FILED
MAR 31 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

454

TIMBER VALLEY ESTATES, INC., et al,

Plaintiffs-Appellants,

vs.

OAK HILL GUN CLUB, INC., OF IOWA,

Defendant-Appellee.

Filed March 31, 1980

0-31
2-61980

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

Plaintiffs appeal from an adverse judgment in their action to enjoin defendant's use of certain timbered property as a gun club where shotgun and rifle firing is carried on. AFFIRMED.

Phil L. Goedken of Bettendorf, Iowa, for plaintiffs-appellants.

Alan R. Havercamp of Davenport, Iowa, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiffs appeal from an adverse judgment in their action to enjoin defendant's use of certain timbered property as a gun club where shotgun and rifle firing is carried on. Plaintiffs are a land developer and individual land owners whose properties are adjacent to a gun club operated by defendant. Defendant is a membership corporation that originated as a coon hunting club and later affiliated with the National Rifle Association.[1]

The trial court determined recreational shooting by club members was valid under the applicable zoning ordinance as a nonconforming use and did not constitute a nuisance. It did enjoin, as contrary to the zoning ordinance, the commercial activity of leasing the premises to Iowa National Guard units for training purposes.

On appeal, plaintiffs have abandoned the nuisance theory that they urged in the trial court as an alternative ground for an injunction. They base their claim for reversal entirely upon the applicable zoning ordinance. Nor do plaintiffs challenge on appeal the trial court's finding that shotgun shooting on defendant's property was established to be a valid nonconforming use under that ordinance.

As so limited, the claims on this appeal concern whether the use of rifles and some handguns for recreational purposes on defendant's property is shown by the evidence to be in violation of the applicable zoning ordinance. The case having been tried in equity in the court below, our review is **de novo** pursuant to Iowa R. App. P. 4. We conclude the trial court's decree was correct and should be affirmed.

I. The trial court decided adversely to plaintiffs solely on its determination that defendant's activities were a valid nonconforming use under the ordinance. We believe defendant's evidence that rifle shooting was carried on by its members as part of the club activities on this property prior to the effective date of the ordinance made a prima facia case as to a nonconforming use. To the extent that plaintiffs seek to defeat such showing by evidence that such use had greatly increased since the effective date of the ordinance, we conclude they have failed in their proof. Although one witness testified such use increased substantially in the early 1960's (the ordinance was enacted in 1949 and became effective in 1952) he also testified this was a temporary situation. There was an insufficient showing to support a finding that the present use of the

[1] At the time of trial, such affiliation had been discontinued.

property for rifle shooting exceeds the use made by defendant prior to the time of the ordinance. The evidence, as a whole, sustains the trial court's finding as to nonconforming use. See, City of Central City v. Knowlton, 265 N.W.2d 749, 753-54 (Iowa 1978). Admittedly, there is no evidence that any pistol shooting took place on the premises prior to the zoning ordinance. It is clear, however, that both small bore and large bore rifle shooting took place as club activities prior to the ordinance and the present pistol shooting is merely incidental to the use made of defendant's small bore rifle range. We believe the trial court correctly refused to enjoin pistol shooting activities.

II. Defendant does not cross-appeal from that part of the trial court's decree enjoining the commercial activity of leasing its rifle range to the Iowa National Guard for training purposes. To the extent plaintiff seeks to extend such injunction, its reasons for doing so have been rejected in the prior divisions of this opinion. The trial court's decree is affirmed in its entirety.

AFFIRMED.