

FILED

DEC 28 1977

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

GUY O. OLSON and
EVA LOIS OLSON,

Appellants,

v.

THE CITY COUNCIL OF THE
CITY OF NORTHWOOD, and
DR. STILAF ANDERSON, DR.
KENNETH BLOCK, LELAND SWENSON,
GEORGE KESLER and EINER LUNDE,
Members thereof,

Appellees.

Filed December 28, 1977

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2-59835

Appeal from Worth District Court - C. H. Wild, Judge.

Plaintiffs appeal trial court annulment of writ of certiorari which thereby upheld the legality of the challenged zoning ordinance amendment. Affirmed.

Phillip N. Norland, of Northwood, for appellants.

John H. Greve, of Northwood, for appellees.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

This is an action wherein plaintiffs sought to test, by certiorari in the district court, the legality of an amendment to the comprehensive zoning ordinance of the City of Northwood. The trial court issued the writ. After full hearing thereon, at which the parties presented additional oral testimony, the trial court upheld the ordinance and annulled the writ. We affirm.

I. Scope of review.

Plaintiffs, having chosen the remedy of certiorari, are thereby subject to the limitations which inhere therein. Unlike many zoning cases at the appellate court level, which are equitable actions for declaratory or injunctive relief,¹ our review in the present case is not de novo.

Certiorari is an action in law. Questions or findings of fact by inferior tribunals are generally not reviewable on certiorari. *Smith v. City of Fort Dodge*, 160 N.W.2d 492, 495 (Iowa 1968); *Staads v. Board of Trustees*, 159 N.W.2d 485 (Iowa 1968); *Iowa-Illinois Gas and Elec. Co. v. Gaffney*, 256 Iowa 1029, 1033, 129 N.W.2d 832, 834 (1964); *Grant v. Norris*, 249 Iowa 236, 253, 85 N.W.2d 261, 271 (1957). A review of the facts, then, is for the purpose of determining whether the inferior tribunal's decision is supported by any competent evidence. *Smith v. City of Fort Dodge*, supra; *Staads v. Board of Trustees*, supra; *Koelling v. Board of Trustees*, 259 Iowa 1185, 1206, 146 N.W.2d 284, 296-97 (1967); *Circle Express Co. v. Iowa State Commerce Comm.*, 249 Iowa 651, 654, 86 N.W.2d 888, 890-91 (1958); *Lineberger v. Bagley*, 231 Iowa 937, 941, 2 N.W.2d 305, 307 (1942). The burden rested on the plaintiffs to show the council exceeded its jurisdiction or otherwise acted illegally in amending the zoning ordinance in question. *Smith v. City of Fort Dodge*, supra; *Staads v. Board of Trustees*, supra; *Adams v. Braginton*, 159 N.W.2d 479 (Iowa 1968); *Sueppel v. Eads*, 261 Iowa 923, 926, 156 N.W.2d 115, 117 (1968). It is in accordance with these procedural restrictions that we consider plaintiffs' three assignments of error.

¹ See, e.g., *Jaffe v. City of Davenport*, 179 N.W.2d 554 (Iowa 1970); *Anderson v. City of Cedar Rapids*, 168 N.W.2d 739 (Iowa 1969); *Brackett v. City of Des Moines*, 246 Iowa 249, 67 N.W.2d 542 (1954).

II. Was the amendment to the zoning ordinance arbitrary and unreasonable?

Plaintiffs assert that the action of the council in amending the particular zoning ordinance was arbitrary and unreasonable because it serves to abrogate that degree of permanency which a comprehensive zoning ordinance is supposed to foster, without any showing of a change in conditions affecting the use of the property. They argue that they and other residential property owners had a right to rely upon the classification set forth in the original comprehensive zoning ordinance, as amended.

The record reflects that in the original comprehensive zoning ordinance of the City adopted in 1964, the property in question, a 20-acre tract, was zoned for residential use. Plaintiffs' property was similarly zoned in 1964 and remains the same. In 1973, the zoning commission recommended a change in the zoning classification of the 20-acre tract from residential to commercial, which, following a public hearing, was enacted by the council.

The 1973 amendment was qualified, however, by prohibiting six designated activities which were otherwise authorized in commercial zones.² There is evidence in the record that this qualification was a compromise designed to appease certain objectors to the proposed rezoning, including plaintiffs. In 1976, again acting at the request of the zoning commission, the council amended the ordinance so as to remove the limitations pertaining to the six activities otherwise permitted in commercial zones. It is this action which plaintiffs challenge.

In passing upon the contentions advanced we are mindful of the fact that, traditionally, zoning has been employed as a holding action to prevent deterioration of districts, and amendments "down" to permit less restrictive uses are not uncommon. *F. H. Uelner Precision Tools, etc. v. City of Dubuque*, 190 N.W.2d 465, 468 (Iowa 1971). In certain instances it may be error to refuse to rezone property caught up in such a

² The six activities thus prohibited were 1) animal hospitals or kennels, 2) farm implement dealerships, 3) automobile or truck agencies which shall not keep on their premises more than 10 vehicles which would be classified as not salable within 90 days, 4) dance and/or music studios, 5) public garages, 6) gasoline service stations.

holding action. See Petersen v. City of Decorah, ___ N.W.2d ___ (Iowa Court of Appeals, filed September 9, 1977). The supreme court has observed "zoning is not static, any existing restrictions being always subject to reasonable revisions with changing community conditions and needs as they appear." Anderson v. City of Cedar Rapids, 168 N.W.2d 739, 743 (Iowa 1969).

When such changes occur they frequently are not welcomed by the owners of property more restrictively zoned which lies on the abutting fringes of the rezoned area. But, such individual complaints cannot hinder legislative action by the duly elected governmental representatives of all of the people of the community. The test is said to be that "[if the reasonableness of such ordinances] is fairly debatable, the court will not interfere with the action of the zoning authority by substituting its judgment for that of the legislative body." Jaffe v. City of Davenport, 179 N.W.2d 554, 555 (Iowa 1970).

At the trial court hearing in the instant case several members of the council and members of the zoning commission were called as witnesses. They testified that there was little other property which was zoned either commercial or industrial that was available for sale. They further testified that commercial development was increasing along highway 65 in the northern part of the city and that the commercial restrictions which had been placed in the 1973 ordinance appeared to be undesirable for the future commercial development of the area. Our review of this evidence and the rest of the record leads us to the conclusion that the trial court applied the proper legal standard in adjudicating plaintiffs' claims and that the evidence fully supports the result achieved by that court.

III. Was the city estopped to amend the ordinance in 1976 as a result of the compromise enacted in 1973?

Plaintiffs argue, additionally, that as a result of the compromise which led to the six special restrictions placed in the 1973 ordinance (see footnote 2, supra), the city is now estopped to remove such conditions from the ordinance. In their argument they seek to predicate the claimed estoppel upon their relinquishing their right to challenge the 1973 amendment in the courts. It is urged that such forbearance was the quid pro quo for the six special restrictions which the council placed in the 1973 ordinance.

We do not reach the issue of whether a city council may ever estop itself or a subsequent council under similar circumstances. We conclude that this certainly would not occur absent evidence that such quid pro quo was bargained for and given in exchange for the zoning restrictions. We have searched the record and can find no evidence upon which the trial court could have based such a finding. The trial court correctly concluded that the elements of an estoppel were not established.

IV. Was a public hearing before the zoning commission a prerequisite to the 1976 amendment?

Lastly, we consider plaintiffs' claim that a public hearing before the zoning commission was required before the council could act upon the commission's recommendation concerning the 1976 amendment. In *Smith v. City of Fort Dodge*, 180 N.W.2d 492, 497 (Iowa 1968) it was held, pursuant to § 414.6, The Code, that a public hearing before the zoning commission was required only with respect to the original comprehensive zoning ordinance of a city or "substantial" amendment thereto. We believe that the trial court correctly concluded that the 1976 amendment to the zoning ordinance in the present case was not such a change as would require a public hearing before the zoning commission.

We have considered all issues presented and find no basis for reversal.

AFFIRMED.