

IN THE COURT OF APPEALS OF IOWA

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DONALD BRAMMER and JOYLYN
BRAMMER, Husband and Wife, et al,

Plaintiff-Appellees,

vs.

FRANKLIN COUNTY BOARD OF
SUPERVISORS, Franklin County, Iowa,

Defendant-Appellant,

and

LAURIDSEN FOODS, INC.,

Defendant.

Filed May 31, 1979

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-2-61666

Appeal from Franklin District Court - B. C. Sullivan, Judge.

Defendant Board of Supervisors appeals district court's sustaining of writ of certiorari which thereby held defendant's amendment to county zoning ordinance was void due to lack of any competent supporting evidence and constituted illegal spot zoning. REVERSED WITH ORDER TO ANNUL WRIT.

Michael J. Cross; and Richard A. Allbee, Franklin County Attorney, for appellant.

Richard G. Santi of Ahlers, Cooney, Dorweiler, Haynie & Smith, Des Moines, Iowa,
and G. A. Cady, III, of Hobson, Cady & Drew, Hampton, Iowa, for appellee.

Heard by Oxberger, C.J., and Danielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant Franklin County Board of Supervisors appeals from district court judgment voiding its decision to amend the Franklin County zoning ordinance to rezone agricultural land for industrial use. Plaintiffs, by certiorari in the district court, sought to test the legality of the amendment. The district court issued the writ and after full hearing sustained the writ by ruling that the Board's decision to rezone the tract of land was void, illegal, arbitrary and capricious because: 1) it was not supported by any competent evidence; 2) it was not made in accordance with the comprehensive plan for Franklin County; and, 3) it constituted illegal spot zoning. We reverse district court's judgment and annul the writ.

On September 9, 1977, Lauridsen Foods, Inc.¹ filed an application with the Franklin County Board of Supervisors requesting the Board to amend the zoning classification of an 186 acre tract of land from Agricultural to Rural Industrial². After a hearing, the Board voted to approve the Applicant's request. Plaintiffs are nearby property owners or tenants who intervened in the application for rezoning and, subsequent to the Board's decision, filed a petition for writ of certiorari in the district court. Following a hearing, the district court found that there was no competent evidence to support the Board's action and that such action, therefore, was capricious, arbitrary, illegal and void.

On this appeal we must decide the following issues: 1) whether the district court can review the action of the Board and, if so, the mode and scope of that review where the Board's action is alleged to be without competent supporting evidence; 2) whether appellate review of the district court's judgment is de novo or at law; 3) whether trial court applied the proper legal standards in its review of the Board's action.

I. Amendment of a county zoning ordinance is a legislative function placed in the board of supervisors by the legislature. See sections 358A.3 - 358A.7, The Code 1977. One who claims such ordinance or amendment is arbitrary or capricious must seek relief

¹ Hereinafter referred to as "the Applicant."

² The tract purportedly was to be the site of a livestock processing plant. The actual use of the site for such a facility could only be accomplished by application to the board of adjustment for special use exception pursuant to section 358A.15(2), The Code 1977.

in the courts by petitioning for a writ of certiorari. Boonhower v. Cerro Gordo County Board of Adjustment, 163 N.W.2d 75, 77 (1968).

Iowa R. Civ. P. 306 limits relief by way of certiorari to questions of jurisdiction or illegality unless otherwise specifically provided by statute.³ It is plaintiff's burden to show the Board exceeded its jurisdiction or otherwise acted illegally in amending the ordinance. Smith v. City of Fort Dodge, 160 N.W.2d 492, 495 (Iowa 1968). Certiorari is not an appeal and may not be used to correct mere errors on the part of the inferior body. Giesey v. Board of Adjustment of Iowa City, 229 N.W.2d 258, 259 (Iowa 1975). Unlike district court review by certiorari of decisions of the board of adjustment under section 358A.21, review in this case does not entitle the petitioner to have the facts determined de novo on the record made in the certiorari proceeding.⁴ Weldon v. Zoning Board of City of Des Moines, 250 N.W.2d 396, 401 (Iowa 1977); Anderson v. Jester, 206 Iowa 453, 463, 221 N.W. 354, 359 (1928). Rather, the Board's findings of fact must stand if supported by substantial evidence which was before the Board, unless it is shown the findings resulted from application of an erroneous legal standard. Weldon v. Zoning Board of City of Des Moines, 250 N.W.2d at 400; Bennett v. Guthridge, 225 N.W.2d 137, 139 (Iowa 1975); Vohs v. District Commission of Fremont County, 213 N.W.2d 595, 598 (Iowa 1974).

Pursuant to Rule 315, the court, in its discretion:

... may receive any transcript of evidence from the original proceeding and such other oral or written evidence as is explanatory of the matters contained in the return [to the writ].⁵ Such transcript and additional evidence shall be considered for the sole purpose of determining the legality of the proceedings, and the sufficiency of the evidence before the original ... board ... to sustain its action, unless otherwise specifically provided by statute.

³ Rule 306 states: "A writ of certiorari shall only be granted when specifically authorized by statute; or where an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded its, or his proper jurisdiction or otherwise acted illegally."

⁴ Section 358A.21, The Code 1977, permits trial de novo on the question of illegality as raised by the petition for the writ. Vogelaar v. Polk County Zoning Board of Adjustment, 188 N.W.2d 860, 863 (Iowa 1971).

⁵ This again is to be distinguished from the power of the district court under section 358A.21 to receive additional evidence in support of any allegation contained in the petition. Weldon v. Zoning Board of City of Des Moines, 250 N.W.2d at 401; Vogelaar v. Polk County Zoning Board of Adjustment, 188 N.W.2d at 863; Anderson v. Jester, 206 Iowa at 462, 221 N.W. at 359. (emphasis added)

We conclude that certiorari is the proper method for plaintiffs to challenge defendant's action but that the district court's powers are limited as provided in Iowa R. Civ. P. 306, 315 and 316.⁶

II. Appellate review of a judgment of the district court in a certiorari proceeding is governed by rules applicable to appeals in ordinary actions and is limited to assigned error. Iowa R. Civ. P. 318. District court's findings of fact have the force and effect of a special jury verdict; Weldon v. Zoning Board of City of Des Moines, 250 N.W.2d at 401; Trailer City, Inc. v. Board of Adjustment of City of Council Bluffs, 218 N.W.2d 645, 648 (Iowa 1974); thus, if they are supported by substantial evidence, and were made by application of proper legal standards, they are binding on this court. Iowa R. App. P. 14(f)(1); Vogelaar v. Polk County Zoning Board of Adjustment, 188 N.W.2d at 863.

III. Having established the mode and scope of review of both the district court and this court, our duty is to decide whether district court erred in finding there was no substantial evidence to support the Board's decision. If there is an absence of substantial evidence to support the findings upon which the inferior tribunal or board arrives at a challenged conclusion of law, it acted illegally. Giesey v. Board of Adjustment of Iowa City, 229 N.W.2d 258, 260 (Iowa 1975).

The "substantial evidence rule" permits only a narrow review; actual determinations and findings of fact of the inferior body are not reviewable. Grantz v. Fritz, 201 N.W.2d 188, 195 (Iowa 1972). Evidence meets the substantial test "when a reasonable mind would accept it as adequate to reach a conclusion." City of Davenport v. Public Employment Relations Board, 264 N.W.2d 307, 311 (Iowa 1978). Stated differently, evidence is substantial if it renders the decision resting thereon fairly debatable. Jaffe v. City of Davenport, 179 N.W.2d 554, 555 (Iowa 1970). The fact that the evidence also would have supported an opposite conclusion by the inferior body is not significant. Bennett v. Guthridge, 225 N.W.2d at 139.

Since the adoption and amendment of zoning ordinances are legislative matters resting in the discretion of the Board, pursuant to chapter 358A, The Code, if the facts

⁶ In pertinent part, Iowa R. Civ. P. 316 limits the district court's judgment on certiorari to sustaining the proceedings below, or annulling same, in whole or in part, to the extent they were in excess of jurisdiction or illegal.

do not show that the Board exceeded its discretion, the action is valid. Hanna v. Rathje, 171 N.W.2d 876, 880 (Iowa 1969). See Deardorf v. Board of Adjustment of City of Fort Dodge, 254 Iowa 380, 388, 118 N.W.2d 78, 83 (1962). The limits of discretion in a case involving a zoning ordinance or amendment thereto is whether the means employed (amendment from agricultural designation to industrial) have any real, substantial relationship to public health, comfort, safety and welfare, including maintenance of property values. Hanna v. Rathje, 171 N.W.2d at 880.

We first must consider district court's finding that defendant's action was illegal, arbitrary and capricious because "there is not a scintilla of evidence introduced by [the Applicant] to justify the exercise of the police power taken by the Defendant" The court concluded that the applicant had relied primarily on incompetent, hearsay statements of counsel, unsworn statements of witness Clark Knowles, and immaterial statements of witness Thomas Willroth as to conditions in another plant similar to the one Applicant intended to construct subsequent to the zoning reclassification.

We conclude district court erred in disregarding the testimony of Mr. Knowles based on a finding that "there is nothing in the record to indicate that Knowles was sworn at the time." The pertinent portions of the record show the following:

(Tr. p. 10, ll. 21-25):

MR. CADY: Just a moment. Gentlemen, at this time I would like permission of the Board of Supervisors to have this entire proceeding reported and that everyone that testifies be sworn. May that be granted?

THE CHAIRMAN: That's all right.

MR. CADY: Thank you.

* * *

(Tr. p. 30, ll. 9-11):

CLARK KNOWLES

Called as a witness herein on behalf of the objectors, having been previously sworn, was examined and testified as follows: (emphasis added)

(Tr. p. 54, ll. 19-22):

(Witness [Mr. Knowles] excused.)

JAMES D. McKEAN

called as a witness herein on behalf of the objectors, having first been duly sworn, was examined and testified as follows: (emphasis added)

In Brenton State Bank v. Heckmann, 233 Iowa 682, 7 N.W.2d 813 (1943), the court held that if attorneys for both sides were present at a probate hearing and either failed to object to failure to swear a witness, such failure constitutes a waiver of the right to object.⁷ In light of this record, and the cited authority, we conclude there is no substantial evidence to support district court's finding with regard to Mr. Knowles' testimony and its subsequent refusal to consider it as evidence.

After a careful review of the record, including Mr. Knowles' testimony, we conclude there is substantial evidence to show the amendment to the zoning ordinance would be in furtherance of the general public's welfare. There is evidence to show that the proposed facility would create significant benefit to the public through an expanded economic base, increased employment and increased tax revenues. We, therefore, conclude that the Board's decision was a valid exercise of its discretion and that the district court erred in ruling to the contrary.

IV. District court also found the action of the board constituted illegal spot zoning. The burden of demonstrating that the amendment results in spot zoning is on the plaintiffs as the party attacking the amendment. Jaffe v. City of Davenport, 179 N.W.2d 554, 556 (Iowa 1970).

As in all cases involving zoning ordinances, the Board's legislative decision to amend the ordinance is a matter largely within its discretion, is given the presumption of validity and, if its reasonableness is fairly debatable, must be upheld. Jaffe v. City of Davenport, 179 N.W.2d at 555. The prime consideration is the amendment's general purpose. Anderson v. City of Cedar Rapids, 168 N.W.2d 739, 742 (Iowa 1965).

Spot zoning results when a zoning ordinance or amendment thereto, without regard to a comprehensive plan for the general welfare of the community creates, for the benefit of the owner, a small island of property with restrictions on its use which differ from those imposed on surrounding property, even though the smaller tract is

⁷ Pursuant to section 78.2(2), The Code 1977, the board of supervisors is given limited authority to administer oaths in any matter pertaining to the business of their respective office. This section, however, is permissive and does not mandate administering of an oath in all such matters.

similar in character to the surrounding property. Jaffe v. City of Davenport, 179 N.W.2d at 556. While each case must be decided on its own facts, important factors to be considered in determining whether the zoning decision constitutes spot zoning are: 1) size of the spot zoned; 2) uses of the surrounding property; 3) changing conditions of the area; 4) use to which the subject property has been put and 5) its suitability and adaptability for various uses. Id. It is also important to consider the fact that zoning is not static and that existing restrictions are subject to reasonable revisions at any time circumstances and conditions warrant such action. Anderson v. City of Cedar Rapids, 168 N.W.2d at 743.

In addition to the substantial public benefit to the Franklin County area which the evidence showed could result from construction of the processing plant, the evidence also showed that the tract in question is located in a sparsely populated area which is close to a potential labor supply. It is near an area presently zoned Rural Industrial-Heavy. Areas zoned Rural Business-Heavy are nearby. Immediate access is readily available to a railroad, major highways, a water supply, and discharge points for the construction of necessary sewage treatment facilities.

Although the Board never formally adopted the comprehensive plan entitled "A Guide Plan for the Franklin County Region,"⁸ these exhibits provide an economic history and future prospects for Franklin County. The Guide recommended industrial development of the county. The plan ultimately adopted by the Board recognized existing uses and contemplated that future development would be accommodated through amendment by the board of supervisors or special exception by the board of adjustment.

Our review of the entire record leads us to conclude that there is substantial evidence to support the Board's decision to rezone the particular tract and that its decision, therefore, did not constitute illegal spot-zoning in disregard of the comprehensive zoning plan for Franklin County. District court erred in finding to the contrary.

The judgment of the district court should be reversed and the writ annulled.

REVERSED WITH ORDER TO ANNUL WRIT.

⁸ Exhibits 14 and 15 before the court.