IN THE COURT OF APPEALS OF IOWA

No. 1-643 / 91-940

FILED
JUN 25 1992
CLERK SUPREME COURT

MARK C. CORD, JR.,

Appellee,

vs.

CITY COUNCIL OF SIOUX CITY, IOWA,

Appellant.

196

Appeal from the Iowa District Court for Woodbury County, Edwin L. Mitchell, Judge.

The City of Sioux City appeals a judgment of the district court in favor of Cord in his action for declaratory judgment against the City. **AFFIRMED.**

James L. Abshier, City Attorney, and C. Maurice Rawe, Assistant City Attorney, for appellant.

Paul Lundberg of Shull, Cosgrove, Hellige, Du Bray & Lundberg, Sioux City, for appellee.

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

SCHLEGEL, P.J.

Mark Cord filed a petition for writ of certiorari and for declaratory judgment against the City of Sioux City seeking a review of the City's actions concerning rezoning of Cord's property. The trial court issued a ruling on the declaratory judgment part of the petition establishing a vested nonconforming use in the Cord property. The City appeals. We affirm the trial court ruling.

At the time of the adoption of the City's first zoning ordinance in 1929, the Cord property had five apartment units on it. By the time Cord acquired the property in 1975, the number of apartment units had increased to eleven. Although the City's 1929 zoning ordinance only permitted four units in the zone, the City conceded the fifth apartment unit was proper since it existed prior to the initial zoning ordinance.

In April 1990 the City sought to enforce the five-unit limitation on Cord. Cord commenced a series of actions seeking variances and zoning amendments which would legitimize all eleven of his apartment units. On November 26, 1990, the City Council rezoned the Cord property to RG-28, allowing eight apartment units on the property. Cord then filed a plan with the City's Inspection Services Division indicating how he intended to convert his eleven apartment units to eight units. Neighbors of the Cord property urged the City Council to reconsider its November rezoning. Cord was notified of the

request and agreed to delay conversion of his property to eight apartment units. Finally, on February 11, 1991, the City Council rezoned the Cord property back to its original zoning classification, RG-50, which permitted only four apartment units (five units in the case of Cord's property).

Our review is for corrections of errors at law. The trial court's findings of fact have the effect of a special verdict and are binding on us if supported by substantial evidence. Matter of Mt. Pleasant Bank & Trust, 426 N.W.2d 126, 129 (Iowa 1988) (citation omitted). We are not bound, however, by the district court's application of legal principles or its conclusions of law. Id. (citation omitted).

In order to determine if Cord was entitled to maintain eight apartment units, the trial court had to make a decision as to whether the eight units "lawfully existed" within the meaning of section 25.98.040 of the Sioux City zoning ordinance as of the February 11, 1991, rezoning. Section 25.98.040 provides: "Any lawfully existing nonconforming use may be continued so long as it remains otherwise lawful . . . " We find the eight units were lawfully existing on February 11, 1991, when the City rezoned to the four-apartment limitation.

The City contends Cord obtained no nonconforming use rights to eight units because the property actually had eleven units. Cord only claims such rights for eight

units, which were authorized by the City Council's November decision. After that decision, eight of the units lawfully existed, and three did not. We find the "unlawful" three units do not taint the "lawful" eight units. See Cameron Apartments v. Zoning Bd. of Adjustment, 14 Pa. Commw. 571, 324 A.2d 805 (1974). The eight apartments for which Cord sought nonconforming use status lawfully existed after the November 26, 1990, rezoning regardless of whether or not all eleven apartments lawfully existed.

The City also argues that after the November rezoning Cord had to physically convert the eleven units to eight before the eight units would lawfully exist. We find the nonconforming use provision of the ordinance, section 25.98.040, contains no such requirement.

We conclude the trial court properly held the eight apartment units were a lawful and vested nonconforming use after the ordinance of February 11, 1991, authorizing a maximum of four units, where the eight units lawfully existed as a result of the amendment of November 26, 1990, authorizing a maximum of eight units. We affirm and thus dismiss Cord's petition for writ of certiorari.

AFFIRMED.