IN THE COURT OF APPEALS OF IOWA

FILED
APR 24 1984
CLERK SUPREME COURT

ROGER ROWSON, RAYMOND ROWSON, MARIE McKENRICH, DOUGLAS JOHNSON, DEAN NIELSEN and **SHIRLEY NIELSEN,**

Plaintiffs-Appellants,

vs.

CLINTON COUNTY BOARD OF SUPERVISORS,

Defendant-Appellee.

Filed April 24, 1984

4-59
83-732

304

Appeal from the Iowa District Court for Clinton County - James R. Havercamp, Judge.

Plaintiffs appeal from the trial court's order annulling plaintiffs' petition for writ of certiorari. REVERSED.

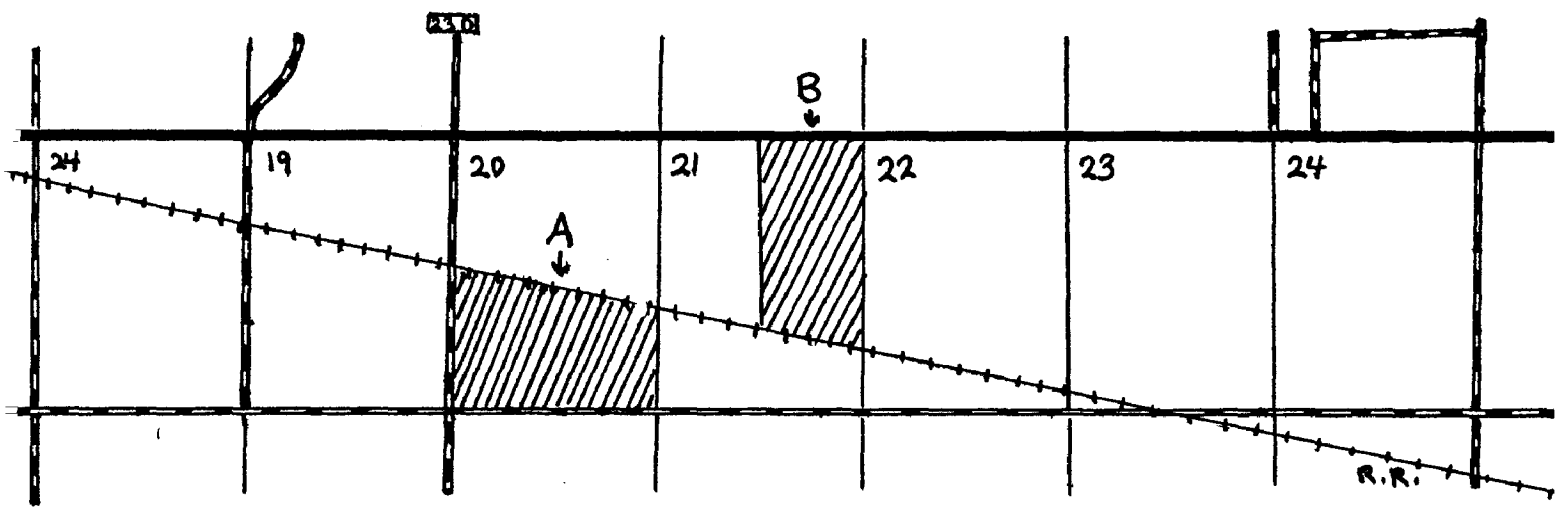
John J. Carlin, Davenport, Iowa, for plaintiffs-appellants.

G. Wylie Pillers, III, Clinton County Attorney, for defendant-appellee.

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

This is an appeal from an order annulling a writ of certiorari and sustaining the action of the Clinton County Board of Supervisors in rezoning two non-adjoining tracts from A-1 Prime Agricultural to M-2 General Industrial. The appellants are Clinton County residents who own land within 500 feet of the tracts in question, and who opposed the rezoning. The landowners contend that the trial court erred in sustaining the action of the supervisors and in finding that its action did not constitute illegal spot zoning. We agree and reverse the trial court.

Iowa Beef Processors had indicated a desire to establish stockyard and slaughter facilities in Clinton County. Iowa Beef obtained options to purchase two tracts in Eden Township, Clinton County. The tracts are hereinafter referred to as parcel A and parcel B.



Parcel A contains 272.5 acres and is south of the railroad right-of-way in section 20. Parcel B contains 214.95 acres and is north of the railroad right-of-way in section 21. The parcels are not adjoining. Parcel B runs along highway 30 which lays to the north of the property. The tracts are close to the city of Clinton and within two miles of its airport. The water table in the area is sufficient for industrial wells. Utilities other than sewer are accessible. The area is suitable for the construction of sewer lagoons. The evidence shows that these

industrial advantages are shared by the remaining land in sections 20 and 21. Portions of sections 24, 19, 22 and 23 in Eden Township also abutted on both highway 30 and the railroad right-of-way. This entire area consists of prime agriculture land and has been farmed.

The best soil types in Clinton County are the Tama and Muscatine series. Parcels A and B contain small quantities of these superior soil types. When compared to parcels A and B, some of the adjoining properties contain considerably more high quality soil, some contain slightly more high quality soil, and some are essentially equal in soil quality.

The applications for rezoning were the result of Iowa Beef Processors' interest in locating in Clinton County. Iowa Beef has not located in Clinton County and is not now interested in doing so. At the time of the application only three other pieces of property were zoned M-2 under Clinton County zoning. They consisted of small tracts of five to seven and one-half acres. They were not in the area of the parcels at issue here.

I. Scope of Review

In a certiorari proceeding, unless modified by statute or constitutional principle, a court's scope of review is limited. A board'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); Carstensen v. Board of Trustees, 253 N.W. 2d 560, 562 (Iowa 1977). This limited review has not been modified in this case by any statute or constitutional principle.

Zoning decisions are an exercise of the police power to promote the health, safety, order and morals of society. Anderson v. City of Cedar Rapids, 168 N.W. 2d 739, 742 (Iowa 1969). In 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. Jaffe v. City of Davenport, 179 N.W. 2d 554, 555 (Iowa 1970).

Our limited task in this case is to determine whether the decision by the board to rezone is fairly debatable. We will review the evidence and other issues in that light. Montgomery, 299 N.W. 2d at 692.

II. Spot Zoning

The appellants contend the board's actions constituted illegal spot zoning. Spot zoning results when a rezoning creates a small island of property with restrictions on its use different from those imposed on surrounding property. Montgomery, 299 N.W. 2d at 696. While courts disfavor spot zoning, it is not necessarily illegal. It is valid if there is a reasonable basis for such zoning when considering the size of the spot zoned, prior use of the property, its suitability for various uses and the uses of the surrounding property. Id. at 696.

We are dealing here with county zoning. The two tracts in question are located several miles from an incorporated city. When dealing with county zoning with wide open spaces as opposed to the relatively congested urban areas, the size of the spot zoned is less important in determining if there is illegal spot zoning. Id.

Parcels A and B have been carved as two separate tracts from adjoining sections. Despite the fact that each tract contains over 200 acres, they have been proposed for development as two separate islands in a vast area of prime agricultural land.

Whether the land is similar in character and use to the surrounding area is primarily for the board to decide. If a reasonable board could conclude that the land is different, we will uphold the decision to rezone. Id.

The facts in this case do not support a finding that it is fairly debatable that the land rezoned is distinguishable from the rest of the land in the area. No effort was made to rezone a planned area. We find that the failure to make any effort to join parcel A and B in a contiguous industrial area is evidence of the board's intention to rezone only the two tracts on which Iowa Beef had an option. Where

rezoning is largely the result of an application to rezone and it is done without full consideration of the entire area it is evidence of the lack of a comprehensive plan. Montgomery, 299 N.W. 2d at 695 (citing Keppy v. Ehlers, 253 Iowa 1021, 1023, 115 N.W. 2d 198, 200 (1962)).

The rezoned land, like the other property in the area, was prime agricultural land. The soil types on surrounding property differ only slightly from those of parcels A and B. There was no evidence that there is a difference in productivity between tracts A and B and surrounding land. In the Montgomery case, on the other hand, the land to be rezoned was not prime agricultural land as was the surrounding farm land. Montgomery, 299 N.W. 2d at 696. In fact, there was evidence in Montgomery that a portion of the rezoned land produced nothing but sand burrs. Id.

Slight differences in soil types, absent any other evidence of dissimilarity, is not sufficient to support rezoning. The whole area is located in close proximity to an existing major highway and to the Chicago and Northwestern Railroad tracks. The area, though rural, is close to the city of Clinton. The Clinton airport is only two miles east of the tracts. We note that water and natural gas are available and that existing roads can be modified to handle industrial traffic. These factors, however, exist as to all land in the general area. We find that it is impossible to differentiate between tracts A and B and the balance of sections 20 and 21 and the surrounding area.

That a zoning statute must be impartially applied as to all properties similarily situated is beyond dispute. Keller v. City of Council Bluffs, 246 Iowa 202, 213, 66 N.W. 2d 113, 120 (1954). In Anderson v. City of Cedar Rapids, 168 N.W. 2d 739 (Iowa 1969), the court found that rezoning for a shopping center in a residential district was not invalid or spot zoning where the rezoned area was bordered on the west by a commercial tract. That tract and the shopping center

area formed a contiguous rectangular area consisting of approximately 3.4 acres. No such contiguous rectangle was formed here.

In denying rezoning in Keppy v. Ehlers, 253 Iowa 1021, 115 N.W. 2d 198 (1962), the Iowa Supreme Court said:

> We feel it must be recognized that in county zoning a more complex question is presented in dealing with agricultural lands, with the wide open spaces, than in the more congested urban communities. . . . But where it appears, as it does here, that such reclassification is largely dependent upon an application being made as to a certain tract, without regard to other tracts in the same area, similar in location to interchange; similar in adaptability to either rural or light industry use; and similar in value, it must be said that plan is evident of a lack of a comprehensive plan within the purview of the statute. While the size of the tract involved is not too material it is of primary importance whether such tract has a peculiar adaptability or is merely carved out of a similar tract or area equally suited to the requested reclassification. Such is the situation here and results in illegal "spot zoning."

Id. at 1023-24, 115 N.W. 2d at 200. (emphasis added)

The rezoning applications here were made for two non-adjoining tracts. The purpose of the rezoning was to provide a site for Iowa Beef Processors. The applications were made without regard to other tracts in the same area and were merely carved out of similar tracts.

We conclude there is insufficient evidence for a reasonable board member to determine that the tracts which were rezoned were best suited for industrial development while leaving the rest of the area zoned agricultural. Because the rezoning resulted in illegal spot zoning, we reverse the decision of the trial court.

REVERSED.