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NO. A09-1961

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State of Minnesota  
**In Court of Appeals**

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CITY OF NORTH OAKS, a municipal corporation and  
political subdivision of the State of Minnesota,

*Appellant,*

vs.

RAJBIR S. AND CAROL L. SARPAL,

*Respondents.*

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**APPELLANT'S REPLY BRIEF**

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Leonard J. Schweich (#0199515)  
Susan Steffen Tice (#131131)  
JARDINE, LOGAN & O'BRIEN, P.L.L.P.  
8519 Eagle Point Boulevard, Suite 100  
Lake Elmo, MN 55042  
(651) 290-6500

*Attorneys for Appellant*

David J. Szerlag (#034476X)  
PRITZKEROLSEN, P.A.  
45 South Seventh Street  
Suite 2950  
Minneapolis, MN 55402  
(612) 338-0202

*Attorneys for Respondents*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... ii

ARGUMENT.....1

    I.    THE DISTRICT COURT ERRED IN DETERMINING THAT  
          RESPONDENTS MET THEIR BURDEN IN PROVING  
          EQUITABLE ESTOPPEL AGAINST THE CITY.....1

        A.    RESPONDENTS CONFUSE THE PROPER  
              STANDARD OF REVIEW .....1

        B.    SARPALS’ BRIEF IS MISLEADING.....1

        C.    SARPALS FAILED TO MEET THEIR BURDEN OF  
              PROOF.....4

            1.    NO WRONGFUL CONDUCT ESTABLISHED .....4

            2.    REASONABLE RELIANCE WAS NOT  
                  ESTABLISHED .....5

            3.    SARPALS DID NOT ESTABLISH THAT THE  
                  EQUITIES FAVORED THEM.....6

CONCLUSION .....8

CERTIFICATE OF COMPLIANCE .....9

**TABLE OF AUTHORITIES**

**Cases**

*City of Eden Prairie v. Liepke*, 403 N.W.2d 252, 256 (Minn. App. 1987) .....4, 7  
*Hawkinson v. Co. of Itasca*, 231 N.W.2d 279 (Minn. 1975) .....8  
*Mesaba Aviation Civ. Of Halvorson of Duluth, Inc. v. County of Itasca*, 258  
N.W.2d 877, 879 (Minn. 1977).....6  
*Modrow v. JP Food Service, Inc.*, 656 N.W.2d 389 (Minn. 2003) .....1  
*Northernaire Productions, Inc. v. Crow Wing Co.*, 244 N.W.2d 279 (Minn.  
1976) .....5  
*Rathbun v. W. T. Grant Co.*, 219 N.W.2d 641 (Minn. 1974) .....1  
*Ridgewood Dev. Co. v. State*, 294 N.W.2d 288 (Minn. 1980) .....4  
*Shefka v. Aitken Co.*, 541 N.W.2d 349, 353 (Minn. App. 1995).....4

**Statutes**

Minn. Stat. § 462.357, subs. 2, 3, 4 .....7

## ARGUMENT

### **I. THE DISTRICT COURT ERRED IN DETERMINING THAT RESPONDENTS MET THEIR BURDEN IN PROVING EQUITABLE ESTOPPEL AGAINST THE CITY**

#### **A. RESPONDENTS CONFUSE THE PROPER STANDARD OF REVIEW**

Appellant appeals two matters: 1) the Court Order denying the City's Motion for Summary Judgment and 2) the Court's conclusion, after trial, that the Sarpals proved their affirmative defense of equitable estoppel against the City. AA-209-210.

Contrary to Sarpals' current assertion, Appellant need not establish that the Trial Court abused its discretion. The proper standards of review are: 1) whether the Trial Court erred in its application of the law at the Summary Judgment stage and 2) whether, upon *de novo* review by this Court, the Trial Court properly applied the law in concluding that the Sarpals proved the elements of their equitable estoppel defense. *Rathbun v. W. T. Grant Co.*, 219 N.W.2d 641 (Minn. 1974); *Modrow v. JP Food Service, Inc.*, 656 N.W.2d 389 (Minn. 2003).

#### **B. SARPALS' BRIEF IS MISLEADING**

No material facts are in dispute that affect the legal arguments in this case. However, in an attempt to defend against this appeal, Respondent has provided incorrect and misleading information to this Court. What follows are but a few selected examples of the ways in which Respondent's Brief is misleading.

Sarpals identify that they relied on the fact that "the City had inspected the construction of the shed on at least two, if not three, occasions." Resp. Brief, p. 2. However, in fact, the Trial Court properly ruled in the City's favor on that issue at Summary Judgment when it concluded that "the responsibility of the City building inspector is to ensure that any

new construction complies with state and city building codes. He is not responsible to ensure that zoning requirements are complied with.” AA-141, lines 6-22; AA-51-52; March 6, 2009 Summary Judgment Order p. 7. Respondents’ alleged reliance on City inspection was not an issue presented at trial because the issue had been determined prior to trial. Respondents’ attempts to raise this issue now when the Trial Court determined the issue before trial is misleading to this Court.

Sarpals repeatedly maintain that they argued that they were prejudiced because they had substantially changed their position based upon the City’s conduct because they would need to spend \$15,000 to \$20,000 to move the shed. See Resp. Brief, pp 3, 12, 19. In support of that claim, Respondents specifically cite this Court to RA-43, ¶ 6, an Affidavit by Respondent Rajbir Sarpal. See Resp. Brief, p. 12.

In fact, the ONLY evidence presented by Sarpals as to the estimated cost to relocate the shed appears in that Affidavit of Rajbir Sarpal which was submitted in opposition to the City’s motion for Summary Judgment. AA-43. Neither that Affidavit nor any similar affidavit nor any trial testimony was introduced by Sarpals at trial. The trial record is void of any evidence establishing any possible costs of shed relocation. For Respondents to now claim, indicate or imply otherwise is incorrect and misleading.

Without directly quoting from it, the Sarpals maintain that a May 10, 2007 letter from the City’s building official informed the City “that the Sarpals built the shed in accordance with the plans, including the AAA survey, as submitted to North Oaks. RA-196”. See Resp. Brief, p. 8. That is a misstatement of the actual contents of the letter which specifically states that “It appears that the site plan submitted by the owner/contractor, approved by NOHOA and our office was in error.” . . . “It is the applicants (sic) responsibility to make sure

structures were in the right place” and “The problem is, the house is not in the location shown on his submittal.” The Sarpals also maintain that “the City acknowledged Dr. Sarpal built the shed precisely how he drew it on the survey . . . ” See Resp. Brief, p. 17. That is false. If the Sarpals had built the shed precisely as he had drawn on the survey it would have been in compliance with the required minimum 30 foot setback because that is what his drawing depicted. As the City building official testified to at trial, the focus in reviewing the drawing was the lot line, setback line and the fact that the shed was drawn outside of the 30 foot setback. AA-149-153.

Respondents maintain that “the plain meaning of this ordinance in no way requires setback measurements to be made only from lot lines. RA-152, 184.” Respondent Brief p. 8. Respondents’ own citation to the record bears out the fallacy of this statement. The City building official testified that it is necessary to measure from the lot line rather than some other structure. The undisputed and uncontroverted evidence in the form of the actual trial testimony of Gregory Schmidt, City Building Official, is as follows:

Q. (Schweich): And why is it necessary to measure from the lot line rather than some other structure?

A. (Schmidt): Other than the fact that that’s the ordinance requirement, I mean, other things on the property can move.

Q. Okay. Now testimony in this case is that Dr. Sarpal measured from a structure on the property when he constructed the slab and foundation, and that he did not measure from the lot line. Is the method Dr. Sarpal described and which he undertook the proper way to ensure the structure was located outside of the setback?

A. No.

Q. Okay. Can you explain why not?

A. Again, because the requirement is the setback from the property line, nothing else. AA-152, lines. 10-19.<sup>1</sup>

Respondents cannot rely upon incorrect and misleading facts to defeat this appeal.

**C. SARPALS FAILED TO MEET THEIR BURDEN OF PROOF**

A party who seeks to estopp the government carries a heavy burden of proof.

*Ridgewood Dev. Co. v. State*, 294 N.W.2d 288 (Minn. 1980).

A party invoking an estoppel claim has a:

“ . . . heavy burden of proof. That party must first show wrongful conduct on the part of the government. The party must also demonstrate expenditures that are unique to the proposed project and would not be otherwise useable. If, these elements are proved, the equities of the circumstances will be examined. The government will be estopped only if the equities advanced by the individual are sufficiently great to outweigh the public interest frustrated by the estoppel.”

*City of Eden Prairie v. Liepke*, 403 N.W.2d 252, 256 (Minn. App. 1987) (citations omitted).

Sarpals had the burden of proving each and every element necessary to establish their affirmative defense of equitable estoppel against the City. They failed to do so.

**1. NO WRONGFUL CONDUCT ESTABLISHED**

Though Respondents do not dispute that in order for estoppel to lie they must establish that the City engaged in affirmative misconduct rather than simple mistake, *Shefka v. Aitken Co.*, 541 N.W.2d 349, 353 (Minn. App. 1995), rev. denied (Feb. 27, 1996), Respondents fail to even argue that the City’s conduct is more than a simple mistake. No evidence exists that the City engaged in affirmative misconduct. *Northernair Productions*,

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<sup>1</sup> Additionally, Sarpals incorrectly assert that “any claims asserted by or on behalf of North Oaks Homeowners Association (NOHOA) were dismissed with prejudice prior to trial. RA-174, lines 3-4.” See Resp. Brief, p. 5. That is a misstatement of the record. The claims of NOHOA of trespass and nuisance in the Petition were voluntarily dismissed without prejudice prior to trial because NOHOA was never a party to this lawsuit and any claim of trespass or nuisance belongs to NOHOA.

*Inc. v. Crow Wing Co.*, 244 N.W.2d 279 (Minn. 1976). It is only if wrongful conduct is established, that the Court proceeds to consider the remaining elements of estoppel.

## 2. REASONABLE RELIANCE WAS NOT ESTABLISHED

Sarpals admit they had no understanding of the meaning of an as-built survey. Sarpals admit that they did not measure from the lot lines to locate the shed. Yet, incredulously, Respondents argue that the “sole reason that the shed was inside the setback area was that they were provided with an incorrect survey by the City” and that “there is simply no question that if not for the actions of the City, the mistake would not have happened.” See Resp. Brief, p. 11 (emphasis added). Those assertions beg the question of what responsibility Sarpals must bear for their lack of knowledge and experience and claimed reliance upon a document which pre-dated actual construction of the home, included the statement “proposed house”, in addition to Sarpals’ failure to locate the lot lines on the property and measure from the lot line when determining the location of the shed. Sarpals’ argument also completely ignores the undisputed fact that they signed a Property Owner Waiver acknowledging their sole personal responsibility for any Code violations.

The City has not mischaracterized the terms of the Zoning Ordinance provision at issue. Simply stated, the Ordinance requires that no buildings be located within 30 feet of the lot lines. Respondents admit they did not locate the lot lines. It is self-evident that the only way for a contractor/builder to know if his building is located more than 30 feet from the lot line is to measure from the lot line. Measuring from anything else will not ensure compliance with the ordinance. The uncontroverted trial evidence is that the only proper way to ensure compliance with the 30 foot minimum setback requirement is to measure from

the lot line. AA-152. For Respondents to argue that the ordinance doesn't require measurement from the lot lines to ensure compliance is disingenuous and illogical.

The City had no burden to prove any element of Sarpals' estoppel affirmative defense and Respondents' attempts to now argue that the City failed to previously raise or introduce evidence on the issue of lack of authority of the City official who provided the survey to the Sarpals fails. See Resp. Brief, pp. 6, 17. The City had no burden to introduce any evidence of the authority possessed by the City employee who provided the survey to the Sarpals.

The Minnesota Supreme Court has explicitly retained and upheld the "authorized act" limitation on estoppel claims against the government and has explained that an important consideration in determining whether the government should be estopped is "[w]hether an administrative officer is authorized to make a representation." *Mesaba Aviation Civ. Of Halvorson of Duluth, Inc. v. County of Itasca*, 258 N.W.2d 877, 879 (Minn. 1977). Sarpals failed to establish that employee's authority. By so failing, Respondents failed to meet their burden of proving that their reliance was reasonable.

### **3. SARPALS DID NOT ESTABLISH THAT THE EQUITIES FAVORED THEM.**

Respondents' attempts to again shift the burden of proof to Appellant fails. Contrary to Respondents' argument, Appellant had no burden to prove any "detriment to the public good." See Resp. Brief, p. 18. Sarpals had the burden to establish that the equities advanced by them were sufficiently great to outweigh the public interest frustrated by the estoppel. *City of Eden Prairie v. Liepke*, 403 N.W.2d 252, 256 (Minn. App. 1987). Sarpals failed to do so.

Sarpals erroneously claim that the City “proffered no evidence of any legitimate interest it seeks to protect, or which would be detrimentally effected (sic) at all, by enforcing its zoning ordinance strictly against the Sarpals.” See Resp. Brief, p. 18. The public interest fostered by the essential, explicitly stated, legislatively granted zoning power provided to the City has at its very essence the promotion of public health, safety, morals and general welfare. Minn. Stat. § 462.357, subds. 2, 3, 4; AA-179-184. Mere enforcement of the Zoning Code minimum setback requirements is, by definition, a public good. It is more than obvious that allowing Respondents’ shed to remain in its present location, in violation of the required 30 foot minimum setback, clearly frustrates, if not defeats, the public interest purpose underlying the statute and ordinance.

In contrast, Sarpals provided no evidence at trial to establish that they made a substantial change in their position or incurred extensive unique expenses which would make it inequitable and unjust for them to be required to comply with the setback ordinance. The trial record contains no evidence of any alleged relocation costs. The trial record established Sarpals’ \$2,500.00 valuation of proposed building costs and their concession that moving the shed will not cause them any financial hardship. AA-195, 129. For Sarpals to have prevailed, it was not enough to show some prejudice in not being permitted to carry out their plan, there must have been substantial prejudice. See e.g., *Hawkinson v. Co. of Itasca*, 231 N.W.2d 279 (Minn. 1975). (\$80,000 expended not so substantial to defeat City’s interests in preventing development). Sarpals failed to establish any prejudice. Respondents simply failed to introduce any evidence at trial to establish that the equities advanced by them outweighed the obvious public interest in Code compliance. Therefore, Respondents, again,

failed to meet their burden of proof in establishing the elements of their estoppel affirmative defense.

**CONCLUSION**

It was error for the Trial Court to conclude that Respondents met their burden of proof in establishing their estoppel affirmative defense when Respondents failed to establish wrongful conduct by the City, failed to establish that their reliance was reasonable and failed to establish that the equities favored them.

The City respectfully requests that the Decision of the Trial Court be reversed.

Dated: 2/26/10

Respectfully submitted,

**JARDINE, LOGAN & O'BRIEN, P.L.L.P.**

By:   
LEONARD J. SCHWEICH (A.R. #199515)  
SUSAN STEFFEN TICE (A.R. #131131)

Attorney for Appellant City of North Oaks  
8519 Eagle Point Boulevard, Suite 100  
Lake Elmo, MN 55042-8624  
Phone: (651) 290-6500  
Fax: (651) 223-5070

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CERTIFICATE OF COMPLIANCE

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I hereby certify that **Appellant's Reply Brief** conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3. The brief contains 2,137 words, including footnotes, excluding the Table of Contents, Table of Authorities, and the Certificate of Compliance. This brief was prepared using Microsoft Word 97.

  
Susan Steffen Tice (A.R. #131131)

Subscribed and sworn to before me  
this 26<sup>th</sup> day of February, 2010.

  
Notary Public

