

2014 IOWA ZONING LAW

BY JAMES E. NERVIG

BRICK GENTRY P.C.

6701 Westown Parkway, Suite 100

West Des Moines, Iowa 50266

Telephone: 515-274-1450

Telecopier: 515-274-1488

jim.nervig@brickgentrylaw.com

2014 IOWA ZONING LAW

By James E. Nervig

TABLE OF CONTENTS

| <u>PAGE</u> | <u>SECTION HEADINGS</u> |
|--------------------|--|
| | I. REQUIREMENTS FOR ADOPTING ZONING REGULATIONS AND REZONING PROPERTY |
| 1 | A. Zoning Law—Cities (Iowa Code Chapter 414) |
| 1 | 1. Power to Zone |
| 2 | 2. Purposes Served by Zoning |
| 3 | 3. Comprehensive Plan |
| 4 | 4. Procedures to Enact and Amend Zoning Regulations |
| 6 | 5. Judicial Review of City Council Rezoning Decisions |
| 7 | 6. Zoning Enforcement Officer |
| 7 | 7. Certificate of Occupancy |
| 7 | B. Zoning Law—Counties (Iowa Code Chapter 335) |
| 10 | C. Applicability to State of Iowa |
| 10 | D. Zoning Beyond City Limits |
| | II. ADMINISTRATIVE RELIEF: POWERS OF BOARD OF ADJUSTMENT |
| 10 | A. Powers of Board in General |
| 11 | B. Variances |
| 12 | C. Special Exceptions |

| | |
|----|---|
| 13 | D. Voting Requirements |
| 14 | E. Required Written Findings of Fact |
| 15 | F. City Council Review of Variances |
| 16 | G. City Council May Not Grant Variances or Exceptions |
| 16 | H. Judicial Review of Board Decisions |
| 19 | III. ETHICAL ISSUES |
| 19 | A. Conflicts of Interest; Ex Parte Communications |
| 24 | IV. SPECIAL ISSUES |
| 24 | A. Vested Rights |
| 24 | 1. Non-Conforming Uses |
| 26 | 2. Rights under Permits |
| 24 | B. Moratoria; Right to a Use Prohibited under a Proposed Zoning Amendment |
| 29 | C. Exclusionary Zoning |
| 29 | 1. Manufactured Homes (Iowa Code section 414.28) |
| 30 | 2. Family Homes (Iowa Code Section 414.22) |
| 31 | D. Conditional Zoning |
| 31 | E. Contract Zoning--Zoning for Planned Unit Developments (PUDs) |
| 32 | F. Spot Zoning |

2014 IOWA ZONING LAW

I. REQUIREMENTS FOR ADOPTING ZONING

REGULATIONS AND REZONING PROPERTY

A. Zoning Law – Cities (Iowa Code Chapter 414)

1. Power to Zone

It is well-settled that zoning decisions are “an exercise of the police powers delegated by the State to municipalities.” *Neuzil v. City of Iowa City*, 451 N.W.2d 159, 163 (Iowa 1990).

Iowa Code section 414.1 provides that:

any city is hereby empowered to regulate any restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Iowa Code section 414.2 gives the city the power to:

divide the city into districts, including historical preservation districts but only as provided in section 303.34, of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

A zoning ordinance is valid if it has any real, substantial relation to the public health, comfort, safety and welfare, including the maintenance of property values. *Shriver v. City of Okoboji*, 567 N.W.2d 397, 401 (Iowa 1997). Zoning ordinances carry with them a strong presumption of validity; and the party challenging the validity of a zoning regulation has the burden of proving the zoning regulation is unreasonable, arbitrary, capricious or

discriminatory. *Perkins v. Board of Supervisors*, 636 N.W.2d 58, 67 (Iowa 2001). If the reasonableness of a zoning ordinance is fairly debatable, a court may not substitute its judgment for that of the legislative body. *Id.* The reasonableness of a zoning ordinance is fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction, and where reasonable minds may differ; or where the evidence provides a basis for a fair difference of opinion as to its application to a particular property. *Neuzil v. City of Iowa City*, 451 N.W.2d 159, 163-64 (Iowa 1990).

A property owner does not have a vested right in the continuation of a particular zoning classification. *Quality Refrigerated Services, Inc. v. City of Spencer*, 586 N.W.2d 202, 206 (Iowa 1998). In reviewing a zoning ordinance, a court is predominantly concerned about the general purpose of the ordinance, and not any hardship that may result in an individual case. *Shriver v. City of Okoboji*, 567 N.W.2d 397, 401 (Iowa 1997). The validity of a zoning regulation does not depend on a balancing test, balancing the possible public good against the harm to landowners; if the reasonableness of the regulation is fairly debatable, it must be allowed to stand. *Molo Oil Co. v. City of Dubuque*, 692 N.W.2d 686, 691 (Iowa 2005), overruling *F.H. Uelner Precision Tools & Dies, Inc. v. City of Dubuque*, 190 N.W.2d 465, 468-69 (Iowa 1971).

2. Purposes Served by Zoning

Iowa Code section 414.1 provides that the zoning power is granted

[f]or the purpose of promoting the health, safety, morals, or the general welfare of the community or for the purpose of preserving historically significant areas of the community.

Iowa Code section 414.3 provides that zoning

regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban

development patterns; to lessen congestion in the street; to secure safety from fire, flood, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

3. Comprehensive Plan

In Iowa, all zoning regulations must be made “in accordance with a comprehensive plan.” Iowa Code section 414.3; *Holland v. City Council of Decorah*, 662 N.W.2d 681, 686 (Iowa 2003). The purpose of a comprehensive plan is to control and direct the use and development of property in the area by dividing it into districts according to present and potential uses. The comprehensive plan requirement is intended to ensure that the municipal zoning authorities act rationally rather than arbitrarily in exercising their delegated zoning authority. *Wolf v. City of Ely*, 493 N.W.2d 846, 849 (Iowa 1992).

Zoning “in accordance with a comprehensive plan” does not require that there be a written planning document separate from the zoning ordinance itself. If the zoning ordinance by itself is intended to reflect the planning necessary to implement a comprehensive zoning scheme, then the validity of the ordinance depends on whether the ordinance advances the community’s interest rather than that of private owners. *Iowa Coal Mining Co. v. Monroe County*, 494 N.W.2d 664, 669 (Iowa 1993), *rehearing denied, certiorari denied* 508 U.S. 940, 113 S.Ct. 2415, 124 L.Ed.2d 638; *Wolf*, 493 N.W.2d at 849. Where a municipality has enacted a written comprehensive plan, separate from its zoning ordinance, then an ordinance

rezoning property must be designed to promote the goals of the plan. *Webb v. Giltner*, 468 N.W.2d 838, 841 (Iowa Ct. App. 1991).

If any proposed zoning change is not in conformity with the existing comprehensive plan, then it is legally necessary for the city to amend its comprehensive plan so as to bring it into conformity with the proposed zoning change before the proposed zoning change can become legally effective.

4. Procedures to Enact and Amend Zoning Regulations

Before the city council may act on proposed original zoning regulations or district boundaries, the city zoning commission (in some cities referred to as the plan and zoning commission) must first prepare a preliminary report on the proposal, hold at least one public hearing thereon, and thereafter deliver a final report to the city council. *See* Iowa Code section 414.6. After enactment of original zoning regulations, the commission is authorized to make recommendations to the city council regarding future amendments, but the statute does not strictly require that the city council receive or consider such commission recommendations.

After the city council receives the final report of the zoning commission, a proposed zoning change may not become effective until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard. *See* Iowa Code section 414.4.

Notice of the time and place of the hearing must be published at least once, not less than seven nor more than twenty days before the date of the hearing, and in no case may the public hearing be held earlier than the next regularly scheduled city council meeting following the published notice. The notice must be published in a newspaper that is published at least once weekly and has general circulation in the city. However, if the city has a population of

200 or less, or if the city does not have a newspaper, then publication may be made by posting in three public places in the city which have been permanently designated by ordinance. *See* Iowa Code section 414.4.

Zoning regulations and district boundaries are enacted and amended by passage of an ordinance by the city council. *See* Iowa Code section 414.5. Iowa Code section 380.3 provides:

A proposed ordinance or amendment must be considered and voted on for passage at two council meetings prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than three-fourths of the council members. If a proposed ordinance or amendment fails to receive sufficient votes for passage at any consideration, the proposed ordinance or amendment shall be considered defeated.

However, if a summary of the proposed ordinance or amendment is published as provided in section 362.3, prior to its first consideration, and copies are available at the time of publication at the office of the city clerk, the ordinance or amendment must be considered and voted on for passage at one meeting prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than three-fourths of the council members.

Iowa Code section 380.4 provides that passage of an ordinance requires an affirmative vote of not less than a majority of the city council members, except when the mayor may vote to break a tie in a city with an even number of council members. However, Iowa Code section 414.4 permits the city council, in its discretion, to enact regulations requiring that a zoning ordinance must receive greater than a majority vote of the city council members for passage.

In case of a written protest against a proposed zoning change, filed with the city clerk at or before the required public hearing before the city council, and signed either (a) by the owners of twenty percent or more of the area of the lots included in the change, or (b) by the owners of twenty percent or more of the property located within 200 feet of the exterior

boundaries of the property for which the change is proposed, then the change shall not become effective except by the favorable vote of at least three-fourths of all members of the city council. *See* Iowa Code section 414.5.

An ordinance becomes law when published, unless a subsequent effective date is provided within the terms of the ordinance itself. *See* Iowa Code section 380.6.

5. Judicial Review of City Council Rezoning Decisions

In *Sutton v. Dubuque City Council*, 729 N.W.2d 796 (Iowa 2006), *rehearing denied* 2007, the Iowa Supreme Court ruled that, in general, decisions by a city council to rezone particular parcels of land are “quasi-judicial” decisions that may be challenged exclusively by writ of certiorari proceedings pursuant to Iowa Rule of Civil Procedure 1.1401. The Court further ruled that the challenge must be brought no later than 30 days after the applicable city council decision, in accordance with the statutory limit for bringing certiorari actions as set forth in Iowa Rule of Civil Procedure 1.1402(3).

The Court acknowledged that, in making decisions to enact a comprehensive plan or a zoning code, a city council acts in a policy-making capacity, so that such decisions are not subject to the 30-day certiorari appeal limitation period applicable to quasi-judicial decisions. The Court stated that a city council decision is “quasi-judicial” if it (1) involves proceedings in which notice and an opportunity to be heard are required, or (2) a determination of rights of parties is made which requires the exercise of discretion in finding facts and applying the law thereto. The Court concluded that, although the rezoning of land requires passage of an ordinance which “on first blush appears to be legislative in nature,” the nature of a rezoning proceeding satisfies both parts of the two-part test for classification as a quasi-judicial action.

The action at issue in *Sutton* was a rezoning to a planned unit development (PUD) zoning district classification. The Court emphasized in its decision that “[t]he quasi-judicial nature of municipal rezoning is particularly evident in matters involving PUD zoning.”

6. Zoning Enforcement Officer

The city administrative official charged with enforcement of the zoning is generally referred to as the zoning enforcement officer. Any prospective purchaser of real estate in a city should consult with the zoning enforcement officer prior to completing the sale transaction. The zoning enforcement officer will confirm, usually in writing upon request, the zoning district classification and regulations applicable to the subject property. The abstract of title to the property cannot be relied upon to show the current zoning of the property.

7. Certificate of Occupancy

Generally, zoning ordinances provide for the issuance of a certificate of occupancy by the zoning enforcement officer, which certifies that the subject property is being used as permitted under the zoning ordinance. The certificate of occupancy is not the same as a housing inspection certificate.

Any prospective purchaser of real estate in a city should ask the seller to see the current certificate of occupancy to satisfy himself or herself that the property satisfies city zoning requirements. If a current certificate of occupancy does not exist, then the prospective purchaser should request the zoning enforcement officer to issue a certificate of occupancy.

B. Zoning Law – Counties (Iowa Code Chapter 335)

Iowa Code Chapter 335 provides a comprehensive set of zoning regulations for counties that very closely parallels the regulations of Chapter 414 for cities. County legislative zoning powers are conferred on the board of supervisors.

County zoning ordinances do not apply to land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used. *See* Iowa Code Section 335.2. The statute does not define with particularity the extent of the agricultural use exemption. In *Kramer v. Board of Adjustment for Sioux County*, 795 N.W.2d 86, 91 (Iowa Ct. App. 2010), the Iowa Court of Appeals interpreted the statutory language as follows:

We believe that a fair reading of the words “for use for agricultural purposes” read in the context of the act refers to the functional aspects of buildings and other structures, existing or proposed. The qualifying words “primarily adapted by reason of nature and area” also refer to the proposed structures and the site on which they are located. *Kuehl v. Cass County*, 555 N.W.2d 868, 688 (Iowa 1996). Qualification for the exemption must be based on a factual analysis of the use of the land or structure.

Because of the very general nature of the definitions in the statute, it is desirable for county zoning ordinances to contain an expanded explanation of the meanings of agriculture and agricultural use to guide zoning officials as well as the public. Recently, the Madison County Board of Supervisors enacted amendments to the Madison County Zoning Ordinance to define with particularity the agricultural exemption and the terms “agriculture” and “agricultural use,” as follows:

A. Farms Exempt.

In accordance with Iowa Code Section 335.2, land, farm houses, farm barns, farm outbuildings or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used, are exempt from the provisions of this Ordinance; except that the foregoing exemption does not apply to any structure, building, dam, obstruction, deposit or excavation in or on the flood plains of any river or stream. To qualify for the exemption, the land, buildings and structures must be utilized primarily as a part of an agricultural enterprise that is operated with the intention of selling agricultural products in the marketplace and thereby earning a profit. The raising of animals and plants primarily for the purpose of the personal use and enjoyment of the owners or occupants of the subject property, and not for the purpose of selling such animals, plants or products therefrom for a profit in the marketplace, shall not constitute agricultural use and shall not qualify any land,

buildings or structures for the exemption. Farm houses qualify for the exemption only if the persons inhabiting the houses are primarily engaged in an agricultural enterprise on the land on which the houses are located. Auction sales yards, recreational facilities, rural or urban areas used primarily for residential or recreational purposes, commercially operated stockyards or feedlots, and areas used for the production of timber, forest products, nursery products or sod shall not constitute agricultural use and shall not qualify any land, buildings or structures for the exemption. In making a determination whether property is being used primarily for agricultural purposes, consideration shall be given to such questions as: (a) What is the size of the parcel of land? (b) Is the parcel currently being used for agricultural purposes? (c) If the parcel is being offered for sale, or if it were to be offered, would it be viewed in the marketplace as other than agricultural? (d) How does the parcel conform to other surrounding properties? (e) What is the highest and best use of the property? (f) What is the actual amount of income produced and from what sources? The property owner may be requested to submit relevant evidence including, but not limited to, a copy of a Schedule F or of other relevant portions of the owner's most recent state and/or federal income tax return that report farm income from the particular parcel in question (provided that the owner may black-out specific dollar amounts from the copies that the owner desires be kept confidential); or, in lieu of submitting copies of portions of tax returns, the owner may submit evidence in the form of a letter or affidavit from the owner's tax preparer, in which the tax preparer certifies that the owner's most recent tax returns contained a Schedule F, or other schedule, that reported farm income from the particular parcel in question.

Agriculture or Agricultural Use: The use of any land, building, structure, or portion thereof, principally for the production of, and as an accessory use for, the treatment and storage of, plants, animals or horticultural products, all for intended profit. "Agriculture" shall include the cultivation of land for the production of agricultural crops, the production of eggs, the production of milk and the production of fruit or other horticultural crops, with the intention of selling such items or products for a profit in the marketplace. "Agriculture" shall include breeding, raising, feeding, grazing, housing and pasturing of horses, beef and dairy cattle, poultry, sheep, swine and honey bees, with the intention of selling such animals or products therefrom for a profit in the marketplace. The raising of animals and plants primarily for the purpose of the personal use and enjoyment of the owners or occupants of the subject property, and not for the purpose of selling such animals, plants or products therefrom for a profit in the marketplace, shall not constitute agricultural use. "Agriculture" shall not include any auction sales yards, recreational facilities, rural or urban areas used primarily for residential or recreational purposes, commercially operated stockyards or feedlots, and areas used for the production of timber, forest products, nursery products or sod. "Agriculture" shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm products.

C. Applicability to State of Iowa

A municipal zoning ordinance is not applicable to the state of Iowa or any of its agencies in the use of its property for a governmental purpose unless the Iowa Legislature has clearly manifested a contrary intent. City of Bloomfield v. Davis County Community School District, 254 Iowa 900, 903, 119 N.W.2d 909, 911 (1963).

D. Zoning Beyond City Limits

A city zoning ordinance may be extended up to two miles outside the city limits, except for areas where a county zoning ordinance exists. See Iowa Code section 414.23. If two cities are within four miles from each other, the foregoing powers extend to a line equidistant between the limits of said cities.

II. ADMINISTRATIVE RELIEF:

POWERS OF BOARD OF ADJUSTMENT

A. Powers of Board in General

Iowa Code sections 414.7 through 414.19 require the city council to appoint a zoning board of adjustment, of either five or seven members, and provide requirements as to rules, meetings, appeals, powers, voting requirements and judicial review applicable to the board and its decisions.

Iowa Code section 414.12 provides that the board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.
3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.” (Emphasis added).

B. Variances

With regard to variances, the statutory “unnecessary hardship” standard has been judicially defined by the Iowa Supreme Court. In *Greenawalt v. Zoning Board of Adjustment of City of Davenport*, 345 N.W.2d 537, 541-42 (Iowa 1984), the Court reaffirmed its definition as follows:

This Court initially gave content to the standard of ‘unnecessary hardship’ in *Deardorf v. Zoning Board of Adjustment*, 254 Iowa 380, 118 N.W.2d 78 (1962). It adopted the definition of that term constructed by the New York Court of Appeals in *Otto v. Steinhilber*, 282 N.Y. 71, 24 N.E.2d 851 (1939), *reh’g denied* 282 N.Y. 681, 26 N.E.2d 811 (1940). We have since reaffirmed that definition in *Board of Adjustment v. Ruble*, 193 N.W.2d 497 (Iowa 1972), and *Graziano v. Board of Adjustment*, 323 N.W.2d 233 (Iowa 1982). Under these decisions an applicant for a zoning variance establishes unnecessary hardship by showing all of the following elements:

- (1) [T]he land in question cannot yield a reasonable return if used only for a purpose allowed in that zone;
- (2) [T]he plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the zoning ordinance itself; and
- (3) [T]he use to be authorized by the variance will not alter the essential character of the locality. *Graziano*, 323 N.W.2d at 236; *Ruble*, 193 N.W.2d at 504; *Deardorf*, 254 Iowa at 386, 118 N.W.2d at 81. . . .

The burden is on the applicant to show all three of the elements. A failure to demonstrate one of them requires the board to deny the application. *Ruble*, 193 N.W.2d at 502; *Deardorf*, 254 Iowa at 384, 118 N.W.2d at 80.

On pages 542-543 of its opinion, the Court in *Greenawalt* further defined the meaning of the phrase “cannot yield a reasonable return”, as used in the first part of its three-part test, by adopting the following explanation as set forth in 3 Anderson, *American Law of Zoning* § 18.17, at 179-83:

A zoning regulation imposes unnecessary hardship if property to which it applies cannot yield a reasonable return from any permitted use. Lack of a reasonable return may be shown by proof that the owner has been deprived of all beneficial use of his land. All beneficial use is said to have been lost where the land is not suitable for any use permitted by the zoning ordinance. For example, where land is located in a district limited to residential or commercial use, and where lack of transportation, sparse development, and the refusal of lending institutions to advance money for residential or commercial uses render development consistent with the ordinance unfeasible, unnecessary hardship is said to result from literal application of the ordinance.

....

An ordinance deprives a landowner of a reasonable return if all ‘productive use of the land’ is denied. Such deprivation is shown where the land in issue has so changed that the uses for which it was originally zoned are no longer feasible.

....

The burden of proving that a literal application of the ordinance will deprive the owner of a reasonable return is upon the owner of the land in question. No variance for unnecessary hardship may be granted if he fails to demonstrate loss of beneficial use. His burden is not sustained if it is shown the land is zoned for residential use, and that it is yielding a substantial return from such permitted use. It is not sufficient to show that the value of his land has been depreciated by the zoning regulations, or that a variance would permit him to maintain a more profitable use.” (Emphasis added in *Greenawalt* opinion.)

C. Special Exceptions

The statutory “unnecessary hardship” standard applicable to variances has no applicability to special exceptions, also commonly referred to as special use permits or conditional use permits. The only standards applicable to special exceptions are those imposed by a city or county in its particular zoning ordinance. The Iowa Supreme Court, in

Vogelaar v. Polk County Zoning Board of Adjustment, 188 N.W.2d 860, 862 (1971), distinguished variances from special exceptions as follows:

As used in the context of zoning ordinances, a ‘variance’ is authority extended to the owner to use property in a manner forbidden by the zoning enactment, where literal enforcement would cause him undue hardship; while an ‘exception’ allows him to put his property to a use which the enactment presently permits.

. . . .

[A] ‘special exception’ permits in a particular district a use not otherwise permitted when certain conditions specifically set out in the ordinances are satisfied. . . . A ‘variance’, on the other hand, relaxes the zoning regulations when literal enforcement would result in ‘unnecessary hardship’.

The purpose of a conditional use permit or special use permit is to bring flexibility to the rigid restrictions of a zoning ordinance, while, at the same time, controlling troublesome and somewhat incompatible uses by requiring certain restrictions and standards. An application for a conditional use permit or special use permit must meet all conditions of an ordinance. The failure to satisfy even one of the ordinance’s conditions is fatal to a permit application. *W & G McKinney Farms, L.P. v. Dallas County Board of Adjustment*, 674 N.W.2d 99, 103 (Iowa 2004).

D. Voting Requirements

Iowa Code section 414.14, provides the following voting requirements with respect to decisions of the board of adjustment:

The concurring vote of three members of the board in the case of a five-member board, and four members in the case of a seven-member board, shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

Because of these voting requirements, in a case where less than the full board is present at the time of hearing, an applicant before the board should give careful consideration

to making a request that the case be continued to a future date of hearing when a full board is present.

E. Required Written Findings of Fact

A board of adjustment is required to make written findings on all issues presented in any adjudicatory proceeding. Such findings must be sufficient to enable a reviewing court to determine with reasonable certainty the factual basis and legal principles upon which the board acted. *Citizens Against the Lewis and Clark (Mowery) Landfill v. Pottawattamie County Board of Adjustment*, 277 N.W.2d 921, 925 (Iowa 1979).

The Iowa Supreme Court has not provided explicit guidance on the required contents of the written findings, leaving it to the discretion of the trial court judge to determine in each appeal whether the board's findings are sufficient to allow the judge to ascertain the factual basis and legal principles underlying the board's decision. If the trial court determines that the board's written findings of fact are insufficient, the court has two alternatives: (a) to remand the case to the board for further proceedings involving issuance of sufficient written findings, or (b) proceeding with the case and making the court's own determination as to the factual basis and legal principles underlying the board's decision.

In *United States Cellular Corp. v. Board of Adjustment of City of Des Moines*, 589 N.W.2d 712, 719 (Iowa 1999), the Supreme Court held that section 414.18 "most certainly does not require that the district court remand a matter appealed to it." [Emphasis supplied by the Court.] If the court elects to remand the case to the board, it is important to determine whether the district court engaged in a "limited remand" rather than a "remand for further proceedings".

In *Sereda v. Zoning Board of Adjustment, City of Burlington*, 641 N.W.2d 206, 207 (Iowa Ct. App. 2001), the Court of Appeals discussed the distinction between the two types of remand, stating that

In a limited remand, a reviewing court retains jurisdiction over the proceedings so that it might evaluate the directed actions of the lower court or tribunal. [Citation omitted.] By contrast, all jurisdiction is lost in a remand for further proceedings, and a dissatisfied party can seek redress only by filing a new application, writ or appeal. [Citation omitted.]

In *Sereda*, the Court concluded that “nothing in Iowa Code Chapter 414 or Iowa Rule of Civil Procedure 306, et seq., which govern writs of certiorari from municipal zoning decisions, contemplates retained jurisdiction.” 641 N.W.2d at 208. The *Sereda* decision dictates that, whenever the district court remands a case to the board, a party seeking judicial review must file a new petition for writ of certiorari within the statutory thirty-day filing period.

F. City Council Review of Variances

Iowa Code section 414.7 grants the city council a limited right of review of variances as follows:

The council may provide for its review of variances granted by the board of adjustment before their effective date. The council may remand a decision to grant a variance to the board of adjustment for further study. The effective date of the variance is delayed for thirty days from the date of the remand.

Under the statute, the city council has the power only to review and remand variances, and this power does not extend to special exceptions or permits. *Delaney v. Board of Adjustment of the City of Waterloo*, 2001 WL 912651, p. 3 (Iowa Ct. App. 2001); 1986 Op. Atty. Gen. No. 86-12-3.

G. City Council May Not Grant Variances or Exceptions

The Iowa Supreme Court consistently has held that the power and authority to grant variances and special exceptions is vested exclusively in the board of adjustment, and that the city council has no jurisdiction to grant variances or special exceptions. *See, e.g., Holland v. City Council of Decorah*, 662 N.W.2d 681, 683-85 (Iowa 2003); *City of Des Moines v. Lohner*, 168 N.W.2d 779, 784 (Iowa 1969); *Depue v. City of Clinton*, 160 N.W.2d 860, 862 (Iowa 1968).

H. Judicial Review of Board Decisions

Iowa Code section 414.15 provides that any person aggrieved by a decision of the board of adjustment may file a petition for writ of certiorari with the district court within thirty days after the filing of the decision in the office of the board. The petition must be duly verified and must set forth that the board of adjustment decision appealed from is illegal, in whole or in part, and must specify the grounds of the illegality.

The petition must be presented to a district court judge. If the judge finds the petition properly presented, the judge issues a writ of certiorari directed to the board of adjustment. The writ contains terms which prescribe the time within which the board must make a return thereto and serve the return on the petitioner's attorney, which time period may not be less than ten days and may be extended by the court. *See* Iowa Code section 414.16.

For return to the writ of certiorari, the board of adjustment must include certified or sworn copies of the complete record in the subject proceeding, and the return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified. *See* Iowa Code section 414.17. The Iowa Supreme Court has held that it is legal and appropriate for a return to writ of certiorari to set forth

statements discussing the evidence upon which the board proceeded and the manner in which the board reached its decision. *Stone v. Miller*, 60 Iowa 243, 14 N.W. 781 (1882).

The return to writ of certiorari is “the only proper defensive pleading” and functions as the board’s answer to the writ. *Wood v. Iowa State Commerce Commission*, 253 Iowa 797, 804, 113 N.W.2d 710, 714 (1962). Thus there is no statutory requirement that the board of adjustment must file a separate “answer” to the petition or writ as is typically required in civil actions. Likewise, there is no requirement for service on the board of the typical civil “original notice” specifying a twenty-day time period within which to appear or file a responsive pleading.

Issuance of a writ of certiorari by the court does not, by itself, stay any proceedings upon the decision appealed from. *See* Iowa Code section 414.16. Thus, if a variance has been granted by the board, the grantee is not stayed from using the property as authorized during the appeal period. The grantee maintains such use at the risk that the reviewing court ultimately may overturn the granting of the variance and declare the use to be illegal and subject to removal. If a petitioner wishes to prevent a use authorized by the board during the appeal period, the petitioner may make application to the court for a restraining order, which the court may grant on due cause shown. *See* Iowa Code section 414.16.

The district court must hold a hearing in the certiorari proceeding, and the trial is “de novo”. *See* Iowa Code section 414.18. The term “de novo” as used in section 414.18 does not bear its equitable connotation, and the court is not free to decide the case anew. *Baker v. Board of Adjustment of the City of Johnston*, 671 N.W.2d 405, 412 (Iowa 2001). In the certiorari proceeding, the district court record includes the return to the writ of certiorari and may include additional relevant evidence that may have been offered by the parties. *Baker*,

671 N.W.2d at 412. Although the court may receive evidence in addition to the record before the board of adjustment, this additional evidence may be admitted only to the extent relevant to the questions of illegality raised by the petition for writ of certiorari, and only to the extent necessary for the proper disposition of the case. *Buchholz v. Board of Adjustment of Bremer County*, 188 N.W.2d 860, 863 (Iowa 1971); *Trailer City, Inc. v. Board of Adjustment*, 218 N.W.2d 645, 647-48 (Iowa 1974).

At the hearing before the district court, the party challenging a decision of the board of adjustment bears a heavy burden of showing that the board exceeded its proper jurisdiction or otherwise acted illegally. *Johnson v. Board of Adjustment, City of West Des Moines*, 239 N.W.2d 873, 879 (Iowa 1976). Illegality of the board's decision is established only if the facts do not provide substantial support for the decision. The district court may not substitute its judgment for that of the board of adjustment, if the board's decision is supported by "substantial evidence," and if the facts leave the reasonableness of the board's decision open to a fair difference of opinion. *W & G McKinney Farms, L.P. v. Dallas County Board of Adjustment*, 674 N.W.2d 99, 103 (Iowa 2004); *Weldon v. Zoning Board of City of Des Moines*, 250 N.W.2d 396, 401 (Iowa 1977).

"Substantial evidence" is a well-defined term under Iowa law. The Code of Iowa defines "substantial evidence as "the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs." Iowa Code section 17A.14(1). The Supreme Court has stated that "evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *City of Davenport v. Public Employee Relations Board*, 264 N.W.2d 307, 311 (Iowa 1978); *see also Perkins v. Board of Supervisors of*

Madison County, 636 N.W.2d 58, 64 (Iowa 2001); *Hasselman v. Hasselman*, 596 N.W.2d 541, 545 (Iowa 1999); *Baty v. Binns*, 354 N.W.2d 777, 780 (Iowa 1984).

After the hearing before the district court, the court is empowered to reverse or affirm, wholly or partly, the decision of the board of adjustment, or may modify the decision. The action of the district court has the effect of a jury verdict and is appealable to the Iowa Supreme Court on assigned errors only. *Cyclone Sand and Gravel Co. v. Zoning Board of Adjustment of the City of Ames*, 351 N.W.2d 778, 784 (Iowa 1984); *Trailer City, Inc. v. Board of Adjustment*, 218 N.W.2d 645, 647-48 (Iowa 1974). If the trial court's findings of fact leave the reasonableness of the board of adjustment's action open to a fair difference of opinion, the Supreme Court may not substitute its decision for that of the board. *Fox v. Polk County Board of Supervisors*, 569 N.W.2d 503, 507 (Iowa 1997); *Helmke v. Board of Adjustment, City of Ruthven*, 418 N.W.2d 346, 347 (Iowa 1988); *Weldon v. Zoning Board of City of Des Moines*, 250 N.W.2d 396, 401 (Iowa 1977).

III. ETHICAL ISSUES

A. Conflicts of Interest; Ex Parte Communications

A board of adjustment decision is subject to challenge on the basis of conflict of interest on the part of one or more of its members. To taint the process and disqualify a board member, the member's interest must be different from that which the member holds in common with members of the public (For example, a personal interest in the welfare of the community is not a disqualifying interest.), and the interest must be direct, definite and capable of demonstration, and not remote, uncertain, contingent, unsubstantial or merely speculative. *Bluffs Development Co. v. Board of Adjustment of Pottawattamie County*, 499 N.W.2d 12, 15 (Iowa 1993).

Even in a case where a board member improperly voted on a matter by virtue of conflict of interest, the board decision will not be invalidated by a court unless the vote of the member's vote was decisive to the board's action. *See* Iowa Code section 362.6; *Stone v. City of Wilton*, 331 N.W.2d 398, 402 (Iowa 1983).

There are compelling considerations, including the basic considerations of fairness, which prohibit members of boards of adjustment from ex parte communications with interested parties. *Rodine v. Zoning Board of Adjustment of Polk County*, 434 N.W.2d 124, 127 (Iowa App. 1988). The standards of section 17A.17 of the Iowa Administrative Procedures Act dealing with ex parte communications, while not legally applicable to boards of adjustment, provide significant guidelines to use in analyzing restrictions on boards of adjustment. *Rodine*, 434 N.W.2d at 127. The standards of section 17A.17 generally do not allow ex parte communications with any party in a contested case, except upon notice and opportunity for all persons to participate in the discussion. However, the statutory standards would not prohibit board members from communicating with members of the board's staff or other employees of the municipality who do not have a personal interest in the contested case.

The members of a board of adjustment are appointed by the governing body of the municipality. This raises the issue of whether the relationship of the governing body to the board of adjustment is such as to place the members of the governing body in a position of undue influence making it improper for them to have certain contacts with the board of adjustment relating to matters to be heard before the board of adjustment.

Courts have held, in cases outside Iowa, that the appearance of a member of a municipal legislative body having the power of appointment of members of a board of adjustment before whom he is appearing in behalf of a party to the application may be so

prejudicial as to invalidate the board proceedings. In the Michigan case of *Barkley v. Nick*, 11 Mich. App. 381, 161 N.W.2d 445 (1968), and the New Jersey case of *Place v. Board of Adjustment*, 42 N.J. 324, 200 A.2d 601 (1964), the courts ruled it to be improper for a member of the municipal body which appoints the board of adjustment to appear before the board, whether on behalf of an applicant or on behalf of a party who objected to a variance application. In *Place*, the mayor of the municipality appeared as attorney for a private client who objected to the grant of a variance. The court observed that the mayor appointed the members of the board and that, by virtue of the relationship, the appearance of a mayor for a private client who objects to the grant of a variance has the likely capacity to influence the action of the board, and in any event creates doubt in the public mind as to the impartiality of the board's action.

In *Martin Marietta Materials, Inc. v. Dallas County*, 675 N.W.2d 544 (Iowa 2004), the Iowa Supreme Court determined that, although procedures and rules of evidence are less rigid in a quasi-judicial body such as a board of adjustment, a board of adjustment is subject to the same high standards as a court with regard to fairness, impartiality and independence of judgment. In *Martin Marietta*, the board of adjustment denied Martin Marietta Materials a conditional use permit for a gravel mining operation. On appeal to the district court, counsel for Martin Marietta made unsupported allegations that various members of the county staff, the board of supervisors and the lawyers representing the county, board of adjustment and board of supervisors may have had conversations with members of the board of adjustment that may have influenced the board of adjustment's decision to deny Martin Marietta's permit application. Counsel for Martin Marietta stated their belief that the board of adjustment decision was "orchestrated by the Board of Supervisors for political reasons," and sought to

take discovery depositions of county staff, the county's lawyers, members of the board of supervisors and members of the board of adjustment to seek information about their possible conversations. Because Martin Marietta failed to furnish the court with any affidavit or other competent evidence to support its belief that such conversations may have occurred, the district court refused to engage in a "fishing expedition" and granted a protective order prohibiting Martin Marietta from taking the depositions.

The Supreme Court overruled the district court's decision to grant the protective order and remanded the case to the district court for further proceedings. In its remand order, the Supreme Court directed that Martin Marietta be allowed to take depositions of the designated county officials, that the questioning must be limited to whether there was communication with board of adjustment members and the context of the communication. The Supreme Court further directed that, if the district court determines that Martin Marietta has made a showing that such communications were improper or made in bad faith, the court may allow Martin Marietta to inquire into the mental processes of the board of adjustment members in reaching their decision.

The Supreme Court's decision is significant for a number of reasons. First, the decision establishes a precedent whereby it would appear that a party who is aggrieved by a decision of a board of adjustment (or, for that matter, any governmental body exercising quasi-judicial decision-making powers) is entitled to engage in a broadly unrestricted "fishing expedition" by taking discovery depositions of all the members of the board of adjustment, as well as any public officials that the aggrieved party alleges "may" have had improper communications with board members, even though the aggrieved party has no actual knowledge that any improper communications ever took place. Specifically, the Court

held in *Martin Marietta* that “there is no rule that would prohibit it from asking all of those it wanted to depose whether there was communication with the Board of Adjustment members and what that communication was.”

A second significant aspect of the *Martin Marietta* decision involves insight into the views of the Supreme Court as to what communications might be deemed improper or made in bad faith. Before *Martin Marietta*, no statutory or judicial standards existed in Iowa that specifically prohibited board of adjustment members from communicating with members of the board’s staff and attorneys or with other municipal officials or employees who did not have a disqualifying personal interest in the contested case. In *Martin Marietta*, the Supreme Court stressed its finding that the board of supervisors opposed Martin Marietta’s application and implied that members of the board of supervisors would have engaged in improper conduct and bad faith if they had communicated their opposition to the board of adjustment. This appears to be a broad expansion of the ex parte communication standards, because the Supreme Court appears to dictate that any member of the board of supervisors who has an opinion on the subject of an application before the board of adjustment is charged with bad faith if he communicates that opinion to a member of the board of adjustment, regardless of whether his opinion is based on a disqualifying personal interest in the case or simply on his good faith belief of what is in the best interests of the public.

A third significant aspect of the *Martin Marietta* decision concerns the difficult position in which board of adjustment staff and attorneys may be placed. Typically, the staff to a board of adjustment consists of one or more employees of the municipality’s planning department, and these employees typically are employed by the board of supervisors or city council, as the case may be. Likewise, legal counsel to a board of adjustment is typically a

member of the county attorney's or city attorney's office, and the county attorney and city attorney typically also represent the board of supervisors or city council, as the case may be. If the *Martin Marietta* decision is properly interpreted as imposing a prohibition of any form of communication between members of the board of supervisors (or city council) and members of the board of adjustment, regarding the subject matter of a pending case before the board of adjustment, then, by virtue of their dual representation and loyalties to both boards, the staff and attorneys would appear to have an inherent conflict of interest. Unfortunately, the full extent of this apparent problem will not be known until there is an opportunity for future litigation with resulting clarification by the courts.

VI. SPECIAL ISSUES

A. Vested Rights

1. Non-Conforming Uses

Under certain circumstances, a property owner has a vested right to continue a so-called "nonconforming use" that does not satisfy current zoning regulations. "A nonconforming use is one that existed and was lawful when the [zoning] restriction became effective and which has continued to exist since that time." *Perkins v. Madison County Livestock & Fair Assn.*, 613 N.W.2d 264, 270 (Iowa 2000). In order to be a valid nonconforming use, the use must be valid in its inception and must be in existence at the time the zoning regulation with which it conflicts was enacted.

The party who asserts a nonconforming use has the burden to establish the lawful and continued existence of the use by preponderance of the evidence; but once the use has been so established, the city has the burden to prove a violation of the ordinance by exceeding the established nonconforming use. *City of Jewell Junction v. Cunningham*, 439 N.W.2d 183,

186 (Iowa 1989). An established nonconforming use runs with the land, and a change in ownership will not destroy the right to continue the use. *City of Clear Lake v. Kramer*, 789 N.W.2d 165 (Table), 2010 WL 3157759 (Iowa Ct. App. 2010).

The power of cities to regulate nonconforming uses is not specifically granted by the Code of Iowa. However, from Chapter 414, cities have inferred such a power. The Iowa Court of Appeals has indicated that regulation of nonconforming uses by cities is limited to reasonable regulation under the police power to protect the public health, safety, welfare or morals, “such as ventilation, fire protection or sanitary requirements . . .” *City of Clear Lake v. Kramer*, 789 N.W.2d 165 (Table), 2010 WL 3157759 (Iowa Ct. App. 2010). The Court dictated that it would not allow a city “to use a ‘public health, safety, welfare or morals’ exception to swallow the nonconforming use rule” by seeking to impose “essentially land use restrictions.” *Id.*

Each city’s zoning ordinance should be consulted to determine the manner in which nonconforming uses are regulated in that particular city. The following is a list of nonconforming use regulations typically found in zoning ordinances:

Many zoning ordinances restrict changes in nonconforming uses. *See Perkins*, 613 N.W.2d at 270. Some prohibit any change other than to a use permitted by the zoning district regulations, while others require approval by the board of adjustment for all changes.

Many zoning ordinances restrict the amount of structural repairs and alterations which an owner of a nonconforming use may make. *See Stan Moore Motors Inc. v. Polk County Board of Adjustment*, 209 N.W.2d 50, 52 (Iowa 1973).

Many zoning ordinances prohibit expansion or enlargement of a nonconforming use beyond its limits at the time the zoning regulation was enacted. *See Conley v. Warne*, 236 N.W.2d 682, 687 (Iowa 1975).

Many zoning ordinances restrict the rights of an owner of a nonconforming use to reconstruct such a use after it has been destroyed. *See Incorporated City of Denison v. Clabaugh*, 306 N.W.2d 748, 750 (Iowa 1981).

Many zoning ordinances provide that, if a nonconforming use is abandoned or discontinued for a certain period of time, the right to reinstate the use is forfeited. *See Ernst v. Johnson County*, 522 N.W.2d 599 (Iowa 1994).

2. Rights under Permits

A property owner may acquire a vested right under a regularly issued zoning permit that may not subsequently be revoked by zoning authorities. In *Crow v. Board of Adjustment of Iowa City*, 227 Iowa 324, 288 N.W. 145 (1939), a property owner complied with all applicable regulations in securing a permit for a building. The zoning officer reviewed the application and made an interpretation that the use for which the permit was sought was permitted by zoning regulations. The zoning officer also obtained an opinion from the city attorney that the use was permitted. The zoning officer then issued the permit. The property owner subsequently relied on the permit by purchasing building materials and commencing excavation and foundation work for the building. After such construction commenced, neighbors appealed the zoning officer's interpretation to the board of adjustment, and the board subsequently ruled that it disagreed with the zoning officer's interpretation, that the use was not permitted under the zoning ordinance, and that the permit should be cancelled. The Iowa Supreme Court held that, because the original decision by the zoning officer was based

on an interpretation of the zoning ordinance that was not “clearly erroneous nor without basis,” and because “the proposition was doubtful and fairly debatable and the language fairly susceptible to the interpretation given it,” the property owner acquired the vested right to proceed under the permit as issued. Because the permit was regularly issued based on a reasonable interpretation by the zoning officer, even though the interpretation was debatable and was disagreed with by the board of adjustment, the Supreme Court held that “[t]he building permit was valid in its inception, and during the time the construction work was in progress.”

The *Crow* holding is not applicable to a case where a permit was issued for a use clearly not permitted under the zoning regulations. In *Chamberlain, L.L.C. v. City of Ames*, 757 N.W.2d 644, 650 (Iowa 2008); *City of Hampton v. Blayne-Martin Corp.*, 594 N.W.2d 40 (Iowa 1999); and *City of Lamoni v. Livingston*, 392 N.W.2d 506 (Iowa 1986), the Iowa Supreme Court held that, where a permit is issued by a zoning officer in violation of the applicable ordinance and without any legal authority, the holder does not gain vested rights in it, and the permit is void and may be revoked by the zoning authorities. Because the zoning officer had no authority to grant the permit in the first place, the Supreme Court held that the deficiency is jurisdictional and reliance will not bar a revocation.

A. Moratoria; Right to a Use Prohibited under a Proposed Zoning Amendment

The issue of vested rights arises in a different context where a municipality acts under an enacted moratorium to refuse to issue a permit, or revoke a previously issued permit, for a use that is permitted under current zoning regulations, but which would not be permitted under amendments that are contemplated by the zoning authorities but have not been enacted. The Iowa Supreme Court has recognized that “[a] moratorium aids a governing body in

performing the legislative task of municipal planning.” *Geisler v. City Council of the City of Cedar Falls*, 769 N.W.2d 162, 166 (Iowa 2009). *Quality Refrigerated Services v. City of Spencer*, 586 N.W.2d 202 (Iowa 1998), involved review of a city’s action in revoking a previously issued permit after a new zoning amendment made the proposed use nonconforming. The Supreme Court held that “no property owner has a vested right in the continuation of a particular zoning classification” but may acquire “the right to complete the development of his property in accordance with his plans as of the effective date of the new ordinance” if he has made substantial expenditures in reliance on a validly-issued permit. In *Geisler*, the Court affirmed that the “vested rights” exception may apply only if a permit has actually been issued. 769 N.W.2d at 168.

United States Cellular Corp. v. Board of Adjustment of City of Des Moines, 589 N.W.2d 712 (Iowa 1999), involved a case where zoning authorities denied a permit for a use permitted under existing zoning regulations and which would not be permitted under a proposed amendment. The Supreme Court held that no vested rights could be acquired under these circumstances, because no permit had been issued that could provide a basis for the acquisition of any vested rights. The Court restated the general rule that an applicant has no vested right to a particular zoning ordinance. However, the Court stated that the general rule is subject to a narrow exception if the zoning authorities act in bad faith. Under the “bad faith” exception, “[local] officials may not, in bad faith, delay [or deny] approval of a properly submitted and conforming building plan while they alter a zoning ordinance to bar the prospective development.” In *United States Cellular*, the Court held that the defendant board of adjustment “acted in bad faith and/or with malice,” by its actions by which “the

Board avoided having to grant the application, and the resulting delay gave it time to enact the new ordinance prohibiting the requested use.”

The “bad faith” exception must be considered by municipalities that desire to refuse permits for presently legal uses that would be prohibited under a new ordinance that is under consideration but not yet enacted. To avoid the application of the “bad faith” exception by a reviewing court, municipalities should consider the enactment of resolutions or ordinances establishing moratoriums, creating a defined time period within which no new permits may be issued for certain uses that are permitted under existing zoning regulations but which would be prohibited under proposed amendments currently under consideration by the zoning authorities. As long as the moratorium is established only for a relatively short time period so as to allow time for the new zoning amendments to be considered and enacted, and as long as the terms of the moratorium appear on their fact to be reasonable and non-discriminatory, the moratorium should pass “bad faith” scrutiny if challenged in the courts.

B. Exclusionary Zoning

1. Manufactured Homes (Iowa Code section 414.28)

Municipalities may not exclude manufactured homes. In general, for zoning purposes, a municipality must permit a manufactured home on any lot where a site-built, single-family dwelling is a permitted use. A “manufactured home” is defined as a factory-built structure, which is manufactured or constructed under the authority of 42 U.S.C. Sec. 5403 and is to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving it to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. This definition of manufactured home does not include the typical “mobile

home,” which is constructed with a permanent hitch allowing it to be transported behind a motor vehicle.

A zoning ordinance must require that a manufactured home be located and installed according to the same standards, including but not limited to, a permanent foundation system, set-back, minimum square footage and standards for sidewalks, driveways, on-site parking and water and sewerage connections. A zoning ordinance is prohibited from imposing construction, building or design regulations which would mandate width standards greater than twenty-four feet, roof pitch or other design standards for manufactured housing if the housing otherwise complies with 42 U.S.C. Sec. 5403.

2. Family Homes (Iowa Code section 414.22)

Municipalities also may not exclude family homes. For zoning purposes, a municipality must consider a family home to be a permitted residential use in all residential districts, including all single-family districts, and a family home shall not be required to obtain a conditional use permit, special use permit, special exception or variance.

A “family home” is defined as a community-based residential home licensed as a residential care facility under Chapter 135C or as a child foster care facility Chapter 237 to provide room and board, personal care habilitation services and supervision in a family environment exclusively for not more than eight persons with a developmental disability or brain injury and any necessary support personnel. Sections 414.29, 414.30 and 414.31 also include elder family homes (defined in section 231A.2), homes for persons with physical disabilities (defined in chapter 504C) and elder group homes (defined in section 231B.2) within the definition of “family home”.

New family homes owned and operated by public or private agencies are required to be disbursed throughout the residential districts and may not be located within contiguous city block areas.

C. Conditional Zoning

Iowa Code section 414.2 provides the general rule that all zoning regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

However, Iowa Code section 414.5 provides, as an exception to the general requirement of uniformity within a particular district, that the city may use “conditional zoning” as part of a rezoning ordinance changing the zoning district classification of certain land or an ordinance approving a site development plan, so as to impose

conditions on a property owner which are in addition to existing regulations if the additional conditions have been agreed to in writing by the property owner before the public hearing required under this section or any adjournment of the hearing. The conditions must be reasonable and imposed to satisfy public needs which are directly caused by the requested change.

D. Contract Zoning--Zoning for Planned Unit Developments (PUDs)

A planned unit development (or PUD) is an exception to the requirement of Iowa Code section 414.2 for general uniformity of regulations within a zoning district. Municipal planning authorities have recognized that traditional zoning ordinance regulations that dictate specific uses, building lines and minimum-area requirements should be relaxed and made more flexible under appropriate circumstances. PUD regulations can be incorporated into zoning ordinances in a number of different ways. A zoning ordinance may provide one or

more special PUD zoning districts. These PUD districts may provide for residential, commercial or industrial uses, or for combinations of these uses. The regulations of a PUD district allow for flexible application of requirements for such matters as mixed land uses, building setbacks, minimum lot area and parking. Many restrictions traditionally proscribed in zoning ordinances may not be specifically defined in PUD district regulations; instead, the PUD regulations may leave these matters to negotiation between the developer and municipal authorities during the plan review process. As an alternative to a PUD zoning district, PUD regulations may take the form of a so-called overlay district. With the adoption of an ordinance to establish a PUD overlay district, the former zoning district classification would remain in place, and the new PUD regulations would be designed to override the rigid regulations of the underlying district so as to provide needed flexibility. Under any form of PUD zoning district, the land uses and applicable restrictions are set forth on a plan or plat of the development that is submitted by the developer and approved by the municipal zoning authorities under procedures set forth in the ordinance. After approval by the zoning authorities, the developer generally is required to record a subdivision plat with the county recorder, along with a declaration of covenants, conditions and restrictions that sets forth the rules governing the development, and that may create an association (commonly referred to as a homeowners' association) to establish the ownership of common areas, membership rights, voting rights and obligations of members.

F. Spot Zoning

Spot zoning results when a zoning ordinance creates a small island of property with restrictions on its use different from those imposed on surrounding property. *Perkins v. Board of Supervisors of Madison County*, 636 N.W.2d 58, 67 (Iowa 2001). Whether spot

zoning is legal or not is determined by the facts of each particular case. To be upheld as legal spot zoning, there must be substantial and reasonable grounds or basis for the discrimination when one lot or tract is singled out by an amendatory ordinance removing restrictions that are imposed upon the remaining portions of the same zoning district. *Perkins*, 636 N.W.2d at 68.

In determining the validity of spot zoning, the Iowa Supreme Court applies a three-prong test that considers (1) whether the new zoning is germane to an object within the police power; (2) whether there is a reasonable basis for making a distinction between the spot zoned land and the surrounding property; and (3) whether the rezoning is consistent with the comprehensive plan. *Perkins*, 636 N.W.2d at 68. In determining whether there is a reasonable basis for spot zoning, the Supreme Court considers the size of the spot zoned, the uses of the surrounding property, the changing conditions of the area, the use to which the subject property has been put and its suitability and adaptability for various uses. *Perkins*, 636 N.W.2d at 68; *Fox v. Polk County Board of Supervisors*, 569 N.W.2d 503, 508-09 (Iowa 1997).