

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.

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

THE COURT OF APPEALS CORRECTLY APPLIED THE ABUSE OF DISCRETION STANDARD IN REVIEWING THE DECISION OF THE DISTRICT COURT.

APPOSITE AUTHORITY

Edin v. Josten's, Inc., 343 N.W.2d 691 (Minn. Ct. App. 1984)
In re: Westling Mfg. Inc., 442 N.W.2d. 328 (Minn. App. 1989)
Porch v. Gen. Motors Acceptance Corp., 642 N.W.2d 473,
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THE COURT OF APPEALS IN APPLYING THE RIDGEWOOD STANDARD FOR ESTOPPEL, DID NOT ADOPT A NEW PRINCIPLE OF LAW OR EXPAND THE REACH OF EQUITABLE ESTOPPEL IN FINDING, UPON REVIEW OF ALL OF THE EVIDENCE, THAT THE RESPONDENT'S ACTIONS CONSTITUTED "WRONGFUL CONDUCT".

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THE COURT OF APPEALS PROPERLY FOUND THAT THE SARPALS REASONABLY RELIED UPON THE RESPONDENT'S CONDUCT.

APPOSITE AUTHORITY

Clear Channel Outdoor Advertising, Inc. v. City of St. Paul,
675 N.W.2d 343 (Minn. Ct. App. 2004)
Engstrom v. Farmers & Bankers Life Ins. Co., 230 Minn. 308,
41 N.W.2d 422 (Minn. 1950)

THE COURT OF APPEALS PROPERLY FOUND THAT THE SARPALS WOULD SUFFER A FINANCIAL HARDSHIP UNDER THE CIRCUMSTANCES.

APPOSITE AUTHORITY

Brown v. Minnesota Department of Public Welfare, 368 N.W.2d 906
(Minn. 1985)
Nadeau v. County of Ramsey, 277 N.W.2d 520 (Minn.1979)

THE COURT OF APPEALS PROPERLY FOUND THAT THERE WAS NO DETRIMENT TO THE PUBLIC GOOD THAT WAS FRUSTRATED BY THE APPLICATION OF EQUITABLE ESTOPPEL BY THE DISTRICT COURT.

APPOSITE AUTHORITY

Thiele v. Stich, 425 N.W.2d 580 (Minn. 1988)

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, Judge 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 storage shed (the “Shed”) they had 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 and not an “as-built” survey as the City had acknowledged;
- 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 to the town in support of obtaining the building permit;
and
- 7) The City did not object to the location of the Shed for nearly a year 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, therefore, judgment in favor of the City must be entered. 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 \$10,000.00 to \$20,000.00 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. This City official then produced a survey and Dr. Sarpal was given an express affirmation that the survey was in fact the as-built survey necessary for NOHOA's requirements. 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. When determining the location of the Shed, Dr. Sarpal measured the required distances using the house depicted on the survey as his reference point. These distances were clearly documented on the survey by drawn lines from the house to the proposed Shed location. Notwithstanding the Appellant's continued protestations that they were unaware of how the Shed was located, it would be evident to even a casual observer that the Sarpals used the house rather than lot lines to place the Shed. The City argued that the Sarpals 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. A plain reading of the zoning ordinance reveals no such requirement exists. Lastly, the City did not 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 the Appellant sought review by the Court of Appeals. By decision filed on July 20, 2010 the Court of Appeals affirmed the Trial Court's Judgment. The Appellant served a Petition for Review that was granted by this Court on September 29, 2010.

STATEMENT OF THE FACTS

1. The Sarpals are residents of Minnesota and own real property located at 4 Red Forest Heights, North Oaks, Minnesota (the “Property”). RA-3, ¶¶ 2,3.

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 of the NOHOA, if any, is irrelevant to this action as any claims asserted by or on behalf of NOHOA were dismissed with prejudice prior to trial. RA-211.

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, RA-193.

9. North Oaks has never identified the individual who provided Dr. Sarpal with the “as-built survey.” RA-93.

10. 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.

11. The Sarpals included the AAA Survey in the plans submitted to the ASC. Dr. Sarpal personally drew the proposed location of the Shed on the AAA Survey submitted to the ASC and, as drawn by Dr. Sarpal, the Shed was properly beyond the Setback and Easement requirements. The drawing was self evident that the proposed location of the Shed was determined by distances measured from the house rather than the lot lines. RA-113, 117, 118, 119, 127.

12. 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 or lot lines. RA-121, 122, 163.

13. At trial, the City in its brief to the Court of Appeals, and now to this Court, continue to misrepresent the terms of the Zoning Ordinance stating that 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.

14. Whether Dr. Sarpal ever located the lot lines or notified the Appellant that he had not measured from the same is irrelevant as the Ordinance does not require the same.

15. 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.

16. 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.

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

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

19. The value of the Shed as per the building permit application was \$2,800.00.

20. The Sarpals introduced evidence that moving the structure also entailed moving sprinkler heads and valves, removing fence posts and pouring a new foundation.

21. The Sarpals presented an affidavit that moving the Shed would cost approximately \$10,000.00 to \$20,000.00.

22. The Appellant failed to introduce any evidence that leaving the Shed in place would be a detriment to the public interest or good.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY APPLIED THE ABUSE OF DISCRETION STANDARD IN REVIEWING THE DECISION OF THE DISTRICT COURT.

The Court of Appeals applied the correct standard of review in reaching their decision – abuse of discretion. RA-219. The abuse of discretion standard is generally used for bench trials involving mixed questions of law and fact. Further, the law is abundantly clear that absent a narrow exception, equitable relief by a district court is reviewed on the abuse of discretion standard. 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). The appellate court will reverse the district court's decision to apply equitable estoppel only if the district court abused its discretion in making that determination. Ev3 Inc. v. Collins, 2009 W.L. 2432348 *7 (Minn. Ct. App. 2009). 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)

In an appeal from a bench trial, we do not reconcile conflicting evidence. We give the district court's factual findings great deference and do not set them aside unless clearly erroneous. When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.

Porch v. Gen. Motors Acceptance Corp., 642 N.W.2d 473, 477 (Minn. App. 2002)
review denied (Minn. June 26, 2002).

The Court of Appeals further analyzed the standard of review as it was applied to estoppel cases in the past. The Court noted that there was conflicting authority as to whether equitable estoppel was a question of fact or law. RA-218.

After its review here, the Court found that in general, estoppel is ordinarily a question of fact for the jury, the exception being when only one inference can be drawn from the facts, and then it is a question of law. See In re: Westling Mfg. Inc., 442 N.W.2d. 328 (Minn. App. 1989) citing L&H Transport, Inc v. Drew Agency, Inc., 403 N.W.2d. 223, 227 (Minn. 1987). Here, the Court held that elements of equitable estoppel were not obvious and therefore the facts clearly permitted more than one conclusion. RA-219.

Appellant's reliance on Modrow v. JP Foodservice, Inc., 656 N.W.2d 389 (Minn. 2003) in asking this Court to review de novo is unpersuasive. Modrow did not involve an estoppel claim but rather the interpretation of a procedural rule. Lastly it is interesting to note that the Westling court looked at the cases where the question of estoppel was determined to be a question of law in light of the L&H Transport analysis. In those cases the Court noted the common denominator appeared to be that the parties seeking estoppel were asserting positions inconsistent with their prior conduct. See Westling 442 N.W.2d 328, 331. There has been no inconsistency in the Sarpals' conduct or position.

An equitable estoppel analysis is fact specific and determined on a case-by-case basis. That sort of analysis is precisely how the Court of Appeals applied equitable estoppel to prevent North Oaks' unfair conduct. Neither the District Court nor the Court of Appeals abused their discretion.

II. EQUITABLE ESTOPPEL ELEMENTS.

The District 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 because homeowners, like the Sarpals, need a legal defense in instances where the government's wrongful conduct has led to an unfair result. The government does not, should not, and in this case cannot be allowed to eviscerate the rights of an innocent homeowner. The District Court did not err or abuse its discretion in this case because if North Oaks were allowed to prevail, the doctrine of equitable estoppel as it applies to zoning cases would be rendered meaningless. The Court of Appeals agreed, finding that the District Court did not abuse its discretion in making findings of fact that estoppel should lie.

If justice demands, estoppel can be applied against the government if the equities are sufficiently great. Mesaba Aviation Division of Halvorson of Duluth, Inc. v. Itasca County, 258 N.W.2d 877 (Minn. 1977). The Minnesota Supreme Court ratified the use of equitable estoppel in zoning cases in Ridgewood Development Co. v. State, 294 N.W.2d 288 (Minn. May 30, 1980) (a local government exercising its zoning powers may be estopped). In Ridgewood, the Court used a five-prong test to determine if a city may be equitably estopped. A local government exercising its zoning powers will be estopped when a property owner: (1) relies in good faith; (2) upon some act or omission of the government; (3) which amounts to wrongful conduct on the government's part; (4) the public's interest would not be unduly damaged by the imposition of estoppel; and (5) the property owner 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 have been ostensibly acquired. Id. at 292. Estoppel is available as a defense against the 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. Id. at 293.

The Ridgewood analysis was properly applied by the District Court and reviewed by the Court of Appeals. Both courts found sufficient factual findings that support each element of the equitable estoppel doctrine. North Oaks offered no evidence at trial of any detriment to the public's interest if equitable estoppel were applied to the circumstances of this case. AA-000208. The Sarpals reasonably relied upon the documents that North Oaks directly gave to them and which North Oaks expressly approved in connection with issuing a building permit to the Sarpals. AA-000208. Without the imposition of equitable estoppel, the District Court properly found that the Sarpals would be forced to incur extensive expenses and obligations of relocating and removing the Shed despite the significant time and money already expended on the initial construction of the Shed. RA-208.

The Court of Appeals applied the law of equitable estoppel to the facts of this case. Each element of equitable estoppel has been satisfied.

III. THE COURT OF APPEALS IN APPLYING THE RIDGEWOOD STANDARD FOR ESTOPPEL, DID NOT ADOPT A NEW PRINCIPLE OF LAW OR EXPAND THE REACH OF EQUITABLE ESTOPPEL IN FINDING, UPON REVIEW OF ALL OF THE EVIDENCE, THAT THE RESPONDENT'S ACTIONS CONSTITUTED "WRONGFUL CONDUCT".

Contrary to Appellant's and The League of Minnesota Cities assertions, the Court of Appeals did not expand the reach of equitable estoppel. It reviewed the District Court's application of equitable estoppel to the full facts of this case and began its analysis with the "most important element," North Oaks' wrongful conduct. North Oaks and the League of Minnesota Cities believe the Court of Appeals based its decision entirely on North Oaks' "good faith, yet erroneous, representation of fact" about the "as-built" survey. But this observation is too narrow because the Court of Appeals, repeatedly, weighed all of the facts in the record to assess whether North Oaks' conduct met the first and "most important" element of equitable estoppel. Both courts examined the entire record and found North Oaks gave the Sarpals an incorrect survey, had multiple opportunities to correct the erroneous representation, and then didn't bother to enforce the zoning ordinance for almost a year after the final inspection of the property. The Court of Appeals' review and balancing of the totality of the facts is not new law or an expansion of the legal standard used in applying estoppel—it quite simply applied the facts of this case to the standard set forth in Ridgewood, 294 N.W.2d 288.

In Ridgewood, the Supreme Court expressly stated that "improper government advice" will satisfy the threshold requirement of wrongful conduct. Id. at 293. When the

government asserts a position inconsistent with its prior conduct, then wrongful conduct lies. See Mesaba Aviation Division 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 Manufacturing, 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).

The Ridgewood case implicitly recognizes—as the Court of Appeals in this case held—that improper government advice can constitute wrongful conduct. In Ridgewood, a developer relied on a Minnesota statute to obtain public financing for a construction project. Id. at 293. After expending significant money and time, and just before construction could commence, the legislature amended the statute the developer was relying upon for financing. Consequently, the developer could not raise the necessary funds to complete the project. The Ridgewood court found that “the actions of elected officials taken to ensure that legislation is applied in conformity with its underlying purpose can hardly be characterized as wrongful conduct.” Id. There was no error or mistake in Ridgewood, but rather, an unfortunate change in legislation made by the Minnesota legislature.

The Court of Appeals acknowledged that to invoke equitable estoppel, the Sarpals must show North Oaks’ conduct rises to the level of malfeasance required to satisfy the wrongful conduct element. North Oaks appears to confuse malfeasance with malice. No court has ever held that the Sarpals must show North Oaks intended to commit a wrongful act. The Court of Appeals was not required to find that North Oaks

“intentionally misled” the Sarpals. Black’s Dictionary defines malfeasance as “wrongdoing by a public official.”¹

In Shetka v. Aitkin County, 541 N.W.2d 349 (Minn. Ct. App. 1995), the Court of Appeals references the requirement for affirmative misconduct or malfeasance. The court found equitable estoppel applicable because “Shetka followed the mandates of the Shoreland Management Ordinance and would be denied judicial review through no fault of his own if the statutory requirements were applied strictly against him.” Id. at 353. Similarly, the Sarpals would be denied use of their property through no fault of their own if North Oaks were to prevail in strictly enforcing its zoning ordinance. North Oaks again cites to Morgan v. Comm’r., 345 F.3d 563, 566 (8th Cir. 2003) to explain the meaning of affirmative misconduct; however, that case makes no mention of Minnesota law at all –it concerns actions of the IRS and the federal doctrine of estoppel.

North Oaks relies on Brown v. Minn. Dept. of Public Welfare, 368 N.W.2d 906 (Minn. 1985) to defeat the wrongful conduct requirement. Brown is distinguishable because the city employee in Brown never made a direct statement to the person seeking to invoke equitable estoppel. The individual, Brown, relied upon an impression created by the government’s conduct, but there was no affirmative action upon which Brown relied to his detriment. Id. at 911. This Court specifically found no wrongful conduct in Brown because “the fact that the [government’s] computer screening process did not catch Dr. Brown’s error did not amount to the wrongful conduct required for estoppel.”

¹ The amicus curiae are wrong to suggest North Oaks must have “intentionally misled” the Sarpals. That is not the standard. Wrongful conduct is something less than intentional misrepresentation.

Id. at 912. Unlike Brown, it is undisputed that Dr. Sarpal requested a specific document, the “as-built” survey. The City official provided the survey to him and reassured him that it was the proper survey to use. North Oaks went further in its affirmative conduct by failing to discover the error, despite numerous opportunities to do so.

North Oaks’ use of In Re: Westling Mfg., Inc., 442 N.W.2d 328, 331 (Minn. Ct. App. 1989) is equally unavailing because the party asserting equitable estoppel was aware of the insufficiency of the documents it purported to have relied upon. There is no evidence the Sarpals knew the “as-built” survey and the building permit that followed were incorrect. The Sarpals did not learn of the zoning ordinance violation until months after the Shed had been fully constructed and used.

North Oaks relies on case law supporting its argument that the issuance of a building permit is insufficient to estop the government from enforcing its zoning ordinances, but it lacks merit as well. Upon closer scrutiny, it is apparent the cases North Oaks cites are easily distinguishable. For example, in Stotts v. Wright County, 478 N.W.2d 802 (Minn. Ct. App. 1991), a property owner applied for and received a permit to remodel, repair, and add new foundation to a non-conforming use. The property owner spoke with no one at the county office about his plans except the clerk who issued the permit. Id. at 802. After the property owner began his repairs, he determined the whole structure was beyond repair and unilaterally decided to tear down the entire structure and build anew. Id. at 804. The court refused to apply equitable estoppel because when issuing the permit for “repairs, remodeling and new block,” the county did

not have a duty to inform the property owner that this meant he could not build an entirely new structure. Id. at 805.

Likewise, Dege v. City of Maplewood, 416 N.W.2d 854 (Minn. Ct. App. 1987) is noticeably distinct from the facts of the present case because the property owner in Dege had notice of limitations placed on the property by a special use permit, concealed facts from the city, and violated the conditions of the special use permit. Refusing to apply equitable estoppel, the Dege court reasoned the property owner “did not rely in good faith on the action of the city in granting the building permit in 1986 when the special use permit granted to him in 1971 put him on notice that such a building was not allowed.” Id. at 857.

Once again the Appellant attempts to introduce new legal issues or theories that were not raised below. This Court should ignore any factual or legal argument not made by North Oaks in prior proceedings and disregard any case law in support of the same. Issues not raised below will not be considered on appeal. Thiele v. Stich, 425 N.W.2d 580, 582 (Minn. 1988). Not only was the accusation of “unclean hands” not raised at the trial level or at the Court of Appeals but it is completely and utterly unfounded. Even so, the Jackel v. Brower, 668 N.W.2d 685 (Minn. Ct. App. 2003) cited by the Appellants actually supports the Sarpals’ position. In that case, a landowner used a highly inaccurate method of measuring a setback and, as a result, was 117 feet off of his promise to place the proposed building 1,065 feet from the adjacent property. The landowner violated the setback by 52 feet. The “cavalier method” by which the landowner located the building, which he knew could be objectionable by neighbors, was found to demonstrate unclean

hands and preclude the landowner from asserting the defense of laches. Id. at 691. North Oaks' use of Jackel is a transparent attempt to manipulate the record and true facts of this case. The proposed location of the Shed, was measured in an exact fashion using the scale of the survey wrongfully provided by North Oaks and meticulously drawn out by Sarpal on the survey presented to the ASC and the Appellant. The Shed then was built in the exact location as depicted on the survey. The method used to measure would be abundantly clear to anyone who even gave the survey a cursory review. There can be no unclean hands—the Sarpals did precisely what they said they would do.

North Oaks, also for the first time, attempts to raise an analogy between negligent misrepresentation cases and equitable estoppel. Its analogy is irrelevant and without merit. The Court of Appeals correctly stated whether or not the government's conduct meets the requirement of wrongful conduct is determined on a case-by-case basis. North Oaks argues the wrongful conduct element cannot be met where a city makes a good faith, albeit erroneous, representation regarding a zoning matter. Relying on Northernair Prods. Inc. v. County of Crow Wing, 244 N.W.2d 279, 281 (1976), North Oaks contends a claim of negligent misrepresentation against a city and equitable estoppel are more than just analogous, they are essentially synonymous. Northernair involved a claim for damages based on negligent misrepresentation of law by a county official. It did not involve equitable estoppel. The analysis in Northernair is entirely different than the equitable estoppel analysis in the present case. A misrepresentation of law by a county official is not actionable as a matter of law, unless the person misrepresenting the law

stands in a fiduciary or other similar relation of trust and confidence to the other person. Id. at 281.

Most importantly, in Northernair, this Court supported “a cause of action against government officers and employees for negligent misrepresentation of fact because other public policy considerations are more compelling in that context.” Id. at 282. (emphasis added). This Court explained “[m]embers of the public have no other access to factual information maintained by the government except through government officers and employees. Therefore, the policy of promoting accuracy through the prospect of tort liability outweighs the possibility of inhibiting performance of duties of office or employment.” Id. at 282. (emphasis added). Even if negligent misrepresentation is analogous, Northernair implicitly recognized the importance of equitable estoppel.

Based on the above referenced relevant case law, the Court of Appeals affirmed the District Court’s finding that North Oaks acted wrongfully in:

- 1) Providing the Sarpals with a document entitled “As-built Report” when they had requested an as-built survey, thereby leading the Sarpals to believe that the document was an as-built survey; AA-000208.
- 2) Providing the Sarpals inaccurate information; Id.
- 3) Failing to completely review the Sarpals’ building permit application; Id.
- 4) Failing to put the Sarpals on notice of such error; Id.
- 5) Approving the Sarpals’ Shed application; Id.
- 6) Making representations as to the as-built survey which constituted government advice. Id.

It is astonishing that North Oaks contends, on page 18 of its brief, that it gave no government advice to the Sarpals because it never advised the Sarpals to use the “as-built” survey, never advised the Sarpals on how to locate or place the structure on their property, and never provided any instruction at all. These statements are contrary to the evidence presented to the District Court, including testimony from the Sarpals and North Oaks itself. North Oaks affirmatively told the Sarpals the document it provided was an as-built survey; North Oaks affirmatively and directly gave the Sarpals a copy of what the Sarpals believed was an as-built survey; North Oaks affirmatively reviewed the Sarpals’ building permit application which included a copy of the AAA Survey; and North Oaks affirmatively approved a building permit application which depicted the Sarpals’ method of measurement.

The Court of Appeals recognized that to build any structure in the City of North Oaks, a homeowner must first obtain approval from NOHOA by way of the ASC. In these circumstances, North Oaks itself instructed the Sarpals of this requirement. RA-000134. It is undisputed the Sarpals requested an as-built survey from the North Oaks property records office because NOHOA required an as-built survey to approve the application. The ASC approved the Sarpals’ plan and, subsequently, the Sarpals were required to submit the approved plans to North Oaks’ building inspector in order to obtain a building permit. At no time did North Oaks object to the proposed location of the Shed.

The Court of Appeals described the wrongful conduct as follows: “North Oaks led the Sarpals to believe that the [2003] survey they used in forming the building plans,

acquiring the building permit, and ultimately completing the construction of the Shed was an accurate as-built survey. Providing the Sarpals with an inaccurate as-built survey, failing to completely review the building permit application, failing to place the Sarpals on notice of the error, and approving the Shed application constitutes wrongful conduct on North Oaks' part." RA-223. The Court of Appeals weighed all the facts in light of Ridgewood's implicit recognition that erroneous government advice could give rise to equitable estoppel. North Oaks knew the Sarpals needed an as-built survey to present to the ASC/NOHOA, provided the Sarpals with an incorrect survey, and failed to identify the possible mistake in the permit-approval process. The totality of the facts demonstrates North Oaks' wrongful conduct.

The Court of Appeals properly affirmed the District Court's finding of wrongful conduct based on more than the single mistake and improper advice from North Oaks' property records employee. RA-223. North Oaks had ample opportunity to put the Sarpals on notice of their error with regard to the location of the Shed. The application process for obtaining a building permit exists and was designed to avoid the very problem that the Sarpals are confronted with. North Oaks idly stood by while the Sarpals expended significant time and money to complete the Shed. Other than to say it wishes to consistently enforce its zoning ordinances, North Oaks has not and cannot explain why it desires so desperately to have the Shed removed. North Oaks unjustly asserts a position inconsistent with its prior conduct. For these reasons, the Court of Appeals did not abuse its discretion in finding North Oaks' conduct wrongful.

IV. THE COURT OF APPEALS PROPERLY FOUND THAT THE SARPALS REASONABLY RELIED UPON RESPONDENT'S CONDUCT.

The Court of Appeals found North Oaks wrongfully induced reliance by the Sarpals because it provided inaccurate documents, failed to correct what it knew or should have known to be inaccurate, failed to reasonably notify the Sarpals of what they contend is the proper manner in which to measure a setback and issued a valid building permit without adequately reviewing the same. RA-224. These failings led the Sarpals to believe that they had complied with each requirement necessary to properly construct their Shed on their property. But, after fully utilizing the completed Shed for nearly one year, North Oaks unjustly decided the Shed should be relocated and demanded the Sarpals move it.

North Oaks purports to rely on the plain language of its zoning ordinance to defeat the reasonableness of the Sarpals' reliance,² claiming it requires setbacks to be measured from the lot lines. North Oaks City Code § 151.050(f)(1)(2007) (the "Ordinance") simply states that no building or structure shall be located within thirty (30) feet of the lot lines. A zoning ordinance must (1) be construed in accordance with the plain and ordinary meaning of its terms, (2) the ordinance should be construed strictly against the governmental entity and in favor of the property owner, and (2) the ordinance must be considered in light of its underlying policy. Clear Channel Outdoor Advertising, Inc. v.

² North Oaks argues the ordinance obviously required the Sarpals to measure from lot lines, but in another portion of its brief (p.18), contends "the City never advised Respondents on how to locate or place the structure on their property." North Oaks cannot have it both ways.

City of St. Paul, 675 N.W.2d 343, 346 (Minn. Ct. App. 2004). North Oaks simply states to this Court that the Ordinance is “obvious” homeowners are required to measure from lot lines. But where the words of a law in their application to an existing situation are clear and free from all ambiguity, the court should not “go beyond the plain language of the statute in search of an ‘obvious purpose.’” See In re Reynolds’ Estate, 18 N.W.2d 238, 243 (Minn. 1945) (pursuant to statutory canons of instruction).

The Court of Appeals found the plain language of the Ordinance requires the setback to be from the lot line, but more importantly also determined the Ordinance is silent on how the setback is to be measured. According to the Court of Appeals, the Sarpals’ technique of measuring from the house was reasonable because the ordinance does not require a property owner to measure from the lot lines. RA-224. The trial testimony revealed that North Oaks does not display any signage or otherwise provide any notice or instructions to homeowners like the Sarpals to measure from lot lines instead of other markers on the property. (RA 162-163).

Notwithstanding the above, North Oaks continues to assert that the ordinance requires measurement from the lot line. They cite the “uncontroverted trial testimony” about the “proper” way to measure lot lines. A close look at this testimony however, reveals it is simply the self-serving testimony of North Oaks’ building inspector, the same individual who claims to have overlooked an otherwise obvious error in relation to the setback measurements completed by the Sarpals. If the method of measurement is so obvious, and the Sarpals’ drawing and submissions in connection with their building permit application blatantly incorrect, then surely North Oaks’ sophisticated building

inspector ought to have discovered the error well before construction of the Shed commenced.

North Oaks also alleges that the Sarpals measured from their lot lines without the City's knowledge. However, the as-built survey that the Sarpals submitted to North Oaks clearly shows that the Sarpals located the Shed by taking measurement from the corner of their home as located on the survey and not from the property lines. The obviousness of the drawing—as suggested by North Oaks itself—negates North Oaks' ability to now contend that it did not know the Sarpals were measuring in an allegedly incorrect manner.

North Oaks also argues the Sarpals waived any right to assert equitable estoppel because of the Property Owner Waiver. The waiver the Sarpals signed arguably makes the Sarpals solely liable for compliance with North Oaks' zoning ordinances. But legal liability is not the issue; rather, the equities of the situation need to be examined. “[H]olding the Sarpals responsible for using the wrong survey is not a just result when Sarpal was provided with the survey by a city employee and affirmatively told that he was using the proper survey.” RA-221. The Court of Appeals expressly held that because “the Sarpals’ legal liability for the encroachment does not foreclose their ability to successfully estop the city from enforcing its setback,” an analysis of equitable estoppel is necessary. RA-221. “Waiver is voluntary relinquishment of a known right.” Engstrom v. Farmers & Bankers Life Ins. Co., 230 Minn. 308, 41 N.W.2d 422 (Minn. 1950). The Sarpals may have waived their legal right to make a claim against North Oaks arising out of the construction of the Shed, but the Sarpals could not have waived a

right that exists in equity that only arose as a result of North Oaks' subsequent, unknown conduct.

The Court of Appeals examined the entire record and correctly found the Sarpals' reliance on the representations made by North Oaks reasonable. The Sarpals expressly asked for an as-built survey and were expressly told by North Oaks that the document it provided was an as-built survey. North Oaks made matters worse by failing to put the Sarpals on notice of the error, despite its own building inspector's review of the building permit application and observance of the subsequent commencement of construction of the Shed in the wrong location. The Sarpals relied upon the authority and accuracy of the North Oaks property records office and, likewise, North Oaks admits it relied upon the Sarpals' drawing submitted with their building permit application that it received from the North Oaks' property records office. If North Oaks can rely upon documents generated from its own records department, then the Sarpals reliance on those same documents—especially when expressly provided to the Sarpals—ought to have been reasonable.

V. **THE COURT OF APPEALS PROPERLY FOUND THAT THE SARPALS WOULD SUFFER A FINANCIAL HARDSHIP UNDER THE CIRCUMSTANCES.**

Equitable estoppel is meant to apply when the government asserts a position inconsistent with its prior conduct and the equities are sufficiently great, equitable estoppel is necessary. See Mesaba Aviation Division of Halvorson of Duluth, Inc. v. County of Itasca, 258 N.W.2d 877. The doctrine is intended to prevent a party from

taking unconscionable advantage of his own wrong by asserting his strict legal rights. Brown v. Minnesota Department of Public Welfare, 368 N.W.2d 906, 910 (Minn. 1985). To measure equity narrowly in terms of quantitative, financial hardship as North Oaks suggests is contrary to the court's general equitable power to measure equity and fashion a remedy that is fair under the circumstances. Indeed, 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 context of applying equitable estoppel in a zoning case, the expenditures of the property owner must be unique to the proposed project. Ridgewood, 294 N.W.2d at 292. The harm, substantial detriment, or hardship most often lies in the time and money expended by the party seeking to invoke equitable estoppel. Beaty v. Minnesota Board of Teaching, 354 N.W.2d 466, 471 (Minn. Ct. App. 1984).

The Court of Appeals determined the Sarpals would suffer injustice if they were required to bear the cost of relocating the Shed, especially in light of the significant time and money expended on the initial construction of the Shed. RA-227. The Court of Appeals relied upon a letter from the Sarpals to North Oaks' City Council explaining that moving the Shed required relocation of sprinkler heads and valves, removing fence posts and pouring a new foundation. The Court of Appeals also recognized the Shed cost approximately \$2,500.00 to build, plus permit fees of approximately \$200.00. In Dr. Sarpal's deposition testimony, introduced during the summary judgment hearing, and by way of an affidavit submitted by Dr. Sarpal, he indicated the cost of relocating the Shed to be approximately \$15,000.00. AA-000079. The evidence establishes the Sarpals

initiated the permit process in or about the summer of 2006 and fully constructed the Shed by the fall of 2006. The Sarpals enjoyed the use of the Shed for nearly one year before North Oaks complained of its location. 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 Court of Appeals properly refused to limit the balancing of the equities to financial hardship. Simply because the Sarpals have the means to relocate the shed, should not mean the Sarpals cannot seek the defense of equitable estoppel. The Court of Appeals properly affirmed the District Court's finding that the Sarpals have acquired the right to use the Shed as it lies based upon North Oaks' conduct.

VI. THE COURT OF APPEALS PROPERLY FOUND THAT THERE WAS NO DETRIMENT TO THE PUBLIC GOOD THAT WAS FRUSTRATED BY THE APPLICATION OF EQUITABLE ESTOPPEL BY THE DISTRICT COURT.

The Ridgewood and Mesaba courts held that “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.” Ridgewood, 294 N.W.2d at 292; Mesaba, 258 N.W.2d at 880. North Oaks claims the setback violation interferes with a **private trail** easement. (emphasis added). North Oaks cites Trial Exhibit 16 (RA-201) a letter from North Oaks to the Sarpals suggesting the Shed interferes with the trail easement. First and foremost, the Respondent did not raise this issue at time of trial and the issue of a

private trail easement and how it might affect the public interest must be disregarded. Thiele v. Stich, 425 N.W.2d 580,582 (Minn. 1988). Second, whether or not there is some alleged interference with a “private” trail is certainly not an interest or concern of North Oaks, especially in light of the fact that the two counts in Respondent’s original complaint, which addressed the Homeowner’s Association rights were dismissed with prejudice prior to trial. RA-211. Even if private easement was an issue, there is no testimony from North Oaks showing the trail has been built, is in the process of being built, or will be built in the future. There is no evidence the setback violation interferes with, or even comes close to, the 15 foot trail easement. The record is utterly void of any evidence of how the Sarpals’ Shed interferes with the private trail easement.

North Oaks also claims that estopping the city will undermine the ability to enforce zoning ordinances. This Court should take notice that this issue was not raised during the trial and should not be considered. No evidence of harm to the public good was introduced at time of trial and any issues on this element of the estoppel analysis should be disregarded as not timely raised. Notwithstanding that fact, the Court of Appeals found the city had presented no evidence of harm to an adjoining landowner, there had been no complaints to the city by other residents, and the city had not explained any other public interest that would be “unduly damaged” if equitable estoppel is applied. RA-227. The Court of Appeals properly found that the Sarpals’ interest in maintaining the location of the Shed outweighs the interest of North Oaks –an interest which has never been articulated by North Oaks.

Any public policy argument must fall in favor of the Sarpals because they have done absolutely everything they could to conform to the building requirements of the ASC, NOHOA, and North Oaks. It is an ugly double standard to suggest homeowners are at the mercy of city building officials with regard to improvements to real property, but when the city makes a mistake that it could have easily or "obviously" (using North Oaks' language) corrected then it isn't liable. The concerns regarding separation of powers are unfounded. Equitable estoppel is not used to overturn an otherwise valid zoning ordinance. Rather, it is used on a case-by-case basis to hold a city responsible for conduct it could and should have taken precautions to avoid. North Oaks must be estopped.

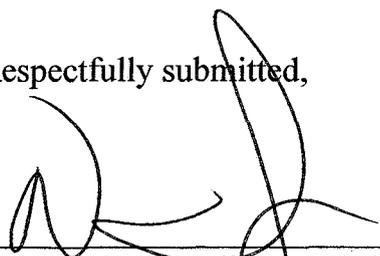
CONCLUSION

For these reasons, Respondents seek an Order upholding the above-entitled decision of the Court of Appeals.

Dated: 11/30/10

Respectfully submitted,

By: _____


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