IN THE COURT OF APPEALS OF IOWA

No. 2-577 / 11-2102
Filed November 15, 2012

DONALD WOODWARD and VIRGINIA JOHNSON,
Plaintiffs-Appellees,

vs.

MONONA COUNTY BOARD OF SUPERVISORS,
Defendant-Appellant.

Appeal from the Iowa District Court for Monona County, John D. Ackerman, Judge.

A county board of supervisors appeals the district court's sustaining a writ of certiorari invalidating a zoning ordinance. **REVERSED AND REMANDED.**

Robert M. Livingston of Stuart Tinley Law Firm, L.L.P., Council Bluffs, for appellant.

Jessica Noll of Deck Law, L.L.P., Sioux City, for appellees.

Heard by Doyle, P.J., and Mullins and Bower, JJ.

MULLINS, J.

The Monona County Board of Supervisors (the County) appeals the district court's decision sustaining a writ of certiorari in favor of Donald Woodward and Virginia Johnson, invalidating a zoning ordinance passed by the County. Woodward and Johnson petitioned the district court for a writ of certiorari following the County's decision to rezone approximately 2.8 acres of land owned by Cory Bumann. The County now appeals, contending the district court exceeded its authority by improperly substituting its judgment for the County's judgment regarding the reasonableness of the rezoning decision. For the reasons stated herein, we reverse and remand.

I. BACKGROUND FACTS AND PROCEEDINGS.

Cory Bumann purchased a tract of land in rural Monona County with the intent of constructing a bar and restaurant to serve tourist traffic coming to enjoy the scenic Loess Hills. The tract of land is located at the southwest corner of the paved county road L-20 and the gravel road 153rd Street. County road L-20 is listed as a Loess Hills scenic byway, is one of the major paved roads through the Loess Hills in Monona County, and is advertised to tourists. Across county road L-20, but not accessible directly by L-20, is the Timber Ridge Winery and Vineyard, which is owned by other members of the Bumann family. While its restaurant and bar is no longer in operation, Timber Ridge continues to serve breakfast for approximately 400 guess on the weekends in the summer. The Timber Ridge property also has bike and ATV trails, along with a campground.

The tract in question is accessible by a dirt path from the Timber Ridge campground across L-20.

Bumann petitioned the county to rezone his tract of land from agricultural to general commercial so that he might build his bar and restaurant. The petition was referred to the county zoning commission, which held public hearings on the petition on April 19 and May 3, 2010. The commission was unable to reach a recommendation on the petition on April 19, and created a split recommendation on May 3.[1] Another public hearing was held in front of the board of supervisors on May 25, 2010, where the petition to rezone the tract was approved. Those in favor and those against the rezoning were present at each meeting and voiced their concerns. Those in favor of the rezoning asserted the restaurant and bar would increase tourism, increase tax revenue, and create jobs. Those opposed to the rezoning were concerned about increased traffic, drunk driving, noise, lack of police enforcement, and littering.

Woodward and Johnson, area property owners, filed a petition for writ of certiorari on June 8, 2010, claiming the ordinance violated the County's comprehensive plan, constituted illegal spot zoning, and was unreasonable, capricious, and inconsistent with the spirit or design of the zoning statutes. The case proceeded to a bench trial on October 19, 2011, and the court issued its decision sustaining the writ on December 1, 2011. The district court ruled that

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[1] At the May 3 meeting, the commission voted 2/3 to deny the rezoning request. However the commission then voted again 2/3 to grant the rezoning request. Both the motion to deny the request and the motion to grant the request failed. No explanation was offered by the commission member who voted "no" on both motions, though many at the meeting believed the member did not understand the first vote, as that vote required an affirmative vote to deny the rezoning request.

there was substantial evidence that the rezoning was germane to an object within the police power, and there was sufficient evidence that the rezoning was consistent with the comprehensive plan. However, it found there was no reasonable basis for distinguishing the tract at issue from the surrounding property. It therefore concluded the ordinance constituted illegal spot zoning. The County appeals.

II. SCOPE AND STANDARD OF REVIEW.

We review a district court's decision on a petition for writ of certiorari for correction of errors at law. *Fox v. Polk Cnty. Bd. of Supervisors*, 569 N.W.2d 503, 507 (Iowa 1997). We are bound by the district court's factual findings if supported by substantial evidence. *Id*.

The district court hearing a certiorari petition in a zoning case is permitted to find the facts anew on the record presented but is not permitted to decide the case anew. *Id.* The zoning board's action will be illegal only if the court's findings of fact fail to provide substantial support for the board's decision. *Id*. "If the district court's findings of fact leave the reasonableness of the board's action open to a fair difference of opinion, the court may not substitute its decision for that of the board." *Id*.

There is a strong presumption that the zoning ordinance is valid. *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 67 (Iowa 2001). If the reasonableness of the zoning ordinance is fairly debatable, the court should not substitute its judgment for that of the County. *Id*.

> The reasonableness of a zoning ordinance is fairly debatable when for any reason it is open to dispute or controversy on grounds that

> make sense or point to a logical deduction, and where reasonable minds may differ; or where the evidence provides a basis for a fair difference of opinion as to its application to a particular property.

Molo Oil Co. v. City of Dubuque, 692 N.W.2d 686, 690–91 (Iowa 2005). "[I]f there is some basis for the ordinance . . . and there is room for two opinions, the challenged ordinance is valid." *Neuzil v. City of Iowa City*, 451 N.W.2d 159, 164 (Iowa 1990). We will only interfere with the County's decision if there is a clear abuse of discretion. *Perkins*, 636 N.W.2d at 67. The challengers to the ordinance have the burden to show the zoning ordinance is arbitrary, capricious, and discriminatory. *Jaffe v. City of Davenport*, 179 N.W.2d 554, 556 (Iowa 1970). Each case is to be decided on its own facts. *Id*.

IV. SPOT ZONING.

Spot zoning occurs when an ordinance creates a small island of property with restrictions on its use that are different from those imposed on surrounding property. *Perkins*, 636 N.W.2d at 67. While spot zoning is not favored, it is not automatically illegal. *Jaffe*, 179 N.W.2d at 556. Spot zoning is valid if it passes a three-pronged test. *Perkins*, 636 N.W.2d at 68. We must determine: "(1) whether the new zoning is germane to an object within the police power; (2) whether there is a reasonable basis for making a distinction between the spot zoned land and the surrounding property; and (3) whether the rezoning is consistent with the comprehensive plan." *Id.*

The district court in this case found the ordinance passed the first and third prongs, but failed to pass the second. The County, as the only party appealing the district court's decision, challenges only the district court's

determination that there is no reasonable basis for making a distinction between the zoned land and the surrounding property. Woodward and Johnson do not challenge the district court's determination that the first and third prongs were satisfied. We therefore confine our analysis to the second prong of the spot zoning test.

In analyzing this second prong, we consider "the size of the spot zoned, the uses of the surrounding property, the changing conditions of the area, the uses to which the subject property has been put[,] and its suitability and adaptability for various uses." *Little v. Winborn*, 518 N.W.2d 384, 386, 387 (Iowa 1994) (citing *Jaffe*, 179 N.W.2d at 556). While the size of the tract rezoned may be of little importance in a rural area such as the Loess Hills region of Monona County, the factor that is of prime importance is whether the rezoned land "has a peculiar adaptability to the new classification as compared to the surrounding property." *Id*. at 387–88.

A. The Size of Spot Zone and Uses of the Surrounding Property. The rezoned tract is approximately 2.8 acres of land. It is surrounded on all sides by land zoned for agriculture. Woodward and Johnson both testified their property was either timber land or farm land with row crops and livestock. Sandra Bubke, the Monona County Zoning and Environmental Health Administrator, testified a person would have to travel two to five miles in any direction to find another commercially zoned district. However, the area in the Loess Hills region was not considered prime agricultural land on the county comprehensive plan.

The Timber Ridge property is zoned agriculture but has a special use permit that allows recreational uses such as a private campground, hiking, touring, and dirt-bike riding. Cory Bumann, while not testifying at trial, asserted at one of the county zoning meetings (the transcript of the meeting was entered into evidence during trial) that the owners of Timber Ridge were recently approved to change the zoning for a shelter house to commercial. This parcel was less than a mile away from his property.

The Timber Ridge facilities, while not directly accessible from L-20, are approximately one-half to three-quarters of a mile away from the rezoned property, and the property itself is contiguous to the Bumann property, separated only by L-20. In addition, there is a dirt path that is a direct access to L-20 from the Timber Ridge campground. The path comes out directly across L-20 from the rezoned tract.

Stanely Skow, a member of the board of supervisors who voted in favor of the rezoning, testified Timber Ridge at one time served a steak supper on Saturday nights with a band and dancing. However, the restaurant and bar at Timber Ridge had since closed down. John McCall, another member of the board of supervisors, testified he consider the rezoned property and Timber Ridge similar in that they were both gathering places that serve food and alcohol to people who come from all over. However, he also testified that the existence of Timber Ridge did not play a particular part in his decision to rezone the tract.

B. The Changing Conditions of the Area.

Testimony at trial revealed L-20 had been paved for twenty to twenty-five years. In addition, Timber Ridge had been located in the area for forty to fifty years, though it appears the closing of the restaurant and bar at Timber Ridge was more recent. It is unclear from the evidence at trial whether the extensive tourism promotion in the Loess Hills was a recent occurrence. However, the comprehensive plan for the county specifically designating the Loess Hill region was adopted by the county in 2007.

C. The Uses to Which the Subject Property Has Been Put. While Woodward and Johnson both testified the tract had previously been used for row crops, Skow remembered the tract of land was never used for much of anything due to the light soil and steep incline. Most of those who testified verified the land had to be leveled in order for the bar to be constructed. Skow and McCall verified the land was never prime agriculture land, though there was no evidence introduced regarding the soil composition or crop yields on this tract.

D. Its Suitability and Adaptability for Various Uses. McCall considered the land to be particularly suitable for rezoning because it was on the scenic byway, which meant a greater traffic flow. He thought rezoning the tract as commercial was the best use of the land for the county's needs. He also considered it proper to put the restaurant and bar at this location rather than in the better farm land of the "bottom ground" of the county. Skow noted the rezoning was done in order to bring tourism to the area. Skow stated many of the roads in the area were unpaved so the county has to work with the roads that are paved. He also noted

that other counties in the Loess Hills region want tourists to be able to start at one end of the scenic byway and go through the other counties with different stops along the way for meals and scenic overlooks. He considered this rezoning to be consistent with this regional plan.

Bumann testified he wanted the restaurant and bar located on this tract because of the highway traffic and the closeness to Timber Ridge. Even Woodward acknowledged the location was desirable because of the proximity to motorcycle traffic and the campground.

The district court wrote a thorough and well-reasoned opinion. In concluding the other two prongs of the spot zoning test were satisfied, it found substantial and competent evidence that "there was already a significant amount of motorcycle and vehicular traffic on the Loess Hills roads as well as on County L-20 due to the increasing popularity of the Loess Hills as well as from the large number of people who attended functions or activities at Timber Ridge." However, when it came to finding evidence to support the second prong of the test—a reasonable basis to make a distinction between the tract and the surrounding property—the district court focused on the fact that the increased traffic, the paving of L-20, and the Timber Ridge customers were not recent occurrences. It found no evidence that the ground was not appropriate for agriculture purposes. However, the evidence at trial indicated that everyone was aware of the steep incline on the property, and Skow testified it had light soil and was never used for much of anything.

The district court acknowledged the proximity to Timber Ridge would not be available to any other landowner in the surrounding property, but then concluded any land bordering L-20 would be equally suited for a restaurant and bar. The district court was concerned that the County did not give serious consideration as to whether other tracts in the same area had similar adaptability, and it was concerned the County did not seriously investigate whether the tract in question had any uniqueness other than its ability to serve Timber Ridge customers. The court concluded the rezoning constituted a piecemeal or haphazard zoning for the benefit of the owner and not for the welfare of the community.

In reviewing this conclusion, we keep in mind that it is within the County's power and authority to determine whether or not the property is similar in character and use to that of the surrounding property. *Keller v. City of Council Bluffs*, 66 N.W.2d 113, 116 (Iowa 1954). The district court is only to look to see if there has been a sufficient showing to reasonably support the County's judgment. *Id*. It is not to supersede the County's discretion just because the court would reach a different conclusion. *Id*. We find based on the evidence admitted at trial and based on the district court's own factual findings that the reasonableness of the rezoning decision was fairly debatable.

There was evidence this land was not prime agricultural land. The property is bordered on one side by the Timber Ridge property. While this property is zoned agriculture with a special use permit, the activity being conducted on the Timber Ridge property is clearly commercial-like activity with a

private campground, a winery, and a weekend breakfast being served to as many as 400 people. The rezoned property is located on one of the few paved roads in the Loess Hills, and the road is heavily traveled by tourists. While there is other property located along L-20, no other property is also located so near Timber Ridge. Based on the facts presented, a reasonable board member could conclude the rezoned land was best suited to zone commercial in the Loess Hills region. *See Montgomery v. Bremer Cnty. Bd. of Supervisors*, 299 N.W.2d 687, 696–97 (Iowa 1980) (upholding a rezoning ordinance despite the fact that other land shared some characteristics of the rezoned land including access to the road, railroad, and river). Accordingly, we defer to the County's judgment on this issue.

As substantial support exists for the County's decision, we find the district court erred in sustaining the writ filed by Woodward and Johnson. We reverse the district court's decision and remand for entry of an order annulling the writ.

REVERSED AND REMANDED.