

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

Plaintiffs,

vs.

POLK COUNTY BOARD OF SUPERVISORS,

Defendant.

EQCE088618

MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI AND DECLARATORY JUDGMENT

COME NOW the Polk County Board of Supervisors and for their Motion to Dismiss the Petition for Writ of Certiorari and Declaratory Judgment, respectfully submit the following motion and supporting brief

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Statement of the Case

1000 Friends of Iowa, Bill Barnes, Inc., Bradley E. and Teresa Coulson, Sondra K. Feldstein Revocable Trust, and Stuart I. Feldstein Revocable Trust, brought a Petition for Writ of Certiorari and Declaratory Judgment against the Polk County Board of Supervisors. Plaintiffs challenge the Board’s recent decision to rezone a portion of former Giesler Family Pumpkin Patch property from Agricultural to Mixed Use upon the application of prospective buyer, The Family Leader Foundation, Inc. The Plaintiffs allege the rezoning ordinance violates the Future Land Use Map in the 2050 Comprehensive Plan,¹ violates the Polk County Zoning Ordinance, and constitutes illegal spot zoning. The Plaintiffs seek a declaratory order that the rezoning ordinance is unlawful. While the Plaintiffs set forth in great detail the challenged governmental action, the Petition is wholly devoid of factual allegations as to how the rezoning ordinance specifically and particularly affects these Plaintiffs—above and beyond those of the half a million other residents of Polk County. Without a particularized personal and legal interest in rezoning ordinance, these Plaintiff lack standing requiring the dismissal of their action.

Standard for Granting a Motion to Dismiss Under Iowa Rule of Civil Procedure 1.421

“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). For purposes of evaluating a motion to dismiss for failure to state a claim upon which relief can be granted, facts pled 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. *See Hedlund v.*

¹ In the Petition, Plaintiffs allege that the recent rezoning action is in violation of the Future Land Use Map in the 2050 Comprehensive Plan. Petition at 2, ¶ 34. The Court can and should take judicial notice that this allegation is incorrect. The Polk County Board of Supervisors adopted an amendment to the Future Land Use Map reclassifying the property as Neighborhood Commercial prior to the adoption of the rezoning application on January 10, 2023. <https://www.polkcountyiowa.gov/umbraco/Api/BoardMinutesAttachmentsApi/GetAttachment?meetingId=2220&attachmentType=Minutes> (last accessed April 3, 2023).

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). A petition “must contain factual allegations that give the defendant ‘fair notice’ of the claim asserted so the defendant can adequately respond to the petition.” *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004).

Argument

Courts traditionally have been cautious to avoid issuing advisory opinions. As a result, the judiciary has developed a variety of rules designed to impose self-restraint. *Godfrey v. State*, 752 N.W.2d 413, 417 (Iowa 2008). Amongst these rules is the doctrine of standing, which ensures that the proper party is bringing the action by requiring the complaining party to have a “sufficient stake” in a “justiciable controversy.” Standing in Iowa is comprised of two elements. In order 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). Though 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 in order to have standing one must have a specific interest in the action, apart from the general interest of the public at large. *Id.* at 419. The second requirement—that plaintiffs be injured in fact—requires the 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 *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689 n.14, 93 S. Ct. 2405, 2417 n.14 (1973)).

Iowa’s two-pronged standing doctrine parallels the federal doctrine, even though 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). As a result, federal case law will often serve 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 the plaintiffs’ claim 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 County Ct. of Common Pleas*, 75 F.3d 834, 838 (3d Cir. 1996).

The Iowa Supreme Court has long-recognized that “mere citizenship confers no right to maintain [an] action.” *Polk Cnty. v. Dist. Ct.*, 133 Iowa 710, 711, 119 N.W. 1054, 1054 (1907). The reason for this prohibition is clear—by asserting a claim based upon citizenship, the plaintiffs have not alleged a specific personal or legal interest in the underlying action different from that of the public generally. *See Koriath v. Briscoe*, 523 F.2d 1271, 1276 (5th Cir. 1975) (“It is tautologically clear that a citizen who asserts only his citizen status as a basis for standing to pursue constitutional or statutory claims has not specified any injury which sets him apart from the mass of citizens who desire that the state adhere to the legal amenities of governance.”).

The United States Supreme Court has also long-rejected citizenship as a basis for standing. Justice Louis Brandeis noted almost one hundred years ago, Plaintiff has [asserted] only the right, possessed by every citizen, to require that the Government be administered according to law and that the public moneys not be wasted. Obviously this general right does not

entitle a private citizen to institute in the federal courts a suit. . . . *Fairchild v. Hughes*, 258 U.S. 126, 129–30, 43 S. Ct. 274, 275 (1922) (emphasis added); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573–74, 112 S. Ct. 2130 (1992) (“We have consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.”); *Tyler v. Judges of Ct. of Registration*, 179 U.S. 405, 406, 21 S. Ct. 206 (1900) (“[E]ven in a proceeding which he prosecutes for the benefit of the public . . . [the plaintiff] must generally aver an injury peculiar to himself, as distinguished from the general body of his fellow citizens.”).

I. Individual Plaintiffs Have Insufficiently Pled Facts Demonstrating Their Particular Personal and Legal Interest in the Challenged Rezoning Ordinance.

In each of their first three counts, Plaintiffs pled, “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.” Petition ¶¶ 36, 49, 57. While declarative, these paragraphs offer no supporting factual allegations to substantiate the Individual Plaintiffs’ claims of standing. *See Hedlund*, 875 N.W.2d at 724 (stating a court must accept well-pleaded factual allegations as true, but not the legal conclusions). The remainder of the Petition is equally devoid of factual allegations setting forth the Individual Plaintiffs particular factual and legal interest in this rezoning action—above and beyond that of any other Polk County resident. Paragraphs 2, 3, and 4 of the Petition set forth the addresses of the Individual Plaintiffs. The paragraphs, however, do not state how far those properties are from

the subject property—and specifically the smaller portion which was rezoned. Paragraph 24 of the Petition states,

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 matters.

While the parties can quibble about the speculation as to the Board's intent, what is most significant about this paragraph is what is not alleged. The Individual Plaintiffs do not allege that they received postcards notifying them of the rezoning application.

Without any supportive factual allegations, the Board is left to speculate as to the particularized interest of the Individual Plaintiffs. It is not the Board's burden to speculate. It is not the Court's burden. It is the Plaintiffs' burden and they have simply failed to articulate their interests. This failure is especially acute under the newly enhanced pleading requirements for claims against municipalities and its officers. As the Iowa Supreme Court recently recognized, newly-enacted Iowa Code section 670.4A(3), sets forth a heightened pleading requirement.

Victoriano v. City of Waterloo, 984 N.W.2d 178, 181 (Iowa 2023). Iowa Code section 670.4A(3) states,

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.

Under general or heightened pleading requirements, the Individual Plaintiffs have failed to pled sufficient factual allegations to confer standing.

II. The Individual Plaintiffs Do Not Have Standing as Taxpayers to Challenge the Rezoning Ordinance.

In each of their first three counts, the Individual Plaintiffs state, “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.” Petition ¶¶ 37, 50, 58. The Individual Plaintiffs’ status as taxpayers is insufficient to confer standing.

“It has long been established . . . that the payment of taxes is generally not enough to establish standing to challenge an action taken by the [] Government.” *Hein v. Freedom From Religion Foundation, Inc.*, 551 U.S. 587, 594, 127 S. Ct. 2553, 2559 (2007). The United States Supreme Court created a narrow exception to this doctrine to recognize standing for plaintiffs to challenge a law authorizing the use of federal funds which contravenes the Establishment Clause. *Id.* That narrow exception is not at issue here. The Iowa Supreme Court, however, has recognized an additional exception—a taxpayer has standing to “ ‘maintain an action in his own name to prevent unlawful acts by a public officer which would increase the amount of taxes he is required to pay. . . .’ ” *Alons*, 698 N.W.2d at 865 (quoting *Polk County v. Dist. Ct.*, 133 Iowa 710, 712, 110 N.W. 1054, 1055 (1907))). This recognition is due to the common sense observation that taxpayers have an interest in ensuring that their tax dollars are lawfully spent. *Wallace v. Des Moines Indep. Cmty. Sch. Dist. Bd. Of Dirs.*, 754 N.W.2d 854, 859 (Iowa 2008).

This exception is not absolute. Taxpayers are injured in fact and thus acquire “standing by showing some link between higher taxes and the government action being challenged.” *Godfrey*, 752 N.W.2d at 424. That link is wholly absent here. There is no allegation, much less evidence, that the individual property owners taxes will be increased as a result of challenged rezoning ordinance. The more significant problem for the Individual Plaintiffs, however, is that

the Subject Property is potentially tax-exempt—assuming a sale to The Family Leader Foundation, Inc.—irrespective of the challenged rezoning application. As averred by the Plaintiffs, the potential tax-exempt status of the property is due to the non-profit status of The Family Leader Foundation, Inc., *not* the rezoning from agricultural to mixed use. The rezoning ordinance, the governmental action challenged here, has no perceivable tax implication on the Individual Plaintiffs. Having no particularized factual or legal interest in the challenged action, the Individual Plaintiffs must be dismissed.

III. 1000 Friends of Iowa Has Insufficiently Pled Facts Upon Which to Confer Organizational Standing to Challenge the Rezoning Ordinance.

As set forth in the Petition “1000 Friends of Iowa, is a domestic not-for-profit corporation organized in 1998 pursuant to Iowa Code Chapter 504 . . . 1000 Friends of Iowa is a statewide, membership-based organization focused on responsible and equitable land use and addressing the impact of irresponsible land use.” Petition ¶ 1. Other than the general, conclusory paragraphs that all Plaintiffs have specific, personal, and legal interest in bringing this action, the Petition is wholly devoid of any factual allegations upon which to confer organizational standing on 1000 Friends of Iowa. Petition ¶¶ 36, 49, 57. For example, there is no allegation that a single member of 1000 Friends of Iowa lives or owns property in the adjacent areas. There is no allegation that a single member of 1000 Friends of Iowa will be adversely impacted by the challenged rezoning.

It is well-settled in Iowa that organization or representational standing in Iowa is derived from the legal interests of its members. “An organization may rest its right to sue on the rights of its members.” *Covington v. Reynolds ex rel. State*, 2020 WL 4514691*4 (Iowa Ct. App. August 5, 2020); *see also Arizonians for Official English v. Arizona*, 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. Washington Apple Advert. Comm’n*, 432 U.S. 333, 342 (1977). The Petition is wholly devoid of factual allegations upon which to confer standing on 1000 Friends. As a result, the organization must be dismissed from the suit.

Conclusion

For the reasons set forth above, the County Defendants respectfully pray that the Petition for Writ of Certiorari and Declaratory Judgment be dismissed in its entirety and this Court grant any and all other relief it deems appropriate.

Respectfully submitted,

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