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A Homeowner's Setback

Minnesota's Supreme Court recently struck down earlier decisions favoring a homeowner's complaint against the local city for errors related to the homeowner's shed. While Dr. Rajbir Sarpal and his wife Dr. Carol Sarpal had prevailed in the district and appellate courts, this May 2011 opinion (797 N.W.2d 18) remands the case back to district court, primarily regarding the point of equitable estoppel against the city.

The Sarpals bought a lot in the City of North Oaks in July 2003 and had a house built on it. Two years later they had a general contractor install an in-ground swimming pool. And in 2006, they decided to undertake a do-it-yourself project, constructing a garden/pool shed without a contractor. Dr. Rajbir Sarpal (referred to as "Sarpal" from here on) went to the City to get a building permit, and was informed that first he needed approval of the Architectural Supervisory Committee (ASC) of the North Oaks Homeowners Association (NOHOA). Following up on those directions, Sarpal heard from ASC that he needed to submit additional information for its review, including "[a]n as-built survey with the location of the pool, pool equipment, fences and water feature," and that he might be able to get one from either the surveyor of the lot pre-construction or the contractor who had built his house. Failing in both attempts, NOHOA suggested that the City might have a survey in its files.

Returning to the City offices, Sarpal presented the letter from ASC outlining its requirements for an as-built survey, and was handed a survey dated October

2003, apparently with assurance that it was the plan he needed. A few details that Sarpal, as a layperson, did not recognize were that the structure on this plan was labeled "proposed house" and that the house had been built in a different location. Before readers start cringing, be assured that the surveyor was not dragged into the ultimate legal morass. However, this may make some rethink the notes and date stamps we place on our plans in case of future (mis)use.

"I am solely and personally responsible for any violations of the State Building Code and/or jurisdictional Ordinance in connection with the work performed on this property." Any surveyor who has been handed a standard certification to sign understands the liability associated with such an action. Sarpal apparently did not.

Sarpal built his shed, using the locations he had calculated from the house to stake it out, and the City inspected

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Sarpal drew his proposed shed on a copy of this survey (probably prompting more cringing from surveyors reading this), along with measurement lines from the proposed house (not from the property lines) to the proposed shed, showing the shed in compliance with the 30-foot rear setback line. ASC approved the plan, and the city approved a building permit once Sarpal signed a form that stated in part, "I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not." Because he was acting as his own general contractor, Sarpal also had to sign a "Property Owner waiver" form stating,

and approved the foundation he laid. After Sarpal framed out the shed, the City re-inspected and re-approved the structure, and after he finished the shed the City issued a certificate of completion. While one would think this is the end of the story, it resumes a year later when the City sent Sarpal a letter in September of 2007.

The difference between the proposed and actual locations of the house was 15 feet. This meant that Sarpal's shed encroached into the 30-foot rear setback area by 15 feet. Further, the rear of the Sarpal property was subject to a 15-foot wide trail easement, and the shed encroached into that by eight feet. The City's 2007 letter signified North

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Oaks' recognition of the trail easement's obstruction by Sarpal's shed, giving him 30 days to move it. Unable to believe this turn of events, Sarpal hired a surveyor, who confirmed the shed's encroachment. Sarpal's request for a variance was denied, but his subsequent request for an extension (since Minnesota winters are known to be below optimal curing temperatures for the new concrete foundation he would need to pour) was approved.

But Sarpal didn't move the shed, and the City filed suit in the County District Court in 2008 for violations of ordinances, trespass, and nuisance. Sarpal responded with claims of equitable estoppel based on reliance on the string of City actions, starting with the survey handed to him and continuing with City inspections, approvals, and the final certificate of completion. "Equitable estoppel" is often raised when one party relies on the actions of another to the first party's detriment, and for the Sarpals this meant significant expenses in moving the shed's foundation, the shed itself, sprinklers, and a fence.

Here is where it gets sticky. The first two courts decided in favor of Sarpal, but Minnesota's Supreme Court noted that the claim of equitable estoppel against a government entity must satisfy four elements, and not all were met in this instance: "First, there must be 'wrongful conduct' on the part of an authorized government agent... Second, the party seeking equitable relief must reasonably rely on the wrongful conduct... Third, the party must incur a unique expenditure in reliance on the wrongful conduct... Finally, the balance of the equities must weigh in favor of estoppel." The third point was undisputed, leaving three points for Sarpal to prove.

Finding that "erroneous government action is not necessarily 'wrongful,'" the high court stated that providing assurance that Sarpal could use an outdated survey and later reviews and approvals were merely mistakes and not "wrongful actions." North Oaks had no reason to notice or correct Sarpal's error, and did not know that he would rely on a location of a "proposed house" or that his house was built any differently from the location Sarpal had submitted for review. Thus there was no intentional wrongdoing, and by failing to satisfy the first element of equitable estoppel, the entire Sarpal argument fails. *A*