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IN THE COURT OF APPEALS OF IOWA CLERK SUPREME COURT

THE CITY OF WAHPETON,
IOWA,

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Appellant,

)

Filed September 9, 1977

v.

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WALTER R. MENDENHALL, JR.,

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2-58561

Appellee.

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Appeal from Dickenson District Court - Richard W. Cooper, Judge.

The City appeals from a denial of declaratory and injunctive relief in a municipal zoning dispute. Affirmed.

Dick H. Montgomery of James, Greer, Hoover, Nelson, Bertell, Montgomery & Barry, of Spencer, for appellant.

David L. Phipps of Whitfield, Musgrave, Selvy, Kelly & Eddy, of Des Moines, and Jack H. Bedell, of Spirit Lake, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger & Carter, JJ.

PER CURIAM

This is an appeal by the plaintiff, City of Wahpeton, in an action seeking (1) a declaratory judgment that the zoning ordinance of the City prohibits operation of a mobile home park on defendant's property, and (2) a permanent injunction against such use of defendant's property. The trial court adjudicated these claims adversely to the City finding that defendant's mobile home park was a permissible nonconforming use under the zoning ordinance and that the City was estopped to claim otherwise as a result of assurances previously given by certain city officials. On appeal the City challenges both the "nonconforming use" and "estoppel" findings. The matter having been tried in equity, our review is de novo. We affirm the trial court.

1. It is uncontroverted in the record that on April 11, 1973, the time of the enactment of the zoning ordinance involved in this controversy, defendant was operating on his property a mobile home park developed to a capacity of 50 mobile homes. The trial court's decree approving such use of defendant's property was confined to this 50 mobile home capacity. The City, in the trial court and in this court, seeks to avoid this apparent nonconforming use by contending such use was contrary to a previous ordinance enacted on November 1, 1957.

The trial court concluded that the 1957 ordinance was not applicable to agricultural land such as defendant's which was situated within the City's corporate boundaries but platted only as government lots. While the issue is not completely free from doubt, we believe that the trial court reached a permissible construction of the 1957 ordinance which should not be disturbed on appeal.

That ordinance purported to regulate, as a restricted residential district, "all of the area within the lots, blocks, and platted area within the town of Wahpeton . . . except [certain designated lots]." Had it been intended that the ordinance include all of the property within the corporate limits (except that specifically excluded), which is the construction now opted for by the City, it would have been a simple matter to have worded the ordinance in this manner. The language employed suggests something less than all of the property within the corporate boundaries. Accordingly, we approve the trial court's determination that "lots, blocks and platted area" includes only property platted as municipal lots and does not include agricultural property designated by government lot description.

II. The trial court further concluded that the City was estopped to claim defendant's use of his property was contrary to the 1957 ordinance. This was based upon findings that defendant, after furnishing the city council a rough sketch showing a proposed mobile home park of approximately 50 spaces, appeared at a regular council meeting on June 5, 1967, in an apparent effort to have his property relieved of the burdens of the 1957 ordinance. At that time he was advised by the city attorney in the presence of the city council that the ordinance did not affect the use of his agricultural property.

Thereafter, defendant made considerable financial investment to develop the mobile home park which was in operation when the 1973 ordinance was enacted. During this time the City made no challenge to this use of his property and certified annually for five years in connection with defendant's application for a state mobile home park license that,

"The maintenance and operation of this mobile home park has been brought to our attention and the maintenance and operation thereof is in accordance with local ordinances, codes and other regulatory measures and that this action has been entered in the records."

We give weight to the foregoing findings of fact by the trial court which had an opportunity to hear and evaluate the testimony of the witnesses on these matters. We do not disturb such findings.

We have no doubt that the facts as found by the trial court would support an equitable estoppel in an action between private parties. See Holden v. Construction Machinery Co., 202 N.W.2d 348, 355-56 (Iowa 1972) and Holsteen v. Thompson, 169 N.W.2d 554, 558-59 (Iowa 1969). The difficult question is whether this doctrine may be invoked against a municipal corporation on these facts. See Alexander v. Randall, 257 Iowa 422, 427-28, 133 N.W.2d 124 (1965). The City contends the facts, as found by the trial court, show no more than action taken under mistake of law which, under the holding in B & H Investments v. City of Coralville, 209 N.W.2d 115 (Iowa 1973), do not create an equitable estoppel against a municipal corporation.

We believe the facts of the present case may be distinguished from the acts under mistake of law by a building department official and city attorney which were involved in the cited case. Here the defendant appeared in front of the city council itself in an apparent effort to obtain a change in the ordinance if it prohibited his

mobile home park. There he was told by the city attorney, who had drafted the ordinance in the presence of the council, that the ordinance did not affect the use of his property and the council expressed no disagreement. We hold the trial court correctly found the City to be estopped.

We have considered all issues presented and affirm the decree of the trial court.