IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BILL BARNES, INC., BRADLEY E. AND TERESA M. COULSON, SONDRA K. FELDSTEIN REVOCABLE TRUST AND STUART I. FELDSTEIN REVOCABLE TRUST, Plaintiffs, VS **POLK COUNTY BOARD OF SUPERVISORS,** Defendant.	Case No. 05771 EQCE088618 **ORDER DENYING MOTION TO INTERVENE**

Background

Before the Court is the Motion to Intervene ("Motion") filed on August 15, 2025, by The Family Leader Foundation, Inc. ("TFL"). A hearing was held on September 19, 2025. Ryan Benn represented TFL. Meghan Gavin represented the Polk County Board of Supervisors (the "Board") which consents to the Motion. CeCe Ibson represented the Plaintiffs who resist the Motion.

This matter involves a decision by the Board to grant an application to rezone land in order for TFL to build facilities. Nearby landowners initiated this action arguing that the Board's action is illegal because it violates the County's 2050 Comprehensive Plan, it violates the County's zoning ordinance, and/or it constitutes "spot zoning." Plaintiffs seek a declaratory judgment requiring the land at issue to remain zoned as "AG" (Agricultural).

TFL seeks intervention as a matter of right pursuant to Iowa Rule of Civil Procedure 1.407(1)(b). Rule 1.407(1) states:

> Upon **timely application**, anyone shall be permitted to intervene in an action under any of the following circumstances:
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> a. When a statute confers an unconditional right to intervene.
>
> **b.** When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, **unless the applicant's interest is adequately represented by existing parties.**

Id. (emphasis added). As the landowner that filed the application for rezoning, it is undisputed that TFL has an interest relating to the subject of the action and that its interest may be impeded by the result of the case. Thus, TFL has a right to intervene if its application to intervene was "timely" and if its interest is not "adequately represented" by existing parties. Plaintiffs contend that TFL cannot establish either point.

Analysis

Timeliness

Iowa Rule of Civil Procedure 75 governed intervention until the rule was amended in 1997. In re A.C., 720 N.W.2d 193, 2006 WL 1896236 (Iowa Ct. App. July 12, 2006) (Sackett, C.J. concurring in part). Rule 75 provided that an interested party could intervene "at any time before trial begins." Rule 1.407 requires a motion to intervene to be "timely" but does not define the term. Rule 1.407 also gives the Court more discretion in whether to grant or deny a motion to intervene. In re A.C., 2006 WL 1896236 at *3.

Plaintiffs' Petition for Writ of Certiorari and Declaratory Judgment was filed on March 7, 2023. The Board filed a Motion to Dismiss on April 3, 2023, that was granted on July 4, 2023. Plaintiffs filed a Notice of Appeal on July 31, 2023. The Iowa Supreme Court reversed the decision and reinstated the case on April 4, 2025. Procedendo issued on May 19, 2025. Thus, for more than two years of the time the case was pending, TFL could not have intervened.

After Procedendo issued, the Court set and held a status conference as well as a trial scheduling conference. TFL did not participate in either. Its Motion was filed approximately three months after this Court regained jurisdiction. TFL's only justification for the delay is that it was not a party to the case and thus did not receive notice of the Procedendo. It appears undisputed, however, that TFL was aware of the Iowa Supreme Court's decision remanding the case.

"Iowa Rule of Civil Procedure 1.407 was amended in 1997 to be "substantially similar" to Federal Rule of Civil Procedure 24. Because of the similarities between the rules, federal authorities that construe and apply the federal rule are persuasive although not conclusive for similar construction and application of the Iowa rule." In re K.P., 814 N.W.2d 623, 2012 WL 664533 at *3 fn 1. (Iowa Ct. App. Feb. 29, 2012).

> Timeliness of a motion to intervene is evaluated in the context of all relevant circumstances, including the following considerations:
>
> (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Midwest Realty Mgmt. Co. v. City of Beavercreek, 93 F. App'x 782, 786 (6th Cir. 2004) (quoting Stupak–Thrall v. Glickman, 226 F.3d 467, 472-73 (6th Cir. 2000)). The Court finds that most of these factors support a finding of timeliness.

TFL has known of the case since its inception, but, given that a Motion to Dismiss was filed and then granted, TFL had no reason to intervene in the case until after remand. Following remand, TFL filed its Motion approximately three months later. Further, "the time between the filing of the complaint and the motion to intervene, in itself, is among the least important

circumstances. What is more critical is the progress made in discovery and motion practice during the course of the litigation." Id. Here, there has been no discovery conducted and no motion practice since remand (apart from the Motion to Intervene). Further, TFL is not seeking to move the existing trial date. The fact that this case was appealed and reversed is an unusual circumstance militating in favor of intervention despite the length of time the case has been on file.

Plaintiffs argue that they would be prejudiced by the intervention because TFL's involvement will increase their attorneys' fees in this litigation. Assuming that is true, that harm is not "due to the proposed intervenors' failure to promptly intervene." The only harm related to the alleged untimeliness of the Motion is the costs incurred in resisting the Motion.

The Count finds that the Motion should be treated as timely. Accordingly, the Court must assess whether TFL's interests are adequately represented by the existing parties in the case.

Adequate Representation

In its Notice of Additional Authorities, TFL argues that "property owners have a separate and distinct interest in defending zoning decisions affecting their property because it is commonplace in Iowa for property owners to be granted intervention when their property's zoning is challenged." D0033 p. 1. However, the existence of TFL's interest in the matter is not disputed. What is disputed is whether TFL's interest is adequately represented.

In the cases TFL cites to the Court, it appears intervention was not contested given that it was not discussed in the appellate opinions. Robinson v. Linn County Board of Supervisors, 10 N.W.3d 251 (2024); Perkins v. Board of Supervisors of Madison County, 636 N.W.2d 58 (2001); Fox v. Polk County Bd. Of Supervisors, 569 N.W.2d 503 (1997). TFL also directs the Court to Midwest Realty Mgmt. Co. v. City of Beavercreek, 93 F. App'x 782, 786 (6th Cir. 2004),

wherein property owners were allowed to intervene at a late date after the original parties to the zoning dispute reached a settlement. Here, there is no indication that a settlement is forthcoming. If a settlement becomes imminent, the Court could revisit the issue of intervention at that time.

TFL and the Board share the identical objective in this case. Both wish to see the Board's action upheld. "When the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented, against which the petitioner must demonstrate adversity of interest, collusion, or nonfeasance." Com. of Va. v. Westinghouse Elec. Corp., 542 F.2d 214, 216 (4th Cir. 1976). TFL offers no argument that any adversity of interest, collusion, or nonfeasance exists in this matter.

The Court sees no reason that counsel for the Board would not adequately represent TFL's interests in the case. Indeed, the Board successfully argued that Plaintiffs' case should be dismissed (though the decision was overturned on appeal). The only argument offered that counsel for TFL might be more effective than counsel for the Board is that TFL has knowledge of some facts unknown to the Board's counsel. This argument is not persuasive for three reasons. First, such facts could easily be shared with counsel for the Board. Second, the Court must evaluate the Board's actions based on the facts available to the Board at the time of its actions. Third, the standard is whether the proposed intervenor's interest is "adequately" represented, not whether the intervenor's counsel might do something differently.

The Board is represented by the Polk County Attorney's Office which, in the Court's experience, does excellent legal work. If the Polk County Attorney's Office were deemed to provide inadequate representation in its defense of a decision of the Polk County Board of Supervisors, it is hard to envision a case where adequate representation could be found.

Finally, the Cout also considers the purposes of intervention which are to "reduce litigation" and "assist in the efficient disposition" of the matter. State ex rel. Miles v. Minar, 540 N.W.2d 462, 465 (Iowa Ct. App. 1995). Allowing TFL to intervene in this case would not aid in either purpose. If the Board's decision is upheld, with or without TFL's involvement, there will be no further litigation. As noted by Plaintiff's counsel at the hearing, if the Board's decision is overturned, with or without TFL's involvement, TFL may still file a new application for rezoning. Finally, although the Court finds no prejudice to Plaintiffs related to the timing of TFL's Motion, the Court does believe that involvement of a third party will, at a minimum, result in a longer trial.

Order

For the foregoing reasons, the Motion to Intervene is DENIED.

IT IS SO ORDERED.

State of Iowa Courts

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

So Ordered

David Nelmark, District Judge
Fifth Judicial District of Iowa

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