FILED
APR 24 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-659 / 89-404

DUBUQUE COUNTY, IOWA,

Appellee,

66

vs.

RAYMOND J. TAYLOR and JOAN M. TAYLOR,

Appellants.

Appeal from the Iowa District Court for Dubuque County, Peter Van Metre, Judge.

Dubuque County brought this suit against defendants seeking to enjoin them from using their property as a junkyard and from depositing fill in an area which falls within a flood plain. The county alleged these activities were a nuisance and violated county zoning ordinances. The district court enjoined defendants from continuing to fill in a pond on their property and ordered them to remove the junk. Defendants appeal. They claim the court erred in: 1) enjoining the placement of any kind of fill in the pond; and 2) finding the land was being used as a junkyard and ordering such use to be abated. **AFFIRMED AS MODIFIED.**

Michael A. Stapleton, Dubuque, for defendants-appellants.

Fred H. McCaw, County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

DONIELSON, P.J.

Defendants Raymond J. Taylor and Joan M. Taylor own approximately fourteen acres of land in Dubuque County. About five or six acres of this property is a pond. Under a county zoning ordinance the property is classified as an M-2 Industrial Use District. The property lies south of the Little Maquoketa River, which flows easterly into the Mississippi River. Both of these rivers flood periodically. The property is in an F-1 Floodway District and an F-2 Floodway Fringe District. Development of these districts is governed by the Dubuque County Flood Plain Management Ordinance.

Dubuque County brought this action against the Taylors seeking to enjoin them from using their property as a junkyard and from depositing fill in the pond which fell within the flood plain. The county claimed these activities were a nuisance under Iowa Code sections 657.2(2) and 455B.275.[1] The county also alleged these activities violated a county zoning ordinance and the flood plain ordinance. The Taylors did not obtain a permit for excavation or filling on the flood plain nor did they obtain a special use permit authorizing the use of the property as a junkyard. The district court enjoined the Taylors from continuing to place fill or material of any kind in the pond. The Taylors were also ordered to remove

---

1. All references in this opinion are to the 1987 Iowa Code.

the junk from their property and were enjoined from using it as a junkyard or for the storage of junk. Although the trial court at one point in its judgment refers to defendants' property as a "nuisance," it is apparent the trial court's decision was predicated on violations of Dubuque County's zoning and flood plan management ordinances.

The Taylors appeal. They contend the court erred in enjoining the placement of any fill in the pond located on their premises and in finding the premises was being used as a junkyard. Both parties concede our scope of review in this action is de novo.

I. **Flood Plain Management Ordinance.** The parties stipulated that at all times material to this action there was in effect the Dubuque County Flood Plain Management Ordinance. The parties further stipulated that according to the floodway maps which are a part of the ordinance, the property in question was located in an F-1 Floodway District and an F-2 Floodway Fringe District.

Under the Flood Plain Management Ordinance, prior to any "flood plain development," which by definition includes filling, a flood plain development permit must be secured. Dubuque County, Iowa, Flood Plain Management Ordinance § IIIB(1) (1987). The definitional section of the ordinance clarifies that both a floodway fringe and a

floodway are encompassed within a flood plain.[2] Therefore, any floodway development or floodway fringe development is subsumed within the term "flood plain development" and a permit is required.

Defendants stipulated they acquired no permit before they began to fill the pond. They first contend no permit was required because by definition filling can take place in a floodway fringe and the county failed to prove whether their pond fell within an F-1 Floodway District or an F-2 Floodway Fringe District.

Defendants are correct in that the ordinance recognizes a floodway fringe may be filled. However, that does not alleviate their statutory duty to acquire a permit prior to beginning "any flood plain development." As noted above,

---

2. FLOOD PLAIN - Any land area susceptible to being inundated by water as a result of a flood.

* * *

FLOODWAY - The channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge flood waters or flood flows so that confinement of flood flows to the floodway area will not result in substantially higher flood levels and flow velocities.

FLOODWAY FRINGE - Those portions of the flood plain, other than the floodway, which can be filled, leveed, or otherwise obstructed without causing substantially higher flood levels or flow velocities.

Dubuque County, Iowa, Flood Plain Management Ordinance § VI (1987).

the duty to get a permit applies to both F-1 floodway and F-2 floodway fringe development. The county met its burden in proving no permit had been obtained prior to the development of defendant's flood plain property.

Defendants next contend no permit is required for the dumping of "rubble" and they cite Iowa Code section 455B.301(5). We have reviewed that section and conclude it defines "solid waste" and provides that dirt, stone, and rock may be used for fill and need not be disposed of at a "sanitary disposal project" as defined in section 455B.301(3). Defendants, however, were still obligated under the local ordinance to obtain a permit before filling their pond.

Defendants' final argument regarding the applicability of the ordinance is their claim that as a fact their property was not within the scope of the ordinance's coverage. Through the testimony of Raymond Taylor's brother, an engineer, defendants attempted to prove their property should not be subject to the Flood Plain Management Ordinance. The trial court rejected this argument as do we. Although not bound by the fact findings of a trial court in equity cases, we do give weight to them. Iowa R. App. P. 14(f)(7). The Floodway Map identifies flood hazard areas and defendants' evidence does

not convince us that their property was improperly designated an F-1 or F-2 district.[3]

II. Junkyard. Defendants argue the trial court erred in concluding their property was being used as a junkyard. They first raise a due process claim and assert the ordinance was unconstitutionally vague. They contend they do not know what it is they have been enjoined from doing with their property.

The ordinance in question specifies a special permit is required to maintain a junkyard on property zoned M-2, Dubuque County, Iowa, Zoning Ordinance § 2.5, and it provides a definition of "junkyard":

> An open area where waste, used or second-hand material are bought, sold, exchanged, stored, baled, packed, assembled, or handled, including, but not limited to, scrap iron and other metals, paper, rags, rubber tires and bottles. The term includes a vehicular wrecking yard, but does not include uses carried on entirely within enclosed buildings.

Dubuque County, Iowa, Zoning Ordinance § 10.0.

Due process requires no more than a reasonably ascertainable standard of conduct. City of Cedar Falls v. Flett, 330 N.W.2d 251, 256 (Iowa 1983). This ordinance's

---

3. Much of defendants' reply brief focuses on the fact that the Dubuque County Board of Supervisors had requested a study of the flood control project, and the 1987 study recommended a reevaluation and possible reduction of elevations at which development would be allowed. We recognize it is essential for municipal officials to periodically review and update zoning regulations, Anderson v. City of Cedar Rapids, 168 N.W.2d 739, 743 (Iowa 1969), however, we not do find the circumstances surrounding this study warrant striking down the flood control ordinance as requested by defendants.

meaning is fairly ascertainable, and we find no merit in the claim that it is unconstitutionally vague.

Defendants claim their property does not fit within the definition of "junkyard." The record in this case consisted of numerous photographs and the testimony of witnesses describing the property. It is apparent numerous vehicles and parts of vehicles, pipe, lumber, tires, concrete, scrap metal, tin, equipment, implements, tanks, and other assorted debris were collected on the property. The trial court correctly found defendants were using their property for a junkyard.

We reject defendants' argument that unless the property is being used in a commercial endeavor, it cannot constitute a junkyard. The ordinance applies to material which is being stored as well as to that which is being sold.

Defendants contend even if their use of their property has created a junkyard, Iowa Code section 306C.2(2) does not prohibit junkyards in areas zoned for industrial use. Defendants fail to recognize local governmental bodies may issue ordinances more restrictive than those set out in the Code. Iowa Code § 306C.7. In this case Dubuque County specifically required the acquisition of a permit to use the property as a junkyard and defendants failed to obtain such a permit.

Finally, in their reply briefs defendants apparently raise an equal protection argument and claim the ordinance

defining "junkyard" should be overturned because it unreasonably discriminates between new and used or secondhand materials. We are not convinced defendants adequately raised this issue before the trial court, and we decline to address it on appeal.

We believe it was the trial court's intention to enjoin defendants from using the property as a junkyard and from doing any further filling of the pond unless defendants acquired the permits necessary to engage in such activities. As the trial court's judgment does not clearly state this, we modify its decision to clarify that defendants may seek permits to fill their pond or use their property as a junkyard and the injunctions continue only as long as defendants do not have permits authorizing the enjoined behavior.

AFFIRMED AS MODIFIED.