FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

N. JASON BECK, ORA HANSEN, ROBERT ZARLEY, HAROLD NEFF, and STEVEN ZORN,

Plaintiffs-Appellants,

vs.

CITY OF JOHNSTON, IOWA and ZONING BOARD OF ADJUSTMENT OF THE CITY OF JOHNSTON, IOWA,

Defendants-Appellees.

Filed November 20, 1984

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4-337
84-126

Appeal from the Iowa District Court for Polk County - Luther T. Glanton, Jr., Judge.

Plaintiffs appeal the judgment of the district court upholding the rezoning of undeveloped property and the granting of a variance for some of the rezoned property. AFFIRMED.

William J. Lillis and Peter S. Cannon of Connolly, O'Malley, Lillis & Hansen, Des Moines, Iowa, for plaintiffs-appellants.

Lee H. Gaudineer of Austin & Gaudineer, Des Moines, Iowa, for defendants-appellees.

Heard by Donielson, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

Plaintiffs appeal the judgment of the district court upholding the rezoning of undeveloped property and the granting of a variance for some of the rezoned property. We affirm.

The property in question was a 160-acre tract of undeveloped land in the city of Johnston. The tract is bordered on the east by Highway 401 (Merle Hay Road), on the west by an abandoned railroad, and on the north by Northwest 70th. Highway 401 has direct access to Interstate 35-80. Northwest 70th has direct access to Highway 141 to the west. These two roads provide the rezoned tract with good transportation access. Before the rezoning, most of the tract was zoned low density residential. A strip adjacent to Merle Hay Road was zoned limited commercial. The tract is presently zoned for a mix of light industrial, commercial, and high density residential.

The challenged rezoning of the tract occurred in 1981. The rezoning of the total tract was done in three separate actions of the city council. In addition, a small portion of the tract was granted a variance after the rezoning.

The first rezoning was passed by the city council on May 28, 1981. Approximately seven aces in the southeast portion of the tract were rezoned light industrial. This plot was to be used as the site of an Amway warehouse-office building. Because Amway needed to start construction on the site, the city council waived the third reading and passed the rezoning ordinance after only two readings. During discussion of the petition, the city council considered preliminary plans for rezoning the whole tract in addition to the proposal to rezone the Amway plot.

After the city council passed the rezoning proposal for the Amway plot, Amway learned that a gas line ran under a portion of the plot. That forced Amway to change the location of its building. Because of the change, Amway would not have had the rear yard setback required by the city's general zoning

ordinance. Amway filed for a variance. The Board of Adjustment granted a variance on June 2, 1981, even though the rezoning passed by the city council did not become effective until two days later.

The second rezoning was passed by the city council on August 13, 1981. Eleven acres adjacent to the Amway plot were rezoned light industrial. Because of this action, the setback requirement to which the Amway plot had been subject became inoperative.

The third rezoning was passed by the city council on November 2, 1981. This action rezoned the remainder of the tract to a combination of light industrial, commercial, and high density residential.

Plaintiffs filed separate suits petitioning for Writs of Certiorari. The lawsuits challenged the legality of all three rezoning actions of the city council and also the grant of the variance by the Board of Adjustment for the Amway plot. The suits were consolidated and a trial was held before the court. The trial court ruled in favor of the defendants. Plaintiffs filed a timely Notice of Appeal.

I. Scope of Review. The scope of review in actions of this kind was set out by the supreme court in Montgomery v. Bremer County Board of Supervisors, 299 N.W.2d 687, 692 (Iowa 1980). A court's scope of review is limited, and a board's action must be upheld if supported by any competent and substantial evidence. Id. In essence, we are to determine whether the decision to rezone was fairly debatable. Id. If it was fairly debatable, we must affirm.

II. The Three Rezoning Actions. There is ample evidence that the rezoning will benefit the city of Johnston. We have no trouble concluding that the decision to rezone was fairly debatable. Therefore, we must affirm the actions of the city council.

The city of Johnston is a suburb of Des Moines. It was incorporated in 1979. Although the city is comprised of fifteen square miles, it only has a population of 3,100 people. The city does not have a sanitary sewer system or a sewage disposal

plant. The city's tax base is inadequate to meet the needs of the city. Rezoning of the land in question to light industrial and commercial will allow Johnston to attract businesses, which will increase the city's tax base. Additionally, the development of industrial and commercial enterprises on the rezoned area will require a lower level of city services—such as water and sewage disposal—than development of a residential area would require. Further, the area rezoned is served on two sides by good transportation access. Plaintiffs have not carried their burden of showing the decision to rezone was not fairly debatable.

In affirming the decision to rezone, we reject plaintiffs' argument that the rezoning violated the comprehensive plan and was therefore in violation of Iowa Code section 414.3 (1983). "A city's comprehensive plan is 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).

> 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 area, then it has zoned in accordance with a comprehensive plan.

Montgomery, 299 N.W.2d at 687 (citations omitted).

Johnston's city council considered arguments for and against the proposed rezoning in several meetings. The Johnston planning and zoning commission also held public discussions on the proposed rezoning. These meetings were sufficient to ensure that full consideration was given to the problems presented.

We reject plaintiffs' arguments that the rezoning of the seven-acre Amway plot constituted illegal spot zoning. Assuming, without deciding, that such action was spot zoning, it was not illegal. Spot zoning is valid if there is a reasonable basis for it considering the size of the spot zoned, prior use of the property, its suitability for various uses, and the uses of the surrounding property. Montgomery, 299 N.W.2d at 696. The Amway plot was not identical to the surrounding property. Land to the north was on an incline. Land to the west and

southwest suffered from more severe drainage problems. All of the surrounding land in the tract was undeveloped. The Amway plot's location on Merle Hay Road provided good transportation access for a warehouse. A reasonable city council could conclude that the land was different from the surrounding land, and we must therefore uphold the decision to rezone. See id.

We also reject plaintiffs' argument that rezoning the plot in three separate actions denied them adequate notice. We realize the potential for abuse if cities routinely allowed small parcels of large tracts slated for rezoning to be rezoned first in an effort to avoid giving notice to surrounding landowners. However, we note that even though no notice was required to be given to plaintiffs, some of them gave their objections to the rezoning of the Amway plot at a meeting of the planning and zoning commission and at the first reading of the proposal before the city council. In addition, the public was informed at all times that the entire 160-acre tract was being considered for rezoning and development.

The Amway plot was rezoned first because Amway needed to start construction. If the decision had been delayed, Johnston would have been denied a substantial and beneficial addition to its roll of taxpayers. The evidence does not show any conspiracy to deprive plaintiffs of notice, nor does it show they were in fact deprived of notice.

III. The Grant of the Variance. In light of our decision upholding all three challenged acts of rezoning, plaintiffs' challenge of the issuance of a zoning variance for the Amway plot is moot. The second rezoning action eliminated any need for the variance. Therefore, judgment on this issue, if rendered, "will have no practical legal effect upon the existing controversy." City of Dubuque v. PERB, 339 N.W.2d 827, 831 (Iowa 1983). Because this issue is moot, we do not decide it.

AFFIRMED.