

Land Use Law Cases

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Gray v. Osborn, et. al. (Iowa Supreme Court, October 5, 2007)

Notation of an easement on subdivision plats was sufficient to create the easement as a matter of law.

Note: This Supreme Court case overrules the Court of Appeals case that appeared in the Spring 2007 CoZo newsletter. Refer to the Spring 2007 newsletter for the relevant facts of this case.

The Iowa Supreme Court overruled the Court of Appeals decision considering whether two successive plats could be read together to create an express easement. The Court of Appeals determined that an easement was not created by the plat notations. The Supreme Court held that two plats of adjacent land need not be considered together when one creates an express easement on the property in question.

The Court stated that intention of the parties is paramount when determining the existence of an easement. Maple Ridge Estates I (MRE1) plat clearly denotes an intention to create an easement. The specific term “easement” is used and the easement’s purpose – ingress and egress – is explicitly noted. The Grays argued that a detailed description of the easement’s purpose was required; the Court rejected this argument and held that the terms “ingress” and “egress” were sufficiently comprehensive. The Grays further argued that because the plat does not specifically state which property was to be the easement’s dominant estate, the easement must fail. The Court held that ambiguity is to be “resolved by resorting to the intention of the parties as gleaned from the instrument itself and the surrounding circumstances, including subsequent conduct by the parties.” Following these guidelines and considering the totality of surrounding circumstances, the property to the east of the area in question was delineated as the dominant estate. The Court conceded that “construing together deeds and mortgages made at different times, by different parties, with different objects, having nothing in common except that they refer to some one or more of adjoining lots with which they are concerned” is ordinarily not sufficient to create an easement; however, in this case both plats were filed by a common owner, for arguably the same purposes and the second plat, Maple Ridge Estates II (MRE2), evidences the easement’s intent and qualifies as sufficient conduct by the parties.

McClure v. Verizon Wireless, et. al., Boone County and Boone County Board of Adjustment (Iowa Court of Appeals, October 12, 2007)

Publishing notice in the local newspaper was sufficient to apprise neighbor of board of adjustment hearing on conditional use permit.

The property of McClure’s neighbor was the proposed site for a cell phone tower. An application for a conditional use permit to build a wireless communication tower was filed with the Boone County Zoning Commission on behalf of Verizon Wireless. The Zoning Commission published notice of the public hearing in the local newspaper. The notice stated the purpose of the hearing, the location of the property and stated “Persons wishing to appear at such hearing

may do so in person, or by attorney, or other representative.” McClure did not see the notice and did not attend the hearing. The Commission recommended approval of the conditional use permit and the matter proceeded to the Board of Adjustment.

The Board of Adjustment published two notices in the local newspaper of the hearing; one to notify the public of the hearing’s original date and another for notification of the rescheduled date. The last notice appeared seven days prior to the Board’s hearing. McClure did not see either of these notices and the Board approved the permit application.

Cell tower construction began in November 2003 and was completed by the spring of 2004. McClure requested that the Board reopen the hearing concerning the permit approval; but the board denied the request. Nearly two years later, McClure filed a petition for declaratory judgment. The district court granted summary judgment in favor of the county and Verizon, and stated that McClure had received adequate notice of the Board’s hearing.

On appeal McClure argued that he should have been notified personally of the Board of Adjustment hearing via U.S. mail or personal service. [per Luke Nelson – the Boone County zoning ordinance does not require mailed notice of board of adjustment hearings, only newspaper publication]. The Court of Appeals concluded that the district court did not err in its decision and affirmed the ruling concluding that published notice in the local newspaper seven days prior to the Board’s hearing was a “reasonable” method of notification for such a matter.

Doane v. Cerro Gordo County (Iowa Court of Appeals, November 15, 2007)

Facts sufficient to establish county’s 60-foot wide prescriptive easement over old roadway.

From 1949 to 1981 McManus owned farmland in Cerro Gordo County. In 1981 Doane purchased the farmland from McManus. The road at issue (Ulmus Rd.) runs adjacent to the boundary of the McManus/Doane farmland and was legally established in 1874. In 1875, the road was vacated by the county board of supervisors. The road was the only access to the McManus homestead. Despite being vacated, the county never taxed the land it believed was its road right-of-way.

In 1934 the county graded the road and installed a culvert. Since 1934, the county continually maintained the road to some degree. After Doane purchased the land in 1981, the homestead and driveway were torn up and the land was put into crop production. After destruction of the homestead, only a 500-foot northern portion of Ulmus was maintained by the county, with the exception of one culvert south of the 500 feet.

In 2003, the county made improvements to Ulmus, including tree removal, and placed stakes on Doane’s property to indicate the area assigned for future grading and improvements. Road grading and construction was completed in 2004 at the county’s expense.

December 2005, Doane filed petition to quiet title and in December 2006 the trial court ruled the county had an easement by prescription for the disputed roads. The appeals court upheld the trial court’s decision and stated that because the county maintained the road to varying degrees since 1934 at the public’s expense, the county displayed conduct similar to that of a landowner. Iowa

Code §564.1 (2005) requires that a landowner receive express notice of an adverse possession claim. The appeals court ruled that Doane received express notice each time he received a tax notice that excluded the Ulmus from the land being taxed; also Doane was aware of the maintenance of the Ulmus by the county at the county's expense. The Court of Appeals held that the county had proven a prescriptive easement for the Ulmus based on its actions and Doane's notification of such actions.