

IN THE COURT OF APPEALS OF IOWA

No. 9-079 / 97-2335

AGRIPROCESSORS, INC.,

Petitioner-Appellant,

vs.

**STATE OF IOWA CITY DEVELOPMENT BOARD and the
POSTVILLE CITY DEVELOPMENT COMMITTEE,**

Respondents-Appellees,

and

CITY OF POSTVILLE,

Intervenor-Appellee.

FILED

APR 30 1999

Appeal from the Iowa District Court for Allamakee County, Joseph C. Keefe,
Judge.

The petitioner appeals from a district court order affirming a decision of the
city development board approving the City of Postville's involuntary annexation
petition. **AFFIRMED.**

David A. Tank and Robert J. Douglas, Jr., of Davis, Brown, Koehn, Shors &
Roberts, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Christie J. Scase, Assistant Attorney
General, for respondents-appellees.

Ivan T. Webber of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C.,
Des Moines, for intervenor-appellee.

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

ZIMMER, J.

Agriprocessors, Inc. appeals from a district court order affirming a decision of the Postville City Development Committee which approved for election a petition for involuntary annexation of land adjoining the City of Postville. We affirm

On December 27, 1996, the City of Postville ("Postville") filed a petition for annexation with the State of Iowa City Development Board pursuant to Iowa Code section 368.11 (1997). The city development board approved the form of the petition and appointed four local representatives to the statutorily mandated city development committee responsible for considering the petition. *See* Iowa Code § 368.14 (1997)

Postville's petition proposed the involuntary annexation of approximately 703 acres of unincorporated territory adjoining the Postville corporate limits. The annexation plan subdivided the territory into five areas. Area I, however, is the only parcel of land involved in this appeal. It contains two industries, Agriprocessors, Inc and Iowa Turkey Products (not party to the present appeal), as well as farm land and eight residential properties.

Following a public hearing held March 12, 1997, the Postville Development Committee issued written findings of fact and conclusions of law on June 2, 1997, approving the petition for annexation. As a result of the committee's decision, a special election was held on August 5, 1997 concerning the proposed annexation. *See* Iowa Code § 368.19 (1997). The proposed annexation was approved by majority vote. *Id.*

Agriprocessors filed a petition for judicial review of the development committee's ruling on July 2, 1997. Following intervention by Postville, and hearing before the district court, the appeal was denied and dismissed and the decision of the development committee approving the petition for annexation was affirmed

Agriprocessors appeals claiming the decision of the development committee is not supported by substantial evidence in the record.

***I. Scope of Review.* Our authority to review the district court's ruling derives from Iowa Code section 17A.20. See Iowa Code § 17A.20 (1997), *Dickinson County v. City Dev. Comm.*, 521 N.W.2d 466, 468 (Iowa 1994). Our review is governed by Iowa Code section 368.22, which provides in part:**

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 the board or a committee, with appropriate directions.

Iowa Code § 368.22 (1997). On appeal we therefore consider the sole question of whether the district court properly applied the law in ruling on Agriprocessors' petition for judicial review of the city development committee's determination on annexation. See *Gorman v. City Dev. Bd.*, 565 N.W.2d 607, 609 (Iowa 1997). We must decide whether the district court correctly concluded there was substantial evidence in the whole record made before the committee to support the committee's decision approving the annexation. Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. See *Dickinson County v. City*

Dev. Comm., 521 N.W.2d at 468. If our conclusions are the same as the district court's, we will affirm; if our conclusions are different, reversal may be required. *Id.*; *Gorman v. City Dev. Bd.*, 565 N.W.2d 609.

II. Substantial Evidence. Agriprocessors argues the development committee failed to offer sufficient evidence that the City of Postville would provide "substantial municipal services and benefits not previously enjoyed" by the area to be annexed. We disagree.

Under the annexation provisions of section 368.17(4), a city development committee may not approve an annexation of territory unless

the committee finds that the city will be able to provide to the territory substantial municipal services and benefits not previously enjoyed by such territory, and that the motive for annexation is not solely to increase revenues to the city.

Iowa Code § 368.17(4) (1997). Agriprocessors does not challenge on appeal the district court's determination the annexation was not proposed solely to increase tax revenues of the city. The only issue we therefore address is whether substantial evidence supports the court's determination that the city will be able to provide to the territory services and benefits not previously enjoyed.

If the city offers new services and benefits, then it meets the "not previously enjoyed" requirement. Furthermore, if the city offers the same services and benefits, but those services are substantially more in degree than what the area is presently enjoying, the "not previously enjoyed" requirement is again satisfied. See *Dickinson County v. City Dev. Comm.*, 521 N.W.2d at 469.

Agriprocessors argues Postville has failed to show several of the services and benefits it can offer are not already enjoyed in the territory to be annexed. These include: police, fire, and ambulance service; sanitary sewer and wastewater treatment; improved water supply; solid waste collection; road and street maintenance; and zoning ordinance protection and community planning.

We determine there is substantial evidence in the record to support the city's involuntary annexation petition. Police service is currently limited to the county sheriff. After incorporation, police service would be provided by Postville. There clearly would be improved service, including regular patrols and general law enforcement benefits beyond the emergency response services currently provided. Though Area I already receives fire protection from the city, there was evidence fire protection infrastructure, such as water pressure to fire hydrants, would be improved.

Sewer and waste water services will also be provided in Area I in place of the septic tank systems currently in use. There was evidence that tying Area I into the city's sewage system would eliminate septic tank and pollution overflow problems currently being experienced. The City also has indicated it will construct and maintain pumping for sewage in poor drainage areas.

Water service will also be improved. Private water contracting will be replaced by a public water system and Postville will also assume responsibility for the maintenance of the heretofore private water lines which will be connected to the city's water system.

After annexation, Postville will also provide solid waste collection services in the territory. This will include weekly garbage service and yard waste removal services not previously enjoyed.

Road and street maintenance will also be provided to the annexed area. This service includes snow removal and street lighting. Annexation would allow Postville to provide these services to a far greater degree than previously enjoyed.

Finally, the territory proposed for annexation is not currently serviced by planing or growth management plans. Following annexation, Postville would provide such services. Furthermore, annexation will allow the city to place tighter zoning controls over the territory, permitting the city to more efficiently maintain sewage treatment lagoons used by industries in the area, including Agriprocessors. There is also evidence city zoning control will allow greater industrial development and expansion than currently permitted under county zoning ordinances, and will eliminate potentially conflicting industrial land uses in the area.

Agriprocessors contends throughout its brief that the evidence fails to reveal base level services previously enjoyed by the territory to be annexed. We determine, however, the development committee had before it sufficient evidence to identify and compare pre- and post-annexation services.

Agriprocessors also argues it already receives many of the services offered by Postville. For example, Agriprocessors claims it privately contracts for water service and solid waste removal. However, a municipality need not demonstrate the "services and benefits offered are necessary to the territory sought to be annexed." *See City of*

Clinton v. Owners of the Property Situated Within Certain Described Boundaries, 191 N.W.2d 671, 678 (Iowa 1971). Agriprocessors cannot block annexation simply by showing it provides to itself services necessary to suit its own special needs. See *Town of Coralville v. Great Lakes Pipeline Co.*, 253 Iowa 23, 29, 110 N.W.2d 375, 379 (Iowa 1961). The issue is whether the municipality can provide services and benefits not previously enjoyed; not, rather, whether any particular property owner actually needs those services. *Id.* Simply because Agriprocessors privately contracts for services does not negate the conclusion Postville can provide services not previously available in the area. Furthermore, Agriprocessors' argument ignores the fact that there are many residences in the area which will receive substantial municipal services following annexation that were not previously available.

Agriprocessors finally argues that Postville is incapable of providing certain services because it is economically incapable of doing so or because expansion of services will strain the city's economic and physical resources. Our focus, however, is the ability of the municipality to extend the services, not the economic practicability of doing so. See *Peterson v. Decorah*, 203 N.W.2d 629, 631 (Iowa 1973). We find the evidence sufficiently supports Postville's position that not only can it offer substantial municipal services not previously enjoyed, but that it also has the ability to actually provide these services.

Having reviewed the record, we satisfied the district court correctly determined substantial evidence supports the development committee's annexation decision.

AFFIRMED.

**No. 97-2335. [9-079] AGRIPROCESSORS v. STATE OF IOWA
DEVELOPMENT BOARD**

Appeal from the Iowa District Court for Allamakee County, Joseph C. Keefe, Judge. **AFFIRMED.** Heard by Streit, P.J., and Vogel, and Zimmer, JJ. Opinion by Zimmer, J. (7 pages \$2.80)

Agriprocessors, Inc. appeals from a district court order affirming a decision of the Postville City Development Committee which approved for election a petition for involuntary annexation of land adjoining the City of Postville. Agriprocessors claims the decision of the development committee to authorize an annexation petition is not supported by substantial evidence in the record. **OPINION HOLDS:** The only issue we address is whether substantial evidence supports the district court's determination that Postville will be able to provide to the territory proposed for annexation services and benefits not previously enjoyed. We determine there is substantial evidence in the record to support Postville's involuntary annexation petition. Several factors in the record demonstrate new services and benefits will be offered, including municipal police and fire services; sewer, solid waste, and waste water services; and planning and growth management services. Agriprocessor's argument that it already provides some of these services to itself via private contracting is without merit. Agriprocessors cannot block annexation simply by showing it provides to itself services necessary to suit its own special needs. The issue is whether the municipality can provide services and benefits not previously enjoyed; not, rather, whether any particular property owner actually needs those services. Simply because Agriprocessors privately contracts for services does not negate the conclusion Postville can provide services not previously available in the area. Furthermore, Agriprocessors' argument ignores the fact that there are many residences

**No. 97-2335. [9-079] AGRIPROCESSORS v. STATE OF IOWA
DEVELOPMENT BOARD (continued)**

in the area which will receive substantial municipal services following annexation that were not previously available. We find the evidence sufficiently supports Postville's position that not only can it offer substantial municipal services not previously enjoyed, but that it also has the ability to actually provide these services.