FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

381

ROBERT W. SMITH and LORRAYNE A. SMITH, a/k/a LORRAYNE KOERPERICK; DANE E. SMITH and NICOLETTE H. SMITH; JOHN CHRISTENSEN and VERNA CHRISTENSEN; S. FRANK MURRAY and BETTY L. MURRAY; WILLIAM H. SMITH and ELIZABETH G. SMITH; REUBEN PIRNER and JEAN PIRNER; RICHARD STRUB and LOUISE STRUB; ULYSSES S. LEWIS and MARIE G. LEWIS; JAMES N. CLARK and PAULINE D. CLARK; and GUY A. GARD and JUDITH A. GARD,

Plaintiffs-Appellants,

vs.

THE CITY OF DUBUQUE,

Defendants-Appellee.

Filed June 25, 1985

5-111
84-1318

Appeal from the Iowa District Court for Dubuque County - Thomas H. Nelson, Judge.

Plaintiffs appeal an adverse summary judgment that dismissed their petition to enjoin defendant from implementing a paving project and enforcing the special assessment for the project. REVERSED.

James H. Heckmann and David C. Bauer, Dubuque, Iowa, for plaintiffs-appellants.

Barry A. Lindahl, City Solicitor, and William G. Blum, Dubuque, Iowa, for defendant-appellee.

Heard by Snell, P.J., Schlegel, and Sackett, JJ.

SACKETT, J.

Plaintiffs appeal an adverse summary judgment that dismissed their petition to enjoin defendant, the City of Dubuque, from implementing a paving project and enforcing the special assessment for the project. Plaintiffs assert: (1) that the city council approved the project and assessment without complying with statutory notice provisions; and (2) that the council had no jurisdiction to approve the project and assessment because the council allegedly violated a municipal ordinance. We reverse.

I. Standard of Review. A motion for summary judgment may be granted when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). Our scope of review in this equity action is de novo, Iowa R. App. P. 4. We consider the facts presented and whether the City of Dubuque was entitled to judgment as a matter of law.

II. Facts. The property owners were properly notified of a hearing to be held on June 4, 1984, at which the Dubuque City Council would consider two resolutions of necessity relating to a proposed street paving project. Certain property owners attended the meeting and voiced their objections. The resolutions were defeated by a vote of 5 to 2. The council went on to consider other matters. The meeting continued past midnight and before adjourning, the council decided to hold a special meeting on June 8.

At the June 8 meeting, a motion was made to reconsider the paving resolutions. They were voted on and adopted.

Plaintiff property owners filed a petition to enjoin defendant from implementing the paving project and making assessments against their property. The trial court sustained defendant's motion for summary judgment.

III. Statutory Notice. Plaintiffs claim the city council violated the statutory notice provisions. Defendant argues it complied with the provisions of Iowa Code section 384.50 (1985).

Plaintiffs do not dispute they received proper notice of the June 4 meeting and were allowed to voice their objections at the meeting. They contend the notice does not extend to the June 8 meeting, and thus defendant was without authority to adopt the resolutions at that meeting.

In interpreting whether plaintiffs received proper notice, we must consider not only section 384.50, but also section 384.51 and Dubuque, Iowa, Ordinance 2-48. Section 384.51 provides a council "may adopt or amend and adopt the proposed resolution of necessity, or may defer action until a subsequent meeting." Ordinance 2-48 requires "a motion to reconsider shall not be entertained except on the same day, or at the next succeeding regular meeting." Under sections 384.50 and .51, the June 8 meeting was proper and action taken was within the council's authority. However, the Dubuque council's authority is also subject to its own city statutes. Ordinance 2-48, while limiting the time in which motions to reconsider can be made, also satisfies certain basic due process requirements of notice and fair dealing. In Gilchrest & Co. v. City of Des Moines, 131 N.W. 776, 779 (Iowa 1911), the court said:

> The manifest design of these statutes is to afford abutting property owners an opportunity to be heard on the propriety of making the proposed improvement, the character of that to be made and in a way to bring them in as parties to the enterprise. They are to bear the burden of the cost. . . .

While the explanation referred to state statute notice requirements, it is also applicable to local ordinances. Dubuque property owners, relying on their own city ordinance, should be able to come to a meeting, express their objections and rely on the vote taken at that time, knowing any later motion to reconsider must be taken at that meeting or the next regular meeting.

Defendant argues the action was proper because the June 8 meeting was merely a continuation of the prior meeting according to McMurray v. City of

Pella, 246 Iowa 313, 67 N.W.2d 620 (1954). In McMurray, a public hearing was held and persons presented their objections. The council deferred voting on the resolution until the third meeting. Each time the council made it clear the meetings were adjourned until a later time when the vote would be taken. The court found the adjourned meeting was a continuation of the original. Id. at 316, 67 N.W.2d at 622.

The facts in this case are distinguishable from those in McMurray. Here the vote was taken at the first meeting and plaintiffs likely believed the resolution had been defeated. The council went on to other matters. Later, after midnight, when plaintiffs had left, the council scheduled a special meeting before the next regular council meeting. At that interim meeting, of which no notice was given, a motion to reconsider was made and passed by unanimous vote.

Plaintiffs undoubtedly believed if there was any further action to reconsider, it would be at the next regular meeting. Fundamental fairness demands the city be held to the mandates of its own ordinance.

We likewise reject defendant's reliance on Slater v. Incorporated Town of Adel, 324 N.W.2d 482, 485 (Iowa 1982), for its contention no additional notice is required where the later resolution does not extend the boundaries, increase assessments or add additional improvements. Slater determined that section 384.51 of the Code did not require a second notice. The effect of a local ordinance, as we have here, was not at issue.

"Statutory requirements as to notice must be strictly observed, or proceedings involving special assessments will be held void." Roznos v. Town of Slater, 254 Iowa 77, 82, 116 N.W.2d 471, 474 (1962). When defendant city did not entertain the motion to reconsider on the same day or at the next regularly scheduled meeting, another notice was required.

We determine defendant lacked jurisdiction to adopt the paving plan at the June 8 meeting because notice requirements were not met. Defendant is not entitled to judgment as a matter of law and the summary judgment should not have been sustained.

REVERSED.