IN THE COURT OF APPEALS OF IOWA

No. 4-221 / 93-1369

FILED
AUG 25 1994
CLERK SUPREME COURT

BOB KNOTT, BETTE KNOTT, HEINRICH OBERSTELLER and MARY OBERSTELLER

Plaintiffs-Appellants,

vs.

JASPER COUNTY BOARD OF SUPERVISORS,

Defendant-Appellee,

and

CLINTON VOS, MARLA VOS and MID-IOWA EQUIPMENT,

Intervenors-Appellees.

Appeal from the Iowa District Court for Jasper County, Richard D. Morr, Judge.

Plaintiffs appeal from a district court judgment on certiorari review determining the Jasper County Board of Supervisors did not engage in illegal spot zoning in rezoning intervenors' property from A-1 (agricultural) to B-2 (commercial). **AFFIRMED.**

Lee M. Walker of Walker, Knopf & Billingsley, Newton, for appellants.

James R. Wilson, County Attorney, for appellee-Board.

S.P. DeVolder of Gamble & Davis, Des Moines, for remaining appellees.

Heard by Donielson, C.J., and Cady and Huitink, JJ.

CADY, J.

Plaintiffs (the Knotts and Oberstellers) appeal from a district court judgment on certiorari review determining the Jasper County Board of Supervisors (Board) did not engage in illegal spot zoning in rezoning the property of the intervenors (Clinton and Marla Vos) from "A-1" agricultural to "B-2" general business with restrictions.

In 1988, the Voses purchased a 317-acre farm two miles south of the intersection of Highway 14 and Interstate 80 in Jasper County. The Knotts and Oberstellers each own property within 3/4 miles of the Vos's land. The property at issue is a 7.35 acre portion of the Vos's farm on which they are operating a farm implement dealership.

The prior owner of the 7.35 acre tract constructed grain storage bins and a machine storage shed on the property. He used the acreage for implement storage and repair, commercial seed storage and sales, and a vegetable garden.

The surrounding land is all zoned A-1, however it is being put to several commercial uses. These include the Healy's machine building tool and dye operation, the Selbers's seed sale business and grain storage bins, the Obersteller's brick masonry building and sheep raising operation, and the Des Planque's dog breeding and sales kennel. Additionally, an airport, a water treatment plant, and a penitentiary are located within a two mile radius of the property. All of these uses existed prior to county zoning and were "grandfathered in."

The Jasper County Zoning Commission considered the Vos's application to rezone their 7.35 acre tract four times before it was finally passed by the Board on June 6, 1990. On certiorari review, Judge Brown reversed the Board's decision because the Board failed to consider the comprehensive land use plan for Jasper County.

The Voses resubmitted their request and the Board held several public meetings. The Board subsequently approved the zoning change, but as a result of concerns raised at the meetings, it imposed the following conditions on use of the property:

> Uses of afore described property if zoned B-2 shall be limited to Farm Machinery Sales & Service and Farm Truck. These conditions limit the size of the sales yard to the afore described property for a term of 20 years.
>
> Should Clint Vos discontinue the Farm Machinery Sales & Service & Farm Truck Sales on the afore described lot he shall make application and rezone the sales lot to A-1 agriculture.

The Knotts and Oberstellers filed a petition for writ of certiorari with the district court. The court permitted the Voses and their business to intervene. The court ruled the Board had a reasonable basis for its zoning decision and annulled the writ.

The Knots and Oberstellers appeal asserting the Board engaged in illegal spot zoning.

I. Scope of Review

Our review of a district court certiorari ruling is for errors of law. Little v. Winborn, No. 93-352 (Iowa filed June 22, 1994). The legislature gave municipalities the power to enact and amend zoning ordinances under their police power. Jaffe v. City of Davenport, 179 N.W.2d 554, 556 (Iowa 1970). Therefore, "[i]n reviewing amendments to zoning ordinances, we presume they are valid and if their reasonableness is fairly debatable, we will not substitute our judgment for that of the legislative body." Montgomery v. Bremer County Bd. of Supervisors, 299 N.W.2d 687, 692 (Iowa 1980). Thus, the Board's decision will be upheld if it is supported by any substantial and competent evidence. Id. (citing Carstensen v. Board of Trustees, 253 N.W.2d 560, 562 (Iowa 1977).

II Spot Zoning

In their petition for certiorari and on appeal, Plaintiffs argue the Board engaged in illegal spot zoning. The Voses dispute spot zoning occurred and assert there is no material difference between the use restrictions on the surrounding properties and those place on their rezoned property.

We need not address whether spot zoning occurred because even if it did, we conclude it was valid.

"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." Jaffe, 179 N.W.2d at 556. Although, spot zoning is not

viewed favorably by the courts, it is not necessarily illegal. Id.

In Little, our Supreme Court enumerated a three part test for determining the validity of a spot zoned tract. The new zoning is valid if: "(1) it is germane to an object within the police power; (2) there is a reasonable basis for making a distinction between the spot-zoned land and the surrounding property; and (3) the rezoning is consistent with the comprehensive plan." Little, No. 93-352 at 10.

In determining whether a reasonable basis exists, the court considers the size of the spot zoned, the changing conditions of the area, the uses to which the land has been put, and its suitability and adaptability for various uses. Id. at 9; Jaffe, 179 N.W.2d at 556. In rural county areas, the size of the spot zoned is less important. Montgomery, 299 N.W.2d at 696. Of primary importance is whether the rezoned tract is peculiarly adaptable to the new classification in comparison to the surrounding tracts. Keppy v. Ehlers, 253 Iowa 1021, 1024, 115 N.W.2d 198, 200 (Iowa 1962).

A. The Police Power. We believe the Board reasonably concluded rezoning Plaintiffs farm land will promote the welfare of the community. The record indicates rezoning will benefit the local economy by providing jobs, increased revenue, and a needed service. The Vos's implement dealership provides six full time jobs and a part time bookkeeping position. It also grossed $1.5 million in

sales in 1991. Moreover, the nearest used farm implement dealer is located in Colfax, ten to twelve miles away.

B. Distinctness of Rezoned Property. The Board had a reasonable basis to determine the rezoned land is different in character and use from the surrounding area. The rezoned tract, unlike the surrounding land, has a low corn suitability rating. There is no record in the government crop office that the property was ever used to grow cash crops. Additionally, the former owner constructed grain bins and a machinery building on the rezoned tract. The only agricultural use of the land was as a vegetable garden.

C. Comprehensive Plan. Because zoning is not static, it is difficult to determine whether a Board's rezoning decision is in accordance with the comprehensive plan. Montgomery, 299 N.W.2d at 695. "If the Board gave full consideration to the problem presented, including the needs of the public, changing conditions, and the similarity of other land in the same area, then it has zoned in accordance with the comprehensive plan". Id.

The transcripts of the Board's meetings indicate they specifically considered the Jasper County comprehensive plan and determined rezoning would be consistent with it. They particularly examined the actual uses of the surrounding properties and the effect of rezoning on the community. Additionally, the plan itself acknowledges it is intended to be "a general guide" to the development of the county's

resources and that "change is necessary and inevitable." Finally, the rezoning will not effect the plans goal to preserve prime agricultural land. As previously discussed, the rezoned tract was not particularly well suited for agricultural use. We conclude the Board rationally decided to rezone the Vos's land.

We affirm the district courts ruling sustaining the writ of certiorari.

AFFIRMED.