FILED
JUN 30 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBERT L. MATTERS, MARY MATTERS, and MARION C. HAYNES,

Appellants,

vs.

CITY OF AMES, IOWA, and its Mayor, WILLIAM F. PELZ, and its Council, CHARLES CALHOUN, JOSEPH MAXWELL, DEAN HUSTON, DONALD NELSON, RUSSELL POUNDS, BARBARA KOERBER, and BOARD OF ADJUSTMENT OF THE CITY OF AMES, IOWA,

Appellees.

Filed June 30, 1978

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2-60488

Appeal from Story District Court - Russell J. Hill, Judge.

Plaintiffs appeal trial court's denial of their petition for declaratory judgment seeking to have zoning ordinance as applied to their property declared an arbitrary, capricious, discriminatory and unreasonable exercise of municipal zoning authority under chapter 414, The Code. - Affirmed.

D. R. Newbrough, of Hegland, Newbrough, Johnston, Brewer & Maddux, Ames, for Appellants.

John R. Klaus, City Attorney, Ames, for Appellees.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiffs appeal the trial court's denial of their petition for declaratory judgment that the Ames city ordinance zoning their property residential is arbitrary, capricious, discriminatory and an unreasonable exercise of the police power under Chapter 414, The Code. The real issue is the sufficiency of the evidence to support the trial court's finding that the ordinance is not an unreasonable exercise of the police powers and the actions of the city council in enacting the ordinance were not arbitrary, unreasonable, capricious or discriminatory as applied to plaintiffs' property. The facts surrounding the property and this cause of action are not in dispute.

The trial court found that except for the non-conforming supermarket adjacent plaintiffs' property, the remaining "R-3" where plaintiffs' property is located is entirely composed of conforming uses, to wit: apartment houses and a funeral home. The purpose of the "R-3" district is to serve as a transition area from high density development to single family residential areas. The court found defendants' position was the commercial area, zoned "C-5" and containing the North Grand Shopping Center, is surrounded by a medium density residential area, the "R-3" district in which plaintiffs' property is located, which serves as a buffer for the one and two family residential areas.

Although the court found there is disagreement between various city groups as to how the property should be zoned, it found the responsibility for changing the zoning of an area rested with the city council and not the city planning commission. The court held it was not the purpose of the judicial system to determine whether or not those decisions were wise. Rather, the court was to determine only whether the actions of the city council in enacting the zoning ordinance were clearly arbitrary, unreasonable or discriminatory. Upon the record, the trial court was unable to say plaintiffs' property is unsuitable for residential purposes or that it is totally unsuited for the zone use.

Under the police power, zoning is a matter within sound legislative discretion, and if the facts do not show the bounds of that discretion have been exceeded, the actions of the city council must be upheld. Keller v. City of Council Bluffs, 246

Iowa 202, 207, 66 N.W.2d 113 (1954). The burden is upon the plaintiffs attacking the validity of the zoning ordinance to establish the acts of the city council were arbitrary, unreasonable, unjust and out of keeping with the spirit of the zoning statutes and each case must be determined upon its own facts. 246 Iowa at 208.

However, the power to zone is not unlimited. It must be reasonably exercised in furtherance of the public safety, health, morals and welfare. F. H. Uelner Precision T. & D., Inc. v. City of Dubuque, 190 N.W.2d 465, 468 (Iowa 1971); Granger v. Board of Adjustment, 241 Iowa 1356, 1363, 44 N.W.2d 399 (1950). A strong presumption of validity accompanies zoning ordinances. If facially valid, and the reasonableness of the enactment is fairly debatable, the ordinance must be allowed to stand. Hanna v. Rathje, 171 N.W.2d 876, 880 (Iowa 1969). See also F. E. Uelner, supra. The test employed is whether the means employed have any real, substantial relation to the public health, comfort, safety and welfare, including the maintenance of property values. Hanna, supra; Plaza Recreational Center v. Sioux City, 253 Iowa 246, 253, 111 N.W.2d 758, 763 (1961). The fact that plaintiffs' property would have a greater market value if zoned commercial rather than residential, is a factor present in many cases and, although entitled to consideration, is not controlling. Brackett v. City of Des Moines, 246 Iowa 249, 258-9, 67 N.W.2d 542 (1954). Courts will not substitute their judgment as to the wisdom or propriety of action by a city or town council, acting reasonably within the scope of its authorized police power, in the enactment of ordinances establishing or revising municipal zones. Anderson v. City of Cedar Rapids, 168 N.W.2d 739, 742 (Iowa 1969).

From a review of the evidence, we find plaintiffs failed to prove the Ames city ordinance zoning their property "R-3" is arbitrary, capricious, discriminatory or unreasonable. The trial court was correct when it held it was unable to say the property was unsuitable for residential use. The purpose of the "R-3" district wherein plaintiffs' property lies is to serve as a buffer between the commercial and residential zones.

AFFIRMED.