

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

CRAIG AKRIDGE,)	
LACEY AKRIDGE, and)	
JOHN DOE, residents of Carter Lake, Iowa,)	Case No. _____
)	
Petitioners,)	
)	
vs.)	
)	
CITY OF CARTER LAKE CITY COUNCIL,)	PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR HEARING AND ORAL ARGUMENTS
CITY OF CARTER LAKE BOARD OF)	
ADJUSTMENT, CITY OF CARTER LAKE)	
PLANNING BOARD, and)	
LAKESIDE AUTO RECYCLERS INC.,)	
)	
Respondents.)	

Petitioners, Craig Akridge, Lacey Akridge, and John Doe, by their attorneys, Lane & Waterman LLP and Michael J. Winter, hereby petition for a Writ of Certiorari and in support thereof state as follows:

RELEVANT FACTS

1. Petitioners, Craig Akridge, Lacey Akridge and John Doe, are residents of the City of Carter Lake, Iowa (the "City").
2. Respondents are the duly constituted City Council (the "City Council") Board of Adjustment (the "BOA") and Planning and Zoning Board (the "Planning Board") of the City.
3. Respondent, Lakeside Auto Recyclers Inc. ("Lakeside"), is an Iowa corporation with its principal place of business located at 2913 N. 9th Street, Carter Lake, Iowa (the "Property"). Lakeside is a real party in interest because its rights in the Property will be affected by adjudication of this action.

4. On August 28, 2006, the City adopted the Comprehensive Plan of the City of Carter Lake, Iowa 2006 (the “Comprehensive Plan”) and the Land Development Ordinances of the City of Carter Lake, Iowa 2006 (the “Development Ordinances”).

5. Under the City’s zoning Development Ordinances the Property is zoned partly as “C/L Locust Street Corridor Mixed Use District” and partly “C-2 General Commercial District.”

6. Under the Development Ordinances, metal recycling collection and processing is considered a heavy industrial use and is prohibited in the C/L and C-2 Districts. Of the 13 zoning classifications in the Development Ordinances, metal recycling collection and processing is only permitted in the “M-2 General Industrial District” through a conditional use permit, the same as all other heavy industrial uses.

7. Lakeside operates an automobile recycling collection and processing business on the Property as a nonconforming use under the Development Ordinance because its use preexisted the zoning now existing on its Property.

8. On or about August 25, 2016, Lakeside submitted a commercial building permit application to the City for the construction of a new automobile shredder plant on the Property (the “Project”).

9. The Project consists of replacing a small portable automobile shredder located at the Property with a permanent massive automobile shredding facility requiring significant foundation and structural work to accommodate a shredder, a control building with a 43 foot tall tower, a fluid recovery building, a fines building, an exit building, storm water detention ponds and other industrial components.

10. Even before knowing anything about the Project, the City Planning Board and BOA had already decided to “rubber stamp” the Project and to fast track its approval with little or no public input from neighboring property owners.

11. As demonstrated by subsequent events, the Planning Board and BOA did not serve as impartial bodies or seek to comply with the Development Ordinances. Their sole intent was to ensure that Lakeside receive a building permit regardless of its legality.

12. On or about September 7, 2016, just 13 days after applying, the building permit application was presented at a special meeting of the Planning Board. After reviewing the application, the Planning Board noted that the Project did not appear to conform with the existing zoning regulations, and that Lakeside would need to obtain a conditional use permit.

13. The Planning Board also determined that the 43 foot tower for the metal shredder exceeded the 35 foot height restriction applicable under the current zoning regulations. The Planning Board determined that Lakeside would need to obtain a variance from the BOA for the tower’s excessive height. The Planning Board also indicated a legal opinion from the City attorney was needed on whether the proposed expansion was consistent with the current zoning classifications.

14. On or about September 27, 2016, the application was presented at a meeting of the BOA. After reviewing the application and hearing from Lakeside, the BOA voted to approve a variance to install the shredder tower up to 43 feet in height.

15. Following the grant of the variance, the City immediately issued a building permit to Lakeside.

16. Neither the Planning Board nor the BOA ever submitted the application to the City Council to address the zoning concerns or issue a conditional use permit, and they never obtained a legal opinion from the City attorney prior to issuance of the building permit.

17. On or about October 27, 2016, several residents of the City filed a Petition for Writ of Certiorari in Pottawattamie County District Court, Case No. CVCV115410 alleging that the BOA, Planning Board and building inspector exceeded their jurisdiction or otherwise acted illegally in approving the application and issuing a building permit.

18. The residents alleged that in granting the variance and issuing the building permit, the Planning Board, BOA and building inspector failed to comply with the Development Ordinances in one or more of the following particulars:

- (a) Lakeside failed to submit a written application for a variance as required by the Development Ordinance.
- (b) Lakeside failed to demonstrate it met the conditions for a variance, including, but not limited to, the condition that strict application of the provisions of the Development Ordinance would constitute undue hardship.
- (c) The BOA failed to make the findings required by Section 2907(e)(8) of the Development Ordinances including that a hardship existed.
- (d) Illegally issuing the building permit allowed Lakeside to expand the nonconforming characteristics of the Property and/or non-conforming structures, which is prohibited by the Development Ordinances.
- (e) The site plan submitted by Lakeside failed to conform to requirements of the Development Ordinances and was never approved.

19. Because of the utter failure to comply with the Development Ordinances, the City agreed to rescind the building permit, and the building inspector was subsequently terminated.

20. Case No. CVCV115410 was dismissed by the residents without prejudice on January 19, 2017 as moot.

21. On or about January 9, 2017, Lakeside again appeared before the Planning Board to discuss the Project.

22. At the January 9, 2017 meeting, the Planning Board submitted the following request to the City's attorney as recorded in the minutes:

With the Council and Mayor's permission, the Planning Board requests a written legal opinion from the City Attorney regarding the current zoning of Lakeside Auto Recyclers in the "CL" District and the proposed addition of a metal shredding processing operation given that the existing salvage business is a non-conforming use and such is not allowed to improve or expand. Is the new operation permitted under the "CL" District given the above circumstances under the current zoning regulations? If not currently zoned for this operation what steps should the Planning Board undertake to revise the zoning for the property in question?

23. Recognizing that the Project would be an expansion of a nonconforming use and prohibited by the Development Ordinances, the Planning Board did not question the appropriateness of the Project, but simply asked how they could circumvent the Development Ordinances to permit the illegal use of Lakeside's Property.

24. As before, the Planning Board had already agreed to pass the Project even before reviewing a site plan, conducting any sort of studies or even holding a public hearing to receive public input.

25. On or about February 16, 2017, the City attorney issued a legal opinion to the Planning Board. The legal opinion stated that the Project would be an illegal expansion of a nonconforming use and prohibited by the Development Ordinances. The City attorney indicated that the only way to allow the proposed expansion would be through amending the Development Ordinances.

26. On or about February 27, 2016, the Planning Board held special meeting. At this meeting the City attorney discussed his legal opinion. One member of the Planning Board, Ed Palandri, requested that the City obtain an environmental impact study, and that the Planning

Board confirm the Project's compliance with the performance standards in the Development Ordinances.

27. On or about March 21, 2017, the Planning Board held a public hearing concerning the proposed changes to the C/L and C-2 Districts. The notice of this public hearing was not published in the newspaper as required by Iowa law. Further, due to an alleged "corrupt file," no minutes of this public hearing were made available.

28. On or about March 28, 2017, the Planning Board held a special meeting. At this meeting, the City attorney presented a proposed amendment to the C-2 District to allow metal recycling, salvage yards and reclamation.

29. On or about April 24, 2017, the City Council voted to amend the Development Ordinances to permit metal recycling, salvage yards and reclamation within the C-2 District (the "Amendment"), but ignored the recommendations from the Planning Board that there be an environmental study and that such use be subject to a conditional use permit.

30. On or about April 28, 2017, Lakeside submitted a commercial building permit application for the Project.

31. On or about April 28, 2017, Lakeside submitted to the Planning Board a 4-page request for over 30 variances from the requirements of the Development Ordinances (the "Variances").

32. On or about May 2, 2017, the Planning Board illegally approved most of the Variances. A request for a setback and height variance were forwarded to the BOA for approval.

33. On or about May 22, 2017, the BOA illegally granted the height and setback variances to Lakeside without the required showings.

34. With the Amendment and approval of the Variances, the City plans to issue a building permit to Lakeside for the Project.

35. Installation and/or construction of the Project will result in adverse impact to Petitioners including, without limitation:

- (a) noise, fumes, dust, vibrations, smoke, debris, exhaust and unsightly conditions and stockpiling of junk;
- (b) release of respirable and particulate hazardous and toxic air pollutants;
- (c) release of hazardous and toxic substances into soil and groundwater causing possible contamination of nearby drinking water sources, utility corridors and recreational waterways;
- (d) risk of explosions and fire hazards resulting in toxic smoke plums;
- (e) increased truck traffic leading to premature deterioration of public roads, congestion and safety issues;
- (f) outdoor night lighting which interferes with neighboring properties;
- (g) power fluctuations or temporary brown outs;
- (h) water runoff polluted with contaminants; and
- (i) reduction in Petitioners' property values.

36. Due to the close proximity of Petitioners' residences to the Property, Petitioners will be exposed to the adverse detrimental impacts described above, thereby depriving them of the quiet and peaceful enjoyment of their property.

37. Affidavits of the Petitioners verifying the contents of this Petition are attached hereto as Exhibit A.

COUNT I – ILLEGAL VARIANCES

38. Petitioners incorporate paragraphs 1-37 as though fully set forth herein.

39. Under the Development Ordinances, only the BOA has the power to authorize a variance from the terms of the Development Ordinances. Section 2907(e) provides in part as follows:

The City Board of Zoning Adjustment shall have the power to authorize in specific cases a variance from the specific terms of this Ordinance which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship, and provided the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.

40. Under Section 2907(e) of the Development Ordinances, the BOA may only grant a variance if the specific conditions therein are met including all of the following:

Unique Circumstances: That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district; and is not created by an action nor actions of the property owner or the applicant;

Consideration of Adjacent Property Rights: That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

Application of Regulations Constitutes Undue Hardship: That the strict application of the provisions of this Ordinance from which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
Consideration of General Welfare of Public: That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare;

Requirement for Written Application and Conditions: A variance from the terms of this Ordinance shall not be granted by the City Board of Zoning Adjustments unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district; that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same in the same district under the terms of this Ordinance, that the special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other land, structures, or buildings in the same district;

Use Variances: Under no circumstances shall the City Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

41. Lakeside's application consisted of 4 pages requesting over 30 variances from the requirements of the Development Ordinances.

42. The Planning Board and BOA approved most of the variances without considering, or requiring Lakeside to demonstrate it met, the conditions for the Variances, including, but not limited to, the condition that strict application of the provisions of the Development Ordinance will constitute undue hardship.

43. Neither the Planning Board nor BOA made the findings required by Section 2907(e)(8) of the Development Ordinances.

44. The Planning Board and BOA exceeded their jurisdiction or otherwise acted illegally in granting the Variances because the Planning Board has no authority to grant variances to Lakeside, and the Planning Board and the BOA failed to follow the requirements of the Development Ordinances.

COUNT II – INCONSISTENT WITH COMPREHENSIVE PLAN

45. Petitioners incorporate paragraphs 1-44 as though fully set forth herein.

46. Section 104 of the Development Ordinances requires states as follows:

The City of Carter Lake intends that this Land Development Ordinance and any amendments to it shall be consistent with the City's comprehensive Development Plan. It is the City's intent to amend this ordinance whenever such action is deemed necessary to keep regulatory provisions in conformance with the Comprehensive Development Plan.

47. Further, Iowa Code § 414.3 requires that amendments to zoning ordinances must be made in accordance with the Comprehensive Plan:

1. The 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. However, provisions of this section relating to the objectives of energy conservation and access to solar energy do not void any zoning regulation existing on July 1, 1981, or require zoning in a city that did not have zoning prior to July 1, 1981.

2. The 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.

48. Among other development principles and concepts contained in the Comprehensive Plan, industrial uses in the City are to transition to higher uses:

In addition to being a residential community, Carter Lake has traditionally hosted a major heavy industrial base. While this pattern will continue, radical changes in the surrounding areas will cause a gradual transition to other patterns of land use. For example, along the Abbott Drive corridor, the new Omaha arena/convention center has replaced railroad yards; the Gallup Organization's corporate campus supplanted large salvage yards and the City Dock;

In general, a mixed-use corridor along Locust Street will separate residential uses to the north from major employment and non-residential use on the south. These areas to the south will increasingly take on the character of a business park, combining office, limited industrial, and distribution space as a substitute for the heavy industries and open storage that have marked the area in the past.

Even in industrial districts, the increasing value of strategic locations near Downtown Omaha and the airport will encourage a gradual upgrading of uses.

49. Industrial uses, such as metal recycling, salvage yards and reclamation are to be phased out or relocated under the Comprehensive Plan:

Large salvage yards located south of Locust should be subject to improved screening standards through proposed modifications in the zoning ordinance.

Gradually, these salvage uses should be replaced by higher value, business park and limited industrial uses.

50. Other provisions of the Comprehensive Plan further demonstrate that the Project is inconsistent with the Comprehensive Plan.

51. The City Council exceeded its jurisdiction or otherwise acted illegally because the Amendment is inconsistent with the Comprehensive Plan in one or more of the following particulars:

- (a) Instead of phasing out salvage yards, the Amendment significantly expands the use and intensity of salvage yards in the City.
- (b) The Amendment results in the area South of Locust being downgraded to allow heavy industrial use instead of being upgraded to take on the character of a business park as contemplated by the Comprehensive Plan.
- (c) The Amendment will result in greater traffic congestion, which has not been adequately addressed by Lakeside or the City.
- (d) The Amendment unnecessarily increases the risk of fire, flood, panic, and other dangers associated with automobile shredders of this scope and size.
- (e) The Amendment increases the risk of air and water pollution, and neither Lakeside nor the City has obtained the appropriate state permits to address this issue.
- (f) The Amendment does not promote the health and general welfare of the City, but caters to one specific property owner.
- (g) The Amendment allows a use which is inconsistent with the character of the area and not suitable in the C-2 District.

COUNT III – SPOT ZONING

52. Petitioners incorporate paragraphs 1-51 as though fully set forth herein.

53. The only property in the City now permitted to be used for metal recycling, salvage yards and reclamation is the Lakeside Property.

54. The City Council's Amendment permits uses on Lakeside's Property, which no other property owners enjoy.

55. There is no reasonable basis for making a distinction between the Lakeside Property and the surrounding property.

56. The surrounding property is used for commercial, not heavy industrial, purposes.

57. The Amendment is inconsistent with the Comprehensive Plan.

58. The Amendment was a scheme to rezone a single parcel for a designated owner.

59. The City Council exceeded its jurisdiction or otherwise acted illegally because the Amendment constitutes illegal spot zoning.

COUNT – IV ARBITRARY, CAPRICIOUS AND UNREASONABLE

60. Petitioners incorporate paragraphs 1-59 as though fully set forth herein.

61. The Amendment and the Variances were not authorized by the Development Ordinances or Iowa law.

62. The Respondent's actions in approving the Amendment and the Variances are arbitrary, capricious and unreasonable in one or more of the following particulars:

- (a) The Respondents ignored the Development Ordinances and Comprehensive Plan which prohibit any new salvage operations within the City limits.
- (b) The City Council ignored the Planning Board's recommendation to obtain an environmental impact study, despite the fact that the proposed Project increases the risks of air and water pollution.
- (c) The City Council ignored the Planning Board's recommendation that a conditional use permit be required to conduct metal recycling, salvage yard and reclamation activities within the C-2 District and, thus, allows a use inconsistent with the C-2 District without retaining the authority to place conditions on that use.
- (d) The type of uses permitted in the C-2 District are office and commercial type uses. The Amendment and the Variances permit a heavy industrial use in the C-2 District, but prohibits the same use in less restrictive districts, including the "M-1 Limited Industrial District."
- (e) The City Council, BOA and Planning Board unreasonably waived performance standards required of other properties within the C-2 District.

- (f) There has been no change in the nature or character of the Property or of the surrounding properties within the C-2 District from the adoption of the Development Ordinances and Comprehensive Plan to justify permitting heavy industrial uses within the C-2 District.

63. Petitioners request a hearing and oral arguments on all matters set forth herein.

WHEREFORE, Petitioners request that a Writ of Certiorari issue from the Iowa District Court for Pottawattamie County commanding the Respondents to certify to this Court a transcript of the records and proceedings relating to the actions taken with respect to the matters described herein, including, but not limited to, written and electronic documents and audio and visual recordings; that upon such proceedings as the Court may determine, a judgment be entered declaring that the actions of the Respondents in granting the Variances and adopting the Amendment exceeded their jurisdiction or were otherwise illegal; that the Court grant Petitioners such other and further relief as the Court deems just and appropriate in the circumstances.

/s/ Michael J. Winter

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/s/ Brett R. Marshall

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ATTORNEYS FOR PETITIONERS

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

CRAIG AKRIDGE,
LACEY AKRIDGE, and
JOHN DOE, residents of Carter Lake, Iowa,

Petitioners,

vs.

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CITY OF CARTER LAKE BOARD OF
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PLANNING BOARD, and
LAKESIDE AUTO RECYCLERS INC.,

Respondents.

Case No. _____

PETITIONER'S AFFIDAVIT

STATE OF Nebraska)
COUNTY OF Sarpy) ss.

I, Craig Akridge, being duly sworn on oath depose and state as follows:

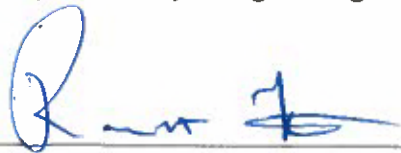
1. I reside at 101 Shoreline Drive, Carter Lake, Iowa.
2. I have read the facts of the Petition for Writ of Certiorari and to the best of my knowledge and belief, the allegations contained in the Petition are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

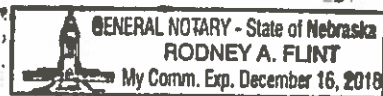


Craig Akridge

Subscribed and sworn to before me, a Notary Public, by Craig Akridge this 24 day of
May, 2017.



Notary Public



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PETITIONER'S AFFIDAVIT

STATE OF Nebraska)
) ss.
COUNTY OF Sarpy)

I, Lacey Akridge, being duly sworn on oath depose and state as follows:

1. I reside at 101 Shoreline Drive, Carter Lake, Iowa.
2. I have read the facts of the Petition for Writ of Certiorari and to the best of my

knowledge and belief, the allegations contained in the Petition are true and correct.

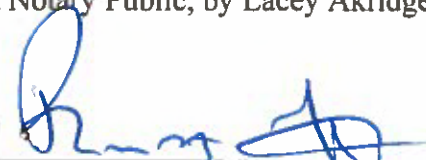
FURTHER AFFIANT SAYETH NAUGHT.



Lacey Akridge

Subscribed and sworn to before me, a Notary Public, by Lacey Akridge this 27th day of
May, 2017.





Notary Public