

Land Use Case Briefs

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Gray v. Osborn, et. al. (Iowa Court of Appeals, January 18, 2007)

Notations on the face of a plat alone are insufficient to create an easement

The Grays own Lot 5 in Maple Ridge Estates I (MRE1), which was platted in 1996. The defendants each own lots in Maple Ridge Estates II (MRE2), platted in January of 2000. The defendants' lots both adjoin the Gray's lots. When MRE1 was platted, a fifty-foot easement across the north part of Lot 5 was sketched on the plat. Other than the sketch, the only reference on the plat to the easement were the words "ingress and egress." Aside from this bare reference, there was no other writing concerning the easement nor any conveyance, grant or reservation of an easement. In the spring of 2003, Osborn constructed a partial driveway on the fifty-foot strip marked on the plat of Lot 5. Prior to that time, Osborn, and the other defendants accessed their lots by use of a gravel lane to the north of Grays' property and west of the defendants' properties. The gravel lane had always been used to access these properties and at the time of trial was still used for that purpose. The Grays filed suit, contending Osborn trespassed and encroached on their property. Osborn answered, asking the court to declare the existence of a fifty-foot easement for ingress and egress on Lot 5 MRE1. The other defendants were allowed to intervene because they would be impacted by the action.

The defendants claimed the two plats are sufficient to form a valid easement as they demonstrate an intent to create the easement and give notice to the plaintiffs of the existence of the easement. The plats were made at different times and while instruments that are part of the same transaction are to be read together; however, the court concluded that the language in the second plat cannot create an easement across the Grays' land. "An instrument creating an easement must use words that clearly show an intention to confer an easement and should describe with reasonable certainty the easement created and the dominant and servient tenements and as a general rule requires the same accuracy of description as other conveyances." Because an express easement is a permanent interest in another's land with a right to enter at all times and enjoy it, the easement must be founded upon a grant in writing or upon prescription.

Heintz, et. al. v. City of Fairfax and City of Cedar Rapids (Iowa Court of Appeals, February 28, 2007)

Challenges to the procedures followed in reaching annexation moratoria agreement did not void the agreement

In 2001, Cedar Rapids and Fairfax entered into an intergovernmental agreement under *Iowa Code 368.4* (annexation moratoria) providing that Cedar Rapids would allow Fairfax to connect to a sewer line within an area of land situated between the two cities. The agreement also limited future annexations between the two cities. The agreement drew a line between the cities and imposed a twenty-four-year moratorium on annexing land located on the other side of the line. In 2004, plaintiffs, who are owners of property in an area between the cities, filed a petition requesting the court find the intergovernmental agreement invalid, citing three arguments. First,

plaintiffs contended the agreement was invalid because the notices published by the cities did not contain a legal description of the land potentially affected by the intergovernmental agreement. The court rejected this argument. Noting that the statute simply requires “notice and hearing,” without further elaboration, the court refused to read this language to necessitate a *legal* description or map of the property affected.

Second, plaintiffs argued the agreement was invalid because the cities did not provide a copy of the agreement to the City Development Board (Board) within thirty days of its enactment as required by section 368.4. Cedar Rapids and Fairfax contend this filing provision is directory, rather than mandatory, therefore the failure to file the agreement in a timely manner does not constitute sufficient grounds to invalidate the agreement. Cedar Rapids did, in fact, file a copy of the agreement with the Board thirty-three months after the agreement was signed. The court determined the late filing was not fatal to the agreement, distinguishing between “mandatory and directory statutes.” It concluded that the filing deadline was “directory” because it was “not essential to accomplishing the principal purpose of the statute but was designed to assure order and promptness . . . A violation [of a directory statute] will not invalidate subsequent proceedings unless prejudice is shown.”

Finally, plaintiffs argued the moratorium agreement was invalid because the statute limits moratorium agreements to ten years, and the duration of this agreement was twenty-four years. The cities conceded the duration provision was invalid, but argued the remaining portions of the agreement could be enforced. The court agreed with the cities, and held that the agreement was still in effect, given that ten years had not yet passed when plaintiffs filed their challenge.

Gardner v. Wandersee, et. al. (Iowa Court of Appeals, April 11, 2007)
Proposed hog confinement on nearby land is not an “area of environmental concern” required to be disclosed in a real estate seller’s disclosure statement.

In July 2003, the Gardners entered into a contract to purchase forty acres of real estate and a home in Louisa County from the Wandersees. The parties closed on the real estate on August 14 and the Gardners moved in on August 16. On September 10, 2003, the Gardners became aware a hog confinement unit was being planned on the property across the road from their home. They learned that the Wandersees had signed a petition contesting it on May 21, 2003. The Wandersees did not disclose the hog confinement in the seller disclosure of property conditions signed on February 1, 2003, and presented to and signed by the Gardners on July 12, 2003. The Gardners filed suit against the Wandersees, the realtor who represented the Gardners, and the realtor for the Wandersees, for failure to disclose the known existence of the hog confinement unit. At trial, the Gardners sought a jury instruction stating that “a hog confinement unit is an environmental concern to be disclosed in a disclosure statement” based on the supreme court’s ruling in *Worth County Friends of Agriculture v. Worth County*, in which the court stated:

Large confinements generate a staggering amount of animal waste, which gives rise to legitimate concerns about air quality and contamination of lakes and streams, as well as underground water.”

The trial court denied the instruction on the basis that it “is not technically an accurate statement of the law,” and the Court of Appeals affirmed the decision of the trial court, stating that “the [*Worth County*] case in no way finds as a matter of law that hog confinement units are environmental concerns that require disclosure ...” The Court of Appeals further concluded that the Gardners were not prejudiced by the district court’s refusal to give the requested instruction because there was evidence presented to the jury that the Wandersees did not believe the hog confinement was being built.