COURT OF APPEALS
DECISION
DATED AND RELEASED

October 17, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3123

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

ARTHUR T. DONALDSON,

Plaintiff-Appellant,

v.

TOWN BOARD OF THE TOWN OF BELOIT,
a Body Politic,

Defendant-Respondent,

DOUGLAS J. GEARHART and
JANET A. GEARHART,

Defendants.

APPEAL from a judgment and an order of the circuit court for Rock County: J. RICHARD LONG, Judge. *Affirmed*.

Before Eich, C.J., Vergeront, J., and Paul C. Gartzke, Reserve Judge.

PER CURIAM. Arthur T. Donaldson appeals from an order denying his motion for summary disposition and dismissing with prejudice his action against the Town of Beloit and its town board. We affirm.

Donaldson acquired an interest in a piece of land for which the town board of Beloit had issued a permit for a sign with a display area of 600 square feet on each side. He commenced erecting a sign and the town building inspector stopped construction on the grounds that Town ordinances permitted signs only 300 square feet on each side. Donaldson appeals. He argues first that the town board "legislatively" approved his sign and, second, that the board and Town are equitably estopped from enforcing the ordinance against him.

Donaldson acknowledges a long line of cases holding that a building permit erroneously issued cannot authorize a use in violation of an ordinance. *See, e.g.*, ***Snyder v. Waukesha County Zoning Bd.***, 74 Wis.2d 468, 476-77, 247 N.W.2d 98, 103 (1976). He attempts to distinguish these cases by noting that the entire town board approved the application. He maintains that the board's action constituted a "legislative" enactment, which effectively undermines the ordinance. He concludes that because a second legislative enactment cannot "violate" the previous enactment (the Town sign ordinance), ***Snyder*** and similar cases have no application.

We reject this argument. The record demonstrates that the board granted the sign permit at a portion of its meeting considering "licenses." There were none of the trappings of a legislative enactment. No open meeting notice had been given, the matter was not on the agenda as an ordinance change, and the matter was not so considered. Because the facts do not support Donaldson's construction, the applicable law remains that an erroneously issued permit cannot authorize a use prohibited by ordinance.

Donaldson cites ***State v. City of Green Bay***, 96 Wis.2d 195, 200-01, 291 N.W.2d 508, 511 (1980), for the proposition that equitable estoppel applies against governmental agencies. We agree that this has long been the law of this state. *Cf.* ***City of Milwaukee v. Leavitt***, 31 Wis.2d 72, 76, 142 N.W.2d 169, 171 (1966) (governmental units are "not wholly immune from" equitable estoppel). However, ***Green Bay*** is not a zoning case but a forfeiture case and, as such, cannot overcome the clear precedent against application of equitable estoppel in

zoning cases. ***Snyder,*** 74 Wis.2d at 476-77, 247 N.W.2d at 103. Estoppel will not lie against a municipality so as to bar it from enforcing a zoning ordinance enacted under the authority of police powers. ***Leavitt,*** 31 Wis.2d at 76, 142 N.W.2d at 171.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.