

# Iowa Supreme Court Changes the Way City Councils and County Boards of Supervisors Handle Rezoning Decisions

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In September 2006 the Iowa Supreme Court decided *Sutton v. Dubuque City Council*; a case that could significantly affect the process by which city councils and county boards of supervisors make decisions on rezoning applications in the future. This article summarizes the case and provides some suggestions to bring the practices of these elected bodies in line with the Supreme Court's ruling.

## The Case

The Dubuque City Council voted to rezone a parcel of property from a commercial recreation district to a planned unit development (PUD) district on a four-to-three vote. The PUD rezoning allowed the property owner to construct a condominium project on property adjacent to a city park. Plaintiffs, who claimed that the condominium would affect their use and enjoyment of the park, challenged the rezoning decision in court on numerous grounds.

Much of the case revolved around whether plaintiffs followed the procedure appropriate for appealing rezoning decisions. The City of Dubuque contended that plaintiffs' claims were barred because they filed the wrong type of action ("declaratory judgment") with the district court. The Iowa Supreme Court concluded that a different type of action ("certiorari") is appropriate for challenging the legality of decisions made by city councils and county supervisors in zoning matters if "the action being reviewed by certiorari is of a *quasi-judicial* nature." This led to the question of significance for future zoning practice: Is a rezoning a quasi-judicial action? The Iowa Supreme Court concluded that rezonings are, in fact, quasi-judicial actions. The Court cited with approval a Washington State Supreme Court opinion that set forth factors that make rezonings quasi-judicial:

"Those factors include (1) rezoning ordinarily occurs in response to a citizen application followed by a statutorily mandated public hearing; (2) as a result of such applications, readily identifiable proponents and opponents weigh in on the process; and (3) the decision is localized in its application affecting a particular group of citizens more acutely than the public at large."

## The Implications

The Court's decision means that city councils will need to conduct rezoning hearings differently than the way they conduct other "legislative" actions, such as adopting resolutions, budgets, and general health, safety and welfare ordinances. The Iowa Supreme Court, and the courts in many other states, have insisted that quasi-judicial proceedings are subject to more rigorous procedural safeguards because their results directly affect the property rights of particular citizens. By way of example, the decisions made by zoning boards of adjustment – variances, special exceptions, and appeals – are all quasi-judicial actions, and the rules of procedure followed by boards of adjustment reflect these safeguards. The primary changes in practice that elected bodies will need to follow for rezoning matters are (1) no *ex parte* contacts outside the hearing, (2) tighter, more "court-like" hearing procedures, and (3) a written decision (or detailed set of minutes) that includes adequate justifications for the decision.

*Ex parte* contacts. Citizens expect to be able to discuss public matters with their elected representatives, and expect the elected representatives to be responsive to those discussions. However, in quasi-judicial

actions many such discussions fall under the definition of *ex parte* contacts. The Iowa Supreme Court has stated that an *ex parte* communication occurs when a board member communicates, directly or indirectly, in connection with a matter before the board, with any person or party, except upon notice and opportunity for all parties to participate. Members of a governmental body performing a quasi-judicial function are prohibited from having *ex parte* communications with interested parties. Such contacts could disqualify the elected official from involvement in the rezoning vote. Insofar as *Sutton* holds that rezonings are quasi-judicial proceedings, it may be interpreted to mean that elected officials should not discuss the particulars of a rezoning case outside the public hearing. This would prohibit discussions with rezoning applicants, objectors and members of the public. Some city attorneys also suggest that discussions with city staff and site visits conducted by individual city council members qualify as prohibited *ex parte* contacts.

*“Court-like” procedures.* The term *quasi-judicial* literally means “court-like.” Zoning boards of adjustment follow (or should follow) quasi-judicial procedures by ensuring that all sides to an issue are provided an opportunity to speak and keeping an official record of the proceedings, including testimony and exhibits. Rezoning decisions cannot be based on material that is not contained within the record. After *Sutton*, the city council cannot rely on some fact or opinion that was not presented in testimony or evidence at the rezoning hearing.

*Written decision.* A written decision (or detailed set of minutes) ensures that decisions are not based on material that is not contained within the record. It should reflect that a deliberative process was used by the council in reaching its conclusion. The written decision must contain a statement of the facts, derived from the record, that support the council’s conclusion. For example, a critical element in deciding whether a rezoning is appropriate is whether the new zoning classification is consistent with the community’s comprehensive plan. The statement of facts in the decision, therefore, should bring out the facts in the record that support the consistency between the plan and the new zoning. The written decision should also clearly state whether the rezoning is being approved or denied; a simple fact that sometimes gets overlooked at the conclusion of a long hearing.

### Conclusion

The *Sutton* decision means that city councils will need to conduct rezoning hearings differently than other matters. To understand the procedural safeguards that may now be expected from elected officials acting on rezoning applications, a good tip is to look at your board of adjustment’s rules of procedure. Of course, city council members should first and foremost consult with their municipal attorney to work through the implications of the *Sutton* case.

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