IN THE COURT OF APPEALS OF IOWA

No. 23-0772
Filed March 27, 2024

COUNTRY VIEW ACRES HOMEOWNERS,
Plaintiff-Appellant,

vs.

DICKINSON COUNTY, IOWA and DICKINSON COUNTY BOARD OF ADJUSTMENT,
Defendants-Appellees,

and

WOODLYN HILLS ESTATES, LLC,
Intervenor.

Appeal from the Iowa District Court for Dickinson County, Charles Borth, Judge.

After the local board of adjustment granted a conditional use permit for some land near their homes, a group of homeowners challenged the board's ruling by writ of certiorari. The district court annulled the writ, which the homeowners challenge on appeal. **REVERSED AND REMANDED WITH DIRECTIONS.**

Jamie Hunter and Gary Dickey of Dickey, Campbell & Sahag Law Firm, PLC, Des Moines, for appellant.

Eric M. Updegraff and Alex S. Dornacker of Hopkins & Huebner, P.C., Des Moines, for appellees.

David C. Briese of Crary, Huff, Ringgenberg, Hartnett & Storm, P.C., Sioux City, for intervenor.

Heard by Bower, C.J., Chicchelly, J., and Doyle, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2024).

DOYLE, Senior Judge.

Woodlyn Hills Estates, LLC (Woodlyn Hills) owns nearly eighty-eight acres of real estate in rural Dickinson County; it applied for a conditional use permit to develop an RV park with 174 *s*pots. Following public hearings, the Dickinson County Board of Adjustment (the Board) voted 3-2 to grant the permit.

Country View Acres Homeowners (the Homeowners), a nonprofit association of individuals who own homes in Dickinson County near the proposed RV park, petitioned for a writ of certiorari to challenge the Board's decision. The district court allowed Woodlyn Hills to intervene in the proceedings and, following the admission of some additional evidence, ultimately annulled the writ.

On appeal, the Homeowners claim the writ should have been sustained because the Board acted illegally by failing to substantially comply with procedural requirements before reaching its decision and because its decision to grant the conditional use permit is not supported by substantial evidence.

I. Background Facts and Proceedings.

In late 2020, Woodlyn Hills acquired land in rural Dickinson County on which a golf course was previously operated. It applied to the Board, seeking a conditional use permit that would allow it to convert the site into a for-profit campground. As part of its application, Woodlyn Hills proposed using the existing buildings as a clubhouse and maintenance buildings; constructing a new storm shelter; and adding gravel drives, boat parking, and sites for 174 campers or RVs, with utility connections, potable water, internet and cable, and a private sewer (because no public sewer was available).

Requisite notice was given of Woodlyn Hills's request for a conditional use permit, and a public hearing was held on April 25, 2022 at 7:00 p.m.

The April 25 hearing began with a member of the Board reading an opening statement that explained the procedure used for its public hearings, which included that the Board "welcome[d] all testimony." Woodlyn Hills[1] presented its request for the conditional use permit, giving an overview of its plan and presenting some of the information and opinions it had obtained from outside agencies and companies regarding how utilities would work at the site, the plan for a private sewer that had been submitted to the Iowa Department of Natural Resources (DNR), and the expected environmental impact. Then members of the Board asked questions of Woodlyn Hills about planned improvement of the pond already on-site and safety measures that would be in place in case of severe weather. After noting that Woodlyn Hills stated in its application that it was not viable to connect the RV park to the nearby public sewers of the Iowa Great Lakes Sanitary District or the City of Milford, one of the Board members asked whether it was just distance and lack of connection points that made it not viable or if there were other reasons. Woodlyn Hills responded that it "would love to connect" to a public sewer and reiterated that the private sewer it had planned was designed to allow for easy connection in the future—if public sewer ever became available. After the Board members said they had no more questions, some sixty-nine letters and emails that were sent in support of or opposition to the granting the permit were read aloud by Megan

[1] Bryan and Daniel Schmit represented the project; for simplicity, we ascribe their actions to Woodlyn Hills.

Kardell, the Dickinson County Zoning and Environmental Health Assistant. She identified the authors of each letter and email but not their addresses.

Sometime during the reading of the correspondence, someone interjected, stating, "Excuse me. We haven't heard anything new in these objections." The assistant county attorney who was present responded that "They all have to be read . . . . Because everybody gets their voice if they took the time to write an email or letter." After the sixty-ninth letter was read, the Board opened the hearing up for public comment. Ten people spoke, including one woman who had also submitted a letter and Steven Anderson, who is both the superintendent of the Iowa Great Lakes Sanitary District and the mayor of Milford. Anderson commented that the letter he provided on behalf of the Iowa Great Lakes Sanitary District stating the RV park would be unable to hook up to its public sewer was correct. But he raised questions about Woodlyn Hills's claim it could not connect to the City of Milford's public sewer, suggesting it lacked supporting documentation and had not been in contact with the city.

After asking several times if anyone else wanted to speak, the Board closed the public discussion; it indicated the Board would speak with Woodlyn Hills before allowing it to summarize its position. Woodlyn Hills reported that—knowing Anderson's dual roles—it believed it reasonably relied on his March 2021 email in which he gave the location of the closest place to hook up with Milford's sewer, which was about a mile away from the site of the proposed RV park, when it concluded that joining Milford's public sewer was not viable. Woodlyn Hills stated, "If [Anderson] says sewer's available and he's offering it, we accept his offer. So, we can make that a condition of the proposal. We accept his offer. It's designed,

currently, to use it." After interruptions and back and forth with members of the public, the zoning administrator, David Kohlhaase, stepped in and said,

> [W]e've told the applicants, they need to exhaust everything possible to get the public sewer. So, . . . I think we need clarification on if sewer is available, and if it is, where is it? And, and in reference to the code that I use, and this is, is beyond the code that I use because of the usage, but in reference to the code that I use, it's 200 feet to the dwelling from the sewer [to be "available."] . . . I think we need clarification on the sewer because that's been a big issue along the way.

Woodlyn Hills responded that no more information was necessary before the vote because the Board could just set the condition that if the public sewer was available, then Woodlyn Hills had to join it.

When Kohlhaase asked Anderson if he could clarify the issue, Anderson stated:

> All I can speak for, I, I'm the mayor of Milford. I don't know where all the facilities are. I don't know what we have for availability. That's why you need to talk to the City of Milford. The sanitary district's facilities, as stated in the letter, are on the north side of Lower Gar Lake. The City's facilities are on the south side. I don't oversee those. I don't regulate, well I regulate them, but we make sure that we've got capacity for what's going towards what station on that other side of the lake. That's what the letter said you need to talk to the City of Milford.

Kohlhaase suggested the issue could not be solved that night and recommended the Board continue the public hearing to a later date so Woodlyn Hills could verify whether public sewer was, in fact, available for the proposed RV park. Kohlhaase also announced that the Board would not be accepting any added letters or public comments because the hearing was being continued and the portion for public involvement was already closed. The Board set the continuation of the hearing for June 6, and the requisite notice was again given.

The June 6 Board meeting was opened the same way as the April 25 hearing—with the reading of the opening statement which "welcome[d] all testimony." Almost immediately, the Board stated it was taking up "older" business — a continuation of Woodlyn Hill's request for a conditional use permit. The Board reminded everyone present that the public comment portion of the proceeding was both opened and closed at the April 25 proceeding, and it was at the point of the process where discussion was ongoing between the Board and Woodlyn Hills. Woodlyn Hills showed a video of the site and pictures from various other campgrounds that it planned to use as inspiration. Then, it detailed all of the discussions that were had between the two dates of the hearing to determine that—without being annexed by Milford, which did not appear immediately possible—the city's public sewer was unavailable to the RV park. Woodlyn Hills then presented more information about its planned private sewer, steps it had taken to deal with concerns over safety of the campers in the event of severe weather, a video showing the distance from the homes of the nearby neighborhoods to the RV park, and information suggesting the RV park would not decrease the value of homes nearby.

After further discussion between the Board and Woodlyn Hills, a list of agreed upon conditions was added to the application and the Board voted 3-2 to grant the conditional use permit for the RV park. Before the record closed on the hearing, Kohlhaase commented that additional communications were received between the two dates of the hearings but those were not given to the Board for consideration because the public comment period was closed.

The Homeowners challenged the legality of the Board's decision by petitioning for a writ of certiorari in the district court suing Dickinson County and the Board and asked that "the County's act of approving the conditional use be annulled and decreed void."[2] Woodlyn Hills intervened in the proceedings, and the district court entered an order that the clerk of court issue a writ of certiorari commanding the Board to certify to the court a transcript of records and proceedings complained of in the Homeowners petition.

The Board filed the certified records of the underlying proceedings—the record return—in the district court. The record return included (among other things) all of the letters and emails provided to zoning administrator Kohlhaase in relation to the requested permit and a written transcript of the two days of the hearing. After the record return was filed, it became apparent to the Homeowners that an email from William Van Orsdel, sent on behalf of the Iowa Great Lakes Association (IGLA) to Kohlhaase on April 21, was not read during the April 25 public hearing.

Van Orsdel's email, which was sent to Kohlhaase and many other people, included the following in the body:

> To All concerned, The Iowa Great Lakes Association [IGLA] is very concerned with the proliferation of RV/Campground Park's zoning requests. Since 2019 we have witnessed an estimated proposed 800 additional units in [four] new RV Parks who have requested zoning changes. That number combine[d] with the estimated 2000 existing units would amount to a total estimated 2800 units which is larger than the cities of West Okoboji, Arnolds Park, & Okoboji. Attached is additional information provided by Greg Hanson who is a property owner and president of his local association. Below we are voicing IGLA's objection to the proposed

[2] For readability purposes we refer to defendants/appellees Dickinson County and Dickinson County Board of Adjustment jointly as "the Board."

Woodlyn Hills zoning request. It's important to note that IGLA is not against development. We are pro development when placed properly in the Iowa Great lakes watershed.

We are strongly opposed to Woodlyn Hills RV/Camp ground 174-unit development, a small summary of the Iowa Great Lakes Association's objections are below, additional information see attachments.

- Without sanitary sewer connection Septic systems will leech fluids into the lake causing pollution, damaging water quality
- This development will not generate enough property tax to pay for traditional county services (to name a few, Fire & Police protection), other tax payers will make up the difference in expense.
- There is no restriction to limit the RV park to 174 units
- This park will generate boat congestion on the lakes and car congestion on the roads
- The neighborhoods are opposed
- It will lower property values
- To our knowledge there are no development regulations nor guidelines

Attachment information:

4163 is of the propose[d] lay out with sewer lines and septic area.

4162 is the same proposal just shows swim area and play area, but does not show sewer plan.

4168 the letter we received in the mail from Kohlhaase

4169 this is a summary of the article 21 and the engineer narrative provided by the developer. I have added concerns and questions to them.

4170 This is the current objection letters I have from my association. There will be more coming and I will be dropping them off on Thursday to . . . Dave.[3] South Shores association and several other groups are writing objection letters as well.

4167 is the rules of the camp ground

4166 is the engineer narrative in response to article 21. Page 2 shows the way they tried to calculate the sewer needs and use which is way off.

4165 is a map of the area. It is hard to read, but [t]he green area is A2 environmentally sensitive area.

4164 is the application for conditional use[4]

---

[3] Presumably a reference to David Kohlhaase.

[4] The attachments were in pdf format.

The Homeowners moved the district court to set an evidentiary hearing, requesting the opportunity "to call witnesses to explain the matters contained in the return, including evidence regarding the legality of the proceedings before the Board." The district court ordered a hearing be scheduled for oral argument only, and if additional evidence was necessary, the court would schedule further proceedings.

In their second amended petition, the Homeowners asserted the Board violated its own procedural rules by failing to consider every public comment (because "[t]he Zoning Office and Zoning Administrator failed to submit all public comments for the [Board]'s consideration"), and by allowing Woodlyn Acres considerable time to give a new presentation with different or additional information without allowing for public comment. They also challenged the merits of the Board's decision to grant the permit, asserting the conditional use of the RV park did not meet eleven of the criteria set out by the zoning ordinance.

The Homeowners submitted five proposed exhibits along with their brief in support of the writ of certiorari, which included an affidavit from Van Orsdel that explained his role as president of IGLA and told about the nonprofit association—including that it has about 1000 citizen members and seventy business members and works to protect, preserve, and enhance the Iowa Great Lakes.[5] Van Orsdel reported that IGLA "routinely works with Dickinson County" and cited examples of other projects and proposals. He stated that after his April 21 email was not read

[5] According to the DNR, "[t]he 'Iowa Great Lakes' region of northwest Iowa . . . includes East and West Okoboji, Big Spirit Lake and others water bodies." *Iowa Great Lakes*, Iowa Dep't of Nat. Res., https://www.iowadnr.gov/Places-to-Go/State-Parks/Iowa-State-Parks/Iowa-Great-Lakes (last visited Mar. 21, 2024).

at the April 25 meeting, he submitted a second letter to the zoning office on behalf of IGLA and asked for it to be read at the June 6 meeting but was told the public comment period was closed. While Woodlyn Hills challenged the Homeowners' inclusion of and reliance on new evidence, in its written ruling, the district court admitted the new evidence subject to the objection lodged.

Muddying the issue regarding Van Orsdel's email, the Board's brief to the trial court addressed a different item that was not read to the Board when discussing whether it violated the procedural requirements. Citing to an item in the return marked "4169" and with the heading, "Campground Objection Letter,"[6] the Board argued:

> [The Homeowners] argue[] that [their] writ should be sustained because an unsigned letter from a non-profit group was not read into the record. The letter was emailed to [the zoning administrator] on April 21st, 2022 and contained no signature as indication of who authored the letter(s). Upon discovery that the letters had not been signed, [the zoning office] notified Van Orsdel that in order for the letters to be read aloud to the Board at the hearing, they would need to be resubmitted with a signature identifying who wrote each letter.[7]

---

[6] Based on the body of Van Orsdel's email, "4169" was an attachment to the email and was "a summary of the article 21 and the engineer narrative provided by the developer. I have added concerns and questions to them." The author of the letter does not appear in the letter, and it is unsigned.

It seems undisputed that this unsigned letter was not received by the Board, but the Homeowners do not argue this attachment should have been considered by the Board.

[7] Kohlhaase forwarded the Van Orsdel email to his assistant Megan Kardell on April 25 at 8:24 a.m. Kardell sent an email to Van Orsdel, cc'd to Kohlhaase, on the 25th at 11:25 a.m. Its subject line states: "Proposed RV Park Document #4169." The body of the email states in its entirety: "The letters you provided in your packet, one did not include the author's name. That letter will need to be re-submitted with the person who wrote it included for it to be valid and read." The Kardell email says nothing about lack of signatures and does not reference any other attachments to the Van Orsdel email—such as the objection letters marked as attachment 4170. Kardell's email does not suggest that Van Orsdel resubmit his email and attached letters. It only requested that he resubmit

> This is a common practice for the County when comments are not submitted with a signature that identifies the individual who wrote the letter. Plaintiff claims that the IGLA has appeared and worked with Dickinson County countless times since 2008. Its representatives should have known the rules regarding signed correspondence or they should have re-submitted it before the hearing as requested by the County.

At oral argument to the district court, the Homeowners emphasized that no public comment was allowed at the June 6 meeting even though Woodlyn Hills was allowed to present new evidence in support of its application. They also highlighted the Board's failure to consider the body of Van Orsdel's email on behalf of the IGLA, which the Homeowners suggested was especially significant because the IGLA is a "really influential environmental organization" in the area and "represent[s] a much broader . . . aspect of the county and community" so—while taking the same stance of the Homeowners—the IGLA's position showed the Board that it was more than just the immediate neighbors to the would-be RV park who opposed the proposal. The Board responded that because it was only required to substantially comply, the fact that it did not consider just a few out of the many letters, and because those letters did not provide any new argument or insight (i.e., were merely cumulative to the others that were read), it substantially complied with the procedure required of it.

In a written ruling, the district court annulled the writ. It concluded the procedures used by the Board did not violate the zoning ordinance of the county or its own rules and procedures when it refused to allow public comment at the June 6 meeting because the main purpose of allowing public input was to "bring to

---

the one letter, attachment 4169, with the author identified for it to be read to the Board. Attachment 4169 is not at issue in this appeal.

the attention of the [Board] concerns that the public has with regard to a proposed use" and "[t]here is nothing in the record suggesting that any new concerns would be raised at the June 6 hearing." The court ruled the Board was then allowed to speak with Woodlyn Hills to discuss additional conditions the Board wanted to put on any forthcoming permit and whether the applicant would accept the permit with those conditions; "[t]here is no rule allowing the public further input after the public input portion of the meeting has concluded or to allow the public some sort of surrebuttal." As to whether the Board violated the rules by failing to consider some public comments, the district court admitted some uncertainty about what it was ruling on—noting the Homeowners pointed to the body of Van Orsdel's email while the Board countered with argument about a different letter that was not given to the Board because it lacked a signature. Ultimately, the court ruled:

> The [Board's] By-Laws state that "[o]ral or written statements can be tendered to the Board by anyone interested in the particular item at issue." It is undisputed that the [Board] received substantial correspondence and testimony from the public at the April 25 meeting as more thoroughly discussed above. Over [sixty] letters/emails were received and read. Neither Van Orsdel's cover email nor the unsigned letter were resubmitted with signature prior to the April 25 hearing. No member of IGLA was noted as having appeared to voice their opposition at the April 25 hearing. As noted above, all other attachments to Van Orsdel's email were made available to the [Board]. Finally, neither Van Orsdel's cover email nor the unsigned letter raised new issues that were not otherwise extensively brought to the attention of the [Board] by other objectors.
>
> The [Board] substantially complied with its by-laws regarding the tendering of oral or written statements.

And finally, the district court concluded substantial evidence in the record supported the Board's decision to grant the conditional use permit.

The Homeowners moved the court to reconsider or enlarge its ruling, emphasizing that they were challenging the Board's failure to consider the body of

Van Orsdel's email. Woodlyn Hills and the Board resisted, and the district court denied the motion.

The Homeowners appeal.

II. Standard of Review.

"With a certiorari proceeding, the district court finds the facts anew only to determine if there was illegality not appearing in the record made before the board. Fact-findings or issues that were before the board for decision are 'reviewed under the substantial evidence standard.'" *TSB Holdings, L.L.C. v. Bd. of Adjustment*, 913 N.W.2d 1, 10 (Iowa 2018) (citations omitted). We review the district court's ruling for correction of errors at law. *Burroughs v. City of Davenport Zoning Bd. of Adjustment*, 912 N.W.2d 473, 478 (Iowa 2018). This means "'[w]e are bound by the district court's findings if supported by substantial evidence.' 'However, we are not bound by erroneous legal rulings that materially affect the court's decision.'" *TSB Holdings*, 913 N.W.2d at 10 (citations omitted).

III. Discussion.

The Homeowners challenge the Board's decision to grant the conditional use permit on both procedural grounds and on the merits. We start with the procedural challenge.

"Iowa Code section 414.15 governs certiorari actions seeking review of board of adjustment decisions." *Burroughs*, 912 N.W.2d at 479. That statute provides that a "person or persons . . . aggrieved by any decision of the board" may present the court a petition alleging the grounds of illegality. Iowa Code § 414.15 (2022). "An illegality is established if the board has not acted in accordance with a statute; if its decision was not supported by substantial

evidence; or if its actions were unreasonable, arbitrary, or capricious." *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 64 (Iowa 2001) (citation omitted).

Section 335.12 requires the board of adjustment to adopt procedural rules. *See Burroughs*, 912 N.W.2d at 481. And article VII, section 5 of the Board's Code of By Laws provides, "Oral or written statements can be tendered to the Board by anyone interested in the particular item at issue."[8] The Homeowners rely on this provision in arguing the Board failed to act in accordance with a statute when it was not given and thus did not consider the body of Van Orsdel's email on behalf of the IGLA in deciding whether to grant the conditional use permit. And the Homeowners point to article VII, section 5 of the bylaws and the Board's adopted "Opening Statement" to support their claim that it violated the Board's procedures to allow Woodlyn Acres to present new information at the June 6 hearing without allowing for additional public comment. The opening statement explains the order of proceedings:

---

[8] Article VII, section 5 states in full:

> Meetings shall be held according to Roberts Rules of Order where not inconsistent with statute, ordinance, provisions of these by laws and other rules adopted by the Board. The Chairman of the meeting shall call the meeting to order at the time published and have roll call. The Chairman of the meeting shall read or have distributed to all persons in attendance an opening statement explaining the conduct of the meeting as adopted by the Board. Oral or written statements can be tendered to the Board by anyone interested in the particular item at issue. Parties may be represented by counsel, present evidence, including testimony, parties may subpoena witnesses, and make arguments. Verbatim transcriptions of the proceedings may be made at any party's own expense. Tape recordings of the proceedings may be made by the parties at their own expense. Either party can ask questions of any witness produced by the other party. The Chairman, with the support of three of the Board members, can impose time limits in cases deemed to be special cases so that the meeting can be held expeditiously.

> An oral statement summarizing the issues and procedural steps presented by the staff, followed by testimony and evidence presented by the applicant. Any member of the audience wishing to speak for or against the appeal may testify next. The board will then give the applicant and the county staff an opportunity to present final summaries and arguments. Finally, the board will discuss the issues and evidence leading to a decision.

When reviewing the action of the Board, we keep in mind that it is substantial compliance—not technical compliance—that is required. *See Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483, 488 (Iowa 2008) ("[A] board's substantial compliance with a statutory requirement was satisfactory[;] . . . 'the requirements imposed by statute upon an inferior tribunal should not be too technically construed, lest its efficiency be wholly paralyzed.'" (citation omitted)). "'[S]ubstantial compliance' means the statute or rule 'has been followed sufficiently so as to carry out the intent for which it was adopted.'" *Id.* (quoting *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988)). So, the question is whether the action taken by the Board "has accomplished the purpose of the statute or rule." *Id.*

In determining whether the Board substantially complied with its own procedural requirements, we consider each procedural error alleged by the Homeowners. First, the Board failed to consider Van Orsdel's email written on behalf of the IGLA. While the body of the email raised similar concerns as other individuals and ultimately expressed an opinion in opposition to the conditional use that was widely shared by other public commenters, it is possible those concerns and opinions would have carried a different weight when expressed on behalf of

an association that boasts 1000 citizen members and seventy business members.[9] Plus, the IGLA offered a similar opinion but with a different perspective—after the close of the public comment, Woodlyn Acres asserted to the Board that the only individuals who were against the conditional use were the nearby neighbors, suggesting they were expressing more of a "not in my backyard" sentiment but that the greater community supported the RV park.[10] And while this statement may have been a fair summary of the opinions presented to the Board, it was inaccurate in hindsight and highlights that the IGLA's comments represented a segment of the population who were otherwise missing from the public comments. The district court seemed to minimize the problem, noting "No member of IGLA was noted as having appeared to voice their opposition at the April 25 hearing." Insofar as we can know or assume the affiliation of any of the ten individuals who spoke at the

---

[9] It would have been up to the Board—as the factfinder and decisionmaker—to determine how much significance to place on the IGLA's opinion.

[10] At the April 25 Board meeting, after the public comment period was closed, Daniel Schmit stated:

> I don't think there's a single letter in opposition to this proposal from anybody in the Okoboji community, the Dickinson County area, the surrounding area, that is not in the South Shores Estates residency or in Country View Acres. If that's incorrect, I apologize. That's my best understanding of the letters that were read, and I think that's an accurate statement.

This statement was left unrebutted even though the Van Orsdel email on behalf of the IGLA with attached letters in opposition had been timely sent to zoning administrator Kohlhaase. At the June 6 Board meeting, Bryan Schmit stated:

> I think it's important, all of the comments that we received from the public comment period were from, were from basically two areas. You had the South Shores Estates. People to the north. And then Country View Acres to the south. I, when I was going back through the list of people who presented their comments, I couldn't find a single person outside of those two areas of the overall broader, broader Dickinson County area.

Again, the Van Orsdel email on behalf of the IGLA was not mentioned.

April 25 meeting, this fact seems to cut the other way—because none of the people who spoke at the meeting announced an affiliation with the IGLA and stated their opposition, IGLA's opinion went unheard and the failure to read the email to the Board was not remedied. And it is not unreasonable to assume that no IGLA member shared their opinion because they believed that was already accomplished by the email sent to zoning administrator Kohlhaase on IGLA's behalf. The Board should have considered the Van Orsdel email.

And it seems that parties' arguments are like ships passing in the night. On appeal, the Board does not really address the Homeowners procedural error argument about the omission to read the Van Orsdel email to the Board. Instead, it addresses the infirmities of attachment 4169 to the email. The fact that a letter, attachment 4169, was not read to the Board is not at issue in this appeal.

All letters read to the Board at the April 25 meeting are included in the record return, but we are frustrated. Because of the layout of the record return and the parties' conflicting answers to questions about the return, and even after spending an inordinate amount of time plowing through its 1100 pages, we cannot determine with any certainty how many letters Kohlhaase received but were not read to the Board. We can say with certainty that Van Orsdel's April 21 email and two other letters—those from Megan Skalicky and one from Seth Skalicky (both supporting the application)—were not read to the Board. Yet it is possible some others were also not communicated to the Board. Van Orsdel's email stated that he was attaching "current objection letters . . . from my association" and identified them as attachment "4170." We can see that Van Orsdel's email included an attachment of a pdf file marked "4170_001." But there is only one letter marked 4170 in the

return. That letter from Greg Hanson, President of Country View Acres, also appears in another part of the 190-page "Correspondence and Emails" section of the return but without the 4170 marking. Hanson's letter was read at the April 25 meeting. In examining the record return, we cannot ascertain what letters (other than the Hanson letter) were included in the email attachment 4170. So, we cannot determine whether those letters were among those read to the Board during the April 25 hearing or whether they were not included in the return. Homeowners say they were not read. The Board says they were read. And even after oral argument, and a post-oral argument motion, we are still uncertain whether the objection letters (other than Hanson's) attached to Van Orsdel's email are a part of the letters included in the record return. But the Homeowners beef is only about the Van Orsdel email, not any of the attached documents. Nevertheless, any correspondence attached to the Van Orsdel email as attachment 4170 with identified authors that were not read should have been read to the Board, as well as the Skalicky letters.

Finally, we note that Woodlyn Acres was allowed to present new information at the June 6 hearing without the board allowing public comment on the new evidence. The Board's rules provide that the applicant will likely have the last word—giving them "an opportunity to present final summaries and arguments" after closing the public comments. But Woodlyn Acres was allowed to go well beyond just summary and arguments here—and the public was barred from responding. This was in error.[11]

[11] The Homeowners present this as both a statutory and constitutional violation. But other than a passing reference to constitutional rights, the Homeowners do

Considering all the procedural issues discussed, we conclude the Board failed to substantially comply with its own procedural requirements and thus acted illegally.[12] We need not address the parties' other arguments raised on appeal. We reverse the ruling of the district court annulling the writ. We remand for reinstatement of the writ and for further proceedings, during which the Board should reopen the record for public comment. The Board shall receive Van Orsdel's April 21 email and any correspondence submitted as attachment 4170 that have identifiable authors which were not read at the April 25 meeting, and the letters from Megan Skalicky and Seth Skalicky, before conducting another vote on whether to grant the conditional use permit. We take no position on whether the conditional use permit for the RV park should be granted.

REVERSED AND REMANDED WITH DIRECTIONS.

---

little to explain how their inability to provide more public comment during this proceeding on a conditional use permit violated the constitution; violation of a rule or statute is not necessarily synonymous with violation of the constitution. *See Weizberg v. City of Des Moines*, 923 N.W.2d 200, 214 (Iowa 2018) ("A regulation or ordinance may well provide for procedures in excess of procedural due process requirements. The failure to follow such a procedure or ordinance cannot give rise, in and of itself, to a due process violation.").

Even if the Homeowners properly presented a due process claim, we would not reach it here. *See, e.g.*, *Good v. Iowa Dep't of Hum. Servs*., 924 N.W.2d 853, 863 (Iowa 2019); *see also Constitutional-Avoidance Rule*, *Black's Law Dictionary* (11th ed. 2019) ("The doctrine that a case should not be resolved by deciding a constitutional question if it can be resolved in some other fashion.").

[12] Because we reverse the Board's decision based on the procedural issues, we do not reach the Homeowners' claim about whether the decision to grant the permit was supported by substantial evidence.