IN THE COURT OF APPEALS OF IOWA

No. 9-443 / 08-1583
Filed October 21, 2009

**J.D. FRANCIS and EDNA ANHALT,
Trustee of the Edna C. Anhalt
Revocable Trust and the
Merlyn M. Anhalt Trust (f/k/a Merlyn
M. Anhalt Revocable Trust),**
Plaintiffs-Appellants,

vs.

**THE BREMER COUNTY BOARD
OF SUPERVISORS,**
Defendant-Appellee,

And
**MARVIN FOLKERTS, KATHY FOLKERTS,
JOHN KRIZEK, JUDITH KRIZEK, ROBERT USHER,
CAROL USHER, LYLE RASMUSSEN,
CAROL RASMUSSEN, TIM SPRATT,
CHRISTINE SPRATT, FORREST HEISER,
NORMA HEISER, RICHARD GAMBAIANI,
JANET GAMBAIANI, BRUCE GIPPLE,
NANCY GIPPLE, LEONARD LAWSON,
DON KLUNDER, and MICK WEISS,**
Intervenors-Appellees.

Appeal from the Iowa District Court for Bremer County, Stephen P. Carroll, Judge.

A buyer and seller of land appeal the district court's decision finding that a county board of supervisors did not act illegally in denying their request to rezone the land from agricultural to residential. **AFFIRMED.**

David Dutton and Michael Young of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, for appellants.

John McCoy of McCoy, Riley, Shea & Bevel, P.L.C., Waterloo, and Kasey Wadding, County Attorney, Waverly, for appellee.

Mark Rolinger, Cedar Falls, for intervenor appellees.

Heard by Vaitheswaran, P.J., and Mansfield, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VAITHESWARAN, P.J.

Developer J.D. Francis purchased approximately thirty-five acres of land from Edna Anhalt. The land was north of Waverly, Iowa, in Bremer County. Under a comprehensive land use plan, the land was zoned as agricultural but most of it was designated for future single-family residential use. Approximately four acres of the real estate constituted "prime" agricultural land under the plan, as these acres included "soil types with a Corn Suitability Rating (CSR) of fifty (50) or greater."

Francis and Anhalt petitioned to have the non-prime land rezoned for residential development.[1] This land had a CSR of 49.5. The Bremer County Planning and Zoning Commission found that the land was a "planned growth area" under the comprehensive land use plan. Nonetheless, the commission denied the rezoning request, citing citizen concerns about "current water supplies, runoff, number of drives along 190th street, increased traffic, a possible sink hole in the area, productivity of the land, quality of life, septic system drainage, and not wanting more neighbors." The Bremer County Board of Supervisors also denied the request following public hearings.

Francis and Anhalt petitioned the district court for a writ of certiorari, contending that the board's denial of their rezoning request contravened the comprehensive land use plan. The district court found no basis for overturning the board's action. This appeal followed.

[1] They initially included the "prime" land in their petition, but later amended their petition to delete these acres.

Our review is on assigned error. *Baker v. Bd. of Adjustment*, 671 N.W.2d 405, 414 (Iowa 2003). We are bound by the district court's findings if they are supported by substantial evidence. *Id.* We will presume that the board of supervisors performed its duty under the law, "unless clear evidence to the contrary appears." *Carruthers v. Bd. of Supervisors*, 646 N.W.2d 867, 870 (Iowa Ct. App. 2002).

Francis and Anhalt assert that the board acted illegally in rejecting their rezoning petition because the land for which they sought rezoning had a lower CSR than the comprehensive land use plan's rating for "prime" agricultural land and was in an area that the plan designated as residential. They cite *Webb v. Giltner*, 468 N.W.2d 838, 841 (Iowa Ct. App. 1991), for the proposition that a county which has enacted a comprehensive plan must abide by that plan when making zoning decisions. We agree with that proposition. But, it is also true that "[s]trict adherence to the statements [in a comprehensive plan] could actually negate other objectives of the comprehensive plan." *Ackman v. Bd. of Adjustment*, 596 N.W.2d 96, 103 (Iowa 1999). As the district court stated,

> [J]ust because a land owner demonstrates that a proposed use is consistent with a comprehensive plan does not mean, ipso facto, that the land owner is entitled to the zoning change . . . . It remains for the board of supervisors to determine when, if at all, growth consistent with the comprehensive plan should occur.

The board made this determination, albeit in a cursory fashion. One supervisor cited "several factors . . . be they CSR, environmental, quality of life issues, safety concerns, roads." He continued, "I think all of the factors, like I just stated, have to be weighed, all the factors have been brought out here, regardless of who brought them out, before a decision can be made." Another

supervisor stated his vote was based on keeping "ag land ag." The third supervisor in attendance cited the "CSR."

While the reasons for denying the rezoning request were sparse and the two supervisors who cited the goal of preserving agricultural land did not explain why the plaintiffs' request compromised that goal, the fact remains that the comprehensive plan does not mandate a "residential" designation for land with a CSR of less than fifty. It simply states that the county will "strive to preserve agricultural land, placing emphasis on" areas with a CSR of fifty or greater. Importantly, the plan lists other factors for consideration, including the protection of "environmental features and sensitive areas" and the "[q]uality of life."

The record contains substantial evidence supporting the existence of these "other factors." Citizens in the vicinity of the proposed development expressed concerns about the effect of residential development on wildlife in the area, leapfrog development in the area, and contamination of groundwater. While the plaintiffs argued that these concerns were pretextual, and that these individuals simply did not want nearby development to occur, and further countered that new wells would not affect existing wells because the water would be drawn from different aquifers, the board was not required to accept their arguments. *See Petersen v. Harrison County Bd. of Supervisors*, 580 N.W.2d 790, 796 (Iowa 1998) ("After weighing these competing interests, the Board made its decision disapproving plaintiffs' proposal and briefly stated its reasons. This is all that the Board was required to do under the statute."); *Anderson v. Jester*, 221 N.W. 354, 359 (Iowa 1928) ("If one of the grounds of alleged illegality is arbitrary, unreasonable or discriminatory action on the part of the board, and

on the facts the reasonableness of the board's action is open to fair difference of opinion, there is, as to that, no illegality.").

We recognize that the board approved a zoning request for another residential development that included land with a higher CSR than the Anhalt property and did not fall within the designated "residential" area of the comprehensive land use plan. However, the board reasonably could have determined that the other land was suitable for residential development because a lower percentage was being used for crop production at the time of the hearing.

For these reasons, we affirm the district court's refusal to overturn the Bremer County Board of Supervisors' denial of the rezoning petition.

AFFIRMED.

Mansfield, J. concurs. Miller, S.J. concurs specially.

MILLER, S.J. (concurring specially)

I concur in the result, but cannot refrain from pointing out that the appellants make a cogent, perhaps compelling, case that the board of supervisors' action in denying their request for rezoning seems impossible to reconcile with another rezoning action by the Board.

The appellants urge that the district court erred in determining the board of supervisors' denial of their request to rezone their land from agricultural to residential was made in accordance with the county's comprehensive plan. They support their claim of illegality, in part, by pointing out that while denying their request the board almost simultaneously approved a similar request, one to rezone from agricultural to residential a tract of land approximately the same size, the Lakefield Estates Subdivision, and pointing out relevant differences in the two tracts.

As shown by the record, and argued by the appellants: (1) the three-year-old comprehensive plan had designated the Francis/Anhalt tract for future single-family residential use, and had designated the Lakefield tract to remain agricultural; (2) the Francis/Anhalt tract had a CSR rating of less than fifty, while the Lakefield tract was designated as prime agricultural land and had a CSR of over sixty-four; (3) the Francis/Anhalt tract had many residences within 500 feet, while the Lakefield tract remained predominately agricultural; (4) the Francis/Anhalt tract was adjacent to a "blacktop" highway, while the Lakefield tract did not have such access to a paved road; and (5) the Lakefield tract was located in a flood plain, while the Francis/Anhalt tract was not.

I recognize that despite the appellants' request that the board state reasons for denying the Francis/Anhalt request, the board was not required to make written, or even oral, findings of fact supporting its decision to do so. *See Montgomery v. Bremer County Bd. of Supervisors*, 299 N.W.2d 687, 694 (Iowa 1980) (noting that rezoning hearings are of the comment-argument type and rezoning decisions are legislative functions, and holding that in making such decisions a board of supervisors need not make findings of fact). Where, as here, however, a board is unable to or unwilling to state cogent reasons for its action on a rezoning request, particularly where, as here, the extremely terse stated reasons and the board's action appear to strongly conflict with a decision on a similar request, affected parties have strong reasons to question the validity of the challenged action.

That said, however, I believe the record supports the decision of the district court in this case and this court's affirmance on appeal. The board's two decisions may be difficult or impossible to reconcile. It may, however, be the board's approval of the Lakefield Estate's subdivision rezoning, an issue not before us, and not its denial of the Francis/Anhalt request, that arguably violates the comprehensive plan.