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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-392**

Marilynn Kammeuller as Personal Representative
of the Estate of Gladys M. Wilcox,
Appellant,

vs.

City of St. Paul,
Respondent.

**Filed December 29, 2009**
**Affirmed**
**Stoneburner, Judge**

Ramsey County District Court
File No. 62CV081509

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Considered and decided by Stoneburner, Presiding Judge; Larkin, Judge; and Stauber, Judge.

**U N P U B L I S H E D   O P I N I O N**

**STONEBURNER**, Judge

Appellant landowner challenges the district court's grant of summary judgment to respondent city, arguing that the city's zoning decision was based on an erroneous

application of law, unsupported by the evidence, and unlawfully required elimination of a nonconforming use. We affirm.

## FACTS

The underlying facts in this case are not in dispute. In 1886, the property involved in this litigation was platted as four separate lots legally described as Lots 12, 13, 14, and 15, Block 9, Summit Avenue Addition, St. Paul, Ramsey County, Minnesota. Lot 12 was given the address of 1514 Portland Avenue. Lots 13, 14, and 15 were given the address of 1508 Portland Avenue.

In 1916, an application was filed for a building permit to build an apartment building 34 feet wide and 70 feet deep on Lot[s] "12-13-14-15." Under the permit issued, a five-unit building was built entirely on Lot 12.

In 1918, an application was filed for a permit to build a 22-foot by 30-foot private garage on the south side of 1514 Portland on Lots "12 & 13-14-15." In 1926, an application was filed to build a 50-foot by 23-foot frame and stucco garage on the south side of 1514 Portland on Lots "12-13-14-15." These "accessory buildings" were built on Lots 13, 14, and 15.

In 1965, Gladys M. Wilcox purchased the lots from the previous owner. Wilcox received two warranty deeds: one for Lot 12 and one for Lots 13, 14 and 15. At that time, Lot 12 had a different Property Identification Number (PIN) from Lots 13, 14, and 15, which had a single PIN. Each deed was separately recorded.

In January 2006, the city's zoning administrator determined that Lots 12, 13, 14, and 15 are a single parcel for zoning purposes and Lots 13, 14, and 15 cannot be

conveyed or developed separately prior to being legally split. In March 2007, despite the city's opinion, appellant Marilynn Kammeuller, as personal representative of the estate of Gladys M. Wilcox (estate), sold Lot 12 with the apartment building. Estate later entered into a purchase agreement to sell Lots 13, 14, and 15 to a developer. But the zoning administrator for respondent City of St. Paul (city) concluded under section 60.213(L) of the city's zoning code that the four lots constituted a single parcel for zoning purposes such that Lots 13, 14, and 15 cannot legally be sold separately from Lot 12 unless estate obtained a "lot split" or subdivision approval. Section 60.213(L) of the city's zoning code, which the parties agree was enacted in 1975, provides that a "zoning lot" is created when an owner of more than one parcel, at the time of filing for a building permit, designates the properties to be used, built upon, or developed as a unit. Estate requested that the zoning administrator determine that the earlier conveyance of Lot 12 and planned conveyance of Lots 13–15 were not subdivisions of a single parcel and did not require subdivision approval. The request was denied.

Estate appealed to the St. Paul Board of Zoning Appeals (BZA), arguing that because section 60.213(L) did not exist until 1975, it could not be retroactively applied to the building permits filed in 1916–1926 for these lots. And estate argued that there was no evidence that an owner of the properties had ever designated that the lots be used or developed as a unit. The BZA denied the appeal by resolution dated June 30, 2008, adopting verbatim the zoning administrator's recommended findings and conclusions including the finding that the four lots were a single parcel with a single PIN when the apartment building and garages were built and conclusion that the later assignment of a

separate PIN for Lots 13–15 did not constitute a lot split. The BZA also concluded the separate conveyance of Lot 12 and the apartment building constituted an illegal subdivision and "it has no standing as a legal nonconforming use or structure."

Estate appealed to the city council, arguing that the code section could not be applied retroactively and that Lot 12 has protected status as a legal nonconforming structure. The city council denied the appeal, adopting the findings of the BZA and ruling that the lots are a single zoning parcel and that separately conveying the lots constitutes illegal subdivision.

Estate then brought a declaratory judgment action seeking declarations that city's decision was unreasonable, arbitrary and capricious, that the properties are not a "zoning lot" or single parcel for zoning purposes and that separate conveyances do not require subdivision approval. On cross-motions for summary judgment, the district court granted city's motion and denied estate's motion, concluding that city had a rational basis for deciding that the four lots are a single parcel based on the building-permit applications. The district court did not address retroactive application of the zoning code or estate's argument that the application of the current code unlawfully forces the elimination of a legal nonconforming structure. This appeal followed.

**D E C I S I O N**

"When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review de novo." *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 638 (Minn. 2006) (citing *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998)). But "[t]he standard of

review is the same for all zoning matters, namely, whether the zoning authority's action was reasonable . . . ." *Swanson v. City of Bloomington*, 421 N.W.2d 307, 311 (Minn. 1988) (citations omitted). "[E]xcept in those rare cases in which the city's decision has no rational basis, 'it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance of their duties.'" *Id.* (citation omitted). The interpretation of a zoning ordinance is a question of law reviewed de novo. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). We conduct an independent review of the decision by the city council, without deferring to the district court. *Semler Const., Inc. v. City of Hanover*, 667 N.W.2d 457, 461 (Minn. App. 2003), *review denied* (Minn. Oct. 29, 2003).

## I. Application of 1975 zoning provision was reasonable.

City's decision is based on the definition of a "zoning lot" found in section 60.213(L) of the St. Paul Zoning Code.

> *Lot, zoning.* A single tract of land which, at the time of filing for a building permit, is designated by its owners or developers as a tract to be used, developed or built upon as a unit, under ownership or control of one (1) person or joint tenants. A zoning lot shall satisfy this code with respect to area, size, dimensions and frontage as required in the district or districts in which the zoning lot is located. A zoning lot, therefore, may or may not coincide with a lot of record as filed with the county recorder but may include one (1) or more lots of record.

This provision was added to the zoning code in 1975. In 1916, when the first application for a building permit for the subject properties was filed, city had no zoning code.[1] And no application for a building permit involving the subject lots has been filed since 1926.

Estate argues that retroactive application of section 60.213(L) is unlawful. Estate relies on authority providing that zoning ordinances are construed in the same way as are statutes[2] and that the retroactive application of statutes is prohibited "unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2008); *see also Cooper v. Watson*, 290 Minn. 362, 369, 187 N.W.2d 689, 693 (1971) (stating "[Minn. Stat. § 645.21] is but expressive of the principle that the courts will presume that a statutory enactment applies to the future and not to the past").

City argues that the ordinance was not applied retroactively because the 1975 ordinance was applied to the circumstances of the lots in 2007. Alternatively, city argues that the plain language of the ordinance requires the city to look back to "the time of filing for a building permit" as the triggering event in determining whether the property is a zoning lot.

A law is applied retroactively when it

> takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, *in respect of transactions or*

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[1] City first enacted a comprehensive zoning code effective August 22, 1922. *See Kiges v. City of St. Paul*, 240 Minn. 522, 524, 62 N.W.2d 363, 366 (1953).

[2] *See Smith v. Barry*, 219 Minn. 182, 187, 17 N.W.2d 324, 327 (1944) (stating that the rules that govern the construction of statutes are applicable to the construction of ordinances); and St. Paul, Minn., Legislative Code § 2.15 (2008) (providing that the rules of construction established for state statutes or found in state case law apply in the construction of city's ordinances).

> *considerations already past* . . . or . . . relates back to and *gives to a previous transaction some different legal effect from that which it had under the law when it occurred* . . . . [or] *affect[s] transactions which occurred, or rights which accrued, before it became operative, and which ascribes to them effects not inherent in their nature, in view of the law in force at the time of their occurrence.*

*Cooper*, 290 Minn. At 369, 187 N.W.2d at 693 (quotation omitted). Plainly, the ordinance in this case is being retroactively applied because actions completed long before enactment of the ordinance are being given a different legal effect from that which they had at the time they occurred. And even though the city may rationally be able to infer retroactive application from the language of the ordinance, the propriety of such an inference is far from clear, nor is it manifest that it was intended that the ordinance be applied retroactively.

Nonetheless, the law is well established in Minnesota that zoning statutes are an exercise of police power such that retroactive application of zoning provisions does not violate constitutional restrictions against the retroactive application of legislation or the impairment of vested rights. *See Property Research and Dev. Co. v. City of Eagan*, 289 N.W.2d 157, 158 (Minn. 1980) (applying an amended zoning ordinance to affirm denial of plat approval for construction of single-family dwellings that were permitted at the time approval was applied for); *Kiges v. City of St. Paul*, 240 Minn. 530, 537, 62 N.W.2d 369, 373 (1953); *Rose Cliff Landscape Nursery, Inc. v. City of Rosemount*, 467 N.W.2d 641, 644 (Minn. App. 1991) (stating that appellant's right to rely on a prior zoning ordinance was subordinate to the city council's police power to enact a different zoning

regulation). Therefore, even though application of the ordinance in this case is retroactive, it is not unlawful or irrational.

## II. The facts support application of § 60.213(L).

City found that the lots have always been treated as a single unit and were not conveyed separately until 2007 when Lot 12 was illegally subdivided. Estate argues that in this case there is no evidence of "the unambiguous expression of an owner's intention that his otherwise separate lots will be used as a unit," which is a prerequisite to application of the ordinance.

City argues that it reasonably relied on the three building permits of public record that exist for the property as well as the fact that a single owner has owned all of the lots until the 2007 conveyance of Lot 12. Each application for a building permit lists all four lots as the location of the proposed building. The apartment building as constructed only occupies Lot 12. The subsequent applications for permits to build garages list Lot 12 even though it is entirely occupied by the apartment building. One garage was built on Lots 13 and 14, and the other garage was built on Lots 14 and 15.

As public records, the applications for building permits were admissible to prove their contents. Minn. R. Evid. 803(14), (15). Estate's speculation about who actually wrote the lot numbers on the permits or whether the numbers were on the permits when they were filed does not overcome the presumption of reliability of the public records. The city could reasonably infer from the applications that the owner and/or developer treated the lots as a single unit for construction of these buildings.

Estate argues that the facts that Lot 12 had a different PIN from the remaining lots and was conveyed by a separate deed in 1965 are evidence that the lots were not considered a unit by the owner. But there is no information about how or why the lots came to have separate PINs or why the lots were conveyed by separate deeds in 1965. And section 60.213(L) specifically provides that a "zoning lot" can be made up of "one (1) or more lots of record" and "may or may not coincide with a lot of record as filed with the county recorder." The city reasonably concluded, based on the evidence in the record, that the four lots were designated by the owner or developer as one tract of land to be used, developed or built on as a unit under the control of one person, satisfying the requirements for application of section 60.213(L).

Estate raised the issue that the city's decision violates the prohibition against the elimination of nonconforming structures, but conceded at oral argument on appeal that if this court affirms the application of section 60.213(L) to the lots, there is no nonconforming structure. Because we are affirming application of the section, we do not address this issue.

**Affirmed.**