

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-2459MN

Michael W. Kennedy and Shirley Kennedy,	*	
	*	
	*	
Plaintiffs - Appellants,	*	
	*	
v.	*	
	*	On Appeal from the United
	*	States District Court
City of North Oaks, a Minnesota Statutory City, North Oaks Homeowners Association, a Minnesota Non-Profit Corporation, Seth Colton, Richard Lange, William Frey, Shirley Ray and Thomas Watson, individually and as Members of the North Oaks City Council,	*	for the District of
	*	Minnesota.
	*	
	*	[Not To Be Published]
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	*	
	*	
	*	
Defendants - Appellees.	*	

Submitted: February 12, 2001

Filed: July 17, 2001

Before RICHARD S. ARNOLD and HANSEN, Circuit Judges, and KORNMANN,¹
District Judge.

¹The Hon. Charles B. Kornmann, United States District Judge for the District of South Dakota, sitting by designation.

PER CURIAM.

The principal issue in this appeal, as presented by appellant, is the validity of Ordinance 59 of the City of North Oaks, Minnesota, under both state and federal law. The District Court² granted summary judgment for the defendants without reaching the merits.

We affirm, substantially for the reasons given in the well-reasoned opinions of the District Court. In particular, the plaintiffs have not shown by sufficient evidence that they have ever suffered an injury in fact by reason of the challenged Ordinance. The summary-judgment record establishes that the City has never applied the ordinance, nor has it threatened to apply it to the plaintiffs. Moreover, the plaintiffs have never attempted to develop their property.

We hold that there is no genuine issue of material fact with respect to the justiciability of the plaintiffs' claims. The judgment of the District Court is

Affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

²The Hon. Richard H. Kyle, United States District Judge for the District of Minnesota.