

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 17, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-3280

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STEVEN D. PEDERSON,

Plaintiff-Appellant,

v.

**TOWN BOARD OF THE TOWN OF WINDSOR,
AND TOWN OF WINDSOR,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Vergeront, JJ.

VERGERONT, J. Steven D. Pederson appeals from an order affirming the rejection by the Windsor Town Board (board) of his four-lot certified survey map. We conclude that the board's rejection of the certified survey map on the ground that Pederson was unwilling to pay for improvements to an affected substandard road was not arbitrary, unreasonable, discriminatory or contrary to law. We therefore affirm.

BACKGROUND

Pederson owns a fifty-nine acre tract of land in the Town of Windsor. He submitted a certified survey map (CSM) to the board seeking approval for the creation of four lots of five and one-half acres each on this tract. The sole public access to the four lots is from Martinson Road. Martinson Road is adjacent to, and not part of, Pederson's tract. The Town of Windsor Planning Report, in response to Pederson's preliminary CSM, stated that Martinson Road is a substandard single purpose town road, providing access to one home at the end of the road, and that certain improvements were needed if it were to function as a road for four building sites. The Town of Windsor Plan Commission (plan commission) moved that Pederson address the substandard condition of Martinson Road and other matters.

At a public hearing before the board held on Pederson's proposed final CSM, Pederson proposed sharing the cost of improving Martinson Road with the Town of Windsor. His petition was held in abeyance with his approval and taken up at a subsequent hearing before the board on July 27, 1993. At that time, there was testimony that Martinson Road was used as a driveway for one farm. The four proposed lots would increase traffic on the road and there was a concern about public safety given the condition of the road. The paved surface now is approximately sixteen feet wide and would need to be increased to twenty or twenty-two feet to accommodate two traffic lanes. Pederson had agreed to dedicate land to increase the right of way from 41.25 feet to 66 feet, as required by the town ordinance.

At the July 27 hearing, Pederson proposed that the Town of Windsor rebuild Martinson Road, assessing the cost to all adjoining property owners. This was a proposal he had previously made to the plan commission. The board refused to accept that proposal. It wanted Pederson to bear the costs of improvement, but Pederson would not agree to that. The board therefore denied approval of the CSM on the ground, among others, that the proposed lots were not accessed by a public roadway meeting the standards of the Town of Windsor Land Division and Subdivision Ordinance. Pederson appealed from the board's decision and the trial court affirmed.

Pederson appeals the board's rejection of the CSM under § 236.13(5), STATS.¹ This court, like the trial court, reviews the action of the approving authority (here, the Windsor Town Board) to determine whether it was arbitrary, unreasonable or discriminatory. Section 236.13(5). Although the board gave several reasons for the rejection of Pederson's CSM, we examine only one ground--that the proposed plots were not accessed by a public roadway meeting the standards of the Town of Windsor Land Division and Subdivision Ordinance. See *Busse v. City of Madison*, 177 Wis.2d 808, 813, 503 N.W.2d 340, 342 (Ct. App. 1993) (where one of the authority's reasons for rejection is adequate, whether the other reasons are valid is irrelevant).

Pederson argues that the board's decision should be reversed because it was unreasonable, unnecessary and beyond the power of the board to require that he bear the cost of improving Martinson Road. Whether the board exceeded its authority and whether it acted unreasonably in rejecting the CSM because Pederson would not bear the cost of improving the road present questions of law that we review de novo. *Pederson v. Town Board of Windsor*, 191 Wis.2d 664, 670, 530 N.W.2d 427, 430 (Ct. App. 1995). However, in construing the Town of Windsor Land Division and Subdivision Ordinance, we construe it liberally in favor of the municipality. Section 236.45(2)(b), STATS.; *Town of Sun Prairie v. Storms*, 110 Wis.2d 58, 64, 327 N.W.2d 642, 644-45 (1983).

Pursuant to its authority under § 236.45(2)(a), STATS., the Town of Windsor has adopted a Land Division and Subdivision Ordinance, effective November 10, 1987. "The purpose of § 236.45 is to permit municipalities to respond to the pressures of development by regulating the formation of subdivisions." *Pederson*, 191 Wis.2d at 672, 530 N.W.2d at 431. Section 5.3 of the ordinance requires use of a CSM to divide land into two, but no more than four, building sites under certain circumstances. This section also prescribes the procedure for review, approval and disapproval of a CSM. Section 5.3(h) provides: "To the extent reasonably practicable, the [CSM] shall comply with

¹ Section 236.13(5), STATS., provides in part: "Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom as provided in s. 62.23(7)(e) 10., 14. and 15., within 30 days of notification of the rejection of the plat." The parties agree that Pederson had a right to appeal the rejection of the CSM under this section and they agree that other provisions of § 236.13, and cases decided under this section, apply to approvals and rejections of CSMs. We therefore do not decide this issue.

the provisions of this Ordinance relating to general requirements, design standards and required improvements."

Section 6.1 of the ordinance requires that subdividers install, furnish and finance at their sole expense the improvements defined in chapter 6 of the ordinance. The defined improvements include street improvements which must meet the requirements of the ordinance. Section 7.1(b) of the ordinance requires that the subdivider shall dedicate land and improve streets as provided in the ordinance. Section 7.2(b) sets forth detailed construction and design standards for "[a]ll streets and highways constructed in the Town or to be dedicated to the Town."

Pederson does not argue that Martinson Road meets the standards of the ordinance. Rather, he argues that the ordinance does not apply to Martinson Road because it is an existing town road. We reject this interpretation of the ordinance. We see no language in the ordinance that limits the design standards to new roads. Reasonably interpreted, the references to "street improvements" and "streets and highways constructed in the Town" include a road, like Martinson Road, that already exists but has been used solely as a driveway for one home.

Pederson also argues that requiring him to pay for improvements to Martinson Road is not reasonably necessary because of the cost. Pederson describes this as a major project involving realignment of the roadbed, a new roadbed and changes in the ditches along the road. He also claims it is unreasonable to require him to pay for the improvements to Martinson Road because it only abuts his property and is not within the subdivision.

The governing body of a town within which a subdivision lies may require that "the subdivider make and install any public improvements reasonably necessary." Section 236.13(2)(a), STATS. Although, as we have held, the ordinance authorizes the Town of Windsor to require Pederson to improve Martinson Road, that requirement must also be reasonable in the particular circumstances. See *Pederson*, 191 Wis.2d at 667, 530 N.W.2d at 429 (town has the authority to require certain public improvements authorized by ordinance and by § 236.13(2)(a), STATS., as long as they are reasonable).

The evidence on the record concerning the cost of upgrading Martinson Road to meet the ordinance's requirements is that it would cost, conservatively \$30,000, "[m]aybe a little more," and that "starting from scratch, without excavation, probably about \$30,000." Pederson did not dispute these estimates at the hearings and did not present any data indicating that the required improvements were not feasible or were unreasonably expensive compared to his expected profits. Based on the evidence presented to the board on the scope and cost of the improvements, on the increased traffic resulting from the proposed new lots and the resulting safety concerns, we conclude that the improvements to Martinson Road were reasonably necessary. We also conclude it was reasonable for the board to require Pederson to pay for those improvements.

The fact that Martinson Road was not *within* Pederson's subdivision does not alter our conclusion that the board's decision was reasonable. The road abuts the proposed subdivision and is the sole public access road to the proposed lots. The road is used now by one family as a driveway. Although Pederson does not own the land on the other side of Martinson Road, he is the only landowner that is now seeking to subdivide and use the road for the new lots. There is no evidence that the Town of Windsor had any intention of upgrading Martinson Road.

The board acted reasonably when it did not accept Pederson's proposal that the Town of Windsor fund improvements to Martinson Road by special assessment. Section 6.1(a) of the ordinance requires that all improvements for land divisions "shall be installed, furnished and financed at the sole expense of the subdivider." Pederson has provided no authority for his contention that the town had the authority to, let alone was required to, fund improvements to Martinson Road by a special assessment.

Pederson contends that, rather than rejecting the CSM, the board should have approved it on the condition that he pay for the upgrading of Martinson Road. Under § 4.3 of the ordinance, the board does have the authority to conditionally approve a CSM, as well as the authority to approve and disapprove. However, since Pederson was unwilling to agree to the conditions the board wanted to impose, it was reasonable for the board to reject the CSM.

Pederson's final argument is that the disapproval of his CSM was discriminatory because the board approved a CSM of another individual, Robert Rademacher, at about the same time. We reject this claim because Pederson has not established that the two are similar in ways that would require similar responses by the board.

By the Court. – Order affirmed.

Not recommended for publication in the official reports.