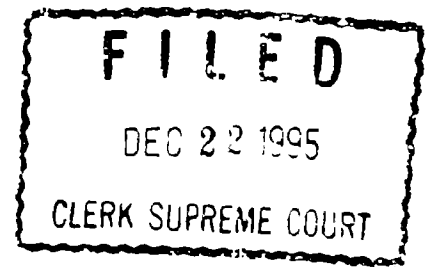


IN THE COURT OF APPEALS OF IOWA

No 5-541 94-1464



STANLEY BAY FARM ENTERPRISES, INC.,

Appellant.

vs

POLK COUNTY, IOWA, and the POLK COUNTY
BOARD OF SUPERVISORS,

Appellees.

Appeal from the Iowa District Court for Polk County, J. W. Jordan, Judge.

Plaintiff appeals a district court judgment dismissing its petitions for declaratory judgment and permanent injunction stemming from defendant Polk County's condemnation of a portion of plaintiff's farmland. **AFFIRMED.**

Lee H. Gaudineer, Jr., of Austin, Gaudineer, Austin, Salmons & Swanson,
Des Moines, for appellant.

John P. Sarcone, County Attorney, and David W. Hibbard, Assistant County
Attorney, for appellees.

Heard by Sackett, P.J., Huitink, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa
Supreme Court.

Stanley Bay Farms appeals an adverse judgment on its claim for declaratory and injunctive relief arising out of a zoning dispute with Polk County.

Stanley Bay was the owner of a 154-acre tract of agriculturally zoned property in northern Polk County. The County condemned 3.74 acres of this property and has erected a road maintenance facility on the condemned property.

Stanley Bay filed this action alleging section 4603(D) of the County's zoning ordinance permitting public service uses in all zoning districts is invalid. Stanley Bay also claimed Polk County violated the terms of its own zoning ordinance by establishing a prohibited industrial use in an agricultural district.

At trial Stanley Bay introduced evidence indicating all of its 154-acre land tract was in the path of prime commercial and residential development from fast-growing Ankeny. Several real estate developers testified that this development would include Stanley Bay's property within five to ten years. There is also evidence indicating the raw development value of the entire tract exceeded \$2 million. An expert witness opined that the presence of the maintenance facility compromised the development potential **and value** of Stanley Bay's property.

The County presented evidence indicating its decision to locate a facility in this area was based on practical and economic considerations. An earlier engineering study

concluded the County would realize an immediate savings of \$64,000 and future annual savings of \$4500 in road maintenance expenditures

The district court determined Stanley Bay failed to carry its burden to prove the zoning ordinance was invalid. The district court found the County's use of the condemned property was a permitted public service use and denied Stanley Bay's request for injunctive relief. There was no ruling made on Stanley Bay's claim Polk County is subject to the terms of its own zoning ordinance.

Stanley Bay raises the same issues on appeal. Since this case was tried as an ordinary proceeding, our review is limited to errors of law. Iowa R. App. P. 4.

Zoning ordinances are strictly construed. *City of Lamoni v. Livingston*, 392 N.W.2d 506, 509 (Iowa 1986). Such ordinances are entitled to presumption of validity, with the burden being placed on the party challenging the ordinance to prove it is unreasonable, arbitrary, capricious, or discriminatory. *Id.* at 511. An ordinance is valid if it has any real substantial relation to the public health, comfort, safety, and welfare including maintenance of property values. *Neuzil v. City of Iowa City*, 451 N.W.2d 159, 164 (Iowa 1990). If a zoning ordinance is facially valid and its reasonableness is fairly ~~debatable~~, it must be allowed to stand. *Anderson v. City of Cedar Rapids*, 168 N.W.2d 739, 742 (Iowa 1969).

We first consider Stanley Bay's claim section 4603(D) is facially invalid because the definition of public service is vague and indefinite. Stanley Bay cites the potentially

all inclusive nature of uses allowed and the absence of any limitation as to the size and intensity of permitted uses as this section's fatal flaws. A civil statute such as a zoning ordinance is impermissibly vague when one must guess at the statute's meaning and its applicability. *Greenawalt v. Zoning Bd. of Adjustment of Davenport*, 345 N.W.2d 537, 545 (Iowa 1989). The ordinance should contain ascertainable standards for inclusion or exclusion of conduct which is the subject of the ordinance. *Id.*

Section 2300 of the Polk County Zoning Ordinance defines "public service" as: "[a]ny facility or service provided by the local or federal government, or duly authorized by the state of Iowa to provide service to the general public." This section references section 4103(E) which specifies these facilities as: "emergency service, buildings or garages (e.g. ambulance, fire, police, rescue), utility substations or transmission and distribution facilities, sewage treatment facilities, water storage facilities and waste stabilization and leachate lagoons; and all government-owned facilities, except landfills, mining facilities and prisons." Our analysis of these provisions establishes that, when read together, sections 2300 and 4103(E) significantly limit the definition of public service under the ordinance. Section 2300 specifies that for a facility to qualify as public it must be either provided by the local or federal government or authorized by the state. That section's reference to section 4103(E), which lists these facilities, includes only government bodies, public utilities, and emergency services. Contrary to Stanley Bay's contention, this definition does not

include services provided by private entities to the general public. Instead, for a private facility to qualify as a public service facility, it must receive state authorization. Nowhere does the ordinance suggest anything other than government owned or approved facilities are to be classified as a public service for zoning purposes. The definition of "public service," therefore, is sufficiently narrow. One need not guess at the meaning of public service to determine the scope of uses permitted by section 4603(D).

We also find the governmental interest served by the placement of the road maintenance facility on the condemned property outweighs any resulting hardship to Stanley Bay. The County will recognize significant cost benefits and will also increase the efficiency of its essential road maintenance service. The land was zoned agricultural when it was acquired by Stanley Bay. There is no evidence Stanley Bay made any significant expenditure or otherwise relied on the preservation of existing use restrictions as a part of any plan to develop this property. In fact, the development prospects for the property are remote in time, and the affect of the County's use of the condemned property on potential development is at best speculative. We determine section 4603(D) is not unreasonable, arbitrary, or discriminating either on its face or as applied to Stanley Bay's property.

We also determine section 4603(D), both on its face and as applied, is consistent with the legislative purpose underlying the zoning ordinance. The purpose of the ordinance as defined by division 1300 is for the “promotion of the health, safety, and general welfare of the present and future inhabitants of the county.” Section 4603(D)’s creation of a zoning exception for public service facilities is clearly consistent with that purpose. This provision of the ordinance allows the County to use its property for the public good in an efficient and beneficial manner consistent with its best legislative judgment. While the use at issue in this case is a heavy industrial use in an agricultural zone, it is nevertheless a use reasonably exercised in furtherance of the health, safety, and general welfare of Polk County’s inhabitants. We will not substitute our judgment for that of the Polk County Board of Supervisors in a matter clearly entrusted to their discretion.

Finally, we reject the claim that Polk County is subject to its own zoning ordinance and should be ordered to remove its facilities from the condemned property. Our determination that the public service use exception is valid renders the question moot. Moreover, a municipality may except itself from the use restrictions of its own zoning ordinance. *Jorgensen v. Board of Adjustment of City of Des Moines*, 336 N.W.2d 423, 426 (Iowa 1983).

We disagree with Stanley Bay’s assertions that our supreme court has held otherwise in *City of Ames v. Story County*, 329 N.W.2d 145 (Iowa 1986). It is our

belief that the holding in that case is expressly limited to disputes between local governments, a circumstance not found in this case *Id.* at 149

In summary, we find section 4306(D) of Polk County's zoning ordinance is valid both facially and as applied in this case. The judgment of the district court is accordingly affirmed.

AFFIRMED.

Schlegel, S.J., concurs. Sackett, P.J., concurs specially.

SACKETT, P.J. (concurring specially)

I specially concur with the majority. It has correctly applied the law.

I question why a county should not be governed by its own zoning law and citizens should not have the assurance in buying and developing property that its own government will not create a use in violation of zoning which will seriously impact on the citizen's use of his or her property as well as value. However, this issue is not ours to decide.