

IN THE SUPREME COURT OF IOWA

No. 23-1199

Polk County Case No. EQCV088618

1000 FRIENDS OF IOWA, *et al.*,

Plaintiffs/Appellants,

-vs-

POLK COUNTY BOARD OF SUPERVISORS,

Defendant/Appellee.

**Appeal from the Iowa District for Polk County
The Hon. Jeanie Kunkle Vaudt, Judge**

**APPELLANTS, 1000 FRIENDS OF IOWA, *et al.*'s,
FINAL BRIEF**

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. THIS CASE IS NOT SUBJECT TO THE PROVISIONS OF IOWA CODE CHAPTER 670 (2023). PLAINTIFFS' CLAIM CHALLENGING THE LEGALITY OF THE BOARD'S DECISION DOES NOT SOUND IN TORT.

Iowa Individual Health Ben. Reinsurance Ass'n v. State Univ. of Iowa, 876 N.W.2d 800, 804 (Iowa 2016)

A. PLAINTIFF'S CASE WAS FILED PURSUANT TO IOWA CODE 335.18 (2023) AND IOWA RULE OF CIVIL PROCEDURE 1.1401 (2023)

Fox v. Polk County Board of Supervisors, 569 N.W.2d 503, 506 (Iowa 1997)

Montgomery v. Bremer County Board of Supervisors,
299 N.W.2d 687, 691 (Iowa 1980)

Homeowners Ass'n of the Coves of Sundown Lake v. Appaloosa County Bd. of Supervisors, 2014 Iowa App. LEXIS 272 *4 (Ia. App. 03/26/2014)

Barnhill v. Iowa Distr. Ct., 765 N.W.2d 267, 272 (Iowa 2009)

Iowa Code § 335.18 (2023)

Iowa R. Civ. P. 1.1401 (2023)

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Iowa Code § 670.2 (2023)

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Sutton v. Council Bluff Water Works, 990 N.W.2d 795 (Iowa 2023)

Iowa Code Chapter 669 (2023)

II. THIS CASE IS NOT SUBJECT TO THE PROVISIONS OF IOWA CODE § 670.4(A) (2022). IN ADDITION TO NOT SOUNDING IN TORT, PLAINTIFFS' CLAIMS ARE NOT "FOR MONETARY DAMAGES." PLAINTIFFS SEEK ONLY THE REMEDIES AUTHORIZED BY IOWA CODE § 335.21 (2023) - REVERSAL OR MODIFICATION OF THE BOARD'S APPROVAL OF THE APPLICATION.

Iowa Individual Health Ben. Reinsurance Ass'n v. State Univ. of Iowa,
876 N.W.2d 800, 804 (Iowa 2016)

Iowa Code § 670.4A (2023)

Victoriano v. City of Waterloo, 984 N.W.2d 178 (Iowa 2023)

Nahas v. Polk County, 991 N.W.2d 770 (Iowa 2023)

A. IOWA CODE § 670.4(A) (2022) WAS PART OF A COMPREHENSIVE "BACK THE BLUE" MOVEMENT WITHIN THE IOWA LEGISLATURE. IT WAS NEVER INTENDED TO APPLY OUTSIDE TORT CLAIMS FOR MONEY DAMAGES.

<https://www.police1.com/legal/articles/iowa-governor-signs-back-the-blue-law-to-raise-penalties-for-rioting-protect-officers-qWYM7fKKiPcaFHTW/>

<https://www.desmoinesregister.com/story/news/politics/2021/04/15/iowa-house-lawmakers-protest-crimes-passes-back-blue-bill-qualified-police-immunity/7219096002/>

<https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20210414042300075&dt=2021-04-14&offset=2205&bill=SF%20342&status=i&ga=89>

<https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20210517100213441&dt=2021-05-17&offset=11746&bill=SF%20342&status=i&ga=89>

B. THE IOWA LEGISLATURE DID NOT INTEND §670.4A TO APPLY TO CASES OTHER THAN THOSE (1) FILED AGAINST MUNICIPAL ACTORS; (2) SOUNDING IN TORT; AND (3) FOR MONEYTARY DAMAGES.

State v. Mathias, 936 N.W.2d 222 (Iowa 2019)

State v. Dolman, 725 N.W.2d 428, 431(Iowa 2006)

Auen v. Alcoholic Beverages Div., 679 N.W.2d 586, 590 (Iowa 2004)

Cox v. State, 686 N.W.2d 209, 213 (Iowa 2004)

Holman v. Branstad, 887 N.W.2d 153 (Iowa 2016)

Iowa Code §§ 670.4A(1) and 669.14A (2023)

III. BOTH 1000 FRIENDS OF IOWA AND THE INDIVIDUAL PLAINTIFFS HAD STANDING TO PURSUE THEIR IOWA CODE § 335.18 (2022) CLAIM.

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Haupt v. Miller, 514 N.W.2d 905, 910 (Iowa 1994)

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Nelson v. Case, 786 N.W.2d 267 (Ia. App. 2010)

Comes v. Microsoft Corp., 646 N.W.2d 440, 442 (Iowa 2002)

C. IOWA'S TWO-PRONGED STANDING TEST.

Citizens for Responsible Choices v. City of Shenandoah,
686 N.W.2d 470 (Iowa 2004)

D. 1000 FRIENDS OF IOWA HAS STANDING TO CHALLENGE THE LEGALITY OF THE BOARD'S ACTION.

<http://1000friendsofiowa.org/welcome/about/>

Covington v. Reynolds, 949 N.W.2d 663 (Ia. App. 2020)

E THE LANDOWNER/INDIVIDUAL PLAINTIFFS HAVE STANDING TO CHALLENGE THE LEGALITY OF THE BOARD'S ACTION.

<https://www.polkcountyiowa.gov/public-works/zoning-commission/>

Reynolds v. Dittmer, 312 N.W.2d 75 (Ia. App. 1981)

Richards v. Iowa Dep't of Revenue & Finance, 454 N.W.2d 573 (Iowa 1990)

ROUTING STATEMENT

Appellants respectfully request the Iowa Supreme Court retain this appeal as it presents an issue of first impression, the resolution of which will have broad import for litigants in Iowa:

Do the heightened pleading requirements of Iowa Code § 670.4A (2023) apply in cases in which the Plaintiff (1) does not plead a cause of action sounding in tort; and (2) does not seek monetary relief, generally, and, more specifically, whether Plaintiffs seeking a Writ of Certiorari and Declaratory Judgment pursuant to Iowa Code § 335.18 (2023) and Iowa Rule of Civil Procedure 1.1401 (2023) were required to satisfy the heightened pleading requirements of Iowa Code § 670.4A (2023) such that the trial court's dismissal of their Petition with prejudice was correct.

Put another way, in passing this "back the blue" amendment to Iowa Code Chapter 670 (2023), did the Iowa Legislature intend to provide all governmental actors with qualified immunity and to impose additional burdens on those with claims against those actors under all circumstances, including in cases where those claims do not sound in tort and where monetary damages are not at issue.

STATEMENT OF THE CASE

On February 7, 2023, the Polk County Board of Supervisors ["the Board"], on a vote of 3 - 2, approved The Family Leader's Request ["Application"] for Zoning Map Amendment, from "AG" Agricultural to "MU" Mixed Use Districts, for a 21.13 acre parcel of land in rural Polk County ["the Subject Property"]. This parcel, like those that surround it, has historically been zoned Agricultural.

The Board's approval of the Application was contrary to the recommendations of County Staff and the Polk County Zoning Commission, as well as concerns expressed in public meetings regarding "spot zoning", lack of infrastructure, tax increases for other property owners, increased traffic and that a non-profit special interest group would be operating a multi-functional campus in the heart of agricultural land.

On March 7, 2023, Appellants — a non-profit devoted to preserving rural Iowa along with several owners of land near the subject parcel — timely filed a Petition for Writ of Certiorari and Declaratory Judgment, pursuant to Iowa Code & 335.18 (2023) and Iowa Rule of Civil Procedure 1.1401 (2023). The Petition challenges the legality of the Board's action and seeks modification or reversal by the trial court.

The Board filed a Motion to Dismiss the Petition, alleging Plaintiffs lacked standing. The Motion makes no reference to Iowa Code Chapter 670 (2023). Plaintiffs filed a Resistance to the Board's Motion.

At the May 5, 2023 hearing on the Motion, the Board additionally argued that Iowa Code §670.4(A) (2023) compelled the trial court to dismiss the Petition with prejudice. On May 8, 2023, Plaintiffs filed a Supplement to their prior Resistance, focused solely on why Iowa Code § 670.4(A) (2023) does not apply in this case, given that Plaintiffs assert no tort claim[s] and are not seeking monetary relief.

On July 4, 2023, the trial court dismissed the Petition for Writ of Certiorari and Declaratory Judgment with prejudice, finding that (1) the Plaintiffs failed to satisfy the applicable test for standing; and (2) that "the heightened pleading requirements imposed by section 670.4A" apply to this action because, as the Board argued, 'the [Municipal Tort Claims Act] is intended to provide a procedural framework for all actions against municipalities..."

Appellants filed a timely Notice of Appeal of the trial court's July 4, 2023 Order. They thereafter filed a Notice of Appeal (Corrected) from which they redacted text imported from another document.

STATEMENT OF THE FACTS

1000 Friends of Iowa, "founded in 1998, is a statewide, membership-based organization focused on responsible and equitable land use and addressing the impacts of irresponsible land use. Our mission is to engage and unite Iowans in efforts to protect farmland & natural areas, revitalize neighborhoods, towns & cities, and improve quality of life for future generations. Our key program areas include: (1) Protecting Our Soil, Water, Farms and Natural Areas; (2) Smarter, Equitable Transportation; (3) Climate Change & Renewable Energy; [and] (4) Sustainable, Regenerative, and Equitable Communities & the Built Environment." (1000friendsofiowa.org) Preserving agriculture land — and challenging misuses of that land — in unincorporated Polk County furthers the mission and goals of 1000 Friends of Iowa. (App. 43)

1000 Friends of Iowa was joined by Bill Barnes, Inc., Bradley E. and Teresa M. Coulson, Sondra K. Feldstein Revocable Trust and Stuart I Feldstein Revocable Trust [hereinafter, "Landowners"] in filing the Petition for Writ of Certiorari and Declaratory Judgment challenging the legality of the Board's approval of the Application, according to the procedure set out in Iowa Code § 335.18 (2023) and Iowa Rule of Civil Procedure 1.401 (2023), the sole mechanism by which such challenges can be prosecuted.

The Landowners were among those who appeared at public meetings before the Board to voice their opposition to the Application. (See, App. 13 & 14)

The Polk County Board of Supervisors is a governing body comprised of individuals elected by district pursuant to Iowa Code § 331.206(1)(c) (2023). Board members include Matt McCoy (District 1), Robert Brownell (District 2), Steve Van Oort (District 3), Tom Hockensmith (District 4) and Angela Connolly (District 5). Connolly is the current chair of the Board; Hockensmith chaired the Board when it took the action subject of these proceedings.

Among the rights, duties and obligations of the Polk County Board of Supervisors are the adoption of ordinances related to real property (Iowa Code § 335.3 (2022)); the adoption of comprehensive plans "designed to preserve the availability of agricultural land...[and to] encourage efficient urban development patterns (Iowa Code § 335.5(1) (2022)); and provision for the manner in which regulations, restrictions and boundaries may be "amended, supplemented, changed, modified or repealed." (Iowa Code §§ 335.6 and .7 (2022)). (App. 3 & 4)

In the summer of 2022, the Polk County Board of Supervisors passed the 2050 Comprehensive Plan, "intended to guide decision-making as it relates to land use and zoning, housing, agricultural and conservation, natural

resources, infrastructure and mobility, and economic development for both incorporated and unincorporated Polk County." (<https://polk2050.org>)

According to Polk County, "Comprehensive Plans are documents meant to guide decision-making for a city, county or region. Generally, Comprehensive Plans are future-oriented with horizon years of between twenty or thirty years. Comprehensive Plans analyze the existing conditions of a place and identify what is working well and what could be improved. A core responsibility of Comprehensive Plans are to create a unified vision for the future of a community. Public engagement is an important step in outlining a vision for Polk County in the year 2050. Community involvement also helps create community buy-in which makes plan implementation easier and more effective. The County will rely on a mixture of public participation and feedback, research on best practices, and expert analysis to identify goals, priorities and action items to implement the community's vision for 2050." (<https://polk2050.org/home/about/>)

The Polk County Board of Supervisors adopted the Polk County Zoning Ordinance on or about September 10, 2007. It has been amended several times, most recently on August 1, 2023 (which amendments do not impact the pending action). (App. 4; for the complete text of the Ordinance, see

[https://www.polkcountyiowa.gov/media/\(\)vjjpqm2/zoning-ordinance-updated-2023-6-8-23.pdf](https://www.polkcountyiowa.gov/media/()vjjpqm2/zoning-ordinance-updated-2023-6-8-23.pdf)).

The Polk County Zoning Ordinance is intended "to implement the vision, goals and policies of the current Comprehensive Plan." (App. p. 55) Among the stated purposes of the County's Zoning Ordinance are to:

- Establish a rational pattern of land use and encouraging the most appropriate use of individual pieces of land throughout the County.
- Divide the unincorporated area of the County into districts of distinct community character according to the use of land and buildings, the intensity of such use (including bulk and height and surrounding open space.)
- Regulate and restrict the location and use of buildings, structures, and land for commercial, industrial, residential and other uses.
- ...
- Preserve and enhance the rural areas of the County with the understanding that the County is developing and increasing in population and will continue to become more urbanized.
- ...
- Preserve the best agricultural soils for future production.
- ...

- Protect landowners from adverse impacts of adjoining developments.
[and]
- Protect and respect the justifiable reliance of existing residents, businesses, and taxpayers on the continuation of existing, established, and planned land use.

...

(App. 55 & 56)

The Subject Property is currently owned by Darrell Geisler. Mr. Geisler owns another parcel, which abuts the Subject Property to the east. A third parcel directly east of the Subject Property and south of Mr. Geisler's other parcel is owned by the Karla Knapp Trust. Ms. Knapp is a sister of Mr. Geisler. The Karla Knapp Trust also owns a second parcel, which abuts the Subject Property across a section of its northern boundary. (App. 7)

The Subject Property has historically been utilized for agricultural purposes and has always been both classified and zoned Agricultural. For a period of years, the Geisler family engaged in agricultural-related activities for the benefit of the general public, including a corn maze and pumpkin patch, which activities were authorized pursuant to a conditional use permit issued by the County. That permit was removed by the County in 2021 at the request of the Geislars. (App. 7)

The Family Leader Foundation, Inc. is led by Robert VanderPlaats, its President and Registered Agent. Its mission is to "strengthen families, by inspiring Christ-like leadership in the home, the church and the government." Upon information and belief The Family Leader Foundation, Inc. is a non-profit 501(c)(3) and is exempt from taxation. (App. 8)

In 2022, The Family Leader Foundation, Inc. announced plans for its "Fields of Harvest" project, a destination office and event venue, intended to include an outdoor amphitheater and a bed-and-breakfast, among other features, to be operated in furtherance of The Family Leader Foundation, Inc.'s mission. (App. 8)

On or about October 29, 2022, The Family Leader Foundation, Inc. submitted a Comprehensive Plan Amendment and Rezoning Application ["the Application"] pursuant to which it requested the Zoning Commission change the Future Land Use Map classification of the Subject Property from "Agricultural" to Neighborhood Commercial" and the zoning district from "Agricultural - AG" to "Mixed Use - MU". (App. 8)

The Application was referred to County Staff for investigation and reporting, following which Staff recommended "denial of the requested Comprehensive Plan Amendment and Zoning Map Amendment to change the Future Land Use Map Classification from Agricultural to Neighborhood

Commercial and to change the Zoning Map from the "AG" Agricultural District to the "MU" Mixed Use District for the Rezoning Area." (App. 8)

In its report, Staff included a number of specific findings concerning the Application as being violative of the Polk County Zoning Ordinance and Contrary to the 2050 Comprehensive Plan, each of which the Plaintiffs adopted and incorporated into their Petition for Writ of Certiorari and Declaratory Judgment. (App. 9 - 12)

The Polk County Zoning Commission met on November 28, 2022 and, following Staff recommendations, voted 5 - 1 to deny The Family Leader Foundation, Inc.'s Application, concluding that the proposed plan for the site was "fundamentally inconsistent" with future land-use goals related to farmland protection. (App. 12)

Thereafter, The Family Leader Foundation, Inc. organized a meeting for December 17, 2022, designed to garner support for its Fields of Harvest project: "Undeterred, the projects' Comprehensive Plan Amendment and Rezoning request is moving forward to be presented to the Polk County Board of Supervisors so they can choose to approve the request despite the recommendations from County Staff and Zoning Commission." (App. 12)

The Family Leader Foundation, Inc.'s Application was presented to the Board three (3) times. On January 10, 2023 and January 24, 2023, members of

the public were permitted to comment. When the Board met on February 7, 2023, however, they voted on the Application without receiving additional input or comment. (App. 13)

Recognizing that in agricultural areas such as that in which the Subject Property is located those with a specific personal or legal interest in the subject matter on which interest the Board's action may have an injurious effect are not necessarily in close proximity, the Board sent postcards to property owners beyond the traditional radius employed, for example, in urban areas, and posted and published several notices of its scheduled meetings on the matter. (App. 13)

During the January 10, 2023 Board meeting, some supervisors expressed concern with the Application including: (a) concerns about "spot zoning" and about non-agricultural development in areas without infrastructure in place (Hockensmith); (b) increased traffic and the need for a conditional use permit (Brownell); (c) that the change from AG to MU would be "setting precedent" (Van Oort); and (d) that if The Family Leader (is successful but then later) leaves, whatever the Board decides will carry over to the next person to buy the property (Hockensmith). (App. 13)

During the January 24, 2023 Board meeting, additional concerns were voiced, including: (a) that the uses permitted in a Mixed Use District are not

permitted in an Agricultural District, absent a conditional use permit (Vandelune (Staff)); (b) approval of the Application would be contrary to the overwhelming opposition (resident); (c) threats to first responders due to the lack of infrastructure (resident); (d) increasing tax burden on other property owners as The Family Leader would pay no taxes (resident); (e) the result will be a non-profit special interest group occupying a parcel in the middle of agricultural land (resident); and (f) rezoning would effectively undo the Comprehensive Plan (Connolly). (App. 13 & 14)

On February 7, 2023, the Board voted to approve The Family Leader Foundation, Inc.'s Application for Zoning Map Amendment by a vote of 3 (McCoy, Brownell & Van Oort) to 2 (Hockensmith & Connolly) (App. 14)

The Board's posted Ordinance No. 368 approving The Family Leader Foundation, Inc.'s Application includes certain "Conditions of Rezoning", pursuant to which The Family Leader Foundation, Inc. is now permitted Institutional Uses (including indoor and outdoor institutional uses, institutional residential occupancy up to 8 residents, public service and group homes) as well as Commercial Uses (including office and indoor commercial amusement). (App. 14)

On March 7, 2023, 1000 Friends of Iowa and a group of Landowners filed a timely twenty (20) page Petition for Certiorari and Declaratory

Judgment (App. 4 – 23) in which they set out in detail the nature of the case, the legal description of the Subject Property, detailed information about the parties (including where the Landowners reside in proximity to the Subject Property, the identities of owners immediately adjacent to the Subject Property — all Geisler family members — and why the case is consistent with the mission and purpose of 1000 Friends of Iowa) and detailed information about other involved actors (County Staff, Zoning Commission, etc.)

Plaintiffs' Petition quotes extensively from the report issued by Polk County Staff following its investigation of The Family Leader, Inc.'s Application, which report Plaintiffs adopted and incorporated as their own claims and concerns.

On April 4, 2023, the Board filed a Motion to Dismiss (App. 27 - 35) in which it advanced three (3) arguments: the Petition was factually deficient as concerned the Landowners/Individual Plaintiffs' particular personal and legal interests; (2) the Landowners did not have standing as taxpayers; and (3) the Petition was factually deficient to confer organizational standing on 1000 Friends of Iowa.

The Board's written Motion did not address the alleged applicability of Iowa Code Chapter 670 (2023), generally, and Iowa Code § 670.4A(2023), specifically, to this Iowa Code § 335.18 (2023) case.

On April 13, 2023, the Plaintiffs filed their Resistance to the Motion to Dismiss. (App. 36 - 59)

At the May 5, 2023 hearing, in response to Plaintiffs' argument that any alleged deficiencies in the Petitioner could be remedied by amendment, the Board raised an additional legal claim, that the heightened pleading requirements set forth in Iowa Code § 670.4A (2023), an amendment to the Municipal Tort Claims Act, compelled dismissal of the Petition for Writ of Certiorari and Declaratory Judgment with prejudice. On May 8, 2023, Plaintiffs filed a Supplement to their earlier written Resistance focused solely on this point. (App. 60 - 64)

On July 4, 2023, the trial court filed its Order Granting Motion to Dismiss [with prejudice]. In that Order, the trial court held that Iowa Code § 670.4A (2023), an amendment to the Iowa Municipal Tort Claims Act, governs all cases against municipal actors, not just those that sound in tort and not just those in which monetary damages are at issue, neither of which are presented in this case:

The parties disagree on the applicability of the Municipal Tort Claims Acts (MTCA), Iowa Code chapter 670, to the present action. The applicability of the MTCA dictates the remedy or remedies available to the court due to Plaintiffs' failure to plead facts sufficient to confer standing. Plaintiffs assert that the MTCA does not apply because (1) this zoning action is governed exclusively by Iowa Code section 335.18, and

(2) this action is not a claim or tort for monetary damages. As a result, Plaintiffs assert that under the relevant Iowa Rules of Civil Procedure, the court should permit them an opportunity to cure any defect. Defendant disagrees, noting the broad definition of tort in the Municipal Tort Claims Act, Iowa Code chapter 670 (the MTCA)...

The court finds Iowa Code chapter 670 - and specifically the heightened pleading requirements imposed by section 607.4A — applies to this action. Defendant correctly urges that by its express term, the MTCA is intended to provide a procedural framework for all actions against municipalities, their officers, and employees, regardless of whether that action emanate from common law, statute or otherwise. Nothing in chapter 670 conflicts with section 335.18, which permits individuals aggrieved by zoning decisions to appeal to a district court. Chapter 670 simply sets forth the procedural requirements for bringing this statutory claim. *S.O. ex rel. J.O. Sr. v. Carlisle Sch. Dist.*, No. 07-2096, 2009 WL 605994, at 4* (Iowa Ct. App. Mar. 11, 2009) (applying the statute of limitations period in the MTCA to plaintiffs' chapter 232 claim against a school employee in the employee's personal capacity).

Because chapter 670 applies to this action, the remedy available to the court for Plaintiffs' failure to properly plead standing is severely limited and mandatory.

(App. 73 & 74)

On this last point, the trial court cited this Court's opinion in *Victoriano v. City of Waterloo*, 984 N.W.2d 178, 182-3 (Iowa 2023).

ARGUMENT

I. THIS CASE IS NOT SUBJECT TO THE PROVISIONS OF IOWA CODE CHAPTER 670 (2023). PLAINTIFFS' CLAIM CHALLENGING THE LEGALITY OF THE BOARD'S DECISION DOES NOT SOUND IN TORT.

Standard of Review: This Court "reviews a district court's ruling on a motion to dismiss for correction of errors at law....We accept the petition's well-pleaded factual allegations as true....We review rulings on statutory construction for correction of errors of law." *Iowa Individual Health Ben. Reinsurance Ass'n v. State Univ. of Iowa*, 876 N.W.2d 800, 804 (Iowa 2016)

Issue Preserved for Appeal: The Board did not invoke Iowa Code Chapter 670 (2023) in its written Motion to Dismiss but argued at the May 5, 2023 hearing that § 670.4A (2023) compels dismissal with prejudice of a Petition that could have otherwise been cured, if needed, by amendment. Plaintiffs argued against this in their Supplement to their Resistance to Motion to Dismiss, filed May 8, 2023 (App. 60 - 64), to which the Board responded on May 11, 2023.

A. PLAINTIFF'S CASE WAS FILED PURSUANT TO IOWA CODE 335.18 (2023) AND IOWA RULE OF CIVIL PROCEDURE 1.1401 (2023)

There exists but one mechanism in Iowa for persons who claim to have been aggrieved by a decision of the Polk County Board of Supervisors: the filing of a Petition for Writ of Certiorari, an original action pursuant to Iowa R.

Civ. P. 1.1401 (2023) ["A party may commence a certiorari action when authorized by statute"].

Iowa Code § 335.18 (2023) states: "Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter or any taxpayer, or any officer, department, board, or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board."

That Iowa Code § 335.18 (2023) provides the sole mechanism for challenging zoning and other decisions of boards of supervisors is well-settled. See, *Fox v. Polk County Board of Supervisors*, 569 N.W.2d 503, 506 (Iowa 1997) ["The nature of the certiorari proceedings against the Board of Supervisors is an ordinary action."]; see also, *Montgomery v. Bremer County Board of Supervisors*, 299 N.W.2d 687, 691 (Iowa 1980) ["The parties agree that certiorari is the appropriate means to review the Board's actions."]

"Certiorari is a procedure to test whether a lower board, tribunal, or court exceeded its proper jurisdiction or otherwise acted illegally." *Homeowners Ass'n of the Coves of Sundown Lake v. Appaloosa County Bd. of*

Supervisors, 2014 Iowa App. LEXIS 272 *4 (Ia. App. 03/26/2014), quoting, *Barnhill v. Iowa Distr. Ct.*, 765 N.W.2d 267, 272 (Iowa 2009).

Pursuant to Iowa Code § 335.21 (2023), the trial court's authority is limited to reversing, affirming, or modifying, in whole or in part, the Board's approval of The Family Leader's Application. The court cannot award damages and cannot assess costs against the Board absent proof that the Board "acted with gross negligence or in bad faith or with malice in making the decision appealed from." Iowa Code § 335.21(2) (2023).

Iowa Code Chapter 670 (2023) is titled "Tort Liability of Governmental Subdivisions." The Chapter defines "*Tort*" as "every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights." Iowa Code § 670.1(4) (2023)

Iowa Code § 670.2 (2023) states "Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function."

Iowa Code § 670.4(1) (2023) states that "[t]he liability imposed by section 670.2 shall have no application to any claim enumerated in this section. As to any of the following claims, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such

claims and, in the absence of any such express statute, the municipality shall be immune from liability." Decisions of Boards of Supervisors concerning the classification or zoning of land are not among the several exemptions set out in § 670.4(1)(a) - (r).

All of the claims exempted by § 670.4(1)(a) - (r), with the possible exception of §§ 670.4(1)(b) and (d), sound in negligence. Indeed, most include the verbiage "act or omission" and/or "negligence".

The Board, in its May 11, 2023 Response to Plaintiff's Supplement to their Resistance to the Motion to Dismiss argued, without reference to authority, that "the expanse of chapter 670 reaches far beyond mere negligence actions..." Whether chapter 670 reaches "far beyond" is a matter for this Court, in this and other cases. Appellants concede the Chapter does apply to cases other than those sounding in negligence, so long as the claims made sound in tort.

In *Sutton v. Council Bluff Water Works*, 990 N.W.2d 795 (Iowa 2023), this Court was tasked with deciding "whether the Iowa Municipal Tort Claim Act allows a claim for strict liability — liability that doesn't depend on negligence or intent to do harm — against a municipality for damaged caused by an underground water main break". (*Sutton v. Council Bluff*, slip op. p. 2)

This Court noted the "defining language" at the beginning of Iowa Code § 670.1(4), "that *tort* 'means every civil wrong which results in wrongful death or injury' to people, property or property rights." While "the term 'civil wrong' isn't separately defined,...its common usage includes several concepts. It includes, for instance, an intentional act resulting in harm (an intentional tort), an act involving wrongful conduct that inadvertently results in harm (negligence), and an act resulting in harm for which, because of the hazards involved, the law imposes strict liability. *Tort, Black's Law Dictionary*, 1792 (11th ed. 2019) (describing '[t]ortious conduct')." *Sutton v. Council Bluff*, 990 N.W.2d at 798.

Appellants submit that it was error for the trial court to conclude that Chapter 670 provides the procedural framework for all claims against governmental actors. Iowa Code Chapter 670 (2023) is concerned with the substance of claims against municipal actors, just as its counterpart, Iowa Code Chapter 669 (2023) is with respect claims against State actors. While both include certain procedural requirements, by their clear title and terms both are fixed on the substantive nature of the claim being prosecuted — it must sound in tort.

II. THIS CASE IS NOT SUBJECT TO THE PROVISIONS OF IOWA CODE § 670.4A (2023). IN ADDITION TO NOT SOUNDING IN TORT, PLAINTIFFS' CLAIMS ARE NOT "FOR MONETARY DAMAGES." PLAINTIFFS SEEK ONLY THE REMEDIES AUTHORIZED BY IOWA CODE § 335.21 (2023) - REVERSAL OR MODIFICATION OF THE BOARD'S APPROVAL OF THE APPLICATION.

Standard of Review: This Court "reviews a district court's ruling on a motion to dismiss for correction of errors at law....We accept the petition's well-pleaded factual allegations as true....We review rulings on statutory construction for correction of errors of law." *Iowa Individual Health Ben. Reinsurance Ass'n v. State Univ. of Iowa*, 876 N.W.2d 800, 804 (Iowa 2016)

Issue Preserved for Appeal: The Board did not invoke Iowa Code Chapter 670 (2023) in its written Motion to Dismiss but argued at the May 5, 2023 hearing that § 670.4A (2023) compels dismissal with prejudice of a Petition that could have otherwise been cured, if needed, by amendment. Plaintiffs argued against this in their Supplement to their Resistance to Motion to Dismiss, filed May 8, 2023 (App. 60 - 64), to which the Board responded on May 11, 2023.

Prior to the passage of Iowa Code § 670.4A (2023), plaintiffs pursuing tort claims against government actors enjoyed the right to voluntarily dismiss their petitions without prejudice at any time up to ten days before trial was

scheduled to begin. See, *Victoriano v. City of Waterloo*, 984 N.W.2d 178 (Iowa 2023).

Similarly, in cases where a motion to dismiss for lack of standing was granted, dismissal of the petition was without prejudice. Plaintiffs then had the opportunity to re-plead their cases so as to address whatever shortcomings the trial court found in their original effort.

The Iowa Legislature's 2021 passage of § 670.4A (2023), adding "Qualified Immunity" where monetary damages are claimed, eliminated the remedy of amendment. *Victoriano v. City of Waterloo*, 984 N.W.2d at 182. Since the Legislature implemented this change, this Court has issued several opinions directly on point here.

In *Victoriano v. City of Waterloo*, this Court set out the purpose and intent of the new Code section:

Section 670.4A was enacted into law on June 17, 2021. See 2021 Iowa Acts ch. 183, § 14 (codified at Iowa Code § 670.4A (2022)). The act, "being deemed of immediate importance, [took] effect upon enactment." *Id.* § 16. The law does two things relevant here. First, Iowa Code section 670.4A(1)(a) (2022) provides qualified immunity to employees or officers subject to claims arising under the IMTCA:

1. Notwithstanding any other provision of law, an employee or officer subject to a claim brought under this chapter shall not be liable for monetary damages if any of the following apply:
 - a. The right, privilege, or immunity secured by law was not clearly established at the time of the alleged deprivation, or at

the time of the alleged deprivation the state of the law was not sufficiently clear that every reasonable employee would have understood that the conduct alleged constituted a violation of law.

Second, the law changes pleading requirements for a claim brought under the IMTCA. *Id.* § 670.4A(3). Generally speaking, Iowa is a notice pleading state. *See* Iowa R. Civ. P. 1.402(2)(a). Under notice pleading, a petition is sufficient "if it informs the defendant of the incident giving rise to the claim and of the claim's general nature." *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). Under the newly-enacted Iowa Code section 670.4A(3), however, a plaintiff asserting a claim under the IMTCA must meet a heightened pleading requirement:

A plaintiff who brings a claim under this chapter alleging a violation of the law must state with particularity the circumstances constituting the violation and that the law was clearly established at the time of the alleged violation. Failure to plead a plausible violation or failure to plead that the law was clearly established at the time of the alleged violation shall result in dismissal with prejudice.

The heightened pleading requirement in section 670.4A(3) has three components. First, a plaintiff "alleging a violation of the law must state with particularity the circumstances constituting the violation." *Id.* Second, the statute requires the plaintiff to "plead a plausible violation" of law. *Id.* Third, the statute requires the petition plead "that the law was clearly established at the time of the alleged violation." *Id.*

Victoriano v. City of Waterloo, 984 N.W.2d at 180 - 1 (emphasis added).

In *Nahas v. Polk County*, 991 N.W.2d 770 (Iowa 2023), this Court "determined the demands of the heightened pleading requirements" which it had declined to do six months prior. *See, Victoriano v. City of Waterloo*, 984

N.W.2d at 182 ["The determination of those issues is not necessary to resolve this appeal"]:

A. **Iowa Municipal Tort Claims Act.** At common law in Iowa, governmental subdivisions (e.g., cities and counties) enjoyed some measure of immunity from a lawsuit. See *Jahnke v. Incorporated City of Des Moines*, 191 N.W.2d 780, 782 (Iowa 1971) (explaining that the Iowa legislature eliminated common law tort immunity when it enacted the IMTCA, which was formerly codified at Iowa Code § 613A (1967)); see also *City of West Branch v. Miller*, 546 N.W.2d 598, 603 (Iowa 1996) (giving examples of the limits of governmental immunity at common law). Although the legislature has since broadly waived governmental immunity for tort cases through the IMTCA, it recently amended the IMTCA to narrow the scope of municipal liability. In 2021, the legislature codified qualified immunity in the IMTCA for the first time. 2021 Iowa Acts ch. 183, § 14 (codified at Iowa Code § 670.4A (2022)). Specifically, the legislature codified a substantive qualified immunity protection and introduced a heightened pleading requirement for plaintiffs bringing IMTCA claims. *Id.* § 14(1), (3) (codified at Iowa Code § 670.4A(1), (3) (2022)).

...

Section 670.4A(1) establishes that qualified immunity protects employees or officers so they are not "liable for monetary damages" under the IMTCA if one of three conditions applies. *Id.* The first condition is that a legal right, privilege, or immunity that the plaintiff claims was violated was not clearly established at the time of the alleged violation. *Id.* § 670.4A(1)(a). The second condition is that the law was not so clear that reasonable employees would have known the conduct the plaintiff alleges violated the law. *Id.* The third condition is not at issue in this case. See *id.* § 670.4A(1)(b).

2. Section 670.4A(3)'s new procedural requirements.

The IMTCA now places a heightened pleading requirement on plaintiffs who bring claims against municipal corporations or those corporations' employees or officers. Iowa Code § 670.4A(3). This heightened pleading

requirement has three features. First, plaintiffs "must state with particularity the circumstances constituting the violation." *Id.* Second, plaintiffs must plead "a plausible violation" of the law. *Id.* Third, they also "must state . . . that the law was clearly established at the time of the alleged violation." *Id.* Ultimately, section 670.4A provides that the failure to plead a plausible violation or that the law was clearly established will "result in dismissal with prejudice." *Id.*

Nahas v. Polk County, 991 N.W.2d 776 - 7 (emphasis added).

In its Response filed May 11, 2023, the Board's argument that Plaintiffs' Petition must be dismissed with prejudice was predicated upon the language found in Iowa Code § 670.4A(3) (2023): "[f]ailure to plead a plausible violation or failure to plead that the law was clearly established at the time of the alleged violation shall result in dismissal with prejudice." The Board, however, ignores the first section of qualified immunity amendment: "Notwithstanding any other provision of law, an employee or officer subject to a claim brought under this chapter shall not be liable for monetary damages if any of the following apply:" Iowa Code § 670.4A(1) (2023) (emphasis added).

The Board's argument also ignores statements directly on point made recently by this Court. "[A] plaintiff asserting a claim under the IMTCA must meet a heightened pleading requirement", *Victoriano v. City of Waterloo*, 984 N.W.2d at 181, and "Although the legislature has since broadly waived governmental immunity for tort cases through the IMTCA, it recently

amended the IMTCA to narrow the scope of municipal liability", *Nahas v. Polk County*, 991 N.W.2d at 776.

In order to hold that these Plaintiffs, who sought a Writ of Certiorari pursuant to Iowa Code § 335.18 (2022), were required to satisfy the heightened pleading requirements of Iowa Code § 670.4A (2023), including dismissal with prejudice in lieu of the right to remedy any alleged deficiencies in their Petition by amendment, this Court must determine that the Iowa Legislature intended such a result; in other words, that the Legislature intended this amendment to the Municipal Tort Claims Act to govern non-tort claims, including those where monetary damages are not at issue.

A. IOWA CODE § 670.4A (2023) WAS PART OF A COMPREHENSIVE "BACK THE BLUE" MOVEMENT WITHIN THE IOWA LEGISLATURE. IT WAS NEVER INTENDED TO APPLY OUTSIDE TORT CLAIMS FOR MONEY DAMAGES.

The language that ultimately became Iowa Code § 670.4A (2023) was widely reported and is now recognized as part and parcel of a "back the blue" movement within the Iowa legislature:

"Senate Majority Leader Jack Whitver, R- Ankeny, who attended Thursday's signing event, said the legislation fulfilled a GOP campaign promises that 'we would back the blue,' but Senate Democratic Leader Zach Wahls of Coralville said the bill was more 'aimed at making political points, not making our communities safer.' Jeff Kaufmann, a former legislator who chairs the Republican Party of Iowa, said SF 342 makes clear Iowa supports law enforcement when 'too often now the loudest voices are demonizing them,' while Mark Stringer, executive

director of the ACLU of Iowa, called the bill 'clearly an effort to shut down public criticism of abuses by law enforcement.'”

(<https://www.police1.com/legal/articles/iowa-governor-signs-back-the-blue-law-to-raise-penalties-for-rioting-protect-officers-qWYM7fKKiPcaFHTW/>)

This qualified immunity provision was intended to strengthen legal protections for police officers and was implemented during the same time period Iowa's lawmakers passed bills raising penalties for protest-related offenses in the wake of the George Floyd's murder. (See, <https://www.desmoinesregister.com/story/news/politics/2021/04/15/iowa-house-lawmakers-protest-crimes-passes-back-blue-bill-qualified-police-immunity/7219096002/>)

The transcripts and videos of the House and Senate debates on the proposed amendment to Chapter 670 are public records and include:

Klein (R) (at 5:49:12) “I want to be clear on qualified immunity because I know this is going to be a topic this evening. We’re not saying we want to protect bad officers, what we want to do is make sure that our law enforcement officers who are acting within the law, within their scope of duty, within their rules, they are protected from lawsuits. This is not protecting bad cops.” [goes on a rant on bad cops:Bad ones get out.] “Qualified immunity is one of those key components to ensuring that good officers are protected, not left out to dry and possibly being sued.”

(<https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20210414042300075&dt=2021-04-14&offset=2205&bill=SF%20342&status=i&ga=89>)

Dawson (3:31) “The top priority [for law enforcement] has always been cementing qualified immunity because of what’s going on at the federal level, and the previous amendment we had before us basically takes the federal level spirit into state code to try to reduce qualified immunity. I think it’s insulting to law enforcement to say that their primary goal in this back the blue bill has been to get sick benefits and then head on out of here. Law enforcement is facing more issues than that.”

Dawson (4:07) “The pinnacle thing that law enforcement asked for this past year was qualified immunity being protected, because they saw people at the national level, trying to basically the first reaction when it comes to civil unrest is to sue the pants off cops and agencies, as well as” [gets cut off by Boulton at this point] qualified immunity “is the main topic of why we’re here today”

(<https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20210517100213441&dt=2021-05-17&offset=11746&bill=SF%20342&status=i&ga=89>)

B. THE IOWA LEGISLATURE DID NOT INTEND §670.4A TO APPLY TO CASES OTHER THAN THOSE (1) FILED AGAINST MUNICIPAL ACTORS; (2) SOUNDING IN TORT; AND (3) FOR MONETARY DAMAGES.

As this Court wrote in *State v. Mathias*, 936 N.W.2d 222 (Iowa 2019) the process of statutory interpretation begins with ascertaining "the legislature's intent." *State v. Mathias*, 936 N.W.2d at 228, quoting, *State v. Lopez*, 907 N.W.2d 112, 116 (Iowa 2018) (internal citations omitted).

We determine legislative intent from the words chosen by the legislature, not what it should or might have said. *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016). We cannot allow legislative intent to change the meaning of a statute if the words used by the legislature will not allow for such a meaning. See *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 337 (Iowa 2008).

We begin with the text of the statute. *Lopez*, 907 N.W.2d at 116. If the legislature chooses to define the term in a statute, that definition ordinarily binds us. *State v. Pettijohn*, 899 N.W.2d 1, 15 (Iowa 2017). When the legislature does not define the term, we look to the context in which the term appears and give it its ordinary and common meaning. *Id.* at 16; accord Iowa Code § 4.1(38); *State v. Bower*, 725 N.W.2d 435, 442 (Iowa 2006).

Then we determine if the statute is ambiguous. *Lopez*, 907 N.W.2d at 116. Ambiguity occurs "if reasonable minds could differ or be uncertain as to the meaning of the statute." *City of Waterloo v. Bainbridge*, 749 N.W.2d 245, 248 (Iowa 2008). When the language is "plain, clear, and susceptible to only one meaning," we do not search for meaning beyond the particular terms. *Id.*; see *Lopez*, 907 N.W.2d at 117. If the language is ambiguous, however, we consider our tools of statutory construction. See *Lopez*, 907 N.W.2d at 117; see also Iowa Code § 4.6.

State v. Mathias, 936 NW.2d at 228

This Court determines legislative intent "from the words chosen by the legislature, not what it should or might have said....Under the guise of construction, an interpreting body may not extend, enlarge, or otherwise change the meaning of a statute." *State v. Dolman*, 725 N.W.2d 428, 431(Iowa 2006), quoting, *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004). "Additionally, legislative intent is derived not only from the language used but also from 'the statute's "subject matter, the object sought to be accomplished, the purpose to be served, underlying policies, remedies provided, and the consequences of the various interpretations."' *Cox v. State*,

686 N.W.2d 209, 213 (Iowa 2004) (citations omitted)." *State v. Dolman*, 725 N.W.2d at 431.

In *Holman v. Brandstad*, 887 N.W.2d 153 (Iowa 2016) this Court engaged in statutory interpretation and construction in the context of the Iowa Legislature's passage of time-limited appropriations bills that is as instructive here:

In determining legislative intent, we may also look to the maxim "expressio unius est exclusio alterius," meaning expression of one thing is the exclusion of another. *Marcus*, 538 N.W.2d at 289. It is an established rule of statutory construction that "legislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned." *Id.* Additionally, we aim to give meaning to the statutory changes the general assembly enacts. *Davis v. State*, 682 N.W.2d 58, 61 (Iowa 2004). "When an amendment to a statute adds or deletes words, a change in the law is presumed unless the remaining language amounts to the same thing." *Id.* When considering statutory amendments, we must assume that the general assembly "sought to accomplish some purpose" and the amendment "was not a futile exercise." *Id.*

Holman v. Brandstad, 887 N.W.2d at 166.

The phrase, "the expression of one thing is the exclusion of another" is particularly salient on this point. In amending Iowa Code Chapters §§ 670 669 (2023), the Iowa Legislature expressly chose the words "monetary damages". "Notwithstanding any other provision of law" governmental actors "shall not be liable for monetary damages if any of the following apply." Iowa Code §§ 670.4A(1) and 669.14A (2023). Contrary to the trial court's

determination that Chapter 670, including § 670.4A (2023) is intended to apply to "all actions", it is clear from the plain language of the Chapter that it governs only claims sounding in tort and only cases where monetary damages are at issue.

Also particularly salient is the *Holman* Court's statement, citing *Davis v. State*, that "[w]hen considering statutory amendments, we must assume that the general assembly 'sought to accomplish some purpose'". The Iowa Legislature made its intended purpose clear during debate: to "back the blue" by strengthening immunity protections for police officers (and, arguably, others) facing tort claims for money damages. That is how Iowa Code § 670.4A (2023) has been interpreted by this Court to date, which interpretation is entirely consistent with legislative intent. The interpretation advanced by the Board and ordered by the trial court in this case is wholly inconsistent.

Neither Iowa Code Chapter 670 (2023) — The Municipal Tort Claims Act — not Iowa Code Chapter 669 (2023) — the State Tort Claims Act — has ever been interpreted by this Court to govern any proceeding other than those sounding in tort. In order to hold otherwise in this case, this Court must necessarily decide that the Legislature, in amending both the Municipal and the State Tort Claims Acts, intended to similarly amend every chapter and

section of the Iowa Code that applies to or concerns alleged wrongdoing by governmental actors. Including Iowa Code § 335.18 (2023) which, like so many other Code chapters and sections affords the government no immunity.

Appellants submit that if the Iowa Legislature intended for governmental actors to enjoy broad immunity and for those challenging their actions to bear additional burdens, they should and would have created an entirely new Code chapter like, for example, Iowa Code Chapter 17A (2023), the Administrative Procedures Act, which, in part, limits the timing and process of challenges to agency action.

III. BOTH 1000 FRIENDS OF IOWA AND THE INDIVIDUAL PLAINTIFFS HAD STANDING TO PURSUE THEIR IOWA CODE § 335.18 (2022) CLAIM.

Standard of Review: This Court "reviews a district court's ruling on a motion to dismiss for correction of errors at law....We accept the petition's well-pleaded factual allegations as true....We review rulings on statutory construction for correction of errors of law." *Iowa Individual Health Ben. Reinsurance Ass'n v. State Univ. of Iowa*, 876 N.W.2d 800, 804 (Iowa 2016)

Issue Preserved for Appeal: Appellants preserved error on this issue by briefing both 1000 Friends of Iowa's and the Individual Plaintiffs' standing in their Resistance to the Board's Motion to Dismiss, which Resistance was filed on April 13, 2023 (See, App. 36 - 59)

A. INTRODUCTION.

In its July 4, 2023 Order granting the Board's Motion to Dismiss, the trial court held that not only do the heightened pleading requirements of Iowa Code § 670.4A (2022) apply to this non-tort case in which monetary damages are not claimed, but that both 1000 Friends of Iowa and the Individual Plaintiffs lacked standing to pursue a claim pursuant to Iowa Code § 335.18 (2023).

Among the deficiencies in Plaintiffs' Petition identified by the trial court were that (1) "the proximity between the subject rezoning area and the individual Plaintiffs' properties is unclear from the fact of the Petition. The Petition lists only Plaintiffs' addresses — not their distance from the subject property" (App. 72); (2) "...the Petition does not articulate the individual Plaintiffs' concerns about the contested rezoning. Rather, the Petition quotes extensively from the recommendations against the zoning made by Polk County staff (App. 72); and (3) "1000 Friends of Iowa does not allege that any of its members has a specific and personal interest in the contested rezoning." (App. 73)

To the extent the Petition filed March 7, 2023 did not satisfy Iowa's notice pleading requirements, any deficiencies could have been cured by an Amended Petition, the filing of which would have related back to the original

date of filing. Appellants submit, however, that the well-plead facts of the Petition to satisfy Iowa's notice pleading requirements and confer standing on both 1000 Friends of Iowa and the Individual Plaintiffs.

B. MOTION TO DIMISS STANDARDS.

This Court has clearly expressed its disfavor with both the filing and the granting of motions to dismiss. See, *Cutler v. Klass, Whicher & Mischne*, 473 N.W.2d 178 (Iowa 1991) ["[W]e certainly do not recommend the filing of motions to dismiss in litigation, the viability of which is in any way debatable. Neither do we endorse sustaining such motions, even where the ruling is eventually affirmed. Both the filing and the sustaining are poor ideas."]

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

The trial court's focus is only on whether the allegations of the Petition are so deficient that the opposing party is deprived of notice of the claims

made. See, *Nelson v. Case*, 786 N.W.2d 267 (Ia. App. 2010) (emphasis added) As the Plaintiffs write in their Resistance, "the Board's Motion to Dismiss manifests a clear understanding regarding precisely who the Plaintiffs are and what the Board did that prompted them to take action." (App. 39)

In its Motion to Dismiss, the Board conceded the very high bar it required to overcome at the first stage of these proceedings: "A motion to dismiss tests the legal sufficiency of the challenged pleading." *Southard v. Visa U.S.A., Inc.*, 734 N.W.2d 192, 194 (Iowa 2007)...A motion to dismiss shall be granted "only if the petition shows no right of recovery under any state of the facts." *Comes v. Microsoft Corp.*, 646 N.W.2d 440, 442 (Iowa 2002)." (App. 28 & 29)

C. IOWA'S TWO-PRONGED STANDING TEST.

The parties agreed, in their Motion to Dismiss and Resistance, that the test the trial court was to apply is that articulated in *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470 (Iowa 2004).

Standing in Iowa is comprised of two elements. In order to pursue a claim, a plaintiff "must (1) have a specific personal interest in the litigation and (2) be injuriously affected." *Citizens v. Shenandoah*, 686 N.W.2d at 475. In

its Motion, the Board notes that a plaintiff must have a "sufficient stake" in a "justiciable controversy." (App. 29).

In their Resistance to the Board's Motion, Plaintiffs elaborated on the concept of justiciability, including that "standing is often tied to justiciability."

(App. 40) Further, Plaintiffs argued:

Here, the clear language of both Iowa Code § 335.18 (2022) and relevant case law establish that the dispute presented by Plaintiffs herein is ripe for adjudication. Iowa Code § 335.18 (2022), Petition to Court, states, in pertinent part: "Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer...may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality...."

(App. 41)

Upon receipt of a Petition for Writ of Certiorari, the district court holds an evidentiary hearing. "In a certiorari proceeding in a zoning case the district court finds the facts anew on the record made in the certiorari proceeding. The record will include the return of the writ and any additional evidence which may have been offered by the parties. However, the district court is not free to decide the case anew. Illegality of the challenged board action is established by reason of the court's findings of fact if they do not provide substantial support for the board decision." *Fox v. Polk County Board*, 569 N.W.2d at 506.

(App. 42)

Not only is the dispute presented by the Petition of Writ of Certiorari — which also includes a plea for declaratory judgment — ripe for adjudication, the process followed by the Plaintiffs in this case is the only recourse they have. There exists no other mechanism or procedure according to which they may challenge the legality of the Polk County Board of Supervisors' approval of the zoning map amendment.

(App. 42 & 43)

D. 1000 FRIENDS OF IOWA HAS STANDING TO CHALLENGE THE LEGALITY OF THE BOARD'S ACTION.

According to the Petition, "Plaintiff, 1000 Friends of Iowa, is a domestic not-for-profit corporation organized in 1998 pursuant to Iowa Code Chapter 504 (2022). Its Registered Agent is Kari Carney and its home office address is 3106 Ingersoll Avenue, Des Moines, Polk County, Iowa 50312. 1000 Friends of Iowa is a statewide, membership- based organization focused on responsible and equitable land use and addressing the impacts of irresponsible land use." (App. 4 & 5) In their Resistance, Plaintiffs provide additional information regarding 1000 Friends of Iowa:

According to its website, "1000 Friends of Iowa, founded in 1988, is a statewide, membership-based organization focused on responsible and equitable land use and addressing the impacts of irresponsible land use. Our mission is to engage and unite Iowans in efforts to protect farmland & natural areas, revitalize neighborhoods, towns & cities, and improve quality of life for future generations. Our key program areas include: (1) Protecting Our Soil, Water, Farms and Natural Areas; (2) Smarter, Equitable Transportation; (3) Climate Change & Renewable Energy; [and] (4) Sustainable, Regenerative, and Equitable Communities & the Built Environment." (1000friendsofiowa.org)

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

(App. 43)

Also, according to its website, "1000 Friends of Iowa is the only group in the state focused solely on promoting responsible land use and sustainability in community, state, and federal development decisions. We seek to prevent poorly-planned land use decisions and sprawl through citizen engagement and education about sustainable development. We encourage land use planning that protects farmland and natural areas, and ensures livable communities through implementation of smart growth principles." (<http://1000friendsofiowa.org/welcome/about/>)

The Board argues that, when it comes to organizational standing, our courts have carved out an exception to a presumption of lack of standing but only for environmental organizations. Appellants submit that 1000 Friends of Iowa — by its very mission — is or is at least akin to an environmental organization. Regardless, our appellate courts have never so limited organizational standing.

In *Covington v. Reynolds*, 949 N.W.2d 663 (Ia. App. 2020), the Iowa Court of Appeals could have denied One Iowa, Inc.'s (an LGBTQ+ advocacy organization) claim of standing on the ground that organizational standing is only available to environmental organization. The Court did not do so, and instead applied the same two factor test employed here, including plead allegations "that its members, or any one of them, are suffering immediate or

threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." quoting *Hunt v. Washington Apple Advert. Comm'n*, 432 U.S. 333, 342 (1977).

In their Petition, Plaintiffs write about the 2050 Comprehensive Plan and its focus on preserving agricultural land in this part of Polk County:

According to Polk County's 2050 Comprehensive Plan, "the Land Use Plan is the central element of the Comprehensive Plan", "agricultural will remain the dominant land use in the northeast, the area most distant from the urban core and with the best soils", and "the designation of land use areas that are primary agricultural minimizes the potential for incompatible land uses in close proximity."

(App. 15)

The Board's Approval of The Family Leader Foundation, Inc.'s Application violates the County's 2050 Comprehensive Plan as described in more detail in paragraphs 18 and 19, *supra*.

(App. 15)

At paragraph 18 of the Petition, Plaintiffs include a number of excerpts from the Polk County Staff Report (which recommended against approval of The Family Leader's Application), several of which are directly tied to the mission and purpose of 1000 Friends of Iowa:

- Reference Attachment A for a vicinity map of the subject property and surrounding area. The larger surrounding area includes land primarily in row crop production with a few existing single family residences. Existing residences in the area are long-standing farm homesteads or single family homes on existing lots of record at low densities;

- "The subject property and surrounding land is entirely classified and zoned agricultural on the County's Future Land Use and Zoning maps. There is no commercial or industrial development nearby the subject property. The closest commercial development is over four (4) miles west within the City of Ankeny."; [and]
- "The subject property is an active farm with the majority of acreage dedicated to row crop production....The operation began prior to Polk County's adoption of Agritourism use standards in 2007. However, in 2009 the Polk County Board of Adjustment approved a Conditional Use Permit, which legitimized the operation, including an expansion to include additional educational displays and activities at that time."

(App. 9)

At paragraph 19 of their Petition, Plaintiffs excerpt further from the County Staff report regarding the "[a]pplicable goals, strategies, policies and action items identified in the 2050 Comprehensive Plan:" (App. 10 & 11; quoted language omitted here)

At paragraph 20 of the Petition, Plaintiffs quote further from the County Staff report regarding the 2050 Comprehensive Plan, several sections of which are also directly tied to the mission and purpose of 1000 Friends of Iowa:

- "Polk County has a significant role and interest in promoting coordinated growth patterns and protecting prime agricultural land in an environment where the County continues to realize development pressure from ongoing population growth.";
- "The subject property and surrounding area are entirely zoned "AG" Agricultural District and classified as Agriculture on the Future Land Use Map. Polk County adopted the current 2050 Comprehensive Plan

in August of 2022. The previous 2030 Comprehensive Plan, adopted in 2006, also classified the subject property and surrounding area as Agricultural with similar goals and policies to the current 2050 Plan to prevent leapfrog development and conversion of farm ground to non-agricultural uses.";

- "The Northeast Quadrant contains some of the most productive farm ground in Polk County, including some of the largest contiguous tracts of agricultural land."; [and]
- "The 2050 Comprehensive Plan places an emphasis on preserving agricultural land outside of future city growth areas, including discouraging reclassification and rezoning of existing agricultural land for residential or commercial development."

(App. 11 & 12)

There are any number of organizations that could take issue with the Board's approval of The Family Leader's application. These might include organizations whose missions or purposes are contrary to those of The Family Leader. But The Family Leader's mission is not at issue here. What is at issue is a decision of the Board that allegedly violates Polk County's 2050 Comprehensive Plan and the Polk County Zoning Ordinance, specifically the focus or goals of both as concerns agricultural land in Iowa.

Unlike other organizations, 1000 Friends of Iowa exists to "protect[] farmland and natural areas". "Our mission is to engage and unite Iowans in efforts to protect farmland & natural areas..." It is for these reasons that 1000 Friends of Iowa challenges the legality of the Board's action. As

such, this Court finds that 1000 Friends of Iowa does have a personal interest in the subject matter of this proceeding, which interest may be or is adversely affected by the actions of the Board.

E. THE LANDOWNER/INDIVIDUAL PLAINTIFFS HAVE STANDING TO CHALLENGE THE LEGALITY OF THE BOARD'S ACTION.

In its written Motion, the Board argues that "[the] Individual Plaintiffs have insufficiently pled facts demonstrating their particular personal and legal interest in the challenged rezoning ordinance" (App. 31) and that they "do not have standing as taxpayers to challenge the rezoning ordinance." (App. 33)

Plaintiffs never claimed taxpayer standing, other than as an element of their claim that The Family Leader's non-profit status will impact property taxes for all other landowners in the area. As such, taxpayer standing is not separately briefed here.

As concerns the Board's first argument, the Board conceded in its Motion that Plaintiffs plead a number of factual allegations in support of their challenge, many of which are excerpted from the Polk County Staff Report, others of which were articulated by residents, County staff and individual Polk County Supervisors at the public hearings that preceded the Board's vote to approve The Family Leader's Application. (App. 7 – 12; 13 & 15)

The Board's argument, and the trial court's July 4, 2023 Order, are largely predicated upon the Plaintiffs' adoption of Polk County staff, the Polk County Zoning Commission's and individual Board member and other comments at the public hearing and incorporation of same into the factual allegations of their Petition.

The Polk County Zoning Commission operates as part of the Polk County Public Works Department. "The mission of the Polk County Public Works Department is to develop, manage, and maintain the highest quality road system, provide excellent snow removal and weed eradication services, promote orderly growth, protect our health and environment and ensure structures and uses are safe and sound. All these services help to enhance the quality of life for all citizens of Polk County." (<https://www.polkcountyiowa.gov/public-works/zoning-commission/>) (emphasis added)

Appellants submit that, as residents of unincorporated Polk County, they necessarily rely on the Zoning Commission, and on County Staff tasked with, as here, evaluating the impacts of applications for rezoning or reclassification of land within their purview. In Section IV of their Resistance (App. 54, *et seq.*), Plaintiffs address the intent and purpose of the Polk County Zoning Ordinance and the 2050 Comprehensive Plan, each of which

particularly impacts residents of unincorporated Polk County, among them the Individual Plaintiffs.

Given these well-plead facts, it is not unreasonable to infer that the Individual Plaintiffs adopted as their own the statements made by County Staff, local residents and elected officials regarding the potentially adverse impacts of the Board's actions.

As Plaintiffs argued in their Resistance to the Motion, "[a]nything additional Plaintiffs might write about their interests has already been articulated by Polk County Staff, whose concerns for residents of unincorporated Polk County are reflected in the 5 - 1 vote against the application by the Polk County Zoning Commission (See, Petition, p. 9,) and by those Supervisors who voted against the application (See, Petition, p. 10, ¶¶ 25 & 26)" (App. 51)

While the Board argued that the Landowners/Individual Plaintiffs lack edstanding because the parcels they own are not immediately adjacent to the one subject of this proceeding, the test the trial court should have and did apply is the Florida four-factor test adopted by the Iowa Court of Appeals in *Reynolds v. Dittmer*, 312 N.W.2d 75 (Ia. App. 1981): (1) proximity of the individual plaintiffs to the subject parcel; (2) the character of the neighborhood in which the subject parcel is located; (3) the type of change

proposed (here, from to AG to MU); and (4) whether individual plaintiffs were entitled to receive notice (here, the Board believed they were and willingly received public comment and correspondence from the individual plaintiffs).

In *Reynolds v. Dittmer*, 312 N.W.2d 75 (Ia. App. 1981), plaintiff landowners filed a petition for writ of certiorari challenging the Warren County Board of Supervisors' approval of three subdivision plats. Defendants, Dittmer, *et al.*, filed a motion to dismiss for lack of standing because the plaintiffs did not own land immediately adjacent to the subject parcels. "[U]able" to find any Iowa cases wherein the court determined whether a person who does not own the land directing affected by a zoning decision has a legal right to object to the zoning change or approval of the subdivision plat", the appellate court turned to decisions from other jurisdictions. *Reynolds v. Dittmer*, 312 N.W.2d at 78.

Finding them "particularly useful", the Iowa Court of Appeals adopted the factors set forth by the Florida Court in *Renard v. Dade County* and concluded that the *Reynolds v. Dittmer* plaintiff landowners met the requirements for standing. "All live adjacent or near the proposed subdivisions, the affected area is primarily farm land, and the proposed subdivision will be residential in character. Also, several of the plaintiffs would be entitled to notice of a zoning variance or rezoning which, by analogy,

strengthens their position in the instant case. We thus conclude district court erroneously dismissed plaintiffs' petition." *Reynolds v. Dittmer*, 312 N.W.2d at 78.

At pages 12 - 16 of their Resistance (App. ___), Plaintiffs set forth the facts plead in their Petition "particularly relevant" to the four-factor analysis. Taking the facts plead in the light most favorable to the Plaintiffs, the trial Court should have found that (1) they all live adjacent to or near the parcel subject of this litigation; (2) the subject parcel and the acres of land adjacent to it have historically been zoned Agricultural; (3) the Board's approval of The Family Leader's Application is a marked change from this history; and (4) the Individual Plaintiffs not only received notice of the Board's meetings but were permitted to speak at those meetings, at which they echoed the concerns expressed by Polk County staff and the Polk County Zoning Commission.

While Appellants concede that they did not specify the precise distance of their land from the Subject Property, that they did plead their addresses satisfies Iowa's notice pleading requirements.

The Board also argued that the status of the Individual Plaintiffs a taxpayers does not confer standing upon them. While one's status as a taxpayer alone may not be sufficient to confer standing, it is most certainly

among the factors the trial court could and should have considered. See, *Richards v. Iowa Dep't of Revenue & Finance*, 454 N.W.2d 573 (Iowa 1990).

In their Resistance to the Motion to Dismiss, Plaintiffs repeat sections of their Petition that relate to taxation, specifically property taxes and the impact permitting a potentially tax-exempt organization like The Family Leader may have on surrounding landowners: "Plaintiffs' Petition clearly sets out why their status as taxpayers is implicated by the Defendants' actions. If the subject parcel is exempted from property taxes, that burden will necessarily be borne by other residents of unincorporated Polk County, including the individual Plaintiffs. This is precisely the scenario presented in *Richards v. Dep't of Revenue*." (App. 54)

While the Landowners/Individual Plaintiffs' standing as taxpayers may not be sufficient, standing alone, to confer standing, the trial court should have found that Plaintiffs sufficiently plead the nature of their claim as taxpayers in the Petition for Writ of Certiorari and Declaratory Judgment.

In their Resistance and at the hearing, Plaintiffs asked "if they do not have standing to challenge the legality of the Board's action, who does?"

Here, Appellants return to the clear language of Iowa Code § 335.18 (2023), which provides the sole mechanism for challenging such actions: "Any person or persons, jointly or severally, aggrieved by any decision of the

board of adjustment under the provisions of this chapter or any taxpayer, or any officer, department, board, or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality."

From the well-plead facts of their Petition, the trial court could and should have found that the Individual Plaintiffs are indeed "persons" "aggrieved" by a decision of the Polk County Board of Supervisors. Appellants submit this Court should reverse the trial court's Ruling on this point.

IV. CONCLUSION.

WHEREFORE and for the reasons set forth herein, Appellants respectfully request this Court issue an opinion holding that (1) Iowa Code § 670.4A (2023) does not apply in cases in which neither tort claims nor monetary damages are plead, generally; (2) Iowa Code § 670.4A (2023) does not govern actions filed pursuant to Iowa Code § 335.18 (2023) and Iowa R. Civ P. 1.1401 (2023), specifically; (3) it was error for the trial court to dismiss Plaintiffs' Petition for Writ of Certiorari and Declaratory Judgment with prejudice; (4) the facts plead in the Petition confer standing on 1000 Friends of Iowa; and (5) the facts plead in the Petition confer standing on the Landowner/Individual Plaintiffs.

In the event this Court issues an opinion consistent with (1) - (3), above, but finds that the facts plead in the Petition do not confer standing on 1000 Friends of Iowa and/or the Landowner/Individual Plaintiffs, Appellants respectfully request this Court remand the case to the trial court for further proceedings (dismissal without prejudice with leave to thereafter amend the Petition to cure any deficiencies),

REQUEST FOR ORAL ARGUMENT

COME NOW the Appellants and respectfully request this Court set this case for oral argument.

Respectfully submitted,

_____/s/ CeCelia C. Ibson_____

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 16th day of January, 2024, the foregoing Final Brief was filed with the Iowa Supreme Court via EDMS and served electronically on each of the attorneys or parties of record as set forth below:

_____/s/ CeCelia C. Ibson_____

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ATTORNEY FOR DEFENDANT/APPELLEE
POLK COUNTY BOARD OF SUPERVISORS

**CERTIFICATE OF COMPLIANCE WITH
I.R.A.P. 6.903(1)(e), (f) and (g)(1) (2023)**

The undersigned does hereby certify that the foregoing Final Brief complies with I.R.A.P. 6.903(1)(e), (f) and (g)(1) (2023). It was prepared using a proportionally spaced typeface, serif, in 14 point and is comprised of 10,943 words, according to the word processing system used to prepare it (Word for Mac 2011 and Pages version 11.2).

_____/s/ CeCelia C. Ibson_____