

Land Use Case Briefs

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City of Okoboji v. Okoboji Barz, Inc., dba O'Farrell Sisters, (Iowa Court of Appeals, May 23, 2007)

Serving alcohol at a restaurant was not an expansion or intensification of a nonconforming use; use of property at time of ordinance adoption is standard for determining extent of nonconformity.

Since 1958, O'Farrell Sisters Restaurant has been located on Lakeshore Drive in the City of Okoboji. In 1972, the City adopted a new zoning ordinance, and the property was zoned C-Commercial. In 1978 the property was rezoned R-1 Single-Family Residential out of concerns about protecting the integrity of the surrounding residential areas. Under the zoning ordinance, restaurants, cocktail lounges, and taverns are not permitted.

Until 1994, patrons were able to buy alcoholic beverages at the restaurant. The restaurant's liquor license was allowed to expire in 1994. In May 2004, an application for a liquor license for the O'Farrell Sisters Restaurant was made to the City of Okoboji. The city council denied the application on the basis that the proposed sale of alcohol constituted an expansion of a nonconforming use that had been discontinued for a period of more than a year, per the terms of the Okoboji Zoning Code. The district court issued a ruling in which it concluded the sale of alcoholic beverages at the restaurant would constitute the addition of a separate nonconforming use under the City's zoning ordinance. The essence of the ruling was to preclude the restaurant from serving alcohol. (The many and varied proceedings leading up to the district court's determination will not be discussed here).

On appeal the Court of Appeals reversed the district court. The Court of Appeals determined that serving alcoholic beverages from a small bar would not excessively intensify or expanded the preexisting nonconforming use, nor would the nature or character of the use substantially change. Further, the Court cited *City of Central City v. Knowlton*, (Iowa 1978) for the proposition that "the use made of the land at the time the ordinance became effective is the standard used to determine whether there is an unlawful enlargement of a nonconforming use." The Court concluded that the sale of alcoholic beverages is not a change in use substantially different from the use the restaurant had at the time of the adoption of the zoning ordinance.

Spencer Diesel Injection & Turbo v. City of Sioux City (Iowa Court of Appeals, April 25, 2007)

Use of comparable sales approach in valuing condemned properties valid when no income history for property is shown.

In 1996, Spencer Diesel purchased property in downtown Sioux City for \$136,000. The property was used as a surface parking lot by the former owner. Soon after gaining possession, Spencer Diesel learned there was an old gas station on the lot that required environmental cleanup. The property could not be used until the environmental cleanup process was finished in 1998.

In March 2002 the City informed the Spencer Diesel it was interested in acquiring the property for use as a parking lot in connection with a well-publicized downtown renewal venture. An appraisal performed on behalf of the city valued the property at \$202,000 pursuant to a comparable sales or market data approach. The appraiser also analyzed the value of the property under an income capitalization approach, which resulted in a value of \$182,000. The appraiser placed the greatest weight on the comparable sales method. Upon receipt of the appraisal, the owner offered the city a two year lease at \$3,500 per month with an option to buy at the end of the lease for \$600,000. The City did not accept the offer and instead initiated condemnation proceedings. In April 2003, the condemnation commission met, and after hearing testimony from the appraiser and considering his report, the commission determined Spencer Diesel would sustain damages of \$202,000. Spencer Diesel filed an appeal with the district court. The city obtained a second appraisal of the parking lot prior to trial. The second appraiser also used both a comparable sales and income approach and, based on the comparable sales approach, set a value of \$200,000. Spencer Diesel did not retain an appraiser, nor did the company designate an expert witness to testify at trial regarding the value of the property. Spencer Diesel's accountant testified, using an income approach to arrive at values ranging between \$450,000 and \$589,000 for the property. The district court determined the fair market value of the property to be \$202,000, and Spencer Diesel appealed.

The Court of Appeals sided with the city, affirming that when the entire property is taken the measure of damage is the reasonable market value at the time of condemnation. "In such cases, the usual guide to the fair market value of the property is comparable sales figures." Evidence of business profits is generally inadmissible as an independent element of damage or as relevant in determining the value of the land because it is too uncertain and depends upon too many contingencies. The only exceptions to the rule prohibiting valuation by the business profits or income capitalization approach are when the property taken is a leasehold or land used for agricultural purposes. The Court of Appeals determined that neither exception applied in this case.

Ames Rental Property Association (ARPA) v. City of Ames (Iowa Supreme Court, July 27, 2007).

Definition of "family" as excluding more than three unrelated persons does not violate Equal Protection Clauses of either U.S. or Iowa State Constitutions.

In an effort to stem the flow of students into residential areas, Ames passed a zoning ordinance which only permits single-family dwellings in certain areas of the city. For purposes of the ordinance, a "family" is any number of related persons or no more than three unrelated persons. A landlord association brought a declaratory judgment against the City claiming the ordinance violates the equal protection clauses of the United States Constitution and the Iowa Constitution. The district court granted summary judgment in favor of Ames because it found the ordinance was rationally related to a legitimate government interest.

In a 4-3 decision the Iowa Supreme Court affirmed the district court. The Iowa Supreme Court noted that the U.S. Supreme Court examined a more restrictive ordinance in *Village of Belle Terre v. Boraas* and held it did not violate the United States Constitution. Finding that *Belle Terre* is "still good law" the Iowa Supreme Court sided with the city of Ames on the U.S.

Constitutional claim. On the Iowa Constitutional claim the Court found that ARPA did not carry its burden to “negate every reasonable basis that might support the disparate treatment” of those disadvantaged by the ordinance. Ames articulated several bases for the zoning ordinance: “promot[ing] a sense of community, sanctity of the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles and controlled transiency.” The Iowa Supreme Court found these interests sufficient.

In a strongly worded dissent, three justices could not accept that distinguishing between related and unrelated persons in a zoning law is rationally related to the promotion of a sense of community, sanctity of the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles, or controlled transiency. The dissenting justices said it is irrational to relate a peaceful neighborhood with a neighborhood populated solely by families, or three or less unrelated persons. “As another court has articulated under a similar ordinance, ‘twenty male cousins could live together, motorcycles, noise, and all, while three unrelated clerics could not.’” Furthermore, “Instead of promoting families, this ordinance disadvantages those most likely to live with roommates—the poor and the elderly.”

“Ames claims it is promoting a sense of community with this ordinance: But whose community is Ames promoting? Is Ames only interested in promoting traditional families or those who can afford to live in a home without roommates—the wealthy and the upper-middle class? It is irrational for a city to attempt to promote a sense of community by intruding into its citizens’ homes and differentiating, classifying, and eventually barring its citizens from the community solely based on the type of relationship a person has to the other persons residing in their home.”