

↓ 96 Nev. 912, 912 (1980) Ferris v. City of Las Vegas ↓

EDWARD H. FERRIS, Appellant, v. CITY OF LAS VEGAS, NEVADA, Respondent.

No. 11908

December 29, 1980

620 P.2d 864

Appeal from judgment granting application for an injunction, Eighth Judicial District Court, Clark County; Joseph S. Pavlikowski, Judge.

↓ 96 Nev. 912, 913 (1980) Ferris v. City of Las Vegas ↓

City brought action to enjoin landowner's alleged commercial use of his property zoned residential. The district court granted injunction, and landowner appealed. The Supreme Court held that: (1) there was sufficient evidence to establish zoning violation by landowner even though city failed to introduce into evidence certified copy of existing zoning ordinances; (2) evidence supported finding that landowner did not have nonconforming use with respect to commercial activities on property; and (3) there was no abuse of discretion in lower court's refusal to apply doctrines of estoppel and laches against city.

Affirmed.

James J. Brown, Las Vegas, for Appellant.

George F. Ogilvie, City Attorney, and *Christopher G. Gellner*, Deputy City Attorney, Las Vegas, for Respondent.

1. Appeal and Error.

Supreme Court will not disturb finding of lower court when it is supported by substantial evidence.

2. Zoning and Planning.

The use of property in residential zone to gain vehicular access to business property is a commercial use in violation of zoning laws.

3. Zoning and Planning.

In action by city to enjoin landowner's zoning violation, sufficient evidence was introduced to establish landowner's commercial use of land zoned residential in violation of zoning laws, even though city failed to introduce into evidence certified copy of existing zoning ordinances.

4. Zoning and Planning.

A "nonconforming use" is a use which does not conform to restriction governing a zoned area, but which lawfully existed at time ordinance went into effect.

5. Zoning and Planning.

Generally, zoning ordinances do not limit right of landowner to continue nonconforming use in existence at time of adoption of ordinance.

6. Zoning and Planning.

Where landowner's use of property for commercial use began in the early 1950's, zoning ordinances under which city sought injunction were enacted in 1960, but predecessor zoning ordinances classified property as residential beginning in 1945, landowner's commercial use of property was unlawful from the outset, and, thus, landowner did not have a nonconforming use.

7. Zoning and Planning.

A landowner acquires no advantage from nonconforming use where it appears that such use was unlawful at time zoning regulation took effect.

8. Zoning and Planning.

An injunction is proper remedy where there is zoning violation, and the granting, refusing or dissolving of injunctions is a matter of discretion.

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↓ 96 Nev. 912, 914 (1980) Ferris v. City of Las Vegas ↓

9. Zoning and Planning.

Where landowner's commercial use of land zoned residential in violation of zoning ordinances began in early 1950's, city was notified of violations in 1974, in 1975 and 1976 misdemeanor citations were issued, and in 1977 city brought action to enjoin landowner's violations, district court did not abuse discretion in refusing to apply doctrines of estoppel and laches against city in the injunction action.

OPINION

Per Curiam:

Appellant owns two houses in an area zoned R-1 (residential). Since the early 1950's, appellant has used the driveway between the two houses as a means of ingress and egress from his business, Ed Ferris Automotive Center. Appellant also has used the rear yards to park and store vehicles being serviced at his business. Pursuant to its zoning ordinances,¹ the city brought an action to enjoin appellant's alleged commercial uses of his R-1 property. The district court granted the injunction, and this appeal followed.

1. Appellant first contends that there is insufficient evidence to establish a zoning violation. This contention is based primarily on the city's failure to introduce into evidence a certified copy of the

existing zoning ordinances.

[Headnotes 1-3]

This court will not disturb the finding of the lower court when it is supported by substantial evidence. *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979). In his answer to the city's complaint, appellant admitted that the houses are located in an R-1 zone. In addition, there is substantial evidence in the record to show that the property was used for commercial purposes. The use of property in a residential zone to gain vehicular access to business property is a commercial use in violation of zoning laws. *See City and County of San Francisco v. Safeway Stores*, 310 P.2d 68 (Cal.App. 1957); *Angel v. Board of Adjustment of Twp. of Franklin*, 262 A.2d 890 (N.J. Super.Ct.App.Div. 1970); *City of Providence v. First National Stores, Inc.*, 210 A.2d 656 (R.I. 1965).

[Headnotes 4, 5]

2. Appellant next contends that even if a zoning violation was established, he has a nonconforming use with respect to

¹ Las Vegas City Code (hereafter L.V.C.C.) 11-1-6(A)(7)(a) states that only vehicles owned by the permanent resident of residential property may be stored on the property. L.V.C.C. 11-1-11(A) lists permissible uses of R-1 property. Use as an entrance to business property is not one of the permitted uses.

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↓ 96 Nev. 912, 915 (1980) *Ferris v. City of Las Vegas* ↓

the commercial activities on the property. A nonconforming use is a use which does not conform to the restriction governing a zoned area, but which lawfully existed at the time the ordinance went into effect. L.V.C.C. 11-1-7. Generally, zoning ordinances do not limit the right of a landowner to continue a nonconforming use in existence at the time of the adoption of the ordinance. *Pederson v. County of Ormsby*, 86 Nev. 895, 478 P.2d 152 (1970); *State ex rel. Davie v. Coleman*, 67 Nev. 636, 224 P.2d 309 (1958).

[Headnotes 6, 7]

Appellant argues that he has a nonconforming use because he began his commercial use of the residential property prior to the enactment of the zoning ordinances under which the injunction was sought. Appellant's use of the driveway began in the early 1950's. L.V.C.C 11-1-6(A) and 11(A) were enacted in 1960. However, predecessor ordinances classified the property as residential beginning in

1945. Thus, appellant's use was unlawful from the outset. A landowner acquires no advantage from a nonconforming use where it appears that such use was unlawful at the time the zoning regulation took effect. *Botchlett v. City of Bethany*, 416 P.2d 613 (Okla. 1966). The evidence in this case supports the finding that appellant did not have a nonconforming use. *Pederson v. County of Ormsby*, *supra*.

3. Appellant's final contention is that the city's action should have been barred by estoppel and laches. Appellant's commercial use began in the early 1950's. The city was notified of the violations in 1974. In 1975 and 1976 misdemeanor citations were issued to appellant. In 1977 the city brought this action for an injunction.

[Headnotes 8, 9]

An injunction is a proper remedy where there is a zoning violation. L.V.C.C. 11-1-26(D); *Smith v. City of Las Vegas*, 80 Nev. 220, 391 P.2d 505 (1964). The granting, refusing or dissolving of injunctions is a matter of discretion. *Coronet Homes, Inc. v. Mylan*, 84 Nev. 435, 442 P.2d 901 (1968); *accord*, *Shakey's Incorporated v. Martin*, 430 P.2d 504 (Idaho 1967); *South Shore Homes Ass'n v. Holland Holiday's*, 549 P.2d 1035 (Kan. 1976); *State Land Board v. Heuker*, 548 P.2d 1323 (Or.App. 1976). The city took action against appellant soon after receiving notice of the zoning violations. We perceive no abuse of discretion in the district court's refusal to apply the doctrines of estoppel and laches in this case.

Affirmed.

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