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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-217 / 88-953

ELLA M. NEUZIL, GREGORY B. NEUZIL, and CAROL F. NEUZIL,

Appellants,

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vs.

CITY OF IOWA CITY, IOWA,

Appellee.

Appeal from the Iowa District Court for Johnson County (49580), L. Vern Robinson, Judge.

Plaintiffs appeal the decision of the district court which entered judgment for the defendant Iowa City. **REVERSED.**

William L. Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City, for plaintiff-appellants.

Richard J. Boyle, Assistant City Attorney, for defendant-appellee.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J.

The Neuzils appeal from the district court decision declaring that the city council of Iowa City acted reasonably when it rezoned the Neuzils' eight and one-half acre tract from multi-family to a single family district in an effort to avoid traffic and environmental problems. Our standard of review is determined by the nature of the trial proceeding. The district court's opinion and the record clearly reveal the primary issue of this case is the reasonableness of the city council's exercise of police power to down-zone the Neuzil property. This is a determination made under equitable principles and our review of such matters is de novo. Kempf v. City of Iowa City, 402 N.W.2d 393, 395 (Iowa 1987); see also City of Cedar Falls v. Flett, 330 N.W.2d 252, 255 (Iowa 1983) Iowa R. App. P. 4. As such, we give weight to the district court's fact-findings, but we are not bound by them. Iowa R. App. P. 14(f)(7). We reverse.

The Neuzil tract of land is approximately eight and one-half acres on which exist two single family residences, one occupied by Mrs. Neuzil and the other by one of her sons. The Neuzils bought this tract in 1941. The family has agreed not to develop the tract during the lifetime of Mrs. Neuzil.

The tract is located in the vicinity of Kinnick Stadium and the University of Iowa Hospital complex. In 1956, Iowa City annexed this property, although then as now, primary

access to the property is through the bordering municipality of University Heights.

In 1962, after an extensive study of the area by the planning staff, with help of a licensed consultant, Iowa City rezoned this property R3A, permitting the construction of three hundred and seventy-three multi-family units. The findings state: "It is excellently located to provide multiple dwelling uses convenient to the campus. It also contains a few multiple dwelling uses including one extensive apartment project located in . . . University Heights."

In 1972, another extensive study was performed by the city staff, recognizing the suitability of the property for multi-family use due to its proximity to the University and other apartment house units in the area, but resulting in down-zoning the allowable residential density of the tract to one hundred twenty-four units. During 1982 the city staff continued studies of the area in preparation of a new city-wide zoning ordinance to implement the comprehensive plan which had been adopted on May 30, 1978. The new ordinance was adopted on April 9, 1985, by the city council. That ordinance classified the Neuzil tract as RM-12, permitting the construction of more than one hundred residential units. However, during a controversy involving an adjacent property, neighbors formed the Melrose Lake Community Association and requested rezoning of the Neuzil tract to reduce the allowable density of development to

sixty-eight units. On June 4, 1985, the property was rezoned to RS-8 despite the Neuzils' objection, even though the Iowa City Planning & Zoning Commission recommended denial of the proposed rezoning on December 20, 1984. The Neuzils challenged the zoning in November of 1985. They contend that the rezoning of their tract was invalid under the circumstances. The city passed a resolution setting forth the reasons for the rezoning in December of 1985.

I. Reasonable Zoning Ordinance

The relevant portions of the Iowa Code empower the city council to enact zoning regulations "for the purpose of promoting health, safety, morals . . . [council] may divide the city into districts . . . in accordance with a comprehensive plan . . . made with reasonable considerations . . . encouraging the most appropriate use of land through such city." Iowa Code §§ 414.1, 414.2, 414.3 (1985). The city council's action must be upheld if supported by any competent and substantial evidence. Montgomery v. Bremer County Board of Supervisors, 299 N.W.2d 687, 692 (Iowa 1980). The decision to rezone must be fairly debatable and if the zoning ordinance is reasonable, a court will not substitute its judgment for that of the legislative body. Id. Even if the decision to rezone did not adhere to the comprehensive plan, such comprehensive plans are always "subject to reasonable revisions designed to meet the ever-changing needs of a community." Stone v. City of Wilton, 331 N.W.2d 398, 403

(Iowa 1983) (emphasis added). The council acts in accordance with a comprehensive plan:

> [i]f . . . [it] 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 . . . .

Montgomery, 299 N.W.2d at 695 (citations omitted).

The rezoning action of the city council must be justified by some aspect of the police power, asserted for interest of the community at large. See Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926). At stake is the burdened property owner's fourteenth amendment right not to be deprived of liberty and property without due process of law, and to receive the equal protection of the law. Id. However, elasticity characterizes the application of constitutional principles to zoning ordinances to the point of a presumption in favor of their validity by a standard of reasonableness that is "fairly debatable." Id.

> Land use restrictions (such as at issue here) reasonably related to the promotion of the health, safety, morals or general welfare repeatedly have been upheld even though the challenged regulations destroyed or adversely affected recognized real property interests or flatly prohibited the most beneficial use of the property . . . Hence, such laws, when justifiable under the police power, validly enacted and not arbitrary or unreasonable, generally are held not to be invalid.

Stone v. City of Wilton, 331 N.W.2d 398, 402 (Iowa 1983) (emphasis added).

The Neuzils offered expert testimony of a real estate appraiser and consultant, Mr. Fisher, to the district court, to rebut the presumption of the validity of the ordinance. Mr. Fisher testified that the best use of this property is "for residential development of a fairly intensive nature . . . . The combination of the topography and the location and the services available and the . . . proximity to . . . employers and generators . . . of residential employment . . . ." He opined that down-zoning of the property was unreasonable under the circumstances because, between the reclassifications of the tract, "the topography of the property was the same . . . . The location . . . was unchanged . . . [and] the employment magnet . . . [was] stronger."

While existing zoning is subject to reasonable revision to meet the changing needs and conditions of the community, this rezoning does not reflect valid growth management or environmental concerns. The general area surrounding and including the subject property has not significantly changed in any way which would command preventative down-zoning measures to safeguard the general health and welfare of the community. Furthermore, Mr. Fisher testified that the expanding University Hospital acted as a magnet that would consequently require more housing in the proximate area. In fact, increased availability of conveniently located housing would alleviate the vehicular traffic by providing more University of Iowa employees with

homes within walking distance of work. Since the general welfare is not benefited by the city council's action, the new zoning has no valid basis. See Kempf v. Iowa City, 402 N.W.2d 393 (Iowa 1987).

The council proffers the explanation that the latest rezoning was necessary because they did not focus specifically on the tract in question when they enacted their most recent zoning ordinance pursuant to the comprehensive plan. When the oversight was brought to their attention by citizens, they acted. The council explained their down-zoning of the parcel as a response to the possibility that additional multi-family residences in the area would overburden the thoroughfares and delicate ecology of the vicinity.

The zoning adopted pursuant to the comprehensive plan allowed for development of over one hundred residences. Considerable study was made of the traffic implications of development of the tract in compliance with the zoning. It is unreasonable to find that impact on traffic was a new consideration in the latest rezoning.

When the Neuzil tract is developed, increased traffic is inevitable. Congestion and hazards resulting from increased traffic are more appropriately handled in a cooperative master plan between builder and the council when plans to develop are submitted. That assures that development of the property is compatible with the

development of the community. See Peterson v. City of Highland Park, 506 N.E.2d 604, 608 (Ill. App. Ct. 1987). Increased traffic has not been shown to be a valid reason at this time to support the rezoning action in contravention of the comprehensive development plan.

A. Spot Zoning

The rezoning of the Neuzil parcel resembles spot zoning. "[O]ne or two building lots may not be marked off into a separate district or zone and . . . subjected to peculiar burdens not applicable to adjoining similar lands." 101A C.J.S. Zoning & Planning § 44, at 163 (1979). The operational motive to alter zoning on a parcel should be related to the public health and general welfare "and designed to serve the best interests of the community as a whole, and in accordance with a comprehensive zoning plan." Id. at 164 (citing Keller v. City of Council Bluffs, 246 Iowa 202, 66 N.W.2d 133 (1954)). "[W]here it does not appear that there is a singling out of one lot for treatment different from that accorded to similar surrounding land indistinguishable from it in character, such spot zoning is not illegal." 101A C.J.S. Zoning & Planning § 44, at 164-65. "Any attempt to amend existing ordinances in the direction of what appears to be spot zoning will be closely scrutinized by the court, and it is capable of being sustained only when the facts and circumstances indicate a valid exercise of the zoning power." Id., § 74, at 285-86.

> Ordinarily, a change in zoning regulations involving a single or very few properties may or should be made only where new or additional facts, such as a change in conditions, or other considerations materially affecting the merits have intervened since the adoption of the regulations, or where the original zoning was erroneous . . . . .
> . . . and a similar rule applies to a change . . . from one class of residential use to another, such as for multiple dwellings. [Citing Lancaster Development, Ltd. v. Village of River Forest, 228 N.E.2d 526, 84 Ill. App.2d 395, 30 A.L.R.3d 1190 (1967)]. An application for such a change should be regarded with suspicion and should be denied unless the change requested will conform to a comprehensive plan and serve one or more of the purposes enumerated in the zoning statute.

101A C.J.S. Zoning & Planning § 74, at 286-88 (emphasis added). (Citations omitted.)

"[Spot] zoning which is not in harmony with an existing comprehensive plan or ordinance is invalid." Id. at 290.

The facts of the instant case support a finding of spot zoning. (1) The Neuzil parcel was singled out for rezoning when there is an approved high density residential development on a materially indistinguishable adjacent tract. (2) The alternation of the zoning limiting the potential use of the Neuzil parcel does not reflect concern for public health and general welfare that arises from a change in conditions since the recently adopted comprehensive plan. (3) Because the single family residential area adjacent to the tract does not face the parcel, apprehension that there will be a negative aesthetic impact or adverse effect on property values of adjoining residences diminishes the validity of these

considerations as the operational motive to command intervention on this developmentally dormant tract. (4) Any further high density development of this tract complements the gradual material change in the area, the expansion of the employment magnet just a few blocks away; and is in accordance with the Comprehensive Development Plan of Iowa City. R-12 zoning of the Neuzil tract is harmonious, not erroneous.

B. Departure from Normal Procedure

The legislature has prescribed the procedural sequence of local zoning authority. Iowa Code section 414.6 states that "after the adoption of such [zoning] regulations . . . the zoning commission may recommend to the council amendments, supplements, changes or modifications . . . ." That is not what happened in this case.

The rezoning was not triggered by a concern of a zoning commissioner or a city councilman about the evolution of the area. Nor did the Neuzils draw attention to their plat by submitting plans for development. Here, the council adopted the high density zoning recommended by the commission under the comprehensive plan.

The normal progression would be for the well-considered ordinance to remain in effect until the planning commission noticed a change in the area, compelling reconsideration. Ms. Milkman, who had been an associate city planner during the rezoning, testified that the rezoning was triggered by a small group of neighbors who petitioned for new

restrictions on a property they were currently enjoying for unprivileged private recreation, not by an initiative of the city to enhance its comprehensive development plan.

The departure from the normal procedural sequence suggests maybe that improper purposes played a role in the decision making and sparks suspicion about the motive for rezoning. See Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 269-70, 97 S. Ct. 555, 565-66, 50 L. Ed. 2d 450, 467 (1977).

The key in the application of the "fairly debatable" test is motive. An event or change in circumstances should trigger the ordinance amendment process. "Such regulations are sustained . . . for reasons analogous to those which justify traffic regulations . . . ." Euclid v. Ambler, 272 U.S. at 387, 47 S. Ct. at 118, 71 L. Ed. at 310. The city does not need to wait until a pedestrian gets run over at a busy intersection to justify installation of a pedestrian controlled traffic signal. But it would be unreasonable to install such a signal in response to a few neighbors at an intersection where their children prefer to cross, not considering the point of convergence of the general pedestrian traffic flow. If there were a light everywhere an accident might happen because a small group chooses to cross a street, traffic would never go anywhere. Analogously, zoning alteration should not be enacted in a response to a small group of neighbors who prefer an uninterrupted lifestyle that could change if a property owner develops within the existing zoning.

The rezoning should not precede the reasonable consideration of the circumstances that are proffered to support the change.

> The specific sequence of events leading up to the challenged decision also may shed some light on the decisionmaker's purposes. Reitman v. Mulkey, 387 U.S. 369, 373-376, 87 S. Ct. 1627, 1629-1631, 18 L. Ed. 2d 830 (1967); Grosjean v. American Press, 297 U.S. 233, 250, 56 S. Ct. 444, 449, 80 L. Ed. 660 (1936). For example, if the property involved here always had been zoned R-5 but suddenly changed to R-3 when the town learned of MHDC's plans to erect integrated housing, we would have a far different case. Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.

Arlington Heights, 429 U.S. 252, 267, 97 S. Ct. 555, 564, 50 L. Ed. 2d 450, 466 (1977) (footnotes omitted).

In Arlington Heights, racial discrimination was found not to be a motive in the council's denial of a request for rezoning because, as the Court states: "there is little about the sequence of events leading up to the decision that would spark suspicion." 429 U.S. 252, 269-70, 97 S. Ct. 555, 565-66, 50 L. Ed. 2d 450, 467 (1977).

The sequence of events leading up to the rezoning decision in the instant case sparks our suspicion. In 1962, shortly after annexing the Neuzil tract, Iowa City zoned the parcel with a classification which would allow the construction of three hundred seventy-three dwelling units. In 1972, it was rezoned to accommodate one hundred

twenty-four possible dwelling units. There is documented evidence that the city was considering the parcel for acquisition as a park in 1979, 1983, and again in 1984. In 1983 the new city-wide zoning ordinance allowed the construction of over one hundred dwelling units on the parcel. In 1984 a group of residents formed the Melrose Lake Community Association and that group petitioned for the down-zoning of the property. In 1985 the property was down-zoned to the point where only sixty-eight units could ever be constructed. The neighbors complained about the effects eventual intense development of the Neuzil tract would have on their property. They wanted to maintain recreational areas. But this does not provide a reasonable basis to down-zone the property the Neuzils have allowed neighbors to use until development plans would curtail the accessibility.

The neighbors should have been fully aware of the possibility of multi-family unit development on the Neuzil tract which had been zoned for high-density for many years. The neighbors had tried to get both the adjacent municipality of University Heights and Iowa City to purchase the Neuzil property for a park. The record reveals that the purchase was financially unfeasible because of the value of the property. There is no evidence that the cities lost interest in purchasing the property for this purpose regardless of the price. Taking all these factors into consideration, we conclude the down-zoning of

the Neuzil property was not triggered by a reasonable motive.

The public welfare reasons for the instant zoning amendment were not formalized until the resolution of December 17, 1985, though the ordinance was adopted on June 4, 1985. The resolution reflects the same types of concerns which faced the planning and zoning commission when they recommended denial of the petition for down-zoning submitted by the community association on December 20, 1984. The commission did not feel that traffic, draining, and environmental sensitivity of the property under scrutiny justified reclassification. Yet these were the reasons given by the council to justify their rezoning action.

Furthermore, there is insufficient evidence that amending the zoning of the Neuzil tract enhances the accomplishment of the community welfare and environmental goals formally stated by the council.

The city council showed no evidence of a material change in the needs and conditions in the community since the adoption of the ordinance classifying the Neuzils' tract as RM-12 that could be better served by down-zoning the tract to RS-8. See Stone v. City of Wilton, 331 N.W.2d 398, 403 (Iowa 1983).

II. Conclusion

We reverse the trial court because the Neuzils met their burden of proof that the city council acted unreasonably, capriciously, and arbitrarily when it down-zoned their tract. The ordinance down-zoning the Neuzil property is declared void and the RM-12 designation reinstated. Costs of this appeal are taxed to the city of Iowa City, Iowa.

REVERSED.