IN THE COURT OF APPEALS OF IOWA

No. 8-166 / 97-1192
Filed May 29, 1998

J & D ENTERPRISES,
Appellant,
vs.

CITY OF SIOUX CITY BOARD OF ADJUSTMENT,
Appellee,
and

SIOUX CITY COMPRESSED STEEL, INC.,
Intervenor-Appellee.

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge.

Petitioner appeals from a district court ruling denying its petition for certiorari and affirming defendant's decision which granted intervenor a conditional use permit to operate a scrap metal recycling business next to petitioner's land. **AFFIRMED.**

James E. Walker of Corbett, Anderson, Corbett, Poulson, Flom & Vellinga, Sioux City, for appellant.

C. Maurice Rawe, Chief Deputy City Attorney, Sioux City, for defendant-appellee.

Anthony J. Stoik of Klass, Stoos, Stoik, Mugan, Villone & Phillips, L.L.P., Sioux City, for intervenor-appellee.

Heard by Sackett, P.J., and Streit and Mahan, JJ.

STREIT, J.

J & D Enterprises appeals from the trial court's denial of the writ of certiorari it filed after the Sioux City Board of Adjustment granted a conditional use permit to a steel remanufacturing plant adjacent to its property. J & D argues the court used improper standards in denying its writ and affirming the board's decision. Because the district court's affirmance is supported by substantial evidence in the record, we affirm.

I. Background Proceedings & Facts.

Sioux City Compressed Steel (SCCS), a scrap metal recycling business, was located in downtown Sioux City. The company and the city agreed SCCS should move the location of the business out of downtown to a site located on the southern outskirts of town zoned for heavy industry. The proposed site was adjacent to property owned by petitioner, J & D Enterprises (J & D).

Pursuant to a Sioux City Municipal Ordinance, SCCS was required to obtain a conditional use permit to build their facility on the new site. Under the municipal code a conditional use is one "having some special impact or uniqueness which requires a careful review of . . . location, design, configuration and special impact . . . ." Sioux City, IA Ordinance 25.12.320 (October 1, 1992). To decide whether or not to grant a conditional use permit, the Sioux City Board of Adjustment holds a public hearing. A conditional use permit should be granted only if the standards set

out in the Sioux City Municipal Code sections 25.12.350(2)(a)-(f) & (3)(a)(b) are met.[1]

The Board held a public hearing on February 26, 1997, to decide whether SCCS should be granted a conditional use permit to build its new facility. At the hearing, J & D objected to the visual impact of the recycling plant. Specifically, J & D wanted the Board to require a ten-foot fence around the property, rather than

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[1] Those sections of the municipal code state:

2. *Standards.* A permit for any conditional use listed in subsection 1 of this section shall be granted only if the evidence is presented which establishes:

a. That the proposed building or use will be in harmony with the general purpose, goals, objectives and standards of the general plan, this title and, where applicable, the subdivision code;

b. That the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety and general welfare;

c. That the proposed building or use will be constructed, arranged and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable district regulations;

d. That the proposed building or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such services;

e. That the proposed building or use will not result in the destruction, loss or damage of any natural, scenic or historic feature of significant importance;

f. That the proposed building or use will not result in the destruction, loss or damage of any natural, scenic or historic feature of significant importance;

3. *General Considerations.* In determining whether the evidence establishes that the foregoing standards have been met, the board of adjustment shall consider:

a. Whether, and to what extent, the proposed building or use at the particular location requested is necessary or desirable to provide a service or a facility which is in the interest of the public convenience or which will contribute to the general welfare of neighborhood or community;

b. Whether, and to what extent, all steps possible have been taken to minimize any adverse effects of the proposed building or use on the immediate vicinity through building design, site design, landscaping and screening.

the proposed eight-foot fence, and a thirty-foot height limitation on the scrap piles, rather than the proposed fifty-foot limit.

After the hearing, SCCS was granted the conditional use permit without J & D's suggested restrictions. J & D filed a petition for writ of certiorari alleging the Board did not follow the municipal code when granting the permit and the Board's decision was not supported by the record. SCCS intervened in the action. After hearing, the district court denied J & D's writ and affirmed the Board's decision. J & D appeals, contending the district court applied the wrong legal standards.

II. Standard of Review.

A certiorari action against a city board of adjustment is specifically authorized under Iowa Code section 414.15 (1997). Decisions of the board can be challenged as illegal, in whole or in part. *Id.*

By statute, the district court reviews board of adjustment decisions de novo. *Id.* § 414.18. The board's action will be found illegal if "the [district] court's findings of fact . . . do not provide substantial support for the board decision." *Fox v. Polk County Bd. of Supervisors*, 569 N.W.2d 503, 507 (Iowa 1997). However, if the reasonableness of the Board's action open to a fair difference of opinion, the court may not substitute its decision for that of the Board. *Id.*

Appellate review of a district court's judgment in a certiorari proceeding is "governed by the rules applicable to appeals in ordinary actions." *Id.* The appellate

court is limited to correction of errors at law and bound by the findings of the trial court if supported by substantial evidence in the record. *Id.*; Iowa R. App. P. 14(f)(1).

III. Standards for Conditional Use Permit Pursuant to Sioux City Municipal Code.

In order for the board to grant SCCS a conditional use permit it had to find SCCS met the standards for conditional uses set out in sections 25.12.350, 25.66070 and 25.66.080 of the Sioux City Municipal Code. Of the numerous standards set out in these sections, J & D contends two standards were not satisfied:

> (1) That the proposed building or use will be constructed, arranged, and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable district regulations. Sioux City, IA Ordinance 25.12.350(2)(c) (October 1, 1992).
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> (2) The proposed site is so located and of sufficient size that it will not interfere with the development of adjacent and nearby properties due to offensive odors, noise and visual qualities or that the plan provide features which will minimize such impacts. Sioux City, IA Ordinance 25.66.070(2)(c)(October 1, 1995).

In determining whether the evidence establishes this standard has been met the board of adjustment must consider "[w]hether, and to what extent, all steps possible have been taken to minimize any adverse effects of the proposed building or use on the immediate vicinity through building design, site design, landscaping and screening." Sioux City, IA, Ordinance 25.12.350(3)(b)(October 1, 1995). J & D challenged the Board's grant of the conditional use permit to SCCS allegating these standards had not been met.

IV. District Court's Application of Law & Findings of Fact.

J & D argues the district court applied the wrong legal standards. Specifically, J & D argues the court improperly considered: (1) the reasonableness of the steps taken by SCCS; (2) the economic practicability to SCCS; and (3) whether SCCS acted in accordance with good management practices. J & D argues these factors were irrelevant to whether the standards set out in sections 25.12.350(2)(c) and 25.66.070(2)(c) were met.

The district court properly reviewed the Board's decision de novo. Iowa Code § 414.18 (1997). In its review, the court assessed whether substantial evidence supported the Board's decision under sections 25.12.350(2)(c) and 25.66.070(2)(c) of the municipal code. The crux of section 25.12.350(2)(c) is whether the proposed use dominates the vicinity. In deciding whether the use dominates the vicinity, the Board was to consider to what extent building design, site design, landscaping, and screening were used to minimize adverse effects. The crux of section 25.66.070(2)(c) is whether the facility has been designed with features that minimize it's interference with the development of adjacent properties.

Some of the findings of the trial court were mere surplusage; not necessary to affirm the Board's decision. For example, if the measures taken by SCCS were the "best management practices" is not applicable to whether the standards under sections 25.12.350(2)(c) and 25.66.070(2)(c) were met. J & D also argues economic practicability and the reasonableness of the measures taken by SCCS were not

applicable. However, part of the Board's analysis was to determine "to what extent, *all steps possible* have been taken to minimize any adverse effects" to surrounding properties. Economic practicability and reasonableness are considerations in determining what steps were "possible." To that extent, the trial court did not err in considering these factors.

Even if the factors J & D contends the district court improperly considered were completely removed from the court's reasoning, there is substantial evidence on the record supporting the district court's judgment. SCCS was not required to eliminate all adverse impacts of its facility. Rather, it was required to *minimize* adverse impacts. The facility will be surrounded by an eight-foot privacy fence with privacy slats. There are plans for green belt outside the perimeter of the fence, with green landscaping, berms, and trees. Scrap piles inside the facility will be set back at a distance of at least three hundred feet from the fence. The Board decided these steps minimized the adverse impacts of the facility. Whether the adverse impacts are sufficiently minimized was not for the trial court and is not for this court to decide. *See Fox*, 569 N.W.2d at 507. The reasonableness of the Board's decision is open to a fair difference of opinion. *Id.* For that reason, the trial court correctly affirmed the board's decision. We affirm the trial court.

AFFIRMED.