IN THE IOWA DISTRICT COURT FOR POLK COUNTY

1000 FRIENDS OF IOWA, BILL BARNES, INC., BRADLEY E. AND TERESA M. COULSON, SONDRA K. FELDSTEIN REVOCABLE TRUST and STUART I. FELDSTEIN REVOCABLE TRUST, Plaintiffs, vs. POLK COUNTY BOARD OF SUPERVISORS, Defendant.	Case No. EQCE088618 **ORDER GRANTING MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI AND DECLARATORY JUDGMENT IN ITS ENTIRETY**

Plaintiffs filed a Petition for Writ of Certiorari and Declaratory Judgment (the Petition) on March 7, 2023. Oral argument on Defendant the Polk County Board of Supervisors' pre-answer Motion to Dismiss (the Motion), resisted as supplemented by Plaintiffs 1000 Friends of Iowa, et al. (the Resistance) was held on May 5, 2023. Attorney CeCe Ibsen appeared for Plaintiffs. Assistant Polk County Attorney Meghan Gavin appeared for Defendant. Oral argument was not reported.

Upon review of the Motion, the Resistance and the court file in light of the relevant law, and after construing the Petition in the light most favorable to Plaintiffs, with all factual allegations deemed admitted for purposes of evaluating the Motion, the court enters the following Order dismissing the Petition In its entirety for the reasons stated below.

BACKGROUND FACTS AND PROCEEDINGS

In the Petition, Plaintiffs challenge Defendant's decision granting the Family Leader Foundation's (the Foundation) rezoning application for a certain property. The Foundation sought to rezone the property previously used as the Geisler Family Pumpkin Patch from agricultural use

to mixed use. After a public hearing and three readings, Defendant approved the application. Plaintiffs allege the rezoning ordinance (1) violates the Future Land Use Map in the 2050 Comprehensive Plan, (2) violates the Polk County Zoning Ordinance, and (3) constitutes illegal spot zoning. Plaintiffs seek a declaratory order that the rezoning ordinance is unlawful.

Defendant filed the Motion, asserting that Plaintiffs have not pled facts sufficient to demonstrate their specific and personal interest in the subject rezoning. In other words, Defendant alleges Plaintiffs lack standing to challenge Defendant's decision.

STANDARD FOR GRANTING A MOTION TO DISMISS

"A motion to dismiss tests the legal sufficiency of the challenged pleading." *Southard v. Visa U.S.A., Inc.*, 734 N.W.2d 192, 194 (Iowa 2007). In evaluating a motion to dismiss for failure to state a claim upon which relief can be granted, facts asserted in the petition are assumed true and all doubts and ambiguities are resolved in favor of the nonmoving party. *Id.* However, a court does not have to accept the legal conclusions asserted as true. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016) (stating a court must accept well-pleaded factual allegations as true, but not the legal conclusions). A motion to dismiss shall be granted "only if the petition shows no right of recovery under any state of the facts." *Comes v. Microsoft Corp.*, 646 N.W.2d 440, 442 (Iowa 2002).

STANDING TO CHALLENGE ZONING APPLICATIONS

Iowa Code section 335.18 relevantly provides that

> [a]ny person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer . . . 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. . . .

Iowa Code § 335.18 (2023). The question raised in the Motion is whether Plaintiffs were "aggrieved" by Defendant's approval of the Foundation's rezoning application. Defendant asserts

that Plaintiffs have not pled sufficient facts in the Petition to demonstrate their specific and personal interest in the contested rezoning. In other words, Defendant argues Plaintiff do not have standing to pursue the claims they assert.

Standing in Iowa has two elements. To pursue a claim, a plaintiff "must (1) have a specific personal interest in the litigation and (2) be injuriously affected." *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004). While these two elements have much in common, they are separate requirements. *Godfrey*, 752 N.W.2d at 418.

The first requirement—that plaintiffs have a personal or legal interest in the litigation—recognizes that to have standing one must have a specific interest in the action, separate and apart from the general interest of the public at large. *Id*. at 419. The second requirement—that plaintiffs be injured in fact—requires plaintiffs to "show some 'specific and perceptible harm' from the challenged action, distinguished from those citizens who are outside the subject of the action but claim to be affected.'" *Id.* (quoting *U.S. v. Students Challenging Regul. Agency Proc.*, 412 U.S. 669, 689 n.14, 93 S. Ct. 2405, 2417 n.14 (1973)).

Iowa's two-pronged standing doctrine parallels the federal standing doctrine, although federal standing is jurisdictional while standing in Iowa is prudential. *Godfrey*, 752 N.W.2d at 418; *Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 867, 869 (Iowa 2005) (discussing Article III "case" and "controversy" requirements). Consequently, federal case law often serves as persuasive authority in determining the applicability of Iowa's standing doctrine. When standing is at issue, "the focus is on the party, not on the claim." *Alons*, 698 N.W.2d at 864. In other words, the merits of Plaintiffs' claims are irrelevant to the question of standing. *Citizens*, 686 N.W.2d at 475 ("Whether litigants have standing does not depend on the legal merit of their claims, but rather whether, if the wrong alleged produces a legally cognizable injury, they are among those who have

sustained it."). Plaintiffs have the burden to establish standing. *FOCUS v. Allegheny Cnty. Ct. of Common Pleas*, 75 F.3d 834, 838 (3d Cir. 1996).

Plaintiffs do not allege that they own property within the subject rezoning area or adjacent thereto. The question then becomes when do other individuals have standing to challenge zoning decisions? The Iowa court of appeals addressed a similar situation over forty years ago in *Reynolds v. Dittmer*, 312 N.W.2d 75 (Iowa Ct. App. 1981). After recognizing that Iowa's standing doctrine applies to zoning challenges, the court looked to other jurisdictions to evaluate whether the challengers had a specific and personal interest in the rezoning as opposed to the general interest that all residents possessed. In doing so the court found the factors utilized by the Florida Supreme Court most persuasive. Those factors included: "(1) proximity of the person's property to the property to be zoned or rezoned; (2) character of the neighborhood, including existence of common restrictive covenants and set-back requirements; (3) type of change proposed; and (4) whether the person is one entitled to receive notice under the zoning ordinance." *Id.* at 78 (citing *Renard v. Dade Cnty.*, 261 So.2d 832, 837 (Fl. 1972). Applying these factors to the instant matter, the court finds Plaintiffs—individually and representationally—have not sufficiently asserted facts demonstrating their specific and personal interest in the property for the following reasons.

First, as Defendant points out, the proximity between the subject rezoning area and the individual Plaintiffs' properties is unclear from the face of the Petition. The Petition lists only Plaintiffs' addresses—not their distance from the subject property. Second, other than a general proclamation that the individual Plaintiffs intended to live in an agricultural area and want the area to remain agricultural, the Petition does not articulate the individual Plaintiffs' concerns about the contested rezoning. Instead, the Petition quotes extensively from the recommendations against the rezoning made by Polk County staff. County staff were articulating generalized concerns of theirs.

Their concerns were not the specific, personal concerns of these Plaintiffs. Third, while Plaintiffs are correct that the instant application rezoned the subject property from agricultural to mixed use, this rezoning decision did not occur in a vacuum. As Plaintiffs acknowledge, the subject property has been used for years as a commercial enterprise—a pumpkin patch and events space. In this context, the rezoning application was not as significant as a traditional rezoning decision. Fourth, Plaintiffs do not allege they were entitled to notice of the rezoning application, despite Defendant's decision to liberally notify neighboring properties. None of the individual Plaintiffs assert facts sufficient to confer standing.

Finally, 1000 Friends of Iowa similarly lacks standing to challenge the instant zoning decision. "An organization may rest its right to sue on the rights of its members." *Covington v. Reynolds ex rel. State*, No. 19-1197, 2020 WL 4514691*4 (Iowa Ct. App. August 5, 2020); *Arizonians for Off. Eng. v. Az.*, 520 U.S. 43, 65–66 (1997) (holding an organization has standing only if its members would have standing individually). To achieve representational standing, an organization "must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Hunt v. Wa. Apple Advert. Comm'n*, 432 U.S. 333, 342 (1977). 1000 Friends of Iowa does not allege that any of its members has a specific and personal interest in the contested rezoning. As a result, the organization lacks standing to challenge this decision.

APPLICABILITY OF IOWA CODE CHAPTER 670

The parties disagree on the applicability of the Municipal Tort Claims Act (MTCA), Iowa Code chapter 670, to the present action. The applicability of the MTCA dictates the remedy or remedies available to the court due to Plaintiffs' failure to plead facts sufficient to confer standing.

Plaintiffs assert that the MTCA does not apply because (1) this zoning action is governed exclusively by Iowa Code section 335.18, and (2) this action is not a claim or tort for monetary damages. As a result, Plaintiffs assert that under the relevant Iowa Rules of Civil Procedure, the court should permit them an opportunity to amend the Petition to cure any defect. Defendant disagrees, noting the broad definition of tort in the Municipal Tort Claims Act, Iowa Code chapter 670 (the MTCA). Iowa Code section 670.1(4) comprehensively defines "tort" as

> every civil wrong which results in . . . injury to personal or property rights and includes but is not restricted to actions based upon . . . error or omission . . . breach of duty, whether statutory or other . . . or impairment of any right under any constitutional provision, statute or rule of law.

Iowa Code § 670.1(4).

The court finds Iowa Code chapter 670—and specifically the heightened pleading requirements imposed by section 670.4A—applies to this action. Defendant correctly urges that by its express term, the MTCA is intended to provide a procedural framework for all actions against municipalities, their officers, and employees, regardless of whether that action emanates from common law, statute, or otherwise. Nothing in chapter 670 conflicts with section 335.18, which permits individuals aggrieved by zoning decisions to appeal to the district court. Chapter 670 simply sets forth the procedural requirements for bringing this statutory claim. *S.O. ex rel. J.O. Sr. v. Carlisle Sch. Dist.*, No. 07-2096, 2009 WL 605994, at *4 (Iowa Ct. App. Mar. 11, 2009) (applying the statute of limitations period in the MTCA to plaintiffs' chapter 232 claim against a school employee in the employee's personal capacity).

Because chapter 670 applies to this action, the remedy available to the court for Plaintiffs' failure to properly plead standing is severely limited and mandatory. Iowa Code section 670.4A(3) states that

> [a] plaintiff who brings a claim under this chapter alleging a violation of the law must state with particularity the circumstances constituting the violation and that the law was clearly established at the time of the alleged violation. Failure to plead a plausible violation or failure to plead that the law was clearly established at the time of the alleged violation shall result in dismissal with prejudice.

Iowa Code § 670.4A(3).

While the Iowa Supreme Court (the Court) has recently noted that this new provision does not wholly abrogate the Iowa Rules of Civil Procedure and a plaintiff's ability to amend or voluntarily dismiss a petition, section 670.4A(3) does have consequences for plaintiffs whose case proceeds to a hearing on a motion to dismiss—which is the procedural status here. *Victoriano v. City of Waterloo*, 984 N.W.2d 178, 182-83 (Iowa 2023). When a court determines—as the court has in this case—that the Petition fails to meet the heightened pleading requirements imposed by section 670.4A(3), dismissal with prejudice is the only remedy permitted by that section. As a result, this case must be dismissed with prejudice.

CONCLUSION

The Motion should be granted. None of the plaintiffs—individual and organizational—have sufficiently asserted standing to proceed in this matter. The Petition fails to state with particularity the circumstances constituting a violation by Defendant, contrary to the pleading requirements imposed by section 670.4A(3). Dismissal of the Petition with prejudice is required.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion is granted and the Petition is dismissed in its entirety with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs are assessed to Plaintiffs.

State of Iowa Courts

Case Number	**Case Title**
EQCE088618	1000 FRIENDS OF IA ET AL VS POLK COUNTY BOARD OF SUPERVISORS
Type:	ORDER REGARDING DISMISSAL

So Ordered

Jeanie Kunkle Vaudt

Jeanie Vaudt, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2023-07-04 18:47:23