

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 28 1988

CLERK SUPREME COURT

HENRY HANSEN,)

Plaintiff-Appellant,)

vs.)

120

CITY OF MUSCATINE,)

8-316
87-1679

Defendant-Appellee.)

Appeal from the Iowa District Court for Muscatine County (No. C4213-687), John A. Nahra, Judge.

Plaintiff appeals a district court ruling upholding defendant city's denial of a subdivision plat. **AFFIRMED.**

Eric M. Knoernschild of Hintermeister & Knoernschild, Muscatine, for plaintiff-appellant.

Harvey G. Allbee, Jr., of Allbee, Allison & Denning, Muscatine, for defendant-appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

PER CURIAM

Plaintiff-appellant Henry Hansen appeals a trial court's decision upholding the action of the city council of defendant-appellant, the City of Muscatine, in refusing to approve a plat submitted by plaintiff to the city council for approval. We affirm.

The land plaintiff seeks to plat is located less than two miles outside the city limits of Muscatine. It is zoned heavy industrial.

In 1985 plaintiff submitted a plat to the Muscatine Planning and Zoning Commission. The plat was approved by the Commission but ultimately rejected by the city council at their December 18, 1986, meeting. Plaintiff appealed to the district court which affirmed the council's action.

Plaintiff appeals contending the council's denial of the plat was improper.

Iowa Code section 409.14 (1987) provides in relevant part:

409.14 Approval condition to filing and recording. No county recorder shall hereafter file or record, nor permit to be filed or recorded, any plat purporting to lay out or subdivide any tract of land into lots and blocks within any city having a population by the latest federal census of twenty-five thousand or over, or within a city of any size which by ordinance adopts the restrictions of this section or, except as hereinafter provided, within two miles of the limits of such city, unless such plat has been first filed with and approved by the council of such city as provided in section 409.7, after review and recommendation by the city plan commission in cities where such commission exists.

Our review is de novo but if the facts found by the court leave the reasonableness of the council's decision open to a fair difference of opinion, we may not substitute our judgment for that of the council. Oakes Const. Co. v. City of Iowa City, 304 N.W.2d 797, 799 (Iowa 1981); Weldon v. Zoning Board, 250 N.W.2d 396, 401 (Iowa 1977).

It is agreed the plat conforms to the laws of the State of Iowa and all ordinances of the city.

The city determined the plat did not conform to their general city plan and determined the plat would present a possible traffic hazard.

The plat shows two city streets which will enter the yet unconstructed U.S. Highway 61 by-pass at the point of two vehicular class "C" accesses. The two class "C" accesses were granted by the Department in 1980. A class "C" access is the lowest class of highway access. It is defined as an access thirty-five feet in width for the purpose of providing access to a farm or field or no more than three dwelling units, and no more than twenty vehicles per hour should enter or exist from that access point.

There is no evidence the access will support the anticipated traffic from the area plaintiff seeks to plat.

We determine the council was correct in determining there would be traffic congestion at the access roads.

Councils may consider access in passing on plats. Oakes Const. Co. v. City of Iowa City, 304 N.W.2d at 806 (Iowa 1981).

AFFIRMED.