IN THE COURT OF APPEALS OF IOWA

No. 8-1010 / 07-1105
Filed March 26, 2009

JOHN ANDERSON,
Petitioner-Appellant,

vs.

THE CITY DEVELOPMENT BOARD OF THE STATE OF IOWA and THE CITY OF DES MOINES,
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert (judicial review) and D.J. Stovall (motion to dismiss), Judges.

John Anderson appeals from the ruling of the district court affirming a decision by the City Development Board approving an involuntary annexation and from the dismissal of his request for declaratory relief, which he had joined with his petition for judicial review. **AFFIRMED.**

John F. Anderson, Des Moines, pro se.

Thomas J. Miller, Attorney General, and Jeanie Kunkle Vaudt and Christie J. Scase, Assistant Attorneys General, for appellee City Development Board.

Mark Godwin, Deputy City Attorney, for appellee City of Des Moines.

Heard by Mahan, P.J., and Miller and Doyle, JJ.

MAHAN, P.J.

John Anderson challenges the City of Des Moines's involuntary annexation of land by a petition that was originally filed in 1998. It is clear Anderson vehemently opposes the annexation of his property by the City of Des Moines (city). However, involuntary annexation is authorized by statute, and our role is limited to reviewing the propriety of the annexation under the statutory scheme provided. After a full review of the record and the applicable law, we affirm.

I. Background.

This appeal follows several earlier appeals of relevance, which we summarize here:

(1) In *Dunn v. City Development Board*, 623 N.W.2d 820, 822-25 (Iowa 2001), which involved the same involuntary annexation petition, the supreme court outlined the involuntary annexation process authorized by Iowa Code chapter 368 (1997). The appellants attempted to have the involuntary annexation petition dismissed for lack of accurate legal description. The supreme court found the appeal premature, noting:

> [T]he petitioners have means of challenging the annexation within the processes of chapter 368. They may attack the merits of the proposal by appearing at the mandatory public hearing and furnishing briefs in support of their position prior to the time any petition is approved. The committee may, under section 368.18, remedy defects in the petition's legal description. Eventually, if the committee approves the petition, an election must be held, and the plaintiffs will have an opportunity to attack the proposal at that level. If the petitioners fail to obtain relief through the administrative proceeding they will then have the right to seek judicial review.

Dunn, 623 N.W.2d at 825.

The parties to the involuntary annexation have, in fact, utilized each of the statutory means noted by the court. The objectors, including Anderson, have participated at the mandatory public hearings and furnished briefs. The committee has amended the legal description pursuant to section 368.18, which is challenged here by Anderson. The committee eventually approved the petition and an election was held in November 2005. Anderson attacked the propriety of the election and sought judicial review. We will further address those challenges later.

(2) In an attempt to avoid the involuntary annexation by the city, Anderson and other citizens of the unincorporated territory of "West Carlisle" attempted to be voluntarily annexed by the City of Carlisle. *Anderson v. City Development Board*, 631 N.W.2d 671, 672 (Iowa 2001) (*Anderson I*), dealt with the question of whether the annexation moratorium agreement between Carlisle and the city could preclude the petition for voluntary annexation. The City Development Board (CDB) concluded the petition was precluded, but on judicial review the district court reversed the dismissal. *Anderson I*, 631 N.W.2d at 672. The supreme court reversed and remanded for reinstatement of the petition's dismissal, concluding Iowa Code section 368.4 requires the dismissal of a "petition or plan which violates the terms" of a valid moratorium agreement. *Id*. at 675.

In *Anderson I*, the supreme court also addressed several alleged procedural errors raised by Anderson, as well as his claims that the moratorium agreement violated the federal equal protection and due process rights of the citizens of West Carlisle. The procedural errors alleged by Anderson included

(1) "a typographical error in the description of land subject to the moratorium agreement," (2) "inadequacy of the description of the affected land," and (3) "failure to provide notice to the Board as required to effectuate the moratorium agreement." *Id.* at 675. The supreme court noted that "[s]ubstantial compliance with prescribed procedural law is sufficient," *id*., and rejected each of these claims. *Id*. at 676.

The court also rejected Anderson's constitutional claims because: "(1) Those affected by the moratorium agreement were provided notice and a hearing, and (2) Annexation law is governed by statute and any right section 368.11 provides for involuntary annexations does not stem from constitutional property rights." *Id*.

(3) The 1998 involuntary annexation action was again before the appellate court in *City of Des Moines v. City Development Board*, 633 N.W.2d 305 (Iowa 2001). In this appeal, the city challenged the CDB's stay of the involuntary annexation proceedings pending the outcome of the *Dunn* and *Anderson I* appeals. *See City of Des Moines*, 633 N.W.2d at 308. After outlining the history of the annexation proceedings, the supreme court addressed the question of whether there was authority to decide the appeal. *Id*. at 309. The court discussed the time limits for review under chapters 17A and 368, *id*. at 309-11, and dismissed the appeal as untimely. *Id*. at 312.

(4) While *Anderson I* was pending on appeal, Anderson filed a suit against the CDB and the attorney general (AG) for declaratory judgment and mandamus, claiming the moratorium agreement was not properly enacted and was therefore invalid, that the CDB applied the annexation laws incorrectly, and that the CDB

and the AG violated the constitutional rights of Iowa citizens in interpreting and enforcing annexation statutes. *See Anderson v. City Dev. Bd.*, No. 01-1242 (Iowa Feb. 26, 2003) (*Anderson II*). The supreme court rejected each of Anderson's challenges on issue preclusion principles because "[a]lthough cloaked in slightly different language, these claims are identical to those concluded in [*Anderson I*]." *Id*. The supreme court therefore affirmed the district court's dismissal of the suit.

(5) In *Anderson v. City Development Board*, No. 05-0577 at 3 (Iowa Ct. App. June 28, 2006) (*Anderson III*), this court rejected Anderson's appeal from the district court's dismissal of his challenge to a voluntary annexation petition because he was not a resident or a property owner in the territory that was the subject of the voluntary annexation.

As evidenced by the numerous appeals, the petition for involuntary annexation has followed a rather tortured path. While the above-noted appeals were being pursued, the city and Warren County (in which lies some of the territory subject to the involuntary annexation petition) entered into mediation to attempt to resolve Warren County's opposition to the annexation. In April 2003 the CDB granted a motion to continue the public hearing (then scheduled for May 2003) to allow additional time for mediation. Regular reports from the city and Warren County were given to the CDB through December 2004.

The CDB rescheduled the involuntary annexation petition for public hearing for June 2005. The hearing began on June 7, 2005, before the city development committee. After the committee chair outlined the procedure that would be followed at the hearing, the city noted that, because the petition was

filed in 1998, about twenty to twenty-five percent of the original area subject to involuntary annexation had been voluntarily annexed; Warren County had withdrawn its objections to the annexation; the city and Warren County had entered into an agreement covering services and other matters; and the city, Warren County and the City of Indianola had entered into an annexation moratorium. The city also noted there was a pending motion to amend the legal description of the original petition to omit the voluntarily annexed areas and to correct "a couple of minor scrivener errors."

A participant presented a resolution to postpone the hearing until the amended petition was available, citing section 368.18. The city resisted further continuance, arguing that the proposed amendments to the 1998 petition did not substantially amend the petition and, consequently, section 368.18 did not require a continuance.

The committee accepted exhibits and then asked the city for updated information concerning the city's financial capacity to provide services and cost estimates. The public hearing was rescheduled to allow the city to compile the information requested, although the city noted that the proper inquiry must focus on the time frame when the original petition was filed.

On August 18, 2005, the public hearing was reconvened. The city presented additional exhibits containing the updated financial and cost information. The assistant city manager testified, as did the city's research and budget officer and the city's community development director, about the services offered by the city and not offered by the county and about the city's ability to serve the area to be annexed. Members of the committee and persons at the

meeting were allowed to ask questions of the witnesses. Public comments were received from numerous participants, including Anderson.

Anderson—whose comments were reduced to writing and encompassed fifty-two, single-spaced pages—argued that the statutory annexation scheme violated home rule and constitutional principles. He argued that statutory scheme was void on several grounds, including overbreadth, vagueness and preemption. He complained about the application of the principle of "substantial compliance" noted in the *Anderson I* decision. He argued the amended petition violated notice requirements. He also attacked individual statements in the petition, complaining that the city was not able to provide services he was not already enjoying and was not financially able to provide the services it claimed it could. He argued annexation would not promote orderly growth, would increase costs of future public services, was not in the public interest, and would not provide an increased level of services to the area to be annexed.

The committee scheduled a decisional meeting for August 30, 2005, at which time it would rule on the motion to amend. Briefs were to be received within ten days.

On September 1, 2005, the committee issued its findings of fact, conclusions of law, and determination. The committee approved the motion to amend, determining it did not substantially amend the petition. The committee made specific findings with respect to the city's ability to provide substantial municipal services and benefits not previously enjoyed in the area to be annexed, that the motive of the city was not solely to increase tax revenues, that the proposed annexation was in the public interest, and that the territory adjoins

the city. The committee concluded it had jurisdiction, the annexation was not barred by statute, and the annexation was in the public's interest. The petition was approved and the CDB directed that a special election be held.

Anderson and several others filed applications for rehearing, which were denied by the CDB at its September 29, 2005 meeting. A written decision denying the applications was issued on October 4, 2005.

On November 2, 2005, Anderson filed a "Petition for Judicial Review and Declaratory Relief" in which he asked that the statutory scheme for involuntary annexation be declared void on the bases of vagueness, overbreadth, constitutional and statutory preemption, and lack of uniformity. He asked also that the application of substantial compliance be declared void as unconstitutional and in violation of home rule authority. He argued the process was procedurally flawed and the decision was without substantial supporting evidence and arbitrary and unreasonable. The CDB moved to dismiss that portion of the petition which sought declaratory relief, arguing it could not be joined with a petition for judicial review. The district court agreed and dismissed the declaratory judgment portion of the petition.

In its final ruling, the district court properly noted that judicial review of administrative action is limited to questions considered by the agency[1] and adequately supported by legal authority.[2] Of the "multitude of issues" asserted by Anderson's petition, the district court found that many issues had not been

[1] "It is well-settled that judicial review of administrative action is limited to questions considered by the agency." *Anderson I,* 631 N.W.2d at 673.

[2] *See City of Asbury v. City Dev. Bd.*, 723 N.W.2d 188, 198 (Iowa 2006) (finding city waived its argument when it "failed to articulate this claim in its brief and failed to address any specific application" to its case).

raised below and that others were not adequately supported by legal authority. The court thus concluded that only three issues were subject to its review: whether the petition for involuntary annexation meets the pertinent statutory requirements; whether the respondents were correct in allowing the petition to be amended; and whether the annexation was supported by substantial evidence.

The district court found the petition for involuntary annexation was properly approved by the CDB. The court ruled any alleged deficiencies in the original petition could be cured by amendment and the amendment allowed by the CDB was not "substantial," which would trigger the requirement of continuance and additional notice under section 368.18. Finally, the district court found the annexation was supported by not "merely substantial but overwhelming evidence, and was consistent with the applicable facts and law. The decision was neither arbitrary nor unreasonable."

Anderson appeals.[3]

II. Standard of Review.

Our review of a city development committee's decision to deny or approve a petition for incorporation is limited generally under Iowa Code section 17A.19 and specifically under section 368.22. Section 368.22 provides in pertinent part that:

> A city, or a resident or property owner in the territory or city involved may appeal a decision of the board or committee, or the legality of an election, to the district court . . . .
>
> The judicial review provisions of this section and chapter 17A shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial

[3] Anderson again raises a multitude of issues; however, we—like the district court—will address only those properly preserved and supported.

> review of that agency action. The court's review on appeal of a decision is limited to questions relating to jurisdiction, regularity of proceedings, and whether the decision appealed from is arbitrary, unreasonable, or without substantial supporting evidence. The court may reverse and remand a decision of a . . . committee, with appropriate directions.

Section 368.22 then states that certain portions of section 17A.19's general judicial review provisions are not applicable to chapter 368 actions. *See Citizens of Rising Sun v. Rising Sun City Dev. Comm.*, 528 N.W.2d 597, 599 (Iowa 1995).

III. Discussion.

We have thoroughly reviewed the briefs and the record in this case. The district court's ruling on Anderson's petition for judicial review is well reasoned and fully supported by the record. We adopt its reasoning as our own and for all the reasons stated therein, we affirm. *See* Iowa Ct. R. 21.29(1)(*d*).

We conclude only two issues warrant further discussion. First, whether the committee erred in concluding there was not "substantial" amendment triggering a continuance under section 368.18. Second, whether the district court erred in dismissing Anderson's request for declaratory ruling.

Our review is guided by the following general principles:

> The law of annexation is purely statutory. The legislature prescribes the conditions of, and procedures for, annexation. Nonetheless, a failure to literally comply with every word of our annexation statutes is not fatal. Substantial compliance is sufficient, and legislation establishing the method by which municipal corporate boundaries may be extended is to be liberally construed in favor of the public.

Pruss v. Cedar Rapids/Hiawatha Annexation Special Local Comm., 687 N.W.2d 275, 279-80 (Iowa 2004) (internal quotations omitted).

A. Amendment of annexation petition. Section 368.18 provides:

> The committee may amend a petition or plan. *If a petition or plan is substantially amended*, the committee shall continue the hearing to a later date and serve and publish a notice describing the amended petition or plan, as required in section 368.15.

(Emphasis added.) This provision clearly authorizes amendment to an annexation petition. *See Dunn*, 623 N.W.2d at 825 (noting that the "committee may, under section 368.18, remedy defects in the petition's legal description"). However, if the amendment changes the petition "substantially," hearing on the petition must be continued and new notice must be given to affected parties.

The committee concluded the proposed amendment did not "substantially" amend the 1998 annexation petition, noting that the primary reason for the continuance and additional notice is to ensure interested individuals and entities have a fair opportunity to review and respond to the information being presented.

There are no decided cases addressing this precise question under section 368.18. However, our supreme court has discussed what constitutes a "substantial amendment" under an analogous provision in *Smith v. City of Fort Dodge*, 160 N.W.2d 492, 497-98 (Iowa 1968):

> In reading a statute we are required to give words of common usage their commonly-understood meaning unless it is clear from a reading of the statute that a different meaning was intended, or unless such construction would defeat the manifest intent of the legislature.
>
> . . . .
>
> Specifically, we seek the interpretation of the words 'substantial amendment' in [Iowa Code section 373.19 (1966)]. A careful review of our case law reveals that we have never had occasion to define 'substantial', but have attempted to define 'substantially.' Webster defines 'substantial' as follows: '3. That is of moment; essential; material . . . . 6. That is such in substance or in the main . . . . 10. Of or pertaining to the substance or main part of anything.'

> It has also been said the word 'substantial' is a relative and not exact term subject to a rule of thumb. It is susceptible of different meanings according to the circumstances of its use. In considering the word, *it must be examined in its relation and context, and its meaning gauged by all the surrounding circumstances.*
>
> The circumstances herein that must be considered, among others, are the size of the tract to be rezoned, the new use for which the property is rezoned, and the effect upon the community as a whole. We have carefully examined these and other relevant circumstances revealed in this brief record.

(Internal citations omitted, emphasis added.) In *Montgomery Properties Corp. v. Economy Forms Corp.*, 305 N.W.2d 470, 477 (Iowa 1981), the supreme court acknowledged its earlier discussion and re-emphasized that "'substantial' is a relative and not an exact term subject to a rule of thumb, that it was susceptible of different meanings according to the circumstances of its use."

In section 368.18, if an annexation petition is "substantially amended" then a continuance and new notice is required. We agree with the committee that the primary purpose of the section is to ensure that interested individuals and entities have a fair opportunity to review and respond to the information in an amended petition. We thus consider the context and the circumstances of the amendment to the annexation petition.

The original petition filed in June 1998 involved the annexation of approximately 8890 acres. The amendment was confined to the legal description of the area to be annexed. The amended petition removed acres that had been voluntarily annexed between the original petition in 1998 and the 2005 hearing: the parties affected by the voluntary annexations were aware of those proceedings. The amendment removed an area that was the subject of an agreement between the city and Warren County and it corrected scrivener errors.

No territory was added. Under these circumstances, we conclude the committee did not err in determining the petition was not "substantially amended."

B. Declaratory Relief. Anderson raises several allegations of procedural deficiencies related to the special election approving the annexation proposal. For example, he alleges violations of section 49.23 (change of polling places), 49.21 (related to accessibility of polling place), and 49.23 (relating to notification of change of polling place). He initially raised these challenges in his petition for judicial review and asked that the election be declared void. The district court granted the motion to dismiss the declaratory portion of the petition for judicial review.

The CDB and the city contend the petition was not the appropriate vehicle to address Anderson's challenges. They assert the allegations of procedural irregularity should have been made in a separate election contest under Iowa Code chapters 57 and 62. Anderson responds that he is entitled to challenge the "legality of an election" under section 368.22.

While section 368.22 does authorize an appeal of "the legality of an election," we find the matters raised by Anderson cannot be addressed in this petition for judicial review. Simply stated, the jurisdiction of the district court and this court is appellate in nature and here there is no election contest from which to appeal.[4]

[4] We believe the challenges raised by Anderson should first have been directed to the county commissioner of elections. *See generally* Iowa Code § 47.2 (county commissioner shall conduct election); chapter 57 (contesting elections); *see also* § 57.7 ("Contest court for contest of public measure."). An appeal from an adverse ruling there might have provided appellate jurisdiction in the district court under section 368.22.

The respondents to this petition are the CDB and the city. We conclude our review is limited to matters raised in the proceedings before the CDB and concerning the petition for annexation, including the CDB's directing an election. Anderson does not challenge the authority of the CDB to order the election or any other CDB or city action related to election. We find no error in the district court's dismissal of Anderson's request for declaratory relief. We affirm.

AFFIRMED.