

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBERT E. HATCHER, PAUL CALLAHAN,)
JOHN FLANAGAN, JUDY FLANAGAN,)
GORDON KOONTZ, WINIFRED KOONTZ,)
NICK PAULSON, LOU ROSSITO, EDWARD)
NOURSE,)

Filed December 21, 1978

Appellants,)

vs.)

THE BOARD OF SUPERVISORS OF)
POTTAWATTAMIE COUNTY, IOWA,)

742
2-61762

Appellee,)

GERALD R. LEAZENBY and BETTY)
LEAZENBY, ROBERT B. GOLDEN and)
PAMELA J. GOLDEN,)

Intervenors-Appellees.)

Appeal from the Pottawattamie District Court - Leo F. Connolly, Judge.

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

James A. Pratt, of Council Bluffs, for appellants.

David Richter, Pottawattamie County Attorney, and Joseph J. Hrvol, Assistant County Attorney, for appellee board of supervisors.

Robert Dippel, of Council Bluffs, for intervenors-appellees.

Heard by Oxberger, C.J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

This is an action wherein plaintiffs sought to test, by certiorari in the district court, the legality of an amendment to the Pottawattamie County zoning ordinance. The trial court issued the writ. After full hearing thereon, at which the parties presented additional evidence, 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 county board of supervisors 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 the plaintiffs' assignment of error.

II. Does the amendment to the zoning ordinance constitute illegal "spot zoning"?

Plaintiffs assert that the action of the board of supervisors in amending the particular zoning ordinance was arbitrary and unreasonable because it constitutes illegal spot zoning. Spot zoning results when a zoning ordinance creates an island of property with restrictions

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).

on its use different from those imposed on the surrounding property. *Keller v. City of Council Bluffs*, 246 Iowa 202, 66 N.W.2d 113 (1954). In determining whether an amendment creates spot zoning, each case must be decided on its own particular facts. *Jaffe v. City of Davenport*, 179 N.W.2d 554 (1970). The fact finding of the zoning authority in this regard is controlling unless clearly shown to be arbitrary and capricious. *Keller*, supra.

The property in question is a 40 acre tract of land located south of Crescent, Iowa, and three-fourths (3/4) mile east of Highway 183. Access to the tract is by a road intersecting Highway 183. The zoning amendment was from agricultural status to general commercial. The amendment was sought by the intervenors to allow construction of a stock car raceway and grandstand which could also be used for country music festivals, rodeos, tractor pull competitions, and camping grounds. Plaintiffs are owners of nearby property, much of which abuts Highway 183. The trial court agreed that the area was becoming increasingly commercial, that the amendment did not constitute spot zoning, and therefore annulled the writ.

The trial court had before it the minutes of those zoning commission and board of supervisors meetings where the zoning amendment was discussed. Additional evidence was received at the trial court hearing. There was considerable testimony before these official bodies that the land abutting Highway 183 near the tract in question has become increasingly commercialized. All of the land was zoned agricultural at one time. During the past 20 years some of the nearby lands have been re-zoned commercial. Commercial enterprises have been established thereon, including a square dance hall, a clothing shop, and a dog kennel. Some of these enterprises have been owned by the plaintiffs. Other commercial activities have apparently been conducted in the area, although their locations were zoned agricultural. 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' claim, and that the evidence fully supports the result reached by that court. Competent evidence supports the conclusion that, under the circumstances, the amendment was not spot zoning. "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).

AFFIRMED.