

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1740**

In re the Matter of the Annexation of Real Property to City of Bemidji from Bemidji Township (MBAU Docket A-8144).

**Filed May 4, 2020
Affirmed
Connolly, Judge**

Beltrami County District Court
File No. 04-CV-18-2915

John J. Steffenhagen, Ryan M. Theis, Hellmuth & Johnson, Edina, Minnesota (for appellant Bemidji Township)

Keith Ellison, Attorney General, Nathan J. Hartshorn, Assistant Attorney General, St. Paul, Minnesota (for respondent Office of Administrative Hearings)

James J. Thomson, Joshua P. Devaney, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent City of Bemidji)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Jesson, Judge.

S Y L L A B U S

Review by the Minnesota Office of Administrative Hearings (OAH) of a city's annexation by ordinance, under Minn. Stat. § 414.033, subd. 2 (2018), is limited to satisfaction of the conditions and procedural requirements in Minn. Stat. § 414.033, subds. 2, 2b.

OPINION

CONNOLLY, Judge

Appellant township challenges the district court's judgment affirming respondent OAH's approval of respondent city's annexation by ordinance under Minn. Stat. § 414.033, subd. 2(3). Because the OAH correctly concluded that the township had no statutory authority to object to the annexation by ordinance or to request an evidentiary hearing, that noncompliance with either the annexation criteria in Minn. Stat. § 414.031 (2018) or the policy considerations in Minn. Stat. § 414.01 (2018) does not constitute a sufficient legal ground to deny a proposed annexation that complies with Minn. Stat. § 414.033, subds. 2 and 2b, and that the OAH lacked jurisdiction to consider other legal issues raised in the township's objection to annexation, we affirm.

FACTS

In May 2018, respondent City of Bemidji (the city) accepted a petition for annexation by ordinance of a 14-acre parcel of property in appellant Bemidji Township (the township) from the property's owner. The public hearing mandated by Minn. Stat. § 414.033, subd. 2b, was held, and the township's objection to annexation was noted. In June 2018, the city adopted an ordinance annexing the property under Minn. Stat. § 414.033, subd. 2(3).

The township filed an objection and requested an evidentiary hearing with respondent OAH. The OAH approved the annexation, having concluded that (1) noncompliance with either the annexation criteria in Minn. Stat. § 414.031 or the policy considerations in Minn. Stat. § 414.01 was not a sufficient legal ground to deny the

proposed annexation, (2) the township had no statutory authority to object to the annexation or to request an evidentiary hearing, and (3) the OAH lacked jurisdiction to consider other legal issues raised in the township's objection to annexation.

The township appealed the OAH's decision to the district court under Minn. Stat. § 414.07 (2018), asking that the order be vacated and that the district court rule on the legal issues raised in its objection to the annexation. The district court directed the township and the city to file memoranda, which they did. The district court then affirmed the OAH's order and dismissed the appeal with prejudice. The township now challenges the district court's decision.

ISSUE

Did the OAH err in concluding that noncompliance with either the statutory criteria in Minn. Stat. § 414.031 or the policy considerations in Minn. Stat. § 414.01 is not a sufficient legal ground to deny a proposed annexation by ordinance that complies with Minn. Stat. § 414.033, subds. 2, 2b?

ANALYSIS

An appellate court reviews an agency's decision independently without according any special deference to a review by the district court. *See In re Rev. of 2005 Annual Automatic Adjustment of Charges for all Elec. & Gas Utils.*, 768 N.W.2d 112, 118 (Minn. 2009). Whether an agency has jurisdiction over a matter is a legal question and thus a reviewing court need not defer to the district court's decision on the issue. *In re N. States Power Co.*, 775 N.W.2d 652, 656 (Minn. App. 2009). "Whether an administrative agency

has acted within its statutory authority is a question of law that we review de novo.” *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010).

The city annexed the property under Minn. Stat § 414.033, subd. 2(3), providing that:

A municipal council may by ordinance declare land annexed to the municipality and any such land is deemed to be urban or suburban in character or about to become so if:

. . . .

(3) 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 received a petition for annexation from all the property owners of the land.

The OAH found that the property met the criteria of Minn. Stat. § 414.033, subd. 2(3), and this finding is not disputed. Nor does the township dispute the OAH’s conclusion that the city “has fully complied with the procedural requirements of Minn. Stat. § 414.033, subd. 2b [(requiring a municipality to hold a public hearing and to provide appropriate notice to the town or towns affected and to the landowners within or contiguous to the area to be annexed)].”

The OAH also concluded: “7. Noncompliance with the statutory criteria for annexations found in Minn. Stat. § 414.031[, subd. 4(a) (presenting 17 factors for the OAH to consider in deciding on an annexation by agency order)] (2016) or the policy considerations in Minn. Stat. § 414.01[, subd. 1b (presenting three goals that the OAH ‘may’ pursue in annexation proceedings)] (2016) does not constitute a sufficient legal

ground to deny a proposed annexation by ordinance that complies with Minn. Stat. § 414.033, subds. 2 and 2b.”

The OAH found instructive an unpublished decision of this court that deals with exactly the same situation at issue here—an annexation by ordinance of property under Minn. Stat. § 414.033, subd. 2, *Gilbert v. Minn. State Office of Strategic & Long-Range Planning*, No. CX-01-1221, 2002 WL 109313 (Minn. App. Jan. 29, 2002), *quoted in In re Annexation of Certain Real Prop. to City of Proctor*, 925 N.W.2d 216, 221 n.3 (Minn. 2019). “No statutory provision gives [the OAH] authority to consider the criteria set forth in sections 414.01, subd. 1, and 414.031, subd. 4, in annexations by ordinance under Minn. Stat. § 414.033, subd. 2.” *Gilbert*, 2002 WL 109313, at *2. We agree. Thus, we reject the township’s argument that the OAH had a statutory duty to consider appellant’s arguments on sections 414.01 and 414.031, subd. 4, in an annexation by ordinance under Minn. Stat. § 414.033, subd. 2.

The township also argues that the district court erred in not considering whether the annexation was “in the best interests of the territory affected,” relying on Minn. Stat. § 414.07, subd. 2(a): “Any person aggrieved by any order issued under this chapter may appeal to the district court upon the following grounds . . . (3) that the order is . . . in unreasonable disregard of the best interests of the territory affected.” This argument ignores the fact that the annexation was made under Minn. Stat. § 414.033, subd. 2(3), which permits annexation by ordinance of property meeting its criteria regardless of the best interests of the territory affected. Thus, neither the OAH nor the district court

reviewing the OAH's decision would have had reason to consider the best interests of the territory affected.

D E C I S I O N

Because the legislature in Minn. Stat. § 414.033, subd. 2, has provided a way of annexing by ordinance property that meets certain criteria and it is undisputed that the property here does meet those criteria, we affirm.¹

Affirmed.

¹ The township's view that Minn. Stat. § 414.033, subd. 2, is defective in not providing for adequate review of annexation by ordinance is a matter for the legislature, not for this court. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987).