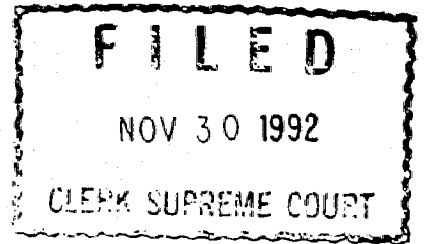


IN THE COURT OF APPEALS OF IOWA

No. 1-627 / 91-593



BLUFFS DEVELOPMENT COMPANY, INC.,

Plaintiff-Appellant,

vs.

THE BOARD OF ADJUSTMENT OF POTTAWATTAMIE COUNTY, IOWA,

Defendant-Appellee.

51

Appeal from the Iowa District Court for Pottawattamie
County, J. C. Irvin, Judge.

Plaintiff appeals a district court order upholding the
Board of Adjustment's denial of the plaintiff's application
for a conditional use permit to construct a sanitary
landfill. WRIT SUSTAINED AND CASE REMANDED FOR A NEW
HEARING.

Bruce D. Fleming of Pogge, Root, Fleming & Tinley,
Council Bluffs, for appellant.

Richard Crawl, County Attorney, for appellee.

Considered by Schlegel, P.J., and Sackett and Habhab,
JJ.

SCHLEGEL, J.

Bluffs Development appeals a district court order upholding the Board of Adjustment's decision denying Bluffs Development's application for a conditional use permit to construct a landfill. Bluffs Development contends: (1) the Board's decision is invalid since certain Board members had a conflict of interest; (2) the Board's rules of procedure concerning rebuttal violated Bluffs Development's right to due process; and (3) the Board's decision was not supported by substantial evidence.

In July 1989 Bluffs Development Company, Inc. applied to the Board of Adjustment of Pottawattamie County, Iowa, for a conditional use permit to construct a sanitary landfill near Treynor, Iowa. The Board denied the application. Bluffs Development then filed a writ of certiorari in district court. The court affirmed the Board, and Bluffs Development filed this appeal. We reverse and remand for a new hearing.

The Board of Adjustment asked the Pottawattamie County Planning and Zoning Commission to review and make a recommendation on the application of Bluffs Development. The commission held public hearings on four different dates. It then recommended the application be denied for the following reasons:

1. The area is not very well covered to protect against noise and blowing litter.
2. Foreign waters run through the area, which could cause contamination of groundwater runoff.

3. The area is zoned for agricultural purposes and has a corn suitability rating.
4. The access road is not adequate. A new road would need to be built to accommodate the truck traffic to the site.

In October 1989 Bluffs Development sent a letter to the Pottawattamie County Attorney contending that certain members of the Board of Adjustment had a conflict of interest for various personal and pecuniary reasons. These concerns were addressed at a public hearing held on October 25, 1989.

Evidence presented at the hearing showed the proposed site is next to land owned by Bill Orr, Sr., who is a chief opponent to the application. Because the current access road to the proposed landfill site is not adequate to accommodate the truck traffic to the site, a new road would need to be built which would likely run through Orr's adjacent property. Orr was a long-standing member of the board of directors of a company at which Don Hoffman, an Adjustment Board member, has been employed as president or managing director for a number of years.¹ As a company board member, Orr had the potential authority to fire Hoffman as part of a majority vote of the company's board members.

Harold Tripp, another member of the adjustment board, has a son employed by the city of Treynor, Iowa. Treynor is a small rural community near where the landfill site was

1. Mr. Orr's term on the board of directors of this company expired the day after the vote was taken on the matter in dispute.

to be located. Tripp's son was adamantly opposed to the construction of the landfill site along with the mayor of Treynor. In addition, M. J. Ryan, another member of the Adjustment Board, had sold insurance policies to several people near the proposed landfill site. Specifically, Ryan had sold Orr the liability insurance policy covering Orr's adjacent land. Finally, Duane Benson, a member of the Board, had allegedly stated before any hearings were held that he intended to deny the application. Benson denied making the statement. Based on this evidence, the Adjustment Board found the members in question did not have a conflict of interest.

The Board held four more public hearings, the last one on March 7, 1990. Bluffs Development requested that its counsel and engineer be allowed to speak in rebuttal to arguments presented by the opposition at this hearing. The Board ruled that, in conformity with prior practice, only one person would be allowed to speak in rebuttal.

The Board voted to deny the application. The Board found the land was best suited for agricultural production. The Board noted the potential problems of blowing debris, water runoff, and traffic. The Board also found the area around the highway between Council Bluffs and Treynor was a growing residential area and found this highway already had substantial traffic.

Bluffs Development filed a petition for writ of certiorari in district court. The court found there was

substantial evidence to support the decision of the Board. The court also found the Board's refusal to allow Bluffs Development to present rebuttal arguments by its counsel and engineer was not prejudicial. Finally, the court found there was insufficient evidence to show a conflict of interest by any of the Board members. The court denied Bluffs Development's motion for rehearing. Bluffs Development then appealed.

Under Iowa Rule of Civil Procedure 318, our scope of review on appeal from a district court judgment in a certiorari proceeding is governed by the rules applicable in ordinary actions. Helmke v. Board of Adjustment, 418 N.W.2d 346, 348 (Iowa 1988). Therefore, we are limited to correction of errors at law, and we are bound by the findings of the district court if supported by substantial evidence in the record. Id.

First, Bluffs Development contends four members of the Adjustment Board had a conflict of interest and should not have sat on the Board in rendering a decision in this case. It relies on the case of Stahl v. Board of Supervisors, 187 Iowa 1342, 1352, 175 N.W. 772, 776 (1920), which stated, "[t]he constitutional guaranties recognize, as a primal necessity, that there be laws providing impartial tribunals for the adjudication of rights." The court there found a member of the board of supervisors who had a direct financial interest in the outcome of a

decision was disqualified to vote. Id. at 1355, 175 N.W. at 777.

In later commenting upon Stahl, the supreme court stated:

We subscribe to the rule that public officers should perform like Caesar's wife, but we must also consider the circumstances, in the absence of statutory disqualification, to determine the likelihood of unfairness and be governed accordingly.

Turnis v. Board of Education, 252 Iowa 922, 930, 109 N.W.2d 198, 203 (1961). The legislative intent behind statutes addressing conflict of interest situations has been to disregard interests when they are so remote as to be deemed insignificant. Helmke, 418 N.W.2d at 349.

The conflicts of interest suffered by the members of the Board of Adjustment in the present case are clearly not insignificant. We find the conflicts of Tripp and Hoffman to be particularly troublesome. Tripp's own son is employed by the city of Treynor, and his son's opposition to the landfill site is unwaivering. It is difficult to conceive that Tripp would not be influenced by the strong emotions and adamant feelings which his own son espouses on this issue. Similarly, we find it difficult to believe Hoffman could remain objective in light of his long-standing business relationship with Orr.

Although the conflicts of the other members of the Adjustment Board were more subtle, the fact that four of the five members of the Board were afflicted with various

degrees of conflicting interests cumulatively increased the likelihood of impartiality and unfairness even beyond the significant threat posed by the conflicts individually. In either event, the likelihood of unfairness in the Board's decision cannot be deemed remote or insignificant.

Bluffs Development also claims error because it was not allowed to present rebuttal argument by its counsel and engineer. All of the rebuttal evidence for Bluffs Development was presented by its counsel. It argues that its engineer should have been allowed to rebut statements made by the engineer for the opposition.

We determine the Board had the ability to promulgate procedural rules. We do not find the Board's decision to follow its procedural rules to be arbitrary, capricious, or otherwise illegal. See Buchholz v. Board of Adjustment, 199 N.W.2d 73, 78 (Iowa 1972). Furthermore, Bluffs Development did not object to the Board's decision to allow only one person to present rebuttal arguments. We conclude Bluffs Development therefore waived this argument. See Jorgensen v. Board of Adjustment, 336 N.W.2d 423, 426 (Iowa 1983); Johnson v. Board of Adjustment, 239 N.W.2d 873, 877 (Iowa 1976).

Because Bluffs Development has introduced sufficient evidence indicating bias or prejudice among the Board members, we hold Bluffs Development has successfully proven the existence of a conflict of interest. Since the Board of Adjustment acted illegally in this regard, a discussion

of whether the Board's denial of the conditional use permit was supported by substantial evidence is unnecessary. We reverse and remand for a new hearing on Bluffs Development's application for a conditional use permit.

WRIT SUSTAINED AND CASE REMANDED FOR A NEW HEARING.