IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 5-160 / 94-0851

REGENCY COUNCIL BLUFFS, INC.,

Appellant,

vs.

COUNCIL BLUFFS ZONING BOARD OF ADJUSTMENT and CITY OF COUNCIL BLUFFS, IOWA,

Appellee.

Appeal from the Iowa District Court for Pottawattamie County, James Richardson, Judge.

Appeal from district court ruling annulling writ of certiorari. Appellant claims board of adjustment and city acted illegally in allowing enlargement of nonconforming use. **WRIT ANNULLED.**

A. W. Tauke and Stephen C. Ebke of Porter, Tauke & Ebke, Council Bluffs, for appellant.

Kathleen A. Kilnoski, City Attorney, for appellees.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

DONIELSON, C.J.

This case involves an appeal from the district court's denial of two combined petitions for a writ of certiorari. Upon our review of the record, the writ is annulled.

I. BACKGROUND.

In 1971 the defendant, Council Bluffs Zoning Board of Adjustment, granted a conditional-use permit for Mobile Estates to develop a mobile home park on a tract zoned for general manufacturing use. Conditions for the mobile home park use included compliance with state and city codes and ordinances, a reasonable timetable for the development of the property, a requirement that all proposed streets be paved with concrete in conformance to city specifications, and a provision that the conditional use be granted for a twenty-year period subject to five-year reviews. In 1972 Council Bluffs' zoning ordinance was amended to exclude mobile home parks as conditional uses in a general manufacturing district. The change made this tract a legal nonconforming use under the city's zoning code.

Between 1971 and 1974 Mobile Estates constructed a mobile home park on one-third of the property. In 1979 the board of adjustment permitted Mobile Estates a variance to expand its nonconforming use, allowing Mobile Estates to add more lots within the original tract. Mobile Estates subsequently sold the developed tract to the plaintiff/appellant, Regency Council Bluffs, Inc., in 1980 with an agreement that

Regency would allow access for the proposed development of the remainder of the property.

Mobile Estates initiated several court actions in an attempt to construct a mobile home park on the undeveloped portion of the original tract. In 1986[1] its request for rezoning was denied and it sought certiorari review from the district court. The district court determined, in part, that the 1971 conditional-use permit was valid when granted and the city had not revoked it. The court further determined the city had waived the timetable requirement for phase development by granting a variance to expand the park in 1979. The case was remanded to the city, but no further action was taken to rezone the property.

Also in 1986, the district court ruled on Mobile Estates' petition for a declaratory judgment.[2] The district court held Mobile Estates' present conditional use was valid. However, since its conditional use was a nonconforming use, the court held it was necessary for Mobile estates to obtain a variance to enlarge its present use.

In 1988 Mobile Estates sought a judicial determination that as a matter of law it had a vested right to complete the mobile home park.[3] The court determined the

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[1]Case No. 57402.

[2]Case No. 57621.

[3]Case No. 59560.

conditional-use permit was valid when issued and remained valid. It found that in reliance on the conditional use, Mobile Estates had expended over $500,000 to improve the tract of land in question. The court held Mobile Estates had "a vested right in this property to continue development of the mobile home park for which the conditional use was granted." Neither the board of adjustment nor city council appealed this order.

Bluffs Acres, as a successor to Mobile Estates, subsequently presented the city with a preliminary plan for development of the property. On the city council's request, the zoning board of adjustment reviewed Bluffs Acres' compliance with the conditions of the 1971 permit. The board determined there had been substantial compliance with the conditions, and the city council then approved Bluffs Acres' plan.

Regency Council Bluffs, the owner of the adjacent, developed mobile home park, subsequently filed petitions for writ of certiorari against the Council Bluffs Zoning Board of Adjustment and the City of Council Bluffs.[4] It challenged the board's finding of compliance with the conditions of the 1971 conditional use permit and the city's approval of Bluffs Acres' preliminary plan. After a hearing, the district court entered a ruling annulling the writ of certiorari and affirming the actions of the board and the city. The court determined there was substantial evidence to support

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[4]Case Nos. 64210 and 64211.

the board's decision regarding compliance with the conditional-use permit. It is from this ruling which Regency Council seeks appellate review.

II. VESTED RIGHTS.

We are mindful in this case that a 1989 district court decision conclusively held Mobile Estates had acquired "a vested right in this property to continue development of the mobile home park for which the conditional use was granted." This decision was entered eighteen years after Mobile Estates had received its conditional use permit and after it had been allowed to enlarge the trailer park in 1979. When one expends substantial sums in property improvements in reliance upon a permit duly issued by the city, a "vested interest" results and the permit cannot be arbitrarily revoked. *See Stoner McCray System v. City of Des Moines*, 247 Iowa 1313, 1321,78 N.W.2d 843, 848 (1956).

> The vested rights concept is a part of the balancing of the respective legitimate interests of the private property owner against those of the general public, keeping in mind that legitimate and valuable expenditures in connection with the use of an affected tract or business conducted on it, before imposition of the regulation, may create a property right which cannot be arbitrarily interfered with or taken without just compensation.

Kempf v. City of Iowa City, 402 N.W.2d 393, 400 (Iowa 1987).

Whether a property owner has acquired a vested right in a zoning classification "depends on the type of the project, its location, ultimate cost, and *principally the*

amount accomplished under conformity." *Stone v. City of Wilton*, 331 N.W.2d 398, 403 (Iowa 1983) (emphasis in original). It is impossible to fix a definite percentage of the total cost which establishes vested rights and applies in all cases. *Id.* Each case must be decided on its own merits, taking into consideration the above-quoted elements. *See id.*

The property at issue in this case has been the subject of numerous legal proceedings. However, we are reviewing only the propriety of the March 8, 1994, order annulling the writ of certiorari. In determining whether the zoning board of adjustment and city council acted illegally or in excess of their jurisdiction, our review is at law. *See Little v. Winborn*, 518 N.W.2d 384, 386 (Iowa 1994). We are bound by the findings of the district court if they are supported by substantial evidence in the record. *Chrischilles v. Arnolds Park Zoning Board of Adjustment*, 505 N.W.2d 491, 493 (Iowa 1993).

We agree with the district court that, based on the evidence presented before it, the boards's decision that Bluffs Acres was in substantial compliance with the 1971 permit was reasonable and supported by the evidence. Regency's present objections based on the time restrictions imposed by the conditional-use permit are superseded by the prior legal determination that Mobile Estates had a vested right in the property to continue development of the mobile home park. Its objection based on the amount of the concrete used in the development's streets is without merit as

the streets were to remain private and would not be dedicated to the city. We affirm the district court's March 8, 1994, order in its entirety.

WRIT ANNULLED.