

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. EQCVo88618

PLAINTIFFS' RESISTANCE TO MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI AND DECLARATORY INJUNCTION

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 Resistance to Motion to Dismiss Petition for Writ of Certiorari and Declaratory Judgment against Defendant, Polk County Board of Supervisors [hereinafter, "the Board"] hereby state as follows:

I. 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 Board voted as it did, despite that "the Polk County Zoning Commission, after hearing from staff, the petitioners and members of the public regarding the proposed Zoning Map Amendment, voted (5) in favor, one (1) against, with zero (0) members sent to recommend denial to the Polk County Board of Supervisors that the Zoning Map Amendment from the "AG" Agricultural District to the "MU" Mixed Use District be denied." (Ordinance No. 368)

Plaintiffs' Petition for Writ of Certiorari and Declaratory Judgment challenge the Board's approval of the Application as violative of the County's 2050 Comprehensive Plan and the Polk County Zoning Ordinance, which governs all of unincorporated Polk County.

As discussed in greater detail herein, Polk County Staff – in their report to the Polk County Board of Adjustment – identified the particularized personal and legal interests of all residents of unincorporated Polk County, which interests are jeopardized by the Board's approval of the Application. (See, Petition, p. 6, ¶ 18 and pp. 7 & 8, ¶ 19). The individual Plaintiffs are just some of the residents of unincorporated Polk County who choose to live where they do because of the agricultural nature of their land and the land surrounding them. Plaintiff, 1000 Friends of Iowa, exists to advocate for land preservation and equitable land use, particularly as concerns rural Iowa.

There exists but one mechanism for challenges to boards of supervisors in Iowa, the procedure described in Iowa Code § 335.18 (2022), which is afforded to any person "aggrieved by any decision of the board..." The plaintiffs in this case are just some of the persons aggrieved by the Board's approval of the Application. If, as the Board alleges,

these Plaintiffs do not have standing to challenge the legality of the Board's action, who does?

If, as the Board seems to argue, it is only owners of parcels immediately adjacent to the subject parcel, then the Board's action will never be subject to challenge. Such a conclusion renders Iowa Code § 335.18 (2022) effectively meaningless and has potentially dire consequences for agricultural Iowa moving forward.

II. THE IOWA SUPREME COURT HAS CLEARLY EXPRESSED ITS DISFAVOR WITH BOTH THE FILING AND SUSTAINING OF MOTIONS TO DISMISS.

In *Cutler v. Klass, Whicher & Mischne*, 473 N.W.2d 178 (Iowa 1991) the Iowa Supreme Court expressed its clear disfavor of both the filing and the sustaining of motions to dismiss:

[W]e certainly do not recommend the filing of motions to dismiss in litigation, the viability of which is in any way debatable. Neither do we endorse sustaining such motions, even where the ruling is eventually affirmed. Both the filing and the sustaining are poor ideas.

The reasons are clear enough. In the first place, in filing a motion to dismiss, a defendant gives away all the facts because in ruling on the motion well-pled facts are assumed to be true. *Berger v. General United Group*, 268 N.W.2d 630, 634 (Iowa 1978); *Sarvold v. Dodson*, 237 N.W.2d 447, 447-8 (Iowa 1976). Combined with this venerable rule is a more recent one. Under notice pleading a suit will survive a motion to dismiss whenever a valid recovery can be gleaned from the pleadings. *Lakota Consol. Indeed. School v. Buffalo Center/Rake Community Schools*, 334 N.W.2d 704, 708 (Iowa 1983).

We recognize the temptation is strong for a defendant to strike a vulnerable petition at the earliest opportunity. Experience has however taught us that vast judicial resources could be saved with the exercise of more professional patience. Under the foregoing rules dismissals of many of the weakest cases must be reversed on appeal. Two appeals often result where one would have sufficed had the defense moved by way of summary judgment, or even by way of defense at trial. From a defendant's standpoint, moreover, it is far from unknown for the flimsiest of cases to gain strength when its dismissal is reversed on appeal. We emphasize that our determination of this appeal is no commendation for filing or sustaining the motion to dismiss.

Cutler v. Klass, 473 N.W.2d at 181. See also, *Smith v. Smith*, 513 N.W.2d 728, 731 (Iowa 1994) ["This case again underscores our disapproval of rushing to judgment by way of a pre-answer motion to dismiss."]

Uncertainty or a lack of precision at this stage of the proceedings, standing alone, does not support sustaining of a motion to dismiss. "The petition should be construed in the light most favorable to the plaintiff with doubts resolved in that party's favor in rolling on the motion. *Bindel v. Iowa Mfg. Co.*, 197 N.W.2d 552, 555 (Iowa 1972). A motion to dismiss is sustainable only when it appears to a certainty that the plaintiff would not be entitled to relief under any state of facts that could be proved in support of the claims asserted. *Id.*" *Haupt v. Miller*, 514 N.W.2d 905, 910 (Iowa 1994) (emphasis added)

The court's focus should be only on whether the allegations of the Petition are so deficient that the opposing party is deprived of notice of the claims made. See, *Nelson v. Case*, 786 N.W.2d 267 (Ia. App. 2010) Here, that is most certainly not the case as evidenced by the fact that the Board's Motion to Dismiss manifests a clear understanding regarding precisely who the Plaintiffs are and what the Board did that prompted them to take action.

III. PLAINTIFFS' PETITION FOR WRIT OF CERTIORARI SETS FORTH FACTS SUFFICIENT TO ESTABLISH STANDING OF BOTH 1000 FRIENDS OF IOWA AND THE INDIVIDUAL PLAINTIFFS.

A. IOWA'S TWO-FACTOR TEST

In their Brief, Defendant, Polk County Board of Supervisors [hereinafter "the Board"] set out the correct standard: "In order to pursue a claim, a plaintiff 'must (1) have a specific personal interest in the litigation and be injuriously affected.'" Defendant's Brief, dated April 3, 2023, citing *Citizens for Responsible Choices v. City of*

Shenandoah, 686 N.W.2d 470, 475 (Iowa 2004). This passage is preceded by "'Standing to sue' has been defined to mean the party must have 'sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy' *Birkhofer ex rel Johannsen v. Brammeier*, 610 N.W.2d 844, 847 (Iowa 2000)" and followed by "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. *Iowa Civil Liberties Union v. Critelli*, 244 N.W.2d 564, 567 (Iowa 1976)."

In *Citizens v. Shenandoah*, the Supreme Court affirmed the trial court's dismissal of Citizen's petition on the ground that, "Citizens lacked standing to challenge the issuance of revenue bonds to finance [the subject] project. That ruling was premised on Citizens' admission in its resistance to the motion to dismiss that none of its members were taxpayers or utilities customers of either of the appellee cities." *Citizens v. Shenandoah*, 686 N.W.2d at 475. The opposite is true in this case. Both the individual members of 1000 Friends of Iowa and the individual named Plaintiffs in this case are taxpayers and customers of the utilities that serve both their properties and the parcel subject of the Petition. Polk County Staff, in their report to the Polk County Zoning Board and the Polk County Board of Supervisors, included issues with utilities in the area as among those which supported their recommendation to deny the Application. (See, Petition, p. 6, ¶ 18)

B. STANDING AND JUSTICIABILITY

Standing is often tied to justiciability. If the court cannot resolve the problem presented it is acting in an advisory capacity, which is not permitted. See, for example,

Iowa Citizens for City Improvement & Food & Water Watch v. State, 962 NW.2d 780 (Iowa 2021) in which plaintiffs sought a court order forcing the state to enact legislation to improve water quality in the Raccoon River. The Supreme Court reversed the district court's denial of the State's motion to dismiss for lack of standing, finding that the alleged injury claimed by the plaintiff could not be remedied by a court: "Here, it is speculative that a favorable court decision in this litigation would lead to a more aesthetically pleasing Raccoon River, better swimming and kayaking on the river, and lower water rates in the Des Moines metropolitan area. As already noted, to a large extent the plaintiffs are simply seeking broad, abstract declarations in this litigation. Such general declarations do not provide any assurance of concrete results, although they do herald long-term judicial involvement." *ICCI v. State*, 962 NW.2d at 792.

Here, the clear language of both Iowa Code § 335.18 (2022) and relevant case law establish that the dispute presented by Plaintiffs herein is ripe for adjudication. Iowa Code § 335.18 (2022), Petition to Court, states, in pertinent part: "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...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...."

Our appellate courts have interpreted this Code section to apply not just to boards of adjustment, but also to boards of supervisors. See, *Fox v. Polk County Board of Supervisors*, 569 N.W.2d 503, 506 (Iowa 1997) ["The nature of the certiorari proceedings against the Board of Supervisors is an ordinary action."]; see also, *Montgomery v. Bremer County Board of Supervisors*, 299 N.W.2d 687, 691(Iowa 1980)

["The parties agree that certiorari is the appropriate means to review the Board's actions."]

"Certiorari is a procedure to test whether a lower board, tribunal, or court exceeded its property jurisdiction or otherwise acted illegally." *Homeowners Ass'n of the Coves of Sundown Lake v. Appaloosa County Bd. of Supervisors*, 2014 Iowa App. LEXIS 272 *4 (Ia. App. 03/26/2014), quoting, *Barnhill v. Iowa Distr. Ct.*, 765 N.W.2d 267, 272 (Iowa 2009).

Upon receipt of a Petition for Writ of Certiorari, the district court holds an evidentiary hearing. "In a certiorari proceeding in a zoning case the district court finds the facts anew on the record made in the certiorari proceeding. The record will include the return to the writ and any additional evidence which may have been offered by the parties. However, the district court is not free to decide the case anew. Illegality of the challenged board action is established by reason of the court's findings of fact if they do not provide substantial support for the board decision." *Fox v. Polk County Board*, 569 N.W.2d at 506. "A declaratory judgment action is appropriate to test the legality of an amendment to a city's comprehensive zoning ordinance. *Keller v. City of Council Bluffs*, 246 Iowa 202, 206, 66 N.W.2d 113, 115 (1954). The existence of another remedy which will afford complete relief does not preclude a judgment for declaratory relief in cases where it is appropriate; the test is whether the legislature has prescribed an exclusive remedy. *Rich Mfg. Co. v. Petty*, 241 Iowa 840, 847, 42 N.W.2d 80, 84 (Iowa 1950)." *Fox v. Polk County Board*, 569 N.W.2d at 507.

Not only is the dispute presented by the Petition of Writ of Certiorari — which also includes a plea for declaratory judgment — ripe for adjudication, the process

followed by the Plaintiffs in this case is the only recourse they have. There exists no other mechanism or procedure according to which they may challenge the legality of the Polk County Board of Supervisors' approval of the zoning map amendment.

C. 1000 FRIENDS OF IOWA HAS STANDING

Plaintiff, 1000 Friends of Iowa, is a domestic not-for-profit corporation organized in 1998 pursuant to Iowa Code Chapter 504. (Petition, p. 2 ¶ 1) According to its website, "1000 Friends of Iowa, founded in 1988, is a statewide, membership-based organization focused on responsible and equitable land use and addressing the impacts of irresponsible land use. Our mission is to engage and unite Iowans in efforts to protect farmland & natural areas, revitalize neighborhoods, towns & cities, and improve quality of life for future generations. Our key program areas include: (1) Protecting Our Soil, Water, Farms and Natural Areas; (2) Smarter, Equitable Transportation; (3) Climate Change & Renewable Energy; [and] (4) Sustainable, Regenerative, and Equitable Communities & the Built Environment." (1000friendsofiowa.org)

Preserving agriculture land — and challenging misuses of that land — in unincorporated Polk County is furthers the mission and goals of 1000 Friends of Iowa.

In litigation involving the construction of Jordan Creek Town Center, 1000 Friends of Iowa — unlike other plaintiffs challenging the project — survived motions to dismiss in federal court, where standing is jurisdictional. In *One Thousand Friends of Iowa v. Mineta*, 250 F. Supp. 1064 (S.D. Ia. 2002) the court dismissed Merle Hay Mall and Valley West Mall on standing grounds. Each had claimed "(1) 'adverse affects' on the health safety and comfort of its employees; and (2) a dimunition in value of its limited partnership's interest in the mall." *1000 Friends v. Mineta*, 250 F. Supp. at

1067. Additionally, Valley West Mall claimed injury from the sale of bonds to finance the Jordan Creek project.

The Court also dismissed the King Irving Neighborhood Association, which claimed injury due to the project's failure to adequately assess the environmental impacts of the development finding that "the Court previously has held that any obligation of the [Federal Highway Commission] to consider environmental justice is not judicially enforceable." *1000 Friends v. Mineta*, 250 F. Supp. at 1070. The case proceeded to hearing in the Southern District and on appeal to the U.S. Court of Appeals for the Eighth Circuit, both of which dismissed the Petition as moot.¹

Similarly, our state appellate courts have recognized that membership organizations have standing to challenge public acts on behalf of their constituencies. See, for example, *Homeowners Ass'n of the Coves of Sundown Lake v. Appanoose County Bd. of Supervisors*, 2014 Iowa App. LEXIS 272 (Ia. App. 03/26/2014).

D. THE INDIVIDUAL PLAINTIFFS HAVE STANDING

Each of the individual Plaintiffs owns land in unincorporated Polk County and in the vicinity of the subject parcel²: "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." (Petition, p. 3, ¶ 2) Plaintiffs, Bradley E. and Teresa M. Coulson, own the property located at 8592 N.E. 56th Street, Bondurant, Iowa 50035. (Petition, p.

¹ By the time the case was heard, the issues regarding which 1000 Friends complained and regarding which they sought injunctive relief had already been completed.

² As Plaintiffs write in their Petition, virtually every parcel adjacent to the subject one is owned by a member the Geisler family, who proposes to sell the subject parcel to The Family Leader. See, Petition, p. 4, ¶ 11.

3, ¶ 3) 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. (Petition, p. 3, ¶ 4)

1. Standing is not limited to only those residents of unincorporated Polk County who own parcels immediately adjacent to the subject parcel

In *Reynolds v. Dittmer*, 312 N.W.2d 75 (Ia. App. 1981), plaintiff landowners filed a petition for writ of certiorari challenging the Warren County Board of Supervisors' approval of three subdivision plats. Defendants, Dittmer, *et al.*, filed a motion to dismiss for lack of standing because the plaintiffs did not own land immediately adjacent to the subject parcels.

"[U]able" to find any Iowa cases wherein the court determined whether a person who does not own the land directing affected by a zoning decision has a legal right to object to the zoning change or approval of the subdivision plat", the appellate court turned to decisions from other jurisdictions:

The Court of Appeals of New York addressed this issue in Douglaston Civic Association, Inc. v. Galvin, 36 N.Y.2d 1, 6, 324 N.E.2d 317, 320, 364 N.Y.S.2d 830 (1974), as follows: "We are troubled by the apparent readiness of our courts in zoning litigation to dispose of disputes over land use on questions of standing without reaching the merits, an attribute which is glaringly inconsistent with the broadening rules of standing in related fields [citing cases]." The pertinent discussion in Am. Jur. 2d states: "while the mere fact that one owns property which adjoins or is near the property which is the subject of the administrative [zoning] decision does not necessarily make him a person aggrieved by the decision, it generally takes little more to establish his status as such." 82 Am. Jur.2d Zoning and Planning § 344.

In Missouri, an adjoining, confronting, or nearby landowner has standing to challenge the validity of an ordinance or to seek review of an administrative zoning decision without further proof of any special damage. Allen v. Coffel, 488 S.W.2d 671, 675 (Mo. App. 1972). The Florida supreme court enumerated the following factors as a guide in determining the sufficiency of a person's interest to

give standing: 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. Renard v. Dade County, 261 So. 2d 832, 837 (Fla. 1972). See also Campbell v. Barraud, 58 AD.2d 570, 571, 394 N.Y.S.2d 909, 911 (1977); Bryniarski v. Montgomery County Board of Appeals, 247 Md. 137, 144-46, 230 A.2d 289, 294-95 (1967); Annot., 37 A.L.R.2d 1143 (1954); Comment, Zoning Determinations, 64 Mich. L. Rev. 1070, 1079 (1966).

Reynolds v. Dittmer, 312 N.W.2d at 78

Finding them "particularly useful", the Iowa Court of Appeals adopted the factors set forth by the Florida Court in *Renard v. Dade County* and concluded that the *Reynolds v. Dittmer* plaintiff landowners met the requirements for standing. "All live adjacent or near the proposed subdivisions, the affected area is primarily farm land, and the proposed subdivision will be residential in character. Also, several of the plaintiffs would be entitled to notice of a zoning variance or rezoning which, by analogy, strengthens their position in the instant case. We thus conclude district court erroneously dismissed plaintiffs' petition." *Reynolds v. Dittmer*, 312 N.W.2d at 78.

The *Reynolds v. Dittmer* court's adoption of Floridas four-factor test remains the law in Iowa. Indeed, that opinion has been cited by appellate courts in other jurisdictions. See, for example, *Laughlin v. Everhart*, 678 P.2d 926, 931, fn 13 (Alaska 1984) ["Laughlin arguably could also seek an injunction since he is an owner of nearby property which is affected by the subdivisions in question."]

As such, the factors this Court should apply are (1) proximity of the individual plaintiffs to the subject parcel; (2) the character of the neighborhood in which the

subject parcel is located; (3) the type of change proposed (here, from to AG to MU)³; and (4) whether individual plaintiffs were entitled to receive notice (here, the Board believed they were and willingly received public comment and correspondence from the individual plaintiffs).

As concerns these four (4) factors, the following paragraphs of Plaintiffs' Petition are particularly relevant:

- 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] (Petition, p. 4, ¶ 12);
- The Family Leader Foundation, Inc. is a domestic not-for-profit corporation organized and operating pursuant to Iowa Code 504. The organization's mission is to "strengthen families, by inspiring Christ-like leadership in the home, the church and the government." (Petition, p. 5, ¶ 13);
- Upon information and belief The Family Leader Foundation, Inc. is a non-profit 501(c)(3) and is exempt from taxation. (Petition, p. 5, ¶ 14);
- 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. (Petition, p. 5, ¶ 15);
- 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

³ In its Motion to Dismiss, the Board writes that an amendment to the Future Land Use Maps reclassifying the property as Neighborhood Commercial was adopted "prior to the adoption of the rezoning application on January 10, 2023." Ordinance No. 368, however, states, "NOW, THEREFORE BE IT ORDAINED that the Zoning Map Amendment (Attachment A) from the "AG" Agricultural District to the "MU" Mixed Use District for the rezoning area [legal description of subject parcel] BE APPROVED."

"Agricultural" to Neighborhood Commercial" and the zoning district from "Agricultural - AG" to "Mixed Use - MU". (Petition, p. 5, ¶ 16);

- 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." (Petition, p. 5, ¶ 17);
- 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." (Petition, p. 6, ¶ 18);
- 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." (Petition, pp. 8 & 9, ¶ 20);
- 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. (Petition, p. 10, ¶ 24);
- 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). (Petition, p. 10, ¶ 25);
- 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). (Petition, p. 10, ¶ 26); and

- 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, p. 13 ¶ 36; p. 17, ¶ 49)

In their Motion to Dismiss, Defendant argues that Plaintiffs "have insufficiently plead facts demonstrating their particular personal and legal interest in the challenged rezoning ordinance." (Motion, p. 5) Anything additional Plaintiffs might write about their interests has already been articulated by Polk County Staff, whose concerns for residents of unincorporated Polk County are reflected in the 5 - 1 vote against the application by the Polk County Zoning Commission (See, Petition, p. 9, ¶ 21) and by those Supervisors who voted against the application (See, Petition, p. 10, ¶¶ 25 & 26)

Defendant also argues that Plaintiffs cannot claim standing by citizenship, a claim not advanced here, and that they do not have standing as taxpayers. While one's status as a taxpayer alone may not be sufficient to confer standing, it is most certainly among the factors this Court may consider. *In Richards v. Iowa Dep't of Revenue & Finance*, 454 N.W.2d 573 (Iowa 1990), where the plaintiff challenged the exemption from property taxes of a nonprofit community for the elderly, the Supreme Court set out the long-settled rule:

The department argues that Richards' interest is no greater than that of the public as a whole. We have distinguished those cases which hold that the fact of owning taxable property does not distinguish an individual's interest from that of every other resident and does not give the complaining party standing in court. *Collins v. Davis*, 57 Iowa 256, 258, 10 N.W. 643, 644 (1881). We recognized a different rule has been adopted in this state. *Id.* In *Burnham v. Barber*, 70 Iowa 87, 30 N.W. [*576] 20 (1886), we held the taxpayer's pecuniary interest was sufficient to maintain a cause of action:

Now, how is the plaintiff aggrieved? Clearly, we think, in assessing his [unimproved] property at a greater valuation than it should be when the valuation fixed upon improved lands is fixed at the same as his. Because of

such assessment the burden of taxation cast upon the plaintiff is greater than it would be if the improved lands had been fixed at their true value.

70 Iowa at 90, 30 N.W. at 22.

In *Pierce v. Green*, 229 Iowa 22, 294 N.W. 237, 131 A.L.R. 335 (1940), we considered whether a taxpayer had sufficient interest to maintain a mandamus action to compel the State Tax Commission to assess all property at its actual value instead of a fraction of its value. We stated:

One does not need a pencil to calculate that such conduct on the part of the defendants was an unjust and unfair discrimination against the plaintiff and those in like situation, causing them to pay a larger share of the tax burden in proportion to the valuation of their property, than those assessed and taxed on a less percentage evaluation, thereby causing damage and injury to the plaintiff and those in like situation which will continue under the expressed intention of the defendants. We think the record clearly shows that the plaintiff has alleged and shown such interest as to entitle him . . . to bring this action.

229 Iowa at 39, 294 N.W. at 248, 131 A.L.R. at 350. See Annot., *Standing of One Taxpayer to Complain of Underassessment or Nonassessment of Property of Another for State and Local Taxation*, 9 A.L.R.4th 428 (1981 & Supp. 1989).

Although these cases dealt with underassessment of another's property, the taxpayer's pecuniary interest in this case is substantially the same. Whether the property of another is entirely exempted or merely underassessed, the taxpayer's tax burden is greater because of the exemption or underassessment. We hold that Richards' pecuniary interest as a taxpayer entitles him to judicial review of the order upholding the tax exemption granted Northcrest's property.

Richards v. Dep't of Revenue, 454 N.W.2d at 575 - 6.

On the subject of property taxes specifically, the following sections of the Petition are particularly relevant:

- 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]. (Petition, p. 4, ¶ 12);

- Upon information and belief The Family Leader Foundation, Inc. is a non-profit 501(c)(3) and is exempt from taxation. (Petition, p. 5, ¶ 14);
- "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." (Petition, p. 6, ¶ 18);
- "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." (Petition, p. 6, ¶ 18);
- "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." (Petition, p. 6, ¶ 18);
- "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." (Petition, p. 6, ¶ 18);
- "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." (Petition, pp. 8 & 9, ¶ 20);
- "The Northeast Quadrant contains some of the most productive farm ground in Polk County, including some of the largest contiguous tracts of agricultural land." (Petition, p. 9 ¶ 20);
- "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." (Petition, p. 9, ¶ 20); and
- 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, p. 13, ¶ 37; p. 17, ¶ 50)

Plaintiffs' Petition clearly sets out why their status as taxpayers is implicated by the Defendants' actions. If the subject parcel is exempted from property taxes, that burden will necessarily be borne by other residents of unincorporated Polk County, including the individual Plaintiffs. This is precisely the scenario presented in *Richards v. Dep't of Revenue*.

IV. IN BOTH THE ZONING ORDINANCE AND THE COMPREHENSIVE PLAN, POLK COUNTY ACKNOWLEDGES AND CONCEDES ITS OBLIGATION TO ALL RESIDENTS OF UNINCORPORATED POLK COUNTY ("SPECIFIC PERSONAL INTEREST"), INCLUDING THE OBLIGATION TO ACT IN SUCH A WAY AS TO AVOID INJURIOUS EFFECTS.

In evaluating a Motion to Dismiss, this Court can also take judicial notice of facts not plead. *Winneshiek Mut. Ins. Ass'n v. Roach*, 132 N.W.2d 436, 443 (Iowa 1965) "Courts may take judicial notice of extraneous facts for the purpose of considering them for a motion to dismiss. The court may take judicial notice of common knowledge or those 'capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'" *Vroeogh v. Iowa Dep't of Corr.*, 2017 Iowa Dist. LEXIS 9 (D. Ct. Polk County [McLellan, J.] 12/12/2017) *2 & 3. Here, the Court can take judicial notice of two accurate sources, the 2050 Polk County Comprehensive Plan and the Polk County Zoning Ordinance, to both of which the Petition for Writ of Certiorari refers.

The intent and purpose of the Polk County Zoning Ordinance are defined in the document itself and establish that the Board's actions impact all residents of Polk County, not just those who own land immediately adjacent to an affected parcel:

Article 1. Title, Purpose and Jurisdiction

Division 1. General Provisions

Section 1. Title

This Ordinance shall be known as the "Polk County Zoning Ordinance", and is generally referred to herein as "the Zoning Ordinance," "this ordinance," "the ordinance" or "these regulations."

Section 2. Intent

In enacting this Ordinance, special attention has been given to ensure that it conforms to the Comprehensive Plan for Polk County. The intent of this Ordinance is to implement the vision, goals and policies of the current Comprehensive Plan.

Section 3. Jurisdiction

The provisions of this Ordinance shall apply to the land within unincorporated Polk County.

Section 4. Purpose

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.

- Provide a transition between areas of different community character.
- Preserve and enhance the rural areas of the County with the understanding that the County is developing and increasing in population and will continue to become more urbanized.
- Preserve and protect the County's natural resources including flood plains, streams, drainageways, woodlands, wetlands, and native prairies.
- Avoid or lessen the hazards of flooding and stormwater accumulation and runoff.
- Avoid or lessen the hazards of soil erosion.
- Preserve the best agricultural soils for future production.
- Preserve and protecting natural habitats for wildlife.
- Create an environment that is safe from fire, flood, and other dangers.
- Protect the tax base by facilitating cost-effective development within the County.
- Encourage the most efficient use of existing and planned public facilities and utilities.
- Protect existing public facilities and utilities from being overloaded.
- Minimize or avoid congestion in the public streets and to ensure safe, convenient and efficient traffic circulation by both limiting the number of friction points, such as intersections and driveways, and minimizing other hazards.
- Protect and enhance a pattern of streets and highways that produces a unified, safe, and efficient system for movement within the County. Protect residential streets from degradation by nonresidential traffic.
- Ensure adequate and safe roads and facilities by limiting land use intensity to the capacity of the roads or facilities.
- Establish and regulate setback lines along streets and highways, property lines, and drainage facilities.
- Promote infrastructure projects that encourage economic 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.
- Define the powers and duties of administrative officers and bodies necessary to administer this Ordinance.
- Prescribe penalties for the violation of the provisions of this Ordinance.

Polk County Zoning Ordinance (available at <https://www.polkcountyiowa.gov/media/moljta5e/zoning-ordinance-updated-2-1-2019-rev-5-06-19.pdf>)

Each purpose listed above serves to balance the interests of the general public of the County and those of individual property owners. The Zoning Ordinance shall be interpreted, administered and enforced in a manner that is consistent with the foregoing purposes.

Polk County Zoning Ordinance (available at <https://www.polkcountyiowa.gov/media/moljta5e/zoning-ordinance-updated-2-1-2019-rev-5-06-19.pdf>)

Similarly, in the 2050 Comprehensive Plan, the Board acknowledges the very broad scope and impact of both the Plan and its actions to implement it, that those actions impact all residents of unincorporated Polk County, and that the Board has an obligation to those residents to avoid injurious effects. In its Report to the Polk County Zoning Commission and the Board of Supervisors, County Staff highlighted sections of the Plan that they concluded would be violated by approval of the Application:

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.”

(Petition, p. 8 & 9, ¶ 20)

In their report to the Polk County Zoning Commission, County Staff articulated the myriad ways in which approval of the Application would violate both the Zoning Ordinance and the Comprehensive Plan. Inexplicably, the Board chose to ignore the stated purposes of both and approved the Application, overruling the Zoning Commission and over the objections of local residents, including the Plaintiffs. This

Court is vested with the authority to hear Plaintiffs' claims of illegality, which authority it should exercise.

WHEREFORE and for the reasons stated herein, Plaintiffs respectfully request this Court enter an Order denying Defendant's Motion to Dismiss.

Respectfully submitted,

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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that on this, the 13th day of April, 2023, the foregoing instrument was served on each of the attorneys or parties of record by Iowa's electronic filing system ["EDMS"] court online filing system and by electronic mail addressed to the following:

_____/s/CeCelia C. Ibson_____

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ATTORNEY FOR DEFENDANT