

IN THE COURT OF APPEALS OF IOWA

No. 0-473 / 10-0232
Filed November 10, 2010

A-LINE IRON & METALS, INC.,
Plaintiff-Appellant,

vs.

CEDAR RAPIDS BOARD OF ADJUSTMENT,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Douglas R. Russell,
Judge.

Plaintiff appeals the district court decision affirming the denial by the
Cedar Rapids Board of Adjustment of a petition for a certificate of conditional
use. **AFFIRMED.**

Dawn M. Gibson, Matthew J. Adam, and Robert S. Hatala of Simmons
Perrine Moyer Bergman, P.L.C., Cedar Rapids, for appellant.

William J. Wright, Cedar Rapids, for appellee.

Heard by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.**I. Background Facts & Proceedings**

A-Line Iron & Metals, Inc. filed a petition for a certificate of occupancy for a conditional use with the city of Cedar Rapids. A-Line sought to operate a business to recycle scrap metal and iron, which is classified as a salvage yard for the conditional use request, on 12th Street S.W., south of Wilson Avenue S.W. The location was zoned I-2, "General Industrial Zone," and the operation of a salvage yard there required a certificate for a conditional use.

Vernon Zakostecky of the Cedar Rapids Department of Community Development prepared a report for the City Planning Commission recommending that the petition could be approved if certain conditions were fulfilled. The report found the requested conditional use was in accord with the future land use designation for the site.¹ The City Planning Commission recommended to the Cedar Rapids Board of Adjustment (Board) that the petition be approved, subject to certain conditions.

A meeting of the Board to address the matter was scheduled for December 8, 2008. Prior to the hearing, the Board received a letter objecting to the proposed conditional use of the property by an attorney for KZIA, Inc., a radio station that owned property directly south of the site. The letter pointed out that in the future land use map the property was zoned "Commercial/Industrial," and salvage yards were not permitted in this category. Twenty-six additional written complaints were filed with the Board prior to the hearing. The area north of

¹ However, during the Board meeting Zakostecky acknowledged the proposed use was not in accord with the future land use map.

Wilson Ave. S.W. was residential, and many of the complaints were from property owners in that area.

At the hearing, Dan Schmidt of Brain Engineering made a presentation on behalf of A-Line, pointing out that the property would be enclosed by an eight-foot-high fence and screened by trees. Also, the president of A-Line, Kyle Stone, explained the company's recycling business. Mark Hanson and Jeff Walters of Altorfer Cat, a business just to the east of the proposed salvage yard that does business with A-Line, testified in favor of the petition, stating the business would create new jobs and improve the Cedar Rapids economy. A-Line stated the noise associated with the business was a maximum of seventy decibels at twenty-five feet and that was lower than the Cedar Rapids noise ordinance for vehicles. The proposed salvage yard was 735 feet from a residential area.

Dennis Mitchell, an attorney for KZIA, stated the radio station anticipated that noise from the salvage yard would interfere with its business. He stated that readings from A-Line's business in Waterloo measured in excess of 100 decibels. He also stated that other businesses in the area were in enclosed buildings and did not encompass industrial outdoor use. Mitchell further noted there was a residential area about three blocks to the north of the proposed salvage yard. As there were several objectors at the meeting, the Board asked that a spokesperson speak, instead of each objector. Brendan Murphy spoke for the group and objected on the same grounds as Mitchell and additionally, complained that the proposed salvage yard would cause trucks carrying scrap metal to drive through the neighborhood.

During the meeting, several questions were asked by members of the Board. One of the Board's questions related to whether the conditional use was consistent with the future land use map. Zakostelecky of Community Development responded:

The Future Land Use Map does show this area as light industry but although the property is zoned I-2 so it would be my opinion that when the Future Land Use Map was drafted it was an oversight by the technical committee as it should have been shown as general industrial because that's exactly what the property is for.

The minutes of the Board meeting nearly recite verbatim Vice Chair David Lodge's comments that followed Zakostelecky's statement:

I . . . welcome new employees and new businesses to Cedar Rapids. This is very complicated and a lot of objectors so I went to the book, there is no question that in this district you have the right to apply for a conditional use of a salvage yard However, I would go to what I would call the three Cs. As I go back into the book here and look at the three Cs it was pointed out that I would just call them consistency, or consistent character, and compatible and as I look at this and as much as I would like to see a new business and new employees, I would say in my opinion we don't have consistency with the land use. We are out of character for the neighborhood and being out of character it lacks the compatibility that I would like see to be able

The Board denied the permit for conditional use. No written findings of fact were filed by the Board, other than provided in the minutes.

A-Line filed a petition for writ of certiorari with the district court. The court found the minutes, the transcript of the hearing, and the documents presented at the hearing provided a sufficient record to review the Board's decision. The court found the reference to the three C's of consistency, character, and compatibility were clearly a reference to the Cedar Rapids Municipal Code. The court determined the Board had considered each of the standards in the code, even

though each standard was not discussed. The court concluded there was substantial evidence in the record to support the Board's decision. The court annulled the writ of certiorari. A-Line appealed.

II. Standard of Review

Iowa Rule of Civil Procedure 1.1412 governs our review on an appeal from a district court's decision on a writ of certiorari. *Baker v. Bd. of Adjustment*, 671 N.W.2d 405, 414 (Iowa 2003). That rule provides that "[a]ppel to the supreme court lies from a judgment of the district court in the certiorari proceeding, and will be governed by the rules applicable to appeals in ordinary actions." Iowa R. Civ. P. 1.1412. Our review is therefore the same as from judgment founded on a special verdict by a jury, that is, on assigned errors only. *Baker*, 671 N.W.2d at 414. We are bound by the district court's findings if supported by substantial evidence. *Chrischilles v. Arnolds Park Zoning Bd. of Adjustment*, 505 N.W.2d 491, 493 (Iowa 1993). However, we are not bound by erroneous legal rulings that materially affect the court's decision. *Id.*

III. Written Findings

The Iowa Supreme Court has established a rule that "boards of adjustment shall make written findings of fact on all issues presented in any adjudicatory proceeding." *Citizens Against the Lewis & Clark (Mowery) Landfill v. Pottawattamie County Bd. of Adjustment*, 277 N.W.2d 921, 925 (Iowa 1979). It is sufficient if a board substantially complies with this requirement. *Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment*, 748 N.W.2d 483, 488 (Iowa 2008). There is substantial compliance if the rule "has been followed sufficiently so as to

carry out the intent for which it was adopted.” *Id.* (citation omitted). The intent of the rule requiring written findings is “to enable a reviewing court to determine with reasonable certainty the factual basis and legal principles upon which the board acted.” *Citizens Against*, 277 N.W.2d at 925.

The Board filed a written “Notice of Official Action by the Board of Adjustment” denying the conditional use application but the written decision fails to include written findings of facts or conclusions of law. The district court determined the record in this case, which consisted of a tape recording of the meeting, the minutes of the meeting, and the documents presented by the proponents and opponents of the petition, was sufficient for the court “to identify with reasonable certainty the factual basis and legal principles upon which the Board acted.” On appeal, A-Line contends the district court erred in this conclusion.

We find no error in the district court’s determination that the Board substantially complied with the rule because the record was sufficient “to enable a reviewing court to determine with reasonable certainty the factual basis and legal principles upon which the board acted.” *See id.* In *Bontrager*, 748 N.W.2d at 489, our supreme court also determined that a board of adjustment did not literally comply with the rule that findings of facts and conclusions of law be in writing. The supreme court found, however, that there was substantial compliance by considering the board’s decision in context of the meeting where the vote was taken as well as the views expressed by board members during the meeting. *Id.* Here, several questions were asked by the Board members

including whether the conditional use was consistent with the future land use map. These questions appear to be responsive to Mitchell's comments that future land uses require all business operations to be conducted within buildings that currently exist in the neighborhood. However, A-Line's operations would not be entirely confined to a building. After Zakostelecky advised that the conditional use was not consistent with the future land use map albeit due to an oversight, Lodge commented that "in my opinion we don't have consistency with the land use . . . are out of character for the neighborhood, and . . . it lacks compatibility." The Board then proceeded to vote to deny A-Line's conditional use application. Thus, the minutes of the meeting and the transcript from the meeting clearly show the Board denied the petition because the intended use of the property was not consistent with the use of nearby property, did not match the character of the neighborhood, and was not compatible with surrounding property. We conclude the Board's findings were sufficiently recorded so as to permit us to review those findings.

IV. Municipal Code

Section 32.02.030(D)(9) of the Cedar Rapids Municipal Code provides:

The City Planning Commission shall only recommend approval of a proposed Conditional Use, and the Board of Adjustment shall only approve a proposed Conditional Use, if evidence is presented that establishes:

- a. That the Conditional Use applied for is permitted in the district within which the property is located; and
- b. That the proposed use and development will be *consistent* with the intent and purpose of this Ordinance and with the Future Use Policy Plan and other elements of the Comprehensive Plan; and
- c. That the proposed use and development will not have a substantial adverse effect upon adjacent property, and the

character of the neighborhood, traffic conditions, parking, utility and service facilities, and other factors affecting the public health, safety, and welfare; and

d. That the proposed development or use will be located, designed, constructed and operated in such a manner that it will be *compatible* with the immediate neighborhood and will not interfere with the orderly use, development and improvement of surrounding property; and

e. That adequate measures have been or will be taken to assure adequate access designed to minimize traffic congestion and to assure adequate service by essential public services and facilities including utilities, storm water damage, and similar facilities; and;

f. That the proposed building, development, or use will comply with any additional standards imposed on it by provisions of this Ordinance for the district in which the property is located; and

g. Whether and to what extent, all reasonable steps possible have been, or will be, taken to minimize any potential adverse effects on the surrounding property through building design, site design, landscaping, and screening.

(Emphasis added.)

Section 32.02.030(D)(10) provides, “In its review and decision, the Board shall consider each of the standards established in subsection 9 above.” A-Line claims the Board improperly considered just three of the standards, b, c, and d, which related to consistency, character, and compatibility. A-Line asserts the record does not support a finding the Board considered the other factors, as required by section 32.02.030(D)(10).

Under the municipal code, a petition for a proposed conditional use may be approved by a Board only if all seven of the standards found in subsection 9 are present. Even if the other four standards that were not mentioned by the Board were present, the petition could not be granted once the Board found the proposed conditional use did not meet the criteria found in b, c, and d. See *Cyclone Sand & Gravel Co. v. Zoning Bd. of Adjustment*, 351 N.W.2d 778, 783

(Iowa 1984) (“Since the ordinance requires that all standards be met, the failure to satisfy even one of the requirements in section 29.45 is fatal to a permit application.”). The district court found, “[t]he fact that only Subsections b, c and d are mentioned in the Minutes is adequate; no other subsection was given as a reason for denying the Petition.”

We affirm the district court’s conclusion that the Board’s decision should not be overturned on the ground the Board did not adequately consider each of the standards in section 32.02.030(D)(9). The Board considered the standards sufficiently to determine the petition for a conditional use could not be granted because not all of the seven standards found in subsection 9 had been established.

V. Sufficiency of the Evidence

A-Line claims the Board’s decision is not supported by substantial evidence. A-Line contends the objectors raised only generalized, unsubstantiated, and speculative concerns that could not rise to the level of substantial evidence. It points out that the objectors did not present expert testimony, a study, or any other type of data to support their claims.

We review the Board’s factual findings to determine whether they are supported by substantial evidence. See *Bontrager*, 748 N.W.2d at 495. Evidence is substantial “when a reasonable mind could accept it as adequate to reach the same findings.” *Id.* (citations omitted). Expert testimony is not generally required; a board may rely on anecdotal reports. *Id.* at 496. “In addition, the board may rely on commonsense inferences drawn from evidence

relating to other issues, such as use and enjoyment, crime, safety, welfare, and aesthetics, to make a judgment” *Id.*

One of the standards required before a conditional use permit can be approved is “[t]hat the proposed use and development will be consistent with the intent and purpose of this Ordinance and with the Future Land Use Policy Plan and other elements of the Comprehensive Plan.” Cedar Rapids Municipal Code § 32.02.030(D)(9)(b). The future land use map showed the area of the proposed salvage yard to be zoned “Commercial/Industrial,” which has approved uses of “[l]imited retail, service, office and warehouse uses with storage and operations conducted within buildings.” A-Line’s business would not be completely confined within a building and would not be consistent with the expected uses found in “Commercial/Industrial” areas. Thus, the proposed salvage yard would not be consistent with the intent and purpose of the future land use policy plan. We conclude there is substantial evidence the proposed salvage yard does not meet the standard found in section 32.02.030(D)(9)(b).

When one standard has not been met, this is fatal to a permit application. *See Cyclone Sand*, 351 N.W.2d at 783. The Board’s decision could be affirmed on this ground alone. We determine, however, there is also substantial evidence in the record to support the Board’s findings that the proposed salvage yard would have a substantial adverse effect upon the character of the neighborhood, and it would not be compatible with the orderly use, development, and improvement of the surrounding property. *See Cedar Rapids Municipal Code*

§ 32.02.030(D)(9)(c), (d). The Board could properly rely on anecdotal reports and testimony to support its decision. See *Bontrager*, 748 N.W.2d at 496.

We affirm the decision of the district court that affirmed the Board's denial of A-Line's petition for a certificate for a conditional use.

AFFIRMED.