

IN THE IOWA DISTRICT COURT FOR FREMONT COUNTY

DANNY JENNINGS; SHELLEY
JENNINGS; KRISTEN THATCHER;
STEPHEN THATCHER; IDA VAN
SCYOC; and TANDON VAN SCYOC
Petitioners,

Vs

FREMONT COUNTY, IOWA, BOARD
OF SUPERVISORS OF FREMONT
COUNTY, IOWA; CLINT
BLACKBURN; CHRIS CLARK; RANDY
HICKEY; and DUSTIN SHELDON,
Respondents.

Case No. EQCV025651

RULING ON PENDING MOTIONS

This matter comes before the Court on numerous motions filed by the parties. Petitioners (collectively referred to as Jennings) have filed a Motion for Temporary Injunction and a Motion for a Partial Judgment on the Pleadings. Intervenor Shenandoah Wind Hill Project, LLC, (SHW) has filed a Motion to Dismiss. Respondents (collectively referred to as Fremont County) have filed a Motion for Judgment on the Pleadings. Petitioners appear by Attorneys Shawn Shearer and Theodore Sporer. Respondents appear by Attorney Robert Livingston. Intervenor appears by Attorneys Kristy Rogers and Brant Leonard. The Court reviews the extensive pleadings and filings of the parties and hears from Counsel. Being advised, the Court enters the following Ruling.

STANDARD FOR REVIEW

When considering a Motion to Dismiss, the Court must accept as true the Petition's well-pleaded factual allegations, but need not accept its legal conclusions. "The purpose of a Motion to Dismiss is to test the legal sufficiency of the Petition". See *Shumate v. Drake Univ.* 846 N.W.2d 503 (Iowa 2014). A Motion to Dismiss should be granted when the factual allegations in the Petition, taken as true, "fail to state a claim upon which relief may be granted". See *Thongvanh v. State* 938 N.W.2d 2(Iowa 2020). A Motion for Judgment on the Pleadings basically follows the same analysis as a Motion

to Dismiss. See *Roush v. Mahaska State Bank*, 605 N.W.2d 6 (Iowa 2000); *Stanton v. City of Des Moines*, 420 N.W.2d 480 (Iowa 1988) and I.R.C.P. 1.954.

The amended Petition in this case is 64 pages long and contains 264 paragraphs. It seeks remedies i-viii. Towards that end, it makes 21 claims. Each of those claims will be dealt with in this Ruling as follows.

CLAIM 1: Declaratory Judgment-Zoning Ordinance Prohibits Construction of WECS in the Agriculture District

Jennings seeks relief on the theory that “the more restrictive use and height limitations of the Zoning Ordinance govern over the terms of the Wind Ordinance.”

Pursuant to the 1978 county home rule amendment to the Iowa Constitution, The Board of Supervisors has the power to enact ordinances such as the Wind Ordinance in this case. *Worth Cnty. Friends of Agric v. Worth Cnty.*, 688 NW2d 257 (Iowa 2004). Each county’s inherent home rule powers are vested in its Board of Supervisors. No statute requires the Board to regulate wind turbines pursuant to its zoning authority rather than its home rule authority. *Mathis v. Palo Alto County Board of Supervisors*, 927 NW2d 191 (Iowa 2019). The Boards decision to regulate Wind Energy Conversion Systems (WECS) in a stand alone ordinance was within its home rule powers so long as it determines local affairs and is not statutorily preempted. *Hunter v. Page County*, 2023 WL 1956723 (S.D. Iowa Jan. 31, 2023).

The *Hunter* case dealt with an almost identical ordinance in Page County, which is right next door. The Court in *Hunter* said “The Wind Ordinance was properly adopted under the County’s broad home-rule authority under Chapter 331 and Article III, section 39A of the Iowa Constitution.”

Jennings also argues that the Board failed to comply with the County’s comprehensive plan as required by Iowa Code section 335.5(4)(d). The term comprehensive plan within that code section does not refer to any ordinance. It refers to the consideration of the comprehensive plan when enacting a zoning ordinance.

Jennings argues that the Wind Ordinance is invalid because Iowa Code Section 331.302(4) requires a repeal of the Zoning Ordinance. That code section only applies to amending an ordinance.

Claim 1 fails to state a claim upon which relief may be granted.

CLAIM 2: Temporary and Permanent Injunctive Relief-Prohibit Issuance of WECS Building Permits for Structures in Violation of the Zoning Ordinance.

Claim 2 fails for all the reasons set out in the discussion of Claim 1.

CLAIM 3: Declaratory Judgment-Illegality and Invalidity of Road Use and Decommissioning Agreements.

In Claim 3 and the following Claim 4 Jennings argue that Road Use and Decommissioning Agreements and the acts of the Board approving them are illegal and invalid.

These agreements speak for themselves. They are valid. The Board had the authority to into these agreements. See once again *Mathis* and *Hunter Id.*

Claim 3 fails to state a claim upon which relief can be granted.

CLAIM 4: Temporary and Permanent Injunctive Relief-Invalidate Road Use and Decommissioning Agreements & Prohibit Actions in Furtherance Thereof.

Claim 4 fails for the reasons set out in the discussion on Claim 3.

CLAIM 5: Declaratory Judgment-Adoption of the Wind Ordinance was an Illegal Act of the Board-Failure to Consider the Comprehensive Zoning Plan.

In Claim 5, as well as Claims 6,7, & 8 Jennings argues that the Board violated Iowa Code Sections 351.1; 352.5 & 414.3 because it “failed its duty to consider the County’s comprehensive zoning structure and plan”. None of these statutes impose any legal duty on the Board relevant to its enactment of the Wind Ordinance. This is a stand alone ordinance, not a zoning ordinance.

A zoning ordinance is **not** a comprehensive plan. There has been no allegation by Jennings that Fremont County has a written comprehensive plan.

The arguments of Jennings are for the political arena not the courts.

Claim 5 fails to state a claim upon which relief can be granted.

CLAIM 6: Temporary and Permanent Injunctive Relief-Invalidate Wind Ordinance as an Illegal Act of the Board-Failure to Consider the Comprehensive Zoning Plan.

Claim 6 fails for the reasons set out in the discussion of Claim 5.

CLAIM 7: Declaratory Judgment- Approving and Entering the Road Use Agreement and Decommissioning Agreement were Illegal Acts of the Board-Failure to Consider the Comprehensive Zoning Plan.

Claim 7 fails for the reasons set out in the discussion of Claim 5.

CLAIM 8: Temporary and Permanent Injunctive Relief-Invalidate Approval and Entry of Road Use and Decommissioning Agreements as Illegal Act of the Board-Failure to Consider the Comprehensive Zoning Plan.

Claim 8 fails for the reasons set out in the discussion of Claim 5.

CLAIM 9: Declaratory Judgment-The Adoption of the Wind Ordinance was an Illegal Act of the Board-Failure to Take Preliminary Votes at the First and Second Readings of the Proposed Wind Ordinance.

Claims 9, 10, 11 & 12 all claim alleged defects concerning procedure in the adoption of the Wind Ordinance. The statutory requirements are fulfilled when the procedures used were consistent with its purpose. The standard is substantial rather than absolute compliance. *KCOB/KLVN, Inc. v. Jasper Cnty. Bd. Of Sup'rs*, 473 NW2d 171 (Iowa 1991). The statutory requirement is satisfied. See *Mathis, Id.*

CLAIM 10: Temporary and Permanent Injunctive Relief-The Adoption of the Wind Ordinance was an Illegal Act of the Board-Failure to Take Preliminary Votes at the First and Second Readings of the Proposed Wind Ordinance

Claim 10 fails for the reasons set out in the discussion of Claim 9.

CLAIM 11: Declaratory Judgment-The Adoption of the Wind Ordinance was an Illegal Act of the Board-Failure to Hold Three Readings of the Same Ordinance.

Claim 10 fails for the same reasons as set out in the discussion of Claim 9.

CLAIM 12: Temporary and Permanent Injunctive Relief-The Adoption of the Wind Ordinance was an Illegal Act of the Board-Failure to Hold Three Readings of the Same Ordinance.

Claim 12 fails for the reasons set out in the discussion of Claim 9.

CLAIM 13: Declaratory Judgment and Temporary & Permanent Injunctive Relief-Adoption of the Wind Ordinance, Approval of the Application, and Approval and Entry of the Road Use Agreement and Decommissioning Agreement were Unreasonable, Arbitrary and Capricious.

Ordinances are entitled to a strong presumption of validity. *Neuzil v. City of Iowa City*, 451 NW2d 159 (Iowa 1990). To carry their burden to rebut this presumption Jennings would need to show “the ordinance is unreasonable, arbitrary, capricious or discriminatory, with no reasonable relationship to the promotion of public health, safety or welfare.” *Shriver v. City of Okoboji*, 567 NW2d 397 (Iowa 1997).

A review shows that this claim fails as a matter of law.

CLAIM 14: Declaratory Judgment and Temporary & Permanent Injunctive Relief-Supervisor Conflicts of Interest

In Claim 14 Jennings argues a conflicted supervisor cast the decisive votes passing the Wind Ordinance and approving the agreements. Even accepting as true the factual allegations made by Jennings, they are insufficient as a matter of Law to state a claim upon which relief can be granted.

CLAIM 15: Declaratory Judgment and Temporary & Permanent Injunctive Relief-Order to Enforce Obligation to Reapply Due to Material Changes in Application Information.

A review of this claim shows no material changes in the Application. This claim fails as a matter of law.

CLAIM 16: Open Meetings Act-The Board Violated the Open Meetings Act in its Deliberation and Adoption of the Wind Ordinance.

In Claims 16, 17 & 18 Jennings claims “indicia of the existence” of Open Meetings violations. Even under Iowa’s liberal notice pleading the Petition fails to plead any violations. What has been pled is conclusory and irrelevant.

In order for there to be a violation there has to be a “meeting”. Whether a particular gathering constitutes a meeting is a matter of law. See *Hutchinson v. Shull*, 878 NW2d 221 (Iowa 2016). Before a gathering is a meeting there must be the presence of a majority of the members of the Board and a discussion involving evaluation as opposed to the mere receipt of information or discussion of options. See *Hettinga v. Dallas Cnty Bd. Of Adj.*, 375 NW2d 293 (Iowa Ct. App. 1985) and *Gavin v. City of Cascade*, 500 NW 2d 729 (Iowa Ct. App. 1993).

These claims fail as a matter of law to state a claim upon which relief can be granted.

CLAIM 17: Open Meetings Act-The Board Violated the Open Meetings Act in its Deliberation and Approval of the Application.

This claim fails for the reasons set out in the discussion of Claim 16.

CLAIM 18: Open Meetings Act-The Board Violated the Open Meetings Act in its Deliberation, Approval, and Entry of the Road Use Agreement and the Decommissioning Agreement.

This claim fails for the reasons set out in the discussion of Claim 16.

CLAIM 19: Conditional-Declaratory Judgment and Temporary & Permanent Injunctive Relief-Void for Vagueness.

Jennings argues in Claim 19 that the Ordinance is “Void for Vagueness” under Article I, Section 9 of the Iowa Constitution.

This is a civil action not criminal. Petitioners do not face any kind of sanctions. See *State v. Nail*, 743 NW2d 535 (Iowa 2007). The Void for Vagueness doctrine finds its roots in the Due Process clause of the U.S. and Iowa Constitutions which forbids governmental deprivation of “life, liberty or property” without due process of law.

In a civil action, such as this, an ordinance would be unconstitutionally vague “when its language does not convey a sufficiently definite warning of proscribed conduct, when measured by common understanding or practice.” See *Greenawalt v. Zoning Bd of Adj. of City of Davenport* 345 NW2d 537 (Iowa 1984).

While Jennings does not like the Ordinance, there is nothing vague about it. This claim fails as a matter of law.

CLAIM 20: Conditional-Declaratory Judgment and Temporary & Permanent Injunctive Relief-Illegal Act-Failure to Republish Amended Ordinances.

Jennings argues that the Wind Ordinance is invalid because its repealer provision violates Iowa Code Section 331.302(4). The repealer section of the Ordinance is not a provision that must be complied with in order to make the Ordinance effective. It is directory and not mandatory. Even if compliance was imperfect it would not invalidate the Wind Ordinance. See *Willett v. Cerro Gordo Cnty. Zoning Bd. Of Adj.*, 490 NW2d 556 (Iowa 1992).

This claim fails as a matter of law.

CLAIM 21: Conditional-Declaratory Judgment and Temporary & Permanent Injunctive Relief-Illegal Delegation of Board Authority to Private Entities.

Jennings argues that the Wind Ordinance is “an ultra vires sub-delegation of powers belonging solely to the Board...to private entities”. The Court sees two problems with this claim. First of all, the rulings by this Court on the other claims would seem to render this conditional claim irrelevant. Secondly, it is not even clear that this constitutes a cause of action.

In any event, only the Board can take action to change the contents of this or any other ordinance. No action by SHW or anyone else can change the contents of the

ordinance. Even if it might be considered a viable cause of action, this claim fails as a matter of law.

RULINGS

IT IS THEREFORE ORDERED as follows:

1. Petitioner's Motion for Temporary Injunction is denied.
2. Petitioner's Motion for Partial Summary Judgment on the Pleadings is denied.
3. Intervenor's Motion to Dismiss is sustained.
4. Respondent's Motion for Judgment on the Pleadings is sustained.
5. This case is dismissed. Costs are taxed to Petitioners.



State of Iowa Courts

Case Number
EQCV025651
Type:

Case Title
JENNINGS ET AL VS FREMONT COUNTY IOWA ET AL
DISMISSED PER COURT

So Ordered

Greg W. Steensland, District Court Judge,
Fourth Judicial District of Iowa

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