FILED
AUG 3 1 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

TOWN OF BLUE GRASS,

Appellee,

v.

WADDELL BROS. METAL CO.,

Appellant.

Filed August 31, 1978

533
2-60532

Appeal from Scott District Court - Lowell D. Phelps, Judge.

Appeal from that portion of injunction which enforced zoning ordinance. Affirmed as modified.

Frank D. Tucker, Jr., Davenport, for appellant.

John T. Flynn, of Wells, Brubaker, de Silva, Gallagher, Flynn & Darland, Davenport, for appellee.

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

PER CURIAM

Defendant, Waddell Brothers Metal Company, appeals from an injunction preventing it from using its premises at 355 West Mayne Street in the plaintiff town of Blue Grass in violation of the town zoning ordinance. The injunction contained an exception which permitted defendant to continue to deal with precious metals within the confines of the building on its premises. This exception was based upon trial court's finding that because defendant had erected its building and appurtenances in conformance with, and in reliance on, building permits approved by the town council, and because defendant believed that it thereby had the consent of the town council to operate its business, the company was entitled to some protection of its substantial investment.

However, trial court also found that the building permits did not disclose defendant's scrap iron dealings, or in any way raise an estoppel to the town's enforcement of the zoning ordinance against those dealings.

Because the case is in equity, our review is de novo. Waitt Bros. Land, Inc. v. Montange, 257 N.W.2d 516, 518 (Iowa 1977); see also rule 14(f)(7), Rules of Appellate Procedure.

Trial court acknowledged that under the rule of Depue v. City of Clinton, 160 N.W.2d 860 (Iowa 1968), the town council was without power to grant defendant permission to operate a business which violated the zoning ordinance. It relied upon Call Bond & Mortgage Co. v. City of Sioux City, 219 Iowa 572, 259 N.W. 33 (1935), however, to hold that the town had acquiesced in defendant's precious metals business. Cf. Pearson v. City of Guttenburg, 245 N.W.2d 519, 528-29 (Iowa 1976). That finding was based on the facts that the precious metals dealings had been carried on for some time and had been known to the town, in contradistinction to the stockpiling of scrap iron, which was both recent and done without the knowledge of the town, having been begun in the fall of 1974, after the last building permit was issued.

Trial court's analysis of the situation in regard to the stockpiling of scrap iron was proper. However, the rationale which that court adopted requires that defendant be allowed to continue to sort precious metals in the yard area prior to processing them. Allowance of the continuation of that activity is justified particularly by the issuance of the building permit for the yard fence.

Upon remand, trial court shall revise its injunction to permit sorting of the precious metals in the yard area prior to processing. Costs shall be assessed against defendant.

AFFIRMED AS MODIFIED AND REMANDED.