

NO. A09-1961

State of Minnesota  
*In Supreme Court*

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

*Appellant,*

vs.

RAJBIR S. AND CAROL L. SARPAL,

*Respondents.*

**APPELLANT'S BRIEF AND ADDENDUM**

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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

- I. IT WAS ERROR AS A MATTER OF LAW WHEN THE COURT OF APPEALS, WHILE ACKNOWLEDGING THAT THE WRONGFUL CONDUCT ELEMENT OF EQUITABLE ESTOPPEL REQUIRES SOME DEGREE OF MALFEASANCE, ADOPTS A NEW PRINCIPLE OF LAW EXPANDING THE DOCTRINE OF EQUITABLE ESTOPPEL BY HOLDING THAT A GOVERNMENT EMPLOYEE'S GOOD-FAITH, YET ERRONEOUS, REPRESENTATION OF FACT TO A PERMIT APPLICANT IS SUFFICIENT TO SATISFY THE WRONGFUL CONDUCT ELEMENT OF EQUITABLE ESTOPPEL.

### APPOSITE AUTHORITY

*Ridgewood Dev. Co. v. State*, 294 N.W.2d 288 (Minn. 1980)  
*Shefka v. Aitken Co.*, 541 N.W.2d 349 (Minn. App. 1995)  
*In re Westling Mfg., Inc.*, 442 N.W.2d 328 (Minn. App. 1989)  
*K-Mart Corp. v. Co. of Stearns*, 710 N.W.2d 761 (Minn. 2006)

- II. IT WAS ERROR AS A MATTER OF LAW WHEN THE COURT OF APPEALS DETERMINED THAT RESPONDENTS' MEASURING TECHNIQUE WAS REASONABLE WHEN RESPONDENT NEVER LOCATED OR MEASURED FROM THE LOT LINE IN ORDER TO COMPLY WITH A SETBACK ORDINANCE REQUIRING THAT NO STRUCTURE BE LOCATED WITHIN 30 FEET OF THE LOT LINE.

### APPOSITE AUTHORITY

*Ridgewood Dev. Co. v. State*, 294 N.W.2d 288 (Minn. 1980)  
*Liquidation of Excalibur*, 519 N.W.2d 494 (Minn. App. 1994)  
*Anderson v. Minn. Ins. Guar. Ass'n*, 534 N.W.2d 706 (Minn. 2000)

III. WHERE IT IS UNDISPUTED THAT THE SPECIFIC INFORMATION RELIED UPON BY THE CITY IN ISSUING THE BUILDING PERMIT WAS CORRECT ON ITS FACE, IT WAS ERROR AS A MATTER OF LAW WHEN THE COURT OF APPEALS, WHILE ACKNOWLEDGING THAT THE CITY IS ENTITLED TO RELY UPON THE ACCURACY OF THE DOCUMENTS SUBMITTED BY THE RESPONDENTS, DETERMINED THAT RESPONDENTS' RELIANCE WAS REASONABLE BECAUSE THE CITY HAD SOME DUTY TO INVESTIGATE AND DETERMINE WHAT MEASURING TECHNIQUES RESPONDENTS INTENDED TO UTILIZE IN ORDER TO ENSURE COMPLIANCE WITH THE ORDINANCE SETBACK REQUIREMENTS.

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*Ridgewood Dev. Co. v. State*, 294 N.W.2d 288 (Minn. 1980)  
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IV. IT WAS ERROR AS A MATTER OF LAW FOR THE COURT OF APPEALS TO CONCLUDE THAT A BALANCING OF THE EQUITIES FAVORED RESPONDENTS WHEN IT IS UNDISPUTED THAT THERE IS A PUBLIC INTEREST IN THE CITY ENFORCING ITS SETBACK REQUIREMENT AND WHEN THE LOCATION OF THE RESPONDENTS' STRUCTURE ENCROACHED 15 FEET ONTO A PRIVATE TRAIL EASEMENT AND WHEN RESPONDENTS ADMIT IT WOULD CAUSE THEM NO FINANCIAL HARDSHIP TO MOVE THE SHED.

APPOSITE AUTHORITY

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Minn. Stat. § 462.357

## STATEMENT OF THE CASE

This matter was commenced in Ramsey County District Court and assigned Court File No.: 62-CV-08-4330. The case was re-assigned to the Honorable Gregg E. Johnson who presided over the court trial.

Respondents own and reside at real property located at 4 Red Forest Heights in the City of North Oaks (the "Property") in a RSL Zone which provides that no structure shall be located within 30 feet of the side yard lot line. Respondents, seeking to construct a pool shed on their property, applied for and were granted a building permit by the City. Prior to applying for the building permit, Respondents were directed by the North Oaks Homeowners Association to submit an "As-Built" as part of the Association's approval process. According to Respondents, a City clerk provided an "As-Built" report which was a survey used for the septic system plans. Though the document provided by the City was not the correct document requested of Sarpal by the Homeowner's Association, aside from the depicted location of the proposed house, it contained accurate information. Respondents drew the location of the proposed shed on the "As-Built" report and submitted it to the City as the required site plan as part of the shed building permit application materials. Respondents' building/site plan, submitted to the City, and upon which the approval of the building permit was premised, depicted the location of the proposed shed outside the required 30 foot setback. Unknown to the City, Respondents had made no attempt to locate the lot line and did not measure from the lot line when they prepared the drawing for building permit application and when they constructed the shed. It was later determined that Respondents had, instead, measured from the incorrectly

depicted location of the house on the "As-Built" obtained from the City. Respondents constructed the pool house on their Property locating it within 30 feet of the side yard lot line which encroaches on a private trail easement. When the City asked Respondents to move the structure, Respondents refused.

When the City initiated legal action to enforce the City side yard setback ordinance regulations, Respondents claimed that the City should be estopped from enforcing its ordinance because information, i.e., the "As-built" they received from the City, and upon which they allegedly reasonably relied, was incorrect.

A Court trial was held on July 21, 2009. By Judgment entered October 6, 2009, the District Court concluded that, although Respondents did construct their shed in violation of the City's set back requirement, the City was equitably estopped from enforcing its setback ordinance and requiring Respondents to incur the cost of relocating the shed because Respondents relied in good faith on alleged wrongful acts or omissions of the City.

The City served a Notice of Appeal of the October 6, 2009 District Court Judgment. By a decision filed July 20, 2010 the Court of Appeals affirmed the District Court Judgment.

The City served a Petition for Review seeking further review of the decision of the Court of Appeals. By Order dated September 29, 2010, the Supreme Court granted review.

## STATEMENT OF FACTS

1. Respondents are husband and wife and are fee owners of real property located at 4 Red Forest Heights, North Oaks, Minnesota (the “Property”), legally described as: Tract “O”, registered Land Survey No. 566. AA-3, ¶¶ 2, 3.

2. The City of North Oaks is a municipal corporation and political subdivision under the laws of the State of Minnesota. *Id.*, ¶ 1.

3. North Oaks has established certain zoning district classifications, including a Residential Single-Family Low Density District (“RSL District”). The Property is located in an RSL District and is governed by North Oaks Zoning City 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”). AA-4, ¶ 5, 179-184

4. The Warranty Deed conveying the Property from the North Oaks Company, LLC, as Grantor, to Respondents as Grantees, reserves a fifteen (15) foot trail easement in favor of North Oaks Homeowners Assoc. (NOHOA) (the “Easement”). AA-185-188 § iv. The easement falls within the Setback. AA-4, ¶ 8. The Warranty Deed further provides, in relevant part, that nothing shall be placed on, over, or in the vicinity of the Easement that will interfere with its use as a trail. AA-186, § iv.

5. In 2006, Respondents decided to construct a pool shed on the Property. AA-4, ¶ 6. Prior to applying for a building permit, Respondents made a proposal to the Architectural Supervisory Committee (ASC) of NOHOA and were advised that they would need to submit to that non-governmental agency for review and approval an “As-

Built” which would show the location of the proposed shed and other features. AA -191, 192, 113, 115, 134, 135. Respondents did not possess an “As-Built.” AA-113.

6. Respondents went to the City to obtain the “As-Built” requested by the ASC. AA-116.

7. In response to Respondents’ request, a counter clerk working for the City provided Respondents with Trial Ex. 8, dated December 21, 2003. AA-117, 118, 136. Exhibit 8 was a survey used for septic system plans and was attached to documents identified as “As-Built Report.” AA-163.

8. Respondents submitted their building plans for the shed to the ASC. AA-113. Respondents also submitted the survey to the ASC which was prepared by AAA Pollution Control, Inc. AA-119.

9. Respondent Rajbir Sarpal personally drew the location of the proposed shed on the AAA Survey before they submitted it to the ASC. AA-117. The proposed location of the shed, as drawn by Respondent, was shown to be beyond the Setback and Easement. AA-118, 127. In other words, it complied with the ordinance.

10. After reviewing the information, including the AAA Survey submitted by Respondents, the ASC approved construction of the shed.

11. Respondents then submitted the same AAA Survey to the City as part of their shed building permit application materials. AA-121, 122.

12. Respondents were aware of the 30 foot minimum Setback ordinance when they applied for a building permit to build the shed. AA-109.

13. The City of North Oaks did not require an as-built as part of the permit application process; rather, the City only required a site plan. AA-148. The City considered the AAA Survey, which included a depiction of the shed location, to be an adequate site plan as it included a scale and included the lot lines, setback and intended location of the shed. AA-149. The site plan submitted by the Respondent and as drawn by Respondent depicted the shed to be outside of the 30 foot setback. AA-118. The location of the house and other markings by Respondent on his submittal to the City were not relevant to the City's building permit application approval process. AA-48, 49.

14. As part of the building permit application process, Respondent Rajbir Sarpal executed a Property Owner Waiver in which he expressly acknowledged that he was the contractor for the shed project and, as such, was solely and personally responsible for any violations of the State building code and/or jurisdictional ordinance in connection with the work performed on this property and, further, that they were acting as their own contractor for purposes of constructing the shed in question. AA-120, 121, 194.

15. Before staking and building the shed, Respondents made no attempt to locate the lot lines on their property. AA-118, 124.

16. Respondents never informed the City that they intended to measure from the proposed home location instead of the lot lines in locating the shed. AA-145.

17. On September 8, 2006 Respondents obtained a building permit to construct the shed. AA-140, 195.

18. Respondents never located the lot line and Respondent admits that he did not measure from the lot lines when he established the location of the shed on his property. AA-122, 123, 129.

19. Respondents constructed the shed on the subject property that is admittedly located within 30 feet of the side yard lot line in violation of City Ordinance § 151.050 and in violation of the covenants contained in the Warranty Deed regarding easement requirements. AA-124, 125, 129.

20. Pursuant to Minn. Stat. § 326.02, subd. 4, a building inspector may not locate lot lines. Only a licensed land surveyor may establish property corners or property lines.

21. The uncontroverted testimony at trial was that the proper and appropriate manner in which to ensure compliance with a setback when locating a structure on a property is to measure from the lot lines. AA-151, 152.

22. Respondent admits that if he had measured from the lot line when he staked the shed, he would have realized he was within the 30 foot set back in violation of the ordinance. AA-124.

23. The City requested Respondents to move the shed, but Respondents refused. AA-128, 129, 201.

24. Respondent Rajbir Sarpal concedes that Respondents will not incur any financial hardship if required to move the shed. AA-129. Respondents' permit application indicated that the value of the shed was \$2,800. AA-195.

## ARGUMENT

### **I. STANDARD OF REVIEW**

In its published decision in this case, the Court of Appeals adopted the standard of review generally used for bench trials involving mixed questions of law and fact – abuse of discretion. See *Porch v. Gen. Motors Acc. Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002); see also *Prairie Island Indian Cmty. v. Minn. Dep't of Pub. Safety*, 658 N.W.2d 876, 890 (Minn. App. 2003) (“Estoppel is an equitable doctrine ‘addressed to the trial court’s discretion, and which is not freely applied against the government.’” (quoting *In re REM-CANBY, Inc. v. Dep't of Human Servs.*, 494 N.W.2d 71, 74 (Minn. App. 1992), review denied (Minn. Feb. 25, 1993))). However, the Court of Appeals, quoting *L&H Transport, Inc. v. Drew Agency, Inc.*, 403 N.W.2d 223, 227 (Minn. 1987), correctly noted that “when only one inference can be drawn from the facts, the question is one of law.” Since the threshold issue presented in this appeal – whether a government employee’s good faith, but erroneous, representation of facts to a permit applicant can ever rise to the level of wrongful conduct – is a pure legal issue, it is subject to de novo review. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389 (Minn. 2003) (citing *Frost-Benco Elec. Ass’n. v. Minn. Pub. Utils. Comm’n.*, 358 N.W.2d 639 (Minn. 1984) (holding that a reviewing court is not bound by and need not give deference to a district court’s decision on a purely legal issue)).

## II. ELEMENTS OF AN EQUITABLE ESTOPPEL CLAIM AGAINST THE CITY

Over the years, the Minnesota Supreme Court has, to some extent, revised its position regarding the application of estoppel against the government. The Supreme Court's interest in avoiding chaos and preserving governmental integrity initially led it to adopt a broad rule that equitable estoppel is not available against the government "when [it] acts in its prerogative of sovereignty[.]" *State v. Horr*, 205 N.W. 444, 445 (Minn. 1925). By contrast, estoppel could be applied against the government when it acts in a proprietary capacity, such as when it undertakes a commercial or industrial enterprise. *Id.* But the Supreme Court later rejected this distinction between sovereign acts and proprietary acts. *Mesaba Aviation Div. of Halvorsen of Duluth, Inc. v. County of Itasca*, 258 N.W.2d 877, 880 (Minn. 1977). In *Mesaba*, the Supreme Court held that, in applying estoppel, the equities of the circumstances should be examined rather than the character of the government's actions. *Id.* Thus, the Supreme Court abandoned one limitation on estoppel claims against the government.

The *Mesaba* court, however, explicitly retained the "authorized-act" limitation on estoppel claims against the government. *Id.* at 879. The court 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." *Id.* The Supreme Court later clarified its post-*Mesaba* position by emphasizing that "where an agency has no authority to act, agency action cannot be made effective by estoppel." *Axelson v. Minneapolis Teachers' Ret. Fund Ass'n*, 544 N.W.2d 297, 299-300 (Minn.

1996) (quotation omitted). Consequently, despite the Supreme Court's rejection of the sovereign-proprietary distinction in *Mesaba* and its emphasis on the equities of the circumstances, it did not alter the rule that, regardless of the equities involved, a government's unauthorized act cannot be made effective by estoppel.

Though Minnesota courts allow the state and its subdivisions to be equitably estopped by an aggrieved citizen in the zoning context, the doctrine of estoppel is not freely applied against a municipality. *Local Gov't. Information Sys. v. Village of New Hope*, 248 N.W.2d 316 (Minn. 1976). Citing *Ridgewood*, the Court of Appeals in this matter noted that equitable estoppel should be used sparingly against the government. *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 293-294 (Minn. 1980). AA-219

A party who seeks to estop the government carries a heavy burden of proof. *Id.*; *State v. Holmberg*, 545 N.W.2d 65 (Minn. App. 1996), *rev. denied* (March 26, 1996). Accordingly, the Minnesota Supreme Court has used strong cautionary language to limit the application of estoppel against government decision makers. *See Ridgewood*, 294 N.W.2d at 292-94 (quoting *Mesaba*) (“[A] court should hesitate to interfere in the performance of a legislative body of its political and policy decisions which, in the absence of taint or fraud, have as their primary, if not sole objective, the general well-being of the community they are selected to represent. In our view, only the most compelling reasons and the clear necessity to avoid the most unconscionable results could, if at all, sustain the substitution by the Court of its judgment for that which is committed to the discretion of the legislative organization . . . the doctrine of equitable estoppel . . . must be used sparingly by the courts.”)

As stated by the Minnesota Court of Appeals, 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).

Because of the implications to the separation of powers doctrine, courts should negate decisions of a city legislature for “only the most compelling reasons and the clear necessity to avoid the most unconscionable results.” *Ridgewood*, 294 N.W.2d at 292.

The Court of Appeals properly identified that a person alleging equitable estoppel against a government must prove that: (1) the government engaged in wrongful conduct, (2) the person reasonably relied on the government’s conduct, (3) the person incurred a unique expenditure, and (4) a balancing of the equities favors estoppel. *Ridgewood*, 294 N.W.2d at 292-93. AA-219-20.

The most important requirement in estopping the government is the finding of wrongful conduct. *Ridgewood*, 294 N.W.2d at 293 (wrongful conduct “is the most important element”); *In re Westling Mfg., Inc.*, 442 N.W.2d 328, 333 (Minn. App. 1989), *rev. denied* (August 25, 1996) (citing *Ridgewood*).

Therefore, analysis of Respondents’ equitable estoppel claim must begin with the “most important requirement”, the alleged wrongful conduct on the part of the City.

Only if this “most important element” is found to exist, and wrongful conduct is established, is a Court required to then balance the harm done to the Respondents versus the harm that would be caused the public if the estoppel were to be applied. *Mesaba*, 258 N.W.2d at 880.

**III. IT WAS ERROR AS A MATTER OF LAW WHEN THE COURT OF APPEALS, WHILE ACKNOWLEDGING THAT THE WRONGFUL CONDUCT ELEMENT OF EQUITABLE ESTOPPEL REQUIRES SOME DEGREE OF MALFEASANCE, ADOPTS A NEW PRINCIPLE OF LAW EXPANDING THE DOCTRINE OF EQUITABLE ESTOPPEL BY HOLDING THAT A GOVERNMENT EMPLOYEE’S GOOD-FAITH, YET ERRONEOUS, REPRESENTATION OF FACT TO A PERMIT APPLICANT IS SUFFICIENT TO SATISFY THE WRONGFUL CONDUCT ELEMENT OF EQUITABLE ESTOPPEL.**

The Court of Appeals correctly noted that “the threshold question when analyzing an equitable estoppel defense is whether the government’s act or omission that induced reliance was “wrongful”. *Ridgewood*, 294 N.W.2d at 292-93; see also *InterState Power Co. v. Nobles Co. Bd. Of Comm’rs.*, 617 N.W.2d 566, 576 (Minn. 2000). AA-220. Though the Court of Appeals’ decision acknowledges that the wrongful conduct element requires some degree of malfeasance, it fails to provide any explanation how the City’s good faith, yet erroneous, representation of fact can ever meet the definition of malfeasance.

Equitable estoppel is available only where a municipality has acted wrongly. “Estoppel is available as a defense against a government if the government’s wrongful conduct threatens to work a serious injustice and if the public’s interest would not be unduly damaged by the imposition of estoppel.” *Ridgewood*, 294 N.W.2d at 293. “Some element of fault or wrongful conduct must be shown.” *Brown v. Mn. Dept. of Public*

*Welfare*, 368 N.W.2d 906, 910 (Minn. 1985) (emphasis original). As stated by the Court of Appeals in this matter, “The Supreme Court has noted that the wrongful conduct element has been interpreted since *Ridgewood* as requiring some degree of malfeasance. *K-Mart Corp. v. Co. of Stearns*, 710 N.W.2d 761, 771 (Minn. 2006).

The District Court (erroneously) determined that the following conduct by the City was sufficient to constitute wrongful conduct to support Respondents’ equitable estoppel claim:

- 1.) providing Respondents with a document entitled “As-Built Report” when they had requested an as-built survey, thereby leading Respondents to believe that the document was an accurate as-built survey; AA -207-08 (COL #2).
- 2.) providing Respondents inaccurate information; *Id.*
- 3.) failing to completely review Respondents’ building permit application, *Id.*
- 4.) failing to put Respondents on notice of such error; *Id.*
- 5.) approving Respondents’ shed application; *Id.*
- 6.) the City’s representations as to the as-built survey constituted government advice; AA-208 (COL #3).

The District Court also concluded (erroneously) that the City’s representations to Respondents with regard to the as-built survey constitutes government advice. AA-222.

For conduct to be wrongful, some degree of malfeasance is required. *K-Mart Corp. v. Co. of Stearns*, 710 N.W.2d 761 (Minn. 2006).

In order for estoppel to lie, Respondents had the burden of proof and must have shown that the City of North Oaks engaged in affirmative misconduct, rather than simple

inadvertence, mistake or imperfect conduct.” *Shefka v. Aitken Co.*, 541 N.W.2d 349, 353 (Minn. App. 1995), *rev denied* (February 27, 1996) (emphasis added). Affirmative misconduct is required before a government will be estopped. In re *Westling Mfg., Inc.*, 442 N.W.2d 328, 332 (Minn. App. 1989). At the very least, to prevail on the defense of equitable estoppel against the government, a party must show more than a simple misrepresentation by a government employee; the party must, instead, show that the government “engaged in affirmative misconduct.” *Morgan v. Comm’r. of Internal Review*, 345 F.3d 563, 566 (8<sup>th</sup> Cir. 2003).

The enforcement of an ordinance cannot be deemed “wrongful conduct” on the part of the City. A municipality may adopt zoning ordinances to promote the general welfare and may enforce them as a valid exercise of their police power. Minn. Stat. § 462.357, subd. 1; *see also Sanderson v. City of Willmar*, 162 N.W.2d 494, 497 (Minn. 1968). A municipality may also lawfully establish setback lines as part of a zoning ordinance. *McCavic v. Deluca*, 46 N.W.2d 873 (Minn. 1951). The City properly did so.

On appeal, the Court of Appeals held that the City was equitably estopped from enforcing its setback ordinance requirement against Respondents pool shed based upon two facts: first, a City employee in response to a request from Respondents for an “As-Built” survey of their home – that they needed for a non-city purpose – provided a survey labeled “proposed house” showing Respondents home in a location different from where it was actually constructed; and second, the City issued Respondents a building permit based on application materials that, on their face, showed a proposed structure that complied with the City’s setback ordinance.

It is important to note that the Court of Appeals, in basing its finding of equitable estoppel on the facts surrounding the issuance of the building permit went far beyond and did not confine itself to the scope of issues before the trial court.

The District Court Order, in denying Summary Judgment clearly identified the ONLY issue for trial concerning the wrongful conduct element of equitable estoppel, to be “whether or not the City engaged in wrongful conduct by giving the AAA map to Mr. Sarpal when he asked about an “as-built survey”. AA-96. The District Court Order was silent as to whether or not the City’s building permit approval process constituted wrongful conduct. *Id.*

The Court of Appeals admits that it is unclear that, standing alone, the approval of a building permit based on an incorrect submission would be sufficient to estop the City from enforcing its zoning law once the error was discovered. AA-221-22. The Court of Appeals then went on to state that “in this situation, because the City is entitled to rely on the accuracy of the documents submitted by the contractor or landowner, the wrongful conduct element of equitable estoppel may not be met.” AA-222.

Well established Minnesota precedent holds that the issuance of a permit is not sufficient to equitably estop the government from enforcing its regulations. See *Stotts v. Wright County*, 478 N.W.2d 802, 805 (Minn. App. 1991) (concluding that the issuance of a permit did not equitably estop a county from ordering removal of a new boat house that exceeded height and setback requirements); *Dege v. City of Maplewood*, 416 N.W.2d 854, 856-857 (Minn. App. 1987) (concluding that issuance of a special use permit did not

equitably estop a city from requiring the removal of a garage that did not comply with City regulations).

It is not until the Court of Appeals views the “City’s act of approving the building permit in context with the act of telling Sarpal that he was using the correct survey” (AA-222) that the Court of Appeals concludes that the City’s conduct rises to the level of “erroneous government advice” that the Court further concludes would give rise to an equitable estoppel defense under *Ridgewood. Id.*

In addition to going beyond the issue presented to the Trial Court regarding wrongful conduct, the Court of Appeals’ Conclusion is just plain wrong.

To begin with, it is undisputed that the City did not do anything to intentionally mislead Respondents during the permit process. At his request, Respondent obtained Trial Court Exhibit 8 from the City. AA-116-17. He asked the City for an “As-Built Survey” and he was advised that Trial Court Exhibit 8 “is the document you need.” AA-118, 136. Respondent admits that at that time he did not know what an as-built survey was. AA-135. The gist of Respondents’ defense is that he constructed a structure based on “erroneous information given to me by the City of North Oaks.” AA-126.

Significantly, however, Respondent admits that he is not claiming that there is anything contained in Trial Court Exhibit 8 regarding the lot lines or setback lines which is incorrect. AA-127. Apparently the “incorrect information” to which Respondent refers is the fact that Court Trial Exhibit 8, dated over one year before his home was constructed, depicts the location of his proposed home, which is clearly labeled

“proposed”, and not the location where his home was actually built. There was no mistake in Respondents’ building permit application materials.

The City provided no “government advice” to Respondents. The City never advised Respondents to use the “As-Built” which they had requested for NOHA purposes as part of their building permit application materials. The City never advised Respondents on how to locate or place the structure on their property. The City never advised Respondents of the location of the lot lines on their property. The City never advised Respondents that their lot lines or setback lines were in any incorrect location. To the extent the City gave Respondents any instruction, it was by way of its setback ordinance.

Providing Respondents with the survey was not governmental advice. In *Mesaba Aviation Div. of Halverson of Duluth, Inc. v. Co. of Itasca*, 258 N.W.2d 877 (Minn. 1977), Mesaba Aviation, during the process of negotiating lease space in a terminal, inquired whether it would be taxed for renting the property. The County auditor, relying on a written legal opinion from the County attorney who was authorized by statute to provide such an opinion, indicated in a letter that the leasehold would not be taxable. Mesaba Aviation, acting in reliance on that representation signed a lease agreement. The County thereafter assessed a personal property tax against the leasehold. That is the type of governmental conduct which can be found to constitute governmental advice. Contrast that with the counter clerk from the City of North Oaks innocently providing Respondents with the wrong document. It is important to note that even in *Mesaba*, the

governmental advice did not result in the application of equitable estoppel by the Supreme Court against Itasca County.

Even if it is determined that the City's actions did constitute government advice, it was still error for the Court of Appeals to conclude it was erroneous government advice and, therefore, wrongful conduct. The Court of Appeals failed to analyze why a government employees' simple act of providing a survey to a permit applicant for a non-city purpose should be considered to be the equivalent of providing government advice.

Without locating the lot lines, it was later determined that Respondents, acting as their own contractors and with prior knowledge of the 30 foot setback requirement, drew the location of the shed on the survey – Trial Exhibit 8 – in a location outside of the 30 foot minimum setback area. AA-118. Respondent subsequently admitted that he had drawn the shed location on Trial Exhibit 8 after measuring not from the lot lines, but from the “proposed” house depicted on the map. AA-122.

Contrary to the Court of Appeals' determination that “the City failed to identify this possible mistake in its permit-approval process” AA-222, there was no way that the City would have known Respondents' measuring technique when reviewing the application materials. The City considered Respondents' survey as submitted, to be an adequate site plan because it contained a scale, the lot lines, setback and intended location of the shed. The location of the “proposed” home and other notations by Respondent on the survey played no role in the City's permit decision. Importantly, the plan submitted by Respondents, as drawn by Respondents, depicted the shed to be outside of the 30 foot side yard setback.

The City, relying on Respondents' drawing, which depicted the shed to be outside the 30 foot setback, and upon Respondents' acknowledgement that he was personally and solely responsible for compliance with the City Zoning Ordinances, issued Respondent a building permit. In doing so, there simply was no wrongful conduct by the City.

The trial evidence is that the site plan submitted by Respondent was a scale drawing which showed the lot lines, the 30-foot setback, and Respondent's own drawing of the proposed shed as being outside of the 30-foot setback. AA-149. According to the undisputed trial testimony, the site plan submitted by Respondents during the permit application process indicated that Respondent was aware of the setback and intended to place the structure outside of the setback in compliance with the ordinance. AA-121-122.

Any government advice by the City (if found to exist) should have had no impact on Respondents at all since the only incorrect information on the "As-Built" was the location depicting the "proposed" house. The accuracy of the location of the "proposed" house has nothing to do with Respondents complying with the setback ordinance since the ordinance requires that any structure be located more than 30 feet from the lot line.

It was error for the Court of Appeals to conclude wrongful conduct by the City existed when Respondents did not show affirmative misconduct on the City's part. It cannot be properly concluded that such conduct constitutes wrongful conduct by the City sufficient to amount to the affirmative misconduct required to support Respondents' equitable estoppel claim. At most, Respondents established that, on a single occasion, a City employee clerk at a counter gave them a document entitled "As-Built Report" upon their request for an As-Built Survey. Such conduct, at most, is a mere mistake or

amounts to mere inadvertence. If every mistake by a public employee gave rise to an equitable estoppel defense, the defense's availability against the government would be the rule, not the exception.

The Court of Appeals' decision should be reversed because it directly conflicts with well-established Minnesota precedent that holds that the wrongful-conduct element of an equitable-estoppel claim against the government requires some degree of malfeasance. See, e. g., *K-mart Corp. v. Co. of Stearns*, 710 N.W.2d 761, 771 (Minn. 2006) (noting that the "wrongful conduct" element has been interpreted to require "some degree of malfeasance"); *In re REM-CANBY, Inc.*, 494 N.W.2d 71, 74 (Minn. App. 1992) (holding that an equitable-estoppel claim against the government requires both that the government made a misrepresentation of a material fact and that the government knew the representation was false); *In re Westling Mfg., Inc.*, 442 N.W.2d 328, 332 (Minn. Ct. App. 1989) (noting that "affirmative misconduct" is required to estop the government); *Mesaba Aviation Div. of Halvorson of Duluth, Inc. v. County of Itasca*, 258 N.W.2d 877, 880 (Minn. 1977) (holding that government conduct must be sufficiently "culpable" to satisfy the wrongful-conduct element).

Not only does the Court of Appeals' decision depart from the established law of equitable estoppel, it creates a paradox in its application. The Court of Appeals determined that "the City's actions were not so egregious as to make the wrongful-conduct element of equitable estopped obvious" AA-218. The Court of Appeals also recognized "that the City is correct in its assertion that it bears no legal responsibility for the Sarpals' error" and that "the City did not technically err by approving the plan as

submitted by Sarpal, which shows the shed avoiding the setback” AA-219. Additionally, the Court of Appeals determined that “the City is entitled to rely on the accuracy of the documents submitted by the contractor or landowner . . .” AA-222.

Though the Court of Appeals’ decision acknowledges that a negligent misrepresentation by a government official is not sufficient to support a claim for damages (*Northernair Products, Inc. v. Crow Wing Co.*, 244 N.W.2d 279 (1976)), its holding has determined that the same government conduct – a good faith, but erroneous, representation – can constitute malfeasance and affirmative wrongful conduct to support an equitable estoppel defense. AA-221. The paradox created is that Respondents could not have successfully sued the City claiming negligent misrepresentation by providing them with the requested “As-Built”, yet the City is prevented from enforcing its zoning ordinance against Respondents because it provided Respondents with the same information. If Respondents had sued the City to recover the cost of moving the shed, they would not have prevailed. Yet, the Court of Appeals has now established a different and lower standard of proof when analyzing the same City conduct in an equitable context where the affirmative defense of equitable estoppel is asserted.

The Court of Appeals made a special point of finding that the ruling in *Northernair Prods., Inc. v. Co. of Crow Wing*, 244 N.W.2d 279 (1976), which involved a legal claim for damages based on an allegation of negligent misrepresentation by a government official, does not stand for the proposition that a good faith, erroneous representation regarding a zoning matter cannot support an equitable estoppel claim. AA-221. However, that finding amounts to a distinction without a difference. The same

conduct, i.e., good faith, yet erroneous representation, is both an element of the negligent misrepresentation claim and an element of an equitable estoppel affirmative defense. Applying a different standard of proof to that same conduct based upon which theory of relief is pled can only result, as it did here, to inconsistent application of the law.

Even if the Court of Appeals is correct and a different standard is warranted in this case because it is in the context of Respondents asserting an equitable estoppel defense, the Court of Appeals' decision is still incorrect because Respondent, as the person asserting the affirmative defense, must have clean hands in order to assert the equitable defense. Respondents did have clean hands.

Respondent assured the City that the setback requirement would be complied with when he submitted his drawing, with his building permit application which showed the shed being outside of the 30 foot side yard setback area. However, and unbeknownst to the City, Respondent had used a method to measure the setback which, contrary to the uncontroverted evidence produced at trial regarding the proper way to measure to ensure compliance with the ordinance, did not include locating and measuring from the lot line. Such "unclean hands" by Respondents prevents them from prevailing on the equitable defense of estoppel. *Jackel v. Brower*, 668 N.W.2d 685 (Minn. App. 2003).

The absurd result is that any permit applicant who receives good faith, yet erroneous advice from a City is better off proceeding with his project in violation of City ordinances and risk suit by the City to enforce its ordinances rather than suing the City first on a negligent misrepresentation theory. By so doing, the permit applicant is assured that his project is "safe" and the City will be prevented by equitable estoppel from

enforcing its ordinances against him. In essence, the application of the Court of Appeals' decision encourages permit applicants to ask for forgiveness rather than permission.

**IV. IT WAS ERROR AS A MATTER OF LAW WHEN THE COURT OF APPEALS DETERMINED THAT RESPONDENTS' MEASURING TECHNIQUE WAS REASONABLE WHEN RESPONDENT NEVER LOCATED OR MEASURED FROM THE LOT LINE IN ORDER TO COMPLY WITH A SETBACK ORDINANCE REQUIRING THAT NO STRUCTURE BE LOCATED WITHIN 30 FEET OF THE LOT LINE.**

Even if the City had committed affirmative misconduct – which is disputed – Respondents, in order to succeed on their equitable estoppel defense, still needed to establish that they reasonably and in good faith relied on the City's misrepresentation. *Heckler v. County Health Servs. of Crawford Co., Inc.* 467 U.S. 51, 61 (1984); *Ridgewood*, 294 N.W.2d at 292; *Liquidation of Excalibur*, 519 N.W.2d at 494, 498 (Minn. App. 1994). An essential element of equitable estoppel is reasonable reliance. *Anderson v. Minn. Ins. Guar. Ass'n.*, 534 N.W.2d 706, 709 (Minn. 1995).

Whether reasonable reliance exists involves two inquiries: 1) whether reliance occurred, and 2) whether that reliance was reasonable. *Id.* The Court of Appeals, specifically concluding “that Sarpals’ technique of measuring from the house was reasonable” (AA-223), incredulously found that “the ordinance does not require a property owner to measure from the lot lines before placing a structure.” *Id.* The Court of Appeals ignored the fact that Respondent did not even attempt to locate the lot line. Thus, by implication, the Court of Appeals also determined that an applicant does not even have to locate the lot line. The importance of the fact that Respondent did not even

attempt to locate the lot line, in addition to failing to measure from the lot line cannot be overstated.

City Ordinance § 151.050 clearly and unequivocally requires that no structure be constructed within 30 feet of the lot lines. AA-184. The set backs are required from the property lines. AA-151, 184. The ordinance language is obvious that an individual building a structure is supposed to measure from the property lines. AA-152, 163. *Id.*

If one is to be certain that his building is located more than 30 feet from the lot line, the proper way to ensure compliance is to measure from the lot line. Measuring from any other location would not ensure compliance. Because Respondent never located the lot lines, he did not even know where the lot line was. Simply put, failure to locate and measure from the lot line can lead to misplacement of a structure. That is what occurred here.

The uncontroverted trial testimony was that the proper and appropriate manner in which to ensure compliance with a setback when locating a structure on a property is to measure from the lot lines. AA-151-152. The Court of Appeals failed to recognize that Respondents had the burden of proof in establishing each element of their equitable estoppel defense. It was incumbent upon Respondent to establish that their measuring technique was reasonable. The Respondent did not do so.

Instead, the Court of Appeals ignored the uncontroverted trial evidence of how to properly locate the lot line and determine the distance between the shed and lot line to ensure compliance with the setback requirement and found that Respondents met their

burden of proof even though Respondent provided no evidence that failing to locate the lot line was a reasonable way to comply with the ordinance.

Respondent admits that he had actual knowledge of the required minimum 30 foot setback since 2003-2004. AA-109, 100. Respondent also admits that he personally participated in the staking of the location of the shed and that he never measured from the lot line. AA-122, 123. Instead, and unbeknownst to the City, Respondent measured from the indicated “proposed” house and never verified that the house was built in the indicated “proposed” location. AA-117, 130, 143, 144. Respondent concedes that he made no attempts to locate the lot lines before the shed’s foundation slab was poured. AA-124. Respondent additionally admits that had he located the lot lines and had he measured from those located lot lines, he would have known that he was not complying with the required 30 foot minimum setback requirement. *Id.*

Incredulously, the Court of Appeals determined that “because the ordinance does not require a property owner to measure from the lot lines before placing a structure, we conclude that Sarpal’s technique of measuring from the house was reasonable.” Even if the Court of Appeals analysis that the ordinance does not spell out how compliance/non-compliance is to be determined is accepted, there is no question that the ordinance explicitly refers to the lot line. The ordinance says nothing about using an “as-built” as a way to measure for setback compliance. But because Respondents never even located the lot line, compliance could not be assured.

Not only did Respondents never locate the lot line, they never knew the exact location of the house from which they admittedly measured. Respondents were on notice

that the location of the house, as depicted on the “As-Built” received from the City, was only a proposed location. Respondents made no effort to verify that the house was actually built in the proposed location. So, in addition to not locating the lot lines and measuring from the lot line, Respondents measured from a location that they never confirmed. In spite of that, the Court of Appeals found Respondents’ measuring technique to be reasonable.

For the sake of argument, if one accepts the Court of Appeals, albeit erroneous, analysis of the ordinance – that it does not require Respondent to measure from the lot line – it is still incumbent upon Respondent to locate the lot line and determine and verify if the “proposed” house they were measuring from was actually located where it was depicted.

By determining that Respondents’ technique of measuring from the proposed house was reasonable, the Court of Appeals not only ignored the uncontroverted trial testimony of the proper way to measure and ensure compliance with the setback requirements, but found that all of the following was reasonable:

- Respondents not locating the lot line
- Respondents not measuring from the lot line
- Respondents not locating the exact location of the “proposed” house from which they admittedly measured.

For the Court of Appeals to so find was error and it was error for the Court of Appeals to conclude that Respondents’ measuring technique from the house was reasonable. Even assuming that the “As-Built” did not include reference to the

“proposed” house location and merely depicted the “house” location, prudence would still dictate that, in order to have one’s measuring techniques found to be reasonable, that one would need to 1.) determine and verify that the house is located in the location depicted on the “As-Built” and 2.) locate the lot line, as referenced in the ordinance.

V. **WHERE IT IS UNDISPUTED THAT THE SPECIFIC INFORMATION RELIED UPON BY THE CITY IN ISSUING THE BUILDING PERMIT WAS CORRECT ON ITS FACE, IT WAS ERROR AS A MATTER OF LAW WHEN THE COURT OF APPEALS, WHILE ACKNOWLEDGING THAT THE CITY IS ENTITLED TO RELY UPON THE ACCURACY OF THE DOCUMENTS SUBMITTED BY THE RESPONDENTS, DETERMINED THAT RESPONDENTS’ RELIANCE WAS REASONABLE BECAUSE THE CITY HAD SOME DUTY TO INVESTIGATE AND DETERMINE WHAT MEASURING TECHNIQUES RESPONDENTS INTENDED TO UTILIZE IN ORDER TO ENSURE COMPLIANCE WITH THE ORDINANCE SETBACK REQUIREMENTS.**

City employees were presented with Respondents’ application and plans which, on their face, were compliant with the setback ordinance. Unbeknownst to the City at that time, Respondents had not measured from the lot line, but had, instead, measured from the location of the “proposed” house in locating his pool shed. The Court of Appeals faulted the City “because Sarpals’ mistake was not recognized by any of the experienced land-use officials who were involved in the approval process”. The Court of Appeals faulted the City for doing exactly what the Court of Appeals’ decision says the City is entitled to do – namely, rely on the accuracy of the documents submitted by the landowner. In spite of acknowledging that the City is entitled to so rely, the Court of Appeals’ decision, in effect, now imposes an additional burden on all zoning officials statewide to go beyond mere submittals to investigate and determine if an applicant’s information is correct and to perform an independent analysis of the applicant’s

measuring techniques. At the same time, the Court of Appeals' decision relieves an applicant of all obligation and duty to even locate lot lines and comply with setback requirements. In other words, the applicant bears no responsibility.

The Court of Appeals has previously determined that a property owner may not benefit from asserting an equitable defense when the property owner has unclean hands because of the "cavalier" method by which he measured to locate his building. *Jackel v. Brower*, 668 N.W.2d 685 (Minn. App. 2003) (a party seeking laches must come with clean hands in order to obtain the benefit of the balancing of the equities). *Brower*, like Respondents, assured the government entity that the setback requirement would be complied with when he submitted a drawing with his building permit application that showed the proposed building to be outside of the setback area. *Brower* had used a highly inaccurate method to measure the setback, purporting to have "stepped off" the distance, resulting in violation of the setback ordinance by 52 feet. The Appellate Court in *Brower* found that, given the cavalier method by which *Brower* located the building, it was not an abuse of discretion to disqualify *Brower* from asserting an equitable defense.

While Respondents did not "step off" their measurement, their failure to even locate the lot line can fairly be described as similarly cavalier. Likewise, Respondents' failure to measure from the lot line can also fairly be described as cavalier. Therefore, Respondents should not be able to benefit from assertion of an equitable estoppel defense.

The focus of the Court of Appeals discussion concerning reasonable reliance turns to the statement by the City, the employee's purported "advice" to Respondents that the

“As-Built” was the correct survey to use to supply to NOHA. Respondents’ reliance on the actions and purported misrepresentations of the City employee was not reasonable because Respondents are deemed to know the law, including existing ordinances. See *Matter of Westling Mfg., Inc.*, 442 N.W.2d 328, 333 (Minn. App. 1989); *Jasaka v. City of St. Paul*, 309 N.W.2d 40, 44 (Minn. 1981); *Anderson v. City of Mpls.*, 178 N.W.2d 215, 217 (Minn. 1970); *Dege v. City of Maplewood*, 416 N.W.2d 854 (Minn. App. 1987).

Even if Respondents had not been deemed to know the law, reliance was not reasonable because he signed a Waiver in which he acknowledged that he was solely and personally responsible for any violation of Code or ordinance. AA-194; AA-120, 121. Respondents’ reliance on the actions and purported misrepresentation by the City employee was not reasonable because Respondent, at the time of his permit application, signed a “Property Owner Waiver” which provides, in part, that he acknowledged:

“that as a contractor on his project, I am solely and personally responsible for any violations of the State Building Code and/or jurisdictional ordinance in connection with the work performed on this property.” (emphasis in original) AA-194.

Respondents acted as their own contractor in building the shed. AA-120. He understood the waiver he signed. AA-121. Respondents, by themselves, determined where they would build the shed. By signing the Property Owner Waiver, Respondents assumed the risk of locating and building the shed without first having located the lot lines. Therefore, it was not reasonable for Respondents to rely upon the actions and purported representations of the City employee because Respondent knew that he, as his

own contractor, was charged with not only knowing the applicable code or ordinance, but also with knowing how to ensure that he was in compliance with the same.

Respondents' reliance on the conduct of the City employee was not reasonable. Because of that, the Court of Appeals erred in concluding that the District Court did not abuse its discretion by determining that Respondents established all elements necessary to succeed on their equitable estoppel defense. Additionally, it was not reasonable for Respondents to rely on the survey document provided by the City at Respondent's request. The document is dated Dec. 21, 2003, which was more than one year before Respondents built their home. Respondent was therefore on notice that the document may not depict the actual location of the house.

Accordingly, the Court of Appeals' conclusion that Respondents' reliance was reasonable must be reversed.

**VI. IT WAS ERROR AS A MATTER OF LAW FOR THE COURT OF APPEALS TO CONCLUDE THAT A BALANCING OF THE EQUITIES FAVORED RESPONDENTS WHEN IT IS UNDISPUTED THAT THERE IS A PUBLIC INTEREST IN THE CITY ENFORCING ITS SETBACK REQUIREMENT AND WHEN THE LOCATION OF THE RESPONDENTS' STRUCTURE ENCROACHED 15 FEET ONTO A PRIVATE TRAIL EASEMENT AND WHEN RESPONDENTS ADMIT IT WOULD CAUSE THEM NO FINANCIAL HARDSHIP TO MOVE THE SHED.**

If wrongful conduct is established, then the Court must balance the harm done to the complainant versus the harm that would be caused the public if estoppel were to be applied. *Mesaba*, 258 N.W.2d at 880. For a respondent to prevail, it is not enough that he show some prejudice in not being permitted to carry out his plans, there must be

substantial prejudice. *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).

The Court of Appeals acknowledges "that the public has an interest in the enforcement of zoning ordinances to ensure uniform and equitable application of the law, minimize nuisances, and to protect property values" AA-224-25 (citing *Dege v. City of Maplewood*, 416 N.W.2d 854, 857 (Minn. App. 1987)). The Court of Appeals even concluded that "to estop the City from enforcing its current zoning ordinance would contravene these interests". *Id.* Yet, the Court of Appeals determined (incorrectly) that this broad public interest, alone, is insufficient to outweigh the equities. The City maintains that such broad statutorily enabled public interest is sufficient to outweigh any equities, if any, advanced by Respondents. However, even if that were not the case, contrary to the Court of Appeals' finding, that is not the only other public interest that would be "unduly damaged" if the City was to be estopped from enforcing the setback ordinance.

In spite of the Court of Appeals finding that "a balancing of the equities is not limited to a balancing of financial hardships" AA-225, the Court of Appeals noted that "the Sarpals presented evidence of the expense and difficulty presented by moving the shed." AA-226. However, in reality, the trial record is void of any evidence establishing any alleged "extensive expenses and obligations" which may be associated with relocating or removing the shed. The Court of Appeals' reference to such evidence is out of context. The evidence referred to by the Court of Appeals, a letter from Respondents

to the City, was not written in support of any claimed financial hardship. Rather, it was a request by Respondents for more time within which to move the shed (after Respondents originally agreed to move the shed), based upon current seasonable conditions, after their variance request was denied. AA-202, 203. Likewise, the trial record is void of any evidence establishing the “significant time and money expended on the initial construction of the shed.” Therefore the District Court’s conclusion lacked an evidentiary basis.

What is contained in the bench trial record establishes:

- 1.) Respondents’ valuation of the proposed costs for building the shed, as contained in the building permit, is \$2,800. AA-195.
- 2.) Respondents’ written concession that his request for an after-the -fact variance was not based upon “financial reasons of hardship”. AA-198;
- 3.) Respondents’ own testimonial admission that moving the shed will not cause him any financial hardship. AA-129.

No trial evidence exists to support the District Court’s conclusions that Respondents will incur extensive expenses to relocate the shed. Likewise, no trial evidence exists to support the District Court’s conclusion that Respondents expended significant time and money initially constructing the shed.

Importantly, other “evidence” cited by the Court of Appeals which it found to support the balancing of the equities in Respondents’ favor was not evidence that was presented at the bench trial in this case. The Affidavit from Respondent estimating the cost to move the shed, approximately \$10,000 - \$20,000, which was relied upon by the

Court of Appeals in reviewing and authorizing the District Court's balancing of the equities, was not admitted into evidence at trial. As the Court of Appeals itself noted, it was submitted at the summary judgment phase. AA-225

Even if at trial Respondents had submitted such evidence of the expense presented by moving the shed, it would have been insufficient to show the substantial prejudice required to tip the balance of equities in their favor. See *Hawkinson v. Co. of Itasca*, 231 N.W.2d 279 (Minn. 1975) (\$80,000 expended was not so substantial to defeat the City's interests in preventing development.)

The Court of Appeals' decision wrongly determined that the broad public interest in enforcing zoning ordinances is insufficient to outweigh the equities when a private trail easement was encroached upon and Respondents would not suffer any financial hardship from moving the structure.

The Court of Appeals is wrong in its determination that no adjacent property interest was adversely affected. AA-225. The trial record clearly establishes that, not only does the shed extend into the 30 foot side yard setback area, it also extends 15 feet onto the North Oaks Homeowners Association trail easement and interferes with construction of a necessary trail within the easement area. AA-201; AA-125.

Accordingly, the trial court record establishes that "public good" is adversely affected and the public interest is frustrated by Respondents' violation of the setback ordinance. Thus, the equities, if any had been advanced by Respondents, would not outweigh "the public interest frustrated by estoppel." The Court of Appeals' balancing of

the equities was in error because it was not based upon the undisputed evidence in the record. Therefore, the Court of Appeals' conclusions must be reversed.

### CONCLUSION

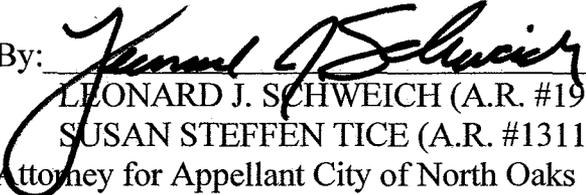
The Court of Appeals erred when it expanded the doctrine of equitable estoppel so that now a government employee's mere good faith, yet erroneous, factual representation to a permit applicant is sufficient to satisfy the wrongful conduct element of equitable estoppel against the government. Because the City committed no malfeasance, wrongful conduct cannot be established. But even if wrongful conduct could be established, Respondents' reliance upon the City's good faith misrepresentation was not reasonable. It was error for the Court of Appeals to require that City officials go beyond the face of Respondents' submittals, while at the same time relieving Respondents of any obligation to locate the lot lines and comply with the setback requirements. Lastly, the Court of Appeals erred in affirming the District Court's balancing of the equities, especially in light of the fact that the Court of Appeals wrongly concluded that the City presented no evidence of harm to an adjoining landowner when the record clearly established that Respondents' shed encroached onto a private trail easement by 15 feet.

For all of the foregoing reasons, Appellant, City of North Oaks, respectfully requests that this Court reverse the Court of Appeals' decision.

Dated: 10/28/10

Respectfully submitted,

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

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