

IN THE COURT OF APPEALS OF IOWA

No. 8-455 / 97-0728
Filed November 30, 1998

**SHERWIN KITTLESON, JACK W. HULL,
and SALLY ANN EWOLDT,**
Appellants,

vs.

EDWIN WINBORN, as Chairman of the Scott County
Board of Supervisors, **OTTO EWOLDT, TOM OTTING,
FORREST KILMER, and ROBERT PETERSEN**, as Members of the
Scott County Board of Supervisors, and **TIMOTHY HUEY**, as Zoning
Administrator and Planning and Development Director of Scott County,
Appellees,

WILSON CONCRETE COMPANY,
Intervenor.

Appeal from the Iowa District Court for Scott County, James R. Havercamp,
Judge.

Plaintiffs appeal from a district court order upholding on certiorari review the
decision of the board of supervisors enacting an ordinance to rezone a forty-acre tract
of rural land from "agricultural-general district" to "heavy-manufacturing district"
pursuant to an application from a concrete company. **AFFIRMED.**

Ralph W. Heninger of Heninger and Heninger, P.C., Davenport, for appellants.

Theodore J. Priester, Assistant County Attorney, for appellees.

Stephen L. Schalk, Davenport, for intervenor.

Heard by Streit, P.J., and Mahan, J., and McCartney, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

STREIT, P.J.

Plaintiffs appeal the trial court's denial of their writ for certiorari contending the Board of Supervisor's rezoning of agricultural land as heavy industrial was illegal spot zoning. Because we find the Board's decision was reasonable and supported by substantial evidence on the record, we affirm.

I. Background Facts & Proceedings.

On May 17, 1996, Wilson Concrete Company filed a petition to rezone a forty-acre plot of land located in unincorporated Scott County. The petition sought to rezone the land from "A-G" (agricultural-general district) to "M" (heavy manufacturing).

Following a hearing, the Planning and Zoning Commission denied the rezoning application. Wilson appealed the commission's decision to the Board of Supervisors. The Board of Supervisors approved the zoning request and implemented the request through Scott County Ordinance No. 96-04. The plaintiffs filed writ of certiorari with the district court. The court held the rezoning decision did not violate the comprehensive plan or land use policies. The court reasoned, although rezoning of the tract from "A-G" to "M" was spot zoning, it was not illegal spot zoning. The court annulled the plaintiff's writ of certiorari. The plaintiffs appeal.

II. Standard of Review.

Our review of a district court certiorari ruling is for errors of law. *Little v. Winborn*, 518 N.W.2d 384, 386 (Iowa 1994) The Board's action is upheld if

supported by competent and substantial evidence. *Id.* In reviewing amendments to zoning ordinances, we presume they are valid and if reasonable, we will not substitute our judgment for that of the legislative body. *Id.* “If the validity of the rezoning ordinance is fairly debatable, it must be allowed to stand.” *Fox v. Polk County Bd. Sup.*, 569 N.W.2d 503, 507 (Iowa 1997).

III. Spot Zoning.

The plaintiffs contend rezoning the agricultural property constituted illegal spot zoning. They maintain the ordinance violates the comprehensive zoning plan and the land use policies of Scott County.

“Spot zoning results when a zoning ordinance creates a small island of property with restrictions on its use different from those imposed on the surrounding property.” *Fox*, 569 N.W.2d at 507 (quoting *Kane v. City Council of Cedar Rapids*, 537 N.W.2d 718, 723 (Iowa 1995)). There is little question the decision of the Board to rezone the subject property as “M” Manufacturing¹ was spot zoning. The forty acres north of the forty acres in question is zoned “C-M,” Commercial and Light Industrial.² The property immediately adjacent to the west and south of the subject

¹ Heavy manufacturing zoning is intended to provide areas of the county for activities and uses of a heavy industrial character, is the least restrictive of any zoned district and permits any use not in conflict with other ordinances or regulations of Scott County of or the State of Iowa.

² Light commercial zoning is intended to accommodate auto and truck oriented commercial and industrial establishments which serve the needs of the travelers on the county roads and highway.

tract is zoned “A-G,” agricultural general,³ and is used for agricultural crop production. The property to the east is zoned “C-M” and is developed with a variety of light industrial and commercial uses. Thus, the zoning of the subject property as heavy manufacturing creates a small island of property with restrictions on its use different from those imposed on the surrounding property. *See id.*

The question is whether the spot zoning is illegal. *Fox*, 569 N.W.2d at 507. Spot zoning is not illegal in all instances. *Montgomery v. Bremer County Bd. of Supervisors*, 299 N.W.2d 687, 696. Our supreme court has set out the circumstances under which spot zoning will be allowed:

If [the new zoning] is germane to an object within the police power and there is a reasonable basis to treat the spot-zoned property differently from the surrounding property, the spot zoning is valid. In determining whether there is a reasonable basis for spot zoning, we consider the size of the spot zoned, the uses of the surrounding property, the changing conditions of the area, the use to which the subject property has been put and its suitability and adaptability for various uses.

Fox, 569 N.W.2d at 569. In short, there must be “substantial and reasonable grounds or basis for the discrimination” of one lot by removing restrictions imposed upon the surrounding lots. *See Keppy v. Ehlers*, 15 N.W.2d 198, 200 (1962).

The trial court found the rezoning did not constitute illegal spot zoning. There was substantial evidence on the record on which the court could base its decision.

³ Agricultural general zoning is intended to serve the agricultural community and act as a holding zone until a compatible urban development proposal is approved through special use permits or rezoning.

Among the 212,827 acres of unincorporated Scott County, previous to the rezoning, none of the land was designated for heavy industrial use. It was within the county's police power to seek a tract of land to zone as heavy industrial within unincorporated Scott County. For one, the Board wanted to keep Wilson Concrete Products located within Scott County. Because there was no undeveloped heavy manufacturing-zoned property in unincorporated Scott County, doing so would be impossible without rezoning a portion of the land. More generally, a rezoning of a portion of the unincorporated land would encourage existing business to expand or redevelop.

The Board's choice of the subject property to zone as heavy industrial is "fairly debatable." *Fox*, 569 N.W.2d at 507. If left to the courts, we may have decided this differently. The Board saw the property as peculiarly adaptable to the new classification when compared with the surrounding property. *See Keppy*, 115 N.W.2d at 196. The property to the west did not have access to a paved frontage road. The property to the south did not have possession of its mineral rights. The subject property has two large ponds across the north boundary line serving as a buffer to the neighboring property. The property is in close proximity to existing light industrial uses and has adequate access to a transportation network.⁴ The tract is not suitable

⁴ The subject property fronts paved Y-48, a quarter mile south of paved, divided four-lane U.S. Highway 61.

for residential development. Adequate water service was located adjacent to the property and private well and septic service did not present a health problem.

Plaintiffs argue the rezoning violates the comprehensive zoning plan. However, the comprehensive plan contemplated heavy industrial use in rural Scott County on a case-by-case basis. As recognized above, substantial evidence exists that the Board performed a case-by-case analysis in coming to its decision. The comprehensive zoning plan contemplates heavy industrial uses and has set up guidelines and special use permits to regulate such use.

The plaintiffs argue the Board's decision is contrary to the County Land Use Policy that agricultural lands are to be preserved. The Board did not deny this policy existed,⁵ however, it also recognized a community's needs change over time, that zoning was not static, and was subject to reasonable revision. Such recognition is in line with Iowa case law. *See Montgomery*, 299 N.W.2d at 696 (the fact that land was zoned under and agricultural classification to limit other uses until specific zoning requests are considered does not preclude use of land for industrial use).

The plaintiffs argue the Board's decision is invalid because it considered only nine of twenty-three policies contained in the Board's Land Use Policies. The Scott County Land Use Policies set out ten specific guidelines to be followed when reviewing proposed development in a rural area. Of the policies the plaintiffs contend

⁵ The one guideline of the Land Use Policies did not meet was that the heavy industrial zone would be located on prime farmland. Eighty-percent of unincorporated Scott County is considered prime farmland.

should have been considered, we find only five not officially considered by the Board and relevant to the rezoning decision.⁶ Although the Board may not have specifically named these policies as those under consideration when making the rezoning decision, a review of the Board's reasoning, as discussed above, reveals that each of these policies were indeed considered.

Because we find the Board's decision was reasonable and supported by substantial evidence on the record, we affirm.

We have reviewed the plaintiffs contention that the district court erred in quashing the plaintiffs discovery requests. The court found the discovery requests irrelevant to the writ of certiorari. Because we find the trial court did not abuse its discretion in quashing the requests, the discovery ruling is affirmed.

AFFIRMED.

⁶ Those policies are:

1. Is it proposed in an area where industries are located?
2. Will the roads, rails, and airport provide nearby access?
3. Is the proposal removed from residential development?
4. Existing industrial uses may be maintained, expanded and/or redeveloped.
5. Large areas of undeveloped land within the rural area currently zoned for light and heavy industrial use should be rezoned for agricultural use, if located on productive agricultural soils.