IN THE COURT OF APPEALS OF IOWA

No. 1999-27 (9-137) / 98-1262

JIM SOBOLIK, IRVEN REICKS, DON GOODER,
Individually and as Representatives of Other Interested Parties,
Petitioners-Appellants,
vs.
IOWA DEPARTMENT OF TRANSPORTATION,
Respondent-Appellee,
and
THE CITY OF CRESCO,
Intervenor-Appellee.

FILED
APR 30 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Howard County, James L. Beeghly, Judge.

The petitioners appeal from a district court order affirming the Iowa Department of Transportation's grant of partial funding for the City of Cresco's airport improvement project. **AFFIRMED.**

John J. Hines of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, for appellants.

Thomas J. Miller, Attorney General, and David A. Ferree, Assistant Attorney General, for appellee Department of Transportation.

Joseph P. Braun of Elwood, O'Donohoe, O'Connor & Stochl, Cresco, for appellee City of Cresco.

Heard by Streit P.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

Petitioners appeal from a district court order affirming the Iowa Department of Transportation's grant of partial funding for the City of Cresco's airport improvement project. We affirm.

In March 1995, a meeting was held in the City of Cresco to discuss development of a regional airport involving the cities of Cresco and Decorah and the counties of Howard and Winnesheik. Within months, the regional plan was abandoned because government officials could not agree on a location for the project.

Cresco subsequently began efforts to expand its own local airport. In July 1995, it submitted an application to the Iowa Department of Transportation (IDOT) for funding to expand the Cresco airport runway from 2949 feet to approximately 5100 feet. In conjunction with the application, Cresco updated its Airport Master Plan as required by the Iowa Aviation System Plan (IASP) to reflect the ultimate goal of construction of a 5100 foot runway. Cresco was notified it would likely not receive funding at that time for a 2150 foot extension because the airport was considered to be of only local significance. To improve its chances of securing funding for the expansion project, Cresco subsequently requested the state formally recognize the airport as having statewide significance. The request was granted, and thereafter Cresco resubmitted its application for funding, but reduced its original request seeking instead reimbursement for extending the runway only to 4300 feet. Cresco did not change its master plan to reflect this request because Cresco still intended to extend the runway to 5100 feet in the future.

In June 1996, IDOT approved the project's funding in two phases. The first phase was approved for funding in June 1996. The City and IDOT executed a written agreement for the airport improvement in August 1996. Thereafter, the city hired consulting engineers and began work on the project. Work progressed slowly. Funding for the second phase was approved in June 1997 despite slow progress on the project.

On August 12, 1997, petitioners requested judicial review of IDOT's funding of the airport improvement project. In an order issued September 22, 1997, the district court allowed the City of Cresco to intervene on the side of IDOT. In the same order, the court rejected petitioners' request for a stay order to halt work on the airport project pending final determination on their petition for judicial review. It did, however, grant petitioners' request to allow additional discovery from IDOT to augment the factual record and permitted petitioners to depose various IDOT officials.

In February 1998, petitioners motioned for additional discovery of documentary evidence and the right to depose additional IDOT officials. The district court denied this request, finding the petitioners had already been given adequate opportunity to engage in discovery, and that review of depositions already taken did not show grounds for additional discovery.

IDOT filed a motion for summary judgment which was heard on April 20, 1998. On June 12, 1998, the district court dismissed the petition for judicial review, affirmed the actions of IDOT and overruled petitioner's request for remand to the agency for further administrative proceedings.

Petitioners appeal the order dismissing their request for judicial review as well as the pre-trial order denying their request for additional discovery. They argue the district court erred in finding: (1) IDOT did not violate its rules and regulations governing the administration of the airport improvement funds; and (2) IDOT was not required to consider the project's impact on the loss of agricultural ground, in violation of Iowa Code section 314.24. They also assert the district court erred in failing to remand the case back to IDOT for further consideration and improperly limited their discovery.

I. IDOT's Funding Decision

A. Scope of Review. The parties agree the present situation does not involve administrative contested case proceedings, but rather falls within the broad residual category of agency action known as "other agency action."[1]

Parties who are "aggrieved or adversely affected by agency action" may seek judicial review in district court to determine whether their "substantial rights . . . have been prejudiced" because the action in question was in violation of constitutional or statutory authority, in violation of agency rules, made by unlawful procedure, or was unreasonable, arbitrary, capricious, or characterized by an abuse of discretion. *See* Iowa Code §§ 17A.19(1), (8)(a)–(e), (g) (1997); *Iowans for WOI-TV, Inc. v. Iowa*

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[1] A "contested case" is "a proceeding in which 'the legal rights, duties or privileges of a party are required by . . . statute to be determined by an agency after an opportunity for an evidentiary hearing.'" *Purethane, Inc. v. Iowa State Bd. of Tax Review*, 498 N.W.2d 706, 708 (Iowa 1993) (quoting Iowa Code § 17A.2(2)). The appeal presently before this court does not involve contested case proceedings.

State Bd. of Regents, 508 N.W.2d 679, 684–85 (Iowa 1993). Our appellate review of the district court's ruling on a petition for judicial review of agency action is permitted under Iowa Code section 17A.20.

"Arbitrary" or "capricious" agency action refers to agency action taken without regard to the law or facts. *See Bernau v. Iowa Dep't of Transp.*, 580 N.W.2d 757, 764 (Iowa 1998). In our review, we apply this standard to the agency's actions to determine whether our legal conclusions are the same as those reached by the district court. *Id.* If our conclusions are the same, we affirm; if they are not, we reverse. *Id.*

B. Merits. Petitioners essentially raise six issues with regard to IDOT's decision to fund the airport project: (1) the project as approved and funded by IDOT is unlawful because it calls for a 4300 foot runway rather than the 5100 foot runway listed in Cresco's airport master plan; (2) Cresco had not complied with prior project agreements when IDOT approved second phase funding, and therefore IDOT violated agency rules regarding project eligibility and requirements; (3) Cresco failed to notify IDOT of matters threatening completion of the project in violation of prior project agreements, and therefore IDOT violated agency rules regarding project eligibility and requirements when it nonetheless approved second phase funding; (4) IDOT failed to adequately consider the regional airport concept in violation of agency rules requiring IDOT to review eligible projects in the manner prescribed in the IASP; (5) the project was "steam rolled" through the IDOT funding process; and (6) IDOT's funding decision was made without considering natural and historic heritage preservation statutes. Based on our standard of review, we will not reverse IDOT's

decision unless the petitioners have established IDOT's decision was arbitrary or capricious, involved an abuse of discretion, or violated agency rules or statutory authority. We consider each of petitioners' contentions in turn.

We agree with the district court that petitioner's first argument is without merit. We find petitioners' position that IDOT acted illegally in approving funding for a project not mirroring every element of the airport master plan to be illogical. Master plans serve as mechanism to plan for the future. Cresco's decision to seek funding for a 4300 foot runway was an intermediate step towards achieving their final goal — a 5100 foot runway. Municipalities need to be able to plan for the future. To demand their long-range planning conform to what they are currently capable of achieving would be nonsensical and defeating. This is not a situation where funding is granted for a project beyond what is called for in a master plan. Rather, the projected funded here was one step towards achieving the city's goals, and was well within the provisions of its airport master plan. We agree with the district court that IDOT's actions were neither arbitrary nor capricious.

Petitioners further contend the 4300 foot runway can not be regarded as a step towards achieving the ultimate goals of the master plan because a 5100 foot runway was absolutely required to satisfy the city's reasons for even seeking expansion of the runway in the first place. Essentially, they contend the runway project is driven by the desire to facilitate a potential area industry's desire to land certain aircraft at the airport. Upon reviewing the record, however, it appears only one of many of that industry's corporate aircraft would not be able to use a 4300 runway, and that the

5100 foot runway is considered to be only an requisite "outer limit." The decision to meet most but not all of the demands associated with the airport expansion project is the type of judgment call with which we will not interfere. *See Mercy Health Center, a Div. of Sisters of Mercy Health Corp. v. State Health Facilities Council*, 360 N.W.2d 808, 809 (Iowa 1985) (judgment calls are the province of the agencies and not of the courts). We find petitioners' argument presents little indication of unreasonable or capricious action by IDOT.

Petitioners next argue Cresco had not complied with prior project agreements concerning construction schedules when IDOT approved second phase funding, and in approving funding IDOT thereby violated agency rules regarding project eligibility and requirements. Petitioners argue a pre-agreement draft schedule prepared in 1995 in conjunction with the Cresco City Engineer's preliminary cost study and narrative has not been adhered to. The actual agreement reached by Cresco and IDOT, however, did not contain nor reference a specific timetable. Even if a schedule has not been maintained, petitioners fail to adequately explain how they have been "aggrieved or adversely affected" by the decision to fund phase two despite the delay. We find it worth noting petitioners are not even party to the contract between Cresco and IDOT and neither Cresco nor IDOT appear concerned with the progress of the project. Petitioners' second argument is without merit.

Petitioners contend in their third argument that Cresco failed to notify IDOT of matters threatening completion of the project in violation of prior project agreements, and therefore IDOT violated agency rules regarding project eligibility

and requirements when it nonetheless approved second phase funding. Specifically, they argue Cresco failed to tell IDOT there was local opposition to the expansion project.

We are not convinced Cresco had any obligation to inform IDOT of local political opposition. Petitioners cite the airport improvement agreement between Cresco and IDOT as imposing the obligation on Cresco. However, circumstances that the agreement contemplates might hinder completion of the project are legal roadblocks, such as lease agreements or other legal instruments affecting use of the airport, as well as any pending legal proceedings. Political opposition alone does not appear to be the type of threat the agreement envisions. Moreover, even if IDOT was owed this duty by Cresco, petitioners concede in their appellate brief that IDOT was very much aware there was local opposition to the project. We fail to see how any harm arises from the failure to notify IDOT of local opposition when IDOT was already aware of this fact. We find petitioners' claim unpersuasive.

In petitioners' fourth claim, they argue IDOT failed to adequately consider the regional airport concept in violation of agency rules requiring IDOT to review eligible projects in the manner prescribed in the IASP. They essentially complain IDOT did not try hard enough to secure a regional airport as an alternative to expanding the Cresco airport.

The IASP does encourage funding for regional projects over individual, localized projects. However, we do not find this plan to be an inflexible bulwark against funding for local projects. The record clearly shows IDOT did encourage

development of a regional airport, but due to political opposition and general disagreement, the project was terminated. Based on the record before us, we cannot say IDOT acted arbitrarily or capriciously, or in any way abused its discretion.

Petitioners argue in their fifth claim that the project was "steam rolled" through the funding process and that it was tainted with political favoritism. We find nothing in the record which supports the allegation IDOT ignored its statutory obligations solely in favor of political considerations. To the extent politics motivated the project, the political decision to proceed with the project rested with and was made by the city government and the airport commission and received broad local and regional support.

In petitioners' sixth and final claim, they contend IDOT's funding decision was made without consideration of the project's impact on the loss of primary agricultural ground, in violation of Iowa Code section 314.24.

Iowa Code section 314.24 provides in part:

> Cities, counties, and the department shall to the extent practicable preserve and protect the natural and historic heritage of the state in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, or highways.

Iowa Code § 314.24 (1997). "Department" refers to Iowa Department of Transportation. *See* Iowa Code § 314.13 (1997).

The plain language of this code section clearly indicates it applies only to "roads, streets, or highways." We find no ambiguity in the meaning of these terms in this context — the statute by its very terms does not apply to airport runway

expansion projects. *See City of Des Moines v. Civil Serv. Comm'n*, 540 N.W.2d 52, 57 (Iowa 1995) (we interpret statutory language fairly and sensibly in accordance with the plain meaning of the words used by the legislature). When statutory language is clear, certain, and free of ambiguity, we are hesitant to search for meaning beyond the wording of the statute. *See Consolidated Freightways Corp. of Delaware v. Nichols*, 137 N.W.2d 900, 904–05 (Iowa 1965); Iowa R. App. P. 14(f)(13) ("In construing statutes the court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said.").

Petitioners argue the language is ambiguous when legislative history is considered. It is true that our courts have looked to legislative history in ascertaining the meaning of an ambiguous statute. However, our rules of "statutory construction cannot be employed to raise the ambiguity; rather, the ambiguity must be found prior to employing the rules of statutory construction." *Iowa West Racing Ass'n v. Iowa Racing and Gaming Comm'n*, 56 N.W.2d 898, 900 (Iowa 1996). Our state code itself implies we should look to legislative intent only *after* a statute is found to be ambiguous. *See* Iowa Code § 4.6 (1997). The language of section 314.24 as it applies in this context is unambiguous, and we find no reason to resort to legislative history to glean an understanding of the statute different than that plainly presented on its face. Whether IDOT failed to consider section 314.24 in approving funding for the runway extension project is irrelevant — it was under no legal obligation to do so.

In summary, we agree with the district court's determination that IDOT in no way acted arbitrarily or capriciously, or abused its discretion in any way with regard

to the funding process of the Cresco airport expansion project. We also agree with the district court that IDOT did not violate agency rules, or act illegally or unconstitutionally.

II. Discovery

On September 22, 1997, the district court granted petitioners' discovery request, specifically permitting several IDOT officials to be deposed. In February 1998, petitioners filed another discovery motion asking permission to depose three more IDOT employees. The district court denied this request, stating that on review of the evidence and depositions already gathered, there were no grounds for any additional discovery.

Normally, judicial review of agency action is made on the record created at the agency level. *See McMahon v. Iowa Dept. of Transp., Motor Vehicle Div.*, 522 N.W.2d 51, 54 (Iowa 1994) ("If the case involves judicial review of agency action in a 'contested case,' 'a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by . . . statute to the agency in that contested case proceeding.' In such cases, the law limits court review to the agency's record." (citations omitted)). However, where, as here, agency action does not involve a contested case, a court sitting in review has discretion to receive and consider any additional evidence it deems appropriate. *See* Iowa Code § 17A.19(7) (1997); *Community Action Research Group v. Iowa State Commerce Comm'n*, 275 N.W.2d 217, 219 (Iowa 1979). The purpose of additional discovery is to highlight "what actually occurred in the agency in order to facilitate the court's search for

errors of law or unreasonable, arbitrary, or capricious action." *Krause v. State ex rel. Iowa Dep't of Human Serv.*, 426 N.W.2d 161, 165 (Iowa 1988). Discretion is accorded the court "in those situations where evidence outside the agency record tends to demonstrate the agency exceeded its legal authority or committed other error." *Medco Behavioral Care Corp. of Iowa v. State Dep't of Human Services*, 553 N.W.2d 556, 562 (Iowa 1996) (citing *Iowa Power & Light Co. v. Iowa State Util. Bd.*, 448 N.W.2d 468, 471 (Iowa 1989)).

We determine the district court did not err in denying petitioners' request to take additional depositions. Petitioners had already deposed several key IDOT officials concerning the Cresco airport expansion project. There was sufficient evidence already available in the record which detailed the funding approval process and the regulatory and political decisions involved. The record was more than thoroughly developed for the purposes of uncovering arbitrary or capricious actions by IDOT; any additional discovery would have been cumulative and unnecessary.

III. Remand for Further Consideration

Petitioners finally request we remand this case back to IDOT to reconsider its decision to fund the Cresco airport project. As explained above, we have carefully reviewed petitioners' numerous claims, and have determined IDOT has not acted arbitrarily or capriciously, or abused its discretion. We are left with petitioners' sole contention that remand is necessary because petitioners think there are issues which IDOT should consider before allowing any additional work to proceed on the project. The courts are not a place for petitioners to force political pressure upon IDOT.

Absent violations of law or other clearly capricious or abusive activity, we will not, as petitioners request, interfere with a governmental agency's judgment calls. *See Mercy Health Center, a Div. of Sisters of Mercy Health Corp. v. State Health Facilities Council,* 360 N.W.2d at 809. Petitioners' request was properly denied by the district court.

We have considered all issues properly presented on appeal and conclude the judgment of the district court should be affirmed.

AFFIRMED.

No. 98-1262. [1999-27 (9-137)] SOBOLIK v. IOWA DEPARTMENT OF TRANSPORTATION

Appeal from the Iowa District Court for Howard County, James L. Beeghly, Judge. **AFFIRMED.** Heard by Streit, P.J., and Vogel, and Zimmer, JJ. Opinion by Zimmer, J. (13 pages $5.20)

Petitioners appeal from a district court order affirming the Iowa Department of Transportation's grant of partial funding for the City of Cresco's airport improvement project (runway expansion). They argue the district court erred in finding: (1) IDOT did not violate its rules and regulations governing the administration of the airport improvement funds; and (2) IDOT was not required to consider the project's impact on the loss of agricultural ground, in violation of Iowa Code section 314.24. They also assert the district court erred in failing to remand the case back to IDOT for further consideration and improperly limited their discovery. **OPINION HOLDS:** ***IDOT'S Funding Decision.*** In general, petitioners raise various claims concerning the funding decision. However, petitioners have not demonstrated IDOT'S decision was in violation of constitutional or statutory authority, in violation of agency rules, made by unlawful procedure, or was unreasonable, arbitrary, capricious, or characterized by an abuse of discretion. They have not demonstrated their substantial rights have been prejudiced in some way by IDOT's actions. With regard to their agricultural impact argument, the plain language of code section 314.24 clearly states that its natural and historic preservation and protection provisions apply only to the design, construction, reconstruction, relocation, repair or maintenance of roads, streets, and highways. By its very terms, the statute does not apply, as petitioners contend, to airport runway expansion projects. Therefore, whether IDOT did or did not consider section 314.24 in approving project funding is irrelevant — it was under no legal obligation to do so. ***Discovery.*** The district court granted a request from petitioners to depose several IDOT officials. Petitioners subsequently made another request to depose additional IDOT officials, which was denied. The court stated that on review of the evidence and depositions already gathered, there were no grounds for any additional discovery. We agree with this conclusion. The record was more than thoroughly developed for the purposes of uncovering arbitrary or capricious actions by IDOT; any additional discovery would have been cumulative and unnecessary. ***Remand for Further Consideration.*** Petitioners finally request we remand this case back to IDOT to reconsider its decision to fund the Cresco airport project. We have carefully reviewed petitioners' numerous claims raised on appeal and have determined IDOT has not acted arbitrarily or capriciously, or abused its discretion. We are left with petitioners' sole contention that remand is necessary because petitioners think there are issues which IDOT should consider before allowing any additional work to proceed on the project. The courts are not a place for petitioners to force political pressure upon IDOT. Absent violations of law or other clearly capricious or abusive activity, we will not, as petitioners request, interfere with agency judgment calls such as IDOT'S funding decision. Petitioners' request was properly denied by the district court.