**IN THE COURT OF APPEALS OF IOWA**

No. 8-970 / 07-1958
Filed March 26, 2009

**VANWYK FARMS, L.C., VERNON VAN WYK,
LORETTA VAN WYK, GENE LACAEYSE
and MARY M. LACAEYSE,**
Plaintiffs-Appellants,

**vs.**

**POWESHIEK COUNTY BOARD OF SUPERVISORS,
BIG RIVER RESOURCES GRINNELL, L.L.C.,
DOUGLAS SHUTTS and ALEXANDER S. MOFFETT,**
Defendants-Appellees.

---

**GENE LACAEYSE, MARY M. LACAEYSE,
VERNON VAN WYK, LORETTA VAN WYK,
and VAN WYK FARMS, L.C.,**
Plaintiffs-Appellants,

vs.

**POWESHIEK COUNTY BOARD OF SUPERVISORS,
BIG RIVER RESOURCES GRINNELL, L.L.C.,
THOMAS LAW, DOUGLAS SHUTTS and
ALEXANDER S. MOFFETT,**
Defendants-Appellees.

---

**VERNON VAN WYK, LORETTA VAN WYK,
VAN WYK FARMS, L.C., GENE LACAEYSE
and MARY LACAEYSE**
Plaintiffs-Appellants,

vs.

**POWESHIEK COUNTY BOARD OF SUPERVISORS,
and BIG RIVER RESOURCES GRINNELL, L.L.C.,**
Defendants-Appellees.

---

**GENE LACAEYSE, MARY M. LACAEYSE,
VERNON VAN WYK LORETTA VAN WYK
and VAN WYK FARMS, L.C.,**
Plaintiffs-Appellants,

vs.

**POWESHIEK COUNTY BOARD OF SUPERVISORS,
and BIG RIVER RESOURCES GRINNELL, L.L.C.,**
Defendants-Appellees.

---

Appeal from the Iowa District Court for Poweshiek County, Annette J. Scieszinski, Judge.

Plaintiffs appeal from the district court's entry of summary judgment in favor of defendants. **AFFIRMED.**

Karl G. Knudson, Decorah, for appellants.

Richard D. Updegraff, Alexander M. Johnson, and Haley R. Van Loon of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., Des Moines for appellee Big River Resources Grinnell, L.L.C.

William A. Wickett and Jason W. Miller of Patterson Law Firm, L.L.P., Des Moines, for appellees Poweshiek County Board of Supervisors, Douglas Shutts, Alexander S. Moffett, and Thomas Law.

Heard by Vogel, P.J., and Mahan and Eisenhauer, JJ.

**MAHAN, J.**

Plaintiffs Van Wyk Farms, Vernon and Loretta Van Wyk, and Gene and Mary Lacaeyse (Plaintiffs) appeal from the district court's entry of summary judgment in favor of defendants Big River Resources Grinnell, L.L.C. (Big River) and Poweshiek County Board of Supervisors, Douglas Shutts, and Alexander Moffett (collectively the Supervisors) with regard to Plaintiffs' challenges to the Supervisors' rezoning of agricultural land in Poweshiek County to allow for the industrial development of an ethanol plant by Big River. Plaintiffs argue the district court erred in (1) granting summary judgment as to their writ of certiorari claims, (2) dismissing their requests for declaratory relief, (3) dismissing their public records claim, and (4) limiting their open meetings claims. We affirm.

**I. Background Facts and Proceedings.**

In 1976 Poweshiek County adopted a zoning ordinance. The county also adopted a comprehensive land use plan in 2001. The zoning ordinance and comprehensive plan were in effect until August 21, 2006, at which time the county adopted new plans: the Poweshiek County Zoning Ordinance of 2006 and the Poweshiek County Land Use Comprehensive Plan of 2006.[1] This case involves four consolidated actions brought by Plaintiffs against Big River and the Supervisors. Plaintiffs are unhappy with the Supervisors' cooperation with and accommodation of Big River's development of an ethanol plant in their evolving rural neighborhood. The site at issue is approximately 175 acres of agricultural land in Poweshiek County near Grinnell, across the highway from the properties

[1] Prior to the adoption of the new plans, the county published proper notice and held a public hearing regarding its intent to repeal and replace the previous plans.

of Plaintiffs Gene and Mary Lacaeyse, Vernon and Loretta Van Wyk, and Van Wyk Farms, L.C.

In late June 2006 the county received several applications requesting a change to industrial zoning for approximately ninety acres of land that were zoned agricultural.[2] The applicants intended this change to allow Big River to develop a 100 million gallon per year dry grind ethanol facility. On July 5 and 6, 2006, the county published notice of a public zoning commission hearing to take place on July 18, 2006, and a public board of supervisors hearing to take place on July 20, 2006, to discuss the proposed rezoning. Additionally, on or about July 1, 2006, copies of the notice were mailed to the owners of property within five hundred feet of the area proposed to be rezoned.

At least forty-nine county residents attended the July 18, 2006 public hearing and were given the opportunity to be heard. At the conclusion of the hearing, the zoning commission voted six to one to recommend to the board of supervisors that the county not rezone the property. Thereafter, at the board of supervisors' July 20, 2006 public hearing, at least forty-seven county residents were given the opportunity to be heard. After considering the county's general zoning scheme, the board of supervisors voted two to one to rezone the subject property.

In mid-August 2006 the county received another application for a change in zoning, requesting an additional eighty-five acres zoned agricultural to be

[2] The application for rezoning was considered under the county's 1976 zoning ordinance, which was in effect at the time.

rezoned industrial for Big River's development of the ethanol facility.[3] On September 6 and 7, 2006, the county published notice of a zoning commission hearing to take place on September 19, 2006, and a board of supervisors hearing to take place on September 28, 2006, to discuss the proposed rezoning. On or about September 9, 2006, copies of the notice were mailed to the owners of property within five hundred feet of the area proposed to be rezoned. Again, both hearings were open to the public. At least twenty-eight residents attended both of the hearings. This time the zoning commission voted five to three to recommend the property be rezoned, and the board of supervisors thereafter voted three to zero to approve the application for rezoning.

Meanwhile, a public hearing was held on September 18, 2006, with regard to a proposal for the county to enter into an agreement with Big River to develop the ethanol facility.[4] Upon the conclusion of the hearing, the board of supervisors adopted Resolution No. 2443, entitled "Resolution Approving and Authorizing Execution of an Agreement for Private Development by and Between Poweshiek County and Big River Resources Grinnell, L.L.C.," which approved the county's continuing negotiations to reach an agreement with Big River for Big River's development of the ethanol facility. The board of supervisors held another public hearing on December 28, 2006, to take up final consideration of the proposed agreement with Big River. At the conclusion of this meeting, the board of supervisors adopted Resolution No. 2449, which officially authorized the county's participation in the agreement with Big River.

---

[3] This application was considered under the county's newly enacted zoning ordinance of 2006 and comprehensive plan of 2006.

[4] Notice for the hearing was published on September 13, 2006.

Meanwhile, another public hearing was held on December 21, 2006, at which time the board of supervisors considered requests from plaintiffs Vernon and Loretta Van Wyk (on behalf of Van Wyk Farms, L.C.) and Michael and Jill Allen to rezone their properties near the Big River ethanol facility site from agricultural to residential.[5] The properties the Van Wyks and the Allens proposed to be rezoned were within 1000 feet of the Big River site. According to the zoning ordinance of 2006:

> No building structure or parcel of land shall be used for manufacturing, fabricating, repairing, storing, cleaning, servicing of materials, products, or goods, within 1000 feet of any lot line adjoining a residential district.

Upon determining the proposed rezoning of the properties would violate the zoning ordinance of 2006, the Supervisors denied the requests made by the Van Wyks and the Allens.

Plaintiffs brought four separate certiorari actions seeking nullification of the Supervisors' actions in (1) rezoning the property for the proposed Big River ethanol facility, (2) refusing to rezone the Van Wyks' property from agricultural to residential, and (3) entering into an agreement for private development with Big River. The petitions also alleged open meetings violations and a public records violation and requested declaratory relief. On July 10, 2007, Big River filed a motion for summary judgment.[6] On September 4, 2007, after a hearing, the district court granted partial summary judgment in favor of all defendants,

[5] The Allens are not parties in litigation of this matter.
[6] The court allowed the Supervisors to join in Big River's motion for summary judgment.

preserving only two narrow open meetings claims for trial.[7] Plaintiffs filed two post trial motions, which were denied. Plaintiffs now appeal.

**II. Standard of Review.**

We review a district court's ruling on a motion for summary judgment for correction of errors at law. Iowa R. App. P. 6.4; *Wallace v. Des Moines Indep. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008). Summary judgment is available only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 735 (Iowa 2008). An issue of material fact occurs when the dispute involves facts that might affect the outcome of the suit under the applicable law. *Wallace*, 754 N.W.2d at 857. Such issue is "genuine" when the evidence allows a reasonable jury to return a verdict for the nonmoving party. *Id*. The burden of showing the nonexistence of a material fact is on the moving party, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Id.*; *Rodda v. Vermeer Mfg*., 734 N.W.2d 480, 483 (Iowa 2007).

**III. Issues on Appeal.**

**A. Writ of Certiorari Claims.**

Under Iowa law, county boards of supervisors have authority over county zoning issues. Iowa Code §§ 335.3, 335.4 (2007). Boards of supervisors are to make zoning regulations

> in accordance with a comprehensive plan [and] with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular

[7] Those claims were later dismissed after a two-day trial.

> uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county.

Iowa Code § 335.5. Zoning regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed subject to the provisions of section 335.6 relative to public hearings and official notice. *See* Iowa Code § 335.7. According to section 335.6:

> [A] regulation, restriction, or boundary shall not become effective until after a public hearing, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the hearing shall be published as provided in section 331.305. The notice shall state the location of the district affected by naming the township and section, and the boundaries of the district shall be expressed in terms of street or roads if possible.

According to section 331.305:

> [I]f notice of an election, hearing, or other official action is required by this chapter, the board shall publish the notice at least once, not less than four nor more than twenty days before the date of the election, hearing, or other action, in one or more newspapers . . . .

Upon our review of decisions made by boards of supervisors with regard to the rezoning of certain property and zoning regulations, we are to "presume that the Board properly performed its duty under the law, unless clear evidence to the contrary appears." *Petersen v. Harrison County Bd. of Supervisors*, 580 N.W.2d 790, 793 (Iowa 1998). Specifically, in evaluating amendments or changes to zoning arrangements, the supreme court has stated:

> We start this discussion with the strong presumption of the validity of the ordinance and amendments thereto. If the reasonableness of the amendment is fairly debatable, we will not substitute our judgment for that of the Board of Supervisors. We will uphold the action of the Board of Supervisors if it is supported by competent and substantial evidence. The court should not interfere with the zoning decisions of the Board of Supervisors unless there is a clear

> abuse of discretion. The property owners, as challengers of the amendment, have the burden to show the amendment is arbitrary, capricious, and discriminatory.

*Perkins v. Board of Supervisors*, 636 N.W.2d 58, 67 (Iowa 2001).

**1. Procedural issues.**

Plaintiffs argue the district court erred in granting summary judgment on their writ of certiorari claims because the Supervisors failed to follow proper notice requirements for the July and September rezonings under the procedures set forth in Iowa Code section 335.6. Specifically, Plaintiffs allege (1) the notices of both hearings did not express district boundaries in terms of streets or roads as required by section 335.6 and (2) the notice of the September 28, 2006 hearing was published one to two days outside the timeframe required by section 331.305.

Our supreme court has determined that an utter lack of compliance with chapter 335 notice provisions deprives a county jurisdiction to rezone certain property and voids the county's prior zoning decisions. *Osage Conservation Club v. Board of Supervisors*, 611 N.W.2d 294, 297-98 (Iowa 2000) (finding a failure to comply with sections 335.6 and 335.7); *Bowen v. Story County Bd. of Supervisors*, 209 N.W.2d 569, 571-72 (Iowa 1973) (finding a failure to provide notice and hearing as required by section 358A.7, the predecessor to section 335.7). In those cases, the court addressed a county's *complete failure* to provide public notice and hearing as required by chapter 335.

The court has not had the opportunity to determine the specific compliance with chapter 335 a county must exercise in adopting or changing

zoning regulations. However, the court has recently recognized that boards of supervisors' substantial compliance with general zoning statutory requirements is sufficient. *Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483, 488 (Iowa 2008). As the court stated:

> In *Thorson v. Board of Supervisors*, 249 Iowa 1088, 90 N.W.2d 730 (1958), we held a board's substantial compliance with a statutory requirement was satisfactory, noting "the requirements imposed by statute upon an inferior tribunal should not be too technically construed, lest its efficiency be wholly paralyzed." 249 Iowa at 1097, 90 N.W.2d at 735; *accord Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 887 (Iowa 1976) ("'[O]nly where it clearly appears there was a failure to substantially comply with the statutory requirements will there be found jurisdiction violations.'") . . . . More recently, in *Obrecht v. Cerro Gordo County Zoning Board of Adjustment*, 494 N.W.2d 701 (Iowa 1993), we held substantial compliance with a zoning ordinance was sufficient.

*Bontrager*, 748 N.W.2d at 488. "Substantial compliance" means the statute "has been followed sufficiently so as to carry out the intent for which it was adopted." *Id*.

Specifically with regard to chapter 335 notice requirements, section 331.605 states, "A county shall *substantially comply* with a procedure established by a state law for exercising a county power unless a state law provides otherwise." (Emphasis added.) In *Osage*, the court referred to secondary authorities stating "substantial compliance" with chapter 335 notice provisions would be adequate. *See Osage*, 611 N.W.2d at 298 (citing Kenneth H. Young, *Anderson's American Law of Zoning* § 4.03, at 247-49 (4th ed. 1996)). This view is the majority rule. *See* 83 Am. Jur. 2d *Zoning and Planning* § 502, at 434 (2003) ("Generally substantial compliance with the procedural requirements for

the manner in which a zoning ordinance may be validly adopted is sufficient to validate the zoning ordinance.").

The court has also noted the purpose of the statutory notice and public hearing requirements are "primarily to aid the Board in gathering information to discharge the legislative function" and that a public hearing is necessary for a board of supervisors to gather such "relevant information." *Osage*, 611 N.W.2d at 298; *Montgomery v. Bremer County Bd. of Supervisors*, 299 N.W.2d 687, 693 (Iowa 1980).

> A notice of hearing may be reviewed to ascertain whether it was sufficient reasonably to inform the public of the essence and scope of the zoning regulation under consideration. The usual requirement with respect to contents is that of fair notice, and this requirement is met if it gives the average reader reasonable warning that land in which that person has an interest may be affected by the legislation proposed.

83 Am. Jur. 2d Zoning and Planning § 516, at 445-46. "Whether the notice of a proposed zoning ordinance is sufficient under the applicable statute is a pure issue of law and not fact." *Id.* at § 512, at 443.

In this case, the following notice was published in the *Grinnell Herald Register* on July 6, 2006:

> You are hereby notified that on Tuesday, July 18, 2006 at 7:30 P.M., the Poweshiek County Zoning Commission will hold a public hearing. This hearing will be held in the Poweshiek County Courthouse Conference Room in the basement of the courthouse in Montezuma, Iowa. The following items will be presented:
>
> 1. Big River Resources Grinnell LLC requesting a change in zoning from agricultural to industrial, approximately 74 acres in the W ½ SE ¼ of Section 4 Township 79 Range 16 West (Washington) Poweshiek County. Approximately 16 acres off of east side of Northwest corner of Section 9 Township 79 North 16 West, Poweshiek County, Iowa. For the purpose of development of a 100

> million gallon per year dry grind ethanol facility developed by Big River Resources Grinnell LLC.
>
> Second public hearing for the above requests will be held Thursday, July 20, 2006 at 9:30 A.M., in the Poweshiek County Board of Supervisor's office on the main floor of the courthouse in Montezuma, Iowa.

This notice was also published in the *Montezuma Republican* on July 5, 2006. A similar notice was published in the *Grinnell Herald Register* on September 7, 2006, and in the *Montezuma Republican* on September 6, 2006, notifying the community about the public hearings to be held on September 19, 2006, and September 28, 2006, with regard to the additional eighty-five acres proposed to be rezoned for the ethanol facility.

With regard to Plaintiffs' contention that the notices of the hearings violated chapter 335 due to their inadequate property descriptions, we note section 335.6 requires notices to state "the location of the district affected by naming the township and section, and the boundaries of the district shall be expressed in terms of streets or roads *if possible*." (Emphasis added.) Here, the property to be rezoned was located in a rural area, and a description in terms of streets and roads was not possible. Furthermore, the record shows at least forty-nine residents attended the July 18, 2006 public hearing; at least forty-seven residents attended the July 20, 2006 public hearing; and at least twenty-eight residents attended both the September 19, 2006 and September 28, 2006 public hearings. Therefore, the notices obviously served to aid the Supervisors in gathering relevant information from the community and discharging the legislative function.

Plaintiffs also allege the notice of the September 28, 2006 hearing was published one to two days outside the timeframe required by section 331.305. According to that section, "[T]he board shall publish the notice at least once, not less than four nor more than twenty days before the date of the . . . hearing." Iowa Code § 331.305. Both notices were timely as to the September 19, 2006 hearing. As to the September 28, 2006 hearing, however, the notice was published in the *Montezuma Republican* twenty-one days before the hearing and in the *Grinnell Herald Register* twenty-two days before the hearing. Iowa law requires a county to hold a public hearing, with proper notice, as a prerequisite to enactment of zoning decisions. Iowa Code §§ 335.6, 331.305. As the district court stated:

> The Supervisors are not required to afford more than one hearing on a zoning change, although clearly it was the Supervisors' design in this case to allow a calendar of two public hearing options—just as had been done in the July rezoning consideration. The first such opportunity was September 19th before the Zoning Commission, and that was lawfully accomplished, meeting the minimum requirements of Iowa law. . . .
>
> The fact that the Supervisors adopted a course to allow more access, does not bind them to succeed. The Supervisors remained statutorily authorized to "take action" on the Commission's "final report" after the Commission itself received public comment via a lawfully publicized public hearing.

We agree. In addition to the two public hearings for each zoning decision, the Supervisors also mailed copies of the published notice to the owners of property within five hundred feet of the areas proposed to be rezoned. The mailing of such notices was not statutorily required. We further note, as we stated above, the attendance at the hearings shows there is no doubt as to the effectiveness of the notices in alerting the public to the hearings.

Upon our review, we find no error in the district court's conclusion that the notices were lawful. The Supervisors more than substantially complied with chapter 335 notice and hearing requirements. *Id*. at §§ 335.6, 331.305; *Perkins*, 636 N.W.2d at 67. The published notices sufficiently described the property and gave the community fair notice of the essence and scope of the zoning regulation under consideration, and the hearings aided the board in gathering relevant information to discharge the legislative function. *Osage*, 611 N.W.2d at 298; 83 Am. Jur. 2d § 516, at 445-46.

Plaintiffs further argue the Supervisors' failure to create mappable zoning districts transformed their actions into the grant of a de facto variance. Specifically, Plaintiffs allege that without the creation of a mappable zoning district, the Supervisors acted to merely approve an ethanol plant—a grant of a special use permit—an action only allowable to boards of adjustment. *Martin Marietta Materials, Inc. v. Dallas County*, 675 N.W.2d 544, 547 (Iowa 2004). In this case, Big River did not submit applications for a special or conditional use permit. Rather, landowners submitted applications for their property to rezoned from agricultural to industrial. As we have discussed above, boards of supervisors may modify zoning districts. We therefore find this argument to be without merit.

Finally, Plaintiffs argue the Supervisors lacked authority to amend the zoning ordinance by motion rather than by ordinance amendment procedures. We have already determined the Supervisors substantially complied with chapter 335 zoning procedures. We find this argument to be without merit.

**2. Resolution Nos. 2443 and 2449.**

Plaintiffs argue the district court erred in granting summary judgment on their writ of certiorari claims because the Supervisors exceeded their jurisdiction or otherwise acted illegally in adopting Resolutions 2443 and 2449. Specifically, Plaintiffs contend Resolution 2443 did not contain a public purpose because it approved an agreement that did not yet exist, and Resolution 2449 did not contain a public purpose because it was incomplete in terms of construction plans. In support of this contention, Plaintiffs rely on the supreme court's determination that a county board of supervisors acts illegally 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." *Perkins*, 636 N.W.2d at 64.

Upon our review, we are to presume the Supervisors properly performed their duties under the law, unless clear evidence to the contrary appears. *Petersen*, 580 N.W.2d at 793. We will uphold the Supervisors' action if it is supported by competent and substantial evidence. *Perkins*, 636 N.W.2d at 67. In adopting Resolutions 2443 and 2449 in this case, the Supervisors considered, among other things, job opportunities for county residents and financial incentives for economic development. As the district court noted:

> The Supervisors' action in moving forward to accommodate Big River's development plans with local financial incentives and otherwise, was—albeit controversial with those who opposed the development and/or the siting of it—within the authority of the legislative body, and in accord with specific guidance of Iowa law.

We agree. Before an agreement with Big River was authorized, the Supervisors evaluated the incentives and benefits for the county. Upon findings of a public purpose, the Supervisors adopted the resolutions which approved and authorized an agreement with Big River. Furthermore, the evidence shows the construction plans were not inadequate and intended to meet Iowa Department of Natural Resources requirements. Finding no error, we affirm as to this issue.

**3. Spot Zoning.**

Plaintiffs next argue the district court erred in granting summary judgment on their writ of certiorari claims because the Supervisors engaged in illegal spot zonings inconsistent with the comprehensive plan of 2006 and section 335.5. Plaintiffs again allege the Supervisors acted unreasonably, arbitrarily, or capriciously in their exercise of zoning authority. Specifically, Plaintiffs claim the rezoning would (1) fail to preserve agricultural land, (2) increase highway congestion, (3) interfere with the airport, (4) fail to adequately facilitate the provision of sewerage, (5) increase fire dangers, (6) conflict with the character of the surrounding area, and (7) fail to adequately facilitate the provision of water.

Spot zoning is the creation of a small island of property with restrictions on its use different from those imposed on surrounding property. *Perkins*, 636 N.W.2d at 67. To determine if spot zoning is valid, we consider:

> (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*. at 68. As the district court stated:

> As the pleading record stands, the Supervisors have put forward a reasonable basis for the decision to rezone, and have shown how the action was consistent with the 1976 comprehensive plan. The defendants offer no material evidence to the contrary—except for dissention as neighbors who live across Highway 146 from the proposed manufacturing plant.

We agree the July rezoning complied with the 1976 comprehensive plan. We further note that the September rezoning was consistent with the newly enacted comprehensive plan of 2006. Upon our review, we find the Supervisors' actions are supported by competent and substantial evidence. *Id.* at 67. Plaintiffs have failed to show the Supervisors acted unreasonably, arbitrarily, or capriciously in rezoning the property for the Big River development. *See id*. at 69. Finding no error, we affirm as to this issue.

**4. Rezoning Request.**

Plaintiffs further contend the district court erred in granting summary judgment on their writ of certiorari claims because the Supervisors unlawfully denied their request for rezoning of their land from agricultural to residential. Upon our review, we agree with the district court's determination that Plaintiffs' requested rezoning would violate the zoning ordinance of 2006.[8] We find substantial evidence supports the Supervisors' decision to deny Plaintiffs' request. *Perkins*, 636 N.W.2d at 67; *Petersen*, 580 N.W.2d at 793. We affirm as to this issue.

[8] According to article XIII, section 1(4) of the zoning ordinance of 2006, "No building structure or parcel of land shall be used for manufacturing . . . within 1000 feet of any lot line adjoining a residential district."

**B. Requests for Declaratory Relief.**

Plaintiffs argue the district court erred in dismissing their requests for declaratory relief. Upon our review, we agree with the district court that the certiorari remedy is exclusive in this context. *Sutton v. Dubuque City Council*, 729 N.W.2d 796, 799-800 (Iowa 2006). We therefore find no error in the district court's dismissal of Plaintiffs' requests for declaratory relief. We affirm as to this issue.

**C. Public Records Claim.**

Plaintiffs further contend the district court erred in dismissing their public records claim because the Supervisors failed to provide the agreement and construction plans approved by Resolution 2443. Plaintiffs allege the Supervisors' failure to provide such public records amounted to a violation of chapter 22.2. *See* Iowa Code § 22.3 ("Every person shall have a right to examine and copy a public record . . . ."). We disagree.

The Supervisors' adoption of Resolution 2443 on September 18, 2006, was the beginning of a negotiation to reach an agreement with Big River. At that time, there were no documents marking an agreement that could be made public record, as such agreement did not yet exist. As the district court noted:

> The plaintiffs speculate that there were preliminary plans submitted, and they complain they did not have access to those. However, implicit in Resolution 2443, was the delegation of a member of the Supervisors to go forward with negotiation and otherwise do all things necessary to carry out the desired agreement. There has been no showing that, at the time the demand for public records was made, documents sought existed, or if they did exist, that the Supervisors failed to furnish access to them.

Over the next several months, an agreement with Big River was negotiated. On December 28, 2006, the Supervisors held a public hearing to take up final consideration of the proposed agreement. At the conclusion of this meeting, the Supervisors adopted Resolution 2449, which officially authorized an agreement between the county and Big River. There is no evidence an agreement or other documents Plaintiffs requested existed at the time they were sought. Finding no error, we affirm as to this issue.

**D. Open Meetings Claims.**

Plaintiffs argue the district court erred in limiting their open meetings claims. We find these claims to be without merit. Upon our review of the record, we find the wording of the agenda for the Supervisors' May 18, 2006 meeting substantially complied with chapter 21.4. Iowa Code § 21.4; *KCOB/KLVN, Inc. v. Jasper County Bd. of Supervisors*, 473 N.W.2d 171, 173 (Iowa 1991). We further find no error in the district court's conclusion that the "huddle" at the Supervisors' July 20, 2006 meeting did not constitute a de facto closed meeting. Iowa Code § 21.2; *contra Barrett v. Lode*, 603 N.W.2d 766, 770-71 (Iowa 1999) (concluding a fact finder could find that a de facto closed meeting was created when the board of supervisors asked persons present at the meeting to leave). Finally, we find that under the facts in this case, a delegate of the Supervisors in the process of negotiation with Big River is not part of a statutorily-specified advisory group subject to the open meetings requirements. Iowa Code § 21.2; *Mason v. Vision Iowa Bd*., 700 N.W.2d 349, 357-58 (Iowa 2005).

The district court did not err in dismissing these open meetings claims. We affirm.

**IV. Conclusion.**

Having considered all issues raised on appeal, we affirm.

**AFFIRMED.**