

IN THE COURT OF APPEALS OF IOWA

No. 3-622 / 13-0198
Filed October 23, 2013

PATRICIA D. FOWLER and MICHAEL P. FOWLER,
Plaintiffs-Appellees,

vs.

MUSCATINE COUNTY BOARD OF SUPERVISORS,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Thomas G. Reidel, Judge.

We must decide (1) whether an ordinance that rezoned certain agricultural property to a commercial classification authorized the operation of a year-round retail establishment and (2) whether the retail establishment could sell ready-to-eat foods. **AFFIRMED IN PART AND REVERSED IN PART.**

Michael C. Walker and Samuel R. Bailey of Hopkins & Huebner, P.C.,
Davenport, for appellant.

James R. Quilty of Quilty Law Firm, Des Moines, for appellees.

Heard by Vaitheswaran, P.J., and Doyle, J., and Goodhue, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

VAITHESWARAN, P.J.

In this appeal and cross-appeal, we must decide (1) whether an ordinance that rezoned certain agricultural property to a commercial classification authorized the operation of a year-round retail establishment and (2) whether the retail establishment could sell ready-to-eat foods.

I. Background Facts and Proceedings

Patricia and Michael Fowler asked the Muscatine County Zoning Commission to have their property rezoned from A-1 agricultural to C-1 commercial to permit the operation of a seasonal deer processing facility and retail counter. The commission initially tabled the request to facilitate the preparation of a conditional rezoning agreement. The Fowlers, the zoning administrator, and the zoning commission chairperson executed an agreement restricting use of the Fowler's real estate to "[o]nly wild game processing," "[r]etail products in the wild game category . . . and supporting wild game products," as well as a single family residence. Attached to the agreement was a description of "Steve's Meat Shop" and the products it sold.

After the conditional rezoning agreement was executed, the commission recommended that the Muscatine County Board of Supervisors approve the rezoning request. The board issued an ordinance rezoning the property from A-1 agricultural to C-1 commercial.

The Fowlers again petitioned to have their property rezoned, this time to "add service of ready to eat food," meaning "hot sandwiches like Pork Chops, Rib eye Steaks, Bratwurst, Hot Italian Sausages, and more." The commission recommended that the board of supervisors deny the request. The board did so.

The Fowlers filed a petition for writ of certiorari, seeking to annul and vacate the board's denial of their application to sell ready-to-eat foods. The board resisted the petition and additionally argued that retail services only could be offered seasonally. On cross-motions for summary judgment, the district court allowed retail services to be conducted year-round but denied the Fowler's request to include within those retail services "ready-to-eat food" or a "deli shop."

Both sides appealed. Our review of the district court's summary judgment ruling is on error. *Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W.2d 91, 96 (Iowa 2012).

II. Analysis

A. Year-Round Retail Service

The board contends the Fowlers were not authorized to provide year-round retail services on their property. In concluding otherwise, the district court noted that neither the ordinance nor the incorporated conditional rezoning agreement provided a "restriction on the time of operations" of a retail service counter. We will begin with those documents.

The ordinance contains the following preliminary findings:

1. A portion of the Property is proposed to be used as a seasonal deer processing and retail service;
2. The Record Owners prepared a Conditional Rezoning Agreement for this property, and it will be binding on all heirs, assignees, transferees, and buyers of any property of the described real estate.

The ordinance then states:

The real property . . . is hereby rezoned from A-1 Agricultural District Zoning Classification to C-1 Commercial District Zoning Classification, be approved with the attached Conditional Rezoning Agreement.

The incorporated conditional rezoning agreement states:

The use of the above described real estate is restricted to:

- A. Only Wild Game Processing.
- B. Retail products in the wild game category, such as Venison, Elk, Buffalo, Wild Boar, Moose, Bear, Raccoon, Rabbit, and Turkey, & supporting Wild Game Products, such as Beef, Pork, & Chicken. (See Attachment A)
- C. Single Family Residence. Though considered non-conforming with current C-1 Commercial Zoning District standards, the existing single-family residential use may be continued and reconstructed (within one year) if destroyed.

When an ordinance is plain and its meaning clear, we do not search for meaning beyond the express terms used in the ordinance. *Baker v. Bd. of Adjustment*, 671 N.W.2d 405, 416 (Iowa 2003). When an ordinance is ambiguous, it is appropriate to apply the general rules of construction for statutes. *Lauridsen v. City of Okoboji Bd. of Adjustment*, 554 N.W.2d 541, 543 (Iowa 1996) (citing 1A Norman J. Singer, *Sutherland on Statutory Construction* § 30.06, at 526 (Singer 5th ed. 1993)). “An ambiguity may arise from the meaning of particular words or from the general scope and meaning . . . in its totality.” *Meduna v. City of Crescent*, 761 N.W.2d 77, 80 (Iowa Ct. App. 2008).

The board argues that the conditional rezoning agreement contains “no reference to year-round retail service,” and, “since there are no words to interpret,” the district court “erred in finding the document allows a year-round business service to operate in the agricultural neighborhood.” The Fowlers counter that the conditional rezoning agreement “contains no restriction on the time for operating the retail service counter at all” and, for that reason, the district court correctly concluded they could operate their retail services year-round.

Complicating the arguments is the board's finding that "[a] portion of the Property is proposed to be used as a seasonal deer processing and retail service." Though this language appears in the preamble of the ordinance, both sides rely on it to amplify their contentions. For that reason, we will consider the language in deciding whether the Fowlers were authorized to provide year-round retail services.

The board argues that the term "seasonal" "unambiguously and undeniably places limits on the privileges conferred by the spot zoning." The Fowlers counter that the term requires deer processing to occur on a seasonal basis but does not limit "retail service" in the same manner. These dueling arguments concerning the board's use of the term "seasonal" lead us to conclude that there is ambiguity in the "general scope and meaning" of the ordinance as a whole. *See id.*

When confronted with an ambiguity,

we may consider among other factors: (1) the object sought to be attained, (2) the circumstances under which the statute was enacted, (3) the legislative history, (4) the common law or former statutory provisions, including laws upon the same or similar subjects, (5) the consequences of a particular construction, (6) the administrative construction of the statute, [and] (7) the preamble or statement of policy.

Taft v. Iowa Dist. Ct., 828 N.W.2d 309, 317 (Iowa 2013) (quotation marks and citation omitted).

The circumstances surrounding adoption of the ordinance are particularly relevant. At the first meeting with the zoning commission, Michael Fowler explained his reasoning for his rezoning request as follows: "[W]hat we'd like to do is to have a seasonal deer processing. We'd like to have a small retail

counter that would just be open between October and January.” He was specifically asked whether the retail sales portion of the business would only be open during that period, to which he replied, “Yeah, deer season.” These concessions illuminate the board’s finding and resolve any ambiguity as to whether the retail services were to operate year-round or seasonally.

We conclude the Fowlers’ retail services were to operate seasonally, between October and January. We reverse the district court decision concluding otherwise.

B. Ready-to-Eat Foods

On cross-appeal, the Fowlers argue that the court erred in concluding they were prohibited from selling ready-to-eat-foods at their retail counter. Again focusing on the board’s finding that “[a] portion of the Property is proposed to be used as a seasonal deer processing and retail service,” they contend “retail service” encompasses the sale of ready-to-eat foods and the conditional rezoning agreement authorizes them to “prepare products for resale.”

In pertinent part, the conditional rezoning agreement, Attachment A states:

Steve’s Meat Shop only does Wild Game Processing, we Do Not Slaughter. . . . We purchase Beef, Pork and Chicken from outside vendors and prepare products for resale. If approved for a commercial license . . . , Steve’s Meat Shop will obtain the proper licensing to run a retail counter in order to sell our Wild Game Specialty items. The Wild Game meat is also purchased from an outside vendor for resale.

Beef is used in Steve’s Meat Shop for several reasons during processing. One example is to mix ground beef into a customer’s ground deer upon request to lessen the taste of wild game.

Pork is used in Steve’s Meat Shop for several reasons during processing. One example is to mix ground pork into a customer’s ground deer upon request to lessen the taste of wild game.

Chicken is used in Steve's Meat Shop. One example is to smoke a full chicken for resale upon request for a customer.

The district court construed this language as follows:

The clear language of attachment A is that beef and pork will be used in processing to lessen the taste of wild game. It also clarifies that the retail counter is to sell wild game specialty items. Nothing in the Conditional Rezoning Agreement may be read to allow the Fowlers to serve hot sandwiches like pork chops, rib eye steaks, bratwurst, or hot Italian sausages. None of these items could be considered wild game specialty items. Furthermore, the ordinance and the Conditional Rezoning Agreement contain no language that would lead to a reasonable interpretation that the Fowlers were permitted to operate a deli shop.

We agree with the district court that the conditional rezoning agreement does not authorize the sale of deli-style sandwiches. However, if the authorized sale of smoked whole chickens creates an ambiguity on this point, the Fowlers' statements to the zoning commission resolve that ambiguity. Michael Fowler stated that the retail store would be limited to wild game, "nothing domestic, like beef or pork." Patricia Fowler explained that deer meat would be bought from a farmer and then sold to the customers—perhaps to a customer who was not successful in hunting for a deer that season. Based on these statements, we conclude the retail service did not encompass ready-to-eat products.

III. Disposition

We affirm the district court's conclusion concerning the sale of ready-to-eat products, but reverse the district court's conclusion that the retail services could be offered year-round.

AFFIRMED IN PART AND REVERSED IN PART.