

Land Use Case Briefs

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Chamberlain, L.L.C. v. City of Ames (Iowa Court of Appeals, December 12, 2007)

Builder did not have vested rights in a building permit based on an invalid interpretation of the building code made by the city building official.

Chamberlain, L.L.C. envisioned building a mixed use complex near the Iowa State campus. The first floor was to contain retail space and the upper floors would contain apartment units. The design for the apartments included a loft or shelf area, similar to what would be found in student dormitories. The loft area could be used for sleeping or storage.

Early fall 2003 Chamberlain owners met with the Ames building official and the Ames fire inspector to primarily discuss the acceptability of the loft areas under building and fire codes. The fire inspector expressed concern if the areas would be used for sleeping but the building inspector stated that the determination from the meeting was that if certain requirements were met, the lofts would be permitted. The building inspector stated that he took into account the building code and considered the lofts to be extensions of other code compliant rooms, thus excluding the lofts from ceiling height restrictions. The city issued a building permit in January 2004 after reviewing phased project plans.

June 2004 the building was nearly complete when Chamberlain received a letter from the Ames Fire Chief stating that the loft areas did not meet minimum height requirements for a habitable space and that a certificate of occupancy would not be issued unless significant modifications were made. Chamberlain appealed the fire chief's determination to the board of appeals, which in turn resolved that the interpretation was not unreasonable.

Upon action in district court, Chamberlain claimed to be illegally denied a certificate of occupancy when it justifiably relied on a valid code interpretation by a previous building official. Chamberlain also contended that the city was prevented from applying a new interpretation of the building code through the doctrines of equitable estoppel or promissory estoppel. The district court held that no false representations or exceptional circumstances existed to support an equitable estoppel claim. The court also held that the original building official's interpretation of the building code was contrary to the express terms of the code, therefore making the issued building permit not in compliance with code. The court determined that Chamberlain had no vested rights in the invalid building code interpretations and because there was no clear and definite promise to enforce, the promissory estoppel claim also failed. Last, the court rejected the claim that the original building official's determination prevented a new interpretation by the board of appeals through issue preclusion.

The court of appeals affirmed the district court ruling. In reference to the equitable estoppel claim, the court of appeals stated that the building official acted in good faith and that good faith errors do not provide the exceptional circumstances required for equitable estoppel. The court held that property rights to a building permit can only vest where a permit is issued in accordance with the relevant ordinance, and since the building permit that was issued to Chamberlain was not in compliance with code, Chamberlain did not have vested rights in the building permit. The court of appeals also upheld the district court's determination that Chamberlain could not prove that a clear and definite promise was made to establish a promissory estoppel claim. Also, in order for issue preclusion to apply, therefore preventing the board of appeals from reversing the original building official's interpretation, the issue must have been handled in a proceeding containing certain essential adjudicatory elements. The court of appeals found that the interactions between Chamberlain and the building official were collaborative in nature, consequently issue preclusion was not applicable.

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Happe v. City of Urbandale (Iowa Court of Appeals, November 15, 2007)

Special assessment for street repaving, relocation and expansion was excessive and not in accordance with the special benefits conferred on the property.

The Happes owned 4.48 acres of land in Urbandale, a portion of which abuts 142nd Street. The city of Urbandale determined the need to acquire approximately 15.5% of the Happe's land for the repaving, relocation and eventual expansion of 142nd Street. The city valued the remaining 3.79 acres at \$281,720, and notified them that the property would be subject to a special assessment of \$37,092.09 for the repaving project. The Happes challenged the City's special assessment and following trial, the district court concluded that Happes failed to establish that the assessment was excessive.

The Court of Appeals examined the facts to determine whether the special assessment was "in accordance with the special benefits conferred upon the property and not in excess of such benefits. *Iowa Code* § 384.61." The Court stated the following factors to be considered when distinguishing special benefits from general benefits:

"[T]he present and future use of the abutting property, the increase in the market value of the affected property, the size and shape of the abutting property, the proximity of the property to the improvement, the amount of property fronting the improvement, the needs of the property owners served by the improvement, and the primary purpose behind the construction of the improvement."

The Happes conceded some special benefit from the road project but considered that benefit to be miniscule. The Happes stated that the old roadway provided sufficient access to their property and the new road limited access to their property by reducing visibility. The new roadway also created the potential for more noise from increased traffic. The city asserted that the roadway would enhance the development potential of the Happe property but the Happes rebutted this claim by the fact that their property came with covenants restricting subdivision at the time they purchased the property. Happe's expert bolstered their claims and opined that the property was fully developed as is. He explained that an appraisal report prepared for the City in connection with its acquisition of part of the Happe property indicated that "the highest and best use of this particular property is as it is, an acreage, and that the covenants prevent any subdividing or any further dividing up that parcel."

Urbandale's community development director stated that it would be physically possible to subdivide the Happe property for development purposes; however, he also stated that subdivision would require rezoning, and he conceded that development "would be possible" with the pre-existing roadway. According to the City's comprehensive urban

renewal plan, the improved 142nd Street was designed to serve as a conduit to a new retail and commercial establishment known as the Village Center. Urbandale's community development director conceded that the Happe's property is "a very minor contributor to that overall traffic."

The Court held that the city's original preliminary special assessment was excessive. The Court also held that an equitable assessment would be similar to that of comparable single family residences in the same area, and adopted a special assessment amount of \$6,118.51.