IN THE COURT OF APPEALS OF IOWA

No. 9-450 / 08-1704
Filed October 7, 2009

MARIANNE CRAFT NORTON TRUST,
Plaintiff-Appellant,

vs.

CITY COUNCIL OF HUDSON, IOWA, TIMOTHY L. MANATT, GENEVIEVE L. MANATT, GALE M. PETERSON, JR., and REBECCA RAE PETERSON,
Defendants-Appellees.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer, Judge.

Appeal from denial of writ of certiorari challenging city's rezoning of land from suburban agricultural to large-lot residential. **AFFIRMED.**

Wallace Taylor, Cedar Rapids, for appellant.

Natalie Burris and Beth Hansen of Swisher & Cohrt, P.L.C., Waterloo, for appellee city council.

Richard Morris and Katie Mitchell of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellees Manatt and Peterson.

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

SACKETT, C.J.

Plaintiff-appellant, Marianne Craft Norton Trust, appeals from the district court ruling that overruled its petition for writ of certiorari, challenging the city's decision to rezone forty acres of land from suburban agricultural to large-lot residential. Appellant contends the rezoning (1) did not follow the requirements in Iowa Code section 414.3 (2007), and (2) was arbitrary and capricious, an abuse of discretion, and not based on substantial evidence. We affirm.

BACKGROUND AND PROCEEDINGS. Defendants-appellees, Manatts and Petersons, own eighty acres of land on the west side of Highway 58, north of the core of the city of Hudson. The eastern forty acres lie within the city limits and are the subject of this appeal. Appellant owns eighty acres of land west of Highway 58 that is immediately south of the forty acres at issue.

Although the land along both sides of Highway 58 north of the city core is primarily farm land, there are more than twenty homes in the four-mile corridor between the city core and Highway 20. In October of 2006 the city adopted an updated comprehensive plan that designated an area of land of approximately 160 acres along the west side of Highway 58 between the core of the city and Highway 20 for future residential use. The land designated for future residential use includes forty acres of appellee's land, forty acres of appellant's land, and about eighty acres to the north of appellees' land.

In November of 2006 Timothy Manatt filed an application for rezoning, seeking to have the appellees' forty acres at issue rezoned from A-1 suburban agricultural to R-5 large-lot residential. The proposed plat submitted with the

rezoning request showed four residential lots—each larger than four and one-half acres, one residential lot of three and one-third acres, and two tracts of undeveloped space along Highway 58 totaling nearly fourteen acres. Manatts and Petersons planned to live on two of the residential lots and to offer the other three for sale.

After a time for public comment, the Hudson Planning and Zoning Commission voted in January of 2007 to recommend the request for rezoning to the Hudson City Council. After public hearings in February and March, the city council voted in April to rezone the property as requested.

In May, plaintiff filed a petition for writ of certiorari, alleging the rezoning was illegal, arbitrary and capricious, unreasonable, not based on substantial evidence, and an abuse of discretion. The petition was heard in April of 2008. With the parties' agreement the court made its own independent inspection of the Highway 58 area between Highway 20 and downtown Hudson. It also heard testimony from several witnesses, received exhibits, and considered arguments, authorities, and briefs submitted by the parties.

The court found the character of the area in question, while once primarily agricultural, "has changed significantly" and "visually appears to be more rural residential than agricultural." The court found the city council members gave proper reasons for granting the rezoning request and "gave consideration to appropriate factors to be considered." The court compared the permitted uses in A-1 and R-5 and found them "quite similar and compatible," although "R-5 is, in fact, more restrictive in terms of permitted uses." The court determined, "even if

the ordinance does fit within the definition of spot zoning, it is not illegal" in that the rezoning relates to an object within the police power of the city, there was a reasonable basis for making a distinction between the rezoned property and the surrounding property, and the rezoning was consistent with the comprehensive plan.

The court overruled the petition for writ of certiorari, concluding plaintiff failed to meet its burden of proof that the city council acted illegally, improperly, arbitrarily, capriciously, or in a discriminatory manner. The court further concluded the city council did not abuse its discretion in granting the rezoning request.

SCOPE OF REVIEW. Appeal of certiorari proceeding is "governed by the rules applicable to appeals in ordinary actions." Iowa R. Civ. P. 1.1412. Thus, our review is limited to correction of errors at law, and we are bound by the findings of the trial court if they are supported by substantial evidence in the record. Iowa R. App. P. 6.14(6)(*a*); *accord Osage Conservation Club v. Bd. of Supervisors*, 611 N.W.2d 294, 296 (Iowa 2000). "A writ of certiorari is proper under Iowa Rule of Civil Procedure [1.1401] when one 'exercising judicial functions . . . is alleged to have . . . acted illegally.'" *Dressler v. Iowa Dep't of Transp.*, 542 N.W.2d 563, 564 (Iowa 1996) (quoting Iowa R. Civ. P. [1.1401]). "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." *Norland v. Worth County Comp. Bd.*, 323 N.W.2d 251, 253 (Iowa 1982).

In reviewing the statutory language of section 335.21, which is identical to the language in section 414.18 that is relevant to our appeal, the supreme court stated:

> In a certiorari proceeding in a zoning case the district court finds the facts anew on the record made in the certiorari proceeding. That record will include the return to the writ and any additional evidence which may have been offered by the parties. However, the district court is not free to decide the case anew. Illegality of the challenged board action is established by reason of the court's findings of fact if they do not provide substantial support for the board decision. 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.

Fox v. Polk County Bd. of Supervisors, 569 N.W.2d 503, 507 (Iowa 1997) (quoting *Helmke v. Bd. of Adjustment*, 418 N.W.2d 346, 347 (Iowa 1988) (citation omitted)). There is a strong presumption of the validity of a city ordinance, including any amendments. *Neuzil v. City of Iowa City*, 451 N.W.2d 159, 163 (Iowa 1990). "Courts reviewing zoning ordinances should not substitute their judgment as to the propriety of the city's action when the reasonableness of the ordinance or its amendment is fairly debatable." *Id.* at 166.

IOWA CODE SECTION 414.3. Appellant contends the rezoning does not comply with the statutory requirements for zoning in section 414.3. The statute provides, in relevant part:

> The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street; to secure safety from fire, flood, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote

> reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. . . .
>
> Such regulations shall be made 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 uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

Appellant argues the city council did not follow the elements of this section when deciding to rezone the property. Appellant argues through each of the sixteen statutory elements in addition to the goals stated in the city's comprehensive plan and the statements of development policy in the plan. Appellant argues the city council, in performing a quasi-judicial function, should have made findings. *See Sutton v. Dubuque City Council*, 729 N.W.2d 796, 798 (Iowa 2007) (noting a "quasi-judicial function is involved if the activity (1) involves proceedings in which notice and an opportunity to be heard are required, or (2) a determination of rights of parties is made which requires the exercise of discretion in finding facts and applying the law thereto"). Appellees respond that the city council, and the district court when considering the petition for writ of certiorari, considered the statutory elements that are applicable under the circumstances. They assert substantial evidence supports the actions of the council and the decision of the court.

The city council minutes show the council received and considered public input more than once, considered the statements of the city's zoning administrator, considered the recommendation of the planning and zoning commission, discussed the issue at more than one meeting, and made a decision. Although appellant suggests the city council did not comply with

section 414.3 in that it did not address each statutory element in making its decision and because no substantial evidence supports a decision based on the statutory elements, the district court considered the applicable elements and concluded otherwise. Because the court did not expressly mention the statutory elements as it considered them, appellant moved the court to amend or enlarge its findings and modify its ruling. In its ruling on the motion, the court stated it "gave consideration to the factors set forth in that code section, to the extent applicable." The court also stated it did not "read *Sutton* as requiring a council to issue written findings."

From our reading of section 414.3, it is clear not all the elements listed apply to every zoning decision or to the decision before us. A primary consideration of the statute is that zoning must be "in accordance with a comprehensive plan." Iowa Code § 414.3; *Molo Oil Co. v. City of Dubuque*, 692 N.W.2d 686, 691 (Iowa 2005); *Kane v. City Council*, 537 N.W.2d 718, 721 (Iowa 1995). The city amended its comprehensive plan in October of 2006. That amendment was not challenged and is not at issue in this appeal. The challenged zoning ordinance changed property from A-1 to R-5 within an area the comprehensive plan map designated for future residential use. The two city councilmen who testified provided evidence the rezoning also follows many land use goals and development policies set forth in the comprehensive plan and does not appear to conflict with any of the goals or development policies. Substantial evidence supports a finding that the rezoning is "in accordance with" the city's comprehensive plan.

Of the other elements in section 414.3, many do not apply to this rezoning or no evidence appears in the record on them. We highlight a few that are relevant to the decision to rezone.

To preserve the availability of agricultural land. The rezoning takes forty acres out of production.

To consider the protection of soil from wind and water erosion. The evidence before the council was that this parcel is classified as highly erodible. Taking it out of production will help protect it from erosion.

To encourage efficient urban development patterns. The evidence is mixed. The city zoning administrator testified it did not promote "infill" growth within the core of the city, but using R-5 zoning was an attempt by the city to control growth because R-5 zoning instead of A-1 zoning prevents owners from parceling off lots for housing without a platting requirement or city approval. She recommended against the rezoning. Other evidence shows the rezoning can be the start of a barrier of residential zoning running between Highway 58 and Butterfield Road that would help protect the city from incursions from the north through de-annexation in favor of annexation by Cedar Falls. The rezoning also helps promote the orderly change of properties along Highway 58 from agricultural to large-lot suburban residential instead of allowing the haphazard and uncontrolled change already occurring by the parceling off of lots for housing.

To lessen congestion in the street. Although the rezoning potentially adds five homes that access Highway 58, it provides for access through one street instead of five separate driveways.

To facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The rezoning provides substantially more tax revenue from the property than its use as agricultural land, but does not require the city to spend money to provide water or sewerage.

The character of the area of the district. The evidence shows the properties along Highway 58 are in transition. Although the land primarily is agricultural, large-lot residential development has increased along the corridor.

The peculiar suitability of such area for particular uses. The corridor along Highway 58, connecting downtown Hudson with Highway 20, is particularly suitable for residential development, except at the southern end, which is in a floodplain. The rezoning recognizes that suitability, but allows the city to control the growth. The majority of the land along the corridor currently is agricultural. The particular forty acres that were rezoned contain a low ridge running parallel to the highway and the land slopes down to the west from the ridge. Houses built on the lots as shown in the plat could be partially or mostly hidden from the highway.

Encouraging the most appropriate use of land throughout such city. The evidence is mixed. The property that was rezoned has a good corn suitability rating but also is rated highly erodible. Of the land within the city limits, there is little available land near the core of the city that is suitable for large-lot residential

development. The land along the Highway 58 corridor has been shifting toward large-lot residential for several years.

Appellant summarizes: "There is nothing in the record to support the district court's decision." From our review of the record, we cannot agree. Although the evidence on some elements of the statute is mixed and could support a decision supporting or reversing the rezoning, the bulk of the evidence on the elements of section 414.3 supports the district court's decision to uphold the rezoning. In addition, if the reasonableness of a zoning decision is open to a fair difference of opinion, courts do not interfere with the decision. *Fox*, 569 N.W.2d at 507. A "fair difference of opinion" aptly describes the parties' positions and the evidence before us. We conclude substantial evidence supports the district court's determination the zoning ordinance complies with the applicable factors in section 414.3.

ARBITRARY AND CAPRICIOUS, AN ABUSE OF DISCRETION, NOT BASED ON SUBSTANTIAL EVIDENCE. Appellant contends the city's decision was not done according to reason and judgment or in a proper exercise of discretion and was not set forth in a written decision explaining the reasons for its decision. It argues the district court, in its review of the city's action, "simply summarized" some of the testimony of the council members without analysis and without addressing the points now raised on appeal. Appellant further contends the rezoning is illegal spot zoning.

We start with the strong presumption that city zoning ordinances, including any amendments to them, are valid. *Shriver v. City of Okoboji*, 567 N.W.2d 397,

401 (Iowa 1997). Appellant has the burden "to rebut the presumption and demonstrate the ordinance's invalidity" by showing it "is unreasonable, arbitrary, capricious or discriminatory, with no reasonable relationship to the promotion of public health, safety, or welfare." *Id*.

The district court, after hearing the evidence and considering the applicable law determined:

> Upon consideration of the evidence presented, the court concludes that plaintiff has failed to meet its burden of proof that the city council acted arbitrarily, capriciously or in a discriminatory manner. The city council did not abuse its discretion in granting the rezoning request. The city council granted the rezoning request after public hearings, review of the comprehensive plan and city zoning ordinances and future land use map.

A city council acts arbitrarily or capriciously if it acts "without regard to the law or facts of the case." *See Dawson v. Iowa Bd. of Med. Exam'rs*, 654 N.W.2d 514, 519-20 (Iowa 2002). As the court noted, the city council conducted public hearings and took public comments. It considered the comprehensive plan, future land use map, and the recommendation of the planning and zoning commission. The council delayed action in order to receive additional public comments. It considered the advice of the city attorney on applicable law. The council also heard from the city zoning administrator, who opposed the rezoning. We do not find such carefully considered action to be arbitrary or capricious.

An abuse of discretion occurs when the action complained of "rests on grounds or reasons clearly untenable or unreasonable." *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997). An "'abuse of discretion is synonymous with unreasonableness, and involves lack of rationality, focusing on whether the [decision made was] clearly against reason and evidence.'" *Id.*

(quoting *Stephenson v. Furnas Elec. Co.*, 522 N.W.2d 828, 831 (Iowa 1994)). A decision is unreasonable if it is against reason and evidence "as to which there is no room for difference of opinion among reasonable minds." *Stephenson*, 522 N.W.2d at 831.

Appellant deposed two council members and questioned them at trial. Appellant argues the council members, when asked about the list of six reasons for rezoning[1] that appear in the council minutes from March 27, "said clearly that they did not know where this list came from and they repudiated the list."

From our review of the council minutes and the record of the public comments it appears the city clerk took what she heard and set it out in a simple list. Although appellant takes great pains to go through each item in the list and each reason given by council members Sadler and Spake[2] in order to show the

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[1] The minutes of the March 26, 2007 council meeting list the following "reasons to vote in favor of the rezoning:"

> (1) increased property tax base, (2) this rezoning complies with State of Iowa statutes and the City's current Comprehensive Plan and Future Land Use Map, (3) this rezoning will meet the objectives of the current owners of the property to be rezoned, (4) "R-5" zoning was created to provide low density housing opportunities in the City of Hudson, (5) this rezoning is the best use of the Highway 58 corridor, (6) following Planning and Zoning Commission recommendation to approve the rezoning.

[2] The city's brief summarized these reasons given by the council members:

> Public comment and letters favored the rezoning.
> The city's Planning and Zoning Commission recommended the rezoning.
> The proposed development was consistent with lot and home sizes in the vicinity.
> It allowed the city more control over growth.
> It added diversity in available neighborhood types.
> It was positive growth, sought by people who want to move to the city.
> It complied with the comprehensive plan and future land use map.
> It has the potential to be connected in the future with other similar residential zoning to the east.
> It helps protect the city from encroaching development by Cedar Falls.
> It meets a demand and allows the city to expand as a bedroom community for nearby cities.

reasons given for the rezoning are not supported by competent and substantial evidence, we cannot say the decision was clearly against reason and evidence or that the evidence is so clearly one-sided that there is no room for difference of opinion among reasonable minds about the propriety of the rezoning decision. *See Schoenfeld*, 560 N.W.2d at 598, *Stephenson*, 522 N.W.2d at 831. The reasonableness of an ordinance is "fairly debatable" where the record shows a basis for a fair difference of opinion. *Neuzil*, 451 N.W.2d at 163-64. "If 'there is room for two opinions,' the challenged ordinance is valid." *Shriver*, 567 N.W.2d at 401 (citation omitted). Consequently, we conclude the city council did not abuse its discretion in approving the rezoning request.

ILLEGAL SPOT ZONING. An underlying thread woven throughout much of the discussion by the parties is whether the rezoning constituted illegal spot zoning. This discussion does not fit neatly either within the claim the rezoning does not comply with Iowa Code section 414.3 or within the claim the rezoning was arbitrary, capricious, or an abuse of discretion, as is evidenced by the varied placement of the discussion in the briefs. We, like the district court, consider the issue separately.

The district court "examined permitted uses in A-1 and R-5 districts," finding them "quite similar and compatible." Based on the similarities between the zoning districts, the fact R-5 is more restrictive than A-1, and the evidence this rezoning "is a first step in what will be a larger rezoning in the future according to the future land use plan," the court determined the rezoning was not spot zoning.

Although the court disagreed with appellants that the rezoning met the definition of spot zoning, the court concluded in the alternative, that even if it was spot zoning, it was not illegal. Citing the factors[3] set forth in *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 68 (Iowa 2001), the court concluded,

> that any "spot zoning" in this case is not illegal. The rezoning determination is related to an object within the police power of the city of Hudson. There is a reasonable basis for making a distinction between the rezoned land and the surrounding property, and the rezoning is consistent with the comprehensive plan. . . . In examining the basis for making the distinction between the subject property and the surrounding property, the court considers the size of the spot-zoned land, the uses of the surrounding property, the changing conditions of the area, the use to which the subject property has been put, and its suitability for various uses. . . . As previously noted, the allowed uses in A-1 and R-5 are not significantly incompatible with each other. In addition, the conditions of the area have changed significantly over the years, to the point that the area is more accurately described as rural residential area. The uses are not inconsistent with each other. The use of this property is quite suitable to R-5, and is consistent with the future land use development plans north of the core area of Hudson, Iowa.

"Spot zoning results when a zoning ordinance creates a small island of property with restrictions on its use different from those imposed on the surrounding property." *Kane v. City Council of Cedar Rapids*, 537 N.W.2d 718, 723 (Iowa 1995); *accord Perkins*, 636 N.W.2d at 67. "'Spot zoning' when construed to mean reclassification of one or more like tracts or similar lots for a use prohibited by the original zoning ordinance and out of harmony therewith is

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[3] The court held:

> We determine if spot zoning is valid under a three prong test in which 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.

Perkins v. Bd. of Supervisors, 636 N.W.2d 58, 68 (Iowa 2001).

illegal." *Keller v. City of Council Bluffs*, 246 Iowa 202, 213, 66 N.W.2d 113, 120 (1954).

The city's zoning administrator testified she believed the rezoning constituted spot zoning. We agree that the rezoning "creates a small island of property with restrictions on its use different from those imposed on the surrounding property." *Kane*, 537 N.W.2d at 723. It therefore meets the definition of spot zoning. We disagree with the district court's contrary determination. We agree, however, with the district court that the permitted uses in A-1 and R-5 are very similar and not incompatible. In contrast to some other spot zoning cases, where the rezoned property was freed from some restrictions placed on the surrounding property, the rezoning in the case before us is more restrictive than the zoning on the surrounding property. *See*, *e.g.*, *Perkins*, 636 N.W.2d at 68-69 (exempting the fairgrounds from surrounding zoning restrictions, including adherence to a comprehensive plan, during the five-day period of the fair); *Fox*, 569 N.W.2d at 506 (rezoning allowed construction of softball complex); *Kane*, 537 N.W.2d at 721 (allowing use of a residential lot for access to a condominium complex).

Considering the factors listed in *Perkins* that we set out in footnote three, we agree with the district court that the rezoning does not constitute illegal spot zoning. Zoning decisions are "an exercise of the police powers delegated by the State to municipalities." *Neuzil*, 451 N.W.2d at 163; *see* Iowa Code §§ 414.1-2. We first consider whether the new zoning is germane to an object within the police power. "Police power" is not precisely defined in prior zoning cases, but

includes promoting "health and the general welfare," and "the health, safety, morals, or the general welfare of the community." Iowa Code §§ 414.1, .3; *see Brackett v. City of Des Moines*, 246 Iowa 249, 256, 67 N.W.2d 542, 545 (1954) (noting "amendatory or subsequent zoning ordinances may be enacted where they are necessary to secure the public health, safety, morals or welfare or other legitimate object of the police power"). For the reasons set forth in our discussions of the rezoning's compliance with Iowa Code section 414.3 and the council's actions not being arbitrary or capricious, we conclude the rezoning is germane to an object within the police power of the city to promote its general welfare.

We also consider whether there is a reasonable basis for making a distinction between the rezoned land and the surrounding property. In this analysis "we consider the size of the spot zoned, the uses of the surrounding property, the changing conditions of the area, the use to which the subject property has been put, and its suitability for various uses." *Kane*, 537 N.W.2d at 723.

Size. As the land is outside the core of the city, in more "wide open spaces" this consideration is less important in our determination whether there is a reasonable basis for making a distinction between this property and the surrounding property. *See Montgomery v. Bremer County Bd. of Supervisors*, 299 N.W.2d 687, 696 (Iowa 1980). The rezoned land comprises forty acres out of 160 acres designated "residential" in the future land use map.

Surrounding Uses. The surrounding land is primarily agricultural, although there are two residences immediately to the north and one across Highway 58 from the rezoned land. There previously were two residences to the south on appellant's land.

Changing Conditions. The future land use map and comprehensive plan were amended in October of 2006 to show 160 acres of land zoned agricultural along the west side of Highway 58 as "residential." The district court personally inspected the Highway 58 corridor from the core of Hudson to the junction with Highway 20, finding, "[w]hile at one time the area along Highway 58 was undoubtedly primarily agricultural, . . . the character of the area has changed significantly. Currently, the area along Highway 58 visually appears more rural residential than agricultural." There is evidence the majority of people living along Highway 58 are not engaged in farming. The R-5 rezoning along Butterfield Road, the purchase of the subject property with a view toward large-lot residential use, and the inquiries about the availability of lots show a demand for rural residential property.

Prior Use. The property has been agricultural in the past.

Suitability for Various Uses. The rezoned land has a good corn suitability rating, but is considered highly erodible. It is along a highway between Cedar Falls and Hudson, providing good access. There is a low ridge running parallel to the highway and the land slopes down to the west from the ridge providing good views. It does not contain any structures that would have to be removed.

Based on our consideration of the evidence concerning these factors, we conclude there is a reasonable basis for making a distinction between the rezoned land and the surrounding property.

The final factor listed in *Perkins* is whether the rezoning is consistent with the comprehensive plan. The comprehensive plan was amended in October of 2006. As set forth above in our consideration of section 414.3, substantial evidence supports a finding the rezoning is "in accordance with" the comprehensive plan. *See* Iowa Code § 414.3.

CONCLUSION. From our review of the evidence, the district court's decision and analysis, the arguments of the parties, and the applicable statutory and case law, we conclude the city council did not act illegally. *See* Iowa R. Civ. P. 1.1401. The council's actions complied with the requirements of Iowa Code section 414.3, are supported by substantial evidence, and are not arbitrary, capricious, or an abuse of discretion. *See Norland*, 323 N.W.2d at 253. The district court's findings are supported by substantial evidence. Accordingly, we affirm the district court's decision that overruled the petition for writ of certiorari.

AFFIRMED.