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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RIPLEY DEVELOPMENT CORPORATION, W. D. RIPLEY and RUTH TAYLOR,	)	
Plaintiffs-Appellants,	)	Filed September 23, 1980
vs.	)	
MUSCATINE COUNTY BOARD OF SUPERVISORS,	)	0-199 2-63522
Defendant-Appellee.	)	

Appeal from Muscatine District Court - Max R. Werling, Judge.

Plaintiffs appeal from trial court's dismissal of petition for declaratory judgment.

AFFIRMED.

William B. Norton and L. Jeffrey Zearley of Norton, Freese & Zearley, Lowden, for plaintiffs-appellants.

Robert H. DeKock, Special Assistant Muscatine County Attorney, and Edmund D. Barry, Assistant Muscatine County Attorney, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiffs appeal from trial court's dismissal of petition for declaratory judgment. We affirm. Ruth Taylor, one of the plaintiffs, owns a 77 acre farm located approximately 1-1/2 miles northeast of Muscatine, Iowa. A 1975 Muscatine County zoning ordinance zoned Taylor's farm as A-1 agricultural. Hoping to build a planned development on the Taylor property that included condominiums, townhouses, cluster homes, and a community center, plaintiffs petitioned Muscatine County District Court to invalidate the 1975 zoning ordinance which prevented them from putting the Taylor farm to commercial and residential uses. After a full hearing the trial court dismissed plaintiffs' petition.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. The district court's findings of fact have the effect of a jury verdict. Weldon v. Zoning Board of Des Moines, 250 N.W.2d 396, 400-01 (Iowa 1977); Johnson v. Board of Adjustment, City of West Des Moines, 239 N.W.2d 873, 878 (Iowa 1976). Such findings, supported by substantial evidence and arrived at by application of proper legal standards, are binding on this court. Vogelaar v. Polk County Zoning Board of Adjustment, 188 N.W.2d 860, 863 (Iowa 1971); Iowa R. App. P. 14(f)(1). If there is substantial evidence for the district court's decision, we may not substitute our opinion for that of the district court. Johnson, 239 N.W.2d at 888-89. The fact that the evidence also would have supported an opposite conclusion does not thereby undermine the evidence's substantiality. Bennett v. Guthridge, 225 N.W.2d 137, 139 (Iowa 1975).

I. Plaintiffs contend that since zoning regulations must be made in accordance with a comprehensive plan, the 1975 Muscatine County zoning ordinance is invalid because it was not fashioned in accordance with Muscatine County's 1958 comprehensive plan. Section 358A.5, The Code 1979. The legislative enactment of zoning regulations carries a strong presumption of validity. Business Ventures, Inc. v. Iowa City, 234 N.W.2d 376, 381 (Iowa 1975); Anderson v. City of Cedar Rapids, 168 N.W.2d 739, 742 (Iowa 1969). The burden of proving that a zoning regulation is invalid rests with the party asserting its invalidity. Business Ventures, 234 N.W.2d at 381. Evidence of invalidity must be clear. Incorporated Town of Carter Lake v. Anderson Excavating and Wrecking Co., 241 N.W.2d 896, 901 (Iowa 1976). A zoning regulation is invalidated only if

proved unreasonable, arbitrary, capricious, or discriminatory. Business Ventures, 234 N.W.2d at 381.

In support of their contention plaintiffs claim that testimony of members of defendant-board establishes that the comprehensive plan was not followed when the zoning ordinance was created. Plaintiffs do not cite, nor can we find, where such testimony is located in the trial transcript. The testimony of one board member, Paul Satterthwaite, indicates that the comprehensive plan did control the drafting of the ordinance. In support of their contention that the ordinance was not drafted so as to follow the comprehensive plan plaintiffs cite testimony of Clayton Lloyd, a principal drafter of the 1975 ordinance. We have examined Lloyd's testimony, and we do not think it establishes that the zoning ordinance was fashioned in disregard of the comprehensive plan. Moreover, defendant presented evidence at trial that the zoning districts contemplated by the 1958 comprehensive plan are incorporated without significant change in the 1975 zoning ordinance. Therefore, since plaintiffs failed to produce any evidence showing that the 1959 zoning ordinance was not made in accordance with the 1958 comprehensive plan, and defendant produced evidence that the requisite relation between comprehensive plan and ordinance existed, we reject plaintiffs' contention that the zoning ordinance was not fashioned in accordance with the comprehensive plan.

II. The source of plaintiffs' next argument is section 349.16(1), The Code 1979, which in part provides:

> There shall be published in each of said official newspapers at the expense of the county during the ensuing year:
>
> 1. The proceedings of the board of supervisors,
>
> . . .

Plaintiffs argue that defendant's failure to publish zoning maps accompanying publication of the 1975 ordinance invalidates the ordinance. Plaintiffs' contention fails. Again, the legislative enactment of zoning regulations carries a strong presumption of validity, Business Ventures, 234 N.W.2d at 381, the burden of proving that a zoning regulation is invalid rests with the party asserting its invalidity, Id., and evidence of invalidity must be clear, Id. Defendant-board adopted zoning maps located in the Muscatine County recorder's office. Plaintiffs have cited no authority that the maps adopted by defendant-board constitute "proceedings" under the meaning of section

349.16(1). Assuming that the maps are proceedings under the meaning of section 349.16, plaintiff has failed to establish that the maps were not "published" under the meaning of section 349.16. There is no dispute that the 1975 ordinance was published. There is no dispute that when the ordinance was promulgated zoning maps were located in the Muscatine County recorder's office. The ordinance incorporated by reference the maps located in the recorder's office through the following language:

> The boundaries of these districts are indicated and established as shown upon maps designated as the Official Zone Plan of Muscatine County, Iowa, which, with all their notations, designations, references and other matters shown thereon, shall be as much a part of the ordinance, as if fully described and set forth herein, and which maps are properly attested and on file in the office of the Recorder of Muscatine County.

§ 21, Zoning Ordinance of Muscatine County (1975). The issue then is whether incorporation of zoning maps by reference in a published ordinance, where the maps are easily accessible to the public, constitutes publication of the maps under section 349.16(1). We hold that it does.

The policy underlying section 349.16(1) is, as plaintiffs emphasize in their brief, to give the public notice of ordinances, rules, and regulations affecting it. Op. Atty. Gen. 1910, 223, 224, 228. Since the 1975 ordinance incorporates by reference maps that are easily accessible to the public, clearly states where the maps may be found, and since the 1975 ordinance was published as specified by section 349.16(1), it gives the public adequate notice of the zoning maps, enabling interested parties to examine their contents. Since incorporation of the maps by reference into the published ordinance fulfills the policy underlying section 349.16(1) of notifying the public of county board proceedings, we consider the zoning maps "published" under the meaning of section 349.16(1).

AFFIRMED.

All judges concur, except Donielson, J., who dissents.

DONIELSON, J. (dissenting)

While I regret to dissent on the basis of a seemingly insignificant detail, which is nevertheless significant from the standpoint of an informed public, I cannot agree with the result in this case. The fact that the ordinance incorporated the zoning maps by reference seems to me an insufficient substitute for actual publication in an official newspaper. As the majority recognizes, the purpose of the publication requirement is to provide the public with notice of regulations that affect it. It has been stated in Iowa that:

> [t]he purpose of publication is to furnish the citizen a convenient method of ascertaining just what business is being transacted by the board of supervisors and how it is being transacted, as well as to furnish a check upon extravagance and to prevent the presentation and allowance of trumped up or padded claims against the county.

Op. Atty. Gen. 1910, 223. In my estimation, such notice is not provided by a reference to the maps in the ordinance. In fact, publication of this type of technical ordinance without the accompanying maps is tantamount to no publication at all for the majority of property owners. Experience teaches that it would be very unusual for official bodies such as the Board of Supervisors to discuss proposed ordinances without the benefit of maps, charts, and diagrams. The same opportunity should be extended to those members of the public whose interests are affected by the ordinance, and accordingly the ordinance and the relevant maps should be published together. If for some reason both could not be published, it seems to me that concern for an informed public would dictate that the maps be published and that the ordinance be incorporated by reference. Since in the instant case the maps were not published, I would reverse the trial court's dismissal of plaintiffs' petition for declaratory judgment.