IN THE COURT OF APPEALS OF IOWA

No. 2-093 / 11-0683
Filed April 25, 2012

DARYL D. LANG,
Plaintiff-Appellant,

vs.

LINN COUNTY BOARD OF ADJUSTMENT,
Defendant-Appellee.

DARYL D. LANG and ARLENE P. LANG,
Plaintiffs-Appellants,

vs.

LINN COUNTY BOARD OF ADJUSTMENT,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Ian K. Thornhill, Judge.

Property owners appeal the district court's annulling writs of certiorari, after the county board of adjustment's denial of agricultural exemptions for zoning. **AFFIRMED.**

Robert M. Hogg and James W. Affeldt of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellants.

Jerry Vander Sanden, County Attorney, and Robert A. Hruska, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Tabor and Bower, JJ.

VOGEL, P.J.

Property owners Daryl and Arlene Lang appeal the district court's annulling of writs of certiorari, after the Linn County Board of Adjustment's denial of agricultural exemptions for zoning. The district court was correct in determining the Board properly denied agricultural exemptions for a house and 6.52-acre parcel owned and occupied by the Langs, and a second house and 35-acre parcel owned by the Langs and rented to tenants, because the use of the property did not meet the definition of "agricultural purposes" under Iowa Code section 335.2 (2003). As substantial evidence exists in the record to support the findings of the district court, we affirm.

I. Background Facts and Proceedings

This case stems from the consolidation of two petitions for writ of certiorari. While the case history is lengthy and complex, central to the proceeding are two parcels of land and two houses, built in the late 1990s and early 2000s. The parcels at issue were originally part of a larger, 48.9-acre parcel.[1] In the first action, filed in July 2004, the Langs sought a writ of certiorari based on the Board's denial of an agricultural exemption from the county zoning ordinance for the house they own and occupy ("House 1"), which is located on a 6.52-acre parcel. The Langs alleged the Board acted improperly and illegally in denying their request. In the second action, filed in July 2007, the Langs sought a writ of certiorari based on the Board's denial of an agricultural exemption for a second house owned by the Langs and rented to tenants ("House 2"), which is

[1] Split from the 48.9-acre parcel in the late 1990s were one 1.86-acre parcel and one 3.7-acre parcel. Neither of these tracts are at issue in this proceeding.

located on a parcel approximately thirty-five acres in size. The Langs asserted the Board acted improperly when it denied their request to reverse the zoning administrator's decision. The consolidated matter came on for hearing on February 16, 2011, and on April 15, 2011, the district court denied the Langs' petitions for writ of certiorari. The Langs appeal.

II. Standard of Review

A petition for writ of certiorari is tried to the district court de novo and the district court may "reverse or affirm, wholly or partly, or may modify the decision brought up for review." Iowa Code § 335.21 (2003);[2] *see Montgomery v. Bremer Cnty. Bd. of Supervisors*, 299 N.W.2d 687, 692 (Iowa 1980) (stating the district court, in reviewing actions by a board of adjustment, must find facts anew). However, the term "de novo" as used in Iowa Code section 335.21, "does not bear its equitable connotation. It authorizes the taking of additional testimony, but only for the submission and consideration of those questions of illegality raised by the statutory petition for certiorari." *Martin Marietta Materials, Inc. v. Dallas Cnty.*, 675 N.W.2d 544, 551 (Iowa 2004). Under Iowa Code section 335.21, "the district court makes its own findings of fact on the record made in the certiorari proceeding. . . . But the district court may not decide the case anew." *Id.*

> If the facts the district court finds do not provide substantial support for the board's decision, then the illegality of the board's action is established. If the facts the district court finds leave the reasonableness of the board's decision open to a fair difference of opinion, the court may not substitute its decision for that of the board.

[2] The provisions of the Iowa Code cited in this opinion are the same under the 2003 and 2007 versions of the Iowa Code.

Id. (internal citation omitted). "A board's action must be upheld if supported by any competent and substantial evidence." *Montgomery*, 299 N.W.2d at 692.

Pursuant to Iowa Rule of Civil Procedure 1.1412, "An appeal from an order or judgment of the district court in a certiorari proceeding is governed by the rules of appellate procedure applicable to appeals in ordinary civil actions." Our appellate review of the district court's ruling is limited to correction of errors at law. *W & G McKinney Farms, L.P. v. Dallas Cnty. Bd. of Adjustment*, 674 N.W.2d 99, 103 (Iowa 2004).

> The district court's factual findings are binding on appeal if they are supported by substantial evidence. If the reasonableness of the board's action is "open to a fair difference of opinion, the court may not substitute its own decision for that of the board."

See id. (citing *Cyclone Sand & Gravel Co. v. Zoning Bd. of Adjustment*, 351 N.W.2d 778, 783 (Iowa 1984)).

III. House 1—The Lang House

The Langs argue the district court erred in upholding the Board's decision that House 1 and the 6.52-acre parcel were not a "farm house" and "land" used for agricultural purposes, because the decision was not supported by substantial evidence and because it "reflected an improperly narrow and outdated understanding of Iowa Code section 335.2."[3]

The crux of the Langs' argument is that their use of House 1 and the 6.52-acre parcel is for "agricultural purposes" and therefore qualifies for an agricultural exemption under Iowa Code section 335.2. This code section provides,

[3] Had the property been in an "agricultural area" as defined under Iowa Code section 352.6, the house "constructed for occupation by a person engaged in farming" would have been exempt.

> Except to the extent required to implement section 335.27, no ordinance adopted under this chapter applies to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are *primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used.* However, the ordinances may apply to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream.

Iowa Code § 335.2 (emphasis added). This code section is "'intended as a protection for the farmer and his investment in his land.'" *Goodell v. Humboldt Cnty.*, 575 N.W.2d 486, 494 (Iowa 1998) (citing a predecessor bill containing the same exception, H.F. 426, 1947 H.J. 587). We have considered a definitional test to determine what constitutes "agricultural purposes" within the scope of the agricultural exemption. *See Kramer v. Bd. of Adjustment for Sioux Cnty.*, 795 N.W.2d 86, 91, 91 n.6 (Iowa Ct. App. 2010) (recognizing that "[s]ome states have an expansive list of activities that qualify as 'agriculture'; some states (including Iowa) use a general definition of 'agricultural land use'; and other states apply a hybrid of the two tests"). Our supreme court has defined agriculture as "the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock." *Thompson v. Hancock Cnty.*, 539 N.W.2d 181, 183 (Iowa 1995).

The Langs argue their activities of growing trees, berries, asparagus, grapes, apples, tomatoes, and farm fish, as well as participating in government farm programs, qualify as "agricultural purposes" under the statute. The Board argues substantial evidence existed for it to conclude that use of House 1 and the 6.52-acre parcel did not "rise to a level qualifying the property for the agricultural exemption in Iowa Code section 335.2."

The district court found the following as to House 1 and the 6.52-acre parcel:

> The court concludes that the following information considered by Defendant, as set forth in the court's findings of fact, provides substantial support for the Board's decision to deny the farm exemption for the 6.52-acre parcel and the residence: the notice of violation issued on August 5, 2002, alleging the second house was not occupied by a person or persons engaged in agriculture; the finding that Daryl Lang was in contempt of court due to his failure to provide any evidence regarding the involvement of the occupant of the house in the "farming operation"; Les Beck's statements to the Board that none of the houses on Plaintiffs' property are occupied by people engaged in agricultural activity; Les Beck's statement regarding the property having been reduced to a 6-acre tract with a pond and some berries; and the information submitted by Plaintiffs regarding activity on their property.
>
> . . . .
>
> The court's role is not to consider anew the question of whether the exemption should have been granted. The court's role is to determine whether the facts provide substantial support for the Board's decision. Plaintiffs have provided the court with case law from other jurisdictions addressing the questions of whether tree farming, berry farming, and farm ponds provide a basis for granting an agricultural exemption. Plaintiffs also rely on an Iowa Attorney General opinion on the question of the requirements to be met by occupants of a farm house in order to receive an exemption. The court has considered these authorities, but concludes they do not change the outcome of this case. The facts provide substantial support for concluding that the activities in which Plaintiffs and the occupants of the farm house were involved with respect to the land and the farm house were not primarily adapted, by reason of nature and area, for use for agricultural purposes.

We further note the only proof the Langs offered of an agricultural purpose—defined as "the art or science of cultivating the ground, harvesting of crops and rearing and management of livestock"—was their assertion through an agricultural exemption sheet on which they listed the following activities as "commercial production":

1. Trees, 4 to 5 acres, 80% for commercial production
2. Raspberries, 0.1 acres, 10% for commercial production

3. Blackberries, 0.1 acres, 10% for commercial production
4. Asparagus, Apples, 1.0 acres, 75% for commercial production
5. Grapes, tomatoes, 0.2 acres, 15% for commercial production

See Thompson, 539 N.W.2d at 183 (defining "agricultural purpose"). The record did not contain the original "Linn County Farm Exemption Information Sheet" for House 1 and the 6.52-acre parcel. Moreover, the Langs did not offer any additional evidence to support "commercial production," such as tax returns or other financial records.

The Langs also argue the Board improperly applied a "minimum acreage test" for the land on which their residence is located and that without a primary means of livelihood test,[4] the only question should be whether they are "engaged in agriculture".[5] We do not read the Board's findings as applying a minimum acreage test; rather, the Board noted that if the size of the 6.52-acre parcel exceeded 35 net acres, it would be presumed to be a farm.[6]

Our case law has not defined the term "farm house" for purposes of the exemption. *Thompson*, 539 N.W.2d at 183. However, the Attorney General has opined that under Iowa Code section 335.2 a "farm house" is one in which the occupants, "are engaged in agriculture on the land where the house[is] located." 1997 Op. Iowa Att'y Gen. No. 97-1-1(L) at *5, 1997 WL 994719, at *5.

While we appreciate that the Langs have participated in land conservation and tree planting projects, as well as growing some fruits and vegetables, the

---

[4] In 1963, the legislature amended what is now Iowa Code section 335.2 to delete the "livelihood" test that was previously required for qualification. *See* 1963 Iowa Acts ch. 218, §2.

[5] It is not disputed that Lang is engaged in farming on other property in Iowa.

[6] Linn County Ordinance section 1.3(2)(a)(1) provides a "parcel in excess of thirty-five (35) acres shall be presumed to be a farm if used for agricultural production."

Langs failed to demonstrate to the Board those activities were sufficient to prove they were using House 1 and the 6.52-acre parcel for agricultural purposes. Similarly, although the Langs' property has some of the attributes that a small farm or small agricultural enterprise may have, the Langs simply did not demonstrate that they cultivated the ground, harvested crops, or reared and managed livestock to an extent warranting an agricultural exemption under Iowa Code section 335.2. *Thompson*, 539 N.W.2d at 183. Without that showing, they could not substantiate that House 1 and the 6.52-acre parcel were "primarily adapted, by reason of nature and area, for use for agricultural purposes." Iowa Code § 335.2.

We recognize that small-scale agricultural production should not be discouraged. However, at some point a line has to be drawn to determine what qualifies under the statute as "agricultural use" and what is more akin to a rural acreage. The Board, after considering all of the evidence submitted by the Langs, drew that line and determined House 1 and the 6.52-acre parcel were not used for "agricultural purposes" under the statute. The district court, after a review of both the statute and case law, agreed the Langs did not meet the definitional test for "agricultural purposes" which includes, "cultivating the ground," "harvesting of crops," and "rearing and management of livestock." *Thompson*, 539 N.W.2d at 183. We affirm the district court as to House 1 and the 6.52-acre parcel because its findings are supported by substantial evidence.

IV. House 2—Tenant House

The district court also upheld the Board's determination that the proposed tenants of House 2 would not be "primarily engaged in agriculture" so as to

qualify the property for the agricultural exemption. The Langs allege the Board applied the wrong test, and should have merely applied an "engaged in agriculture" test. Under that broader standard, the Langs assert they were "sufficiently engaged" in agriculture to qualify for the exemption. House 2 was originally intended for use by the Langs' son, so he could assist with farm operations after completing college. When the Langs' son did not occupy the house, the Langs decided they would rent it to other tenants, rather than having the house sit empty.

As to House 2, the district court stated,

> The court concludes that the following information considered by Defendant, as set forth in the court's findings of fact, provides substantial support for the Board's decision to deny the farm exemption for Plaintiffs to rent to the Schaeffers: the work logs submitted by the Tiernans did not set forth duties primarily engaged in agriculture; the statement from Steve McShane that the sheep on the property are not owned by Plaintiffs, and the owner of the sheep cares for them on a daily basis, which was confirmed in a statement made by Daryl Lang; the statement from Darcey Bena that the previous farmhand was ill and not seen outside for several days at a time; and Les Beck's statements regarding the average hours of the previous farmhand. As [with House 1 and the 6.52-acre parcel], the authorities relied on by Plaintiffs do not change the outcome of this case because the facts provide substantial support for concluding that Plaintiffs' request for an exemption to rent to the Schaeffers should be denied because the farm house was not *primarily* adapted, by reason of nature and area, for use for agricultural purposes.

As the above facts allude, following Mr. Tiernan's death in November 2006, the Langs submitted a new proposal that the new occupants, Jeff and Nielie Schaeffer, would perform the same duties performed by the Tiernans. These duties included: casing trees and looking for tree peculiarities; special projects including fence repair, planting seedlings, watering crops, clearing and preparing

grounds for additional tree planting, monitoring fish production, and mowing; taking care of sheep; assisting in the management of fish production, including monitoring water quality, feeding fish, and monitoring pond conditions and fish quality.

The district court noted in its findings of fact that the Board conducted a review of the work logs submitted by the previous tenants. The district court explained,

> In his work log, Mr. Tiernan did not specifically assign the work hours to one of the work task categories outlined in the lease agreement. Based on the descriptions in the work log, staff assigned all hours into one of the task categories from the lease. The results are shown below for the entire 21-month period:
> - Case the tree farm: 313.5 hours (20%)
> - Special projects help: 505.5 hours (31%)
> - Take care of sheep: 87.0 hours (5%)
> - Assist in the management of fish production: 206 hours (13%)
> - Other (tasks that could not be clearly assigned to any of the above categories): 497.5 hours (31%)

The district court also noted the work logs indicated a total of 1610 hours were logged for the twenty-one month period and that the average work day, including "other" tasks—such as mowing—was 3.7 hours per day; discounting the "other" tasks the average work day was 2.6 hours. The average work week, discounting the "other" tasks was 12.2 hours per week. The district court noted that based on the Board's review of past work, the Board determined the application for the agricultural exemption would be denied to the proposed tenants, the Schaeffers. On its review, the district court concluded there was substantial evidence to support that House 2 and the land were not "primarily adapted, by reason of nature and area, for use for agricultural purposes." Iowa Code § 335.2.

Under the statue, the key consideration is whether House 2 and the land are "*primarily adapted*, by reason of nature and area, for use for agricultural purposes." Iowa Code § 335.2 (emphasis added). The Langs urge the district court erred in upholding the Board's application of a "*primarily engaged* in agriculture" test, as that language infers a "primary means of livelihood" test, which the legislature removed from Iowa Code section 335.2 in 1963. 1963 Iowa Acts ch. 218, §2. In making its determination, the Board considered, among other things, the amount of time devoted to the performance of the work duties and used language indicating that the Tiernans were not "primarily engaged" in agriculture. In its decision the Board stated, "Based on this review of the actual work logs, it is the Department's determination that these duties, *including the time devoted to the performance of the duties*, does not qualify as being 'primarily engaged in agriculture.'" (Emphasis added.) Therefore, the house cannot be considered as a farm house for purposes of the exemption. The Board concluded in its Order, "[B]ased on all of the evidence, it is reasonable to conclude that the occupants are not 'engaged in agriculture' and that the house is not 'primarily adapted' for agriculture." Under *Thompson*—defining agriculture as "the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock"—the Board applied the proper test. *Thompson*, 539 N.W.2d at 183. The district court then found,

> The facts, as set forth by the court, provided a basis for the Board to make its decision, and the reasonableness of that decision is open to a fair difference of opinion. Therefore, the court may not substitute its decision for the Board's decision.

See W & G McKinney Farms, 674 N.W.2d at 103 ("If the reasonableness of the board's action is 'open to a fair difference of opinion, the court may not substitute its decision for that of the board.'").

Because the district court's determination—that the Board's decision to not extend the agricultural exemption to House 2 and the land—was supported by substantial evidence in the record and the district court did not err in determining House 2 and the land did not meet the definition of "agricultural purposes" under Iowa Code section 335.2, we affirm the district court. *See id.* (stating the standard of review is for correction of errors at law and the district court's factual findings are binding if supported by substantial evidence).

AFFIRMED.

Bower, J., concurs; Tabor, J., dissents.

TABOR, J. (dissenting)

I respectfully dissent. The majority frames the question before us as one of substantial evidence to support the decision of the Linn County Board of Adjustment to uphold (by operation of law after a two-to-two vote) the zoning administrator's denial of an agricultural exemption for the Langs' 6.5-acre parcel. If that were the question raised on appeal, then I would agree with the majority's deference to the decisions of the district court and the county board.

But as I see it, the issue being challenged by the Langs is the district court's legal determination, which is not binding on an appellate court. *See Danish Book World, Inc. v. Bd. of Adjustment of City of Cedar Rapids*, 447 N.W.2d 558, 560 (Iowa Ct. App. 1989) (stating "we [are not] precluded from inquiring into whether the trial court applied erroneous rules of law which materially affected the decision"). Specifically, the Langs contend "the district court wrongly relied on the zoning administrator's improperly narrow and outdated understanding of the agricultural exemption under Iowa Code section 335.2." When the claim of error lies with the interpretation of the law expressed by the board and embraced by the district court, then we may substitute our own reading of the statute. *See Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006).

At the board of adjustment meeting on June 30, 2004, Zoning Administrator Les Beck addressed the Langs' challenge to his denial of an agricultural exemption for their land as follows: "the county has honored the exemption for years and now the property is reduced to a 6-acre tract with a

pond and some berries and should not be considered a farm."[7] This theme was echoed by one of the two members of the board who voted to uphold the denial: "Combellick felt the definition of a farm is not 6 acres and some berries." The district court expressly relied on "Les Beck's statements regarding the property having been reduced to a 6-acre tract with a pond and some berries" as "substantial support" for the board's decision.

I believe that the district court misinterpreted section 335.2 by adopting the view of the zoning administrator that land previously falling under the agricultural exemption was no longer exempt because of its reduced acreage. The language of section 335.2 "does not appear to sanction the establishment of minimum acreage requirements because the exemption is not stated in terms of size or quantity of use, but instead focuses on the nature of use." *See* Neil D. Hamilton, *Freedom to Farm! Understanding the Agricultural Exemption to County Zoning in Iowa*, 31 Drake L. Rev. 565, 580 (1982); *see also Kuehl v. Cass Cnty.*, 555 N.W.2d 686, 687 (Iowa 1996) (finding hog confinement proposed for five-acre site qualified as a facility for "agricultural purposes"). Because the proper test to determine whether land has been "primarily adapted" for "agricultural purposes" is the nature of its use—the board and district court should have asked whether the Langs' use of their property had changed since the county recognized the original forty-eight-acre tract as falling under the agricultural exemption. In a

[7] Linn County zoning ordinance 1.3 contains the language in Iowa Code section 335.2, but also directs the zoning administrator to consider the size of the acreage in deciding whether a parcel qualifies for a "farm" exemption. Under the ordinance, "a taxable parcel" of less than ten acres "is presumed not to be a farm unless the applicant seeks a variance and thereafter provides clear and convincing evidence to the Board of Adjustment that the property is being used as a farm."

June 8, 2004 contempt ruling, Judge Newmeister found that Daryl Lang "carries on two agricultural purposes on the parcel he owns in Linn County. He grows trees and he has a fish farm."

The acknowledgement that those activities served an "agricultural purpose" should have been the focus of the board's analysis. It was not the focus because the zoning administrator suggested the Langs' tract did not qualify for the exemption because of its reduced size. I believe that this erroneous view of the statute materially affected the board's decision to uphold the denial of the agricultural exemption.

The majority decision gives a nod to smaller farms, recognizing that "small-scale agriculture should not be discouraged." The decision goes on to say that some line drawing must be done between what qualifies as an "agricultural use" and "what is more akin to a rural acreage." I agree that the size of the acreage is a relevant factor in determining whether the property is used for agricultural purposes, but I disagree that a board of adjustment can draw an arbitrary line that parcels of less than ten acres cannot be "primarily adapted" for agricultural purposes. Now that the conventional view of Iowa agriculture as the production of corn, soybeans, cattle, and hogs is being challenged by the emergence of Community Supported Agriculture involving smaller farms growing fruits, vegetables, and livestock, it is critical that county boards of adjustment do not employ a litmus test for the number of acres necessary to qualify for an agricultural exemption.

Had the board applied the proper legal test, it is likely that the crops listed on the Langs' agricultural exemption information sheet would have satisfied the

statute's requirement that the land be "primarily adapted" for agricultural purposes. For instance, the Langs indicated to the county that they had one acre of asparagus, seventy-five percent of which was intended for commercial production; four to five acres of trees, eighty percent intended for commercial production; as well as nearly one-half acre devoted to raspberries, blackberries, grapes, and tomatoes. The Assistant Linn County Attorney acknowledged during oral argument that the board of adjustment did not make a credibility determination concerning the Langs' information sheet. I would remand the case for the board to reconsider whether the Langs' 6.5-acre parcel is "primarily adapted" to agricultural purposes, treating the size of their acreage as only one of several factors in the determination. *See Danish Book World*, 447 N.W.2d at 561 (reversing and remanding to the board of adjustment with instructions to apply the proper factors).

I also believe that the board of adjustment applied the wrong legal standard in deciding whether to uphold the denial of an agricultural exemption for the Langs' thirty-five acre parcel. At its May 30, 2007 meeting, Zoning Administrator Beck reminded the Board of Adjustment that the issue was "whether or not the proposed occupant of 3713 Springville Road will be primarily engaged in agriculture." On that basis, the board upheld Beck's denial. The district court found substantial support for the board's decision in the evidence that the former tenants were not "primarily engaged in agriculture." Our legislature deleted the "primary means of livelihood" test from the exemption statute almost fifty years ago. 1963 Iowa Acts ch. 218, § 2 (amending Iowa Code § 358A.2 (1947)). Because the district court embraced the faulty interpretation

applied by the board, I would reverse and remand for reconsideration of the exemption for this parcel as well.