IN THE COURT OF APPEALS OF IOWA

No. 1999-565 (9-826) / 99-0200
Filed July 12, 2000

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JUL 1 2 2000
CLERK SUPREME COURT

GUY L. ROBERTS,
Plaintiff-Appellant,

vs.

CITY OF DES MOINES, DES MOINES CITY COUNCIL, JOHN DORRIAN, ARCHIE BROOKS, PRESTON DANIELS, GEORGE FLAGG, CHRISTINE HENSLEY, MICHAEL McPHERSON, and TOM VLASSIC,
Defendants-Appellees,

MIDAMERICAN ENERGY COMPANY,
Intervenor-Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Guy Roberts appeals from a district court ruling affirming the action of the Des Moines City Council which reversed the decision of the Historic District Commission concerning the proper location for an electric pole. **AFFIRMED.**

Keith D. Haroldson of Haroldson Law Firm, Johnston, for appellant.

Roger K. Brown, Assistant City Attorney, for appellee-City.

Gregory R. Brown and Timothy S. Eckley of Duncan, Green, Brown, Langeness & Eckley, P.C., Des Moines, for intervenor-appellee.

Considered by Streit, P.J, and Zimmer and Hecht, JJ.

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HECHT, J.

Guy Roberts appeals from a district court decision which affirmed the action of the Des Moines City Council. The City Council reversed the decision of the Sherman Hill Historic District Commission, which had denied MidAmerican Energy Company's request to replace an electric pole. Roberts claims the City Council failed to comply with the municipal code. We affirm.

In 1988, Iowa Power & Light Company, now known as MidAmerican Energy Company, filed an application with the Commission for a certificate of appropriateness to improve electric service in the Sherman Hill area. The application stated most poles would be replaced. The Commission granted a certificate, which expired on January 17, 1990.

In spring 1993, MidAmerican installed a new, larger utility pole on the corner of 17th and Pleasant Streets. The previous pole was about twenty feet high, and the new pole is about forty-five feet high. Roberts, who owns property in the Sherman Hill area and who was also the chairman of the Commission, filed a complaint with the Commission concerning the new pole. MidAmerican then filed a new application for a certificate. The Commission denied the certificate, recommending the pole be placed "at a more feasible location in conjunction with the historic district."

As permitted by city ordinance, MidAmerican appealed the Commission's decision to the City Council. The City Council reversed the decision of the Commission and granted a certificate to MidAmerican. The City Council found:

> a. There was previously a power pole at this location. Relocation of the existing power pole will simply move it into someone else's front yard.

> b. The provision of adequate and reliable electric service is a necessity of modern life. The power pole in question is one of may [sic] poles necessary for an adequate and reliable electric distribution system within the Sherman Hill Historic District and the City of Des Moines.

Roberts appealed to the district court.[1] The court found the City Council appropriately reviewed and reversed the decision of the Commission. The court determined the City Council's actions were supported by the facts, the law, and the record. Roberts appealed.

This case was filed as an equity action and our review is de novo. See Iowa R. App. P. 4. We give weight to the findings of the district court, but are not bound by them. Iowa R. App. P. 14(f)(7).

Iowa Code section 303.34(3) permits cities to establish commissions to deal with matters involving areas of historical significance. Ordinances enacted under authority delegated to local governments are generally considered extensions of state statutes and, thus, liberally construed to effect their purpose. *City of New Hampton v. Blayne-Martin Corp.*, 594 N.W.2d 40, 45 (Iowa 1999).

The ordinance in question here provides:

> In deciding such appeal, the city council shall consider whether the commission has exercised its powers and followed the guidelines established by law and ordinance, and whether the commission's action was patently arbitrary or capricious.

We find the ordinance does not require the City Council to make specific findings the Commission's action is arbitrary or capricious. The City Council is

[1] Roberts's appeal to the district court was initially dismissed for lack of standing. The Iowa Supreme Court held Roberts did have standing, and the case was reversed and remanded for further proceedings. *Roberts v. City of Des Moines*, No. 96-332 (Iowa Apr. 23, 1997).

only required to consider this issue. However, we determine the City Council implicitly found the Commission's action was arbitrary and capricious.

The terms "arbitrary" and "capricious" mean the action complained of was without regard to the law or facts. *Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 764 (Iowa 1998). The Commission's action denying the certificate of appropriateness to MidAmerican Energy was arbitrary and capricious because at the time of the decision there was no evidence the pole could feasibly be placed in another location. Furthermore, the Commission had previously approved a certificate for the same project, although the certificate expired before the project was completed.

We find the City Council's reasons for issuing the certificate of appropriateness to MidAmerican Energy are supported by the record. There was previously a pole at the corner of 17th and Pleasant Streets. The pole was necessary for electric service to the area. There was no good alternative location for the pole.

We affirm the decision of the district court which upheld the action of the City Council in reversing the decision of the Commission and granting a certificate of appropriateness to MidAmerican Energy. Costs of this appeal are assessed to Roberts.

AFFIRMED.