IN THE COURT OF APPEALS OF IOWA

No. 8-209 / 06-1672
Filed July 16, 2008

DAVID C. WIEBBECKE,
Petitioner-Appellant,

vs.

BENTON COUNTY BOARD OF SUPERVISORS, BENTON COUNTY BOARD OF ADJUSTMENT and MARC GREENLEE, as Administrative Officer,
Respondents-Appellees.

Appeal from the Iowa District Court for Benton County, Kristin L. Hibbs, Judge.

The petitioner appeals from the district court's review upholding the Benton County Board of Adjustment's zoning decision. **AFFIRMED.**

Kenneth Dolezal, Cedar Rapids, for appellant.

David Thompson, Benton County Attorney, Vinton, for appellee.

Heard by Vogel, P.J., and Eisenhauer, J. and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

VOGEL, P.J.

David Wiebbecke appeals from the district court's denial of his petition for writ of certiorari based upon the Benton County Board of Adjustment's denial of his request to rezone his property. Finding no errors at law, we affirm.

I. Background Facts and Proceedings

In 2004, Wiebbecke purchased two acres of agricultural land in rural Benton County. Prior to purchasing the land, Wiebbecke did not consult an attorney, review the abstract, or obtain a title opinion to determine if any use restrictions were applicable Wiebbecke intended to build a large metal pole building, in which he would reside, store his personal belongings, and work on old cars. However, he later discovered that the land he purchased was within Benton County's agricultural land use district.

On January 12, 2005, Wiebbecke requested a land use change. On February 4, 2005, a public hearing was held and the Benton County Board of Supervisors, citing the favorable corn suitability rating of the land, denied the request for a variance. The minutes of the meeting stated the land had a corn suitability rating of eighty-five, but "the current rule is that any change on land with a [corn suitability rating] over 70 is not allowed."[1]

[1] The Benton County Iowa Land Preservation and Use Plan states:

> High quality farmland is that agricultural land where the soil has a Corn Suitability Rating of 70 or above. Low quality farmland has a CSR of 69 or below. Benton County has 296,152 acres of high quality farmland, which is 69.5 percent of all general agricultural land . . . . As reflected in the goals, objects and policies of the county, the preservation and protection of these valuable lands is essential to provide for the continuous production of food and fiber without hindrance from conflicting land uses.

Wiebbecke appealed this decision to the Benton County Board of Adjustment. After a public hearing on March 30, 2005, the Board denied Wiebbecke's request for a variance. Again, the minutes of the meeting stated that the denial was based upon the fact that the land had a corn suitability rating higher than seventy and a variance would not comply with the Benton County Agricultural Land Preservation Ordinance (Ordinance Number 24). On September 7, 2005, the Board held another public meeting to reconsider its previous decision, but again denied Wiebbecke's request for a variance.

Wiebbecke filed a petition for a writ of certiorari in district court. The petition alleged that the denial of his request for a variance was based upon Ordinance Number 24 and that the ordinance is illegal and unconstitutional. On September 18, 2006, following a hearing, the district court dismissed Wiebbecke's petition for writ of certiorari and affirmed the Board's denial of Wiebbecke's request for a variance. Wiebbecke appeals from this ruling.[2]

II. Standard of Review

"A writ of certiorari shall only be granted . . . where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded proper jurisdiction or otherwise acted illegally." Iowa R. Civ. P. 1.1401. "Unless otherwise specially provided by statute, the judgment on certiorari shall be limited

[2] Following Wiebbecke's appeal, the record was supplemented with the following information. In October 2007, Wiebbecke filed a new request for a land use change regarding the same property, to construct a 40 foot by 54 foot "pole building for storage." A public hearing was held on November 1, 2007, and the Benton County Board of Supervisors approved this request. However, the land use change was granted only "[f]or a pole building for storage, no well or septic will be needed or allowed." While this grant would seemingly nullify the reason for disallowing the initial variance request, a high CSR, it does not affect the arguments as framed on appeal: 1) the assertion the Board failed to make sufficient written factual findings, and 2) the assertion Ordinance No. 24 is contrary to statutory law and unconstitutional.

to sustaining the proceedings below, or annulling the same wholly or in part, to the extent that they were illegal or in excess of jurisdiction." Iowa R. Civ. P. 1.1411. Therefore, "certiorari is an action at law to test the legality of an action taken by a court or tribunal acting in a judicial or quasi-judicial capacity." *Petersen v. Harrison County Bd. of Supervisors*, 580 N.W.2d 790, 793 (Iowa 1998).

Our review of the district court's ruling on certiorari is limited to correction of errors at law. *W.G. McKinney Farms, L.P. v. Dallas County Bd. of Adjustment*, 674 N.W.2d 99, 103 (Iowa 2004). We are bound by the factual findings of the district court if supported by substantial evidence. *Id*.

III. Analysis

Wiebbecke asserts that the Board's decision was not supported by substantial evidence because it failed to make sufficient written findings of fact. "[B]oards of adjustment shall make written findings of fact on all issues presented . . . sufficient to enable a reviewing court to determine with reasonable certainty the factual basis and legal principles upon which the board acted." *Citizens Against the Lewis and Clark (Mowery) Landfill v. Pottawattamie County Bd. of Adjustment*, 277 N.W.2d 921, 925 (Iowa 1979). The Board's September 7, 2005 meeting was reported by a court reporter. At this meeting, Wiebbecke's attorney made a presentation, the County responded, and members of the public were allowed to make arguments for and against Wiebbecke's request for a variance. The Board was actively involved and questioned several of those who spoke. The discussion and deliberations included the reasons Wiebbecke requested the variance, the reasons the variance was opposed, as well as the reasons why the

Board voted to deny the variance. Among the considerations were the CSR of the property, as well as the size of the property, the character of the surrounding property and the effect on the neighboring property values, and the fact that a hardship was created by Wiebbecke rather than the ordinance. Although written findings were not made, the Board's reasoning and conclusions were included in the reported and transcribed hearing; and thus facilitated our review of the Board's action. *See Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483, 488 (Iowa 2008) ("[T]he reviewing court must determine based on the facts of the particular case whether the actual compliance has accomplished the purpose of the statute or rule."); *Citizens*, 277 N.W.2d at 925 (stating that "facilitate judicial review" is one of the "compelling considerations" supporting the requirement of written factual findings). Therefore, we find the Board made sufficient factual findings. *See Bontrager Auto Serv., Inc.*, 748 N.W.2d at 488 ("[S]ubstantial — as opposed to literal — compliance with the written-findings requirement is sufficient.").

In reviewing the Board's decision, the district court stated:

> The Court finds nothing in the record to suggest that the Board did not allow discussion of any the various points of view presented or that improper matters were considered. As is apparent from the record of the public hearing, all present were given a full opportunity to present whatever information and arguments, legal or otherwise, they wished. It is clear from the questions asked by the Board members that they listened and considered the information presented before reaching their decision.

The district court then concluded that Wiebbecke failed to prove the decision of the Board was illegal. *Perkins v. Bd. of Supervisors of Madison County*, 636 N.W.2d 58, 64 (Iowa 2001) ("An illegality is established if the board

has not acted in accordance with a statute; if its decision was not supported by substantial evidence; or if its actions were unreasonable, arbitrary, or capricious."). We agree. As we conclude that the Board's decision was supported by substantial evidence, we may not interfere with its judgment. *See Bontrager Auto Serv., Inc.*, 748 N.W.2d at 497 ("[T]he reasonableness of the board's decision is open to a fair difference of opinion, and therefore, the board's decision should have been affirmed on that basis.").

Wiebbecke next asserts that Ordinance Number 24 is contrary to statutory provisions and unconstitutional. This ordinance was enacted by the Benton County Board of Supervisors and states it was adopted in accordance with the Benton County Land Preservation and Use Plan and pursuant to Iowa Code chapters 335 (County Zoning) and 352 (County Land Preservation and Use Commissions). The ordinance creates an Agricultural Land Use District defined as "[a]ll of Benton County that is not within the corporate limits of cities and towns." Additionally, the ordinance sets forth the powers of the Board and the procedure for granting a variance.

Wiebbecke contends that Ordinance Number 24 does not comply with Iowa Code sections 352.6 and 352.9 (2005). He claims that these code sections require the county to obtain his permission to include his land in or allow for him to withdraw his land from the agricultural land use district. However, we conclude the code sections cited by Wiebbecke are inapposite as they pertain to creating, expanding, or withdrawing land from an agricultural area.

Iowa Code section 352.1 recognizes the importance of preserving agricultural land and provides local citizens and local governments three means

to accomplish this: (1) the creation of county land preservation and use plans and policies, (2) the adoption of an agricultural land preservation ordinance, and (3) the establishment of agricultural areas. *See* Iowa Code §§ 352.5 (county land preservation and use plans and policies), 335.27 (agricultural land preservation ordinances), and 352.6-.11 (agricultural areas). An agricultural land preservation ordinance is enacted by the county after notice and a hearing, where an agricultural area is "self-imposed zoning" initiated by the owners of farmland. Iowa Code §§ 335.6, 335.27, 352.6; *In re Condemnation of Certain Rights*, 666 N.W.2d 137, 140 (Iowa 2003).

In the present case, Wiebbecke sought a variance from Ordinance Number 24, created under Iowa Code section 352.5 as an agricultural land preservation ordinance enacted by the county. Although Iowa Code section 335.27 provides that an agricultural land preservation ordinance is subject to the same use restrictions of an agricultural area, it does not provide that an agricultural land preservation ordinance is subject to the consent and withdrawal provisions of an agricultural land area. Therefore, we conclude sections 352.6 and 352.9 are not applicable to the ordinance and Wiebbecke's argument is without merit.

Additionally, Wiebbecke contends that Ordinance Number 24 is unconstitutional as it constitutes a taking of property without just compensation.[3] Generally, land-use regulation does not constitute a taking requiring

[3] On appeal, Wiebbecke also asserts that Ordinance Number 24 constitutes spot zoning. However, as he did not raise this argument to the district court and it was not ruled on by the district court, we conclude that Wiebbecke did not preserve this argument for appeal. *See, e.g.*, *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998).

compensation unless it either: "1) involves a permanent physical invasion of the property or 2) denies the owner all economically beneficial or productive use of the land." *Hunziker v. State*, 519 N.W.2d 367, 370 (Iowa 1994). Neither of these exceptions is applicable here. Additionally, a government is not required to pay compensation "where it can be shown the property owner's 'bundle of rights' never included the right to use the land in the way the regulation forbids." *Bellon v. Monroe County*, 577 N.W.2d 877, 880 (Iowa Ct. App. 1998) (citations omitted). The ordinance was in effect at the time Wiebbecke purchased the land, thus he did not acquire a use contrary to the existing agricultural classification. *See id.* (holding a plaintiff did not acquire a use contrary to the provisions of the existing road classification). Therefore, we conclude that this claim is also without merit.

Having considered all of the arguments before us on appeal, we affirm the district court's decision.

AFFIRMED.