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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed October 25, 1983

COLLEEN NOELLER, et al.,

Plaintiffs-Appellants,

vs.

CITY OF VINTON, et al.,

Defendants-Appellees.

3-165
2-67960

Appeal from Benton District Court, Larry J. Conmey, Judge.

The plaintiffs in a declaratory judgment action appeal from the adverse final judgment that the plaintiffs had failed to meet their burden of proving the illegality of defendant city's ordinances rezoning certain property from a residential to a commercial classification. AFFIRMED.

William L. Meardon and Angela M. Ryan of Meardon, Sueppel, Downer & Hayes, Iowa City, for plaintiffs-appellants.

James F. Pickens of Pickens, Barns & Abernathy, and Bennett M. Fischer of Fischer & Fischer, Cedar Rapids, for defendant-appellee City of Vinton.

Considered by Oxberger,C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

OXBERGER, C.J.

The plaintiffs in a declaratory judgment action appeal from the adverse final judgment which held that the plaintiffs had failed to meet their burden of proving the illegality of defendant city's ordinances rezoning certain property from a residential to a commercial classification. The plaintiffs claim that the trial court erred in holding: (1) the mistaken designation of the properties at issue as R-2, rather than R-1, in the notice of the public hearing and the ordinance text, did not invalidate ordinance 504, Vinton, Iowa, Ordinance ch. 10, tit. VI, 504 (1980); (2) ordinance 507, Vinton, Iowa, Ordinance ch. 10, tit. VI, 507 (1980) was not invalid although it was not referred to the planning and zoning commission; and (3) the mistaken designation of the zone of the subject properties as R-2, rather than R-1, was harmless. Furthermore, the plaintiffs contend: (1) the rezoning was invalid because it was not made in accordance with a comprehensive plan; (2) the rezoning was arbitrary, unreasonable and discriminatory and constituted illegal spot zoning; and (3) the rezoning in this case should be regarded as a quasi-judicial rather than legislative action.

The plaintiffs are owners of single-family residences in defendant city. The individual defendants are the owners of and a former owner of property located on C Avenue south of plaintiffs' properties. The individual defendants sought to rezone their properties from a residential to a commercial use. The uses of the properties in the area surrounding the individual defendants' properties along C Street were mixed, including residential uses and commercial uses such as a veterinarian clinic and a restaurant. On the east side of C Avenue was Washington High School. Except for the construction of additional residences, there have not been any changes in the character of the area since 1975. In 1978, one of the individual defendants applied to have his property rezoned from residential to commercial. The application was denied.

On February 28, 1980, the city council approved a comprehensive plan which had been under consideration since 1977. The plan designated the area in which the individual defendants' properties were located as residential.

On May, 22, 1980, the city council enacted a new comprehensive zoning ordinance. Under the old zoning ordinance, both R-1 and R-2 zoning districts had permitted only single family residences with livestock and poultry restricted in the R-2 district. Under the new ordinance, the R-1 district permitted single-family homes and the R-2 district permitted single-family and two-family homes. The defendants' property, which had previously been zoned R-2, was now R-1. The zoning ordinance became effective on June 9, 1980.

On June 5, 1980, defendants Robert and Carolyn Berry made an application for the rezoning of their property from R-2 residential to B-1 commercial. In the same month, defendant Michael Weir submitted an application to rezone his property in the same way. The planning and zoning commission held a hearing on the applications on June 25, 1980. The commission recommended not to allow the rezoning.

On July 7, 1980, the city council published a notice of public hearing on a proposed amendment to the comprehensive zoning ordinance which would rezone the individual defendants' properties from an incorrectly designated R-2 residential to B-1 commercial. The city council passed ordinance 504 on a vote of five to one. The ordinance as published provided that the properties were rezoned from R-2 to B-1.

On December 1, 1980, after the plaintiffs had filed their lawsuit, the city council published a notice of public hearing on a proposed amendment to their comprehensive zoning ordinance by rezoning the individual defendants' properties

from a correctly designated R-1 classsification to a B-1 commercial classification. On December 18, 1980, the city council held the public hearing and enacted ordinance 507 which rezoned the properties from the R-1 classification to the B-1 commercial classification. Prior to the enactment of new ordinance 507, the city council did not refer the proposed rezoning to the planning and zoning commission for its report or recommendations.

On October 17, 1980, the plaintiffs filed a petition for declaratory judgment and injunction challenging the validity of the rezoning accomplished by ordinance 504 rezoning the property. On January 13, 1981, the plaintiffs filed an amendment to their petition challenging the validity of ordinance 507. The trial court ruled that the mistaken designation of the individual defendants' properties in the notice of public hearing and ordinance 504 did not invalidate ordinance 504. The trial court concluded that the mistaken designations were harmless error because all interested parties knew about the properties to be rezoned and made their objections known to the city. The trial court also rejected the plaintiffs' claim concerning ordinance 507 on the basis that the ordinance was the correction of a minor error. The trial court also concluded the rezoning was not illegal spot rezoning and that the rezoning was not a substantial amendment and did not constitute a major change in the city's comprehensive plan. On this basis, the trial court dismissed the plaintiffs' petition.

I. Spot Zoning

We must first deal with the issue of spot zoning because if the zoning in this case is illegal spot zoning, the other issues will not be reached. Ms. Noeller contends that the rezoning at issue is arbitrary, unreasonable and discriminatory and constitutes illegal spot zoning. Spot zoning results when rezoning "creates a small island of property with restrictions on its use different from those imposed on surrounding property." Montgomery at 696 (quoting Jaffe v. City of Davenport,

179 N.W.2d 255, 556 (Iowa 1970)). However, spot zoning is not illegal per se and can be valid if there is a reasonable basis for it considering the size of the spot zoned, the prior use of the property, its suitability for various uses, and the uses of surrounding property. Montgomery at 696. Technically, the rezoning in the present case is spot zoning. However, the facts are such that we agree it was a valid exercise of the council's zoning power. Testimony indicates that the council members gave due consideration to the possibility of spot zoning. The council discussed many different approaches to rezoning that area and at all times fully accounted for the size of the property to be rezoned. In fact, one reason that defendant Berry's prior request to rezone his property to commerical was turned down was because the council feared one property owner's request would constitute illegal spot zoning. The evidence indicates that even if this property was left residential, the chances were slim that any more residences would be built there. Furthermore, there were already quite a few ongoing commerical enterprises in the surrounding residential area.

When a sufficient showing has been made to support reasonably its judgment, a council's discretion will not be superseded by the court's opinion. Keller v. City of Council Bluffs, 66 N.W.2d 113, 116 (Iowa 1954). We believe such a showing has been made. We conclude that the zoning change will inure to the benefit of the community and that at all times the council fully considered the public welfare as paramount and acted accordingly.

Therefore, we do not find the zoning to be arbitrary, unreasonable, or discriminatory. Nor do we believe it to be illegal spot zoning. We affirm that portion of the trial court's ruling.

II. Incorrect Designation

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. Montgomery v. Bremer City Board of Supervisors,

299 N.W.2d 687, 692 (Iowa 1980). Iowa Code chapter 414 sets out the manner in which cities can change or adopt zoning. Section 414.4 provides:

> The council of such city shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in a paper of general circulation in such city.

Iowa Code § 414.4 (1983)(emphasis added).

Ms. Noeller maintains that the notice of public hearing was fatally defective because the present zone was designated as R-2, although the correct classification was R-1, and as such zoning ordinance 504 is invalid.

The basic requirement of notice imposes upon the zoning authority a mandatory duty to give the notice, or otherwise lack jurisdiction to pass valid zoning measures. B & H Investments, Inc. v. City of Coralville, 209 N.W.2d 115, 117-18 (Iowa 1973) (citing 96 A.L.R. 2d 449, 455-56). We agree that notice must be given. However, section 414.4 provides no method to determine the sufficiency of notice and there are no Iowa authorities to guide us in judging that sufficiency as it relates to section 414.4. The sufficiency of a jurisdictional notice has been discussed before in Iowa, though. Because notice in this case is jurisdictional, we believe it is proper to analogize it to other Iowa cases presenting this similar issue. In Spalti v. Town, 179 Iowa 59, 161 N.W. 17 (Iowa 1917), the court held that jurisdictional notice was sufficient, even though it contained no specific statement that tax assessments would be made, and no list of property owners. The court stated:

> We are not disposed to take any issue with counsel's earnest contention that a want of notice as provided by law of the pendency of the resolution of necessity would be a

> jurisdictional defect and negative the authority of the council to act. But here no such want appears. There was a notice, duly published for the proper time. It conformed to the only express statutory requirement, and made known to all persons within the taxing limits the time when the resolution would be finally considered, and the opportunity for objection. For us to say that, in addition to what the statute requires, the notice must also specifically mention other facts, omission of which will be fatal to the council's jurisdiction to proceed, would be in the nature of judicial legislation, and beyond the proper province of the court.

Id. at 64, 161 N.W. at 19 (emphasis added). In In re Appeal of Apple, 161 Iowa 314, 142 N.W. 1021 (Iowa 1913), the court said that literal compliance with the statutory notice requirements was sufficient and that "[N]o more can be required than the Legislature has fixed as necessary to be stated in the notice." Id. at 318, 142 N.W. at 1022.

In the same vein, the court in Roznos v. Town of Slater, 116 N.W.2d 471 (Iowa 1962), held that notice was sufficient where it gave notice of the time when a resolution would be considered for possible amendment in passage and listed plaintiff's property as property to be assessed, although the resolution attached to the notice may have erroneously designated streets. The court's statement is applicable to the case at bar:

> Statutory requirements as to notice must be strictly observed or the proceedings involving special assessments will be held void. . . . Unless designated items are specifically required in the statute, it is sufficient if it informs one of the nature of the improvement, the property to be affected, and gives him the opportunity to be heard. . . . It must conform substantially to the requirements of the law providing therefor. . . But no more can be required than the legislature has fixed as necessary to be stated in the notice."

Id. at 474 (emphasis added)(citations omitted).

Our review is on error only. We look at the facts to determine only if the trial court's decision is supported by substantial evidence. Smith v. City of Fort Dodge, 160 N.W.2d 492, 495 (Iowa 1968). The burden is on the plaintiffs to show

the council exceeded its jurisdiction or acted illegally.

We find that the notice in this case was sufficient. The statute states: "[a]t least fifteen days' notice of the time and place of such hearing shall be published in a paper of general circulation in such city." The evidence is clear that notice was timely given, the proper time and place was stated, and notice was published in the Cedar Valley Times, a paper of general circulation in Vinton. The specific requirements of the statute had been strictly complied with. But because there is no statutorily prescribed method for giving that notice, we find it must also be reasonable and afford a fair opportunity to appear and object. Buchholz v. Board of Adjustments, 199 N.W.2d 73, 77 (Iowa 1972). The record shows that all interested parties were reasonably apprised of the proceedings. Ms. Noeller testified that she knew what property was proposed to be rezoned, that the proposed change was to B-1 commercial, and that the property was presently residential. Furthermore, Ms. Noeller stated that at no time was she misled. There is no evidence that the plaintiffs did not have a fair opportunity to appear and object to the proposed zoning change. Therefore, we affirm that portion of the trial court's ruling and find that notice was sufficient to satisfy Iowa Code section 414.4.

III. Validity of Ordinance 507

Ms. Noeller contends that the rezoning to B-1 commercial was rendered invalid by Iowa Code section 414.6 due to a failure to refer ordinance 507 to the planning and zoning commission. Section 414.6 states in part:

> Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and such council shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the council amendments, supplements, changes, or modifications.

Iowa Code § 414.6 (1983)(emphasis added).

The requirements of section 414.6 are restricted to the original comprehensive zoning ordinance and to substantial amendments, which means general modifications, not minor changes. Smith v. City of Fort Dodge, 160 N.W.2d 492, 497 (Iowa 1968). Ordinance 507 was virtually identical to ordinance 504. Excepting the corrected zoning designation, the same real estate was involved and the same zoning changes were made. In reference to whether this was a "substantial" amendment so as to bring section 414.6 into play, we note that the word "substantial" is susceptible to different meanings and must be examined in its relation and context and gauged to all the circumstances. Id. at 498. Here, the zoning change was submitted to the planning and zoning commission at the time of the enactment of ordinance 504. Although the commission disapproved the zoning change at that time, the council passed ordinance 504 in August of 1980. The very same matter was proposed again in December of 1980, except the correct designation was used. It was very probable that the commission would again disapprove. However, even with a final report disapproving the rezoning, there was no evidence that the council would vote any other way than it did. All evidence points to a conclusion that the council was merely trying to correct a clerical error in ordinance 504. Thus, we deem it a minor change, not a substantial amendment. Smith at 497. Therefore, since the statutory requirements of 414.6 relate only to major changes and ordinance 507 did not amount to such a change, we find 414.6 not to be applicable.

IV. Harmless Error

Ms. Noeller contends the trial court erred in holding that the mistaken designation was harmless error and as such did not invalidate any actions culminating in the passage of ordinance 504. There is no evidence that everyone

involved was not fully familiar with the proposed area to be rezoned. All evidence indicates that interested citizens had ample opportunity to be heard and that the city council thoroughly discussed the issue. We see nothing to support plaintiffs' contention that the council did not give reasonable consideration to the character of the area and its peculiar suitability to particular uses. See Iowa Code § 414.3. Therefore, we find no merit in Ms. Noeller's argument.

V. Comprehensive Plan

Ms. Noeller contends that the zoning was not in accordance with the comprehensive plan and therefore was invalid under Iowa Code section 414.3. Section 414.3 states: "...regulations shall be made in accordance with a comprehensive plan." The general rule is that when it is argued that an administrative body acted in disregard of applicable laws or regulations, the presumption of regularity applies until clearly rebutted. Johnson v. Board of Adjustment, 239 N.W.2d 873, 887 (Iowa 1976). It is the plaintiffs' burden to rebut that presumption. If the zoning authority gives full consideration to the problem presented, including the needs of the public, changing conditions, and the similarity of other land in the same area, then it has zoned in accordance with a comprehensive plan. Montgomery at 695. The testimony of the council members convinces us that the criteria of Montgomery were fully considered before the zoning change was implemented.

The council members testified that the advantages and disadvantages of the zoning were fully discussed. They realized that there would be an increase in traffic and noise in the rezoned area. However, the advantages of commercial community growth were deemed paramount. There were strong criticisms that the comprehensive plan, as it was, lacked sufficient commercial property designation. Thus, the council felt Vinton needed another area where commercial

development could be pursued. Further testimony indicated that ample consideration was given to the character of the neighborhood in general. Several witnesses testified that even though property in that area had been zoned residential, it had been used for commercial purposes for quite some time. Furthermore, evidence indicated that this commercial use would continue. One council member testified that rezoning the property would help to "clean up" that area and also bring tax dollars into the city.

The main thrust of Ms. Noeller's argument though centered around the "changing conditions" criteria of Montgomery: she claimed that there had been no change in conditions in that area since the comprehensive plan was adopted. Therefore, the rezoning was not in accordance with the comprehensive plan. We agree that the majority of the witnesses were of that opinion. However, the comprehensive plan is meant to be a guide for future community development. The record strongly supports the conclusion that the council gave full consideration to the problems presented. Although conditions may not have changed, the council was at liberty to correct by amendment what they believed to be an insufficiency or injustice in the original comprehensive plan. See 8 E. McQuillin, The Law of Municipal Corporations §§ 25.67, .69 (3d ed. rev. 1976). Furthermore, a council's discretion to change its plan is quite broad and it may amend the general ordinance anytime it deems circumstances and conditions warrant such action. Plaza Recreational Center v. Sioux City, Iowa, 111 N.W.2d 758, 766 (Iowa 1961). Therefore, unless the zoning amendment is invalid on its face, the burden of alleging and proving facts to support her claim of invalidity is on Ms. Noeller. See Andersen v. City of Cedar Rapids, 168 N.W.2d 739, 743 (Iowa 1969). We find that the foregoing discussion clearly shows that the council substantially complied with Iowa Code section 414.3 and that Ms. Noeller did not meet her heavy burden.

VI. Quasi-Judicial vs. Legislative Action

Plaintiffs urge that the rezoning at issue was in actuality an adjudication of the rights of the proponents and opponents and as such failed to comply with due process requirements and should be held invalid. We find no merit in this argument. Amendment of a zoning ordinance is a legislative function. Boomhower v. Cerro Gordo County Board of Adjustment, 163 N.W.2d 75, 77 (Iowa 1968). Furthermore, a council may amend its zoning ordinances anytime it deems circumstances warrant, as long as the procedural requirements of the statute are followed and it is not unreasonable or capricious. Keller at 116. As previously stated, these criteria have been met. We therefore affirm the trial court's ruling.

AFFIRMED.