

NO. A09-1961

State of Minnesota
In Court of Appeals

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

Appellant,

vs.

RAJBIR S. AND CAROL L. SARPAL,

Respondents.

RESPONDENTS' BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

IN DENYING NORTH OAKS' MOTION FOR SUMMARY JUDGMENT DID THE DISTRICT COURT ABUSE ITS DISCRETION IN APPLYING THE APPLICABLE LAW AND FINDING THAT MATERIAL QUESTIONS OF FACT EXISTED

NO-The Trial Court in applying the standards for equitable estoppel set forth in Ridgewood found that material questions of fact existed as to whether North Oaks engaged in "wrongful conduct".

APPOSITE AUTHORITY

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

Mesaba Aviation Div. of Halvorsen of Duluth, Inc. v. Co. of Itasca, 258 N.W.2d 877 (Minn. 1977)

Matter of Westling Mfg., Inc., 442 N.W.2d 328 (Minn. Ct. App. 1989)

WAS THE TRIAL COURT CLEARLY ERRONEOUS IN FINDING THAT THE SARPALS REASONABLY RELIED ON THE WRONGFUL CONDUCT OF NORTH OAKS AND THAT THE EQUITIES FAVORED THE SARPALS?

NO- After a review of the evidence, the Trial Court found that the City's conduct was wrongful, that the Sarpals relied upon the City's wrongful conduct, and that the prejudice they did or would sustain was greater than the effect on the public good.

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

Mesaba Aviation Div. of Halvorsen of Duluth, Inc. v. Co. of Itasca, 258 N.W.2d 877 (Minn. 1977)

Brown v. Minnesota Department of Public Welfare, 368 N.W.2d 906, 910 (Minn. 1985).

STATEMENT OF THE CASE

This litigation was commenced by the Appellant, City of North Oaks (the “City” or “North Oaks”) on April 18, 2008, in the Ramsey County District Court, Justice Gregg E. Johnson presiding. In its petition for Injunctive Relief, the City requested that the Court order the Respondents Rajbir S. Sarpal and Carol L. Sarpal (the “Sarpals”) to move a shed constructed nearly a year and a half earlier out of a 30 foot setback area established by a city zoning ordinance. The Sarpals, in responding to the City’s petition, did not deny that the shed was within the setback area as established by ordinance but raised affirmative defenses, including equitable estoppel and vested rights. In support of these defenses, the Sarpals relied on the following facts: 1) the survey the City provided to them was inaccurate; 2) they had located the shed on their property consistent with the survey that they had obtained from the City; 3) both the City building officials and the North Oaks Home Owners Association (“NOHOA”) had reviewed and signed off on the placement of the shed; 4) the City had inspected the construction of the shed on at least two if not three occasions; 5) the City issued a certificate of completion for the shed; 6) the City acknowledged that the shed had been placed in accordance with the plans submitted in support of obtaining the building permit application; and 7) the City did not object to the location of the shed for more than six months after the issuance of the certificate of completion.

North Oaks subsequently filed a Motion for Summary Judgment asserting that there were no material facts at issue and that they were entitled to judgment as a matter of law. In response, the Sarpals argued that they had reasonably relied upon the City’s

actions and material facts existed as to whether the City's acts constituted wrongful conduct, i.e.; 1) in providing inaccurate documentation; 2) failing during a number of inspections to recognize or place the Sarpals on notice of the error; and 3) signing off on the project as being properly completed. Further, the Sarpals argued that they had substantially changed their position based upon the City's conduct and that the prejudice they would suffer, requiring them to spend 15 to 20 thousand dollars to move the shed, would far outweigh any effect on the public interest in allowing the shed to remain. The City's response was simply a bare assertion that Minnesota law was clear that a municipality cannot be estopped from enforcing its zoning ordinances.

A hearing was held on February 3, 2009 and subsequently the Court issued an order on March 20, 2009, denying the City's motion on the grounds that material fact questions existed as to whether the City engaged in wrongful conduct in their dealings with the Sarpals and whether equitable estoppel should lie.

A trial was commenced on July 21, 2009. At that time the Sarpals introduced evidence that they were told by the NOHOA that they could obtain an "as built survey" from the City offices. Dr. Sarpal went to the City with the letter and presented it to a city official. He asked whether he could obtain the proper survey and was advised that the City would provide the same. A survey was then produced by this City official and Dr. Sarpal was given an express affirmation that the survey was in fact the "as built survey" required by NOHOA. This survey was then used to gain approval from the Architectural Supervisory Committee ("ASC"), as well as the City, during the building permit process. A City building official reviewed the plans prior to approving the building permit.

Evidence was also introduced that the shed was constructed in exactly the same location on the lot as depicted in the survey. The City introduced no evidence as to the identity of the employee who provided the survey to the Sarpals. The City argued that Sarpal should have known that the survey provided was not the proper survey and that the ordinance in question required that any measurements for setback requirements had to be made from lot lines and not structures located on the property. Further, the City did not attempt to introduce any evidence that showed what effect, if any, leaving the shed in its present location would have on the public good. After a one day bench trial the Court found that the City of North Oaks was equitably estopped from enforcing its zoning ordinance and could not require the Sarpals to incur the cost of relocating the shed. Judgment was entered on October 6, 2009, and this appeal followed.

STATEMENT OF THE FACTS

1. The Sarpals are residents of Minnesota and own real property located at [REDACTED] North Oaks, Minnesota (the "Property"). RA-3, ¶¶ 2,3; RA-205, ¶1.
2. The Property is governed by North Oaks Ordinance §151.050 (the "Ordinance") which provides, in relevant part, that no building or structure shall be located within thirty (30) feet of the lot lines (the "Setback"). *Id.*; RA-205, ¶ 2.
3. Evidence of the Warranty Deed and rights, if any, of the NOHOA is irrelevant to this action as any claims asserted by or on behalf of NOHOA were dismissed with prejudice prior to trial. RA-174, lines 3-4.
4. In or about the summer of 2006, the Sarpals made plans to construct a storage shed (the "Shed") on the Property. The construction of the Shed was to be performed by the Sarpals themselves, which required the Sarpals to independently obtain the necessary building permit and survey. RA-191, 192, RA-205-206, ¶4.
5. Previously, the Sarpals had hired a professional contractor who obtained the necessary building permits and surveys on the Sarpals' behalf for the construction of their house and an in-ground swimming pool. The Sarpals were not involved with the process of obtaining the building permits or surveys for the construction of their house and in-ground swimming pool. RA-132; RA-206, ¶5.

6. The Sarpals submitted plans for the construction and location of the Shed to the Architectural Supervisory Committee (the "ASC"), as required by NOHOA. In order for the ASC to review and approve the plans for the Shed, the ASC required that the Sarpals provide an as built survey of the Property. RA-113, 116; RA-206, ¶6.

7. According to the July 11, 2006 letter to the Sarpals from NOHOA, the Sarpals were instructed to provide an as built survey in order to have the Shed construction plans approved. At all relevant times the Sarpals had no understanding as to the meaning of an "as built survey". RA-192; RA-135.

8. Upon the Sarpals' request and after reviewing a letter from NOHOA stating the requirement for an as built survey, an employee of North Oaks provided the Sarpals what they were led to believe was an as built survey of the Property, Trial Exhibit 8. RA-117, 136.

9. North Oaks has never identified the individual who provided Dr. Sarpal with the "as built survey". RA-93; 103-178.

10. The authority or lack thereof of the city official who provided the survey to Dr. Sarpal was never raised in the City's Summary Judgment or at trial and therefore was not properly preserved for review by this Court. RA-14-28; RA-103-178.

11. The as built survey provided to the Sarpals by North Oaks was prepared by AAA Pollution Control, Inc. (the "AAA Survey"). The AAA Survey was a survey used for septic system plans and was attached to a group of documents identified as "As Built Report." RA-163.

12. The Sarpals included the AAA Survey in the plans submitted to the ASC. Mr. Sarpal personally drew the proposed location of the Shed on the AAA Survey submitted to the ASC and, as drawn by Mr. Sarpal, the Shed was properly beyond the Setback and Easement requirements. The drawing reflects that the proposed location of the Shed was measured by the distance from the location of the house and not the distance from property lines. RA-113, 117, 118, 119, 127.

11. North Oaks' building inspector reviewed the Sarpals' plan, including the AAA Survey, and granted a building permit to construct the Shed on September 8, 2006. The Sarpals were given no instructions on the building permit application, the building permit, or postings in the building official's office advising that measurements must be taken from property lines. RA-121, 122, 163.

12. The City both at trial and in its Appellate brief mischaracterized the terms of the Zoning Ordinance stating that the Ordinance, 151.050 (F) (1) requires all measurements to be made from the lot lines. The ordinance in question reads as follows:

151.050 (F) Setbacks

(1) No building or structure (except fences, screening, planting strips, and landscaping in compliance with 151.033 and 151.034), individual sewerage treatment system or well shall be located within 30 feet of the lot lines, the nearest edge of any road or street easements or any wetland, except that additions which do not exceed 25% of the existing building footprint area, on buildings or structures lawfully existing upon the effective date of this chapter shall be excluded from wetland setback requirements.

The plain meaning of this Ordinance in no way requires setback measurements to be made only from lot lines. RA-152, 184.

12. In or about the spring of 2007, when the Shed had been fully completed for over six months, North Oaks demanded that the Sarpals relocate the Shed because the location of the Shed, as built, extended into the Setback area. It was at that time when the Sarpals learned that the AAA Survey that North Oaks had provided was not, in fact, an as built survey. RA-128, 129, 201.

13. In a letter dated May 10, 2007 to Jim March, North Oaks' building official Greg Schmidt informed North Oaks that the Sarpals built the Shed in accordance with the plans, including the AAA Survey, as submitted to North Oaks. RA-196.

14. On October 16, 2007, the Sarpals applied to North Oaks for a variance from compliance with the Setback. RA-198, 202.

15. On November 14, 2007, North Oaks denied the Sarpals' variance request and again demanded that the Sarpals relocate the Shed. RA-202.

ARGUMENT

North Oaks has appealed both the denial of their Motion for Summary Judgment as well as the Trial Court's decision that they were equitably estopped from enforcing their zoning ordinance. In regard to Summary Judgment, the Court noted that a genuine issue of material fact precluded judgment for the City. A bench trial was then commenced and after hearing testimony and reviewing the documentary evidence, the District Court properly found that the City's conduct was wrongful and that the Sarpals rightfully and justifiably relied on North Oaks' representations in connection with the placement and construction of a storage shed on their property. North Oaks' arguments are contrary to well established case law regarding the application of equitable estoppel to zoning cases, and mischaracterize the evidence the District Court used to make its findings. This Court should therefore affirm the District Court's decisions.

I. IN DENYING NORTH OAKS' MOTION FOR SUMMARY JUDGMENT DID THE DISTRICT COURT ABUSE ITS DISCRETION IN APPLYING THE APPLICABLE LAW AND FINDING THAT MATERIAL QUESTIONS OF FACT EXISTED

A. Standard of Review

North Oaks appeals the District Court's denial of summary judgment. In considering the District Court's denial, the reviewing court must determine if there are genuine issues of material fact and whether the trial court erred in its application of the law. State by Cooper v. French, 460 N.W.2d 2, 4 (Minn.1990). The evidence must be viewed in a light most favorable to the nonmoving party. Clough v. Ertz, 442 N.W.2d 798, 801 (Minn.App.1989).

The Trial Court denied North Oaks' motion for summary judgment because the evidence, in the light most favorable to the Sarpals, left a myriad of factual issues regarding the application of equitable estoppel to this case. RA-95-96.

B. The Trial Court properly denied North Oaks' Motion for Summary Judgment Finding that Material Facts Existed Regarding the Application of Equitable Estoppel

In its Motion for Summary Judgment, North Oaks simply argued that because the Sarpals were admittedly in violation of the zoning ordinance, the Court had no choice but to enter judgment in North Oaks' favor. RA-14-28. The Motion, in touching upon the affirmative defenses raised by the Sarpals, indicated that it was equally clear there was no prior City action that the Sarpals relied upon and, therefore, the City could not be estopped. *Id.* To support their positions the City made bare assertions as to the state of the law and any potential facts raised by the Sarpals. *Id.* In response the Sarpals set forth in detail their defense of equitable estoppel and all of the underlying facts that supported the same. RA-29-43.

The Minnesota Supreme Court has acknowledged the right for property owners to apply the principle of equitable estoppel since Mesaba Aviation Div. of Halvorsen of Duluth, Inc. v. Itasca County, 258 N.W.2d 877 (Minn. 1977). Prior to Mesaba, it was well settled that equitable estoppel could only be considered in cases against the government when it acted in a proprietary capacity. The Mesaba court did away with that distinction indicating that the equities of a situation should be examined, rather than the character of the government's actions. *Id.* Three years later the Minnesota Supreme Court in Ridgewood Development Co. v. State, 294 N.W.2d 288 (Minn. May 30, 1980)

looked closer at equitable estoppel in cases that involved governmental agencies and adopted a test to determine whether estoppel could lie.

“A local government exercising its zoning powers will be estopped when the property owner: 1) relying in good faith; 2) upon some act or omission of the government; 3) has made such a substantial change in position or *incurred such extensive obligations and expenses* that it would be *highly inequitable* and unjust to destroy the rights which he ostensibly had acquired. Id. at 292. The Court also held that before any balance of the equities could occur, one must look to see if the conduct of the government could be considered wrongful. Id. Interestingly, the Court did note that action, such as occurred in the instant case, could be considered wrongful, i.e. an official giving improper advice. Id. at 293.

North Oaks acknowledges in their Appellant Brief that Ridgewood is the proper standard to be applied but also relies on In re Liquidation of Excalibur Inc. Co., 519 N.W.2d 494, 499 (Minn. Ct. App. 1994) standard for application of equitable estoppel. Excalibur is a case involving the interpretation and application of an insurance policy and has no place in this discussion of property owner rights.

In response to North Oaks' Motion for Summary Judgment, the Sarpals raised a number of facts at issue. First, the Sarpals introduced un rebutted evidence that the sole reason that the shed was inside the setback area was that they were provided with an incorrect survey by the City. RA-117, 136. There is simply no question that if not for the actions of the City, the mistake would have never happened. The Sarpals also showed that the City agreed the shed was in exactly the place where it was documented

on the survey. Third, had the survey been accurate, the shed would have been outside the setback area. RA-196.

Evidence of substantial change in position on the Sarpals' part was also provided to the Court. In addition to the obvious completion of the shed itself, correspondence to the City outlining what would have to be done in order to move the shed, which included pouring a new foundation, moving sprinkler heads and valves, as well as the obvious expense of tearing down or having the building physically moved, the cost for all of this work was approximately 10 to 20 thousand dollars. RA-203; RA-43, ¶6. The City introduced no evidence to contradict the Sarpals' testimony regarding the survey or how it had been acquired, nor did North Oaks show how keeping the shed in the present location would somehow be a detriment to the public good. RA-207, ¶18. Armed with the forgoing, the Court certainly had sufficient evidence to find that questions of material fact existed and that the Motion for Summary Judgment was properly denied.

II. WAS THE TRIAL COURT CLEARLY ERRONEOUS IN FINDING THAT THE SARPALS REASONABLY RELIED ON THE WRONGFUL CONDUCT OF NORTH OAKS AND THAT THE EQUITIES FAVORED THE SARPALS?

A. Standard of Review

North Oaks also appeals the Trial Court's application of equitable estoppel after the bench trial. The District Court's factual findings must be clearly erroneous to warrant reversal. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." Fletcher v. St. Paul

Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999). “The standard of review for a bench trial is broader than the standard for jury verdicts...” Runia v. Marguth Agency, Inc., 437 N.W.2d 45, 48 (Minn. 1989). Estoppel is ordinarily a question of fact and the district court's decision will not be disturbed unless it is manifestly and palpably contrary to the evidence. In re Westling Mfg., Inc., 442 N.W.2d 328, 331 (Minn. Ct. App.1989). A district court's exercise of its equitable powers is reviewed for an abuse of discretion. Edin v. Josten's, Inc., 343 N.W.2d 691, 693 (Minn. Ct. App.1984) (a reviewing court reviews the district court's grant of relief in equity for abuse of discretion).

B. There was sufficient evidence to support the Trial Court's application of equitable estoppel and deny North Oaks' request for relief.

The Trial Court made sound conclusions of law and fact in this case. Minnesota courts have adopted the doctrine of equitable estoppel in the context of zoning cases to allow homeowners relief in instances where the government's wrongful conduct has led to an unfair result. The government should not, and in this case cannot, be allowed to eviscerate the rights of an innocent homeowner.

After trial, the Trial Judge ruled that North Oaks was equitably estopped from requiring the Sarpals to move their shed at their expense. RA-208. In so ruling, the judge found that the City engaged in wrongful conduct regarding: 1) their representations as to the survey, which constituted government advice; 2) providing inaccurate documentation; 3) failing to competently review the building permit application; and 4) failing to place the Sarpals on notice of the error. RA-207-208. In applying the Ridgewood test the Court also found that the Sarpals reasonably relied upon the City's

wrongful advice in constructing the shed and lastly that, on balance, the equities favor the Sarpals as there was no evidence presented by North Oaks as to any detriment to the public good in allowing the shed to remain. Id. Appellant has put forward no facts or law showing that the trial decision was clearly erroneous.

1. The Trial Court Properly Found Wrongful Conduct

There was sufficient evidence presented of wrongful conduct to support the Trial Court's findings. Specifically, North Oaks' representations and advice regarding the as built survey amount to wrongful conduct. See RA-135-137.

In Ridgewood, the Supreme Court expressly stated that "improper government advice" will satisfy the threshold requirement of wrongful conduct. 294 N.W.2d at 293. When the government asserts a position inconsistent with its prior conduct, then wrongful conduct lies. See Mesaba Aviation Div. of Halvorson of Duluth, Inc. v. County of Itasca, 258 N.W.2d 877, 880 (Minn. 1977) ("reliance on conduct later wished to be renounced is a necessary element"); see In re Westling Mfg., Inc., 442 N.W.2d 328, 331 (Minn. Ct. App. 1989); see also City of Eden Prairie v. Liepke, 403 N.W.2d 252, 255 (Minn. Ct. App. 1987).

North Oaks urges this Court to rely upon inapposite case law. At the outset, Northernair Productions v. Crow Wing Co., 244 N.W.2d 279, 281 (Minn. 1976), was decided before Ridgewood and does not take into account an equitable estoppel analysis. The Northernair case concerned a county official's interpretation of a zoning ordinance which was an issue of law. Id. To the extent Northernair is applicable here, the court's analysis actually supports the District Court's ruling, the Northernair court explicitly

acknowledged that “a cause of action against a city employee for negligent misrepresentation of a matter of fact” is permissible. Id. There is no dispute, nor is it an issue in this case, that North Oaks has the authority to establish a zoning ordinance as recognized in the Sanderson v. City of Willmar, 162 N.W.2d 494 (Minn. 1968) and Kiges v. City of St. Paul, 240 Minn. 522 (Minn. 1953) cases. The City’s reliance on these cases is therefore completely misplaced.

North Oaks suggests Morgan v. Comm’r., 345 F.3d 563, 566 (8th Cir. 2003) is persuasive in this case. That case, however, does not apply Minnesota law, concerns actions of the IRS and addresses the federal doctrine of estoppel. Finally, North Oaks’ reliance on Shefka v. Aiken Co., 541 N.W.2d 349, 353 (Minn. Ct. App. 1995), rev. denied (February 27, 1996), actually highlights the very reason underlying the Trial Court’s application of equitable estoppel. The Court of Appeals in Shefka applied equitable estoppel because of the court’s “concern about the unfairness of the decision it felt compelled to render.” Id. The District Court in this case properly took the same action and avoided the inequitable result that would have inevitably occurred if North Oaks were to have prevailed.

It is uncontested that Dr. Sarpal obtained what he believed was an “as built survey” from the City. He brought a letter to the City office, showing the official what he needed and was told on more than one occasion that the survey he was given was indeed the survey needed to submit his plans to the ASC and ultimately to the City for a building permit.. RA-136. The Sarpals relied on North Oaks to provide documents that North Oaks held in its property records. RA-136. The City attempts to exonerate itself by

claiming that the Sarpals violated the ordinance by not measuring the set back area from the lot lines; however there is no such requirement expressed in the ordinance. RA-152, RA-184. Had that been true, one would have expected the City inspector to note the violation and deny the permit. Further, the City was forced to admit that on the plans submitted to the building department, the measurements were drawn from the home rather than from the lot lines on the survey. In addition no attempt was made by the reviewer or the City to contact Dr. Sarpal or check the accuracy of the same. RA- 161-162. The City witness also admitted that any competent building official would have known that the survey presented was not an "as built survey". RA-155, RA-161-163. North Oaks' own building official, despite North Oaks' present contention that the survey was obviously inaccurate, did not make the finding that the as built survey provided to Dr. Sarpal was inaccurate until after full completion of the construction of the shed. Id. RA-196. It is absurd to suggest that an inexperienced home owner should have known the survey was inaccurate when North Oaks itself, a sophisticated party in dealing with zoning issues in all respects, failed to notice or place the Sarpals on notice of the error, even after reviewing the building permit application. RA-195. There is no dispute that the Sarpals were not aware of North Oaks' mysterious measurement requirement, which is precisely why Dr. Sarpal made the measurements the way he did on the wrong survey provided by the City.

2. The Trial Court Properly Found that the Sarpals Reasonably Relied Upon North Oaks' Wrongful Conduct

The mere fact that the Sarpals built the shed in strict accordance with the survey provided by the City is undeniable proof of reliance. The City has acknowledged Dr. Sarpal built the shed precisely how he drew it on the survey that the City used in reviewing and subsequently approving the building permit. RA-153, 196. North Oaks wrongfully induced reliance by the Sarpals because it provided inaccurate documents, failed to correct what it knew or should have known was inaccurate, and failed to reasonably notify the Sarpals of the proper way to measure a setback. These failings led the Sarpals to believe that they had complied with each requirement necessary to properly construct their shed on their property.

At trial North Oaks did not introduce any evidence to rebut the Sarpals' claim of reliance. For the first time in their appellate brief, they now claim that reliance on information provided by the City is somehow misguided because the employee did not have the authority to provide information to Sarpal. North Oaks argues for the first time on appeal that North Oaks' city employee, whom North Oaks never identified during the District Court proceedings, was not authorized to make any representations regarding the AAA Survey that the city employee led the Sarpals to believe was an as built survey.

As an initial matter this Court should ignore any factual argument made by North Oaks as it was not raised or preserved in the District Court. Issues not raised below will not be considered on appeal. Thiele v. Stich, 425 N.W.2d 580, 582 (Minn.1988). Regardless of this fatal flaw in North Oaks' argument, the cases in support of its agency

argument all relate to a city employee's right to contract and bind the city. These cases have nothing to do with equitable estoppel and the effect of a city's wrongful conduct on a homeowner who reasonably relies upon the conduct.

Lastly, the City avers that the Sarpals executed a Property Owner Waiver and therefore cannot rely on estoppel. RA-194. The Waiver is both extraneous and unpersuasive. Again, the Sarpals have never disputed the fact that they were responsible for construction and following the applicable law. That being said, the Waiver does not somehow absolve the City from its own actions, and certainly there is no legal authority that executing a Waiver will extinguish any rights one may have in equity.

Because overwhelming and uncontroverted evidence demonstrates reasonable reliance, the Trial Court's conclusion cannot be considered clearly erroneous.

3. The Trial Court did not err in finding that the equities favor the Sarpals.

The Trial Court relied upon ample evidence to support the balance of equities favor

the Sarpals. The Minnesota Supreme Court has unequivocally recognized that a district court sitting in equity has broad discretion when determining the equitable circumstances of a case. Nadeau v. County of Ramsey, 277 N.W.2d 520, 524 (Minn.1979). In the present case, the City never introduced one iota of evidence that there was any detriment to the public good by allowing the shed to remain in place. North Oaks has proffered no evidence of any legitimate interest it seeks to protect, or which would be detrimentally effected at all, by enforcing its zoning ordinance strictly against the Sarpals. In fact, according to North Oaks' theory, if the act of violating a zoning ordinance by itself was

sufficient to satisfy this element of the Ridgewood analysis, then equitable estoppel could never be applied to prevent a government from enforcing its zoning ordinance despite its wrongful conduct.

In contrast, the Sarpals presented concrete evidence of a substantial change in position or extensive expenses and obligations. The Sarpals produced correspondence outlining the extensive and difficult procedure involved with relocating the shed. These difficulties include moving sprinkler heads and valves, removing fence posts, and pouring new foundation. RA-203. It is axiomatic that construction of the shed in and of itself was a substantial change in position as it involved a substantial physical addition and improvement to the Sarpals' property. Lastly the Court record contained an affidavit outlining the approximate cost, \$10,000.00 to \$20,000.00, to remove and relocate the shed. RA-43, ¶6. In response, North Oaks suggests that because the Sarpals have the means to pay for the removal without causing a financial hardship they are somehow ineligible for the application of equitable estoppel. But the evidence, coupled with the time and energy already devoted and expended to the construction of the shed by the Sarpals in the first place, support the Trial Court's finding that the equities lie in favor of the Sarpals. RA-208, ¶5. Because the City failed to produce any evidence on the public detriment any weighing of the equities must favor the Sarpals.

CONCLUSION

This is a case where property owners did everything they could and everything they were required to do, in connection with the construction of an improvement to their property. North Oaks' distaste of the Shed's location can only be blamed on its own improper actions. To hold otherwise allows cities such as North Oaks to strip the rights of property owners unfairly and without justification.

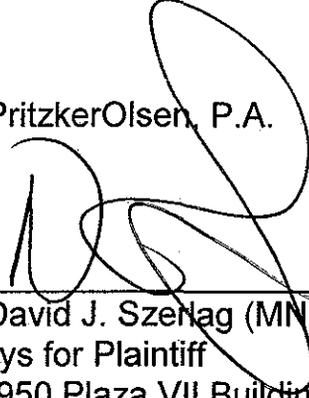
The Sarpals respectfully request that this Court affirm the decision of the District Court. The District Court made sound findings of fact and applied the doctrine of equitable estoppel appropriately.

Dated:

2/17/10

PritzkerOlsen, P.A.

By:



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