

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

1000 FRIENDS OF IOWA, BILL BARNES, INC., BRADLEY E. AND TERESA M. COULSON, SONDR K. FELDSTEIN REVOCABLE TRUST and STUART I. FEDLSTEIN REVOCABLE TRUST,

Plaintiffs,

vs

POLK COUNTY BOARD OF SUPERVISORS,

Defendant.

CASE NO. _____

PETITION FOR WRIT OF CERTIORARI AND DECLARATORY JUDGMENT

COME NOW the Plaintiffs, 1000 Friends of Iowa [hereinafter, "1000 Friends"], Bill Barnes, Inc., Bradley E. and Teresa M. Coulson, Sondra K. Feldstein Revocable Trust and Stuart I. Feldstein Revocable Trust [hereinafter, collectively, "the Individual Plaintiffs"], by and through counsel of record undersigned, and for their Petition for Writ of Certiorari and Declaratory Judgment against Defendant, Polk County Board of Supervisors [hereinafter, "the Board"] hereby state as follows:

INTRODUCTION

These proceedings challenge the legality of the Polk County Board of Supervisors' approval, on a vote of 3 - 2 taken February 7, 2023 (Ordinance No. 368), of The Family Leader Foundation's Request for Zoning Map Amendment (from "AG" Agricultural District to "MU" Mixed Use District). The Family Leader Foundation, Inc.'s Application also sought reclassification of the Subject Property from "Agricultural" to

"Neighborhood Business", but only the Zoning Map Amendment was approved. The Subject Parcel is now zoned "MU" Mixed Use, but its Future Land Use Map classification remains "Agricultural."

**PROPERTY SUBJECT OF THE BOARD'S ACTIONS
AND THESE PROCEEDINGS**

Subject Property / Rezoning Area:

5251 NE 94th Avenue, Ankeny, being legally described as the W 1/2 of the NE 1/4, Section 22 of Township 80 North, Range 23 West of the 5th P.M. (Douglas Township). The subject property is approximately 79 acres in size. The Rezoning Area is the approximately 21.13 acres located in the NW corner of the subject property, being more particularly described as follows:

Beginning at the N 1/4 Corner of said Section 22; thence S89°32'16"E, 700.00 feet along the north line of said NW 1/4, NE 1/4 to a point; thence S00°20'28"W, 383.43 feet to a point; thence S90°32'16"E, 300.00 feet to a point; thence S00°20'28"W, 651.99 feet to a point; thence N89°32'16"W, 1000.00 feet to a point on the west line of said NW 1/4, NE 1/4; thence N00°20'28"E, 1035.42 feet along said west line to the point of beginning. Said parcel contains 21.13 acres, more or less, which includes 0.68 acres, more or less, of existing county road easement.

General Location...:

The subject property is approximately three and one-half (3 1/2) miles east of the intersection of Interstate 35 and E. 1st Street within the City of Ankeny. City of Ankeny corporate limits extend east to the intersection of NE 94th Avenue and NE 38th Street. The subject property is located on the south side of NE 94th Avenue, being east of NE 46th Street Street (approximately 1 1/2 miles east of Ankeny corporate limits), and west of NE 56th Street.

Hereinafter, the above-described 21.13 acre parcel is referred to as "the Subject Property."

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, 1000 Friends of Iowa, is a domestic not-for-profit corporation organized in 1998 pursuant to Iowa Code Chapter 504 (2022). Its Registered Agent is Kari Carney and its home office address is 3106 Ingersoll Avenue, Des Moines, Polk County, Iowa 50312. 1000 Friends of Iowa is a statewide, membership- based

organization focused on responsible and equitable land use and addressing the impacts of irresponsible land use.

2. Plaintiff, Bill Barnes, Inc. is a domestic corporation organized in pursuant to Iowa Code Chapter 490. Its home office address is 306 2nd N.E., Bondurant, Iowa 50035. Bill Barnes, Inc. owns parcels to the northeast of the Subject Property.

3. Plaintiffs, Bradley E. and Teresa M. Coulson, own the property located at 8592 N.E. 56th Street, Bondurant, Iowa 50035.

4. Plaintiffs, Sondra K. Feldstein Revocable Trust and Stuart I. Feldstein Revocable Trust, own the property located at 9095 N.E. 72nd Street, Bondurant, Iowa 50035. Plaintiff, Sondra K. Feldstein Revocable Trust also owns the property located at 11045 N.E. 56th Street, Elkhart, Iowa 50073.

5. Defendant, Polk County Board of Supervisors, is a governing body comprised of individuals elected by district pursuant to Iowa Code § 331.206(1)(c) (2022). The Board is comprised of Matt McCoy (District 1), Robert Brownell (District 2), Steve Van Oort (District 3), Tom Hockensmith (District 4) and Angela Connolly (District 5). Supervisor Hockensmith chairs the Board.

6. Among the rights, duties and obligations of the Board are the adoption of ordinances related to real property (Iowa Code § 335.3 (2022)); the adoption of comprehensive plans "designed to preserve the availability of agricultural land...[and to] encourage efficient urban development patterns (Iowa Code § 335.5(1) (2022)); and provision for the manner in which regulations, restrictions and boundaries may be "amended, supplemented, changed, modified or repealed." (Iowa Code §§ 335.6 and .7 (2022)).

7. The Board adopted the Polk County Zoning Ordinance on or about September 10, 2007. The Ordinance has been amended several times, most recently on March 29, 2021.

8. The Board adopted its 2050 Comprehensive Plan on or about June, 2022.

9. The Board is also authorized to appoint commissions (Iowa Code § 335.8 (2022)). Pursuant to that authority, the Board appoints the Polk County Zoning Commission.

10. Plaintiffs' Petition for Writ of Certiorari and Declaratory Judgment is an original action pursuant to Iowa Rule of Civil Procedure 1.1401 (2022) and authorized by Iowa Code §335.18 (2022).

FACTS

11. The Subject Property is currently owned by Darrell Geisler. Mr. Geisler owns another parcel, which abuts the Subject Property to the east. A third parcel directly east of the Subject Property and south of Mr. Geisler's other parcel is owned by the Karla Knapp Trust. Ms. Knapp is a sister of Mr. Geisler. The Karla Knapp Trust also owns a second parcel, which abuts the Subject Property across a section of its northern boundary.

12. The Subject Property has historically been utilized for agricultural purposes and has always been both classified and zoned Agricultural. For a period of years, the Geisler family engaged in agricultural-related activities for the benefit of the general public, including a corn maze and pumpkin patch, which activities were authorized pursuant to a conditional use permit issued by the County. That permit was removed by the County in 2021 at the request of the property owner[s].

13. The Family Leader Foundation, Inc. is a domestic not-for-profit corporation organized and operating pursuant to Iowa Code 504 (2022). Its President and Registered Agent is Robert Vander Plaats. The organization's mission is to "strengthen families, by inspiring Christ-like leadership in the home, the church and the government."

14. Upon information and belief The Family Leader Foundation, Inc. is a non-profit 501(c)(3) and is exempt from taxation.

15. In 2022, The Family Leader Foundation, Inc. announced plans for its "Fields of Harvest" project, a destination office and event venue, intended to include an outdoor amphitheater and a bed-and-breakfast, among other features, to be operated in furtherance of The Family Leader Foundation, Inc.'s mission.

16. On or about October 29, 2022, The Family Leader Foundation, Inc. submitted a Comprehensive Plan Amendment and Rezoning Application [hereinafter "the Application"] pursuant to which it requested the Zoning Commission change the Future Land Use Map classification of the Subject Property from "Agricultural" to "Neighborhood Commercial" and the zoning district from "Agricultural - AG" to "Mixed Use - MU".

17. The Application was referred to County Staff for investigation and reporting, following which Staff recommended "denial of the requested Comprehensive Plan Amendment and Zoning Map Amendment to change the Future Land Use Map Classification from Agricultural to Neighborhood Commercial and to change the Zoning Map from the "AG" Agricultural District to the "MU" Mixed Use District for the Rezoning Area."

18. In its report, Staff included the following:

- "The subject property is primarily used in row crop production. However, the northern portion of the property along NE 94th Avenue contains a number of existing buildings, structures and improvements.";
- "In the northwestern corner of the subject property, located within the Rezoning Area, are several structures established since 2007....Together the structures have functioned as part of an active Agri-tourism use operated by the property owners from approximately 2005 through 2021. The Agri-tourism uses were agricultural activities open to the public, including a pumpkin patch farm stand, related activities and accessory event space.";
- "If this rezoning petition is approved, the prospective buyer of the Rezoning Area intends to repurpose and add onto these existing structures in redeveloping the property for their use as commercial office and event space.";
- "Reference Attachment A for a vicinity map of the subject property and surrounding area. The larger surrounding area includes land primarily in row crop production with a few existing single family residences. Existing residences in the area are long-standing farm homesteads or single family homes on existing lots of record at low densities.";
- "The subject property and surrounding land is entirely classified and zoned agricultural on the County's Future Land Use and Zoning maps. There is no commercial or industrial development nearby the subject property. The closest commercial development is over four (4) miles west within the City of Ankeny.";
- "The subject property is an active farm with the majority of acreage dedicated to row crop production....The operation began prior to Polk County's adoption of Agritourism use standards in 2007. However, in 2009 the Polk County Board of Adjustment approved a Conditional Use Permit, which legitimized the operation, including an expansion to include additional educational displays and activities at that time.";
- "Roads/Access/Utilities...Upon review of this application, Polk County Engineering expressed concerns related to the ability of NE 94th to handle increased traffic from commercial development. If the proposal moves forward, Polk County would require a traffic study and any recommended improvements at time of development."; and
- "The proposed commercial redevelopment of the property for future office and event space would likely require fire suppression, and the existing water main does not have fire flow capacity. If the project moves forward, the prospective buyers would be responsible for providing a private onsite pump or holding

tank system to meet fire suppression requirements. There is no public sewer available to the property."

19. The County Staff report included the following "[a]pplicable goals, strategies, policies and action items identified in the 2050 Comprehensive Plan:"

Chapter 3: Land Use, Goal 2 – Ensure preservation and conservation of environmental and historic land uses in Polk County: "Polk County contains a wide variety of natural resources and historic land uses. Preservation of this land amidst development pressure will help to ensure Polk County is environmentally healthy and conscious. This can be done through inventorying, preserving and buffering."

Strategy 1 – Preserve rural character of Polk County

Policies and Action Items:

- 1. Protect large contiguous areas of prime farmland with a focus on northwest and northeast Polk County.*
- 4. Continue to Foster land strategies and regulations that conserve the productivity and availability of high value agricultural land.*
- 5. Seek to reduce conflicts that may arise between development and agricultural practices.*

Chapter 3: Land Use, Goal 3 – Be a regional leader in sustainable land use management: "Polk County can be a regional leader in sustainable land use management by reducing urban sprawl even as the County faces growth pressures. This can be accomplished by discouraging leapfrog development and encouraging cities to grow in an orderly and condensed manner. Preventing unnecessary conversion of natural land to the built environment should be paramount."

Strategy 1 – Promote coordinated growth patterns to discourage urban sprawl

Policies and Action Items:

- 1. Discourage leapfrog development across Polk County to keep growth connected and centralized.*
- 3. Limit unincorporated development within urban fringe areas, which includes areas near municipalities growth boundaries.*
- 5. Allow for growth only where utilities and infrastructure can be financially supported and provided.*

Chapter 6: Agriculture, Goal 1 – Protect agricultural activities in key areas of Polk County: "Polk County will have to continue to be proactive in order to preserve

large, contiguous tracts of active agricultural land. Agriculture faces threats from many angles, none of which are more pressing in Polk County than the growing population and urbanization. Polk County must conserve land, discourage sprawl while also minimizing conflicts between Ag and non-Ag uses.”

Strategy 1 – Preserve large, contiguous tracts of agricultural land

Policies and Action Items:

2. Rezoning of agricultural land to non-agricultural uses should only be done in accordance with the Future Land Use Plan to protect this historical land use.

Strategy 2 – Encourage compact growth and discourage suburban sprawl

Policies and Action Items

3. Limit the expansion of non-agricultural or rural related commercial or industrial growth in unincorporated areas near existing agricultural uses.

The Comprehensive Plan may be amended from time to time if it can be demonstrated that a real and immediate need exists based upon changing circumstances.

20. As concerned its Comprehensive Plan Analysis, County Staff wrote:

- "Polk County has a significant role and interest in promoting coordinated growth patterns and protecting prime agricultural land in an environment where the County continues to realize development pressure from ongoing population growth.";
- "The 2050 Comprehensive Plan and Future Land Use Map continues to encourage commercial development in areas with adequate road networks, utilities and zoning compatibility to support such development. Similarly, the Plan and Future Land Use Map discourages commercial development in areas without these conditions including an emphasis on discouraging leapfrog development and conversion of prime agricultural land. ";
- "The subject property and surrounding area are entirely zoned "AG" Agricultural District and classified as Agriculture on the Future Land Use Map. Polk County adopted the current 2050 Comprehensive Plan in August of 2022. The previous 2030 Comprehensive Plan, adopted in 2006, also classified the subject property and surrounding area as Agricultural with similar goals and policies to the current 2050 Plan to prevent leapfrog development and conversion of farm ground to non-agricultural uses.";

- "The Northeast Quadrant contains some of the most productive farm ground in Polk County, including some of the largest contiguous tracts of agricultural land.";
- "The 2050 Comprehensive Plan places an emphasis on preserving agricultural land outside of future city growth areas, including discouraging reclassification and rezoning of existing agricultural land for residential or commercial development.";
- "The requested amendments do not support the applicable goals and policies of the Polk County 2050 Comprehensive Plan. The requested amendments would facilitate commercial redevelopment of the subject property that is fundamentally incompatible with the surrounding and use pattern, including active farming operations, farm residences and some existing single family development at low densities on established parcels of record."; and
- "In addition to being incompatible with surrounding land uses, there are also not adequate utility services available to serve commercial uses on the subject property."

21. The Polk County Zoning Commission met on November 28, 2022 and, following Staff recommendations, voted 5 - 1 to deny The Family Leader Foundation, Inc's Application, concluding that the proposed plan for the site was "fundamentally inconsistent" with future land-use goals related to farmland protection.

22. Thereafter, The Family Leader Foundation, Inc. organized a meeting for December 17, 2022, designed to garner support for its "Fields of Harvest project": "Undeterred, the projects' Comprehensive Plan Amendment and Rezoning request is moving forward to be presented to the Polk County Board of Supervisors so they can choose to approve the request despite the recommendations from County Staff and Zoning Commission."

23. The Family Leader Foundation, Inc.'s Application was presented to the Board three (3) times. On January 10, 2023 and January 24, 2023, members of the

public were permitted to comment. When the Board met on February 7, 2023, however, they voted on the Application without receiving additional input or comment.

24. Recognizing that in agricultural areas such as that in which the Subject Property is located those with a specific personal or legal interest in the subject matter on which interest the Board's action may have an injurious effect are not necessarily in close proximity, the Board sent postcards to property owners beyond the traditional radius employed, for example, in urban areas, and posted and published several notices of its scheduled meetings on the matter.

25. During the January 10, 2023 Board meeting, some supervisors expressed concern with the Application including: (a) concerns about "spot zoning" and about non-agricultural development in areas without infrastructure in place (Hockensmith); (b) increased traffic and the need for a conditional use permit (Brownell); (c) that the change from AG to MU would be "setting precedent" (Van Oort); and (d) that if The Family Leader (is successful but then later) leaves, whatever the Board decides will carry over to the next person to buy the property (Hockensmith).

26. During the January 24, 2023 Board meeting, additional concerns were voiced, including: (a) that the uses permitted in a Mixed Use District are not permitted in an Agricultural District, absent a conditional use permit (Vandelune (Staff)); (b) approval of the Application would be contrary to the overwhelming opposition (resident); (c) threats to first responders due to the lack of infrastructure (resident); (d) increasing tax burden on other property owners as The Family Leader would pay no taxes (resident); (e) the result will be a non-profit special interest group occupying a

parcel in the middle of agricultural land (resident); and (f) rezoning would effectively undo the Comprehensive Plan (Connolly).

27. On February 7, 2023, the Board voted to approve The Family Leader Foundation, Inc.'s Application for Zoning Map Amendment by a vote of 3 (McCoy, Brownell & Van Oort) to 2 (Hockensmith & Connolly)

28. The Board's posted Ordinance No. 368 approving The Family Leader Foundation, Inc.'s Application includes certain "Conditions of Rezoning", pursuant to which The Family Leader Foundation, Inc. is now permitted Institutional Uses (including indoor and outdoor institutional uses, institutional residential occupancy up to 8 residents, public service and group homes) as well as Commercial Uses (including office and indoor commercial amusement).

COUNT I - THE BOARD'S APPROVAL OF THE APPLICATION VIOLATES THE 2050 COMPREHENSIVE PLAN AND, AS SUCH, WAS ILLEGAL

29. Plaintiffs adopt and incorporate, as if fully set forth herein, paragraphs 1 through 28 of this Petition.

30. According to Polk County:

- **Comprehensive Plans are documents meant to guide decision-making for a city, county or region.**

Generally, Comprehensive Plans are future-oriented with horizon years of between twenty or thirty years. Comprehensive Plans analyze the existing conditions of a place and identify what is working well and what could be improved.;

- **A core responsibility of Comprehensive Plans are to create a unified vision for the future of a community.**

Public engagement is an important step in outlining a vision for Polk County in the year 2050. Community involvement also helps create community buy-in which makes plan implementation easier and more effective. The County will rely on a mixture of public participation and feedback, research on best practices, and expert analysis to identify goals, priorities and action items to implement the community's vision for 2050.;

- **Finally, a Comprehensive Plan is not meant to be a static, unchanging document.**

Rather, it is recommended that the County review the plan annually to make sure action items are being accomplished and policies followed. Additionally, a formal review of the Comprehensive Plan is recommended once every five years to ensure the plan still reflects the community vision. Amendments to the Comprehensive Plan should be made when there is a significant difference between the goals and recommendations of the plan and the existing conditions of the present.; and

- ...

- **Comprehensive Plans are not legal documents but the creation of a comprehensive plan is the legal justification for zoning ordinances and maps.**

Goals, priorities, policies and action items can all be used to defend zoning-related decisions and votes by the County and elected officials. The preferred community layout as identified in the future land use plan can also help justify decisions on zoning and rezoning applications. In short, comprehensive plans are not law but can be useful tools in decision-making for Polk County as it plans for the future.

31. According to Polk County's 2050 Comprehensive Plan, "the Land Use Plan is the central element of the Comprehensive Plan", "agricultural will remain the dominant land use in the northeast, the area most distant from the urban core and with the best soils", and "the designation of land use areas that are primary agricultural minimizes the potential for incompatible land uses in close proximity."

32. The 2050 Comprehensive Plan is incorporated by reference into the Polk County Zoning Ordinance.

33. The Board's Approval of The Family Leader Foundation, Inc.'s Application violates the County's 2050 Comprehensive Plan as described in more detail in paragraphs 18 and 19, *supra*.

34. By virtue of the Board's Approval of The Family Leader Foundation, Inc.'s Application, the Subject Property is now zoned "MU" Mixed Use. The Future Land Use

Map classification for the Subject Property remains Agricultural, such that the zoning and classification are in conflict.

35. The Board's Approval of The Family Leader Foundation, Inc.'s Application is not supported by substantial evidence and/or is unreasonable, arbitrary or capricious.

36. Plaintiffs have a specific, personal and legal interest in the Subject Property, like the parcels that surround it throughout this part of the County, remaining agricultural land. Indeed, the individual Plaintiffs chose to locate to and remain in this part of the County because it is agricultural in nature.

37. The Individual Plaintiffs also have a pecuniary interest sufficient to maintain a cause of action. Given The Family Leader Foundation, Inc.'s tax-exempt status, the burden of taxation to support County and other services will be disproportionately borne by the Individual Plaintiffs.

WHEREFORE, and for the reasons set forth herein, Plaintiffs respectfully request the Court issue a writ of certiorari and, after hearing, enter an Order declaring that the Board's Approval of The Family Leader Foundation, Inc.'s Application violates the County's 2050 Comprehensive Plan and, as such, was illegal.

COUNT II - THE BOARD'S APPROVAL OF THE APPLICATION VIOLATES THE COUNTY'S ZONING ORDINANCE; REZONING BY MAP AMENDMENT IN THIS CASE IS NOT COVERED BY THE ORDINANCE'S STATED JUSTIFICATIONS. AS SUCH, THE BOARD'S APPROVAL WAS ILLEGAL

38. Plaintiffs adopt and incorporate, as if fully set forth herein, paragraphs 1 through 28 of this Petition.

39. Article 1, Section 4 of the Polk County Zoning Ordinance describes its purpose as follows:

The purpose of this Ordinance is the implementation of the Comprehensive Plan and the protection and promotion of the health, safety, and general welfare of the present and future residents of the County. More specifically, the purposes of this Ordinance are to:

- Establish a rational pattern of land use and encouraging the most appropriate use of individual pieces of land throughout the County.
- Divide the unincorporated area of the County into districts of distinct community character according to the use of land and buildings, the intensity of such use (including bulk and height and surrounding open space.)
- Regulate and restrict the location and use of buildings, structures, and land for commercial, industrial, residential and other uses.
- Encourage compatibility between different land uses and to protect the scale and character of existing development from the encroachment of incompatible uses;
- Secure adequate light, clean air, convenience of access, and safety from fire, flood and other danger, which may include providing adequate open spaces for light, air and outdoor uses.
- Regulate the bulk, scale, and density of new and existing structures to achieve the community character of the Comprehensive Plan.
- ...
- Protect the tax base by facilitating cost-effective development within the County.
- ...
- Protect landowners from adverse impacts of adjoining developments.
- Protect and respect the justifiable reliance of existing residents, businesses, and taxpayers on the continuation of existing, established, and planned land use.
- Promote planned and balanced growth to increase the tax base to protect existing property owners.

40. Article 2, Division 2, Section 1, of the Polk County Zoning Ordinance

includes the following:

Agricultural purposes. See “**Agriculture.**”

Agricultural tourism. Any tourism operation that is directly dependent upon an agricultural operation. Farm tours, pick-your-own operations and wineries are examples of agri-tourism.

Agriculture. The art or science of cultivating the ground, including the harvesting of crops and the rearing and management of livestock.

41. "Neighborhood Business" is not defined in the Polk County Zoning Ordinance. According to the Polk County Zoning Commission, "[t]he Neighborhood Business classification is defined within the Polk 2050 Comprehensive Plan as land for small retail and office spaces located at major nodes for readily accessible services to residents and the traveling public. Typical land uses include daycares, assisted living facilities, all office, convenience stores and other neighborhood serving uses."

42. Article 3, Division 3 of the Zoning Ordinance describes the "purpose and intent" of both the pre-Application ("AG" Agricultural District) and the Application-approved ("MU" Mixed Use District) zoning districts:

Section 1. Rural Districts

The rural districts are intended to preserve or encourage the continuation of agricultural uses and agricultural land. There are three rural districts: an Agricultural District (AG) designed to preserve agriculture, Agricultural Transition (AT) which encourages the continuation of agriculture understanding that the area will most likely develop in the future with the extension of public water and sanitary sewer, and an Estate Residential District (ER) which allows for housing at a density to retain their basic rural character.

(A) Agricultural District – AG

This district is intended to preserve and protect areas of Polk County that are presently predominantly in agricultural use and which are not needed to accommodate the County's growth until after the year 2030. These areas contain soils that are predominantly prime agricultural soils. This district is designed to protect the agricultural land allowing only scattered residential dwellings that mostly serve the agricultural uses. This area shall be last in priority for rezoning to accommodate growth in the future. The Agricultural designation also ensures the continuation of the rural character of these areas of the County.

...

Section 3. Mixed Use District

The MU (Mixed Use District) is intended to accommodate a mix of medium and high-density housing and complementary office and commercial uses that will be served by public utilities, as well as recognizing existing areas developed with a mix of residential, commercial and industrial uses. The district is located around the edges of the growing cities, where it recognizes this development type within municipal land use plans. It also is planned for locations in the North Central unincorporated areas where neighborhood infill and revitalization is recommended.

43. Every parcel surrounding the Subject Property to the north, south, east and west is, according to County Staff, zoned "AG" Agricultural District. By amending the zoning map as they did, the Board created a spot-zoned parcel, rezoned from AG to "MU" Mixed Use.

44. Article 18, Division 1, Section 1 of Zoning Ordinance permits rezoning through a text or map amendment only when certain conditions are met, to wit:

(A) The use desired is not covered in the text of the Ordinance, but is acceptable because:

- (1) The proposed use is in accordance with the purpose of the zoning district; and
- (2) There are similar uses in the district; and
- (3) The intensity of use proposed is consistent with other uses in the district. In demonstrating consistency, the building volume ratios, site volume ratios, and landscape volume ratios of the proposed use and existing uses in the area shall be compared. The Board of Supervisors, upon the recommendation of the Zoning Commission, may adjust the intensity, landscaping, and other criteria to ensure that consistency is maintained.

(B) New conditions have arisen that have not been addressed in the Ordinance. These new conditions may be any one of the following:

- (1) The Comprehensive Plan has been amended and the Zoning Ordinance needs to be brought into conformity with the Plan.
- (2) A changing market or other conditions require new forms of development or new procedures to meet changing needs.
- (3) New methods of development or providing infrastructure makes it necessary to alter the Ordinance to accommodate these new methods.

(4) Changing governmental finances requires amending the text of the Ordinance to be in keeping with the needs of government to provide and afford new public services.

(C) After experience with the regulations, adjustments are needed to achieve the desired objectives. This request must come from County staff who have recognized problems that need to be corrected or from developers and others who have experienced trouble making the regulations work properly.

45. The desired use of the Subject Property is not in accordance with the purpose of the zoning district, there are no similar uses in the district and the intensity of the proposed use is inconsistent with other uses in the district.

46. No new condition have arisen such that the Board's approval of the Application falls under section B.

47. The Application is clearly inconsistent with the desired objectives of the County.

48. The Board's Approval of The Family Leader Foundation, Inc.'s Application is not supported by substantial evidence and/or is unreasonable, arbitrary or capricious.

49. Plaintiffs have a specific, personal and legal interest in the Subject Property, like the parcels that surround it throughout this part of the County, remaining agricultural land. Indeed, the individual Plaintiffs chose to locate to and remain in this part of the County because it is agricultural in nature.

450 The Individual Plaintiffs also have a pecuniary interest sufficient to maintain a cause of action. Given The Family Leader Foundation, Inc.'s tax-exempt status, the burden of taxation to support County and other services will be disproportionately borne by the Individual Plaintiffs.

WHEREFORE, and for the reasons set forth herein, Plaintiffs respectfully request the Court issue a writ of certiorari and, after hearing, enter an Order declaring that the Board's Approval of The Family Leader Foundation, Inc.'s Application violates the Polk County's Zoning Ordinance and, as such, was illegal.

**COUNT III - THE BOARD'S APPROVAL OF THE APPLICATION
CONSTITUTES ILLEGAL "SPOT ZONING"**

51. Plaintiffs adopt and incorporate, as if fully set forth herein, paragraphs 1 through 50 of this Petition.

52. By virtue of the Board's approval of The Family Leader Foundation, Inc.'s Application, the Subject Parcel is now zoned "MU" Mixed Use.

53. Prior to the Board's approval of The Family Leader Foundation, Inc.'s Application, the Subject Parcel was zoned "AG" Agricultural.

54. All land surrounding and abutting the Subject Parcel to the north, south, east and west has historically been, and remains, zoned "AG" Agricultural.

55. There exists no substantial nor reasonable grounds or basis for the discrimination when the Subject Parcel is singled out for an amendatory ordinance removing therefrom restrictions imposed upon the remaining portions of the same zoning district.

56. The Board's Approval of The Family Leader Foundation, Inc.'s Application is not supported by substantial evidence and/or is unreasonable, arbitrary or capricious.

57. Plaintiffs have a specific, personal and legal interest in the Subject Property, like the parcels that surround it throughout this part of the County, remaining agricultural land. Indeed, the individual Plaintiffs chose to locate to and remain in this part of the County because it is agricultural in nature.

58. The Individual Plaintiffs also have a pecuniary interest sufficient to maintain a cause of action. Given The Family Leader Foundation, Inc.'s tax-exempt status, the burden of taxation to support County and other services will be disproportionately borne by the Individual Plaintiffs.

WHEREFORE, and for the reasons set forth herein, Plaintiffs respectfully request the Court issue a writ of certiorari and, after hearing, enter an Order declaring that the Board's Approval of The Family Leader Foundation's Application constitutes illegal spot zoning.

COUNT IV - DECLARATORY JUDGMENT

59. Plaintiffs adopt and incorporate, as if fully set forth herein, paragraphs 1 through 58 of this Petition.

60. This Court has the authority to declare the rights and obligations of the parties to these proceedings.

61. Plaintiffs have the right to challenge the Board's approval of The Family Leader Foundation, Inc.'s Application.

62. The Board's approval of The Family Leader Foundation, Inc.'s Application was an illegal violation of the County's 2050 Comprehensive Plan and/or the Polk County Zoning Ordinance and/or constituted illegal spot zoning.

WHEREFORE, and for the reasons set forth herein, Plaintiffs respectfully request the Court issue an Order declaring that Board's approval of The Family Leader Foundation, Inc.'s Application was illegal and that zoning of the Subject Property shall remain "AG" Agricultural, consistent with the classification of the Subject Property in the 2050 Comprehensive Plan Future Land Use Map.

Respectfully submitted:

____/s/CeCelia C. Ibson_____

CeCelia C. Ibson

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