COURT OF APPEALS
DECISION
DATED AND RELEASED

April 3, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

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No. 96-2007

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

A. RONALD WULF,

PLAINTIFF-APPELLANT,

v.

TOWNSHIP OF MONTELLO, AND
JOINT WHITE LAKE SANITARY DISTRICT NO. 1,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Marquette County: WILLIAM M. MCMONIGAL, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

EICH, C.J. A. Ronald Wulf appeals from an order confirming a decision of the Montello Town Board expanding the boundaries of the Joint White Lake Sanitary District. Wulf, who owns property included in the expansion area, argues that: (1) the notice of the proceedings before the board did not comply with applicable statutes and thus denied him due process of law; (2) the board's

decision was arbitrary and capricious and violated the requirement of § 60.71(6), STATS., that it be accompanied by written findings; and (3) there was insufficient evidence to support the board's determination that the proposed work was necessary, would benefit the annexed properties and would promote public health, convenience or welfare. We decide against Wulf on all issues and affirm the order.

I. Background

Sanitary districts do not have the power to extend their own boundaries. As we discuss in greater detail below, that power resides in the town board of the town where the district lies, and either a majority of the landowners in the district or, as occurred in this case, the town sanitary commission may request the board to add territory to the district. Sections 60.71(2), 60.785(1)(b), STATS. The proceedings in this case began when the White Lake Sanitary District requested the Montello Town Board to extend its borders to include certain lands within the "drainage area of White Lake" which were then outside the District boundaries. The resolution embodying the District's request was accompanied by a map and a legal description of the property proposed to be annexed, and recited that the purpose of the annexation was to "implement programs to address pollution emanating from lands within the drainage basin of White Lake but outside of the current boundaries of the District."

The board scheduled a public hearing on the request for July 9, 1994, and issued a Class 2 notice,[1] which was published and distributed as

[1] A Class 2 notice requires the publication of two legal notices, one per week for two consecutive weeks, with the second to be published at least a week before the act or event in a newspaper of general circulation or by posting the notices in at least three public places. Sections 985.07(2), 985.01, 985.02, STATS.

required by law. Section 60.71(4)(b), STATS. All sixty-four persons present at the hearing were afforded the opportunity to speak on the proposed boundary change. Wulf was not among them, although he submitted a written statement that was read at the hearing. His attorney also sent a letter to the board objecting to the inclusion of his property in the annexation.

At its regular meeting on July 12, 1994, the board discussed the annexation. The minutes of the meeting indicate that three individuals, including Wulf, addressed the board at the meeting. Prior to the meeting, the board had published a Class 1 notice[2] of the meeting, along with its agenda, which indicated that the annexation would be discussed. The board met again on July 19 to continue its consideration of the District's request and to view the affected property. Notice of this meeting was posted in several locations. Again, Wulf was among the affected property owners attending the meeting.

On August 1, 1994, the board met again and, after further discussion, extended the District's boundaries as requested by the District. This meeting was held pursuant to a published Class 1 notice and, as before, Wulf and the other property owners were in attendance.

Wulf then filed this *certiorari* action challenging the board's decision. The trial court confirmed the annexation order, and Wulf appealed.

II. Scope of Review

[2] A Class 1 notice requires the publication of a single legal notice at least a week before the act or event in a newspaper of general circulation or by posting the notice in at least three public places. Sections 985.07(1), 985.01, 985.02, STATS.

In *certiorari* proceedings, we review the decision of the agency, not the circuit court. ***State ex rel. Harris v. Annuity & Pension Bd***., 87 Wis.2d 646, 651, 275 N.W.2d 668, 671 (1979). We accord a presumption of correctness and validity to the agency's decision and the issues on review are strictly limited to (1) whether the agency kept within its jurisdiction and acted according to law; (2) whether its action was arbitrary, oppressive and unreasonable, representing its will and not its judgment; and (3) whether the evidence was such that the agency might reasonably make the order or determination it did. ***Arndorfer v. Sauk County Bd. of Adjustment***, 162 Wis.2d 246, 253, 254, 469 N.W.2d 831, 833-34 (1991).

III. Improper Notice

Section 60.785(1), STATS., provides that territory may be added to a town sanitary district "under the procedure in s. 60.71," which is the general statute providing for creation of town sanitary districts. After the petition for creation of the district—or, in this case, the request for annexation—is filed with the town board, the board is required to "schedule and conduct a hearing," the notice of which is to be published as "a Class 2 notice." Sections 60.71(4)(a),(b), STATS. As indicated above, the Montello Town Board published a Class 2 notice of the initial public hearing. Wulf maintains, however, that the board was also required to publish a Class 2 notice of its July 12, July 19 and August 1 meetings, and that its failure to do so violated the statute and also his constitutional right to "procedural due process," which he describes as "the right to be heard before suffering a loss through state action."

There is no question that the board held the hearing required by § 60.71(4), STATS., on July 9, and we reject Wulf's attempt to classify the

subsequent meetings of the board to debate and act upon the proposal as either continuations of that hearing or as additional § 60.71 hearings in and of themselves. The statute requires only that "a hearing" be held within thirty days of the receipt of the district's request, and that "[a]ny person may file written comments," and "[a]ny owner of property within the [proposed] boundary … may appear at the hearing and offer objections, criticisms or suggestions as to the necessity of the [annexation] and … whether his or her property will be benefited [thereby]…." Section 60.71(4)(c). That is the hearing for which the Class 2 notice is required by statute, and that is the hearing that was held on July 9, 1994. The subsequent board meetings were held pursuant to the notice required for such meetings, and the fact that the board permitted two or three people to speak during its discussion of the request does not change those meetings into something they plainly were not.

Beyond that, it is undisputed that Wulf appeared, either in person or through his attorney, not only at the July 9 hearing but at all subsequent board meetings at which the annexation was discussed. We think he is indeed hard pressed to mount a viable claim that his rights to procedural due process were violated—much less that he was in any way prejudiced by the form of the notice given by the board of its subsequent meetings.

IV. Written Findings

Wulf next argues that the board's decision was "arbitrary and capricious and violates the procedural requirements of § 60.71(6), STATS.," which states that, following the required hearing, the board is to "issue written findings and a decision" on the district's request, and which also provides:

> As part of its findings, the town board shall determine if: 1. The proposed work is necessary. 2. Public health, safety, convenience or welfare will be promoted [thereby]. 3. Property to be included in the [expansion] will be benefited ….[3]

The District contends that, while the notice and hearing requirements of § 60.71(4), STATS., are "procedures" within the meaning of § 60.785(1)(a), STATS., and thus applicable to extension or annexation proceedings, the "findings and decision" requirements of § 60.71(6) are not. According to the District, § 60.71(6) is a substantive, rather than a procedural, statute because it "sets forth the substantive findings that are prerequisites to the establishment of a town sanitary district." Other than that statement, the District's entire argument on the point is that such "substantive" requirements would be inappropriate if applied to an expansion proceeding because one of the findings required by the statute is that public convenience and safety will be promoted "by the establishment of the district." We disagree. First, the argument ignores the existence of the very statute it refers to: § 60.71(6), which, as indicated, specifically incorporates the procedural requirements of an "establishment hearing" into the boundary-

[3] The statute goes on to say, among other things, that "if the … board's findings … are all in the affirmative, the … board shall issue an order establishing the boundaries of the town sanitary district…," and that "if any of the … board's findings … are partly or wholly in the negative, the … board shall dismiss the proceedings …." Sections 60.71(6)(c) and (f), STATS.

expansion process. Second, the argument, which cites no legal authority, is largely undeveloped, and we have often stated that we will not consider arguments that are undeveloped and lacking citation to supporting law. ***Lechner v. Scharrer***, 145 Wis.2d 667, 676, 429 N.W.2d 491, 495 (Ct. App. 1988).

Assuming, without deciding, that the "findings and decision" requirements of § 60.71(6), STATS., apply to the instant proceedings, we are satisfied that they were met by the board's decision. Pared to its essentials, Wulf's argument is not that the board failed to make the findings required by the statute; rather, he challenges the adequacy of the findings made. According to Wulf, the board must do more than make the required findings;[4] citing ***Kammes v. Mining Investment & Local Impact Fund Board,*** 115 Wis.2d 144, 340 N.W.2d 206 (Ct. App. 1983), he argues that the board must go further and "express the reasoning process involved" in arriving at its decision. We don't see ***Kammes*** as persuasive on the point, however, because in that case we were considering an agency's

[4] In this case, the board's written findings essentially restate the statutory language:

> NOW, THEREFORE, after consideration of all of the evidence and proceedings in this matter, the Board ... FINDS:
>
> 1. That the proposed addition of the territory to Joint White Lake Sanitary District No. 1 is necessary.
>
> 2. That the public health, safety, convenience, and welfare will be promoted by the proposed addition of the territory.
>
> 3. That the property to be added to the District will be benefited by the District.
>
> 4. That none of the property proposed to be added to the District is located within a city or village.

award of money[5] and, citing divorce cases setting maintenance, we concluded that the agency was required to "articulat[e] the factors upon which an award of a certain amount is made," including an "explana[tion] why th[e] particular amount is chosen." ***Id.*** at 157, 340 N.W.2d at 213. However applicable maintenance and child support cases may be with respect to an agency—like the Mining Investment and Local Impact Fund Board in ***Kammes***—whose job it is to award specific sums of money, we do not see them as having any particular relevance to a town board order expanding the boundaries of a sanitary district.

We think our decision in ***Old Tuckaway Assocs. v. City of Greenfield,*** 180 Wis.2d 254, 509 N.W.2d 323 (Ct. App. 1993), is more to the point. ***Tuckaway*** involved a challenge to a decision of a local zoning board of appeals that upheld the city council's rejection of a proposed project for residential development. After hearing from interested parties and inviting written statements from affected property owners, a member of the board moved to deny the appeal from the city's action because "the Common Council has every right to make its decision based on aesthetics and economics …. and I think the Council was correct." ***Id.*** at 276, 509 N.W.2d at 331. The appeals board passed the motion without additional comment, and we upheld its decision against a claim that it was procedurally improper because it failed to articulate the reasons underlying its decision. We first considered the supreme court's decision in ***State ex rel. Harris v. Annuity & Pension Bd.,*** 87 Wis.2d 646, 275 N.W.2d 668 (1979), that administrative agencies need not "'indulge in the elaborate opinion procedure of

[5] The agency involved, an adjunct of the Wisconsin Department of Revenue, existed to award grants to municipalities for the cost of constructing new water wells on private property in cases where local mining activities affected the existing wells. *See* ***Kammes v. Mining Inv. & Local Impact Fund Bd.***, 115 Wis.2d 144, 147-48, 340 N.W.2d 206, 208-09 (Ct. App. 1983).

an appellate court,'" but that "'[i]t is sufficient if the findings of fact and conclusions of law are specific enough to inform the parties and the courts on appeal of the basis of the decision.'" ***Tuckaway***, 180 Wis.2d at 277, 509 N.W.2d at 331-32 (quoting ***Harris***, 87 Wis.2d at 661, 275 N.W.2d at 675). We went on to conclude that

> the findings of fact and the conclusion of law rendered by the Board … were specific enough to inform the parties as well as this court on appeal, of the basis of the decision. As noted above, the Board had before it the minutes from the Common Council's meetings regarding the project and entertained statements from both parties concerning all facets of the Project. Although succinct, the findings of the Board are clear—the council rejected the Project based on aesthetics and economic feasibility, both of which were proper criteria on which to render a decision.

Id. at 277, 509 N.W.2d at 332.

In this case, the board made the findings required by the legislature, and the legislature has not indicated anywhere in the statute that it must find something more, or must discuss and analyze the evidence before it—or even provide rhetorical justification for making the findings—in order for its action to be valid. As the District points out, when the legislature has wanted something more, it has made its intention clear—as in § 66.014(9)(d), STATS., which requires the Department of Administration to hold hearings on all petitions for the incorporation of cities and, afterward, to "prepare its findings and determination citing the evidence in support thereof." (Emphasis added.) Section 971.14(3), STATS., also requires hearing examiners in competency proceedings to make written findings, including the "facts and reasoning, in reasonable detail, upon which the findings and opinions … are based," and § 48.64(4)(a), STATS., requires certain Department of Health and Social Services decisions affecting foster home

placement to "specify the reasons for the decision and identify the supporting evidence."

Finally we note, as we did in ***Tuckaway***, that the board had the benefit of all parties' positions on the matter—both orally and in writing—along with the documentary submissions and other materials. We have long recognized that, even though a judicial or administrative factfinder is required to explain its discretionary decisions, where the explanation is inadequate, or none is given, we will independently review the record to ascertain whether facts exist to support the decision. ***State v. Clark***, 179 Wis.2d 484, 490, 507 N.W.2d 172, 174 (Ct. App. 1993). As we note immediately below, there is ample evidence to support the board's decision in this case.

V. Sufficiency of the Evidence

Finally, Wulf argues that the evidence was insufficient to support the board's findings on all the required issues: that the expansion was necessary, would promote the public convenience and welfare, and would benefit the specific properties—especially his own.

We review an agency's findings under the substantial evidence test which is, basically, "whether reasonable minds could arrive at the same conclusion reached by the [agency]." ***State ex rel. Palleon v. Musolf***, 117 Wis.2d 469, 473, 345 N.W.2d 73, 75 (Ct. App.), *aff'd*, 120 Wis.2d 545, 356 N.W.2d 487 (1984). "Substantial evidence" does not mean a preponderance of the evidence: We will uphold an agency's findings even if they are contrary to the great weight and clear preponderance of the evidence—we need find only that "the evidence is sufficient to exclude speculation or conjecture." ***West Allis Sch. Dist. v. DILHR***, 110

Wis.2d 302, 306, 329 N.W.2d 225, 228 (Ct. App. 1982), *aff'd,* 116 Wis.2d 410, 342 N.W.2d 415 (1984).

As to the necessity for the work, the District's resolution asking the board to expand the boundaries had the stated purpose of "preventing pollution and otherwise protecting and improving the water quality of White Lake," and it specifically referred to problems created by runoff from lands within the Lake's drainage area as a principal cause of such pollution. There was considerable testimony about this problem at the public hearing. In addition to the written statements of several individuals expressing concern over such runoff, and the testimony of the District's chairman as to the need for drainage and runoff control, the board received and considered an engineering report identifying the need for drainage improvements in the area—"including the area proposed for addition to the district." The report specifically identified Wulf's property as a cause of surface water runoff that was "especially critical … because of the potential pollutant load from the horse pasture in this … area." The board also considered submissions from Wulf and his attorney disputing the existence of pollution emanating from his property, along with testimony and written statements from other citizens recounting their personal observations of runoff water crossing the road adjoining Wulf's property and running into the lake. In the discussions at the board meeting at which the decision was reached, members acknowledged that runoff control was the "goal" of the expansion, and the board found "in the affirmative" on that question.

Wulf's challenge appears to be that the board's decision failed to discuss the "specific work [to be undertaken] on [Wulf's] actual premises"—that the board members discussed only the general need to control runoff. The statutes applicable to town sanitary district expansions, §§ 60.785 and 60.71, STATS., are

drafted in general terms; they do not require preparation of a specific project plan prior to proceeding with annexation. In this case, after taking considerable evidence and hearing considerable discussion on the matter, the board decided that expanding the District to include lands that had been identified as sources of runoff pollution was necessary in order to be able to deal effectively with those problems.

Wulf points to comments received at the public hearing that might support a different determination, but, as we noted above, that is not the test. He has not satisfied us that the record is so lacking in evidence that no reasonable board could determine that inclusion of Wulf's and the other lands in the District was necessary.

We believe the same is true with respect to his challenge to the evidence supporting the board's determination that the proposed expansion would promote the public health, safety, convenience or welfare. As before, his argument is, in essence, that some of the statements made to the board supporting expansion were "conjecture, rumor and supposition" rather than credible evidence. As an example, he criticizes the statement of one witness who reported observing horse manure washing over the road from Wulf's property into the lake as an "unsubstantiated comment." And he notes that the engineering report states at one point that his property is outside the existing boundaries of the drainage basin and, at another, that there was little evidence of "pollution by agricultural sources." In short, he argues that all of the "evidence" related to runoff from lands within the drainage basin, and that his property lies outside the basin's boundaries. But the board's action is part of the legislative process; it is not acting as a tribunal, bound by rules of courtroom evidence. Determinations of "public convenience and necessity" or "public interest" made by agencies such as the Montello Town Board

are legislative, not judicial, functions. ***Westring v. James***, 71 Wis.2d 462, 473, 238 N.W.2d 695, 701 (1976); ***In re City of Beloit***, 37 Wis.2d 637, 644, 155 N.W.2d 633, 636 (1968).

There is little question, we think, that protecting the state's waters from pollution promotes "public health, safety, convenience [and] welfare." Nor is there any dispute that local sanitary districts have a role to play in controlling pollution. And the fact that some or all of Wulf's property lies outside the drainage basin—or that runoff from his fields may occur only during periods of high water—makes little difference, in our opinion, in light of the evidence of actual runoff problems on his lands. There is no requirement that the board precisely define the watershed or the affected drainage area—or that a source of pollution be continuous—before annexation proceedings may be instituted. There was evidence before the board from which it could reasonably conclude, as a legislative matter, that annexing property identified as the source of pollution problems would promote the public convenience and welfare, and the presence of contrary evidence does not render that evidence insufficient.

Finally, Wulf argues that substantial evidence did not support the finding that his or the other appellants' property would benefit from the annexation. His position here is that because the drainage basin "is referenced throughout the [engineering] report, as well as the district resolution … as the basis for the annexation," and because his lands are not within the basin, they "could not be deemed benefited" by the annexation. The "benefit" requirement is not directed toward individual properties within the annexed territory, however.

> [T]hat is not what the legislature meant by the language used. The statute does not provide that if any piece or parcel of land included within the boundaries of the proposed district shall not be benefited, the district shall not

> be organized. If the town board finds that the property within the boundaries of the proposed district *as a whole* will be benefited then the district is to be organized…. If all the property within the boundaries of the proposed district is in the watershed and the proposed improvement may serve it, then the property of the district as a whole is benefited and the town board if it makes the other necessary finding may organize the district…. That is the benefit that is meant by the statute.

Fort Howard Paper Co. v. Fox River Heights Sanitary Dist., 250 Wis. 145, 152, 26 N.W.2d 661, 665 (1946).

Again, whether or not Wulf's lands were within the drainage basin, there is no question that the annexation's purpose was to attempt to control pollution of the lake caused by surface runoff, and that, as indicated above, the board had evidence before it that Wulf's property was at least an intermittent source of such pollution. There was also evidence that controlling such pollution would have a beneficial effect on property values in the entire area—both within and outside the strict boundaries of the drainage basin.[6] We are satisfied that substantial evidence supports the board's findings and decision.

By the Court.—Order affirmed.

Not recommend for publication in the official reports.

[6] We agree with the District that the board was considering its request to add defined lands located within the "drainage basin" or "watershed" of White Lake, and however these areas are measured or determined, the record is clear that the objective of both the District and the board was to bring into the District all lands that produced or contributed to runoff pollution affecting the lake.