

IN THE COURT OF APPEALS OF IOWA

No. 8-842 / 08-0468
Filed December 31, 2008

**RAYMOND A. BUSER, SALLY M. BUSER,
LESLIE CROZIER, JERRY D. CROZIER,
LARRY HENKES, JOYCE HENKES, and
KEN VANMILLIGAN,**
Plaintiffs-Appellants,

vs.

**JOHNSON COUNTY, IOWA BOARD OF
ADJUSTMENT,**
Defendant-Appellee,

STONE HILLS SOILS, L.L.C.,
Intervenor-Appellee.

Appeal from the Iowa District Court for Johnson County, Mitchell E. Turner, Judge.

The plaintiffs appeal from the district court's denial of a writ of certiorari.

AFFIRMED.

John E. Beasley of Phelan, Tucker, Mullen, Walker, Tucker & Gelman, L.L.P., Iowa City, for appellants.

Janet Lyness, County Attorney, and Andrew B. Chappell, Assistant County Attorney, for appellee.

James P. Craig of Lederer, Weston & Craig, P.L.C., Cedar Rapids, for intervenor.

Heard by Sackett, C.J., and Vaitheswaran and Doyle, JJ.

VAITHESWARAN, J.

The Johnson County Planning and Zoning Administrator issued Stone Hills Soils, L.L.C. (Stone Hills) a conditional use permit for the production of compost manufactured soil. A group of property owners and interested parties appealed the action on the ground that Stone Hills did not establish the permitted use within a year of the permit's issuance, as required by ordinance.¹ They also contended that Stone Hills failed to establish a use before the effective date of an amended ordinance that created a new zoning classification for composting facilities.²

The Johnson County Board of Adjustment denied the appeal. The board effectively adopted the planning and zoning administrator's position that (1) a building permit was not necessary to establish a use under the ordinance and (2) a use could be established "when the activity permitted has been commenced." Johnson County, Iowa, Code of Ordinances art. 8:1.20(II)(5)(c)(2). The board

¹ Article 8:1.20(II)(5)(c) of the Johnson County Code of Ordinances states:

1. A use for which a Conditional Use Permit is granted must be established within one (1) year after such permit is issued. If such use is not so established, the Conditional Use Permit shall be deemed to have expired and shall be null and void.
2. A Conditional Use Permit which requires a building permit shall be deemed established when such a building permit is obtained and the construction thereunder commenced. If no building permit is required, the use shall be deemed established when the activity permitted has been commenced.

² Effective July 7, 2006, the Johnson County Code of Ordinances was amended to add an Agricultural, Solid Waste Disposal and Environmental Resource Reclamation District. The purpose was to "provide areas within Johnson County where it is appropriate to site and operate sanitary landfills and composting facilities"

cited the steps Stone Hills took to establish “use” and effectively determined that those steps amounted to the commencement of activity under the ordinance.

The plaintiffs petitioned for a writ of certiorari. In a thorough ruling, the district court rejected their arguments, as follows:

There is substantial evidence in the record that steps were being taken by Stone Hills Soils to comply with the conditions of the [conditional use permit.] [The administrator for the Johnson County Planning and Zoning Department] determined that Stone Hills Soils had secured necessary permits; was in the process of securing other necessary permits; was in the process of finalizing agreements necessary to engage in the composting process; and had been delayed by outside forces in its attempts to get the composting facility up and running. These determinations 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 that of [the board’s] decision.

The Court further finds that because there is substantial evidence that Stone Hills Soils has taken steps to comply with the conditions of the [conditional use permit], there is no non-conforming use of the land at issue by Stone Hills Soils that would violate Ordinance 06-22-06-Z2. Stone Hills Soils was issued the [conditional use permit] that made it valid for Stone Hills Soils to operate a composting facility in an agriculturally zoned area. There is no evidence in the record that indicates the passage of Ordinance 06-22-06-Z2 changed the zoning of the area where the composting facility will be located

Plaintiffs have not established that [the board] exceeded its jurisdiction or acted illegally. [The board]’s decision should be affirmed.

On appeal, the plaintiffs reiterate the arguments raised before the board and the district court.

We review the district court’s decision for correction of legal error. *Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483, 497 (Iowa 2008). We are bound by the board of adjustment’s fact findings if they are supported by substantial evidence. *Id.* at 490-95.

The district court provided a detailed summary of the record evidence, reviewed the evidence under the appropriate standard, and correctly applied the law. No useful purpose would be served by revisiting the evidence or reevaluating the law. For the reasons stated by the district court, we affirm the Johnson County Board of Adjustment's rejection of the plaintiffs' challenge to Stone Hills's conditional use permit.

AFFIRMED.