IN THE SUPREME COURT OF IOWA

No. 17-0752

PAUL J. BURROUGHS, KENNETH BURROUGHS, TERRI SPINNER, DAVID SPINNER, SEAN HARVEY AND TY HARVEY

Plaintiffs-Appellants,

v.

THE CITY OF DAVENPORT ZONING BOARD OF ADJUSTMENT, THE CITY OF DAVENPORT, IOWA AND MZ. ANNIE-RU DAYCARE CENTER

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE MARK J. SMITH, JUDGE
SEVENTH JUDICIAL DISTRICT
Scott County Equity No. EQCE128560

PLAINTIFFS-APPELLANTS' FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

Michael J. Meloy - AT0005306
Meloy Law Office
2535 Tech Drive, Suite 206
Bettendorf, IA 52722
(563) 359-3959
(563) 359-3953 - fax
mike@meloylaw.com

ATTORNEY FOR PLAINTIFFS-APPELLANTS

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STATEMENT OF THE CASE

The case issue is whether or not a municipal zoning board of adjustment must comply with the state and city statutory requirements and issue a written decision containing findings of fact in a contested evidentiary hearing before the 30 day appeal time period to the district court commences.

The Davenport Zoning Board of Adjustment (**Board**) did not comply with § 414.15 of the Iowa Code and § 17.52.020(B) of the Davenport City Code because it did not make written findings of fact on the issues presented to the Board by Plaintiffs Burroughs, Spinner and Harvey (Collectively referred to as **Burroughs**) at the October 13, 2016 and December 8, 2016 contested evidentiary hearings. The Board merely orally voted to deny Burroughs administrative appeals at the end of the October 13, 2016 and December 8, 2016 contested hearings. Burroughs' due process rights were violated when the Board did not issue written decisions containing findings of fact in the contested evidentiary hearings before the Board.

On January 6, 2017 Defendant Board placed the minutes of the December 8, 2016 hearing on the City's website. *February 20, 2017 Plaintiffs' Supplemental Response to Defendants' Reply to Plaintiffs' Response and Resistance to Defendants' Motion to Dismiss, par. 3; App. p.*

064. On January 25, 2017 Burroughs filed a Petition for Writ of Certiorari against the Board, the City of Davenport, Iowa (**Davenport**) and Mz. Annie-Ru Daycare Center (**Annie-Ru**). Burroughs' pled that Annie-Ru did not apply for a Special use permit and did not receive permission from the Board to operate a daycare center before the July 8, 2016 opening of the daycare operation and that the Board did not issue any written decisions on Burroughs' appeals heard by the Board on October 13, 2016 and December 8, 2016. *Plaintiffs' Petition filed January 25, 2017, p. 3, ¶. 17-18; App. p. 003; p. 7, ¶ 38; App. p. 007*.

Burroughs' certiorari petition requested that the District Court declare that the ZBA's October 13, 2016 and December 8, 2016 proceedings illegal and in excess of jurisdiction because they never complied with the state and city code requirements of filing a written decision and that the Board erred in its oral vote. Pursuant to the statutory mandate of § 414.15 of the Iowa Code, "Written Decision", the Board must issue a written decision in a contested evidentiary hearing. Pursuant to § 17.52.020(B) of the City Code every decision made is a public record and shall be immediately filed in the office of the Board. A public record is a written document.

On February 3, 2017 Defendants Board and Davenport filed a Motion to Dismiss Plaintiffs' Petition for Writ of Certiorari stating that the Petition

should be dismissed for lack of subject matter jurisdiction, alleging that Burroughs failed to timely file the Petition within a 30 day time period that Defendants alleged started running on the dates of each contested hearing. *February 3, 2017 Defendants' Pre-Answer Motion to Dismiss; App. p. 041-042*.

On February 13, 2017 Burroughs filed a Response and Resistance to Defendants' Motion to Dismiss and asserted that under § 414.15 of the Iowa Code there must be written findings of fact in a decision filed in the office of the Board and quoting the Iowa Supreme Court that "boards of adjustment shall make written findings of fact on all issues presented in any evidentiary proceeding" (underlining added) *Citizens Against the Lewis and Clark (Mowery) Landfill v. Pottawattamie County Bd. of Adjustment*, 277 N.W.2d 921, 925 (Iowa 1999). *February 13, 2017 Plaintiffs' Response and Resistance to Defendants' Pre-Answer Motion to Dismiss; App. p. 051-056.*

On February 20, 2017 Defendants Board and Davenport filed their Reply to Plaintiffs' Response and Resistance to Defendants' Motion to Dismiss again claiming that Plaintiffs' failed to timely file their Petition and that the ZBA had substantially complied with the requirement to issue written findings of fact. *February 20, 2017 Defendants' Reply to Plaintiffs'*

Response and Resistance to Defendants' Pre-Answer Motion to Dismiss; App. p. 057-063.

On February 20, 2017 Burroughs filed a Supplemental Response to Defendants' Motion to Dismiss and supporting affidavit of John F.H. Lonergan, II and asserted that under § 17.52.020(B) of the Davenport City Code every Board decision shall be filed immediately in the office of the Board and shall be a public record. Burroughs also asserted that under § 414.9 of the Iowa Code:

> The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. (underlining added).

February 20, 2017 Plaintiffs' Supplemental Response to Defendants' Pre-Answer Motion to Dismiss; App. p. 064-066;

Plaintiffs established that the Board had not even placed the minutes of the December 13, 2016 meeting on the City website until January 6, 2017 and that no official record of the hearing was never filed in the office of the Board. *February 20, 2017 Affidavit of John F.H. Lonergan, II; App. p. 067-068.* Accordingly, the earliest any 30 day appeal period could lawfully commence on the December 8, 2016 was January 6, 2017.

On February 23, 2017 a hearing on Defendants' Motion to Dismiss and Plaintiffs' Response and Resistance was held before the District Court.

On April 13, 2017, the District Court entered an order granting Defendants' Motion to Dismiss, finding that the District Court appeal period began to run on the day each hearing was held before the Board. *April 13, 2017 District Court Order on Defendants' Pre-Answer Motion to Dismiss; App. p. 077-080.*

On May 12, 2017 Plaintiffs filed their notices of appeal to the Iowa Supreme Court.

STATEMENT OF FACTS

Daycare centers are a conditional use only allowed by the Board in a "R-4" residential district after public hearing and approval of a special use permit. On July 8, 2016 an intensive daycare operation, Annie-Ru, opened for business seven (7) days per week, twenty-four (24) hours per day at 1112 Bridge Avenue, Davenport, Iowa (**The Site**). *Plaintiffs' Petition for Writ of Certiorari, par. 15; App. p. 001-036.* The Site is located in an "R-4" residential district. Annie-Ru supervises up to forty (40) children per eight (8) hour shift and up to one-hundred twenty (120) children per day at The Site. *Plaintiffs' Petition for Writ of Certiorari, p. 3, par. 16; App. p. 003.*

Prior to July 8, 2016 no public notices were sent by Davenport to any of the surrounding neighborhood property owners, nor was a public hearing held by the Board on whether the Annie-Ru daycare could operate by special use permit at The Site. *Plaintiffs' Petition for Writ of Certiorari, p. 3, par. 17; App. p. 003.*

Annie-Ru did not apply for a Special use permit nor did they receive any approval from the Board to operate a daycare before or after July 8, 2016. *Plaintiffs' Petition for Writ of Certiorari, p. 3, par. 18; App. p. 003.* Annie-Ru does not have any ownership interest in the site. *Plaintiffs' Petition for Writ of Certiorari, p. 3, par. 19; App. p. 003.*

Davenport city planner Matthew Flynn (Flynn) made an administrative decision, without discussion of the issue with the Board or Burroughs, to allow Annie-Ru to operate the daycare center without a Special use permit. *Plaintiffs' Petition for Writ of Certiorari, p.4, par. 20; App. p. 004.* On August 23, 2016 Burroughs' attorney sent a letter to Flynn advising Flynn of the illegal occupancy by Annie-Ru at the site. *Plaintiffs' Petition for Writ of Certiorari, Ex. B – August 23, 2016 letter to Flynn. ; App. p. 0021-0024.* On August 30, 2016 Flynn sent a letter to Burroughs' attorney stating that his zoning interpretation was that Annie-Ru was

operating legally without a permit. *Plaintiffs' Petition for Writ of Certiorari, Ex. C – August 30, 2016 Letter from Flynn; App. p. 0025-0026.*

On September 7, 2016 Burroughs and other Bridge Avenue residents timely filed an appeal to the Board of Flynn's decision to allow Annie-Ru to operate at the site without a duly issued Special use permit pursuant to § 17.48.050 of the Davenport City Code. *Plaintiffs' Petition for Writ of Certiorari, p. 4, par. 23; App. p. 004; Ex. D – September 7, 2016 Appeal of Administrative Decision; App. p. 027-035.*

On October 13, 2016 a contested hearing was held regarding the appeal of the Flynn decision allowing Annie-Ru to operate at The Site without a special use permit. *Plaintiffs' Petition for Writ of Certiorari, p. 4, par. 24; App. p. 004.* Burroughs, their attorney and other members of the public argued that the original daycare special use permit was nontransferable to Annie-Ru and that under Iowa caselaw a special use permit is terminated when the party that was granted the special use permit abandons the premises and the use stopped operating for a period of eighteen (18) months. *Plaintiffs' Petition for Writ of Certiorari, p. 4, par. 24; App. p. 004.*

Burroughs', their attorney and other members of the public argued that a special use permit runs with the land and that a special use permit may

only be granted to the owner of that real property. *Plaintiffs' Petition for Writ of Certiorari, p. 5, par. 26; App. p. 005.*

The Board orally denied the Burroughs administrative appeal of the operation of the special use permit to Annie-Ru on October 13, 2016. *Plaintiffs' Petition for Writ of Certiorari, p. 5, par. 28; App. p. 005.* The Board did not issue any written decision on the October 13, 2016 Burroughs contested evidentiary hearing, after they voted to deny the appeal. *Plaintiffs' Petition for Writ of Certiorari, p. 5, par. 29; App. p. 005.*

On October 13, 2016 the Board requested that Burroughs file a petition to revoke the special use permit of Annie-Ru and ordered Davenport city staff to waive any filing fee on the revocation application. *Plaintiffs' Petition for Writ of Certiorari, p. 5, par. 30; App. p. 005.* On November 14, 2016 Burroughs filed a signed revocation petition, pursuant to Section 17.48.050 of the Davenport zoning ordinance, to revoke the Annie-Ru special use permit. *Plaintiffs' Petition for Writ of Certiorari, p.5, par. 31; App. p. 005; Ex. E – November 14, 2016 Petition to Revoke Special Use Permit, App. p. 036.*

On December 8, 2016 a hearing was held before the Board regarding the Burroughs Revocation Petition of the Annie-Ru special use permit. *Plaintiffs' Petition for Writ of Certiorari, p. 5, par. 32; App. p. 005.*

Burroughs' attorney and other residents argued that the original special use permit was nontransferable to Annie-Ru and argued that under Iowa code, city statute and Iowa caselaw a special use permit is terminated when the business that was granted the special use permit abandons the premises and the use stops for a period of eighteen (18) months. *Plaintiffs' Petition for Writ of Certiorari, p. 5, par. 33; App. p. 005.* Burroughs argued that a special use permit runs with the land owner and that Annie-Ru was a mere leasee of The Site who had no right to a special use permit. *Plaintiffs' Petition for Writ of Certiorari, p. 6, par.34; App. p. 006.*

Burroughs, his attorney and other residents presented exhibits, extensive testimony and argument to the Board on December 8, 2016 and made legal arguments, including the following:

a) The Board does not have the authority to grant a perpetual special use permit to a business leasee on the land owned by Davenport Family Homes.

b) The Board only grants special use permits on a case by case basis after an evidentiary hearing.

Plaintiffs' Petition for Writ of Certiorari, p. 6-7, par.35(a)-(f); App. p. 006-007.

The Board orally voted to deny Burroughs' petition to revoke the special use permit to Annie-Ru on December 16, 2016. *Plaintiffs' Petition for Writ of Certiorari, p. 7, par. 37; App. p. 007.* The Board has not issued a written opinion on the Plaintiffs' Petition to Revoke the Annie-Ru special use permit. *Plaintiffs' Petition for Writ of Certiorari, p. 7, par. 38; App. p. 007.*

PLAINTIFFS-APPELLANTS' ROUTING STATEMENT

This case should be retained by the Supreme Court because it involves an issue of public importance as to what date the 30 day District Court appellate time period commences when the Board fails to issue written findings of fact in a contested evidentiary hearing and may result in the reversal of certain existing caselaw.

ARGUMENT

I. The District Court Erred when it Dismissed Plaintiffs'-Appellants' Petition for Writ of Certiorari After a Contested Evidentiary Hearing Administrative Appeal was Held Before the Davenport Zoning Board of Adjustment. The District Court Failed to Interpret § 414.15 of the Iowa Code Correctly.

A. Preservation of error.

Burroughs preserved error on their certiorari cause of action by timely filing this appeal within 30 days of the District Court's April 13, 2017 Ruling of Dismissal of the Certiorari Petition.

Burroughs filed their notice of appeal to the Iowa Supreme Court on May 12, 2017.

B. Scope of Review.

The Supreme Court's review of a certiorari appellate ruling is at law. Our Supreme Court is bound by the findings of the district court if they are supported by substantial evidence. Our Supreme Court, however, is not bound by an erroneous legal ruling that materially affect the court's decision. *Danish Book World, Inc. v. Board of Adjustment,* 447 N.W.2d 558, 560 (Iowa App. 1989).

The powers of a municipal zoning board are derived purely by statutory grant. *Chapter 414 of the Iowa Code.* The Board is obligated to comply with § 414.15 and our Supreme Court caselaw that requires the Board to file written decisions containing findings of fact in an evidentiary contested hearing.

The key reasons for requiring written findings of fact from the Board is to facilitate judicial review, to avoid judicial usurpation of administrative functions, to help parties plan their cases for rehearing's and to keep agencies within their jurisdiction. *E. McQuillin, 8A Municipal Corporations,* § 25.272 (3rd Ed. 1976).

There were compelling considerations recognized by our Supreme Court in holding that a zoning board shall make written findings of fact on all issues presented in a contested evidentiary proceeding. The present case was a contested evidentiary proceeding where Burroughs submitted extensive testimony and exhibits. Thus the Board was required to make written findings of fact in this evidentiary proceeding but did not.

Thirty-eight (38) years ago the Iowa Supreme Court clearly held that "boards of adjustment shall make written findings of fact on all issues presented in any evidentiary proceeding." (underlining added) *Citizens Against the Lewis and Clark (Mowery) Landfill v. Pottawattamie County Bd. of Adjustment*, 277 N.W.2d 921, 925 (Iowa 1979). The Iowa Legislature amended § 414.15 of the Iowa Code in 1981 to require that the Board file its written decision in the office of the Board.

In reaching the *Citizens* holdings, the Iowa Supreme Court relied upon the following law treatise statement:

> The practical reasons for requiring administrative findings are so powerful that the requirement has been imposed with remarkable uniformity by virtually all federal and state courts, irrespective of a statutory requirement. The reasons have to do with facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administrative consideration, helping parties plan their cases for rehearing's and judicial review, and keeping agencies within their jurisdictions.

K. Davis, Administrative Law Treatise, § 16.05 (2d Ed. 1978)

The District Court's dismissal of Burroughs' certiorari appeal ignored Burroughs' argument that there was no written decision made by the Board and that the appeal was timely filed within 30 days of the issuance of the minutes of the Board's December 8, 2016 meeting, placed on Davenport's web page on January 6, 2017.

The Board's actions of not complying with the mandatory state code requirement of filing a decision as well as Iowa caselaw on the issuance of written findings of fact must be critically analyzed by this Court to determine when the 30 day time period for appeal runs so that citizens may timely file appeals to the district court. The Board must be subject to judicial review.

Section 414.15, "Petition for Certiorari", of the Iowa Code states:

> Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board. (underlining added).

Section 414.15 of the Iowa Code clearly states that the petition shall be presented to the Court within thirty days after the filing of the decision in

the office of the board. Thus, the Board must file a decision in its office. The Board failed to do that.

The words of Iowa Code § 414.15 "within thirty days after the filing of the decision in the office of the board" (underlining added) clearly and unequivocally states that there must be a filed decision before the 30 day time period begins to run on a Certiorari Petition. In the present case, the Board admits that it never issued any written decision that was filed in the office of the Board after either the October 13, 2016 or the December 8, 2016 Board hearings. There has never been any written decision issued to the present date. Yet the Board claims that they substantially complied with the code through its minutes of meeting that were never placed in the Board's file.

The logic of a § 414.15 decision is apparent. The Board was operating in a quasi-judicial fashion in the contested evidentiary hearing. Burroughs had the right to receive a written decision pursuant to state code. An aggrieved petitioner must know the basis and rationale of the Board's decision so that they can properly challenge a decision in the District Court. The Board failed to comply with its statutory duty to issue a written decision.

The Board claims that the 30 day time period runs from the December 13, 2016 hearing date. The Board ignores the statutory language of § 414.15 of the Iowa code which clearly states that there has to be a written board decision issued before the 30 day time period runs. The Board's argument is disingenuous. It creates a situation where no one can legally ascertain the correct appeal date when the Board fails to issue a decision. It makes appeals extraordinarily difficult to perfect.

The Board's failure to issue a written decision violated Burroughs' due process rights and Burroughs ability to file a timely District Court appeal. The Board cannot violate the statutory mandate of § 414.15 of the state code while piously claiming that Burroughs did not comply with the 30 day appeal period of § 414.15 of the Iowa Code. The Board cannot have it both ways. The Board's position leaves Plaintiff without material issues for appeal because the District Court has no idea what the factual or legal basis of the Board's decision was. This makes the Board a de facto no appeal Board.

II. Pursuant to § 17.52.020(B) of the Davenport City Code the 30 Day Certiorari Appeal Period in the Contested Case Does Not Begin to Run Until the Board Issues a Written Decision Containing Findings of Fact. The District Court Erred when it Misapplied the *Arkae* and *Chrischilles* Holdings and Failed to Interpret § 17.52.020(B) of the Davenport City Code Correctly.

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The District Court heavily relies on the *Arkae* case to support its dismissal of the Burroughs certiorari appeal. *Arkae Development, Inc. v. Zoning Bd. of Adjustment of City of Ames,* 312 N.W.2d 574 (Iowa 1981).

April 13, 2017 Ruling on Defendants' Pre-Answer Motion to Dismiss, p. 3; App. p. 079.

The District Court's reliance on *Arkae* to dismiss Burroughs' district court appeal is misplaced. *Arkae* is inapposite to the present facts and is readily distinguishable.

Arkae pertained to the issuance of a municipal building permit and the issue was whether or not an appeal challenging the validity of the building permit filed to the zoning board was timely. *Arkae* pertains to the time period to file an appeal to the zoning board, not the time period to file an appeal from the zoning board decision to the District Court. The District Court failed to grasp the distinction between a Board and a District Court appeal.

Time periods must be distinguished and may be unreasonable as to different petitioners. "(A) time limit which may be reasonable in its application to one who has been denied a permit may be unreasonable in its application to one seeking to challenge its issuance." *3 A. Rathkopf, the Law of Zoning and Planning*, § 37.04(1)(a) 1981. The District Court failed to recognize this difference and did not apply it to the Burroughs appeal.

Courts have uniformly held that the time to file an appeal to a zoning board does not commence until the petitioner has knowledge of the decision

or is chargeable with knowledge of the decision. *Arkae* at 577. That is not the issue here. This case pertains to the running of the time of the appeal to the District Court not the running of the time of the appeal to a zoning board. The District Court's dismissal of Burroughs' appeal after the Board's oral vote erroneously relies on *Arkae*.

Arkae does not apply to the time period the Board's decisions must be appealed to the District Court. *Arkae* solely applies to the time period for an administrative appeal to the zoning board. The District Court's reliance upon and misinterpretation of *Arkae* must now be reversed. *Arkae* is inapplicable to the present issue on appeal. *Arkae* stands for the proposition that a 30 day appeal time period to the zoning board may be extended past 30 days if a party did not have timely knowledge of the permit issuance. *Id.* at 577.

The District Court's dismissal of Petitioner's § 414.15 appeal confuses two different appeal deadlines – one to the zoning board and the other to the District Court. *Arkae* reversed the District Court's finding that the appeal to the zoning board was untimely when the petitioner did not have actual knowledge of the permit issuance until 43 days after its issuance. *Id.* at 575.

The District Court also heavily relies upon *Chrischilles v. Arnolds Park Zoning Bd. of Adjustment,* 505 N.W.2d 491 (Iowa 1993) to dismiss

Plaintiff's appeal. *April 13, 2017 Ruling on Defendants' Pre-Answer Motion to Dismiss, p. 3; App. p. 079.* To the extent that *Chrischilles* implies or holds that the appealing party must file a District Court appeal within thirty (30) days of the Board meeting, it should be overruled by our Supreme Court. *Chrischilles* appears to misstate and misconstrue what *Arkae* stands for. *Id.* at 494. The Supreme Court needs to clarify the law pursuant to Chapter 414 of the Iowa Code as well as under Davenport city code on the running of this appellate deadline.

The *Chrischilles* court found that a certiorari Plaintiff cannot challenge a zoning variance decision 15 months after the variance order was issued by the zoning board. *Id.* at 494. In the present case, the Board failed to file any written order or decision. In *Chrischilles* the Plaintiffs were notified in writing of the Board's final decision. *Id.* at 493. In the present case, Plaintiffs were not notified in writing of the Board's final decision. *Chrischilles* cites § 414.15 of the Iowa Code to reaffirm that the thirty (30) day appellate time period only begins to run from the date of the Board's filing of the written decision. *Id.* at 493. Thus *Chrischilles* supports Burroughs' position in the present case that the Board was required to file a written decision before the thirty (30) day appellate period runs.

A municipal code can carry more restrictive requirements than state law. Davenport City Code Section 17.52.020(B) requires that:

> The board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and shall also keep records of its hearing and other official actions. Findings of facts shall be included in the minutes of each case of requested variation and the reasons for recommending or denying such variation shall be specified. Every rule or regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board shall be filed immediately in the office of the board and shall be a public record. (underlining added).

A public record is a written document. Davenport's city code requires the Board to immediately publicly file its written decision in the office of the Board. This city requirement mandates the Board provide fundamental due process so that a party can understand the basis of the Board decision and an appeal can be timely filed and fully challenged in the District Court.

The District Court's dismissal of the certiorari petition ignores the Board's municipal statutory failure to issue a written decision and instead holds that the 30 day time period runs from the date of the Board hearing that Burroughs attended. The District Court finds that because the Plaintiffs attended and participated in the contested hearing and had knowledge of the oral vote, the appeal period commenced at the hearing. This is clearly wrong. There never was a decision issued containing written findings of

fact. Under the District Court's ruling an appeal must be filed within 30 days of the date of the hearing even if the Board issues a written ruling 30 days after the hearing is concluded. This defies common sense.

The erroneous caselaw application by the District Court must be reversed because it not only violates the municipal tolling requirements but also violates the fundamental due process rights of Plaintiffs to have a ruling to read and understand. The District Court confuses the issue by applying caselaw only applicable to the time period to file appeal to the Board, thus failing to distinguish with the time period to file appeal to the District Court. The District Court fails to recognize or apply the statutory language of § 17.52.020(B) of the Davenport City Code in its ruling. The District Court decision constitutes reversible legal error.

Courts have a duty to construe appellate zoning rules in a reasonable manner that does not deprive citizens of their important statutory right to appeal a Board decision to the District Court. *Citizens* at 923.

The § 17.52.020(B) city code fundamental due process requirement of a written decision ensures transparency of a Board's decision and provides the District Court an adequate record to correctly review the Board's decision. The Board cannot be allowed to make decisions contrary to their own city code requirements.

CONCLUSION

The Iowa Supreme Court should reverse the district court dismissal of the Burroughs certiorari petition and remand the case back to the district court for hearing on the merits of the appeal.

REQUEST FOR ORAL ARGUMENT

Plaintiffs-Appellants hereby request oral argument.

/s/ Michael J. Meloy
Michael J. Meloy AT0005306
2535 Tech Drive, Suite 206
Bettendorf, Iowa 52722
(563) 359-3959
(563) 359-3953 – Fax
mike@meloylaw.com

PROOF OF SERVICE AND CERTIFICATE OF FILING

I hereby certify that on September 21, 2017, I served this document by mailing one copy to all other parties in this matter at their respective addresses as shown below:

Brett R. Marshall
Lane and Waterman, LLP
220 North Main Street, Suite 600
Davenport, Iowa 52801
bmarshall@l-wlaw.com

I further certify that on September 21, 2017, I filed this document with the Clerk of the Iowa Supreme Court by use of the Iowa Supreme Court's electronic filing system.

/s/ Michael J. Meloy
Michael J. Meloy

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