

**IN THE COURT OF APPEALS OF IOWA**

No. 3-901 / 13-0015  
Filed November 6, 2013

**RESIDENTIAL AND AGRICULTURAL ADVISORY COMMITTEE,  
LLC, an Iowa Limited Liability Company, MATT MESCHER,  
ALLAN R. DEMMER, CATHERINE DEMMER, WAYNE AMESKAMP,  
SHARON AMESKAMP, VERNON BOGE, DONALD BOGE,  
MARY ANN RUBLY, JOHN R. RUBLY, STEVE HOEGER,  
DOLORES THIER, LARRY THIER, GARY BURKLE, CINDY  
BURKLE, WAYNE VORWALD, LINDA VORWALD, JEFF PAPE,  
GERALD WOLF, JOANNE WOLF, LORRAINE M. BURKLE,  
and BERNARD R. BURKLE,**

Plaintiffs-Appellants,

**vs.**

**DYERSVILLE CITY COUNCIL, MAYOR JAMES A. HEAVENS,  
MIKE ENGLISH, MARK BREITBACH, ROBERT PLATZ,  
MOLLY EVERS, and DAN WILLENBORG,**

Defendants-Appellees.

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Appeal from the Iowa District Court for Dubuque County, Thomas A.  
Bitter, Judge.

Plaintiffs appeal the district court decision denying their petition for writ of certiorari by which they sought to challenge a zoning decision by the Dyersville City Council. **REVERSED AND REMANDED.**

Susan M. Hess of Hammer, Simon & Jensen, P.C., Dubuque, for appellants.

Jenny Leigh Weiss and Douglas M. Henry of Fuerste, Carew, Juergens & Sudmeier, P.C., Dubuque, for appellees.

Heard by Vogel, P.J., and Mullins, J., and Sackett, S.J.\*

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

**VOGEL, P.J.**

The plaintiffs appeal the district court decision denying their petition for writ of certiorari that sought to challenge a zoning decision by the Dyersville City Council. The plaintiffs assert that under Iowa Rule of Civil Procedure 1.1406 the issues before the court at the initial hearing were limited to the sufficiency of the petition for writ of certiorari, whether an injunction should have been issued, and whether a bond would be required. They contend the district court improperly considered the merits of the case before they had an opportunity to conduct discovery. We conclude the district court improperly decided the merits of the petition for writ of certiorari after the initial hearing, rather than confine its decision to whether the writ should be issued. We reverse the decision of the district court and remand for further proceedings.

**I. Background Facts & Proceedings**

On September 4, 2012, the Residential and Agricultural Advisory Committee, L.L.C., and twenty-three individuals<sup>1</sup> (plaintiffs) filed a petition for writ of certiorari and request for stay and injunction against the Dyersville City Council, the mayor of Dyersville, and the individual city council members (city council). The plaintiffs alleged the city council had acted (1) in violation of Iowa law, (2) in violation of Dyersville city ordinances, (3) in excess of its authority, (4) arbitrarily and capriciously, and (5) in contravention of public safety, health, morals, and the general welfare by passing Resolution Number 38-12, which

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<sup>1</sup> Prior to this appeal two of the individuals dismissed their claims, so there are twenty-one individual petitioners on this appeal.

rezoned certain property from A-1 Agricultural to C-2 Commercial. The property in question included that known as the “Field of Dreams.”

The plaintiffs raised the following specific claims regarding the actions of the city council:

- a. The city council failed to make written findings and conclusions, which they were required to make.
- b. The city council failed to consider the impact of the development, and there was no specific site plan.
- c. The city council violated the open meeting laws of Iowa and the quasi-judicial requirements associated with the process of rezoning the property.
- d. The city council failed to remain impartial, in violation of their quasi-judicial responsibilities.
- e. The city council failed to consider the comprehensive plan of the City of Dyersville.
- f. The city council failed to consider the impact of rezoning on the subject property and surrounding environment, or to require a hydrology study.
- g. The city council failed to consider the impact of rezoning on local farming practices and the value of surrounding agricultural property.
- h. The city council failed to consider any logistical, infrastructure, or traffic concerns.
- i. The city council’s rezoning of the property constitutes spot zoning.
- j. The city council’s rezoning failed to consider the effect of the use and enjoyment of surrounding landowners.
- k. The city council’s rezoning of the property failed to consider and utilize alternative zoning tools.
- l. The actions of the city council represent a violation of due process and equal protection.
- m. Other and further reasons as appearing in the record of the proceedings of the city council.

The district court set the matter for a one-hour hearing on September 25, 2012. Before the hearing was held, Go the Distance Baseball, L.L.C., the proposed buyer/developer, filed a petition to intervene. A petition to intervene was also filed by F.O.D. Real Estate, L.L.C., Field of Dreams Movie Site, Inc., and Donald and Rebecca Lansing, the owners of the real estate. Additionally, on

September 21, 2012, a motion to dismiss was filed by the defendants, claiming they had been acting legislatively and were immune from suit, and claiming the Residential and Agricultural Advisory Committee lacked standing. The plaintiffs filed a request for a later hearing, additional testimony, and discovery claiming, "In the instant matter, additional evidence is required as Petitioners believe the record is inadequate to determine the legality of the City Council's action." On September 25, 2012, the day of the hearing, the city council filed a second motion to dismiss, claiming the petition for writ of certiorari failed to state a claim. The city council also filed a resistance to the plaintiffs' request for an injunction. The plaintiffs filed a resistance to the city council's motion to dismiss. All of these matters were to be argued during the one-hour hearing.

At the hearing, counsel for plaintiffs stated the writ could have issued immediately if she had not requested a stay, and stated the hearing was on whether the writ would be issued and whether the court would grant a stay. The court responded, "Well, and I think that's right." The court stated it would consider first, whether it was going to issue the writ, and second, whether it would issue an injunction. Counsel for plaintiffs stated they were also seeking a stay and additional discovery before a final hearing on the merits as alleged in their petition.

The district court noted the city council had offered thirty-three exhibits "for purposes of this hearing." The district court stated, "My inclination is to say that for purposes of this hearing, I want to receive those exhibits because I want the ability to read through procedurally what happened in this matter." Counsel for plaintiffs objected to one exhibit, and the court determined that exhibit would be

considered only for the purposes of establishing bond. The court then discussed with counsel for plaintiffs what type of discovery she was considering. She stated she wanted to take depositions “[f]or matters that are outside the record.” The court stated it would consider whether discovery would be appropriate.

The district court issued an order on October 10, 2012, denying the petition for writ of certiorari. The court made extensive findings of fact concerning the proceedings before the Dyersville City Council. The court concluded:

Clearly, the Dyersville City Council had jurisdiction to hear and decide the proposed rezoning of the property in question. The Defendants have complied with any and all procedural requirements pertaining to the rezoning of the property. Proper due process rights have been afforded the Plaintiffs. The Defendants heard and considered numerous issues and concerns associated with the rezoning of the property. The Zoning and Planning Commission voted 8-0 in favor of recommending the proposed zoning change. The City Council voted 4-1 in favor of passing the proposed zoning change. The Court finds no illegality in the rezoning of the property. The Plaintiffs cannot demonstrate a likelihood of success on the merits.

The plaintiffs filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), pointing out that the hearing on September 25, 2012, was only to determine whether a writ of certiorari should be issued, not to determine the merits of the case. The plaintiffs stated that they wanted to conduct additional discovery, and they were not required at the time of the initial hearing to demonstrate the illegality of the city council’s actions. The district court denied the motion, finding the plaintiffs had failed to present the court with any additional information that should be considered when determining the illegality of the rezoning decision. The plaintiffs now appeal.

## **II. Standard of Review**

Certiorari is the proper remedy for reviewing the legality of a decision by a city council on a zoning matter. See *Sutton v. Dubuque City Council*, 729 N.W.2d 796, 797 (Iowa 2006). An order by the district court in a certiorari proceeding may be appealed, and the appeal “is governed by the rules of appellate procedure applicable to appeals in ordinary civil actions.” Iowa R. Civ. P. 1.1412. “Our review is limited to correction of errors at law and we are bound by the findings of the trial court if supported by substantial evidence in the record.” *Sergeant Bluff-Luton Sch. Dist. v. City Council of Sioux City*, 605 N.W.2d 294, 297 (Iowa 2000).

## **III. Merits**

The rules concerning the proper procedure for consideration of a petition for writ of certiorari are found in the Iowa Rules of Civil Procedure from 1.1401 to 1.1412. Iowa Rule of Civil Procedure 1.1406 provides:

The court may issue the writ without notice upon the filing of the petition, or it may fix a time and place for hearing and prescribe reasonable notice to the defendant. If the petition is filed before a final order or decree in the original proceeding or if the plaintiff seeks a stay, the court shall fix a time and place for hearing and prescribe reasonable notice to the defendant before issuing the writ. Any hearing shall be confined to the sufficiency of the petition, what records or proceedings shall be certified, and the terms of any bond to be given.

The official comment to this rule states, “The hearing contemplated being in the nature of a preliminary examination and not going to the merits of a petition, it should be limited to the sufficiency of the petition, the necessity and requirements of the bond, or stay, and contents of the proposed writ.” Iowa R. Civ. P. 1.1406 cmt.

After a writ is issued, a return is made by the defendant. Iowa R. Civ. P. 1.1408. In a certiorari proceeding challenging a zoning decision by a board of adjustment, the return contains certified or sworn copies of the documents acted upon by the board and “such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.” Iowa Code § 414.17 (2011). The rules further provide, “When full return has been made, the court shall fix a time and place for hearing.” Iowa R. Civ. P. 1.1410.

At this hearing, in addition to the record provided by the defendant in the return, “the court may receive any transcript or recording of the original proceeding and such other oral or written evidence explaining the matters contained in the return.” See also *Geisler v. City Council*, 769 N.W.2 162, 169 (Iowa 2009) (noting the court has the ability to take additional evidence at a hearing under rule 1.1410). The additional evidence may be considered “only to determine the legality of the proceedings or the sufficiency of the evidence before the original tribunal, board, officer, or magistrate.” Iowa R. Civ. P. 1.1410. The court may then enter a judgment either annulling or sustaining the writ. Iowa R. Civ. P. 1.1411.

In this case, the petition for writ of certiorari included a request for a stay of the rezoning. The district court could properly set the matter for a hearing before issuing the writ. See Iowa R. Civ. P. 1.1406. The issues to be considered at the initial hearing are limited to “the sufficiency of the petition, what records or proceedings should be certified, and the terms of any bond to be given.” *Id.* At the time of the initial hearing, the court does not address the merits of the case. See Iowa R. Civ. P. 1.1406 cmt. “We are confronted only with the question

whether certiorari will lie in the pleaded circumstances.” *Hoefer v. Sioux City Cmty. Sch. Dist.*, 375 N.W.2d 222, 224 (Iowa 1985).

A certiorari action may be commenced “when authorized by statute or when the party claims an inferior tribunal, board, or officer, exercising judicial functions, or a judicial magistrate exceeded proper jurisdiction or otherwise acted illegally.” Iowa R. Civ. P. 1.1401. A party’s actions are illegal if they are arbitrary and unreasonable, are not authorized, are contrary to statute, or are not supported by the facts. *Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483, 481 (Iowa 2008). A plaintiff challenging a city council’s rezoning decision has the burden to show the action was “arbitrary, unreasonable, unjust and out of keeping with the spirit of the zoning statutes.” *Keller v. City of Council Bluffs*, 66 N.W.2d 113, 116-17 (Iowa 1954).

The court considers whether the petition minimally meets the necessary requirements for a writ of certiorari.<sup>2</sup> *Hoefer*, 375 N.W.2d at 225. At the time of the initial hearing, “the sole issue before the court is whether the petition was sufficient to support the writ.” *Id.* At that point, plaintiffs are not required to state with significant detail the basis for their claim. *Id.*

In *Westover v. Board of Trustees*, 416 N.W.2d 691, 692 (Iowa 1987), the Iowa Supreme Court addressed the issue of whether the district court properly quashed a writ of certiorari before the defendant made a return of the writ, as

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<sup>2</sup> In *Hoefer*, 375 N.W.2d at 223, the defendant had filed a motion to dismiss for failure to state a claim upon which any relief could be granted. The defendant in this case filed a similar motion, but the district court did not specifically base its ruling on this ground. Because the initial hearing is limited to the sufficiency of the petition, we believe this necessarily implicates the issue of whether the petition fails to state a claim upon which relief can be granted, and therefore, the case of *Hoefer*, 375 N.W.2d at 224-25, is applicable to our analysis.



contemplated by rule 1.1408. The supreme court stated, “we conclude that the district court acted precipitously in quashing the writ prior to the time that the defendant employer made such return as is required by law.” *Westover*, 416 N.W.2d at 692. The court determined that prior to the time the defendant made a return of the writ, “any action to quash the writ is premature.” *Id.* at 693.

In *Buchholtz v. Board of Adjustment*, 199 N.W.2d 73, 74 (Iowa 1972), the district court granted a motion to dismiss a petition for writ of certiorari on the ground that it did not sufficiently allege the defendant’s actions were either illegal or arbitrary in nature. The return of the writ disclosed only the proceedings before the zoning commission, and not the actions of the board of adjustment. *Buchholtz*, 199 N.W.2d at 76. The supreme court determined the record was not sufficient to support the district court’s finding that the board of adjustment had fully complied with a city ordinance. *Id.* The court determined the district court did not have sufficient information upon which to grant the motion to dismiss. *Id.* The court concluded, “[b]ecause the trial court did not have before it a return by the defendant upon which to make a determination as to the legality of the action taken, we reverse and remand with instructions that defendant be directed to file its return to the writ of certiorari.” *Id.*

Likewise, in *Burd v. Board of Education*, 151 N.W.2d 457, 459 (Iowa 1967), the issue was whether the district court had properly dismissed a petition for writ of certiorari after an initial hearing on whether or not to issue the writ. The appellate court noted that the hearing was confined to the issue of the sufficiency of the petition. *Burd*, 151 N.W.2d at 459. The court found the petition was sufficient because it alleged facts which, if proven, would justify a finding that the

defendant had not proceeded as required by law, and that a claim was stated upon which relief could be granted. *Id.* at 462. The court determined the issues in the case could only be determined after a full hearing on those issues. *Id.* at 463.

Here, the plaintiffs contend the district court decided the case prior to the submission of all of the evidence they intended to present. The district court noted the exhibits were offered “for purposes of this hearing,” and stated it would accept the exhibits “for purposes of this hearing,” to allow the court “to read through procedurally what happened in this matter.” As noted above, the purpose of the hearing on September 25, 2012, was confined to determining “the sufficiency of the petition, what records or proceedings should be certified, and the terms of any bond to be given.” See Iowa R. Civ. P. 1.1406. Thus, the exhibits should have been considered only for procedural background as the court made a determination of the sufficiency of the petition, not for a determination of the merits of the case.<sup>3</sup>

Additionally, there was no finding that the taking of additional evidence was not necessary. “If all the material facts appear in the record, or are not disputed, or only questions arising upon the record are presented, the taking of evidence is not necessary.” See *Baker v. Bd. of Adjustment*, 671 N.W.2d 405, 413 (Iowa 2003). On the other hand, “when the record is inadequate to determine the legality of the board’s action, additional evidence is necessary and

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<sup>3</sup> Because a writ of certiorari had not yet been issued, the exhibits offered by the city council at the hearing could not constitute the return of the writ, as required by rule 1.1408. Therefore, the case was not yet ripe for a full hearing under rule 1.1410.

may properly be taken by the district court.” *Bontrager Auto Serv.*, 748 N.W.2d at 491.

It would have been clear to the district court based on the plaintiffs’ filings and arguments at the hearing that plaintiffs intended to offer additional evidence. In fact, the city council may have intended to introduce additional evidence at the final hearing. The court’s decision to proceed to the merits of the case precluded the parties from having the opportunity to introduce all of the evidence they wanted to present before the court’s final decision. On this issue the Iowa Supreme Court has stated:

Questions likely to arise in such cases are of such great importance that the Legislature appears to have had in mind that the parties should, on the question of the legality of the board’s action, be entitled to a full and complete hearing before a proper court of record and according to accepted judicial method of ascertaining facts. The parties are not on certiorari bound by the finding or opinion of the local board on the facts, or by the evidence offered there, or by knowledge outside of the evidence on which the board may have acted, but, ordinarily at least, are entitled to take testimony when a determinative issue of fact is raised.

*Baker*, 671 N.W.2d at 413 (quoting *Anderson v. Jester*, 221 N.W. 354, 359 (Iowa 1928)).

We conclude the district court improperly dismissed the plaintiffs’ petition for writ of certiorari. The district court did not address the issue of whether the petition alleged facts which, if proven, would justify a finding that the city council had acted illegally—which was the only issue before the court. Instead, the court

leaped ahead and addressed the issues of the case on the merits.<sup>4</sup> See *Burd*, 151 N.W.2d at 462.

We reverse the decision of the district court and remand for further proceedings in accordance with this decision.

**REVERSED AND REMANDED.**

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<sup>4</sup> In making our determination we also note that the district court used an erroneous legal standard in denying the petition for writ of certiorari, finding, “The Plaintiffs cannot demonstrate a likelihood of success on the merits.” This is a standard for granting a temporary injunction. See *Lewis Inv., Inc. v. City of Iowa City*, 703 N.W.2d 180, 184 (Iowa 2005). While the court properly set forth this standard in its conclusions of law, in the judgment the court did not mention the request for an injunction, and stated this standard in denying the petition for writ of certiorari.