Ridgewood* was consistent with its statement of estoppel law just three years earlier in the *Mesaba* case. That case dealt with erroneous government advice about whether certain property was taxable, and there the Court explained that

if a specific representation is authoritatively made to and invites reliance by a taxpayer and the taxpayer’s consequent change of position makes it inequitable to retract the representation, estoppel may lie.<sup>4</sup>

*Ridgewood*’s treatment of erroneous government advice as wrongful conduct for estoppel purposes remains good law. The City and the League suggest that since *Ridgewood* the Court has heightened the wrongful-conduct standard and now requires a showing of “malfeasance” in order to estop a government agency from taking action

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<sup>3</sup> *Id.* at 293 (emphasis added).

<sup>4</sup> *In the Matter of the Petition of Mesaba Aviation Division*, 258 N.W.2d 877, 880-881 (Minn. 1977).

contrary to its previous advice. But none of the Court's post-*Ridgewood* government estoppel cases on which they rely dealt with a claim of estoppel based on erroneous government advice, and therefore none of those cases can be read to apply to government-advice based claims.

The subsequent cases have no factual similarity to this case whatsoever. In *Brown v. Minnesota Department of Public Welfare*, the first post-*Ridgewood* government estoppel case, a doctor sought to estop a government agency from recovering Medicare payments it had erroneously made to the doctor.<sup>5</sup> The doctor based his estoppel claim in part on a conversation one of his employees had had with an agency employee, in which the doctor's employee was "left with the impression" that the doctor did not have to obtain prior authorization for the services provided.<sup>6</sup> Because there was no claim that the agency employee had actually made a statement constituting government advice, the Court determined that "[t]he record therefore does not disclose a representation by the Department upon which an estoppel could be based."<sup>7</sup> *Brown* makes no mention of a malfeasance requirement, but instead reiterates simply that estoppel requires "some fault or wrongful conduct."<sup>8</sup>

The Court next addressed government estoppel in 2000 in the case of *Interstate Power Company v. Nobles County Board of Commissioners*.<sup>9</sup> In that case, it does not

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<sup>5</sup> See 368 N.W.2d 906 (Minn. 1985).

<sup>6</sup> *Id.* at 910-911.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 912.

<sup>9</sup> See 617 N.W.2d 566 (Minn. 2000).

appear that the plaintiff even raised an estoppel claim. The issue was whether a zoning amendment could be applied retroactively. There was no alleged erroneous government advice in the case, and the Court again stated that a successful estoppel claim required simply “wrongful conduct.”<sup>10</sup>

The Court’s next government estoppel case, *Northwest Airlines, Inc. v. County of Hennepin*, decided in 2001, arose out of tax protest.<sup>11</sup> The airline sought to estop the taxing authority from changing its assessment approach, based on its past practice.<sup>12</sup> This case did not present a claim of erroneous government advice, and the Court’s cursory analysis of the estoppel claim did not include a malfeasance requirement.<sup>13</sup>

Four years later, in 2005, the Court decided the case of *Bond v. Commissioner of Revenue*. There, a taxpayer had sought to “collaterally” estop the state revenue department from collecting income tax from him based on non-action by a federal agency. Relying on a “theory floated on an Internet website,” the taxpayer argued that the Social Security Administration (SSA) had created a trust bearing his name and made him the trustee of that trust by issuing a social security card to him.<sup>14</sup> Based on this “theory,” the taxpayer contended that all of his income was deductible as fiduciary fees paid to him by the trust.<sup>15</sup> The taxpayer based his “collateral estoppel” claim solely on the fact that he had sent the SSA—not the agency he was seeking to estop—three letters

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<sup>10</sup> *Id.* at 576.

<sup>11</sup> *See* 632 N.W.2d 216 (Minn. 2001).

<sup>12</sup> *See id.* at 221.

<sup>13</sup> *See id.*

<sup>14</sup> *Bond v. Commissioner of Revenue*, 258 N.W.2d 877, 840 (Minn. 2005).

<sup>15</sup> *Id.* at 834.

asserting his “theory” and that the SSA had never responded. There was no alleged government advice in the case, or any actual representation of any type by a government agency. *Bond* includes the statement, quoted by the City and the League, that the necessary wrongful conduct “is not simple inadvertence, mistake, or imperfect conduct,”<sup>16</sup> but this statement was made in the context of a case challenging a government omission, not government advice. It therefore has no application here.

Finally, the Court most recently considered estoppel of the government in the 2006 case of *Kmart Corporation v. County of Stearns*. This case involved a tax protest, and Kmart challenged the prospective application of a Tax Court decision regarding the documents that had to be filed in order to make a tax protest complete. Significantly, Kmart did not even make an equitable estoppel claim in the case.<sup>17</sup> Rather, after dismissing the retroactivity argument that Kmart did make, the Court conducted an estoppel analysis sua sponte, in dicta.<sup>18</sup> Again in this case, there was no claim of any actual representation by a government agency, and, as in *Bond*, the plaintiff was attempting to estop one governmental entity—the county that collected the property tax—based on the actions of an entirely separate government entity. This is no precedent or law supporting such an estoppel claim.

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<sup>16</sup> *Id.* at 838.

<sup>17</sup> See *Kmart Corp. v. County of Stearns*, 710 N.W.2d 761, 771 (Minn. 2006) (“We note that Kmart’s argument presents some elements of equitable estoppel, although Kmart does not specifically refer to that doctrine.”)

<sup>18</sup> See *id.* (“[B]ecause Kmart’s arguments are founded on a claim of reliance, we have also analyzed them under principles of equitable estoppel.”).

Careful consideration of the facts and holdings of the Court's post-*Ridgewood* jurisprudence demonstrates that the Court has not deviated from its guidance in *Ridgewood* that "improper advice" from a government official amounts to wrongful conduct on which an estoppel claim may be based. Indeed, to the extent that the Court has not seen a government-advice/estoppel case in the wake of *Ridgewood*, it has not even had occasion to reconsider that guidance.

**II. There are strong public policy reasons for allowing citizens to rely on government advice provided by zoning officials.**

Applying *Ridgewood*'s "improper advice" test of wrongful conduct is particularly appropriate in cases involving zoning-related matters.

First, zoning laws and requirements are distinctly local and citizens with questions about those laws have few options other than to contact local officials. And as these officials are usually also in charge of enforcement as well, it is both logical and efficient for citizens to pose their zoning-related questions to these officials. In this way, zoning law is very different from the tax, social security and Medicare-related laws at issue in most of the Court's post-*Ridgewood* cases. With respect to these laws, many more resources are available to a party to learn the law.

Second, zoning and related building requirements affect almost every property owner in the state. At some time or other, nearly every homeowner or business owner will build or remodel a home or business or make some other change to their structure or property that will require municipal approval. Indeed, countless times every day people all over the state are asking local officials questions similar to the question that the

Sarpals posed to the City, and they are relying on the information they are given. The League warns that holding municipal employees accountable for erroneous advice, “will chill government employees’ willingness to provide information to the public.” The more likely result will be that these employees will make sure that the information they intend to provide—which they know the citizen will rely on—is correct before they provide it. Improving the quality and accuracy of the government advice provided by municipal employees should be a goal of everyone involved in the zoning process.

Third, if citizens know they can rely on the information they receive from zoning officials, they will be more likely to ask if their planned work is zoning compliant before they undertake that work. This will give cities—and citizens—the opportunity to avoid problems before they arise. Far from leading to increased public expenditures, as the League foresees, clarifying zoning requirements upfront will in fact reduce zoning violations and thereby reduce enforcement-related costs.

Fourth, if citizens cannot rely on the advice of city officials, they will be forced to take one of two alternative courses of action, both of which will lead to costly inefficiencies. Either they will have to consult with an attorney to make sure they are in compliance with local zoning rules and regulations, which will drive up development costs, or they will simply try to interpret the local requirements themselves. In the latter case, if the citizen draws the wrong conclusions about local requirements, both the citizen and the municipality will likely bear additional costs relating to enforcement and corrective measures.

This case itself provides a good example of why the better public policy is to hold local zoning officials accountable for their advice. If the City employee who gave Mr. Sarpal the property sketch knew that his or her actions would bind the City, the employee would have likely looked more carefully at the sketch and would have determined that it was not an as-built survey. If that case, Mr. Sarpal may have been forced to hire a surveyor to prepare the necessary as-built. This would have meant some additional expense for the Sarpals, but that expense would have been a small fraction of what the Sarpals—and the City and the League—have had to spend in attorneys' fees and court costs to resolve this dispute.

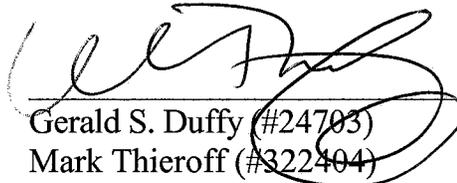
The League wants the Court to focus on the effect that its decision in this case may have on improper government advice that has already been given, and it is possible that an affirmance of the Court of Appeals could result in some additional claims against cities. But the Court should be more concerned with the erroneous government advice that has not yet been given, which instances are presumably far, far greater in number. Affirming the principal that improper government advice will result in estoppel of any enforcement action will almost certainly produce changes at the municipal level that will prevent that erroneous advice from being given in the first place.

### **Conclusion**

For all of the foregoing reasons, amicus curiae RSI Recycling, Inc., respectfully urges the Court to conclude that the City of North Oaks engaged in wrongful conduct under *Ridgewood Development Company v. State of Minnesota* and affirm the decision of the Court of Appeals in this matter.

Dated: December 7, 2010.

Respectfully submitted by

A handwritten signature in black ink, appearing to read "G. Duffy", is written over a horizontal line. The signature is fluid and cursive.

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