FILED
JUN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BEAVER KREEK DEVELOPMENT CORPORATION, an Iowa Corporation)

Plaintiff-Appellee,)

vs.)

THE CITY OF NORTH LIBERTY, JOHNSON COUNTY, IOWA A Municipal Corporation)

Defendant-Appellant.)

1-45
2-64561

Filed June 30, 1981

Appeal from Johnson District Court. William Eads and Thomas Horan, Judges.

Defendant city appeals from a judgment for plaintiff developer in the developer's action to obtain reimbursement under a city ordinance for that portion of a subdivision's storm sewer construction costs that was attributable to the need to accomodate water draining onto the subdivision from outside it. AFFIRMED.

Marion R. Neely of Neely Law Offices, Iowa City, Ia., for defendant-appellant.

Phillip A. Leff, of Leff, Leff, Leff, Haupert & Traw, Iowa City, Ia., for plaintiff-appellee.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant city appeals from judgment for plaintiff developer in an action to obtain reimbursement under a city ordinance for a portion of storm sewer costs. We affirm. Our review is on error assigned. Iowa R. App. P. 4.

I. The city asserts the trial court erred in finding, as a matter of law, that the city by enacting its ordinance intended to limit the common law duty of the developer as owners of a servient estate to take storm water from adjoining land. We find the trial court did not modify the common law duty but interpreted the ordinance to place the obligation on the city to pay the developer for sewer costs in excess of service to the subdivision. The developer continued to be obligated to provide service for adjoining surface water. The language of the ordinance when given its plain and rational meaning in this regard is clear and unambiguous. [1] We will not resort to any other rules of construction in this circumstance. See Heins v. City of Cedar Rapids, 231 N.W.2d 16 (Iowa 1975). Accordingly, we do not find error in the trial court's conclusion of law.

II. The city asserts trial court erred in finding the developer was required by the city to provide a storm drain system greater than needed to service the subdivision. We disagree. The trial court determined the city required the developer to provide the system that was installed by requesting modification of subdivision proposals and by subsequently approving the plan. There is substantial evidence to support this finding and we are bound, therefore, by it. See Iowa R. App. P. 14(f)(1).

As to the city's assertion that evidence concerning a city engineer's participation be excluded on the grounds of violation of terms of employment or conflict of interest, we find the issue was never presented by proper objection to the trial court and is not preserved for our review. In any event, any consideration of the engineer's prior relationship with defendants goes to the credibility of the evidence presented, and is not

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[1] "5.3 Storm Drains. The developer shall provide the subdivision with adequate drains, ditches, culverts, complete bridges, storm sewers, intakes and manholes, to provide for the collection and removal of all surface waters, and these improvements shall extend to the boundaries of the subdivision so as to provide for extension by adjoining properties. In the event that the City requires a storm drain system which is greater than is needed to service the subdivision itself, the City of North Liberty shall pay on a pro rata basis for the excess cost over that which is necessary to service the subdivision itself. Other subdivisions which connect with the said systems shall on a pro rata basis reimburse the City for the cost of the additional system which shall service that subdivision and meet all City specifications."

grounds for exclusion.

III. The city asserts the developer should be estopped from claiming payment under the ordinance because no demand for reimbursement was made before the contracts for the installation of the storm sewer were signed. The trial court found no requirement of advance notice or demand appeared in the ordinance. We agree. We find no merit in city's argument of its inability to follow bidding procedures required as the city was not a contracting party.

IV. Finally, city argues the excess cost to the subdivision should not have included the cost of twin culverts installed. It asserts the evidence to support the necessity of this cost was not sufficient. We find sufficient evidence to support the installation of these culverts was in response to the city's requirement. No error is asserted as to the cost calculations given at trial and found by the trial court.

We affirm the trial court in all matters raised on appeal.

AFFIRMED.