

IN THE COURT OF APPEALS OF IOWA  
SUPREME COURT NO. 15-1413  
DUBUQUE COUNTY CASE NO. CVCV 057723  
DUBUQUE COUNTY CASE NO. CVCV101023

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RESIDENTIAL AND AGRICULTURAL  
ADVISORY COMMITTEE, L.L.C., an Iowa  
Limited Liability Company, MATT  
MESCHER, ALLAN R. DEMMER,  
CATHERINE DEMMER, WAYNE  
AMESKAMP, SHARON AMESKAMP,  
MARY ANN RUBLY, JOHN R. RUBLY,  
DELORES THIER, LARRY THIER, GARY  
BURKLE, CINDY BURKLE, WAYNE  
VORWALD, LINDA VORWALD, JEFF  
PAPE, GERARD WOLF, and JOANNE  
WOLF

Petitioners-Appellants,

vs.

DYERSVILLE CITY COUNCIL, MAYOR  
JAMES A. HEAVENS, MIKE ENGLISH,  
MARK BREITBACH, ROBERT PLATZ,  
and DAN WILLENBORG.

Respondents-Appellees.

**RESPONDENTS'/APPELLEES' FINAL  
BRIEF**

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**APPEAL FROM THE IOWA DISTRICT COURT  
FOR DUBUQUE COUNTY  
HONORABLE JUDGE THOMAS A. BITTER**

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## PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on February 5, 2016, the undersigned party or person acting in their behalf, did serve the within Respondent/Appellee's Final Brief on all other parties to this matter by mailing of one (1) copy thereof to the following counsel for said parties at their respective address, to-wit:

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I further certify that on February 5, 2016, I will file this document EDMS with the Clerk of the Supreme Court.

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## ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the necessary copies of the preceding Respondent's/Appellee's Proof Brief and Final Brief was \$\_\_\_\_\_.

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**STATEMENT OF ISSUES FOR REVIEW**

**I. THE DISTRICT COURT PROPERLY ANNULLED THE WRIT WITH RESPECT TO ORDINANCE 770, WHICH REZONED THE PROPERTY FROM A-1 TO C-2**

*Ackman v. Board of Adjustment for Black Hawk County*, 596 N.W.2d 96 (Iowa 1999)

*Alexanderson v. Bd. of Clark Cnty. Comm'rs*, 144 P.3d 1219 (Wash. 2006)

*Ames Rental Property Ass'n v. City of Ames*, 736 N.W.2d 255 (Iowa 2007)

*Anderson v. City of Cedar Rapids*, 168 N.W.2d 739 (Iowa 1969)

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*Bluffs Dev. Co., Inc. v. The Bd. of Adj. of Pottawattamie Cnty.*, 499 N.W.2d 12 (Iowa 1993)

*Blumenthal Inv. Trusts v. City of West Des Moines*, 636 N.W.2d 255 (Iowa 2001)

*Botsko v. Davenport Civil Rights Comm'n*, 774 N.W.2d 841 (Iowa 2009)

*Bowers v. Polk Cnty. Bd. of Supervisors*, 638 N.W.2d 682 (Iowa 2002)

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*Oehl v. Amana Colonies Land Use Dist. Bd. of Trustees*, 847 N.W.2d 237 (Iowa App. 2014)

*Parsons v. Town of Wethersfield*, 60 A.2d 771 (Conn. 1948)

***Penny v. City of Durham*, 107 S.E.2d 72 (N.C. 1959)**

***Perkins v. Board of Supervisors of Madison County*, 636 N.W.2d 58 (Iowa 2001)**

*Pfaff v. City of Lakewood*, 712 P.2d 1041 (Colo. 1986)

*Putney v. Abington Twp.*, 108 A.2d 134 (Pa. 1954)

*Quality Refrigerated Services, Inc. v. City of Spencer*, 586 N.W.2d 202 (Iowa 1998)

*Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1 (Iowa 2004)

*Riniker v. Dubuque Cnty.*, 2002 WL 1842918 (Iowa App. 2002)

*Schwarz v. City of Glendale*, 950 P.2d 167 (Ariz. 1997)

***Shriver v. City of Okoboji*, 567 N.W.2d 397 (Iowa 1997)**

*State v. Seering*, 701 N.W.2d 655 (Iowa 2005)

*Summit Ridge Dev. Co. v. City of Independence*, 821 S.W.2d 516 (Mo. App. 1991)

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*Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)

*W&G McKinney Farms, L.P. v. Dallas County Bd. of Adjustments*, 674 N.W.2d 99 (Iowa 2004)

**I.C.A. Const. Art. 3, §38A**

Iowa Code §364.1

Iowa Code §414.1

Iowa Code §414.5

**Dyersville City Ordinance Section §165.39(5)**

4 Am. Law. Zoning § 38:14 (5th ed. 2014)

Merriam-Webster Collegiate Dictionary, 7 (10<sup>th</sup> ed. 2002)

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**II. THE DISTRICT COURT PROPERLY ANNULLED THE WRIT WITH RESPECT TO ORDINANCE 777, WHICH CORRECTED THE SCRIVENER'S ERROR IN ORDINANCE 770**

*Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483 (Iowa 2008)

*Fox v. Polk Cnty. Bd. of Supervisors*, 569 N.W.2d 503 (Iowa 1997)

*Gorman v. City Development Board*, 565 N.W.2d 607 (Iowa 1997)

***Heintz v. City of Fairfax*, 730 N.W.2d 210 (Iowa .App. 2007)**

Iowa Code §368.4

Iowa Code §368.7

Iowa Code §414.4

Dyersville City Ordinance Section 165.39

1 Am. Law. Zoning § 8:6 (5th ed. 2014)

**III. THE COURT GAVE THE APPROPRIATE WEIGHT TO THE OPINION AND TESTIMONY OF PETITIONERS' EXPERT CHRISTOPHER SHIRES**

*Carstensen v. Board of Trustees*, 253 N.W.2d 560 (Iowa 1977)

*Dougherty v. Boyken*, 155 N.W.2d 488 (Iowa 1968)

*Harrington v. State*, 659 N.W.2d 5093 (Iowa 2003)

*In re Det. of Holtz*, 653 N.W.2d 613 (Iowa Ct. App. 2002)

*In re Det. of Palmer*, 691 N.W.2d 413 (Iowa 2005)

*In re Estate of Ohrt*, 516 N.W.2d 896 (Iowa 1994)

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**Iowa R. Evid. 5.704**

Iowa R. Civ. Pro. 5.401

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION-TYPE FACE REQUIREMENTS, AND TYPE-STYLE  
REQUIREMENTS**

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 13,869 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief has been prepared complies with the typeface requirement of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in Times New Roman style, size 14 font.

FUERSTE, CAREW,  
JUERGENS & SUDMEIER, P.C.

By: /s/ Jenny L. Weiss  
Jenny L. Weiss

## **Routing Statement**

Pursuant to Iowa R. App. P. 6.1101(2)(c), this case involves questions of existing legal principal which are ordinarily transferred to the Court of Appeals.

## **Statement of the Case**

Respondents accept the Statement of the Case in Petitioners' brief.

## **Statement of Facts**

Respondents do not accept Petitioners' Statement of Facts. The District Court's findings of fact accurately recites all material facts in this case and is incorporated below, with corresponding citation to the record in brackets<sup>1</sup>:

Field of Dreams was a 1989 movie filmed largely at the Don Lansing farm in rural Dyersville (Dubuque County), Iowa. [\_\_\_\_]. Thousands of tourists visited each year, but the numbers have generally been slowly declining.

In 2010, Lansing listed his farm for sale. Eventually, Mike and Denise Stillman purchased the property (including the house and a total of 193 acres) with the intent of creating a large baseball/softball complex with as many as 24 fields and other features. The Stillmans planned to keep the white house and the original baseball diamond intact as an attraction for the people who came for tournaments. The complex, to be called All-Star Ballpark Heaven, would be created on the

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<sup>1</sup> Due to the word count considerations, facts not necessary for the Court's decision have been omitted and noted in "[\_\_\_\_]".

Lansing farmland right next to the house and the original field. That sale was contingent upon certain things, such as the rezoning of the property for commercial use.

The agenda for the 11-21-11 Dyersville City Council meeting listed an action item as "Authorize City Administrator to Sign IIW Proposal for Professional Services for Field of Dreams Utilities Extension Feasibility Study 2011." [App. 1178-1179] The City Council, the Mayor (James Heavens), and the City Administrator (Michael "Mick" Michels) all discussed that item at some length. The City would be paying approximately \$9,625 to hire an independent engineering firm, IIW, to prepare a utilities extension feasibility study to determine the cost and the logistics of getting water and sewer services to the Field of Dreams site. That action item was discussed for a total of 19 minutes. Mick Michel referred to the "pending sale" of the property. City Council member Molly Evers said she "just found out about this" on November 10, 2011. Jacque Rahe with the Dyersville Economic Development Corporation said, "Kind of the whole purpose of a lot of this is so that we can go to different state officials to secure the funding for this, so we have to know what type of numbers we're talking about in both return on investment and in the actual cost of this. So the whole goal is to not, you know, ever have this as a taxpayer burden, but to be able to secure funding in other matters as much as we possibly can." She went on to discuss a meeting with the governor in the middle of December. The motion to approve the study passed 5-0 (with City Council members Mike English, Mark Breitbach, Molly Evers, Dan Willenborg, and Robert Platz). [App. 1479-1483; Ex. EE 1:33:15 – 1:52:20].

In December 2011, the developers (Mike and Denise Stillman) organized, and presumably paid for, a bus trip to Des Moines to meet with state officials about financing issues related to the development of All-Star Ballpark Heaven, the planned baseball/softball complex at the Field of Dreams site. Mayor Heavens, along with Council members Robert Platz and Daniel Willenborg, went along on the bus trip and joined the group for dinner, which was again presumably funded by the Stillmans. Planning and Zoning Commission member Roger Gibbs also went along on the bus trip. The purpose of the trip was to begin lobbying state officials for financial assistance with the project.

Sometime around January or February 2012, an "Economic and Fiscal Impact Study" report was prepared by an entity called the Strategic Economics Group from Des Moines. The report was 54 pages. It detailed the proposed All-Star Ballpark Heaven, general information about the Dubuque County area, the economic impact such a complex would have on the area, and other general information about the project. Specifically, the report projected 1,400 new jobs by its eighth year of operation. It projected \$34.1 million in payrolls and \$102 million in gross goods and services for the State of Iowa. It projected significant increases in local and state tax revenues, affecting things such as school funding. [App. 881-934].

At the City Council meeting on February 20, 2012, at least six of the Petitioners appeared personally and spoke against the proposed project. Wayne Ameskamp handed some written materials to the Council members and spoke primarily about flooding and water runoff. Matt Mescher said that "eastward expansion (for the City of Dyersville) was never on the radar." He was concerned that the interests of neighboring property owners were

being ignored. He mentioned traffic concerns and that Dyersville has one of the most dangerous intersections in the state. He said the Stillmans' business model would work anywhere, not just at the actual Field of Dreams site. Lastly, he said, "My neighbors do not want ball fields in the middle of their cornfields." Wayne Vorwald also proposed moving the project over to the Dyersville business park. He expressed concerns about intermixing urban activity and farming activity, particularly the increasing use of aerial spraying by farmers. He also expressed concern about giving "millions of tax dollars" to the project. Jeff Pape discussed concerns with manure spreading, aerial spraying, and water runoff into the Hewitt Creek Watershed. Larry Thier said the population at the Cooperstown baseball complex in upstate New York has actually declined since 1999. Several other people spoke against the project, and several people spoke in favor of it. [App. 1484-1488; 1545-1556; Ex. FF 0:27:45-1:39:40].

At the City Council meeting on April 2, 2012, Gary Sejkora, an engineer with IIW, spoke about his Conceptual Water & Sewer Evaluation report, a 55-page report that detailed several different options to provide water and sewer services to the Field of Dreams area. Generally speaking, the cost to run water to the site would be approximately \$1.1 million, and the cost for sewer service would be approximately \$2.9 million. Council members Dan Willenborg and Molly Evers asked questions which demonstrated they had read the report prior to the hearing. Discussion was held for almost an hour. The Council voted 5-0 to receive and file the report. [App. 1489-1492; 1557-1614; Ex. GG 0:45:20 – 1:39:15].

The City Council met again on May 7, 2012. Molly Evers said she had received a letter from a man in New Zealand regarding the Field of

Dreams and his warnings about how such a project would affect the community. Molly asked where the project was at that time. City Administrator Michel said he was preparing the Development Agreement, which he would then send to the Economic Development Committee. Molly asked when people from the community would be permitted to come speak at a public hearing. She expressed her concern about how this project could affect the community. She said the project was more than just an issue of money. She said she's been receiving correspondence and phone calls from community members. Dan Willenborg said he has also talked with some community members, and he told them "we don't know which way we're going with this." Molly said she has told people that they need to start speaking up. Robert Platz said he "would like to know what our citizens themselves think about it." [App. 1493-1496; 1615-1618; Ex. HH 0:18:15 – 0:25:15].

At the May 21, 2012, City Council meeting, agenda item #10 was described as "Presentation by Joe Scherrman in support of All-Star Ballpark Heaven." Scherrman operates a business known as Scherrman Implement and Appliance in or near Dyersville. He spoke in favor of preserving the original baseball field at the movie site, and he opined that the best way to preserve the field was to build extra fields at the location. He said he has visited Cooperstown, which has "done a good job keeping their community small and successful." At that meeting, Molly Evers again asked when a public hearing could be set so the public could come and talk about the proposal. She was told to talk to the mayor, who was absent that night. Lastly, Wayne Ameskamp spoke to the council. He asked if there are enough kids to support 24 baseball diamonds. He asked what happens to the ground if the project fails. He asked about his

ability to continue hunting on his own land. He expressed concerns about flooding, water runoff, and traffic. He said he'd like to see the project put to a public vote "to see what percentage of Dyersville residents are in favor of this project." [App. 1497-1502; 1619-1627; Ex. II 0:54:40 – 1:04:25].

At the June 4, 2012, City Council meeting, Resolution 31-12 was to fix a date to consider the application for voluntary annexation by the Lansings and several other property owners who were seeking to voluntarily annex their property into the City of Dyersville. City Administrator Michel said they were still awaiting one signature from a property owner, and he asked that the matter be tabled. All Council members voted to table the issue. [App. 1503-1505; 1619-1627; Ex. JJ 0:24:45 – 0:27:20]. On June 11, 2012, the City Council held a special meeting. The mayor and all Council members were present. Various people got up and spoke. Dale Boge, who lives within two miles of the Field of Dreams on a century farm, called for a referendum. He said he opposed the project, and he generally opposed any change. He offered to put up some of his own money to help hire a lawyer to fight the project. Jacque Rahe, the Dyersville Economic Development Director spoke next. She mentioned a "Save Our Town" letter that was placed on cars over the weekend, and she said some of the information in the letter was incorrect. Barb Penney, a local resident, spoke next. She said she has been to Cooperstown 7-8 times. She is upset with some of the incorrect or inaccurate information about Cooperstown in the "Save Our Town" letter. She said she was not yet supporting or opposed to the Field of Dreams project, but she would like to see a public vote. Deb Tegeler, a local resident, spoke next. She also was not yet supporting or opposed to the project. She

expressed concerns about traffic. Jerry Wolfe, a local resident, spoke against the project and requested a public vote. He expressed concerns about traffic, security, noise, trash, flooding, and cost. He also requested a public vote. Joe Ertl, a local resident and former State Representative, spoke next. He also asked for a public vote. Barb Watkinson, a local resident, spoke next. She has also been to Cooperstown 2-3 times, and she disagreed with some of the information in the "Save Our Town" letter. She expressed concern about flooding. Debbie Moser asked for a public vote. Jim Wilhelm said he was against the project, and he felt that all of the Council members had already made up their minds to vote for the project, with the exception of Molly Evers. The Council next considered Resolution 31-12 to set a date to consider the voluntary annexation request. The proposed date was July 2, 2012. Matt Mescher got up and spoke about the annexation briefly. The Council voted unanimously to set the date for July 2, 2012, to consider the voluntary annexation request. [App. 1506; 1641-1649; Ex. KK].

On June 18, 2012, the Council met to consider Resolution 35-12 to approve the Memorandum of Understanding. The meeting and discussion lasted approximately 70 minutes. Attorney Marc Casey, the City Attorney for Dyersville, was asked to explain the Memorandum of Understanding. He explained that it is a document that merely states the intention of the parties. "This is simply so both parties have some sense that they're headed in the same direction and that there's no road blocks that somebody may throw up. If the Stillmans, if they were to find out tonight that the Council's not even in favor of this, then obviously they're going to say 'we're not going to invest any more time or effort in this.' But if the Council's saying yes, we want to look at

these things, we will consider these things, that's what this sets out. The important thing to remember is that this vote is simply to say we're going to keep talking with you people, we're going to negotiate with you people, but we're still going to take a vote on annexation, we're still going to take a vote on rezoning, we're still going to take a vote on approving a Development Agreement. And if any of those items, when the time comes for them to be voted upon, if they're not approved by the Council, then it's done. This Memorandum of Understanding does not commit the City to anything other than to continue its process and to work with these people and see if agreements can be reached on the various items that need to be put together to make this a whole project." The Council members, the mayor, Attorney Casey, and City Administrator Michel then continued to discuss issues such as tax increment financing, payment of sewer and water hook-ups, and payment of attorney fees. [App. 1508-1513; 1650-1662; Ex. LL 0:39:24 – 1:57:50].

Various citizens and concerned residents stood up and spoke on June 18, 2012. Some voiced their support for the project. Others voiced their objection. Denise Stillman spoke about the possibility of erecting a dome over one of the fields to allow for play year-round. She said she had communicated with two local colleges about their interest in having a place for their baseball teams to train during the winter. She also talked about building dormitories on the property for the players and coaches to stay during tournaments. At the end of the meeting, the Council voted 5-0 to approve Resolution 35-12 (approving the Memorandum of Understanding).<sup>2</sup> The language in the Memorandum of Understanding says, "The

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<sup>2</sup> Petitioners did not challenge Respondents' approval of the Memorandum of Understanding. This is not an issue on appeal.

City will put forth its best effort" to annex the property, to rezone the property, and to add the property to the Urban Renewal Area for purposes of tax increment financing. [App. 1508-1513; 1650-1662; Ex. LL 0:39:24 – 1:57:50].

On July 2, 2012, the City Council met for approximately 83 minutes regarding the issue of the voluntary annexation of property owned by Donald L. Lansing, Rebecca L. Lansing, Gerald Deutmeyer and Alice M. Deutmeyer, John E. Rahe and Nicole Rahe, Keith G. Rahe and Jacque K. Rahe, and Dorothy Meyer. (Most, but not all, of that time was spent discussing the annexation issue.) The mayor and all five Council members were present. A camera from KCRG Channel 9 news was present, presumably because the issue was newsworthy and contentious. Denise Stillman spoke first very briefly. She introduced Ron Kittle, a former professional baseball player, who voiced his support for baseball projects like the proposed All Star Ballpark Heaven. City Administrator Michel said the total proposed property to be voluntarily annexed is approximately 500 acres. The mayor said the Council had received one written communication from Matt Mescher. Mescher was present at the meeting, and he spoke about his concerns. He expressed concern about how much funding the City of Dyersville and the State of Iowa were providing to the proposed project. He said the taxpayers are funding 57% of the total cost of the project. He also said there is a growing division in the community over the project, and the Council is "turning on one of their own for doing what she was asked and providing information to the rest of the public." He didn't want to argue whether the project will have a positive economic impact on the community, but he said money shouldn't be the sole deciding factor. Other things, such as noise, pollution, etc.,

should be considered. Wayne Ameskamp spoke. He said he has spoken with four of the Council members about his concerns. He voiced his opposition to the annexation. Jack Mescher spoke next, and he introduced Attorney Susan Hess. She said the citizens of Dyersville request a vote on the issue. She offered the Council a petition signed by certain citizens. She said her client is the group of people who have signed the petition. She said her clients have retained her to make sure the statute is properly followed and notices are properly given. Attorney Marc Casey said the application for voluntary annexation must be considered by the Council, not by any sort of public vote. He said Iowa Code §368.7 contains the procedure for voluntary annexation. Jack Mescher, son of Matt Mescher, spoke against the annexation. He said the City doesn't have the necessary hydraulic studies or traffic studies or pollution studies. Jacque Rahe, Dyersville Economic Development Executor Director, spoke in support of the annexation. She said the project would result in 24 full-time, year-round jobs. Joe Ertl spoke again and again requested a public vote on the annexation issue. Finally, there was a motion to approve Resolution 37-12. The motion passed 4-1, with Molly Evers voting no.<sup>3</sup> Then the Council voted on Resolution 38-12 to refer to the Planning and Zoning Commission the rezoning of certain property from A-1 to C-2. City Administrator Michel explained the proposal of rezoning for conditional use "for the preservation of the existing white farmhouse with wrap-around porch overlooking the Field of Dreams, the preservation of the existing Field of Dreams, and the creation and construction of All-Star Ballpark Heaven a complex featuring 24 baseball and softball fields targeted for

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<sup>3</sup> Petitioners did not challenge Respondents' annexation of the property. This is not an issue on appeal.

competition and training for youth 8 to 14 and incidental uses thereof." The Council voted 5-0 to approve Resolution 38-12 and send the matter to the Planning and Zoning Commission. [App. 1514-1517; 1665-1685; Ex. MM 0:2:00 – 1:25:15].

At the July 2, 2012, meeting, Eric Schmechel spoke for the Dubuque Soil and Water Conservation District. He spoke about the stormwater and watershed management practices, and specifically about the impact of the proposed baseball complex on the watershed. The Council members asked him questions about general water issues and how/when he might become involved with the actual All-Star Ballpark project. He said the project, if done correctly, can actually improve the location's issues with respect to water runoff. [App. 1514-1517; 1665-1685; Ex. MM 1:25:16 – 1:37:00].

On Sunday July 8, 2012, the Planning and Zoning Commission hosted an informational session with Denise Stillman. It was advertised as "a 20-minute presentation followed by a question and answer period. Overview provided by Denise Stillman, the lead developer." (See App. 1140) The minutes from the meeting indicate that the meeting was called to order by Denise Stillman at 6:30 PM, and that the meeting was adjourned at 7:37 PM. (See App. 806-809) Present for that "work session" was Planning and Zoning Commission members Patrick Graham, Bob Meinert, Michael Murphy, Dan Olberding, and Jim Willenbring. Members Roger Gibbs, Mike Gogel, Dave Kronlage, and Rebecca Willenborg were absent. Amended minutes were later issued. The only change in the amended minutes was to strike that notation that the meeting was called to order by Denise Stillman. (See App. 810-813) Various other people, such as some of the Council members, also

attended the July 8, 2012, Planning and Zoning Commission's "work session."<sup>4</sup>

The Planning and Zoning Commission met on July 9, 2012, to discuss the rezoning of the Field of Dreams property from A-1 to C-2. City Administrator Michel described how City staff proposes a 200-foot buffer zone on three sides of the property to be rezoned. He said such a buffer zone "worked very effectively when there was a lot of disagreement with the ethanol plant." He said it was "created to protect adjoining property owners to make sure that that type of use of development doesn't occur." He said concerns were expressed about children playing baseball right up to the fence line or right up to the property line. The 200-foot buffer strip would allow for manure spreading and other farm practices to continue without interfering with the baseball activities. He advised the Planning and Zoning Commission that the City has looked into property values, stormwater issues, and crime issues. Wayne Ameskamp and Matt Mescher both spoke against the rezoning. Mescher questioned the 200-foot buffer zone, and he argued that the reason for the buffer being 200 feet was to effectively prevent the neighboring property owners from objecting (according to Iowa Code §414.5). Gary Sejkora from IIW Engineers spoke about their study of the wastewater that will be generated and the water that will be used. Pat Meinert, a Dyersville resident, spoke about two primary concerns. First, does the aquifer have enough water? And second, how is all of this being paid for? Jack Mescher spoke about his concerns, including water issues and the 200-foot buffer strip. Julie Nebel from IIW spoke about certain traffic concerns, and she offered some specific information about some of the roads that would be

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<sup>4</sup> Petitioners did not challenge the July 8, 2012, work session. This is not an issue on appeal.

affected by the baseball project. Several other people spoke for and against the rezoning and the project in general. The meeting lasted almost two hours. The Commission voted 8-0 to approve a positive recommendation in favor of the proposed rezoning. The minutes, as they pertain to the rezoning of the Field of Dreams property, from the two-hour Planning and Zoning Commission meeting held on July 9, 2012, provide as follows: [Recitation of the Minutes has been omitted. *See* App. 818-824, QQ].

The City Council met again on July 16, 2012. One of the agenda items was Resolution 47-12 to fix a date of meeting to consider the rezoning of the property in question from A-1 to C2. It was unanimously approved 5-0 to set that date for August 6, 2012. [App. 1524-1529; 1686-1708; Ex. NN 0:43:55 – 0:45:00]. The Council met on August 6, 2012. The mayor and all five Council members were present. Attorney Susan Hess spoke first. She referred to a letter that she had tried (unsuccessfully) to deliver to the Council earlier that day. She told the Council that their action was quasi-judicial in nature, and that they are required to remain impartial. She said the Planning and Zoning Commission and the City Council had both failed to remain impartial. She offered a petition with signatures of neighboring landowners. She said the rezoning should be done through a PUD. She said the Council has violated the due process and equal protection rights of the Dyersville citizens. She said she was representing a group of concerned citizens, but that group was not a legal entity of its own. Jack Mescher spoke next. He asked whether the Council members were aware of the City ordinance and/or the State Code regarding the ability to file a written protest if at least 20% of the landowners who are within 200 feet of the property in question object to the proposed

rezoning. City Administrator Michel advised the Council not to answer that question. So Jack Mescher suggested that it would be ethically improper for the Council to knowingly prevent the neighboring property owners from exercising their statutory right to file a written protest. After approximately 30 minutes of discussion, no one else wanted to speak, so the Council closed the public hearing. Molly Evers moved to table Ordinance 770 "until we are educated with what is going on here." Her motion was not seconded, and it died. The Council then voted on Ordinance 770. The vote passed 4-1, with Molly Evers voting no. Molly read a written statement that lasted more than three minutes. She said more people oppose the project than favor it. She said the project is not good for farmers and farming. The Council then moved to waive the second reading of Ordinance 770. That motion passed 4-1, with Molly again voting no. The Council then voted 4-1 to waive the third reading of Ordinance 770. [App. 1539-1544; 1709-1718; Ex. OO 0:17:50 – 0:55:00].

Sometime after Ordinance 770 was passed, it was brought to the attention of the Council that the legal description of the Lansing property, as provided in Ordinance 770, was incorrect. At the Council meeting on May 6, 2013, the Council voted on Ordinance 777, which would amend (and correct) Ordinance 770 regarding the scrivener's error in the legal description. The Ordinance would replace all references to "the SW Y4 of the SE Y4 of Section 22, Township 89 North, Range 2 West of the 5th Principal Meridian" with "the SE Y4 of the SE Y4 of Section 22, Township 89 North, Range 2 West of the 5th Principal Meridian." City Attorney Marc Casey spoke about a "typo" which resulted in an incorrect legal description for one quarter section. He said the map was correct, and he said there isn't a "person in the world that can

deny what was discussed through all these times and what the intention was to have that square 160 owned by the Lansings, not a 40-acres that wasn't owned by them and had nothing to do with the Field of Dreams project." He said "the key is that there was fair notice to the public, and clearly everybody knew what land was being discussed when we talked about this rezoning." The public was invited to speak on the issue, but no one spoke. The Council then voted to waive the reading of the Ordinance. The Ordinance itself was then moved for approval and seconded, and it passed by a vote of 4-1. Molly Evers voted against the Ordinance. Waiver of the second and third readings of that Ordinance also passed 4-1. [App. 1405-1411; Ex. PP 0:24:58 – 0:30:50].<sup>5</sup>

**I. THE DISTRICT COURT PROPERLY ANNULLED THE WRIT WITH RESPECT TO ORDINANCE 770, WHICH REZONED THE PROPERTY FROM A-1 TO C-2**

**Preservation of Error.** Petitioners preserved error on this issue.

**Standard of Review.** The appellate court reviews the District Court's decision on a petition for writ of certiorari for correction of errors at law and is bound by the District Court's factual findings if supported by substantial evidence. *Fox v. Polk Cnty. Bd. of Supervisors*, 569 N.W.2d 503, 507 (Iowa 1997). When a constitutional challenge is raised, review of that issue is de novo. *Perkins v. Board of Supervisors of Madison County*, 636 N.W.2d 58, 64 (Iowa 2001).

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<sup>5</sup> Petitioners did not challenge the July 9, 2012, Planning and Zoning meeting. This is not an issue on appeal.

**Argument.** For over three years now, Petitioners have asserted that the Supreme Court in *Sutton v. Dubuque City Council*, 729 N.W.2d 796 (Iowa 2006), changed the essential nature of the rezoning process from legislative to judicial. Petitioners are wrong.

In *Montgomery v. Bremer Cnty. Bd. of Sup'rs*, the Iowa Supreme Court stated:

In rezoning, the Board is exercising a legislative function. The purpose of the statutory hearing is primarily to aid the Board in gathering information to discharge the legislative function. Its goal is to gather “legislative facts-generalized propositions of fact or policy guiding the exercise of legislative judgment.”

299 N.W.2d 687, 693 (Iowa 1980). As for the procedure available to challenge the action of the Board, the *Montgomery* Court stated:

The objectors claim that findings of fact are required because the Board was exercising a quasi-judicial function. As stated in Division I, for purposes of determining whether certiorari was available under Iowa R. Civ. P. 306 [now Rule 1.1401], the Board was exercising a quasi-judicial function. However, as explained in Division II, the essential nature of the decision to rezone is legislative and the hearing before the Board was of the comment-argument type.

*Id.* at 694 (emphasis added). *Montgomery* is unquestionably good law, unchanged by *Sutton* and cited by *Sutton* with approval. 729 N.W.2d at 797.

In *Sutton*, the Iowa Supreme Court held that certiorari is the exclusive

remedy for “review of decisions of city councils or county boards of supervisors acting in a quasi-judicial capacity when the claimant alleges illegality of the action taken.” *Id.* at 800. *Montgomery* held that councils and county boards act in a quasi-judicial capacity for the purpose of determining whether certiorari is available; *Sutton* simply expanded that holding to make certiorari the exclusive remedy. Post-*Sutton* case law confirms this analysis. *See Oehl v. Amana Colonies Land Use Dist. Bd of Trustees*, 847 N.W.2d 237 (Iowa App. 2014) (Table); *Marianne Craft Norton Trust v. City Council of Hudson*, 776 N.W.2d 302 (Iowa App. 2009) (Table); *Vanwyk Farms, L.C. v. Poweshiek County Bd. of Sup’rs*, 767 N.W.2d 420 (Iowa App. 2009) (Table).

Public policy also demands Respondents’ interpretation. If the Court accepts Petitioners’ interpretation of *Sutton* and changes the essential nature of zoning, the collateral consequences would be acute. Council members, as elected officials, would be prohibited from considering the wishes of their constituents unless those constituents came to the hearing and spoke on the record. Hearings would be all-or-nothing, laden with procedural requirements akin to a court of law and outside the expertise or resources of the ordinary citizen/council member. According to the Iowa League of Cities, there are more than 850 cities in Iowa with populations of less than

8,000. <https://www.iowaleague.org/pages/CitiesInIowa.aspx> (follow “population” hyperlinks). Requiring court-like proceedings in rezoning would overwhelm the financial resources of small municipalities who likely do not have departments devoted to planning, instead relying on a City Manager/Administrator who wears multiple hats.

The proper standard of care is delineated under the home rule powers granted to Respondents under Iowa’s Constitution and Code. A city council may “amend its zoning ordinances at any time it deems circumstances justify such action and such an amendment is valid if statutory procedural requirements are followed, and the amendment is not unreasonable or capricious, nor inconsistent with the spirit of the zoning statute.” *Kane v. City Council of City of Cedar Rapids*, 537 N.W.2d 718, 721 (Iowa 1995) (citing *Keller v. City of Council Bluffs*, 66 N.W.2d 113, 116-17 (Iowa 1954)). See also I.C.A. Const. Art. 3, §38A (West 2012); Iowa Code §364.1 (2015); *Shriver v. City of Okoboji*, 567 N.W.2d 397, 401 (Iowa 1997); *F.H. Uelner Precision Tools & Dies, Inc. v. City of Dubuque*, 190 N.W.2d 465, 469 (Iowa 1971).

Zoning ordinances carry with them a "strong" presumption of validity. *Perkins*, 636 N.W.2d at 67; *Quality Refrigerated Services, Inc. v. City of Spencer*, 586 N.W.2d 202, 207-08 (Iowa 1998); *Shriver*, 567 N.W.2d at 401;

*Kempf v. City of Iowa City*, 402 N.W.2d 393, 399 (Iowa 1987). In challenging the rezoning, the Petitioners carry a heavy burden of proof. See *Perkins*, 636 N.W.2d at 67; *Shriver*, 567 N.W.2d at 401. To rebut the presumption of validity, the Petitioners must show the ordinance has "no reasonable relationship" to any proper purpose; an ordinance is valid if it has "any real, substantial relation to the public health, safety, and welfare." *Shriver*, 567 N.W.2d at 401.

A zoning regulation will not be held arbitrary unless "clearly" so and when an issue as to whether it is unreasonable is "fairly debatable," courts will not substitute their judgment for that of the legislative body. *Perkins*, 636 N.W.2d at 67; *Shriver*, 567 N.W.2d at 401. An ordinance is "fairly debatable" where the record shows a basis for a fair difference of opinion - if there is room for two opinions. *Perkins*, 636 N.W.2d at 67; *Shriver*, 567 N.W.2d at 401.

It is a fundamental precept that zoning "is not static, any existing restrictions being always subject to reasonable revisions with changing community conditions and needs as they appear." *Anderson v. City of Cedar Rapids*, 168 N.W.2d 739, 743 (Iowa 1969) (citing *Brackett v. City of Des Moines*, 67 N.W.2d 542 (Iowa 1954)).

Under this standard of review, the substantial evidence at trial and the writ record demonstrate, without doubt, that the rezoning of the subject property was fairly debatable and reasonably related to public welfare.

**A. The Rezoning of A-1 to C-2 was Reasonably Related to a Legitimate Interest, to wit: Improving the Economy and Tourism Sector of Dyersville**

It is undisputed that Respondent Council Members voted in favor of the rezoning because they believed the intended development of the property would benefit Dyersville’s economy and tourism sector. (App. 2030-2033; 1447-1448; 1459-1460). As discussed in Section I.B., economic development is emphasized in Dyersville’s comprehensive plans. Studies done prior to the rezoning projected that All-Star Ballpark Heaven would add 1,400 new jobs to the region by its eighth year of operation with \$34.1M in payroll, \$102M in gross goods and services for the State of Iowa, and significant increases in local and state tax revenues. [App. 881-934]. Dyersville would increase its water and sewer capabilities at no cost to taxpayers. [App. 798-801]. Respondent Council Members also testified that the unanimous recommendation of the Planning and Zoning (“P&Z”) Commission influenced their decision to rezone. [App. 2022; 2030; 1448; 1466]. The P&Z members testified that they believed the development to be

good for not only Dyersville's, but the region's, economy. [App. 1956; 1973-1974; 1976; 2096; 2107].

**B. The Rezoning of A-1 to C-2 was “Fairly Debatable”**

As accurately summarized by the District Court and reflected in the audio and video recordings of City Council and Commission meetings, the decision to pass Ordinance 770 to rezone the property from A-1 to C-2 was a matter of significant debate. [Exs. EE 1:33:15-1:52:50; FF 0:27:45-1:39:40; GG 0:45:20-1:39:15; HH 0:18:15-0:25:15; II 0:54:40-1:04:25; JJ 0:26:25-0:27:20; KK; LL 0:39:24-1:57:50; MM 0:2:00-1:37:00; NN 0:45:55; OO 0:17:50-0:55:00; QQ]<sup>6</sup>. Both opponents and proponents spoke at the twelve meetings and hearings leading up to the decision to rezone. Petitioners confirmed that there were those in the community in favor of the rezoning/development, that the Respondent Council Members listened and weighed the opinions of everyone who spoke, and that Respondent Council Members agreed with the proponents, rather than Petitioners. [App. 1771; 1815-1816; 1817; 1900-1901; 1919; 2106; 1939-1940; 1949-1950; 1419; 1429]. Every Respondent Council Member testified that they listened to all opinions, kept an open mind, and voted for what they believed to be best for Dyersville. [App. 2023; 2031; 1448; 1465].

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<sup>6</sup> This string citation to the record will hereinafter be referred to as “Video Exhibits.”

### C. Ordinance 770 is Constitutionally Valid

Petitioners argue their due process rights were denied because they were not given a “meaningful opportunity to be heard.” They argue their equal protection rights were violated because the 200 foot, A-1 buffer zone surrounding the rezoned area resulted in Petitioners being treated differently from other similarly situated landowners. Both arguments fail.

**i. Procedural Due Process.** Petitioners were afforded procedural due process. “A person is entitled to procedural due process when state action threatens to deprive the person of a protected liberty or property interest.” *Bowers v. Polk Cnty. Bd. of Supervisors*, 638 N.W.2d 682, 690 (Iowa 2002). “The requirements of procedural due process are simple and well established: (1) notice; and (2) a meaningful opportunity to be heard.” *Blumenthal Inv. Trusts v. City of West Des Moines*, 636 N.W.2d 255, 264 (Iowa 2001).

In the context of rezoning, due process merely requires a “comment-argument” type hearing which involves “an opportunity for persons to present data and arguments orally . . . in an effort to communicate their views more effectively than they could in writing.” *Montgomery*, 299 N.W.2d at 693. This is “a much more informal process than an evidentiary hearing.” *Id.*

It is undisputed that proper notice of all work-sessions and meetings was provided to the public, “comment-argument” type hearings were held when required, and Petitioners, along with the general public, were given a meaningful opportunity to be heard. [Exs. EE-OO; Video Exhibits; QQ; App. 1479-1544; 802-805; 806-813; 818-824; 1413; 1417; 1421-1422; 1424; 1428; 1431-1432; 1434; 1437; 1470; 1762-1773; 1809-1815; 1897-1901; 1915-1919; 1921-1922; 1934-1938; 1942-1944; 1946-1948].

Petitioners’ argument otherwise is nothing more than speculation with no citation to the record. Petitioners also allege the City Clerk failed to deliver to the City Council a letter drafted by their attorney and that this violated their due process rights. Petitioners’ attorney, Susan Hess, personally appeared at the August 6, 2012, City Council hearing, with a copy of this letter. She spoke three times to the Council, outlined the concerns raised in the letter and, despite opportunity, did not provide the City Council with a copy. [App. 1539-1544; Ex. OO]. There were no less than twelve public hearings or meetings during which the development was discussed. [Video Exhibits]. Petitioners and their attorney attended these hearings and meetings and spoke about their concerns. [Video Exhibits]. Likewise, many supporters spoke. [Video Exhibits]. Respondent council members all testified they heard, understood and considered all comments, concerns and

opinions presented. [App. 2023; 2031; 1448; 1465]. Petitioners’ procedural due process claim is without merit.

**ii. Equal Protection.** “The first step of an equal protection claim is to identify the classes of similarly situated persons singled out for differential treatment.” *Ames Rental Property Ass’n v. City of Ames*, 736 N.W.2d 255, 259 (Iowa 2007). “If people are not similarly situated, their dissimilar treatment does not violate equal protection.” *Timberland Partners XXI, LLP v. Iowa Dept. of Revenue*, 757 N.W.2d 172, 175 (Iowa 2008). “If a plaintiff fails to articulate, and the court is unable to identify, a class of similarly situated individuals who are allegedly treated differently under the challenged statute, the plaintiff has not satisfied the first step of an equal protection analysis and the court need not address whether the statute has a rational relationship to a legitimate governmental interest.” *Id.*

Petitioners cannot satisfy this first step. Ordinance 770 affected all neighboring landowners the same way: the rezoned property, none of which is owned by Petitioners, is rezoned from A1 to C2. Petitioners argue that the 200-foot buffer zone denied them, as similarly situated landowners, the right to protest under Section 165.39(5). This is inaccurate. First, all landowners within 200 feet to the rear or front of the rezoned area – none of whom are Petitioners (*See* Section I.F.) – were treated alike. Second, it was the

legislature, not Respondents, who created three different classes of people in Section 165.39(5), to wit: (1) persons whose property is rezoned; (2) persons who own property within two hundred feet of the rezoning in the front or rear adjacent; and (3) everyone else.<sup>7</sup> Finally, other jurisdictions have held that an applicant for a zoning change may avoid the necessity for a super-majority (or unanimous) vote by the creation of a buffer zone. *See Schwarz v. City of Glendale*, 950 P.2d 167 (Ariz. 1997); *Eadie v. Town of North Greenbush*, 854 N.E.2d 464 (N.Y.2006); *Pfaff v. City of Lakewood*, 712 P.2d 1041 (Colo. 1986); *Heaton v. City of Charlotte*, 178 S.E.2d 352 (N.C. 1971).

Assuming, *arguendo*, Petitioners could satisfy the first step in an equal protection analysis, they cannot satisfy the second. In analyzing Petitioners' equal protection claim, the court uses the rational basis test. *Bowers*, 638 N.W.2d at 689. "Under the rational basis test, [t]he plaintiff has the heavy burden of showing the statute unconstitutional and must negate every reasonable basis upon which the classification may be sustained." *Varnum v. Brien*, 763 N.W.2d 862, 879 (Iowa 2009). "The rational basis

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<sup>7</sup> Dyersville Chapter 165.39(5) mirrors the former version of Iowa Code §414.5. The current version of §414.5 also distinguishes between (1) persons whose property is rezoned; (2) persons who own property within two hundred feet of the rezoning; and (3) everyone else.

standard requires a consideration of whether there is a reasonable fit between the government interest and the means utilized to advance that interest.”

*State v. Seering*, 701 N.W.2d 655, 665 (Iowa 2005). “Under the rational basis analysis, a statute is constitutional unless it is patently arbitrary and bears no rational relationship to a legitimate governmental interest.” *Bennett v. City of Redfield*, 446 N.W.2d 467, 474 (Iowa 1989).

“In the context of zoning, legitimate government interests include promoting the health, safety, morals, or the general welfare of the community.” *Ames Rental Property Ass’n*, 736 N.W.2d at 259 (citing Iowa Code § 414.1 (2003)). “For legislation to be violative of the Iowa Constitution under the rational basis test, the classification must involve extreme degrees of overinclusion and underinclusion in relation to any particular goal.” *Ames Rental Property Ass’n*, 736 N.W.2d at 260 (*quoting Racing Ass’n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 10 (Iowa 2004)) (internal quotation omitted).

The trial and writ records established the challenged rezoning passes the rational basis analysis, to wit: Respondents believed (and the facts presented to them prior to the rezoning supported) the rezoning and development would be beneficial Dyersville’s economy and tourism. (App. 2031-2033; 1448; 1459; 1460). As to the creation of the buffer zone, City

Administrator Michel testified the City had successfully used a 200 foot buffer zone to address concerns of surrounding property owners when an ethanol plant was constructed. [App. 2037-2039; 2079-2080]. Michel and City Attorney Marc Casey chose the location of the buffer zone in this case to correspond to those property owners who were concerned about and sought protection from the feared negative effects of the rezoning. [App. 2037-2039; 2079-2080]. Michel’s and Casey’s testimony mirrored their prior statements to Respondents. [Exs. OO, QQ]. Finally, both the State of Iowa and Dyersville found a rational basis to create different classes of persons in their respective zoning statutes. *See* Iowa Code § 414.5 and Section 165.39(5), Dyersville City Ordinances. *See also Ames Rental Prop. Ass’n*, 736 N.W.2d at 259 (under the deferential rational basis standard, a “zoning ordinance is valid unless the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious. A statute or ordinance is presumed constitutional and the challenging party has the burden to negat[e] every reasonable basis that might support the disparate treatment. The City is not required or expected to produce evidence to justify its legislative action.”). Petitioners do not challenge the constitutionality of either of these provisions.

**D. The Rezoning From A-1 to C-2 was Not Illegal Spot Zoning.**

Spot zoning is the creation of a small island of property with restrictions on its use different from those imposed on surrounding property. *Fox*, 569 N.W.2d at 508 (quoting *Kane*, 537 N.W.2d at 723). Not all spot zoning is illegal. *Fox*, 569 N.W.2d at 508 (citing *Montgomery*, 299 N.W.2d at 696). It is valid if “germane to an object within the police power and there is a reasonable basis for making the distinction between the spot zoned and the surrounding property.” *Jaffe v. City of Davenport*, 179 N.W.2d 554, 556 (Iowa 1970). This determination “is primarily a legislative matter and is largely within the zoning authority’s discretion.” *Id.* Each case must be decided based on its own peculiar facts. *Id.* “Of primary importance is whether the [rezoned land] ha[s] a peculiar adaptability for the uses allowed by the amendment or is merely carved out of a similar tract equally suited to the restrictions of the amendment.” *Perkins*, 636 N.W.2d at 68.

Petitioners argue that the Court failed “to consider the appropriate analysis for spot zoning in Iowa,” referencing the three prong analysis outlined in *Perkins*. Each prong is analyzed below.

**i. First Prong.** The first prong of the *Perkins*’ test is whether “the new zoning is germane to an object within the police power” of the City Council. *Id.* at 68. In analyzing this prong, the court applies the “fairly debatable”

standard. *Molo Oil Co. v. The City of Dubuque*, 692 N.W.2d 686, 688 (Iowa 2005). Where the reasonableness of a zoning ordinance is fairly debatable, the court will not substitute its judgment for that of the legislative body. *Id.* at 691 (“The reasonableness of a zoning ordinance is fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction, and where reasonable minds may differ; or where the evidence provides a basis for a fair difference of opinion as to its application to a particular piece of property.”). *See also Keller*, 66 N.W.2d 113, 116 (“Under the police power, zoning is a matter within sound legislative discretion and, if the facts do not show the bounds of that discretion have been exceeded, it must be held the action of the legislative body, here the council, is valid.”). There is no dispute that Respondents’ decision to rezone was a matter of various opinions and public debate. [Video Exhibits; App. 1771; 1815-1816; 1817; 1900-1901; 1919; 1939-1940; 1949-1950; 2106; 1419; 1429]. Petitioners’ unsupported assertion that there is no evidence in the record that the public would benefit from the rezoning is wrong. *See also* Section I.E.

Petitioners argue that when analyzing this prong, it is “relevant to consider Iowa law that places an emphasis on preserving the state’s finite

supply of agricultural land.” Petitioners cite no authority in support of this argument, which contradicts *Molo Oil*.

ii. ***Second Prong.***

The second prong of *Perkins* considers “whether there is a reasonable basis for making a distinction between the spot zoned land and the surrounding property.” *Id.* Petitioners argue there is nothing in the record to support distinguishing the rezoned property from the surrounding property. This is not true. At a November 21, 2011, City Council meeting, the uniqueness of the property was specifically addressed by Jacque Rahe, Executive Director of the Dyersville Economic Development Corporation:

This [All Star Ballpark Heaven] can't go anywhere else because the Field of Dreams is where the Field of Dreams is. It may be different if we could say we have this other land here, it is closer to the city, it would be a lot cheaper, this is where you should do it. It is just not the cards we have been dealt and we've been dealt a pretty good hand. [Ex. EE 1:46:10].

Almost the entire record in this case reflects differences in opinions between the suitability of the Field of Dreams property for the proposed development and the changing conditions of not only the Field of Dreams, but Dyersville. [Video Exhibits].

Petitioners do correctly point out that, prior to the annexation, the Field of Dreams property was zoned B-2 business commercial. Only because

of the annexation did it revert back to A-1. [App. 818-824, Ex. QQ].

Petitioners argue that there is nothing on the record showing the prior B-2 usage was considered by the Respondents. Again, this is not true. It was raised by Petitioner Ameskamp and discussed at a City Council meeting [Ex. EE 0:33:40 – 0:37:00], and it was addressed at the July 9<sup>th</sup> P&Z meeting. [App. 818-824; Ex. QQ].

iii. ***Third Prong.***

Finally, the third requirement under *Perkins* is the rezoning must be consistent with the comprehensive plans. *Id.* This requirement is discussed in the Section I.E.

**E. The Rezoning of A-1 to C-2 is Consistent with the City of Dyersville’s Comprehensive Plans**

Petitioners argue Respondents failed to consider the comprehensive plans in its rezoning decision and relied on “misleading information provided exclusively by [the City Administrator].” They provide no citation to the record in support of this conclusory and inaccurate statement. The District Court provided a detailed and accurate summary of Dyersville’s comprehensive plans. In addition to its summary, the record shows the following:

In 1962, the City of Dyersville adopted its first Comprehensive Plan (hereinafter “1962 plan”). [App. 337-467]. The 1962 plan states that “it is

literally speaking impossible for all land in the community to be developed to the complete satisfaction of each individual landowner....Zoning, therefore, must be rationalized and related to a sound economic policy.” [App. 365]. The 1962 Plan set out a future land use plan for commercial development that did not expand outside the downtown area. [App. 452].

In 1974, Dyersville adopted its second Comprehensive Development Plan (hereinafter “1974 plan”) “updat[ing] and expand[ing]” the 1962 plan. [App. 415]. An objective of the 1974 plan was to provide a “flexible” guide “subject to alteration in accord with changing conditions, needs and ideas.” [App. 416]. The 1974 plan emphasized the need for a “stimulating economic environment” for population growth to prevent “stagnant or declining economic conditions” which would set “the scene for population outmigration and-or decline in the standard of living.” [App. 484]. It cited the importance of water, sewer, and street access when considering commercial development outside of the downtown. [App. 511-514]. It discouraged development in agricultural areas *unless* the same can be served by public sewer. [App. 511-516; 570].

In 1991, the City of Dyersville adopted the 1991 Dyersville Community Builder Plan (hereinafter the “1991 plan”). [App. 711-776]. One of the main concerns addressed by this plan was the need for Dyersville to

“become much more aggressive in guiding and encouraging its own growth.” [App. 719]. The 1991 plan noted that “Dyersville is a community with many different facets” with the “most recent facet of Dyersville’s personality” being tourism. [App. 719]. Citing a desire to “keep all of these different facets alive” the plan attempted to “maintain a balance between all of its elements and not sacrifice one for another. Each of them are important and each has ample room to grow and flourish within the community.” [App. 719]. With this goal in mind, the 1991 plan outlined “Dyersville’s Strengths and Weaknesses, Opportunity & Threats” as “guiding tool[s]” for future planning sessions. [App. 720]. Weaknesses cited by the plan included “[e]mpty storefronts,” “[n]eed more youth aimed retail,” “[n]eed more job opportunities” and “[r]etail slowly dying.” [App. 721]. The top threat cited by the plan was the “[l]oss of Field of Dreams or other major tourist attraction.” [App. 722].

In 1997, Dyersville updated and supplemented its 1991 plan in its Community Builder Plan 1997 (hereinafter “1997 plan”). [App. 777-796]. One of the 1997 plan’s purposes was to “[d]escribe how the community plans to improve infrastructure, cultural resources, primary health care services, natural resources, conservation and recreation facilities” with the goal of assisting Dyersville in “planning and implementing comprehensive

planning efforts for community development, business development and economic development.” [App. 779].

The 1991 and 1997 plans mirrored one another in their goals for Dyersville. The first goal cited in each was “expanding local economy in the industrial, commercial, and tourist sectors” with stated objectives being “more aggressive in recruiting industries” and “more aggressive in meeting the needs of existing business and industry.” [App. 724-725; 783-785]. Both also had a goal of ensuring adequate public capital facilities and financing, including proposed strategies encouraging “public-private partnership whenever possible” and utilizing alternative sources of funding to “defray the costs of capital improvements whenever possible.” [App. 727; 787].

Finally, in 2003, an Annexation Plan was adopted as a “general plan” for potential annexation of the unincorporated fringe areas surrounding Dyersville, focusing “primarily on the estimated costs and benefits associated with potential growth areas.” [App. 663].

The recurring themes of the 1962, 1974, 1991, and 1997 plans are that they are to be flexible guides for future growth and that Dyersville needs to be more aggressive in its economic development. Recurring considerations when determining the appropriateness of an area for commercial development is access to public water and sewer and transportation

corridors. It is undisputed that economic development was the primary consideration of Respondents when voting to rezone the property. Water and sewer access was of paramount concern to Respondents, resulting in Respondents hiring IIW Engineering to study the feasibility of running water and sewer to the property. [App. 971-1025]. After the study demonstrated that it was possible – and before the vote to rezone the property – Respondents approved a Memorandum of Understanding with the developers who agreed to pay for the necessary water and sewer infrastructure. [App. 798-801. *See also* App. 866-880]. Further, tourism, traffic concerns, highway maintenance, and the potential impact on existing downtown businesses were considered by both the P&Z Commission (in its unanimous vote to Respondents) and Respondents. [Video Exhibits; App. 881-934; 935-970; 971-1025; 818-824].

In addition to the formal plans listed above, the Dyersville City Council also meets biennially for goal setting sessions. In 2007, 2009, and 2011, the following were listed as “Issues, Concerns, Trends and Opportunities” of the City Council: “Selling our ‘Great’ city,” “Resistance to change in the community,” and “Drawing more people to our city: visit, live and work.” [App. 1088-1126].

Petitioners read the statutory phrase “in accordance with a comprehensive plan” as “only as prescribed by a comprehensive plan.” This reading ignores Iowa law. In *Botsko v. Davenport Civil Rights Comm’n*, the Iowa Supreme Court cited a dictionary definition of the term as meaning “agreement” or “conformity” in holding that a tribunal acts in “accordance” when it acts “consistent with” statutory requirements. 774 N.W.2d 841, 846 (Iowa 2009) (*citing* Merriam-Webster's Collegiate Dictionary 7 (10th ed. 2002)). Respondents’ decision to rezone the Property was “in accordance” with Dyersville’s comprehensive plan and its zoning ordinances.

In *Montgomery v. Bremer Cnty. Bd. of Sup'rs*, a rezoning was challenged by neighboring landowners who claimed it was not in accordance with a comprehensive plan. In affirming the action of the Board of Supervisors, the Iowa Supreme Court dismissed the challengers’ arguments:

Merely because the Board did not predict then that the specific tracts involved here could be used industrially does not mean the Board is acting without a comprehensive plan now. While the rezoning was prompted by the request from Hormel, the Board did not merely rubberstamp the request. The Board considered the unique suitability of the land for industrial development because of access to roads, railroads, water and high power lines.

The fact that the land had been zoned and used agriculturally did not show a lack of comprehensive plan in deciding to rezone. There

was evidence that the land was not particularly well suited for agricultural use. The previous classification of the land as agricultural, the most restrictive classification, was designed to limit other uses in the county until the Board could consider specific rezoning requests. The agricultural zone was not designed to preclude future industrial uses.

The Bremer County Comprehensive Plan stated a goal of “balancing out” agricultural employment opportunities with nonagricultural employment. The Plan discussed the significance of manufacturing to the economy of Bremer County. Along with manufacturing come jobs, capital investment and tax revenue. The Plan also recognized that processing of commodities was a “keystone” of the economy. We conclude that the Board has rationally decided to rezone this land to further these goals in accordance with a comprehensive plan.

*299 N.W.2d at 6395. See also Iowa Coal Min. Co. v. Monroe Cnty.*, 494 N.W.2d 664, 669 (Iowa 1993) (“in the context of rezoning, this court has held that compliance with the comprehensive plan requirement merely means that zoning authorities have given ‘full consideration’ to the problem presented, including the needs of the public, changing conditions, and the similarity of other land in the same area”); *Riniker v. Dubuque Cnty.*, 2002 WL 1842918, at \*2 (Iowa App. 2002) (unpublished opinion) (even though “comments from members of the Board reveal[ed] varying degrees of understanding of the particulars” of the comprehensive plan “[c]ase law has clarified that if a board of supervisors gave 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”); *W&G McKinney Farms, L.P. v. Dallas County Bd. of Adj.*, 674 N.W.2d 99, 105 (Iowa 2004) (a comprehensive plan must be considered in its entirety: “[s]trict adherence to certain statements made in the plan could actually negate other goals and objectives of the comprehensive plan.”); *Ackman v. Bd. of Adj. for Black Hawk County*, 596 N.W.2d 96, 103 (Iowa 1999) (“[P]laintiffs' argument that the policies must be applied strictly would undermine their very purpose—to guide zoning officials in harmonizing competing land uses. Strict adherence to the statements could actually negate other objectives of the comprehensive plan.”).

In *Alexanderson v. Bd. of Clark Cnty. Comm'rs*, 144 P.3d 1219 (Wash. 2006), a Memorandum of Understanding was found to be a de facto amendment of the county's comprehensive plan documents. In this case, the Memorandum of Understanding [App. 748-801] approved by the Council on June 18, 2012, can likewise be considered an amendment by the Council of previous plan documents, responding to the change of circumstances presented by the development proposal.

The trial and writ records show the rezoning was consistent with Dyersville’s comprehensive plans. Respondent English testified that he reviewed the “1990s’ plans” prior to his vote. [App. 1459]. The City’s and County’s comprehensive plans were discussed at the July 9, 2012, P&Z meeting. [Ex. QQ 0:07:05 – 0:08:03, 12:25, 15:00, 16:03].<sup>8</sup> The 2003 Annexation Plan was discussed at both the November 21, 2011, and February 20, 2012, City Council meetings. [Exs. EE 1:33:15-1:52:50; FF 0:27:45-1:39:40]. The trial and writ records show the process that resulted in this rezoning was comprehensive and gave due consideration to all of the factors identified by the Petitioners: the impact of the development; appropriate land use and density; use of open space; effect on the nearby environment; crime; the impact on local farming practices; value of surrounding property; logistical, infrastructure, and traffic concerns; and the use and enjoyment of surrounding landowners. [App. 802-805; 806-813; 818-824; 1479-1544; Exs. EE – PP].

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<sup>8</sup> At 7:05 of Ex. PP, City Administrator Michel provided a detailed outline of the plans. Some of the individual Respondents were present at the P&Z meeting as observers. [App. 1740; 2031; 1462].

**F. Petitioners Failed to Trigger the Protest Provision of Section 165.39(5), Dyersville City Ordinances**

Petitioners argue that the District Court erred in (1) holding that they failed to trigger the protest provision of Chapter 165.39(5); (2) failing to apply the appropriate definition of “lot”; and (3) failing to correctly analyze and apply Chapter 165.39(5) to the facts of this case. Petitioners provide neither relevant citation to the record nor any case law analysis in support of their arguments.

Section 165.39(5) of the Dyersville City Ordinance states:

Council Vote. If the Commission recommends against, or if a protest against such proposed amendment, supplement, change, modification or repeal is presented in writing to the Clerk, duly signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending the depth of one lot or not to exceed two hundred (200) feet therefrom, or of those directly opposite thereto, extending the depth of one lot or not to exceed two hundred (200) feet from the street frontage of such opposite lots, such amendment, supplement, change, modifications, or repeal shall not become effective except by the favorable vote of all members of the Council.

Petitioners failed to submit a proper protest prior to the August 6, 2012, council meeting. [App. 2044]. The August 6, 2012, letter faxed by Petitioners’ attorney at 4:30 p.m. immediately prior to the 6:00 p.m. City

Council meeting was not signed by 20% or more of the surrounding lot owners. [App. 1539-1544; Ex. OO].

Petitioners, as the party relying on the supermajority voting requirement, have the burden of proving that the owners of 20% or more of the area of the property specified in the statute have protested the rezoning. *Fondren N. Renaissance v. Mayor & City Council of City of Jackson*, 749 So. 2d 974, 980 (Miss. 1999). “This 20 percent showing must be made before the local governing body and cannot be raised for the first time upon appeal.” *Id.* (citing *City of Biloxi v. Hilbert*, 597 So. 2d 1276, 1280 (Miss. 1992)). Petitioners failed to make any showing to the Dyersville City Council that the owners of 20% or more of the land entitled to protest signed the purported protest other than a blanket statement by their attorney, which was immediately refuted by City Attorney Marc Casey. [Ex. OO]. At trial, Petitioners provided self-serving and contradictory testimony: one witness claimed the protest was signed by 21% [App. 1720] of the property owners entitled to protest; another claimed it was closer to 40% [App. 1895]. No formula was provided for how these numbers were calculated and Petitioners’ own expert failed to provide an estimate. Petitioners have failed in their burden.

More importantly, Petitioners' reading of Section 165.39(5) is wrong. The Ordinance, which is quoted in its entirety above, sets forth three categories of landowners who may file a protest: (1) owners of 20% or more of the area of the lots included in the proposed change; (2) owners of 20% or more of the property immediately adjacent in the rear of the proposed change extending the depth of one lot or not to exceed two hundred (200) feet; or (3) owners of 20% or more of the property directly opposite the proposed change extending the depth of one lot or not to exceed two hundred (200) feet from the street frontage of such opposite lots.

With respect to category 1 above, it is undisputed that 0% of the owners of the area of the lots included in the proposed change [the Lansings] signed the August 6<sup>th</sup> letter. [App. 879; 1168-1177].

In *Heaton v. City of Charlotte*, the North Carolina Supreme Court examined statutory language substantially similar to the language in category 2 and held that the term "immediately adjacent" refers to land extending from the rezoned area – not from the exterior boundary line of the lot in which the zoning change is proposed. In that case, the relevant statute provided as follows:

Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the

owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of three-fourths of all the members of the legislative body of such municipality.

178 S.E.2d at 361. The City of Charlotte enacted a zoning amendment that included an area that “skirted the area proposed to be rezoned so that at no point was the property of any of the plaintiffs within 100 feet of the area proposed to be rezoned.” *Id.* The plaintiffs nonetheless claimed that “their properties lie, in relation to the property proposed to be rezoned, immediately adjacent thereto . . . extending one hundred feet therefrom.” *Id.* The Court’s analysis hinged on the meaning of the phrase “immediately adjacent,” which it concluded means “adjoining” or “abutting.” *Id.* at 364. Since plaintiffs did not own 20% of the land adjoining or abutting the rezoned area of the lot, a supermajority vote was not triggered. *See also Armstrong v. McInnis*, 142 S.E.2d 670, 679 (N.C. 1965) (explicitly permitting the use of zoning buffer zones, stating, “[t]he creation of a buffer zone of 101 feet around the outer edge of the Williard Tract, which buffer zone is to remain zoned as Residential A-20, is permissible.); *Parsons v. Town of Wethersfield*, 60 A.2d 771, 773 (Conn. 1948) (“To say that the term

‘lots immediately adjacent’ is to be defined as lots in the immediate vicinity or neighborhood, as claimed by the plaintiffs, would furnish no definite standard on which to figure the percentage. If, on the other hand, it is construed as meaning ‘adjoining or abutting,’ the test can be easily applied. The latter is a common definition.”); *Putney v. Abington Twp.*, 108 A.2d 134, 141 (Pa. 1954) (“immediately adjacent” means “touching” the area rezoned).

Applying the cases cited to the present case, none of the signatories to the August 6 2012, letter were property owners entitled to protest under category 2. The only property owners extending the depth of one lot immediately adjacent in the rear were the Lansing. [App. 879; 1168-1177].

Finally, in *Penny v. City of Durham*, 107 S.E.2d 72 (N.C. 1959), North Carolina addressed the language in category 3. In *Penny*, a proposed rezoning included an area of 150 feet between the street fronting the property and the area of the property to be rezoned. *Id.* at 74. Owners of more than twenty percent of the area of the lots abutting on the opposite side of the street fronting the property protested the change. *Id.* The Court held that “the expression ‘directly opposite’ when applied to the lands in this case means those tracts of land on opposite sides of the street with only the street intervening.” *Id.* (emphasis added). Accordingly, since a 150 foot zone

intervened between the rezoned area and the street fronting the lot in which the rezoned area was located, no supermajority vote was triggered.

Applying *Penny* to the present facts yields the same result. Section 165.39(5) permits a challenge by the owners of property directly opposite of the proposed rezoned area extending the depth of one lot, not to exceed two hundred (200) feet. Again, the only property owners this applied to were the Lansings. [App. 879; 1168-1177]. The property owners on the opposite side of the street did not have a right to protest because there was a lot between the proposed rezoning and the street.

Not only is Respondents' interpretation of 165.39(5) consistent with case law in other jurisdictions, it is also grammatically correct. If one replaces the pronouns with the immediately preceding appropriate noun, section 165.39(5) reads as follows:

5. Council Vote. If the Commission recommends against, or if a protest against such proposed amendment, supplement, change, modification or repeal is presented in writing to the Clerk, duly signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear **of such proposed change** extending the depth of one lot or not to exceed two hundred (200) feet from **such proposed change**, or of those directly opposite **to such proposed change**, extending the depth of one lot or not to exceed two hundred (200) feet from the street frontage of such opposite lots, such amendment, supplement,

change, modifications, or repeal shall not become effective except by the favorable vote of all members of the Council.

This grammatically correct reading of 165.39(5) results in the same outcome as *Heaton* and *Penny*: with or without the 200 foot area that was not rezoned, the only property owners who could protest under 165.39(5) were the Lansings and they did not sign the August 6, 2012, letter. [App. 879; 1168-1177].

**G. Petitioners' Miscellaneous Allegations of Impartiality, Failure to Consider, etc. are Without Merit**

Petitioners assert that the City Council failed to act impartially. It is not improper for a City Council member to obtain information outside of the public hearing. *Sutton*, 729 N.W.2d at 801(citing *Sutton v. Dubuque City Council*, case no. EQCV93688 (the Supreme Court was “satisfied that the district court’s ruling” that it was “not only legal but wholly proper and reasonable for a developer to take individual council members, one at a time” to a proposed development site “was correct.”)).

Courts in other jurisdictions have widely held it is appropriate for a city council to consider information received outside of public hearing in voting on zoning amendments. In *Gayland v. Salt Lake Cnty.*, a municipality appealed a lower court’s order that approved a rezoning request that the

municipality had denied. In overturning the lower court's ruling, the Utah

Supreme Court stated:

In support of its contention that the refusal to approve its application was an arbitrary deprivation of its property rights, plaintiff argues that the Commission improperly heard, considered and based its determination on protests and representations voiced by people representing jealous business interests in the general area. We do not see any impropriety in the Commission receiving and taking into account any information they had to offer bearing on the problem under consideration.

It is important to keep in mind that such a hearing is not of the same character as a trial, nor even of an administrative hearing or other legal proceeding, and is not limited by formal rules of procedure or evidence as they are. In pursuing its authority to zone the county the [sic] Commission is performing a legislative function. It has the responsibility of advising itself of all pertinent facts as a basis for determining what is in the public interest in that regard. For this reason it is entirely appropriate to hold public hearings and to allow any interested parties it desires to give information and to present their ideas on the matter. But this is by no means the only source from which the commissioners may obtain such information. From the fact that they hold such public offices it is to be assumed that they have wide knowledge of the various conditions and activities in the county bearing on the question of proper zoning, such as the location of businesses, schools, roads and traffic conditions, growth in population and housing, the capacity of utilities, the existing classification of surrounding property, and the effect that the proposed reclassification

may have on these things and upon the general orderly development of the county. In performing their duty it is both their privilege and obligation to take into consideration their own knowledge of such matters and also to gather available pertinent information from all possible sources and give consideration to it in making their determination.

358 P.2d 633, 635 (Utah 1961). *See also Fondren N. Renaissance*, 749 So. 2d at 978 (holding that it was permissible for a City Council member to consider a telephone call from a constituent); *Harmon City, Inc. v. Draper City*, 997 P.2d 321, 329 (Utah App. 2000) (holding that a city council “was not required to disregard the concerns of its electorate—or its own concerns—when performing in a legislative capacity”); *Summit Ridge Dev. Co. v. City of Independence*, 821 S.W.2d 516, 520 (Mo. App. 1991) (stating the assertion that “constituents should be prevented from contacting their Council person on matters of neighborhood concern is denied outright”).

American Law of Zoning, a treatise cited in *Shriver*, states:

A municipal legislator is not disqualified to vote on a zoning amendment simply because he has expressed an opinion as to the appropriate disposition of the proposed measure. A legislator is not disqualified simply because he talked with an applicant seeking a zone change. To impose so strict a requirement of impartiality on legislators would be to ignore the political realities of the election process and to unnecessarily restrict public dialogue on zoning problems.

4 Am. Law. Zoning § 38:14 (5th ed. 2014).

Moreover, in *Bluffs Dev. Co., Inc. v. The Bd. Of Adj. of Pottawattamie Cnty.*, the Iowa Supreme Court set forth the standard for disqualifying a quasi-judicial officer from acting on a matter, stating:

The interest must be different from that which the quasi-judicial officer holds in common with members of the public. For example, a personal interest in the welfare of the community is not a disqualifying interest. In addition, such interest must be direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial, or merely speculative or theoretical.

Practicality is the driving force behind these standards. As one court wisely noted,

local governments would be seriously handicapped if any conceivable interest, no matter how remote and speculative, would require the disqualification of a zoning official. Such a policy would not only discourage but might even prevent capable men and women from serving as members of the various zoning authorities.

Practicality has convinced one court that due process standards for disqualification of quasi-judicial officers do not rise to the level of those prescribed for judicial disqualification. On this point the court. . . noted that such a rarefied atmosphere of impartiality cannot practically be achieved where the persons acting as administrative adjudicators, whose decisions are normally subject to judicial review, often have other employment or associations in the community they serve. It would be difficult to find competent people willing to serve, commonly

without recompense, upon the numerous boards and commissions in this state if any connection with such agencies, however remotely related to the matters they are called upon to decide, were deemed to disqualify them. Neither the federal courts nor this court require a standard so difficult to implement as a prerequisite of due process of law for administrative adjudication.

499 N.W.2d 12, 15 (Iowa 1993). Petitioners failed to show any “direct, definite, capable of demonstration” interest on the part of any of the Respondents. No Dyersville City Council or P&Z member had a direct and personal financial interest in the rezoning or proposed development. [App. 146-181].<sup>9</sup> Petitioners’ claim is without merit.

Petitioners’ claim that City Staff was essentially working for the developers is also false. [App. 2054; 2093-2094]. Their arguments otherwise come from a lack of understanding, conjecture, and innuendo. Finally, Respondents are not required to issue written findings of fact. *See Marianne Craft Norton Trust*, 776 N.W.2d at \*3 (Unpublished) (affirming the district court’s finding that it did not “read *Sutton* as requiring a council to issue written finding.”).

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<sup>9</sup> Petitioners spend significant brief space alleging that P&Z Commission Member Roger Gibbs had a disqualifying conflict of interest. The July 9, 2012, P&Z meeting decision is not appealable. However, Petitioners summary of Mr. Gibbs’ interest in the rezoning and development is exaggerated and at times, false. [See App. 1958-1965; 1969-1973].

## **II. THE DISTRICT COURT PROPERLY ANNULLED THE WRIT WITH RESPECT TO ORDINANCE 777, WHICH CORRECTED THE SCRIVENER'S ERROR IN ORDINANCE 770**

**Preservation of Error.** Petitioners preserved error on this issue.

**Standard of Review.** The appellate court reviews the District Court's decision on a petition for writ of certiorari for correction of errors at law and it is bound by the District Court's factual findings if supported by substantial evidence. *Fox*, 569 N.W.2d at 507.

**Argument.** Petitioners argue Ordinance 777, which corrected one letter in the legal description contained in Ordinance 770, is invalid because it rezoned the property and therefore all the procedural requisites of a rezoning were necessary. Petitioners have blown hot and cold on this issue. In their resistance to Respondents' summary judgment motion, they conceded "[t]he purpose of Ordinance 777 was not a rezoning of property." [App. 188] However, at the time of trial, they were again arguing that Ordinance 777 was a rezoning.

The District Court accurately described the dispute surrounding Ordinance 777, which Respondents hereby adopt, with citations to the record in brackets:

"Lastly, the Petitioners claim that Ordinance 777 is illegal. The facts are undisputed. The legal description of the property described in the

proposed zoning change in Ordinance 770 was incorrect. It contained one error, described as a typographical error by the Respondents. The error was discovered sometime after Ordinance 770 had passed. Ordinance 777 proposed to correct the error and amend Ordinance 770 ‘to correct a scrivener’s error by substituting the SE1/4 of the SE1/4 of Section 22, Township 89 North, Range 2 West of the 5<sup>th</sup> Principal Meridian in all places for and removing all references to the SW1/4 of the SE1/4 of Section 22, Township 89 North, Range 2 West of the 5<sup>th</sup> Principal Meridian.’ [App. 1237-1240; 1405-1411] Notice was provided to the public. [App. 1237-124-; 1405-1411]. No one spoke at the Council meeting about Ordinance 777.” [App. 1405-1411; Ex. PP].

[App. 291].

Again, it is undisputed that notice of Ordinance 777 was provided to the public [App. 1237-1240] and no one spoke against the correction at the Council meeting. [App. 1405-1411; Ex. PP 0:24:58 – 0:30:50].

Petitioners exclusively and improperly rely on *Gorman v. City Development Board*, 565 N.W.2d 607 (Iowa 1997) in support of their argument that Ordinance 777 was illegal. In *Gorman*, the plaintiff challenged a voluntary annexation. The notice in *Gorman* contained an incorrect legal description of the property, resulting in the omission of 40 acres. *Id.* Despite the error, the annexation agreement was approved. *Id.* The Supreme Court held the annexation agreement invalid because it did not substantially comply with the requirements of §368.7, Code of Iowa, which

requires the legal description be in the notice. *Id.* The Court also considered the collateral consequences of the mistake, noting that in a voluntary annexation proceedings, the legal description is provided to and relied upon by the “secretary of State, county boards of supervisors, affected public utilities, the Iowa Department of Transportation, and regional planning authorities.” *Id.*

Ten years later, the Iowa Court of Appeals “easily distinguished” *Gorman* in *Heintz v. City of Fairfax*, 730 N.W.2d 210 (Iowa. App. 2007) (table decision). In *Heintz*, an annexation moratorium enacted under §368.4, Code of Iowa, which only requires notice and a hearing, was challenged by the plaintiffs who claimed failure to include a legal description in the public notice was fatal. *Id.* at \*2. The plaintiffs in *Heintz* argued *Gorman* stands for the proposition that a legal description must be contained in notice of a moratorium agreement and failure to include the legal description invalidated the agreement. *Id.* The Court rejected this argument, finding *Gorman* “easily” distinguishable because the voluntary annexation statute (§368.7) required a legal description, while the statute governing the moratorium agreement (§368.4) did not. *Id.*

Neither §414.4, Code of Iowa, nor Chapter 165.39, Dyersville City Ordinances, require a legal description be included in the public notice.

Further, the collateral consequences outlined in *Gorman* are absent in a rezoning, which is used only as a function of the City of Dyersville to determine the appropriate zoning district.

“Substantial compliance” with a zoning ordinance is all that is required of Respondents. *Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483, 488 (Iowa 2008). “Substantial compliance” means the statute “has been followed sufficiently so as to carry out the intent for which it was adopted.” *Id.* Respondents “clearly” substantially complied with the statutory requirements. [App. 1237-1240; 1405-1411; Ex. PP].

Finally, “an ordinance is validly adopted even though the notice of hearing imperfectly describes the subject thereof, where the defect is so minimal that no one could have been truly misled.” 1 Am. Law. Zoning § 8:6 (5th ed. 2014). The following fact is undisputed: no Petitioner was confused or misled by the incorrect legal description in Ordinance 770. [App. 1760-1761; 1818-1819; 1901-1902; 1415; 1418-1419; 1426; 1435; 1468; 1471]. In fact, Petitioners’ Petition filed September 4, 2012, contained a map [Ex. 26] accurately reflecting the area intended to be rezoned by Ordinance 770, and this map was cited by Petitioners as the rezoned property “commonly known as” the “Field of Dreams Property.” [App. 1, 6, 7].

The District Court properly sustained Respondents' actions with respect to Ordinance 777 and annulled the writ. Its decision must be affirmed.

### **III. THE COURT GAVE THE APPROPRIATE WEIGHT TO THE OPINION AND TESTIMONY OF PETITIONERS' EXPERT CHRISTOPHER SHIRES**

**Preservation of Error.** Petitioners preserved error on this issue.

**Standard of Review.** The appellate court reviews a District Court's decision regarding the admissibility of evidence for abuse of discretion. *State v. Rodriquez*, 636 N.W.2d 234, 245 (Iowa 2001); *Oldham by Oldham v. Shenandoah Cmty. Sch. Dist.*, 461 N.W.2d 207, 209 (Iowa App. 1990).

**Argument.** Petitioners speculate that because the Court failed to reference Mr. Shires' testimony in its Order, it did not give it any weight. If the Court's silence as to Mr. Shires' testimony is reflective of the weight it was given, the Court was not in error.

When deciding whether an expert should testify, the preliminary question the Court must ask is whether the proposed testimony will assist the trier of fact in understanding the evidence or determining a fact at issue. Iowa R. Evid. 5.702. *See also Quad City Bank & Trust v. Jim Kircher & Associates, P.C.*, 804 N.W.2d 83, 92 (2011); *In re Det. of Holtz*, 653 N.W.2d 613, 615 (Iowa Ct. App. 2002). The proponent of the testimony bears the

burden of showing that it will aid the trier of fact. *Holtz*, 653 N.W.2d at 615.

"All expert opinion testimony is admitted as a matter of necessity; it must first appear that a jury needs assistance on issues it is unable to intelligently and correctly determine alone." *Dougherty v. Boyken*, 155 N.W.2d 488, 490 (Iowa 1968). Mr. Shires' opinion as to "prudent planning practice" and his interpretation of the Dyersville ordinances and comprehensive plans were not necessary in the Court's determination of whether or not Respondents acted in excess of their jurisdiction or otherwise acted illegally.

Mr. Shires' opinions regarding the legal and procedural requirements of Dyersville and Iowa law, the meaning of Dyersville's comprehensive plans, the effect of the Memorandum of Understanding, and spot zoning all constituted impermissible opinion testimony upon "a question of law or mixed question of law and fact upon which even an expert witness is not permitted to express his opinion directly. Such matters are not the subject of opinion testimony." *M. Capp. Mfg. Co. v. Hartman*, 148 N.W.2d 465, 468 (Iowa 1967). In *Hartman*, the Iowa Supreme Court held that a building inspector's testimony that construction of a home would violate the zoning ordinance was incompetent as a legal conclusion and opinion of the witness. *Id.* See also Iowa R. Evid. 5.704; *In re Det. of Palmer*, 691 N.W.2d 413,419 (Iowa 2005) (a witness cannot opine on a legal conclusion or whether the

facts of the case meet a given legal standard); *In re Estate of Ohrt*, 516 N.W.2d 896, 900 (Iowa 1994) ("Experts, no matter how well qualified, generally should not be permitted to give opinions on questions of domestic law"); *Kooyman v. Farm Bureau Mutual Insurance Co.*, 315 N.W.2d 30, 37 (Iowa 1982) (expert opinion that liability insurer's attorneys acted in bad faith and that insurer failed to conduct a sufficient investigation of a claim against the insured was inadmissible).

Further, Mr. Shires' opinion as to what constitutes "prudent planning practice" was irrelevant to any issue at trial, let alone whether Respondents exceeded their jurisdiction or acted illegally. *See* Iowa R. Civ, Pro. 5.401, 5.403, 1.1401. It is undisputed the City Council had jurisdiction to rezone the subject property. *See* ¶1 of the Petition, filed 9.4.12. Regarding illegality, Respondents' decision must be upheld if supported by any competent and substantial evidence. *Carstensen v. Board of Trustees*, 253 N.W.2d 560, 562 (Iowa 1977). If the zoning decision is fairly debatable, it is presumed to be valid and upheld. *Jaffe*, 179 N.W.2d at 555 (Iowa 1970). *See also Schmidt v. City of Bella Villa*, 557 F.3d 564, 571 (8th Cir. 2009) (District Court properly excluded testimony of expert witness when it did not relevant to any issue in the case).

Finally, Mr. Shires' testimony could not aid and therefore was not material to the Court's decision. *See Harrington v. State*, 659 N.W.2d 509, 523 (Iowa 2003) ("Evidence is material when 'there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.'").

### **Conclusion**

The District Court's annulment of the writs related to Ordinances 770 and 777 was proper. It must be affirmed.

### **Request for Oral Argument**

Respondents respectfully request oral argument.