

IN THE IOWA DISTRICT COURT IN AND FOR FREMONT COUNTY

IDA VAN SCYOC and TANDON VAN
SCYOC,

Plaintiffs,

v.

FREMONT COUNTY, IOWA; BOARD OF
ADJUSTMENT OF FREMONT COUNTY,
IOWA; AND FREMONT COUNTY
ZONING ADMINISTRATOR DAN DAVIS.

Defendants,

MIDAMERICAN ENERGY COMPANY,

Intervenor.

CASE NO. CVCV025821

RULING ON PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

This case came before the Court on November 3, 2025, for hearing on Plaintiffs' Motion for Summary Judgment in regard to Count I of the petition. At hearing, Plaintiffs appeared by attorney Shawn Shearer. Defendants appeared by attorneys Robert M. Livingston and Fremont County Attorney Peter E. Johnson. Intervenor appeared by attorney Elizabeth Etchells. The Court has considered the filings, the arguments of counsel, and applicable law, and now makes the following:

FINDING OF FACTS

The Court finds the following facts relevant and undisputed. On or about March 10, 2025, MidAmerican Energy Company submitted applications for zoning certificates for the construction of commercial wind turbines in Fremont County, Iowa. The applications were approved, and the zoning certificates were executed by the Fremont County Zoning Administrator and sent to MidAmerican on March 13, 2025. On March 26, 2025, Ida Van Scyoc and Tandon Van Scyoc

filed an appeal with the Administrator and Fremont County Board of Adjustment challenging the validity of the certificates. The Board has not set a hearing date nor held any hearing on the appeal. Plaintiffs filed a petition on May 16, 2025. Under Count I, Plaintiffs seek a writ of mandamus ordering the Board to perform its duties and hold a hearing on filed appeal.

CONCLUSIONS OF LAW

Summary judgment is proper only when the entire record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007) (citing *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996)); Iowa R. Civ. P. 1.981(3). An issue of fact is material when a dispute exists that may affect the outcome of the suit, given the applicable governing law. *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992) (citing *Hike v. Hall*, 427 N.W.2d 158, 159 (Iowa 1988)). The requirement that the issue be genuine “means the evidence is such that a reasonable jury could return a verdict” for the party resisting the motion. *Id.* (citing *Hike*, 427 N.W.2d at 159). In determining whether a motion for summary judgment should be granted, the court ““must determine whether any facts have been presented over which a reasonable difference of opinion could exist that would affect the outcome of the case.”” *Id.* (quoting *Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987)).

The party requesting summary judgment bears the burden of proof. *Clinkscales v. Nelson Sec., Inc.*, 697 N.W.2d 836, 841 (Iowa 2005) (citing *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004)). “A court entertaining a motion for summary judgment must view the evidence in the light most favorable to the nonmoving party.” *Id.* (citing *Harris*, 679 N.W.2d at 677). “Even if the facts are undisputed, summary judgment is not proper if reasonable minds could draw different inferences from them and thereby reach different conclusions.” *Id.* (citing

Walker Shoe Store, Inc. v. Howard's Hobby Shop, 327 N.W.2d 725, 728 (Iowa 1982)). The nonmoving party should be afforded every legitimate inference that can be reasonably deduced from the evidence. *Id.* (citing *Cent. Nat'l. Ins. Co. v. Ins. Co. of N. Am.*, 522 N.W.2d 39, 42 (Iowa 1994)). However, “[t]he resistance must set forth specific facts constituting competent evidence to support a prima facie claim.” *Hoefler v. Wisconsin Educ. Ass’n Ins. Trust*, 470 N.W.2d 336, 339 (Iowa 1991) (citing *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989); *Prior v. Rathjen*, 199 N.W.2d 327, 330 (Iowa 1972)). The adverse party “may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.” Iowa R. Civ. P. 1.981(5).

ANALYSIS

The facts of this case are straightforward and undisputed. Plaintiffs filed an appeal to the Board of Adjustment, and the Board has not held a hearing on the appeal as is required by Fremont County Zoning Ordinance. The only reason given for the Board’s refusal to hold a hearing is that Plaintiffs did not tender a \$5 filing fee that Defendants assert must be paid to perfect the appeal. Defendants have not made any arguments alleging the appeal was defective for any other reason.

Section 17 of the Fremont County Zoning Ordinance concerns the Board of Adjustment. Subsection C is titled “Applications, Appeals, Hearings and Stay of Proceedings.” The subsection sets forth two possible proceedings that may come before the Board. The first comes from § 17(C)(1) and concerns applications regarding zoning matters of which the Board has original jurisdiction. The second is stated in § 17(C)(2) and is an appeal of any decision of the Zoning Administrator. That subsection states that any aggrieved person may appeal and that an appeal

must be taken within 20 days after the decision by filing a notice of appeal with the Administrator and the Board. The fact that these two procedures are discussed in different subsections implies that they are functionally different. This conclusion is further supported by the fact that they are legally distinct as the Board's jurisdiction of application is original in nature while an appeal invokes the Board's appellate jurisdiction.

Section 17(C)(3) is titled "Hearings" and continues to treat applications and appeals differently. It states in relevant part:

The Board of Adjustment shall fix a reasonable time for the Hearing of the appeal, give ten (10) days notice by letter to all owners of the property located within five hundred (500) feet in all directions from the property for which the variation is being sought, and make a decision within a reasonable time after the appeal is submitted. Each application shall be accompanied by a check payable to the Treasurer of the County, or a cash payment of five dollars (\$5.00) to cover the cost of publishing and/or posting or mailing the notices of hearing or hearings.

The section then proceeds to discuss who may appear at the hearing and sets forth the procedure for judicial review of a Board appellate decision.

The two sentences of § 17(C)(3) quoted above are companion provisions with the first governing appeals and the second governing applications. The plain text of the Ordinance regarding the payment of a \$5.00 fee refers only to the filing of applications. While the Court is "generally give deference to the board's interpretation of its city's zoning ordinance," the Defendants "may not extend, enlarge or otherwise change the meaning of an ordinance." *Meduna v. City of Crescent*, 761 N.W.2d 77, 80 (Iowa Ct. App. 2008). In order for Defendants' position that Plaintiffs must pay the fee in order to perfect their appeal to be valid, the term "application" in the provision would have to be enlarged to include appeals, which would conflict with the other provisions of Section 17. The clear and unambiguous text of the Ordinance requires the payment of the fee solely for applications and does not create such a requirement for appeals. As such, the

Court finds that Plaintiffs are not required to pay a \$5.00 fee and that Defendants' assertion to the contrary is without basis in Ordinance's clear and unambiguous language.

As stated above, there is no other alleged defect in the appeal, thus the Court finds that Plaintiffs did properly appeal the decision to approve MidAmerican's zoning applications to the Board. At that point, the Board was obligated to hold a hearing within a reasonable amount of time. It has failed to do so. Plaintiffs seek a writ of mandamus, which is a remedy in which an inferior tribunal, board, corporation, or person is commanded to do or not to do an act of which they are legally required. Iowa Code § 661.1. As argued by Plaintiffs, § 17(C)(3) states that the Board "shall" fix the time for hearing an appeal. It is well-established in our law that "shall" denotes a mandatory duty. *Kopecky v. Iowa Racing and Gaming Commission*, 891 N.W.2d 439 (Iowa 2017). The Board was required to set a hearing and failed to do so, consequently, mandamus is proper under the facts of this case in order to compel the Board to comply with § 17(C)(3) and set a hearing date on Plaintiffs' appeal.

RULING

IT IS THEREFORE ORDERED that the Plaintiffs' Motion for Summary Judgment as to Count I of the petition is granted. Trial scheduled to commence December 4, 2025, is cancelled.

IT IS FURTHER ORDERED that the Fremont County Board of Adjustment shall comply with § 17(C)(3) of the Fremont County Zoning Ordinance, including fixing a reasonable time for the hearing of the appeal, providing the proper 10-day notice by letter to nearby landowners, and render of a decision within a reasonable amount of time after the appeal is submitted.



State of Iowa Courts

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Type:

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IDA/TANDON VAN SCYOC V FREMONT CO BOA ETAL
OTHER ORDER

So Ordered

Donna K Bothwell

Donna K. Bothwell, District Judge
Fourth Judicial District of Iowa

Electronically signed on 2025-11-25 13:59:33