

# IOWA PLANNING



American Planning Association  
**Iowa Chapter**

*Making Great Communities Happen*

A Publication of the Iowa Chapter of the American Planning Association

January 2008



## Iowa Planning Gets A New Look

Starting with this issue of Iowa Planning you will notice that we have a new look. This new look coincides with the new branding effort that APA National is implementing with all of its Chapters and Organizations.

You will notice this new look in all of the publications and communications that APA Iowa publishes and sends and will also include our website. Please look for these changes over the coming months, we are very excited to start implementing them.

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## 2007 Iowa Planning Awards

Each year, the Iowa Chapter of the American Planning Association (Iowa APA) asks its more than 350 members to nominate plans, projects, and individuals deserving recognition by the professional organization. Award nominees can be recognized in as many as fifteen categories ranging from planning excellence to distinguished leadership. Based on an independent review by a jury of professional planners from the Minnesota Chapter of the APA, four nominees have been selected to receive Iowa APA Awards in 2007.

### **Karin Franklin, AICP**

#### **Distinguished Leadership Award for a Professional Planner**

Franklin has worked in the City of Iowa City Planning Department since 1979. While in Iowa City, she has served as an Associate Planner, Senior Planner, Neighborhood Services Coordinator, and most recently, Director of Planning. Franklin has been instrumental in developing the city's Office of Neighborhood Services, Iowa City Public Art Program, and in reorienting downtown Iowa City as a residential, entertainment, and fine arts center. Iowa City Mayor Pro-Tem, Regina Bailey said, "Karin has left her mark on our community in a way that has added to its vibrancy, its sense of place, and its beauty." Franklin has both Bachelor and Master of Arts degrees from the University of Iowa.

For more information:  
Jeff Davidson, Director of Planning  
and Community Development, City  
of Iowa City, 319-356-5232  
[jeff-davidson@iowa-city.org](mailto:jeff-davidson@iowa-city.org)

### **City of Dubuque Planning Services**

#### **Planning Excellence Award for Implementation**

The City of Dubuque Planning Services Department is being honored for successful implementation of their Port of Dubuque Master Plan. Prior to adoption of the plan, Dubuque's riverfront was an area plagued by environmental issues and undervalued properties. The City of Dubuque adopted the master plan in March 2002 focusing on five primary objectives to a successful redevelopment of the Mississippi riverfront. Today, the city has made significant progress on their objectives. The new riverfront is home to increased tourism opportunities and high-quality jobs that helped Dubuque be selected as an All-America City by the National Civic League.

For more information:  
David Johnston, Assistant Planner,  
Planning Services Department,  
City of Dubuque  
563-589-4210  
[djohnson@cityofdubuque.org](mailto:djohnson@cityofdubuque.org)

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# President's Message

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## President's Message

Eric C. Jensen, AICP

Hello Iowa Planners! I hope that you had a great 2007. It is hard to believe that we are coming to the end of another year.

I would like to start this edition of the President's Message by thanking all of you who attended the 2007 APA Upper Midwest Regional Planning Conference on October 31<sup>st</sup> through November 2<sup>nd</sup> in Dubuque. Over 250 Planners from throughout the region attended the conference. The Grand River Center, Grand Harbor Resort, the National Mississippi River Museum and Aquarium, and the City of Dubuque served as outstanding settings for the conference. I would like to thank the Conference Planning Committee: **David Wilwerding**, City of Johnston; **Matt Flynn**, City of Davenport; **Erik Lundy**, City of Des Moines; **Tom Treharne**, City of Marion; **David Johnson**, City of Dubuque; **Larry Ward**, Southwestern Wisconsin Regional Planning Commission; and, **Rich Russell**, City of Dubuque, who led the committee's efforts. The committee did an excellent job of putting together an exceptional conference.

I would also like to thank all of the conference sponsors: **Heartland Brick Council, Vinyl Siding Institute, HNTB, Olsson Associates, DSW, Durrant, JEO, R.A. Smith, RDG Planning and Design, SAA, SEH, Shive-Hattery, CDA, U.S. Army Corps of Engineers, NewCom Technologies, and Ladco Development**. The generous participation by these sponsors helped to ensure a great conference.

Although we have just recently concluded this year's conference, planning has already begun for the 2008 American Planning Association Iowa Chapter (APAIA) conference. The conference will be held October 29<sup>th</sup> through the 31<sup>st</sup> in Sioux City. Please watch for more conference details from the Chapter coming in the next several months, as well as requests for session proposals, sponsorships, and volunteers for next year's conference. We are excited about next year's conference and Sioux City is sure to be an excellent venue. We hope to see you all there!

It is time for APAIA elections again. Please look for more information on the upcoming elections from the Chapter President-Elect, **John Peterson**. John is currently working with the Nominating Committee (**Gary Taylor**, ISU Extension and **Phil Poorman**, City of Des Moines) to identify a slate of candidates for the election. If you are interested in running for the President-Elect, Secretary, or Treasurer positions, please contact John, Gary or Phil. Elections will take place around the first of the year with the new officers taking their positions on the Board on March 1, 2008.

The talk of the upcoming elections reminds me that this will be my last President's Message. My term as Chapter President will end on February 28, 2008. It has truly been a pleasure and an honor to serve as the Iowa Chapter President. I would encourage all APAIA members to get involved in Chapter activities and if you are interested, run for a position on the Board of the Chapter. It is a very rewarding experience. I hope to stay active in Board and Chapter activities, so I look forward to keeping in touch with all of you. I thank you for the privilege of allowing me to serve as your Chapter President.

Have a great new year!



# Chapter Executive Committee

**President:**

Eric C. Jensen, AICP  
City of Ankeny, (515) 963-3547  
[ejensen@ci.ankeny.ia.us](mailto:ejensen@ci.ankeny.ia.us)

Seana E. Perkins, AICP  
City of Ankeny  
515-963-3557  
[sperkins@ci.ankeny.ia.us](mailto:sperkins@ci.ankeny.ia.us)

**President-Elect:**

John Peterson, AICP  
City of Ankeny, (515) 963-3550  
[jpeterson@ci.ankeny.ia.us](mailto:jpeterson@ci.ankeny.ia.us)

**“Networking, Leadership & Professional Development Program Area” Co-Chairs:**

Erik Lundy, AICP  
City of Des Moines, (515) 283-4144  
[emlundy@dmgov.org](mailto:emlundy@dmgov.org)

**Secretary:**

Tom Drzycimski, AICP  
Cerro Gordo County, (641) 421-3075  
[tdrzyci@co.cerro-gordo.ia.us](mailto:tdrzyci@co.cerro-gordo.ia.us)

Tom Treharne, AICP  
City of Marion, (319) 377-1581  
[treharnet@cityhall.ci.marion.ia.us](mailto:treharnet@cityhall.ci.marion.ia.us)

**Treasurer:**

Deb Schiel-Larson, AICP  
City of Johnston, (515) 727-7763  
[dlarson@ci.johnston.ia.us](mailto:dlarson@ci.johnston.ia.us)

**“Legislative Program Area” Chair and CoZO Liaison:**

Les Beck  
Linn County Planning and Development  
(319) 892-5151  
[les.beck@linncounty.org](mailto:les.beck@linncounty.org)

**Immediate Past President:**

Stu Huntington, AICP  
Iowa State University  
[huntin@iastate.edu](mailto:huntin@iastate.edu)

**Awards Coordinator:**

David Wilwerding, AICP  
City of Johnston, (515) 727-7775  
[dwilwerding@ci.johnston.ia.us](mailto:dwilwerding@ci.johnston.ia.us)

**At-Large Representative:**

Charlie Kuester  
(641) 424-8171  
[ckeuster@mchsi.com](mailto:ckeuster@mchsi.com)

**University Relations Coordinator:**

Stevin Dahl, AICP  
(515) 451-3000  
[stevin@dahlcommunications.com](mailto:stevin@dahlcommunications.com)

**At-Large Representative:**

Rich Russell, AICP  
City of Dubuque, (563) 589-4152  
[rrussell@cityofdubuque.org](mailto:rrussell@cityofdubuque.org)

**Planning Commissioner Representative:**

Vacant

**Professional Development Officer:**

Gary D. Taylor, AICP  
Iowa State University, (515) 294-2973  
[gtaylor@iastate.edu](mailto:gtaylor@iastate.edu)

**Student Representatives**

**(Iowa State University):**  
Graduate - Brad Schmidt  
(920) 475-2432  
[schmib33@iastate.edu](mailto:schmib33@iastate.edu)

**“Advocacy, Outreach & External Voice Program Area” Chair:**

Matt Flynn, AICP  
City of Davenport, (563) 326-7743  
[mflynn@ci.davenport.ia.us](mailto:mflynn@ci.davenport.ia.us)

Undergraduate - Brad Bollig  
[bbollig@iastate.edu](mailto:bbollig@iastate.edu)

**“Communications Program Area” Co-Chairs:**

Richard Brown, AICP  
City of Des Moines, (515) 248-6356  
[rrbrown@dmgov.org](mailto:rrbrown@dmgov.org)

**Student Representative**

**(University of Iowa):**  
Hilary Copeland  
(319) 541-1431  
[hilary-copeland@uiowa.edu](mailto:hilary-copeland@uiowa.edu)



# Student Scholarship Awarded

The Iowa APA created the Student Essay Scholarship contest this year as an effort to outreach and support the student members of the chapter. The Essay requirements included submission of a 3,000 to 5,000 word essay on a current planning topic or theme. In addition, the award recipient was invited to present the paper at the Upper Midwest APA Planning Conference being held in Dubuque, Iowa. This year's recipient of a \$1,250 scholarship is:

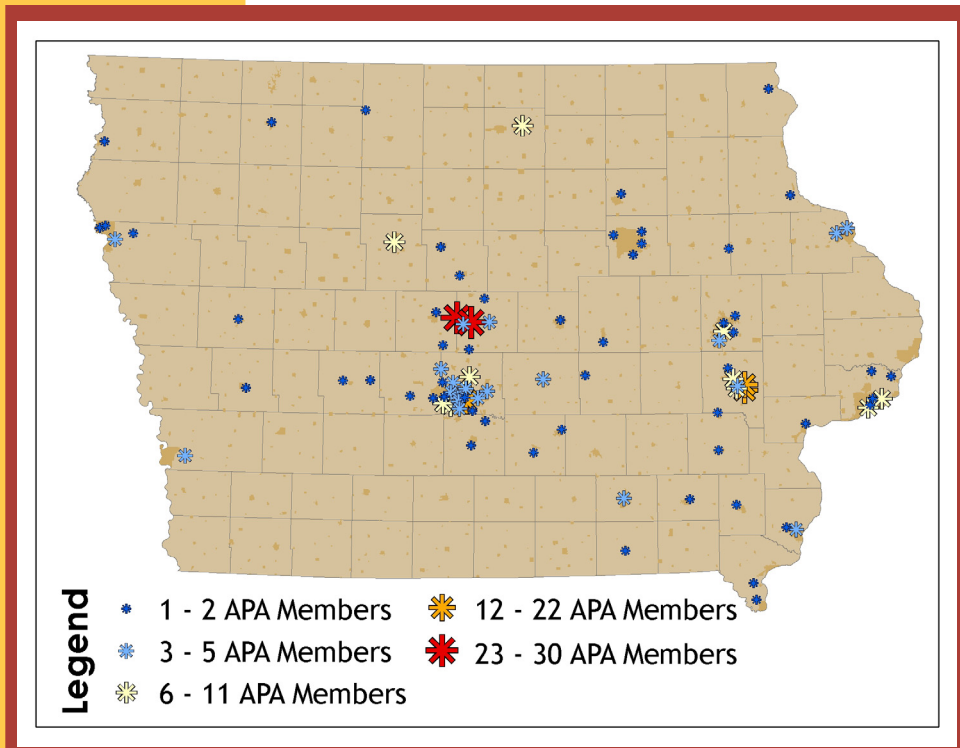
**John Dawson - for his essay entitled "The Convergence of Planning and Democracy: Literature Review and Lessons from Planning Theory on Democratic Planning in Practice"**

In his essay Mr. Dawson suggests that practicing planners have some gain in paying attention to planning theory in understanding and addressing some of these challenges. There is, unfortunately, a form of disconnect between planning theory and planning practice. While the demands of practice require the planner to act under constraints and often without the time to analyze a situation with the rigor of planning theory, practitioners can still look to theorists for input. Not all of the work of theorists is directly applicable to practice given the complexities and constraints of practice, some attention to the discussions progressing in planning theory can help practitioners avoid some substantial problems.

Mr. Dawson is pursuing his Master's Degree in Urban and Regional Planning from the University of Iowa with an expected graduation of May 2008.

For more information, contact:  
John Dawson  
(319) 353-4309  
[john-p-dawson@uiowa.edu](mailto:john-p-dawson@uiowa.edu)

**Getting to Know Iowa APA:**  
The map below shows the location of Iowa APA members by their zipcode



# Land Use Briefs

*Submitted by: Gary Taylor, Assistant Professor & Extension Specialist,  
ISU Community & Regional Planning*

**City of Okoboji v. Okoboji Barz, Inc.,  
dba O'Farrell Sisters,  
(Iowa Court of Appeals, May 23, 2007)**

***Serving alcohol at a restaurant was not an expansion or intensification of a nonconforming use; use of property at time of ordinance adoption is standard for determining extent of nonconformity.***

Since 1958, O'Farrell Sisters Restaurant has been located on Lakeshore Drive in the City of Okoboji. In 1972, the City adopted a new zoning ordinance, and the property was zoned C-Commercial. In 1978 the property was rezoned R-1 Single-Family Residential out of concerns about protecting the integrity of the surrounding residential areas. Under the zoning ordinance, restaurants, cocktail lounges, and taverns are not permitted.

Until 1994, patrons were able to buy alcoholic beverages at the restaurant. The restaurant's liquor license was allowed to expire in 1994. In May 2004, an application for a liquor license for the O'Farrell Sisters Restaurant was made to the City of Okoboji. The city council denied the application on the basis that the proposed sale of alcohol constituted an expansion of a nonconforming use that had been discontinued for a period of more than a year, per the terms of the Okoboji Zoning Code. The district court issued a ruling in which it concluded the sale of alcoholic beverages at the restaurant would constitute the addition of a separate nonconforming use under the City's zoning ordinance. The essence of the ruling was to preclude the restaurant from serving alcohol. (The many and varied proceedings leading up to the district court's determination will not be discussed here).

On appeal the Court of Appeals reversed the district court. The Court of Appeals determined that serving alcoholic beverages from a small bar would not excessively intensify or expanded the preexisting nonconforming use, nor would the nature or character of the use substantially change. Further, the Court cited *City of Central City v. Knowlton*, (Iowa 1978) for the proposition that "the use made of the land at the time the ordinance became effective is the standard used to determine whether there is an unlawful enlargement of a nonconforming use." The Court concluded that the sale of alcoholic beverages is not a change in use substantially different from the use the restaurant had at the time of the adoption of the zoning ordinance.

**Spencer Diesel Injection & Turbo v. City of Sioux City  
(Iowa Court of Appeals, April 25, 2007)**

***Use of comparable sales approach in valuing condemned properties valid when no income history for property is shown.***

In 1996, Spencer Diesel purchased property in downtown Sioux City for \$136,000. The property was used as a surface parking lot by the former owner. Soon after gaining possession, Spencer

#### **Editor's Note:**

The Iowa Supreme Court and Court of Appeals issue opinions related to land use at roughly the rate of one per month. Starting with this issue of the Iowa APA newsletter we will carry summaries of the most recent opinions. The briefs featured in this issue of Iowa Planning are from April-Jul 2007

# Land Use Briefs

## *Land Use Briefs continued from page 5*

Diesel learned there was an old gas station on the lot that required environmental cleanup. The property could not be used until the environmental cleanup process was finished in 1998.

In March 2002 the City informed the Spencer Diesel it was interested in acquiring the property for use as a parking lot in connection with a well-publicized downtown renewal venture. An appraisal performed on behalf of the city valued the property at \$202,000 pursuant to a comparable sales or market data approach. The appraiser also analyzed the value of the property under an income capitalization approach, which resulted in a value of \$182,000. The appraiser placed the greatest weight on the comparable sales method. Upon receipt of the appraisal, the owner offered the city a two year lease at \$3,500 per month with an option to buy at the end of the lease for \$600,000. The City did not accept the offer and instead initiated condemnation proceedings. In April 2003, the condemnation commission met, and after hearing testimony from the appraiser and considering his report, the commission determined Spencer Diesel would sustain damages of \$202,000. Spencer Diesel filed an appeal with the district court. The city obtained a second appraisal of the parking lot prior to trial. The second appraiser also used both a comparable sales and income approach and, based on the comparable sales approach, set a value of \$200,000. Spencer Diesel did not retain an appraiser, nor did the company designate an expert witness to testify at trial regarding the value of the property. Spencer Diesel's accountant testified, using an income approach to arrive at values ranging between \$450,000 and \$589,000 for the property. The district court determined the fair market value of the property to be \$202,000, and Spencer Diesel appealed.

The Court of Appeals sided with the city, affirming that when the entire property is taken the measure of damage is the reasonable market value at the time of condemnation. "In such cases, the usual guide to the fair market value of the property is comparable sales figures." Evidence of business profits is generally inadmissible as an independent element of damage or as relevant in determining the value of the land because it is too uncertain and depends upon too many contingencies. The only exceptions to the rule prohibiting valuation by the business profits or income capitalization approach are when the property taken is a leasehold or land used for agricultural purposes. The Court of Appeals determined that neither exception applied in this case.

**Ames Rental Property Association (ARPA) v. City of Ames**  
(Iowa Supreme Court, July 27, 2007)

***Definition of "family" as excluding more than three unrelated persons does not violate Equal Protection Clauses of either U.S. or Iowa State Constitutions.***

In an effort to stem the flow of students into residential areas, Ames passed a zoning ordinance, which only permits single-family dwellings in certain areas of the city. For purposes of the ordinance, a "family" is any number of related persons or no more than three unrelated persons. A landlord association brought a declaratory judgment against the City claiming the ordinance violates the equal protection clauses of the United States Constitution and the Iowa Constitution. The district court granted summary judgment in favor of Ames because it found the ordinance was rationally related to a legitimate government interest.

In a 4-3 decision the Iowa Supreme Court affirmed the district court. The Iowa Supreme Court noted that the U.S. Supreme Court examined a more restrictive ordinance in *Village of Belle Terre v. Boraas* and held it did not violate the United States Constitution. Finding that *Belle*



# Events Calendar

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## **Mastering Land Use and Planning Processes CM | 6.00**

Tuesday, 01/29/2008 9:00AM to 4:30PM  
NBI, Inc., Overland Park, KS

This intermediate-level seminar is designed for professionals who want to sharpen their knowledge of land use, including business, real estate, and environmental attorneys, developers, appraisers, surveyors, engineers, industry managers, and local zoning/land use officials.

## **APA Audio/Web Conference: Complete Streets CM | 1.50**

Wednesday, 01/30/2008 4:00PM to 5:30PM  
American Planning Association

Make room for pedestrians, bicyclists, and transit users on your auto-oriented roads. Learn how the complete streets movement provides safe and convenient user access and more choice in transportation modes, and how it has become a major tool for planning to improve communities. Through programs that rethink the physical design of streets, complete streets make cities and towns more livable and appealing to all residents. Learn how communities overcome resistance and how some communities have funded these programs.

## **APA Audio/Web Conference: Mastering Density CM | 1.50**

Wednesday, 02/13/2008 4:00PM to 5:30PM  
APA Audio/Web Conference: Mastering Density

Long a goal of planning, density can still be hard sell in some communities. Presenters demonstrate how to achieve density through design as well as how to understand the economics of density. Learn how density works with transportation and ultimately affects sustainability. Examine density's effects and benefits and learn how to present the concept of density to achieve critical buy-in.

## **APA Nebraska Chapter Conference**

Wednesday, 02/20/2008 to 02/22/2008  
APA Nebraska Chapter Conference, Grand Island, NE

The APA Nebraska Chapter Conference will be held February 20-22, 2008, at the Holiday Inn Midtown in Grand Island.

## **Rocky Mountain Land Use Institute CM**

Thursday, 03/06/2008 7:30AM to 03/07/2008 5:00PM  
Rocky Mountain Land Use Institute-University of Denver Sturm College of Law, Denver, CO

Join your colleagues from all across the United States at the region's largest and most comprehensive land use planning and law event. This three-day annual conference brings together a diverse group of professionals and faculty from across the Rocky Mountain West and the country for discussion and debate of critical regulatory, environmental, and land development issues. Dynamic sessions focus on current and controversial topics led by world-class speakers who are sure to educate, provoke, and entertain. Networking opportunities are unparalleled, while new clinic and workshop options will engage the intellect and provide maximum opportunity for interaction.

For a complete  
calendar or events  
please visit:

[www.planning.org](http://www.planning.org)  
or  
[www.iowa-apa.org](http://www.iowa-apa.org)

### SAVE THE DATE!

College of Design Career Days 2008  
Iowa State University

Thursday, February 28, 2008: Design Expo  
Friday, February 29, 2008: Interview Day

Stay tuned for more details and updates  
on the event website at:  
[www.design.iastate.edu/CAREER/careerdays.php](http://www.design.iastate.edu/CAREER/careerdays.php)



# Chapter Sponsors

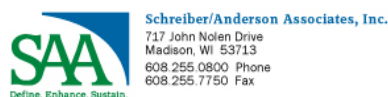
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For More Information Please Contact:

Richard Brown, AICP  
rrbrown@dmgov.org  
515-248-6356



**Con't from Below**

to relate a peaceful neighborhood with a neighborhood populated solely by families, or three or less unrelated persons. "As another court has articulated under a similar ordinance, 'twenty male cousins could live together, motorcycles, noise, and all, while three unrelated clerics could not.'" Furthermore, "Instead of promoting families, this ordinance disadvantages those most likely to live with roommates—the poor and the elderly."

"Ames claims it is promoting a sense of community with this ordinance: But whose community is Ames promoting? Is Ames only interested in promoting traditional families or those who can afford to live in a home without roommates—the wealthy and the upper-middle class? It is irrational for a city to attempt to promote a sense of community by intruding into its citizens' homes and differentiating, classifying, and eventually barring its citizens from the community solely based on the type of relationship a person has to the other persons residing in their home."

# Awards and Land Use Briefs

*2007 Iowa Awards Continued from Page 1*

## **LADCO Development, Inc. Planning Excellence Award for Best Practice**

LADCO Development is being honored for their work on the Village of Ponderosa in West Des Moines. The Village of Ponderosa is a carefully planned neo-traditional village district containing mixed-use buildings for retail, office, and residential spaces. LADCO utilized extensive stakeholder participation through the planning process seeking input from West Des Moines city planners, area homeowners, and design charettes. The plan is built around forty acres of open space, a 2.25-acre lake, and pedestrian pathways to help replace vehicle-oriented suburban living with proximity and convenience. West Des Moines Mayor, Steven Gaer said, "LADCO Development has worked very closely with city planning, business leaders, and the public community to gain input and work cooperatively in shaping the overall design and plan of the village."

For more information:  
Tamera Hanson,  
Marketing Communications Director  
LADCO Development, Inc  
515-278-8505  
thanson@ladcodevelopment.com

## **RDG Planning and Design and the City of Marshalltown Planning Excellence Award for Best Practice**

RDG Planning and Design and the City of Marshalltown are being honored for their work on the Marshalltown City Center Plan. With plans to replace the historical Carnegie library and significant investment occurring west of the Marshall County Courthouse, community members worried about the fate of the eastern portion of downtown. Especially unique to this project was its strategy to maintain viable surrounding areas to an already vibrant downtown. By involving nearly 100 stakeholder groups in the planning discussion through public design studios and open houses, RDG and the steering committee were able to produce community ownership of the final plan. Marshalltown Housing and Community Development Director, Michelle Spohnheimer said, "We continue to utilize the City Center Plan as a tool encouraging new development, reuse of existing structures, business improvement, transportation enhancements, and overall community betterment. We look forward to the future of Marshalltown and the great things that will be developing."

For more information:  
Gary Lozano, AICP, Partner, RDG Planning  
and Design,  
515-288-3141, glozano@rdgusa.com

*Land Use Briefs continued from page 6*

*Terre* is "still good law" the Iowa Supreme Court sided with the city of Ames on the U.S. Constitutional claim. On the Iowa Constitutional claim the Court found that ARPA did not carry its burden to "negate every reasonable basis that might support the disparate treatment" of those disadvantaged by the ordinance. Ames articulated several bases for the zoning ordinance: "promot[ing] a sense of community, sanctity of the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles and controlled transiency." The Iowa Supreme Court found these interests sufficient.

In a strongly worded dissent, three justices could not accept that distinguishing between related and unrelated persons in a zoning law is rationally related to the promotion of a sense of community, sanctity of the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles, or controlled transiency. The dissenting justices said it is irrational

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