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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1272**

Township of Midway, petitioner,
Appellant,

City of Duluth,
Petitioner Below,

vs.

City of Proctor,
Respondent,

Minnesota Office of Administrative Hearings,
Respondent Below

**Filed May 13, 2013
Affirmed
Chutich, Judge**

St. Louis County District Court
File No. 69DU-CV-12-520

Kenneth D. Butler, Duluth, Minnesota (for appellant)

John H. Bray, Duluth, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Peterson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

In this dispute concerning annexation of real property, appellant Township of Midway (township) challenges the district court's grant of summary judgment for respondent City of Proctor (Proctor). The township contends that because the petition for annexation contained an erroneous legal description of the property, the petition was legally deficient and the resulting ordinance annexing the property is invalid. Because Minn. Stat. § 414.033, subd. 2(3) (2012) does not require an annexation petition to include a legal description, and because the statutory requirements were met, we affirm.

FACTS

In December 2011, two St. Louis County property owners filed a petition with the Proctor City Council asking Proctor to annex their land, which lies along the I-35 corridor heading into Duluth. The petition, signed by both property owners, states that the unincorporated property they want Proctor to annex is 67.4 acres, abuts Proctor's south side, and "is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available." The petition further states that "[t]he reason for the requested annexation is that the [p]etitioners wish to have complete city services and utilities." The petitioners also attached legal descriptions of the parcels to be annexed.

Proctor held a public hearing on the petition and passed an ordinance approving the annexation, and an administrative-law judge approved the ordinance in February

2012. Shortly after the approval, the township and the City of Duluth¹ asked the administrative-law judge to withdraw the approval, contending that Proctor failed to follow certain procedures required by statute and that “the petition and the ordinance are legally defective in that the legal description used in them is incorrect.” The administrative-law judge denied the request and affirmed the order approving the annexation ordinance.

The township and the City of Duluth applied for review of the administrative-law judge’s decision in St. Louis County District Court and asked the court to enjoin Proctor “from taking any action in reliance on the validity of the annexation including, but not limited to, rezoning or issuance of building permits.” The district court denied the motion for injunctive relief, and the parties later filed cross-motions for summary judgment. The district court granted summary judgment for Proctor, upholding the annexation, and denied summary judgment for the City of Duluth and the township. This appeal followed.

D E C I S I O N

Our review of a district court’s grant of summary judgment is de novo. *Weavewood, Inc. v. S & P Home Inv., LLC*, 821 N.W.2d 576, 579 (Minn. 2012). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

¹ The property at issue also apparently “border[s] on property lying and being within the jurisdiction of” the City of Duluth. The City of Duluth joined in the township’s arguments at the district court but is not a participant in this appeal, nor is the Office of Administrative Hearings.

there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. On appeal, we review the record to determine whether any genuine material factual issues exist and whether the district court erroneously applied the law. *Dahlin v. Kroening*, 796 N.W.2d 503, 504 (Minn. 2011).

Minnesota law allows municipalities to annex abutting, unincorporated land by either board order or ordinance. Minn. Stat. §§ 414.031, .033 (2012); *see Rockford Twp. v. City of Rockford*, 608 N.W.2d 903, 906 (Minn. App. 2000). The owners of the land at issue here petitioned Proctor for annexation under Minn. Stat. § 414.033, subd. 2(3), which allows a municipality to annex unincorporated property by ordinance if:

the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition for annexation from all the property owners of the land.

Before adopting an ordinance annexing land under this subsection, the municipality must hold a hearing and give notice to affected towns and contiguous landowners. *Id.*, subd. 2b (2012). Importantly, the parties do not dispute that the property owners and Proctor met all of the statutory requirements for annexation by ordinance.²

The township contends, rather, that the legal description of the property is flawed and argues that the erroneous legal description invalidates the annexation ordinance

² On summary judgment, the township also argued that the administrative-law judge did not follow required hearing procedures before approving the annexation. The district court construed the statute and concluded that no additional hearing or findings were required, and the township does not challenge this procedural issue on appeal.

because “those persons not aware of the location of the property being annexed or without personal knowledge that the property actually does abut the City of Proctor” would be injured because those persons “would not be able to determine if Minn. Stat. § 414.033, [s]ubd. 2(3) had been met.” Interpreting section 414.033, subdivision 2(3), we conclude that the district court did not err in rejecting the township’s arguments.

Statutory interpretation presents a question of law that we review de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011). We must first determine whether the language of the statute is clear or ambiguous. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

A statute is ambiguous if it is reasonably susceptible to more than one meaning. *Id.* Although ambiguity may exist when a statute is silent on an issue, “silence does not render a statute ambiguous unless the silence renders the statute susceptible to more than one reasonable interpretation.” *Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012). We may not add words to a statute that were intentionally or inadvertently omitted by the legislature. *Id.*

If the statutory language is unambiguous, we interpret the statute’s text according to its plain language. *Rockford Twp.*, 608 N.W.2d at 906. We consider sections of a statute together “to give the words their plain meaning.” *Id.*

Minnesota law on municipal annexation is silent as to whether a legal description is required in a petition for annexation by ordinance or in the resulting ordinance. In fact, the statute contains no technical requirements for a valid petition or ordinance. While common sense dictates that the petition and the resulting ordinance must necessarily

include some description of the land to be annexed, our reading of the statute and surrounding sections suggests that a formal legal description is not required.

The annexation-by-ordinance statute refers to the “land,” which is simply defined in the statute as “geographical units of land within or outside a municipality, depending upon the context in which the term is used.” Minn. Stat. § 414.011, subd. 4 (2012). That land must “abut[] the municipality.” Minn. Stat. § 414.033, subd. 2(3). And, the “property owner” making the petition must be “the fee owner of the land, or the beneficial owner of land whose interest is primarily one of possession and enjoyment.” Minn. Stat. § 414.011, subd. 5 (2012).

Based on these definitions, the petitioners must simply show that they own the property and that the property abuts the municipality. Even though the statute does not specify how these showings are to be made, the absence of such specifics does not render the statute ambiguous. *See Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 760 (Minn. 2010) (stating that “silence in a statute regarding a particular topic does not render the statute unclear or ambiguous unless the statute is susceptible of more than one reasonable interpretation”). Minnesota Statutes section 414.033, subdivision 2(3), does not expressly require a legal description in either the initial petition or the resulting ordinance and we decline to read such a requirement into the statute. *See Reiter v. Kiffmeyer*, 721 N.W.2d 908, 911 (Minn. 2006) (“[W]e will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently.”).

While we recognize that an ordinance annexing property would be meaningless without some description of the land being annexed, no language in the statute requires

that description to be in the form of a legal description. In the entire chapter on municipal boundary adjustments, the legislature does not require, or even mention, a legal description of land to be annexed. *See* Minn. Stat. ch. 414 (2012). The chapter instead focuses on the natural boundaries of land to be annexed rather than legal boundaries.³ *See* Minn. Stat. § 414.031, subd. 4(f) (2012) (allowing the administrative-law judge to alter the boundaries of an area to be annexed to “preserve or improve the symmetry of the area”); *id.*, subd. 4(g) (2012) (allowing the administrative-law judge to “alter the boundaries of the proposed annexation so as to follow visible, clearly recognizable physical features”).

The township does nothing more than speculate about potential adverse effects from the allegedly flawed legal description, and its argument about the effect of an erroneous legal description on persons not familiar with the property is ultimately irrelevant under the statute. Moreover, the annexation-by-ordinance statute prescribes procedures designed to ensure that those most interested in the annexation receive notice of the proposed annexation and a right to be heard on the issue. Minn. Stat. § 414.033, subd. 2b (stating that before a city may adopt an ordinance annexing property under Minn. Stat. § 414.033, subd. 2, it must hold a public hearing and give notice to “the town

³ Conversely, other statutory chapters concerning land use expressly require a formal legal description. *See* Minn. Stat. § 40A.10, subd. 1(a) (2012) (requiring a person applying to the county for the creation of an agricultural preserve to include a legal description of the area in the application); Minn. Stat. § 103F.612, subd. 2(b)(1) (2012) (requiring a legal description in a wetland owner’s application to the county for designation of a wetland preservation area); Minn. Stat. §§ 394.301, subd. 4, 462.3595, subd. 4 (2012) (requiring a conditional use permit issued by a county or municipality to “include the legal description of the property” involved or included).

or towns affected by the proposed ordinance and to all landowners within and contiguous to the area to be annexed”). Proctor fulfilled those notice and hearing requirements before issuing the annexation ordinance, and nobody objected to the proceedings because of any alleged confusion concerning the property’s location or ownership.

Because the property owners and Proctor met all of the requirements of section 414.033, subd. 2(3), in annexing the property by ordinance, and no factual dispute exists as to the location of the property, the district court properly granted summary judgment for Proctor.

Affirmed.