FILED
JUN 26 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-142 / 89-749

TIMOTHY J. BURNS, PATSY L. BURNS, and **BERYL SARCHETT,**
Petitioners-Appellees,

30

vs.

MUSCATINE COUNTY BOARD OF ADJUSTMENT,
Respondent.

JAMES J. GEISELHART, CONSTANCE L. GEISELHART, WAYNE J. SCHAAPVELD, and **VICKI A. SCHAAPVELD,**
Plaintiffs-Appellants,

vs.

MUSCATINE COUNTY BOARD OF SUPERVISORS,
Defendants.

Appeal from the Iowa District Court for Muscatine County, Max R. Werling, Judge.

Appellants appeal the decision of the district court which denied appellants' writ of certiorari and affirmed the Muscatine County Board of Supervisors' approval of the replatting of appellee Beryl Sarchett's lot into two lots. **AFFIRMED.**

Roger A. Huddle of Weaver & Huddle, Wapello, for appellants.

William F. Creasey of Goedken & Creasey, Muscatine, for appellees.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

HABHAB, J.

31

Appellants appeal the decision of the district court which denied appellant's writ of certiorari and affirmed the Muscatine County Board of Supervisors' (Board of Supervisors) approval of the replatting of appellee Beryl Sarchett's lot into two lots. We affirm.

The underlying facts of the case at hand are largely undisputed. In September 1975, L. E. Sarchett, Jim Mong, and Doyle Dugger petitioned the Muscatine County Zoning Commission (Zoning Commission) for approval of a subdivision of 77.6 acres of land and for rezoning of the tract from A-1 agricultural to R-1 residential. The plat presented for the subdivision reveals that the 77.6 acres was to be divided into three lots, two 20-acre lots and one 37.6-acre lot.

On September 10, 1975, the Zoning Commission unanimously approved the following motion concerning the proposed subdivision:

> I make a motion that we recommend to the Board of Supervisors that the 77.6 acres situated in Section 31, Twp. 77N, R2W as described in the Mong-Dugger petition be rezoned from A-1 Residential with the stipulation that there be only one home on each of the 3 lots as platted. That would be a total of three homes.

Subsequently, on September 29, 1975, the Board of Supervisors met. The Board approved the rezoning and platting of the proposed subdivision. As later set forth, we agree with the trial court that the Board merely approved the plat. It did not adopt the restriction.

In December of 1986, L. E. Sarchett and appellee Beryl Sarchett, owners of lot 3, and appellees Timothy Burns and Patsy Burns, contract purchasers of lot 3, made application to the Muscatine County Board of Adjustment (Board of Adjustment) for a special use (variance) permit in order to allow the Burnses to construct a second home on the 37.6-acre tract. Notices were given to all interested parties as required by law. No objections were lodged. On December 9, 1986, the Board of Adjustment approved the special use (variance) permit and also granted the Burnses permission to reside in a mobile home on lot 3 while their house was under construction. Appellant James Geiselhart, current owner of lot 2, was present at the meeting and voiced no objection.

Section 358A.18 requires that a petition challenging a decision of the Board of Adjustment be filed within thirty days after the filing of its decision. In this respect, no judicial review was sought concerning the Board of Adjustment's decision. On January 13, 1987, appellants Wayne Schaapveld and Vicki Schaapveld purchased lot 1 in the subdivision from Doyle Dugger.

In January of 1988, the Burnses, who had been unable to obtain financing for the construction of their house, petitioned the Board of Adjustment for a variance to use their mobile home until their house could be built. On February 10, 1988, the Board of Adjustment denied the Burnses' request to extend the use of their mobile home on

lot 3 and also revoked the previously-granted special use permit. Appellees then petitioned for judicial review.

During the pendency of the petition for judicial review, appellees requested the Board of Supervisors to replat lot 3 into two separate lots. The Board of Supervisors unanimously approved the replatting on December 12, 1988. Appellants then filed a petition for writ of certiorari. The two actions were consolidated for trial. The district court found the Board of Adjustment was without authority to revoke the special use permit for construction of the second house on lot 3. Additionally, the district court found no error in the replatting of lot 3. Appellants have appealed from the district court decision.

The principles of judicial review in a zoning case are set forth in Weldon v. Zoning Bd., 250 N.W.2d 396, 401 (Iowa 1977):

> [I]n a certiorari proceeding in a zoning case the district court finds the facts anew on the record made in the certiorari proceeding. That record will include the return to the writ and any additional evidence which may have been offered by the parties. However, the district court is not free to decide the case anew. Illegality of the challenged board action is established by reason of the court's findings of fact if they do not provide substantial support for the board decision. If the district court's findings of fact leave 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.

This court's scope of review on appeal from the trial court's judgment on a writ of certiorari is governed by

Iowa Rule of Civil Procedure 318. Garman v. Ames Zoning Bd. of Adjustment, 436 N.W.2d 651, 653 (Iowa App. 1988). We review the record to determine whether the trial court applied the correct legal standards and whether its decision is supported by substantial evidence. Id.

The initial issue which confronts us is to what extent, if any, did the Board of Supervisors adopt a one-house-per-lot restriction for the lots in the subdivision. We note initially that boards of supervisors have only those powers which have been expressly conferred by statute or those implied from the conferred powers. McMurry v. Board of Supervisors, 261 N.W.2d 688, 690 (Iowa 1978); Mandicino v. Kelly, 158 N.W.2d 754, 760 (Iowa 1968).

Section 358A.4, Iowa Code (1975), provided:

> For any and all of said purposes the board of supervisors may divide the county, or any area or areas within the county, into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land. All such regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulation in one district may differ from those in other districts.

Under this law, it is argued by appellees individualized conditions could not be unilaterally imposed by the Board of Supervisors upon a property owner in order for rezoning

to occur.[1] Thus, appellees contend, that even if the restriction were imposed, the Board was without authority to do so. Consequently, appellees argue, the restrictions have no effect. Because of our ruling, we need not answer that question.

When we review the record, we find the trial court applied the correct legal standards to this case, and we further find the trial court's decision is supported by substantial evidence. In this regard, we adopt the following statement made by the trial court:

> The only authority the County had to act in the matters involved in these lawsuits was granted to it by statute. Prior to the enactment of Chapter 358A, rural zoning was unknown in Iowa. Zoning is a creature of statute, totally. Accordingly, the Court must look to the statute and to the cases interpreting it to determine what the authority of the County was at the time the action was taken. . . . [I]t is very doubtful that one would be entitled to conclude from the records that a condition was approved by the Board, whether effective or not. The official minutes of the

---

1. Subsequently, the Iowa Legislature amended section 358A.7 in 1985 to provide in relevant part:

> The regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed notwithstanding section 358A.4, as a part of an ordinance changing land from one zoning district to another zoning district or an ordinance approving a site development plan, a board of supervisors may impose conditions on a property owner which are in addition to existing regulations if the additional conditions have been agreed to in writing by the property owner before the public hearing required under this section or any adjournment of the hearing. The conditions must be reasonable and imposed to satisfy public needs which are directly caused by the requested change.

1985 Iowa Acts ch. 9, § 1.

> Board meeting only show that the plat was approved. That was done by the recorded vote of all of the members of the Board. In the discussion of the plat, one of the members raised the question about the legality of restrictions. It is clear restrictions were being considered. It is the view of this Court that in order to have a claim that a restriction was attached the motion upon which the vote was taken would have had to include the restriction. This was clearly not done.

We agree with the trial court that when the Board of Supervisors approved the rezoning and the plat, it did not include the restriction in dispute. When we make that finding, it must follow that lot 3 could be replatted if the proper procedure was followed.

It is not disputed that the appellees followed the procedure required by Muscatine County to divide lot 3. The final plat of the subdivision was unanimously approved by the Muscatine County Board of Supervisors on December 12, 1988. The trial court found that this replatting procedure conformed to the applicable law and was appropriate. We agree and accordingly affirm the trial court.

We have considered each of the grounds relied upon by the appellant for reversal. Because we hold for appellees, it is unnecessary to resolve a number of the other issues. For those remaining that require our attention, after due consideration thereof, we find them to be without merit.

AFFIRMED.