

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, ex rel. RICHARD F. LEE, et al,

Appellants,

v.

THE CITY OF GRAIN VALLEY, MISSOURI, et al.,

Respondents.

DOCKET NUMBER WD70059

Date: September 15, 2009

Appeal from:
JACKSON COUNTY Circuit Court
The Honorable Michael W. Manners, Judge

Appellate Judges:
Division One: James E. Welsh, Presiding Judge, Victor C. Howard and Alok Ahuja,
JJ.

Attorneys:
James M. Roberts, Esq., Blue Springs, MO, for appellant.
James T. Cook, Esq., and Matthew W. Geary, Esq., Kansas City, MO, for
respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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Appellants,

v.

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JACKSON COUNTY

Before Division One Judges: James E. Welsh, Presiding Judge, Victor C. Howard and Alok Ahuja, JJ

Appellants Richard and Kendra Lee live in an 800 square foot home in Grain Valley, Missouri. Sometime in 2007, they began to explore with officials of the City of Grain Valley building a new, larger residence on their property to replace the existing structure. The Lees were informed by the City that their property was zoned commercial, and that building such a residence would therefore not be allowed. The Lees contend that they attempted to submit "building permit papers" for their contemplated new home with the City, but that the City would not accept the application. The City disputes that this ever occurred.

The Lees then unsuccessfully requested a zoning variance from the Grain Valley Board of Zoning Adjustment. After it was denied, the Lees filed this lawsuit, seeking a writ of mandamus against the City "requiring [the City] to issue a Building Permit of the City of Grain Valley allowing [the Lees] to build a new home on their land replacing the current dwellings."

Grain Valley Ordinance Number 1906 took effect on June 25, 2007, before the Lees filed their lawsuit. Among other things, this ordinance zoned a swath of property, including the Lees', as "transitional."

The Lees' case was tried to the court. On July 29, 2008, the court issued its judgment denying the Lees' Petition for Writ of Mandamus, based on its conclusion that the Lees' property "was zoned commercial by Grain Valley in the early 1980s." The Lees now appeal.

AFFIRMED.

Division One holds:

The circuit court's refusal to issue a writ of mandamus is affirmed for two independently sufficient reasons. First, it is uncontested that, prior to the filing of this lawsuit, the City of Grain Valley enacted a new ordinance which zoned the Lees' property as "transitional." The Lees have not argued, or proven, that they are entitled to a building permit under the current transitional zoning of their property. Although they contend that they submitted a permit application to the City under the prior zoning regime, the City disputes this claim, and the trial court was not required to find that an application was ever filed or attempted to be filed. But even if the Lees had filed a permit application prior to the City's amendment of its zoning ordinance, that would not give them a vested right to continued application of the prior zoning ordinance after the City lawfully enacted a new zoning ordinance. Because the Lees have failed to establish their clear right to a building permit under the zoning to which their property is presently subject, the circuit court did not err in denying mandamus relief.

Second, and separately, in order to establish their right to mandamus relief the Lees were required to show that their proposed construction was in compliance with the City's legal requirements. However, the testimony at trial was extremely vague as to the precise type of residential construction the Lees desired to build (whether a new substitute building, or an expansion of the existing structure). In addition, the Lees failed to prove that their contemplated construction complied with applicable ordinances. In these circumstances, they failed to satisfy their burden to prove a clear, unequivocal, specific right to have a building permit issued, or a corresponding present, imperative, and unconditional duty on the City's part to issue such a permit.

Opinion by: Alok Ahuja, Judge

September 15, 2009

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.

