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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HAROLD B. HESLINGA,	)	
Plaintiff-Appellant,	)	Filed December 21, 1978
vs.	)	
CITY OF OSKALOOSA, IOWA,	)	
Defendant-Appellee,	)	
VICKERS PETROLEUM CORPORATION, FRANCHISE REALTY INTERSTATE CORPORATION, and McDONALDS,	)	687 2-61446
Intervenors.	)	

Appeal from Mahaska District Court - Charles N. Pettit, Judge.

Plaintiff appeals from judgment denying his petition to enjoin defendant city from vacating and selling an alley. Affirmed.

Harold B. Heslinga, pro se.

James P. Rielly, of Oskaloosa, counsel for appellee.

Michael P. Brice, of Oskaloosa, counsel for intervenors.

Submitted to Oxberger, C. J., Donielson, Snell and Carter, JJ.

DONIELSON, J.

Plaintiff filed a petition for injunctive relief to restrain defendant City of Oskaloosa from selling the vacated portion of a city street on April 5, 1977. The plaintiff is a holder of a Sheriff's certificate of purchase for a nearby lot. The trial court ruled against plaintiff on all six counts filed and dismissed the petition in a decree filed December 5, 1977. None of the six counts are at issue here; the sole issue on appeal is which of two provisions of the Code determines the notice procedure a city must use to vacate an alley.

Near the end of trial to the court, plaintiff was allowed to amend his petition to conform to the proof. He then alleged that defendant city had failed to follow the notice provisions of §§ 306.10 and 306.12, The Code, before disposing of municipal property. In its Findings of Fact and Conclusions of Law, the trial court declined to rule on that portion of plaintiff's amended petition, stating it "need not be resolved by the court for the reason that such issue is outside the pleaded issues of the case." Plaintiff did not move to enlarge or amend the findings of the trial court, but asks us on appeal to consider whether the city has followed the correct statutory notice procedure. We believe the trial court should have ruled on this portion of the petition once it had allowed plaintiff to amend the petition so as to include the issue. However, under our **de novo** review, we do not believe a ruling would have changed the trial court's result.

Plaintiff urges that § 306.10, The Code, covers the vacation of municipal alleys, and the notice provisions of §§ 306.11 and 306.12 require a hearing with notice published and sent by certified mail to adjoining property owners. We agree with defendant that § 364.12(2)(a), which deals with the power and duties of cities, more properly covers defendant's actions. Section 364.12(2)(a) states: "Public ways and grounds may be temporarily closed by resolution. Following notice as provided in § 362.3, such public ways and grounds may be vacated by ordinance." Notice as provided by § 362.3 requires published notice at least four days prior to the hearing. The defendant city complied with these provisions. The provisions of chapter 364 dealing specifically with city streets prevail over the more general provisions of chapter 306 dealing with highways. Section 4.7, The Code, 1977; See Op. Atty. Gen. (Berger) September 13, 1977. The trial court did not err when it dismissed plaintiff's petition.

AFFIRMED.