

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

CITY OF ANN ARBOR,

Appellant,

Case No. 20-51 AA; 20-52 AA
Honorable Patrick J. Conlin, Jr.

vs

ORLENE HAWKES, DIRECTOR OF
MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY
AFFIARS/STATE BOUNDARY
COMMISSON,

Appellee.

OPINION AND ORDER

At a Session of the Court held in the
Washtenaw County Courthouse in
the City of Ann Arbor, on August 12, 2021

PRESENT: HONORABLE PATRICK J. CONLIN, Jr., Circuit Court Judge

Appellant appeals two final decisions and orders issued by Appellee on November 18, 2019 denying two petitions to annex certain territory in both Ann Arbor Township (Petition No 19-AR-1) and Pittsfield Township (Petition No. 19-AR-2). This Court has jurisdiction to review the decision of Appellee under MCL 123.108, MCL 24.304 et seq., and MRC 7.103(3).

The State Boundary Commission (SBC herein) was created by the State Boundary Commission Act, per MCL 123.1001 et seq., and established to administer that Act and portions of the Home Rule City Act and the Home Rule Village Act. The SBC serves as an advisory administrative body that reviews

various types of municipal boundary adjustments and recommends, to the Director of the Michigan Department of Licensing and Regulatory Affairs, the approval or denial of petitions, including annexation petitions.

On December 3, 2018, Ann Arbor City Council authorized the submission of petitions to the SBC for annexation of 89 island parcels from Ann Arbor Township, Pittsfield Township, and Scio Township. Those petitions were filed on February 26, 2019. It appears that all three petitions were processed in lockstep. Public hearings were held on petitions concerning township islands in Ann Arbor Township and Pittsfield Township. The public comments on were generally in opposition to the petitions and after the hearings, the SBC permitted Appellant to submit written responses made at the public hearing.

On October 16, 2019, the SBC recommended denial of petitions 19-AR-1 (Ann Arbor Township with exception to 2705 Newport Road) and 19-AR-2 (Pittsfield Township) but approval of petition 19-AR-3 (Scio Township). On November 18, 2019, Appellee accepted the recommendation from the SBC and denied petitions 19-AR-1 and 19-AR-2 and approved petition 19-AR-3.

Appellant filed appeals on both denials on January 15, 2020. On the motion of Appellant, the Court extended the filing deadlines for Appellant's brief to August 28, 2020 and Appellee's brief to October, 2, 2020. The Court also permitted an *amicus curiae* brief to be filed by December 9, 2020. The Court heard oral argument on March 5, 2021 and took the matter under advisement for further review and consideration.

A circuit court's review of an agency's decision is governed by MCL 24.306

which provides:

(1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

- (a) In violation of the constitution or a statute.
- (b) In excess of the statutory authority or jurisdiction of the agency.
- (c) Made upon unlawful procedure resulting in material prejudice to a party.
- (d) Not supported by competent, material and substantial evidence on the whole record.
- (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

(2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings.

"When reviewing whether an agency's decision was supported by competent, material, and substantive evidence on the whole record, a court must review the entire record and not just the portions supporting the agency's findings." *Great Lakes Sales, Inc. v State Tax Comm'n*, 194 Mich App 271 (1992). Substantial evidence is what "a reasoning mind would accept as sufficient to support a conclusion. *Dignan v Mich Pub Sch Employees Retirement Bd*, 253 Mich App 571 (2002). Substantial evidence is "more than a mere scintilla" but less than "a preponderance" of evidence." *Mantei v Mich Pub Sch Employees Retirement Bd*, 256 Mich App 64 (2003). A reviewing court must not substitute its

discretion for that of the administrative agency even if the court might have reached a different result. *VanZandt v State Employees' Retirement Sys.*, 266 Mich App 579 (2005).

MCL 123.1009 sets forth the framework to be used by the SBC when evaluating a petition by a city to annex territory belonging to a township. It provides:

Criteria to be considered by the commission in arriving at a determination shall be:

(a) Population; population density; land area and land uses; assessed valuation; topography, natural boundaries and drainage basins; the past and probable future urban growth, including population increase and business, commercial and industrial development in the area. Comparative data for the incorporating municipality, and the remaining portion of the unit from which the area will be detached shall be considered.

(b) Need for organized community services; the present cost and adequacy of governmental services in the area to be incorporated; the probable future needs for services; the practicability of supplying such services in the area to be incorporated; the probable effect of the proposed incorporation and of alternative courses of action on the cost and adequacy of services in the area to be incorporated and on the remaining portion of the unit from which the area will be detached; the probable increase in taxes in the area to be incorporated in relation to the benefits expected to accrue from incorporation; and the financial ability of the incorporating municipality to maintain urban type services in the area.

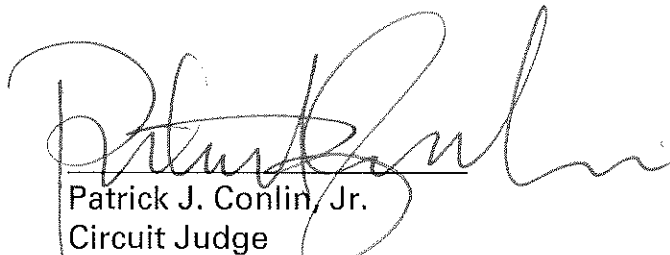
(c) The general effect upon the entire community of the proposed action; and the relationship of the proposed action to any established city, village, township, county or regional land use plan.

In the Final Decision and Order in both petitions 19-AR-1 and 19-AR-2 it is unclear to this Court what specific criteria the SBC relied upon in reaching its decision. The Court has questions as to why the third petition was granted and

not the first two. It is not clear from the record why these three petitions are different. Thus it is left to the Court to surmise certain issues in the instant petitions that may or may not have been present in the third petition concerning Scio Township. Moreover, there is inadequate discussion of the historic annexation documents between the Appellant and both townships. From this record, the Court cannot make a reasoned decision on whether there exists competent, material and substantial evidence on the whole record. Accordingly, the Court remands this matter to the SBC for further proceedings consistent with this Opinion.

IT IS HEREBY ORDERED that this matter is remanded to the SBC for further proceedings consistent with this Opinion.

IT IS SO ORDERED.



Patrick J. Conlin, Jr.
Circuit Judge