

**Appendix at end of brief**

IN THE SUPREME COURT OF IOWA

No.: 23-1690

Polk County Ruling No.: CVCV065474 NC23-02

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Scott Campbell,

Petitioner-Appellant,

v.

CITY DEVELOPMENT BOARD OF THE STATE OF IOWA

Respondents-Appellees.

---

APPEAL FROM THE IOWA DISTRICT COURT  
IN AND FOR POLK COUNTY  
THE HON. PAUL D. SCOTT, JUDGE

---

Petitioner-Appellant Final Brief  
Scott Campbell  
2480 NE 102nd Ave. Ankeny, IA 50021  
515-984-0655  
Email: [scott@ankenywatch.com](mailto:scott@ankenywatch.com)  
Self Represented

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### **BRIEF POINT**

**THE DISTRICT COURT IMPROPERLY USED THE VOLUNTARY ANNEXATION PROCEDURE DETAILED IN *IOWA CODE* § 368.7 DISREGARDING THE DIRECTIVES OF THE LEGISLATURE IN *IOWA CODE* § 368.6 WITH REGARDS TO THE PRESUMPTION OF VALIDITY AND THE WISHES OF THE RESIDENTS. THE CITY DEVELOPMENT BOARD IGNORED ITS OWN PROCEDURES AS CONVEYED BY AN EMAIL SENT TO SCOTT CAMPBELL STATING AN INVOLUNTARY ANNEXATION SHOULD BE USED IF ALL THE RESIDENTS DID NOT DESIRE TO BE ANNEXED.**

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Scott Campbell vs City Development Board of Iowa Polk County District Court (Ruling CASE NO. CVCV065474 Order for Judgment Docket #D0023).....4,5,7,8,9

**Statutes:**

*Iowa Code* § 368.6

*Iowa Code* § 368.7

*Iowa Code Chapter 368*

Iowa Code § 17A.19(2) (2011)

*Iowa R. App. P.* 6.1101(1)

Iowa Admin. Code 263 ch. 7

**STATEMENT OF ISSUES PRESENTED FOR REVIEW**

- 1) The district court ignored the direct evidence that was presented in the petition for judicial review of agency action (App. p 43) .The City Development Board's policy, stated, via an email (App. pp. 19-21, App. pp. 34-36) sent to Scott Campbell, that the annexation could not proceed as a voluntary annexation and must be considered an involuntary annexation if all the residents were against the annexation. This was discussed in the Petition submitted by Scott Campbell to the

district court. The district court disregarded the petition (App. p. 13) signed by the residents that was submitted to the City Development Board in which 100% of the residents wished not to be annexed.

- 2) The district court judge did not establish that a land owner would be considered a resident for purposes of Iowa Code § 368.6. The residency of the landowner initiating the annexation (Dennis Albaugh) was used by the City Development Board to establish a presumption of validity (App. p.8) the residency of Dennis Albaugh was exhaustively discussed in the petition submitted by Scott Campbell to the district court on (App pp. 33-36).
- 3) The district court appears to be indicating that Iowa Code § 368.6 can be ignored, even though this is the source of the meaning of the presumption of validity in Iowa Code, revolving around the wishes of the residents (App. p. 46).
- 4) The district court did not make an argument based on fact or legislative intent with regards to why Iowa Code § 368.6 should be substantially ignored and that it was sufficient to apply only the requirements of § 368.7 to establish a presumption of validity.
- 5) The district court does not appear to be differentiating between or are ignoring the differences between the wishes of the residents as described in Iowa Code § 368.6 and the consent of landowners as described in Iowa Code § 368.7. While § 368.6 is discussing the presumption of validity with regards to the definition of a valid



voluntary annexation § 368.7 is discussing the procedures for a particular type of voluntary annexation. The district court is contending that the presumption of validity is defined in section § 368.7 while it is clearly only discussed in § 368.6 (App. p. 46).

- 6) Application of presumption with regards to Iowa Code § 368.6 was carefully implemented in the annexation procedure. Both the City Council and City Development Board were made aware of the wishes of the residents before they voted on approval of the annexation procedure. This was not acknowledged or discussed by the district court in its decision.

### **ROUTING STATEMENT**

This case, Scott Campbell vs City Development Board of Iowa Polk County No.: CVCV0S4944, is being appealed due to an adverse decision by the district court. Pursuant to *Iowa R. App. P.* 6.1101(1), transfer of this case to the Court of Appeals for decision would be appropriate. This case involves a petition for judicial review of an agency action. The case revolves around the use of an improper annexation procedure, definitions of residency, and the district court's opinion that § 368.6 can be substantially or wholly disregarded.

### **STATEMENT OF THE CASE**

This case involves a Petition for Judicial Review of an agency action. This case revolves around the use of the improper annexation procedure, definitions of

residency, and the district court's opinion that Iowa Code § 368.6 can be disregarded. Additionally, the district court judge appears to be ignoring portions of the petition submitted to the district court due to an alleged procedural error (App. pp. 43-44). As a citizen representing myself, I was unaware of a supposed requirement to file a reply to a brief submitted by the City Development Board's attorney. I was proceeding according to the rules for civil procedure as presented in Iowa code. I cannot find any requirement to reply to a brief in Iowa code in a civil case and cannot find any requirement that specific portions of appellate court procedure be followed in Iowa Code in a civil case. I apologize for not submitting the brief if it is a requirement. I sincerely felt the petition I submitted to the District Court was sufficient to make a decision on the case and felt no need to reply. I request that the appellate court preserve the arguments within the original petition submitted to the district court by Scott Campbell so that the merits of this case can be fully considered.

### **STATEMENT OF FACTS**

The City Development Board issued a decision on April 13, 2023 (App. p. 5). Scott Campbell filed a Petition for Judicial Review of Agency Action on May 3, 2023. (App. pp. 33-40) with the Polk County District Court. The venue is based upon the provisions of Iowa Code § 17A.19(2) (2011). See petition submitted to the district court (App. pp. 38-39).

**BASIC SUMMARY OF CASE:**

**THE DISTRICT COURT IMPROPERLY APPROVED THE USE OF THE VOLUNTARY ANNEXATION PROCEDURE DETAILED IN IOWA CODE § 368.7, DISREGARDING THE DIRECTIVES OF THE LEGISLATURE IN IOWA CODE § 368.6 WITH REGARDS TO THE PRESUMPTION OF VALIDITY AND THE WISHES OF THE RESIDENTS. THE CITY DEVELOPMENT BOARD IGNORED ITS OWN PROCEDURES AS CONVEYED BY AN EMAIL SENT TO SCOTT CAMPBELL STATING AN INVOLUNTARY ANNEXATION SHOULD BE USED IF ALL OF THE RESIDENTS DO NOT WISH TO BE ANNEXED.**

A Notice of Appeal (App. pp. 49-50) was filed in the Polk County District Court on October 9, 2023 from the Ruling on Motions for Summary Judgment (CVCV065474) (App. pp. 42-48) filed on September 19, 2023. The combined certificate (App. pp. 51-52) was served on October 16, 2023.

**ARGUMENT**

Preservation Of Error: Error was preserved by the Claimant by filing a Petition for Judicial Review of an agency action and sustaining an adverse ruling by the Polk County District Court.

Standard Of Review: The standard of review on a district court's ruling on a motion to dismiss is for correction of errors at law and whether the decision was arbitrary, unreasonable, or without substantial supporting evidence.

**City Development Board Policy and Residency with Regards to Iowa Code § 368.6**

Please refer to the petition filed (App. pp. 33-37) with the district court for a discussion of residency with regards to Dennis Albaugh. The district court ignored the direct evidence in which the City Development Board's policy stated the annexation could not proceed as a voluntary annexation and must be considered an involuntary annexation if all the residents were against the annexation (App. pp. 19-20). The following was taken from the email sent by the City Development Board, "I will note that 'if 100% of the residents did not consent to the annexation it would be considered an involuntary annexation'". The board then submitted evidence during the hearing that was later sent by email (App. p. 22). The board contended the attachment to the email proved that the party initiating the annexation (Dennis Albaugh) was a resident of the area to be annexed. However, the attached document emailed by the City Development Board (App. p. 28) states:

See Pruss v. Cedar Rapids/Hiawatha Annexation SpecialLocal Comm., 687 N.W.2d 275, 282 n. 3 (Iowa 2004) (stating it is unclear whether the presumption of validity would apply to non-resident owners)

The above excerpt from the Pruss decision clearly indicates that there are non-resident owners and that the presumption of validity did not necessarily apply to owners who do not reside on the property to be annexed. The City Development Board improperly used the P Hill Ruling document as proof that a non-resident owner was a resident even though the court did not establish that a non-resident landowner could be considered a resident for purposes of Iowa Code § 368.6. Thus the information contained in the emails sent to Scott Campbell by the City Development Board proves the voluntary procedure in Iowa Code § 368.7 should not have been used since 100% of the residents, as established in the signed petition (App. p. 13), did not wish to be annexed. The application should have been denied and the city could have reapplied using the involuntary procedure. The above arguments have disproved the notion that Dennis Albaugh is a resident of the area proposed to be annexed. Furthermore, even if Dennis Albaugh were a resident, allowing a single person's wishes to dictate the validity of the use of the so called 80/20 application procedure in Iowa Code § 368.7 would not be consistent with Iowa Code § 368.6. Iowa Code § 368.6 expressly states that the residents' (plural) wishes are required to meet the presumption of validity. Dennis Albaugh is a single property owner. Abiding by the wishes of a single property owner is not consistent with the directives of Iowa Code § 368.6 which discusses the wishes of the residents (plural).

## **The Court is Disregarding the Presumption of Validity Described in § 368.6**

The below statement from the district court decision implies that statute Iowa Code § 368.6 can be completely bypassed and ignored. (App. p.46):

Even if the Court determined the presumption of validity did not apply here, the Board's decision was still supported by substantial evidence.

While the courts can interpret statutes, it is not the role of the courts to decide on which statutes can be ignored and which statutes can be applied, especially when there is a remedy that has been created by the legislature. In this case an involuntary procedure could have been used.

The presumption of validity in Iowa Code § 368.6 involves the wishes of the residents. Below is an excerpt from the Pruss document submitted by the City Development Board (App. p. 28):

The interplay between Iowa Code sections 368.7(2) and 368.7(3) also weighs in favor of the statutory interpretation urged by Respondent and Intervener. It has been already established that the voluntary annexation application is presumed to represent the wishes of the residents of the territory being annexed.

The court has affirmed in this case that the voluntary annexation application is

presumed to represent the wishes of the residents in a voluntary annexation. The wishes of the residents are explicitly discussed in Iowa Code § 368.6 and should not be ignored. There is no indication in Iowa code that Iowa Code § 368.7 can be used as the sole determinate of the presumption of validity. The presumption of validity with regards to annexation is only discussed in Iowa Code § 368.6 and does not mention the completion of the requirements of Iowa Code § 368.7 as the sole requirement for meeting the presumption of validity in Iowa Code § 368.6. The district court appears to consider the proper execution of Iowa Code § 368.7 to be the sole determination of validity, completely ignoring the directives within Iowa Code § 368.6 with regards to the wishes of the residents and a presumption of validity (App. pp. 34-38). There is no mention in Iowa Code Chapter 368 that the sole requirement to comply with the presumption of validity discussed in Iowa Code § 368.6 was the completion of the requirements of Iowa Code § 368.7. In this case, the wishes of all the residents living on the property to be annexed were ignored. The district court's interpretation prevents the application of Iowa Code § 368.6 with regards to the wishes of the residents irrespective of the percentage of residents who do not desire annexation, rendering Iowa Code § 368.6 meaningless. The interpretation by the district court and the City Development Board means that legislators intended to allow the use of a voluntary annexation procedure in which 100% of the residents living on the area to be annexed did not

wish to be annexed. Iowa Code § 368.6 appears to have been placed directly in front of Iowa Code § 368.7 so that a determination to proceed with a valid use of a so called 80/20 voluntary annexation could be determined, thus preventing the use of the 80/20 voluntary annexation as a form of defacto involuntary annexation.

The following was taken from the district court decision (App. pg. 44):

(“[T]he terms [voluntary and involuntary] are merely shorthand appellations used by the legislature to describe the form of the action.”).

The above is making an argument that the titles of statutes created by the legislature are without specific meaning and that the title of § 368.7 “Voluntary annexation of territory” with the emphasis on voluntary, can be construed as a suggestion (App. p. 36). The court is disregarding the intent of the legislature and deriving intent that does not exist in statute. I will agree that if a majority of the resident's wishes, as conveyed in § 368.6, are in favor of annexation that the § 368.7 annexation procedure would be considered to be voluntary and the procedure would be consistent with the title. This procedure should not be used if a majority of the residents are against the annexation procedure since it would no longer be voluntary.

**A Discussion of the Differences Between Consenting Landowners as Applies to § 368.7 vs. Wishes of the Residents as Applies to § 368.6**



The excerpt below was taken from district court (App. pg. 46):

When read together, the text in section 368.6 and 368.7 provides for a presumption of validity for all voluntary annexations, even those circumstances where some resident property owners who have not **consented** to the annexation are included.

While the text in Iowa Code § 368.6 and Iowa Code § 368.7 can be read together, Iowa Code § 368.6 must be fulfilled for there to be a valid presumption of validity. The presumption of validity is not mentioned in § 368.7 and is solely defined by the intent outlined in § 368.6. The **consent** of the resident property owners is not required to initiate and complete the requirements of Iowa Code section § 368.7 for an 80/20 voluntary annexation. A single consenting landowner can apply for an annexation in Iowa Code section § 368.7 with no consenting land owning residents as long as the land owner's property is comprised of at least 80% of the property to be annexed. Successful completion of the so called 80/20 annexation application and the consent of land owner's as described in Iowa Code § 368.7 is not comparable to and does not invalidate the **wishes** of the majority of the residents as discussed in Iowa Code § 368.6. Once the wishes of the majority of residents in regards to annexation are determined or discovered by the City Development Board, the board should have been able to ascertain that the incorrect procedure was used and the application should have been denied or converted to an involuntary procedure.

### **Presumption with Regards to Iowa Code § 368.6**

During the procedural process of the annexation, unless otherwise established, it is appropriate for the City Council and City Development Board to presume the wishes of the residents are being adhered to with regards to the proposed annexation. However, in this case the Ankeny City Council and City Development Board were notified of the wishes of the residents before voting and thus no presumption could be made by the board concerning the wishes of the residents. The residents' wishes were established by the petition (App. p. 13) signed by 100% of the residents and presented to the City Development Board before the decision was made by the board. The wishes of the residents were disregarded, but the wishes of the single landowner requesting the annexation, Dennis Albaugh, were granted by the City Development Board. This district court did not recognize or discuss in its ruling that 100% of the resident's signed a petition declaring their wish not to be annexed.

### **CONCLUSION**

The City Development Board was given sufficient information before making a decision to not proceed with the Iowa Code § 368.7 annexation procedure and should have denied the application or advised the City to resubmit an application for an involuntary procedure. The City Development board made decisions based on improper or inaccurate interpretation of residency with regards to § 368.6 and

was unable to accurately cite precedent or statute to substantiate its decision. The City Development Board's decision was inconsistent with the direction by the legislature with regards to rule 263 7.7(2):

Initial board review. The board shall review each request for approval of an application for voluntary annexation of territory within an urbanized area to determine compliance with the requirements of Iowa Code chapter 368 rules.

The sole completion of the procedure outlined in Iowa Code § 368.7 is not sufficient and is not a substitute for the requirements needed to meet the presumption of validity outlined in Iowa Code § 368.6. The City Development Board acknowledged via email that an involuntary procedure should have been used since 100% of the residents living on the property to be annexed did not desire to be annexed. This was established by a signed petition by the residents (App. p. 13) submitted to the board before the board's decision to approve the Iowa Code § 368.7 annexation procedure. The current annexation submitted by Dennis Albaugh (DRA Properties) needs to be denied or resubmitted as an involuntary procedure.

### **REQUEST FOR ORAL ARGUMENT**

There is no request for oral argument.

**CERTIFICATE OF COMPLIANCE**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because it has been prepared in a proportionally spaced typeface using Time New Roman in 14 point font and contains 3255 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

*Scott Campbell*  
/s/ Scott Campbell

2/27/24  
Date

**CERTIFICATE OF SERVICE**

I, Scott Campbell, certify that on this 27th day of February, 2024, I or a person acting on my behalf served the above Respondents-Appellees, the attorney of record, Eric Dirth Attorney PIN: AT0013752, via EDMS in full compliance with Rules of Appellate Procedure and Rules of Civil Procedure.

*Scott Campbell*  
/s/ Scott Campbell

2/27/24  
Date

**CERTIFICATE OF FILING**

I, Scott Campbell, hereby certify that I, or a person acting in my direction, did file the attached Petitioner-Appellants' updated brief upon the Clerk of the Iowa Supreme Court via EDMS on this 27th day of February, 2024.

*Scott Campbell*  
/s/ Scott Campbell

2/27/24  
Date

Scott Campbell  
2480 NE 102nd Ave. Ankeny, IA 50021  
515-984-0655  
Email: [scott@ankenywatch.com](mailto:scott@ankenywatch.com)

IN THE SUPREME COURT OF IOWA  
No. 23-1690

---

SCOTT CAMPBELL,  
  
Petitioner–Appellant,  
vs.  
CITY DEVELOPMENT BOARD,  
  
Respondent–Appellee.

---

Appeal from the Iowa District Court  
  
For Polk County  
  
Honorable Paul D. Scott, District Court Judge

---

**APPENDIX**  
  
Combined Appellant/Appellee Appendix

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Scott Campbell  
2480 NE 102nd Ave. Ankeny, IA 50021  
515-984-0655  
Email: [scott@ankenywatch.com](mailto:scott@ankenywatch.com)  
Petitioner-Appellant  
Self Represented

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## CERTIFICATE OF SERVICE

I, Scott Campbell, certify that on this ??th day of February, 2024, I or a person acting on my behalf served the above Respondents-Appellees, the attorney of record, Eric Dirth Attorney PIN: AT0013752, via EDMS in full compliance with Rules of Appellate Procedure and Rules of Civil Procedure.

\_\_\_\_\_  
*/s/ Scott Campbell*

2/??/24  
Date

## CERTIFICATE OF FILING

I, Scott Campbell, hereby certify that I, or a person acting in my direction, did file the attached Appendix upon the Clerk of the Iowa Supreme Court via EDMS on this ??th day of February, 2024.

\_\_\_\_\_  
*/s/ Scott Campbell*

2/??/24  
Date

Scott Campbell  
2480 NE 102nd Ave. Ankeny, IA 50021  
515-984-0655  
Email: [scott@ankenywatch.com](mailto:scott@ankenywatch.com)

**Exhibit A**

BEFORE THE CITY DEVELOPMENT BOARD  
STATE OF IOWA

---

IN THE MATTER OF THE VOLUNTARY	)	NO. NC23-02 / ANKENY
ANNEXATION OF THE CITY OF ANKENY	)	
INCLUDING LAND WITHOUT THE CONSENT	)	FINDINGS OF FACT AND CONCLUSIONS OF
OF THE OWNER	)	LAW AND DETERMINATION

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TO: City of Ankeny, Polk County Board of Supervisors, Polk County Attorney, Des Moines Area Metropolitan Planning Organization, Iowa State Attorney General, Iowa Department of Transportation, Affected Public Utilities and Parties of Record

STATEMENT OF THE CASE

The City of Ankeny (hereinafter the "City") filed its request for City Development Board approval of annexation of territory, which included some land without the owners' consent, on January 23, 2023. Such requests can be made to avoid the creation of islands or to create more uniform boundaries. Notice of the City Development Board's review of the request and owners' applications was given on January 25, 2023, and the Board reviewed the proposal at its meeting on February 8, 2023. Notice of a public hearing was given on March 9, 2023, and the City Development Board held a public hearing on the proposal on April 12, 2023. The City Development Board, having considered the City's request for approval, the property owners' applications and all evidence submitted by the affected parties, hereby makes the following findings of fact, conclusions of law and determination.

FINDINGS OF FACT

1. On June 2, 2022 and September 7, 2022, by written application, which included a map, DRA Properties, LC requested the City of Ankeny to annex the following described property owned by them and located in Polk County, Iowa:

The proposed annexation territory is described in Appendix A, attached hereto and by this reference made a part of.

- The territory also includes some land without the consent of the owners, which is described in Appendix A, attached hereto and by this reference made part of.
2. On September 8, 2022, the City of Ankeny notified, by mail, the Polk County Board of Supervisors and Douglas Township Trustees of a notice of a consultation meeting for September 26, 2022, to review the City's proposed application for annexation.
  3. On November 25, 2022, the City of Ankeny published in an official county newspaper notice of the City Council's public hearing on December 19, 2022, to consider the application for voluntary annexation.
  4. A copy of the annexation proposal was sent to the affected public utilities and owners of the territory being included without their consent on November 22, 2022.
  5. By Resolution No. 2022-571 dated December 19, 2022, which contained a legal description, the City Council of Ankeny voted to annex the subject property.
  6. The area to be annexed has a common boundary with the City of Ankeny of more than 50 feet.
  7. The total land area proposed for annexation included 77.75 acres, which included county road right-of-way. The territory included without the consent of the owners included 12.38 acres, which is less than 20% of the total land area proposed to be annexed.
  8. On January 23, 2023, the City requested the City Development Board approve the annexation of the territory described in finding number one. Said request included a copy of the owners' applications, map and City Council resolution.
  9. On January 25, 2023, the City Development Board notified, by mail, the City of Ankeny, Polk County Board of Supervisors, Polk County Attorney, Des Moines Area Metropolitan Planning Organization, Iowa Attorney General, Iowa Department of Transportation, affected public utilities, parties of interest and property owners, of the proposed annexation and request for approval. Said notice invited oral and written evidence relative to the proposed annexation.

**App. - 006**



10. The City Development Board received no response from any governmental unit, business or individual.
11. At its meeting on February 8, 2023, the City Development Board found the proposal to be complete and properly filed and scheduled a public hearing for April 12, 2023, on the annexation proposal.
12. On March 9, 2023, the City Development Board notified by mail, the City of Ankeny, Polk County Board of Supervisors, Polk County Attorney, Des Moines Area Metropolitan Planning Organization, Iowa Attorney General, Iowa Department of Transportation, affected public utilities, parties of interest and property owners, of the public hearing and the hearing was held as scheduled on April 12, 2023. At the hearing all persons appearing and desiring to be heard were heard.
13. The Board determined that the inclusion of the land without the owners' consent avoided the creation of islands and made the boundaries of the city more uniform.
14. Based on the information favoring the annexation found in the city's submission, presented at the public hearing and other materials filed by the City of Ankeny and the absence of evidence of any potential adverse consequences, at least four-fifths of the Board voted to approve the annexation.

#### CONCLUSIONS OF LAW


1. The territory to be annexed "adjoins" the City of Ankeny as the term is defined in Iowa Code Section 368.1(1).
2. The annexation request filed by the City of Ankeny included territory without the consent of the owner, which comprises not more than 20% of the land area proposed for annexation. Inclusion of this territory avoids the creation of islands and creates more uniform boundaries for the City of Ankeny. The request submitted by the City of Ankeny to the City Development Board complies with Iowa Code Section 368.7(1).
3. The City published notice of the filing of the application and provided copies of the

proposed annexation to parties in accordance with the requirements of Iowa Code Section 368.7(1).

4. The City Development Board possesses jurisdiction to approve or deny the owner's applications for annexation in accord with Iowa Code Section 368.7(1). The annexation proposed was approved by at least four-fifths of the Board as required by Iowa Code Section 368.7(1). The Board is required to file portions of the proceedings in accord with Iowa Code Section 368.7.
5. The resolution by the City Council of Ankeny conforms with Iowa Code Section 368.7.
6. The City of Ankeny's request for Board approval and the annexation is in substantial compliance with Iowa Administrative Code r. 263—7.2.
7. In accord with the standards set forth in Iowa Code Chapter 368, including the presumption of validity for voluntary annexation approval set forth in Iowa Code Section 368.6, the annexation proposal is in the public's interest.

Dated this 13<sup>th</sup> day of April, 2023.

CITY DEVELOPMENT BOARD



Dennis Plautz, Chairperson  
signature affixed by Matt Rasmussen,  
Administrator for City Development Board as  
authorized under Iowa Administrative Code  
r. 263—9.11(2)

THEREFORE, IT IS ORDERED that the application of the following described territory to the City of Ankeny is hereby approved:

The proposed annexation territory is described in Appendix A and attached hereto and by this reference made a part of.

IT IS FURTHER ORDERED that the owner's annexation applications and maps, City Council resolution, notices of Board review and this Order be filed by the Board with the Ankeny City Clerk and that the Board file a copy of the map and legal description with the Iowa Department of Transportation.

To complete the annexation process, the Board Administrator shall mail a copy of this Order and other relevant documents to the Polk County Recorder and Iowa Secretary of State on or after the 31<sup>st</sup> day following issuance of this Order. To request a stay of completion of the annexation process, a person or city authorized by Iowa Code Section 368.22 to appeal this Order must deliver to the Board Administrator a timely written request for a stay accompanied by notice of the filing of a petition for judicial review or intent to file a petition for judicial review. Any such request shall be referred to the Board for action at its next regularly scheduled meeting or at a special meeting.

Dated this 13<sup>th</sup> day of April, 2023.

CITY DEVELOPMENT BOARD



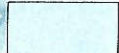
  
/s/ Dennis Plautz, Chairperson



**Exhibit B**



**Legend**

-  Non-Consenting Landowners
-  Consenting Landowners
-  Ankeny

N  
1 inch = 360 feet  
Date: 9/13/2022

**App. - 010**  
**DRA Properties NE Annexation**  
**Landowners**



Exhibit C

# Voter Registration Search

You can find the results of your search below.

Show  entries Filter Results:

Voter ID	Name	Address	Party	Age
BRE 116440455 <a href="/search/voter/id/BRE/116440455">(/search/voter/id/BRE/116440455)</a>	Albaugh Dennis Michael <a href="/search/voter/id/BRE/116440455">(/search/voter/id/BRE/116440455)</a>	781 Sandhill Crane CT Rockledge 32955	No Party Affiliation	49
CLL 102974117 <a href="/search/voter/id/CLL/102974117">(/search/voter/id/CLL/102974117)</a>	Albaugh Dennis <a href="/search/voter/id/CLL/102974117">(/search/voter/id/CLL/102974117)</a>	940 Cape Marco Dr UNIT 2506 Marco Island 34145	Republican Party of Florida	73

Showing 1 to 2 of 2 entries

Previous  Next

## Search Our Records

Search By Voter Name

---

**Voter Name**

SMITH JOHN

Search Voters by Name

Clear



4/12/23, 9:09 PM

Search for Albaugh Dennis - FloridaParcels.com  
**E-FILED 2023 MAY 03 2:54 PM POLK -CLERK OF DISTRICT COURT**

The property information displayed here is obtained from public records.

We make no guarantees on the validity of the data presented. Information should be independently confirmed and you use the information displayed here at your own risk.

## Exhibit D

### Petition to Reject Voluntary Annexation North of NE 102<sup>nd</sup> Ave

We, the residents of the land east of I-35, north of NE 102<sup>nd</sup> Ave and west of NE 29<sup>th</sup> St. (the undersigned), ask the City Council of Ankeny to reject the voluntary annexation requested by DRA Properties, LC. The proposed annexation does not reflect the wishes of the residents, nor has the city disclosed future costs to the homeowners that result from the annexation. Iowa code section 368.7 allows 20% of non-consenting land to be annexed; however, section 368.6 clearly states that the intent of a voluntary annexation is to reflect the wishes of the residents of territory to be annexed (see below).

#### Iowa Code 368.6 Intent

It is the intent of the general assembly to provide an annexation approval procedure which gives due consideration to the wishes of residents of territory to be annexed, and to the interests of the residents of all territories affected by an annexation. The general assembly presumes that a voluntary annexation of territory more closely reflects the wishes of the residents of territory to be annexed, and, therefore, intends that the annexation approval procedure include a presumption of validity for voluntary annexation approval.

As previously stated, the residents of the territory unanimously do not wish to be annexed into the City of Ankeny, and thus we ask the City Council to reject the proposed annexation.

Address	Name	Signature	Date
Plot #5 2734 NE 102 <sup>nd</sup> Ave	Bobbe Jean Reek	Bobbe Jean Reek	12/7/2022
	William M Reek	William M Reek	12/7/2022
Plot #6 2698 NE 102 <sup>nd</sup> Ave	Judith Vogel	Judith Vogel	12/7/2022
Plot #7 2680 NE 102 <sup>nd</sup> Ave	JESSE BALDWIN	Jesse Baldwin	12-7-22
	Lacey Baldwin	Lacey Baldwin	12/7/22
Plot #8 2662 NE 102 <sup>nd</sup> Ave	Martin Vogel	Martin Vogel	12/7/22
	Wallace Shea	Wallace Shea	12/7/22
	Lana Shea	Lana Shea	
Plot #9 2644 NE 102 <sup>nd</sup> Ave	Laura Parker	Laura Parker	12/7/22
	Ryan Parker	Ryan Parker	12/7/22
Plot #10 2626 NE 102 <sup>nd</sup> Ave	Julie Day <sup>Julia</sup>	Julie Day	
	Jess Day	Jess Day	12/8/22
Plot #11 2608 NE 102 <sup>nd</sup> Ave	Brian Snyder	Brian Snyder	12-8-22
	Jessica Snyder	Jessica Snyder	12/8/22
Plot #12 2480 NE 102 <sup>nd</sup> Ave	Suzanne Campbell	Suzanne Campbell	12/8/22
	Scott Campbell	Scott Campbell	12/8/22

Scott Campbell  
2480 NE 102<sup>nd</sup> Ave.  
Ankeny, IA 50021  
515-984-0655  
[scott@ankenywatch.com](mailto:scott@ankenywatch.com)

Office of the Attorney General of Iowa  
Hoover State Office Building  
1305 E. Walnut Street  
Des Moines, IA 50319

April 4, 2023

Attn: I am requesting a reply to this document by email at [scott@ankenywatch.com](mailto:scott@ankenywatch.com) from the Attorney Generals office. I am forwarding a copy of this document to the City Development Board. I am mailing a copy to the Governors office.

**The Improper Use of an 80/20 Voluntary Annexation Procedure by the City of Ankeny:**

I believe the City of Ankeny has improperly used the 80/20 voluntary annexation procedure in a recent supposedly voluntary annexation. See attached Annexation Map Scan.pdf . This appears to be in an effort to execute what is in reality an involuntary annexation in an attempt to avoid the more difficult and time consuming involuntary annexation procedure. The rest of the document will explain what happened at the city council meeting and as well as a discussion of why I believe the 80/20 voluntary annexation procedure should not have been used. How does the City of Ankeny justify a voluntary annexation of property in which 100% of the residents are against the annexation? Below is an email previously sent to the City Development Board members after the vote of approval of the annexation was taken by the Ankeny City Council:

I am requesting that the contents of this email be given to the City Development Board members as well as the attached petition before a vote is taken. An Mp3 of portions of the meeting in which the City of Ankeny approved the annexation can be downloaded at the link below. Some of the residents describe the fact that this was not a voluntary annexation and that an 80/20 type voluntary annexation was not consistent with Iowa code.

Materials to be given to the City Development Board members before the vole for approval of the Ankeny annexation requested by DBA Properties.

- 1) The petition that is attached (Signed Petition Ankeny.pdf) that was given to the City Manager and the council persons before the vote.
- 2) Link to MP3 audio file of Ankeny city council meeting with residents stating that this was not a voluntary annexation and citing Iowa code before vote was taken.  
[http://ankenywatch.com/downloads/Clip\\_Ankeny\\_Annexation\\_Meeting.mp3](http://ankenywatch.com/downloads/Clip_Ankeny_Annexation_Meeting.mp3)
- 3) A copy of this email.

End of email to City Development Board:

Reply of a previously sent email by Scott Campbell by the Administrator of the City Development Board:

Dear Mr. Campbell,

My name is Matt Rasmussen, Administrator for the City Development Board. Please note that I am not on the City Development Board, nor am I an attorney.

Your questions appear to me to require legal interpretation. I am not an attorney, and as such, cannot provide legal advice. I encourage you to seek professional legal advice.

I will note that “if 100% of the residents did not consent to the annexation” it would be considered an involuntary annexation. With an 80/20, up to 20% of an annexation territory can come from non-consenting property owners to avoid the creation of (an) unincorporated island(s) or to create more uniform boundaries.

I would be happy to discuss with you, but again, I am not an attorney and could only provide my layman’s opinion based on my experience with the City Development Board.

Regarding another government agency you could contact with your concerns, I suppose you could contact the Attorney General’s office for an opinion, but I must tell you, the City Development Board is represented by an Assistant Attorney General.

If a city approves an annexation such as an 80/20, it would require approval by the City Development Board in order to be legal and final. If you disagree with the decision of the City Development Board, the next step would be to appeal to Iowa District Court.

Regards,

Matt Rasmussen

515-348-6196

**From:** Scott <[scott@ankenywatch.com](mailto:scott@ankenywatch.com)>

**Sent:** Saturday, January 7, 2023 3:26 PM

**To:** City Development Board <[cdb@iowaeda.com](mailto:cdb@iowaeda.com)>

**Subject:** Improper use of the 80/20 voluntary annexation in Ankeny

**Iowa City Development Board**

**Attn:** Matt Rasmussen

### **The Improper Use of an 80/20 Voluntary Annexation Procedure by the City of Ankeny**

I believe the City of Ankeny has improperly used the 80/20 voluntary annexation in a recent supposedly voluntary annexation. Below is a discussion of what happened at the city council meeting and an explanation of why I believe the 80/20 voluntary annexation procedure should not have been used. How does the City of Ankeny justify a voluntary annexation of property in which 100% of the residents are against the annexation?

With regards to the recently approved 80/20 voluntary annexation requested by DBA properties (Please refer to the signed petition/map with signatures blurred by request of some of the residents). The City of Ankeny is adhering to the procedural aspects of an 80/20 voluntary annexation (368.7) while ignoring section 368.6 which defines the intent of the legislature with regards to what can be considered a voluntary annexation. This appears to be in an effort to execute what is in reality an involuntary annexation in an attempt to avoid the more difficult and time consuming involuntary annexation procedure. In this case the party being annexed submitted a signed petition to the city council before the vote with 100% of the residents not consenting to the annexation, their wishes were not being reflected as directed in 368.6. The

presumption that this was a valid 80/20 voluntary annexation was not met. The residents consider the annexation to not be voluntary. It is clear 368.6 shifts the burden of these presumptions on the party being annexed and in this case proof was submitted via a signed petition by the residents of the proposed voluntary annexation. With regards to the presumption of validity statement in 368.6. Arguments that this applies to 368.7 are valid. The procedural aspects of this statute must be adhered to to meet the requirements of the 80/20 annexation and achieve a claim of validity. This does not mean that the presumption of validity is met solely by following the procedures of 368.7. The legislative intent of 368.6 must also be adhered to in order to achieve a presumption of validity. It would seem absurd that the directives of the literal statute describing the presumption of validity would not have to be adhered to. The residents are trying to negotiate a settlement with the city so a valid voluntary annexation can proceed. However in the absence of some kind of agreement the annexation petition by DBA properties submitted to the Iowa City Development Board by the City of Ankeny needs to be rejected or converted to non-voluntary.

In my opinion 368.6 was included directly in front of 368.7 to prevent the use of an 80/20 voluntary annexation procedure in an attempt to avoid the involuntary procedure. Why would the legislature even include an involuntary procedure in law if an 80/20 voluntary annexation with 0% of the residents approving of the annexation can be used? Arguments might be made that an 80/20 voluntary annexations is valid if some of the residents consented to the annexation. Certainly if over 50% of the residents approved of the annexation the directives in 368.6 would be met. In addition an argument could be made that if the residents did not submit proof before the city council voted that the annexation did not reflect the wishes of the residents the council could have validly approved the annexation as directed in 368.6 and 368.7. It is presumed by the legislature that the annexing authority is submitting a valid annexation proposal. While the lack of consent by a resident as indicated on the annexation map does not imply or indicate that the residents wishes are not being reflected, a signed petition stating the wishes of 100% of the residents not favoring annexation does. The intent of the Iowa legislature with regards to 368.6 is not being adhered to and the annexation cannot be presumed to be a valid voluntary annexation.

While it is true that the 80/20 voluntary annexation cannot proceed if “islands” are being created, which applies to this annexation (with the exception of the Campbell property), this conflict is eliminated by the conversion of the annexation to an involuntary annexation. The conflict between the statutes (368.6 and 368.7) is being caused by the City of Ankeny's inappropriate choice to pursue a voluntary annexation. There is no need to violate any of the statutes in Iowa code or to weigh the requirements of one statute higher than another. The legislature has provided a remedy to the problem through involuntary annexation. Since the council has already expressed a willingness to annex the area there should be no problem initiating an involuntary annexation procedure if they desire.

Five Questions:

- 1) Why was 368.6 placed directly in front of section 368.7 (describing the so called 80/20 annexation) if the section does not apply to 368.7?
- 2) If 368.6 does not apply to section 368.7 what is the statute referring to?
- 3) Is it appropriate to disregard the intent of the legislature in 368.6?
- 4) Is it not common sense that 368.7 cannot be a voluntary procedure if 100% of the residents did not consent to the annexation? Section 368.7 is labeled "**Voluntary** annexation of territory".



How could use of this statute be used in an annexation procedure and still be consistent with 368.6?

5) Did the legislature include section 368.6 in front of 368.7 specifically to prevent the use of the 80/20 procedure as a defacto involuntary procedure?

I was unable to get any of the above questions answered by the City Council of Ankeny. They disregarded the petition and voted unanimously as a group.

Is it possible for me to discuss this matter with a person at the Iowa City Development Board? Are there any other government agencies I can contact with my concerns about the misapplication of the 80/20 voluntary annexation? I have a website ankenywatch.com which discusses the annexation.

Link to document on ankenywatch.com

<http://ankenwatch.com/downloads/IowaCityDevelopmentBoard.pdf>

Looking forward to a reply

Scott Campbell

[scott@ankenwatch.com](mailto:scott@ankenwatch.com)

End of email reply by City Development Board Administrator

The following should be sufficient proof that the City of Ankeny acted improperly, with foreknowledge of the law and the facts, when approving the 80/20 voluntary annexation:

- 1) See the attached petition (Signed Petition Ankeny.pdf ) signed by 100% of the residents indicating they did not want to be annexed and the attached Annexation Map Scan.pdf. This was presented to the Ankeny City Council before the vote for approval of the 80/20 procedure.
- 2) The link to the audio clip of some of the residents notifying the Ankeny City Council of the correct procedure before the vote. The residents also stated their wish not to be annexed.  
[http://ankenwatch.com/downloads/Clip\\_Ankeny\\_Annexation\\_Meeting.mp3](http://ankenwatch.com/downloads/Clip_Ankeny_Annexation_Meeting.mp3)
- 3) The Administrator of the City Development board has stated in an email received- I will note that “if 100% of the residents did not consent to the annexation” it would be considered an involuntary annexation. See email above.

Actions by the City of Ankeny with regards to the improper use of the 80/20 annexation procedure will likely directly harm the residents of the neighborhood. The residents bargaining position with regards to costs are significantly reduced if an 80/20 procedure is allowed. The increased time, the requirement for the Citizens of Ankeny to vote on the annexation and the allowance for tax abatement if an involuntary procedure is required would increase the time and costs to the City of Ankeny. This would incentivize the City to bargain with the residents. This could amount to tens of thousands of dollars in savings for each resident. The residents tried to work out an agreement with the City of Ankeny with the terms in writing but Ankeny refused, indicating the residents had no choice but to submit to an 80/20 voluntary annexation. The City was unwilling to negotiate a written agreement. The City of Ankeny acted as if the 80/20 annexation was a done deal and the wishes of the residents were irrelevant.

Requested Recommendations:

- 1) The city managers, mayors and councils of the cities in Iowa need to be educated on proper annexation procedures. This issue needs to be discussed specifically with the City of Ankeny.
- 2) An interpretation of 368.6 with regards to when 368.7 can be used as well as a request for clarification of the statute by the Attorney General or by the appropriate agency.
- 3) With regards to the City of Ankeny annexation vote. Since this was done with foreknowledge of the law and the residents wishes. A recommendation of disciplinary action if deemed appropriate.

I would like to praise the City Development Board administrator and staff. They have been punctual and up to now appear to be acting without bias.

Scott Campbell

## Exhibit F

**Subject:** RE: Improper use of the 80/20 voluntary annexation in Ankeny  
**From:** Matt Rasmussen <Matt.Rasmussen@IowaEDA.com>  
**Date:** 1/9/2023, 8:07 AM  
**To:** "scott@ankenywatch.com" <scott@ankenywatch.com>  
**CC:** Betty Hessing <Betty.Hessing@IowaEDA.com>

Dear Mr. Campbell,

My name is Matt Rasmussen, Administrator for the City Development Board. Please note that I am not on the City Development Board, nor am I an attorney.

Your questions appear to me to require legal interpretation. I am not an attorney, and as such, cannot provide legal advice. I encourage you to seek professional legal advice.

I will note that "if 100% of the residents did not consent to the annexation" it would be considered an involuntary annexation. With an 80/20, up to 20% of an annexation territory can come from non-consenting property owners to avoid the creation of (an) unincorporated island(s) or to create more uniform boundaries.

I would be happy to discuss with you, but again, I am not an attorney and could only provide my layman's opinion based on my experience with the City Development Board.

Regarding another government agency you could contact with your concerns, I suppose you could contact the Attorney General's office for an opinion, but I must tell you, the City Development Board is represented by an Assistant Attorney General.

If a city approves an annexation such as an 80/20, it would require approval by the City Development Board in order to be legal and final. If you disagree with the decision of the City Development Board, the next step would be to appeal to Iowa District Court.

Regards,

Matt Rasmussen  
515-348-6196

---

**From:** Scott <[scott@ankenywatch.com](mailto:scott@ankenywatch.com)>  
**Sent:** Saturday, January 7, 2023 3:26 PM  
**To:** City Development Board <[cdb@iowaeda.com](mailto:cdb@iowaeda.com)>  
**Subject:** Improper use of the 80/20 voluntary annexation in Ankeny

### Iowa City Development Board

**Attn:** Matt Rasmussen

#### The Improper Use of an 80/20 Voluntary Annexation Procedure by the City of Ankeny

I believe the City of Ankeny has improperly used the 80/20 voluntary annexation in a recent supposedly voluntary annexation. Below is a discussion of what happened at the city council meeting and an explanation of why I believe the 80/20 voluntary annexation procedure should not have been used. How does the City of Ankeny justify a voluntary annexation of property in which 100% of the residents are against the annexation?

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80/20 voluntary annexation was not met. The residents consider the annexation to not be voluntary. It is clear 368.6 shifts the burden of these presumptions on the party being annexed and in this case proof was submitted via a signed petition by the residents of the proposed voluntary annexation. With regards to the presumption of validity statement in 368.6. Arguments that this applies to 368.7 are valid. The procedural aspects of this statute must be adhered to to meet the requirements of the 80/20 annexation and achieve a claim of validity. This does not mean that the presumption of validity is met solely by following the procedures of 368.7. The legislative intent of 368.6 must also be adhered to in order to achieve a presumption of validity. It would seem absurd that the directives of the literal statute describing the presumption of validity would not have to be adhered to. The residents are trying to negotiate a settlement with the city so a valid voluntary annexation can proceed. However in the absence of some kind of agreement the annexation petition by DBA properties submitted to the Iowa City Development Board by the City of Ankeny needs to be rejected or converted to non-voluntary.

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Five Questions:

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- 2) If 368.6 does not apply to section 368.7 what is the statute referring to?
- 3) Is it appropriate to disregard the intent of the legislature in 368.6?
- 4) Is it not common sense that 368.7 cannot be a voluntary procedure if 100% of the residents did not consent to the annexation? Section 368.7 is labeled "**Voluntary** annexation of territory". How could use of this statute be used in an annexation procedure and still be consistent with 368.6?
- 5) Did the legislature include section 368.6 in front of 368.7 specifically to prevent the use of the 80/20 procedure as a defacto involuntary procedure?

I was unable to get any of the above questions answered by the City Council of Ankeny. They disregarded the petition and voted unanimously as a group.

Is it possible for me to discuss this matter with a person at the Iowa City Development Board? Are there any other government agencies I can contact with my concerns about the misapplication of the 80/20 voluntary annexation? I have a website ankenywatch.com which discusses the annexation.

Link to document on ankenywatch.com <http://ankenwatch.com/downloads/IowaCityDevelopmentBoard.pdf>

Looking forward to a reply

Scott Campbell

[scott@ankenywatch.com](mailto:scott@ankenywatch.com)

## Exhibit G

**Subject:** RE: A few questions with regards to the recent meeting for approval of annexation by the City of Ankeny.  
**From:** Matt Rasmussen <Matt.Rasmussen@IowaEDA.com>  
**Date:** 4/12/2023, 5:13 PM  
**To:** Scott <scott@ankenywatch.com>

Scott,

Ruling attached. I've highlighted the arguments made and the ruling made by the Judge.

There are no instructions for the appeal process per se. Appeal is covered in Iowa Code 368.22 and provides (among other things) that an appeal must be filed within 30 days of the filing of a decision.

I expect our decision to be filed as soon as tomorrow.

Regards,

Matt

MATT RASMUSSEN | Redevelopment Tax Credit Program Manager and City Development Board Administrator  
IOWA ECONOMIC DEVELOPMENT AUTHORITY  
1963 Bell Avenue, Suite 200 | Des Moines, Iowa  
50315  
+1 (515) 348-6196 | [matt.rasmussen@iowaeda.com](mailto:matt.rasmussen@iowaeda.com)

-----Original Message-----

From: Scott <[scott@ankenywatch.com](mailto:scott@ankenywatch.com)>  
Sent: Wednesday, April 12, 2023 4:00 PM  
To: Matt Rasmussen <[Matt.Rasmussen@IowaEDA.com](mailto:Matt.Rasmussen@IowaEDA.com)>  
Subject: A few questions with regards to the recent meeting for approval of annexation by the City of Ankeny.

1) Can you send me the court ruling that states a land owner is considered a resident for purposes of an annexation even if he/she does not live on the property and no home or domicile for said resident exists? This was discussed in the meeting and should not be privileged information.

2) Can you direct me to the instructions for the appeal process when an annexation is approved by the board? How much time is there for an appeal to be filed and when does this time start?

Scott Campbell

Attachments:

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P Hill Ruling.pdf

182 KB

**Exhibit H**  
**P Hill Ruling.pdf**

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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CONCERNED CITIZENS OF SOUTHEAST  
POLK SCHOOL DISTRICT and JESSMAN  
SMITH,

Petitioners,

v.

CITY DEVELOPMENT BOARD OF THE  
STATE OF IOWA,

Respondent,

And

CITY OF PLEASANT HILL, IOWA,

Intervener.

---

Case No. CVCV046875

**RULING RE: PETITION FOR JUDICIAL  
REVIEW OF AGENCY ACTION**

**Introduction**

Petitioners' Petition for Judicial Review was filed on December 31, 2013. The Court held a contested hearing on May 22, 2014. Petitioners were represented by Gary Dickey. Respondent was represented by Matthew Oetker. Intervener was represented by Bradley Skinner. Having reviewed the court file, certified record, applicable law, briefs, and being otherwise fully advised of the premises, the Court now **AFFIRMS** the agency decision of December 3, 2013.

**Background**

On September 25, 2013, the City of Pleasant Hill, Iowa, filed an Application for Voluntary Annexation with the City Development Board (the Board). C.R. Tab 1, p. 1. The application concerns four unincorporated parcels of land in Polk County, Iowa, that are within the urbanized area of the City of Altoona. *Id.*; C.R. Tab 18, p. 5. Since all of the landowners requested annexation, it was considered a 100% voluntary annexation. *Id.*; *City of Ashbury v.*

*Iowa City Dev. Bd.*, 723 N.W.2d 188, 194 (Iowa 2006) (“In a 100% voluntary annexation, all of the property owners in the territory request the adjoining city to annex their land.” (citing Iowa Code § 368.7(1)(a))). The Board held a public meeting on November 1, 2013, and accepted oral and written comment; however, it deferred final deliberation until a later date in order to consider additional materials submitted by the public. C.R. Tab 18, p. 5.

The Board reconvened on November 21, 2013, and unanimously voted to approve the annexation request. *Id.* at 13; C.R. Tab 17. On December 3, 2013, the Board completed the annexation process by filing its written decision with the Iowa Secretary of State and Polk County Recorder. C.R. Tab 18, p. 13. Petitioners now seek judicial review.

### **Standard of Review**

Iowa Code section 368.22 governs the standard of review for City Development Board decisions, and reads in pertinent part as follows:

A city, or a resident or property owner in the territory or city involved may appeal a decision of the board or a committee, or the legality of an election, to the district court of a county which contains a portion of any city or territory involved....The judicial review provisions of this section and chapter 17A shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of that agency action. 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.

“Substantial evidence means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)(1).

When reviewing a finding of fact for substantial evidence, we judge the finding in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it. Our review of the record is fairly intensive, and we do not simply rubber stamp the agency finding of fact.

Evidence is not insubstantial merely because different conclusions may be drawn from the evidence. To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder. Our task, therefore, is not to determine whether the evidence supports a different finding; rather, our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made.

*Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (internal citations and quotation marks omitted).

## **Discussion**

### **I. Procedural Issue**

Respondent and Intervener allude to standing arguments regarding Petitioners' use of "Concerned Citizens" as a party. *See* Resp. Br. 13; Int. Br. 2. Intervener argues "Citizens is neither a city, a resident, nor a property owner and Iowa Code Section 368.22(1)(a) does not provide it the right to appeal this decision." Int. Br. 2. However, Jessman Smith has been added as a party on behalf of Petitioners. Neither Respondent nor Intervener opposed the addition of Smith and Petitioners therefore have proper standing before the Court.

### **II. Petitioners' Arguments**

Petitioners first argue that "[b]ecause the city's voluntary annexation application was not entitled to presumption of validity [sic], the Board's decision must be reversed." Pet'rs' Br. 5. Petitioners argue that because the owners of the parcels in question were not all residents of the territory, they were afforded a presumption of validity to which they were not entitled. *Id.* at 5-6. They cite the language of Iowa Code section 368.6 to buttress this argument which states:

It is the intent of the general assembly to provide an annexation approval procedure which gives due consideration to the wishes of the residents of the territory to be annexed, and to the interests of the residents of all territories

affected by an annexation. The general assembly presumes that a voluntary annexation of a territory more closely reflects the wishes of the residents of territory to be annexed, and, therefore, intends that the annexation approval procedure include a presumption of validity for voluntary annexation approval.

Iowa Code § 368.6. Petitioners argue the language of this statute does not extend the presumption of validity to mere landowners, as opposed to residents, and as such the Board's approval was based on an illegal decision-making process. Pet'rs' Br. 5–7. Petitioners suggest this presumption resulted in the Board's failure to consider the public interest when approving the annexation. *Id.* at 3.

Respondent claims that because Petitioners failed to link their argument to any of the enumerated grounds set forth in Iowa Code section 368.22, it is outside the scope of appellate review. Resp. Br. 6. Although Petitioners did not specifically link their argument to the statute, it would follow that an illegal decision-making process would be “unreasonable.” *See* Iowa Code § 368.22 (listing an “unreasonable” decision as one of the grounds for appeal). Error preservation requires that the “issue be raised while one’s opponent still has an opportunity to respond to the issue”; it also mandates that the agency had “an opportunity to consider and rule on the issue.” *Soo Line R. Co. v. Iowa Dep’t of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994) (citations omitted). This argument was raised and considered at the agency level while Respondent still had an opportunity to respond and therefore is properly raised before the Court. *See* C.R. Tab 17, p. 4 (discussing whether the issue before the Board included “residents” in the territorial expansion district).

The Court finds Petitioners’ argument on the presumption of validity to be incorrect. Statutory interpretation supports the argument that the Board correctly applied the presumption of validity in this case. One of the “general rules of statutory construction” is that “[a]ll parts of the enactment should be considered together and undue importance should not be given to any single or isolated portion.” *City of Des Moines v. City Dev. Bd.*, 335 N.W.2d 449, 453 (Iowa Ct.



App. 1983). Petitioners have failed to consider Iowa Code section 368.6 in conjunction with section 368.7. Iowa Code section 368.7(1)(a) states territory may be voluntarily annexed by application of “*all the owners of land* in a territory adjoining a city.” (emphasis added). Iowa Code section 368.6 explains a voluntary annexation is presumed to reflect the wishes of the residents of the territory to be annexed and is therefore entitled to a presumption of validity. *See* Iowa Code § 368.6. Petitioners’ interpretation of the statutory language renders Iowa Code section 368.7(1)(a) meaningless. If Petitioners’ argument were correct, then a voluntary annexation could only be created by an application of all the residents of the land in question, instead of all the owners of land.

The interplay between Iowa Code sections 368.7(2) and 368.7(3) also weighs in favor of the statutory interpretation urged by Respondent and Intervener. It has been already established that the voluntary annexation application is presumed to represent the wishes of the residents of the territory being annexed. The other territory affected, due to having part of the annexation territory within its urbanized area, is Altoona. Altoona consented to annexation of the territory. C.R. Tab 1, p. 176–77. Since this is a voluntary annexation, Board approval would not have been necessary but for part of the territory being within Altoona’s urbanized area. *Compare* Iowa Code § 368.7(2) (showing Board approval is not needed for a voluntary annexation not within the urbanized area of another city), *with* Iowa Code § 368.7(3) (showing Board approval for a voluntary annexation is needed when concerning territory within the urbanized area of another city).

In other words, the reason this voluntary application was brought before the Board was in order to give due consideration to Altoona’s interests and to ensure the application would not create an island. *See City of Des Moines*, 335 N.W.2d at 453 (“Presumably, the intent of the Legislature in requiring approval by the Board of voluntary annexations within urbanized areas was to provide a check by an impartial body on competition between cities for certain



territories.”) (citation omitted); Iowa Code § 368.7(3) (“The board shall not approve an application which creates an island.”). The *City of Des Moines* case cited by Petitioners also stands for the proposition that the Board has the ability to take other practical considerations into account when deciding whether to approve an application. This was done. The board received and considered oral and written comments from the public and delayed its proceedings in order to consider the materials presented. *See supra* p. 2. There is no competition between cities for this territory, it will not result in the creation of an island, and the record establishes that public comments were heard and considered. The Board satisfied its duty of overseeing and approving orderly city development.

The *Pruss* footnote cited by Petitioners does not provide convincing evidence that the presumption of validity does not apply. *See Pruss v. Cedar Rapids/Hiawatha Annexation Special Local Comm.*, 687 N.W.2d 275, 282 n. 3 (Iowa 2004) (stating it is unclear whether the presumption of validity would apply to non-resident owners). The issue alluded to in the *Pruss* footnote was not discussed in the opinion and the issues actually discussed run counter to Petitioners’ argument. The *Pruss* court stated the petitioner’s argument “mistakenly equate[d] the legislature’s use of the “voluntary” and “involuntary” nomenclature as an immutable characterization of the consent or lack thereof of the residents....In truth, the terms are merely shorthand appellations used by the legislature to describe the *form* of the action, and do not necessarily reflect the wishes of all the residents of the land in question.” *Id.* at 282. Again, Petitioners’ interpretation of the statute would command approval from every resident in order for an annexation to be voluntary—something expressly rejected by the *Pruss* court. The *Pruss* court further explained it would not interpret the statute in a manner that “eviscerates the distinction between voluntary and involuntary annexations.” *Id.* at 283. In sum, it was not unreasonable for Respondent to find the 100% voluntary annexation was entitled to a presumption of validity.

Petitioners secondly argue that “because the Board deliberately refused to consider the effects of the city’s proposal to develop an industrial warehouse on the affected territories, its decision must be reversed.” Pet’rs’ Br. 7. Petitioners claim the Board abdicated its obligation to consider the public interest factors set forth in Iowa Code section 368.16 and 368.17. *Id.* Even so, Petitioners correctly note that Iowa Code sections 368.16 and 368.17 are “not specifically applicable to the voluntary annexation procedures.” *Id.* at 8. Had the Board considered the public interest factors, Petitioners argue the annexation likely would not have been approved. *Id.* at 10.

Petitioners’ arguments fail for several reasons. As Petitioners acknowledge at times, the statutes relied on in their argument do not specifically apply where, as here, the annexation is 100% voluntary. Committees are formed to consider proposals when involuntary petitions are not dismissed, or when two or more petitions for voluntary annexation are considered. *See* Iowa Code §§ 368.14, 368.14A. The statutes relied on by Petitioners mandate *that committees* consider certain factors when deciding whether to approve a proposal. *See* Iowa Code § 368.16 (“Subject to section 368.17, the *committee* shall approve....”) (emphasis added); Iowa Code § 368.17 (“The *committee* may not approve....”) (emphasis added). Petitioners are attempting to “eviscerate” the distinction between voluntary and involuntary annexations by requiring the Board to consider factors designated for committees. *See City of Des Moines v. City Dev. Bd. of State of Iowa*, 473 N.W.2d 197, 202 (Iowa 1991) (explaining the board is not the same as the committee and sections 368.16 and 368.17 are not specifically applicable to voluntary annexation procedures).

The *City of Des Moines* case cited by Petitioners explains that sections 368.16 and 368.17 may help guide the Board’s decision regarding a voluntary annexation to the extent that they provide insight regarding the legislative intent in creating the Board. *City of Des Moines*, 473 N.W.2d at 202. However, the *City of Des Moines* case this case involved competing annexation applications. *Id.* at 198. The court therein found the sections pertaining to involuntary

annexations to be helpful in gaining an “understanding of the general issues involved in annexation matters.” *Id.* at 202. The sections pertaining to involuntary annexations may help guide a board’s decision on voluntary annexation applications, more specifically competing applications, but are not mandated. *See id.* at 200–01 (explaining that it is unnecessary to apply the provisions of sections 368.16 and .17 to voluntary annexations and is contrary to the legislative scheme distinguishing between voluntary and involuntary annexations).<sup>1</sup> Petitioners’ framing of permissive considerations as mandatory is misguided and contrary to the *City of Des Moines* precedent. Public interests can be taken into account through the acceptance and consideration of public comments, as was done in this case. It does not have to come in the form of treating a voluntary annexation procedure as an involuntary one.

Petitioners thirdly argue that “because the city cannot provide necessary services to the affected territories, the Board’s decision must be reversed.” Pet’rs’ Br. 10. Petitioners argue Iowa Code section 368.17 prohibits Board approval for a voluntary annexation if “the city will not be able to provide the territory substantial municipal services not previously enjoyed by it.” *Id.* Again, Petitioners are seeking to apply involuntary annexation procedures to a voluntary annexation. Regardless of the inapplicability of Petitioners argument, substantial evidence in the record shows services will be provided to the annexed territory.<sup>2</sup> Since Petitioners’ argument regarding the provision of services does not apply to the facts at hand, Petitioners’ argument regarding the impropriety of using tax increment financing (TIF) for the services also fails. However, this argument would also fail on the merits. TIF bonds provide one possible way to

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<sup>1</sup> Petitioners have a habit of making misleading arguments that contradict their own authorities. For example, Petitioners argue the Board “abdicated its statutory obligation to consider the public interest factors set forth in section 368.16 and [3]68.17.” Pet’rs’ Br. 7. On the next page in Petitioners’ brief, they quote authority stating this “obligation” is not specifically applicable to voluntary annexations. *Id.* at 8.

<sup>2</sup> The territory will be provided with water, sanitary sewer, fire, EMS, and police services. C.R. Tab 12, p. 3–4. Buildings in the territory will be inspected by a certified building official. *Id.* at 8. The territory has an engineer to ensure the serviceability and viability of growth and development. *Id.* at 11. Infrastructure improvements and funding have begun. *Id.* at 12. The annexation is also consistent with the long term development plans of the area. C.R. Tab 18, p. 8.

finance the services; if this fails, it does not mean the city cannot provide services. In fact, Petitioners' brief discusses another possible means of financing the services. Pet'rs' Br. 11 (showing the City may issue general obligation bonds to finance the services).

Finally, Petitioners argue that the annexation request was made in bad faith and must be reversed. Pet'rs' Br. 12. This argument is again based on an inapplicable statute. *See id.* (citing Iowa Code 368.17(4)). Petitioners argue the sole motive for annexation is to increase revenues for the city and is therefore made in bad faith. *Id.* Even if this statute applied to the case at hand Petitioners argument would fail. To support their assertion Petitioners quote passages showing increased revenues was *a* motivation for annexation; this does nothing to prove it was the *sole* purpose. Voluntary application by the landowners in the area would be another obvious reason for annexation, which is likely one of the reasons why the statute cited by Petitioners in support of their argument applies to involuntary petitions and not cases such as this.

Petitioners' additional bad faith arguments are equally irrelevant. This case concerns an application for annexation of territory within an urbanized area of another city. This is governed by Iowa Code section 368.7(3), which does not make reference to bad faith. Iowa Code section 368.7(4) states an application cannot be approved if a preponderance of the evidence shows the application was filed in bad faith. However, this statute pertains to situations involving competing annexation petitions and is inapplicable to the facts at hand. Petitioners' bad faith argument fails.

For all of the above reasons, the challenge by the Petitioners fails.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the decision of the City Development Board of the State of Iowa is **AFFIRMED IN ITS ENTIRETY**.

Dated this \_\_\_\_ day of July, 2014.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV046875  
**Case Title** CONCERNED CITIZENS ET AL V. CITY DEVELOPMENT BOARD

So Ordered

A handwritten signature in black ink, appearing to read "D. Stovall".

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Dennis J. Stovall, District Court Judge,  
Fifth Judicial District of Iowa

Electronically signed on 2014-07-11 14:45:38 page 10 of 10

**Exhibit J**  
**Petition District Court.pdf**

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p style="text-align: center;">SCOTT GLENN CAMPBELL,</p> <p style="text-align: center;">Plaintiff-Petitioners,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">CITY DEVELOPMENT BOARD OF THE STATE OF IOWA,</p> <p style="text-align: center;">Respondent,</p>	<p style="text-align: center;">Case No. _____</p> <p style="text-align: center;">PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION</p>
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COMES NOW the Plaintiff-Petitioner and petitions the Court to review the decision of the City Development Board with regards to the approval of an annexation proposal submitted by DRA Properties L.C.:

1. That on April 12, 2023 the board members of The City Development Board No. NC23-02 / Ankeny of Iowa improperly voted in favor of a so-called 80/20 annexation procedure defined under section 368.7. See exhibit A (City Development Board Decision) and exhibit B (map) for details of the annexation area. That the decision of the City Development Board was either partially or wholly based on the invalid assumption that DRA Properties L.C. a property owner within the area to be annexed was considered a resident for the purposes of section 368.6. Section 368.6 states:

368.6 Intent.

It is the intent of the general assembly to provide an annexation approval procedure which gives due consideration to the wishes of the residents of territory to be annexed, and to the interests of the residents of all territories affected by an annexation. The general assembly presumes that a voluntary annexation of territory **more closely reflects the wishes of the residents of territory to be annexed, and, therefore, intends that the annexation approval procedure include a presumption of validity for voluntary annexation approval.**

2. For the purposes of the argument with regards to determination of residency in section 368.6 the following are being acknowledged:

a. A property owner is not necessarily a resident but could be.



b. Any property owner of the area to be annexed has the right to initiate an annexation procedure whether said property owner is a resident or not as detailed in section 368.7 1. a.

c. We are not discussing whether or not land owners may apply for the issuance of a petition for annexation as detailed in section 368.7 1.a which is an application for annexation and is only one factor used in determining whether a so-called 80/20 annexation is a valid voluntary annexation. Section 368.7 1.a below:

**1. a. All of the owners of land in a territory adjoining a city may apply in writing to the council of the adjoining city requesting annexation of the territory.** Territory comprising railway right-of-way or territory comprising not more than twenty percent of the land area may be included in the application without the consent of the owner to avoid creating an island or to create more uniform boundaries. Public land may be included in the territory to be annexed. However, the area of the territory that is public land included without the written consent of the agency with jurisdiction over the public land shall not be used to determine the percentage of territory that is included with the consent of the owner and without the consent of the owner.

We are discussing the wishes of the residents as detailed in section 368.6. The wishes of the residents cannot be determined by a lack of consent with regards to section 368.7 1. a. and the wishes of the resident's are not the same as the desire of the petitioning land owner.

d. Dennis Albaugh is not a resident of the area to be annexed with regards to section 368.6. Residency in this section cannot be referring to residency in the state of Iowa since it would be an absurd presumption that the wishes of all of the citizens of Iowa are to be considered with regards to section 368.6. Dennis Albaugh appears to be a resident of Florida. Voting records show that Dennis Albaugh is a registered voter of Florida and is not registered to vote in Iowa. See exhibit C.

The City Development Board of Iowa was sent the signed petition exhibit D and another document (Annexation Improper Use City of Ankeny 2023.pdf) exhibit E before the public meeting. The following was stated in an email sent by the City Development Board Administrator. See exhibit F:

I will note that “if 100% of the residents did not consent to the annexation” it would be considered an involuntary annexation.

The City Board decided that DRA Properties L.C. could be considered a resident for the purposes of section 368.6. The board then decided it was appropriate to approve the annexation at least in part based on the assumption that a single resident's wishes was sufficient to provide a presumption of validity with regards to section 368.6 and that the use of section 368.7 Voluntary annexation of territory was valid. The City Development Board based its decision at least in part on a document sent by Matt Rasmussen administrator of the City Development Board via email (exhibit G) to Scott Campbell. CONCERNED CITIZENS OF SOUTHEAST POLK SCHOOL DISTRICT and JESSMAN SMITH v. CITY DEVELOPMENT BOARD OF THE STATE OF IOWA. Case No. CVCV046875 (See Exhibit H):

The Pruss footnote cited by Petitioners does not provide convincing evidence that the presumption of validity does not apply. See Pruss v. Cedar Rapids/Hiawatha Annexation Special Local Comm., 687 N.W.2d 275, 282 n. 3 (Iowa 2004) (**stating it is unclear whether the presumption of validity would apply to non-resident owners**). The issue alluded to in the Pruss footnote was not discussed in the opinion.

Pruss footnote from Pruss v. Cedar Rapids/Hiawatha Annexation Special Local Committee:

It is also unclear whether Pruss actually *resides* on the property in question, or simply owns it. It is unsettled whether the presumption of validity would apply to non-resident owners.

It has not been established whether or not a non-resident owner can be used with regards to the presumption of validity in section 368.6. The City Development Board made a decision based on criteria that has not been established in court and used the document (Case No. CVCV046875) as the basis to grant residency with regards to section 368.6 to Dennis Albaugh presumed owner of DRA Properties L.C.. There are additional reasons why Dennis Albaugh should not be considered a resident of the area to be annexed:

Dennis Albaugh maintains a residency in Florida at the following address 940 Cape Marco Dr UNIT 2506 Marco Island 34145. Dennis Albaugh maintains a domicile in the City of Ankeny at the following address 1180 NE 18th St, Ankeny, IA 50021, it is not located on the property to be annexed. There are no structures or buildings on the property that Dennis Albaugh purchased and is requesting to be annexed that can be resided in and Dennis Albaugh has never physically resided in the area to be annexed.

Administrative code with regards to involuntary annexation gives an example of the separation of property owner and resident. This is a procedure directly referring to the City Development Board:

Iowa Administrative Code  
Agency 263 - City Development Board  
Chapter 7 - VOLUNTARY ANNEXATION

Iowa Admin. Code r. 263-7.9 (8)

Following conversion of the application into an involuntary petition, the board shall order appointment of a special local committee to consider the application and all pending petitions for annexation of common territory, pursuant to Iowa Code section 368.14A. Committee appointments shall be made by resolution of the appropriate governing bodies within 45 days of issuance of the board's order. Each resolution shall state that the local representative selected is a qualified elector of the city or territory represented or, **if none of the qualified electors of the territory will accept the appointment or the territory has no resident qualified electors, that the representative owns property within the territory**. Copies of the resolutions shall be submitted to the board.

While Iowa Admin. Code r. 263-7.9 (8) does not directly reference the issues presented within this petition, the administrative code when making a decision with regards to chapter 368 clearly separates



a property owner from a resident. The code states “if none of the qualified electors of the territory will accept the appointment or the territory has no resident qualified electors, that the representative owns property within the territory”. A property owner is not considered a resident, presumably unless he lives on the property. The procedural rules of the administrative code with regards to chapter 368 indicates that a resident and a property owner are separate. There is no reason to believe that there is some sort of special condition whereby a property owner is a resident unless he lives on the property to be annexed.

From the Iowa Judicial Branch Glosario Legal:

Residence: **The place where a person actually lives.** A person can have more than one residence (for example, a house or apartment.) See “Domicile.”

From Merriam-Webster Dictionary Usage Notes: Using Citizen and Resident Legally

And, **obviously, *resident* is applicable to a person who is living in a "residence."** A **residence is any place where one actually lives**—a home, apartment, etc.—as distinguished from a domicile.

Again, a resident is defined as the place where a person actually lives. Dennis Albaugh (DRA Properties L.C) has never lived on the property to be annexed.

The Boards determination that Dennis Albaugh is a resident for purposes of section 368.6 was not established by court precedent in the Case No. CVCV046875 used by The City Development Board to establish validity. The traditional methods for establishment of residency have not been met. Iowa Admin. Code r. 263-7.8 differentiates between a property owner and a resident. Thus, if Dennis Albaugh cannot be established as a resident of the property to be annexed with regards to section 368.6 by admission of the City Development Board (See exhibit F) the procedure dictated in section 368.7 must be dismissed or converted to an involuntary procedure. All of the residents of the area to be annexed expressed their wishes **not to be annexed** in a petition submitted to the City Council of Ankeny and the City Development Board of Iowa before voting for approval of the annexation. See exhibit D for petition. Section 368.6 states “The general assembly presumes that a voluntary annexation of territory more closely reflects the wishes of the residents of territory to be annexed.” The title of section 368.7 is “Voluntary annexation of territory”. The annexation in this case is not even consistent with the title of the statute being used in the annexation process by the City of Ankeny since a majority of the residents living on the property to be annexed are not volunteering to be annexed. In fact 100% of the residents do not wish to be annexed.

If the City Development Board approves an annexation based on the wish of a single landowner, who is not a resident and overrides the wishes of all the residents living on the area to be annexed, it renders the utility of section 368.6 meaningless and irrational with regards to the wishes of the residents. In all cases the landowner petitioning for annexation under section 368.7 would be in favor of the annexation. In this case 100 percent of the residents living on on the property to be annexed did not volunteer for annexation. Under what set of conditions would the City Development Board consider

the wishes of the residents as directed in section 368.6? Chapter 368 makes no mention of a majority land owner's wishes being weighed more heavily than all the residents living on the land to be annexed with regards to section 368.6.

2. That the City Development Board improperly asserted that a presumption of validity with regards to section 368.6 had been met when a single property owner approved of the annexation. As previously argued Dennis Albaugh cannot be considered to be a resident of the area to be annexed. Making an assumption that Dennis Albaugh was a resident of the area to be annexed, he would be a small minority of the residents of the area to be annexed. In this case in which the City Development Board considers Dennis Albaugh to be a resident, the City Development board has disregarded the wishes of the majority of the residents living on the property to be annexed.

The section 368.7 procedure is a middle ground between a purely voluntary (all parties agree and City Development Board action is not required) and an involuntary procedure. Section 368.6 immediately precedes section 368.7 and is used to determine whether a valid voluntary annexation procedure can be initiated. It appears what the legislature intended was that the annexation would be considered voluntary, with regards to the section 368.7 procedure, when a majority of the residents agreed with the proposed annexation. Thus, the annexing city needs to convince a majority of the residents to agree to an annexation. This affords the residents of the area to be annexed some ability to negotiate terms with regards to the annexation and does not place all of the leverage with regards to negotiations in the hands of the city. The city could negotiate with all the residents, and a procedure as defined in section 368.7 can be used as long as a majority of the residents' wishes are met agreeing to a voluntary annexation and provided the remaining qualifications of section 368.7 are met. This should not significantly impede the growth of the urban area. Section 368.7 still remains a viable option for annexing authorities since they simply must get the consent of a majority of the residents to proceed. Thus, all forms of annexation remain viable options and the utility of all sections in chapter 368 are preserved. The determination of voluntary, based on a majority of residents, clarifies the differences between voluntary and involuntary annexations and removes any conflicts between section 368.6 and section 368.7.

If the City Development Board makes a decision based on the wish of a single resident or landowner, in this case the petitioner under section 368.7 1.a, overriding the wishes of a larger group of residents, it renders the utility of section 368.6 meaningless and irrational with the regards to the wishes of the residents. Chapter 368 makes no mention of a single resident or majority land owner's wishes being weighed more heavily than the other residents in the annexation process with regards to section 368.6.

It is clear section 368.6 shifts the burden of the presumption of validity on the party being annexed. In this case, proof was submitted via a signed petition (exhibit D) by the residents of the proposed voluntary annexation before votes approving the annexation by the City Council and the City Development Board of Iowa. With regards to the presumption of validity statement in section 368.6. Arguments that this applies to section 368.7 are valid. The procedural aspects of this statute must be adhered to meet the requirements of the so-called 80/20 annexation and achieve the claim of a valid voluntary annexation. This does not mean that the presumption of validity is met solely by following the procedures of section 368.7. The wishes of the residents with regards to annexation clearly extend beyond simple adherence to section 368.7. There is no mention in Iowa Code of the wishes of the residents being fulfilled solely by properly executing section 368.7. The legislative intent of section 368.6 must also be adhered to in order to achieve a presumption of validity. If the majority of residents wishes are reflected in the annexation procedure then the directives in section 368.6 would be met

assuming the City Council and/or the City Development Board is supplied with written documentation stating the wishes of the residents. It appears that if the residents do not submit proof of their wishes with regards to the annexation before the City Council or City Development Board votes, then it can be presumed that the annexing authority is submitting a valid annexation proposal. While the lack of consent by a resident as indicated on the annexation map (see exhibit B) does not imply or indicate that the residents' wishes are not being reflected, a signed petition stating the wishes of the residents not favoring annexation does. Thus, the City Council or City Development Board would no longer have grounds for presuming that a voluntary annexation procedure could be used if the petition stating the wishes of the residents to not be annexed is submitted before the City Council or City Development Board votes.

3. That the intent and meaning of section 368.6 should not be disregarded. That section 368.6 serves a viable function, otherwise the legislature would not have included it in chapter 368 immediately preceding section 368.7. When section 368.6 was added to chapter 368, it is presumed it had a function. It would not be appropriate to disregard section 368.6, justifying this disregard by some overreaching declaration that substantial compliance has been met or the method by which municipal corporate boundaries may be extended is to be liberally construed in favor of the public. Disregarding section 368.6 could not be considered to be substantial compliance with Iowa Code:

Davis v. State

When interpreting amendments, we will assume that the amendment sought to accomplish some purpose and was not a futile exercise. *Hanover Ins. Co. v. Alamo Motel*, 264 N.W.2d 774, 778 (Iowa 1978); *State v. One Certain Conveyance*, 211 N.W.2d 297, 299 (Iowa 1973).

4. That the City Development Board during the meeting of April 12, 2023 No. NC23-02 / Ankeny refused to site a precedent by a court of law whereby the wishes of the residents residing on the property to be annexed could be disregard and a voluntary procedure under section 368.7 could be approved ignoring the wishes of the residents. The board made a decision not based on determination of law and without proper knowledge of the specific conditions presented to it with regards to section 368.6.

5. That the Petitioner has exhausted all administrative remedies and has been aggrieved and adversely affected by the final agency action.

6. That the venue is based upon the provisions of Iowa Code § 17A.19(2) (2011). 17. That the relief prayed for herein is sought on one or more of the following grounds:

- a. In violation of properly raised constitutional or statutory provisions;
- b. In excess of the statutory authority of the agency; c.
- d. Made upon unlawful procedure;
- e. Affected by other error of law;

f. Unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole;

g. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

WHEREFORE, the Plaintiff-Petitioner prays that the District Court find as a matter of law:

7. That the court should not disregard section 368.6 applying undue weight to other statutes, disregarding the intent of section 368.6.

8. That section 368.7 1. a voluntary annexation of territory is a request to initiate annexation of the territory and is to be interpreted as referring to the annexation procedural process. That initiation of the annexation process is not to be interpreted as fulfilling the presumption of validity as detailed in section 368.7 and is not the same as the wishes of the residents in section 368.6.

9. That the determination of whether an annexation is voluntary or involuntary is not determined solely by the act of initiating a voluntary procedure under section section 368.7.

10. That the wishes of the property owner or owners in section 368.7 1.a cannot be used to determine the presumption of validity as outlined in section 368.6, overriding the wishes of the majority of residents and rendering section 368.6 meaningless.

11. That in the case in which 100% of the residents residing in the area to be annexed agree in writing that a voluntary annexation is not consistent with the wishes of the residents of the area to be annexed and if documentation is signed and submitted to the City Council and/or the City Development Board of Iowa before voting for approval of the annexation that the procedures of section 368.7 “Voluntary annexation of territory” shall not apply.

12. That the provisions of section 368.6 in no way consider the presumption of validity to be solely based upon the completion of the directives of section 368.7.

13. That a resident for purposes of section 368.6 be defined as a person who resides on the property to be annexed.

14. That the presumption of validity stated in section 368.6 is used to determine whether the annexation procedure is presumed a valid voluntary procedure for purposes of proceeding to section 368.7. That the the wishes of the majority of the residents being submitted prior to votes by both the City and the City Development Board of Iowa is used to determine the wishes of the residents, overriding any presumption by the City Council or City Development Board. That the rights of the residents of an area to be annexed be preserved in a manner consistent with section 368.6 such that a fair and reasoned annexation process can be achieved. That there is a determination that a majority of the residents, wishes be used in deciding whether an annexation is voluntary or involuntary, thus maintaining consistency with the legislative intent in section 368.6 to reflect the wishes of the residents.

15. That the City Development board made decisions based on improper or inaccurate interpretation of precedent and was unable to site precedent or statute to substantiate its decision. That its decision was inconsistent with the direction by the legislature with regards to rule 263 7.7(2):


Initial board review. The board shall review each request for approval of an application for voluntary annexation of territory within an urbanized area to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

The board finalized its decision and approved the annexation while disregarding the following:

- a) The board made an inaccurate or improper interpretation with regards to court decision CONCERNED CITIZENS OF SOUTHEAST POLK SCHOOL DISTRICT and JESSMAN SMITH v. CITY DEVELOPMENT BOARD OF THE STATE OF IOWA. Case No. CVCV046875 when determining residency of the property owner who submitted the annexation petition. This was used substantially or in part to justify the use of the so-called 80/20 voluntary annexation procedure detailed in section 368.7.
- b) The board could not site any court decision or code section justifying the disregarding of the wishes of 100% of the residents living on the property to be annexed with regards to section 368.6 during the public meeting. The board did not delay its proceedings in order to, both consider materials presented and supply precedent or statutes to justify its decision.

WHEREFORE, the Plaintiff-Petitioner prays:

That the District Court order the dismissal of the approval of the annexation by DRA Properties L.C. (See exhibit A) by the City Development Board No. NC23-02 / Ankeny and deny the use of the voluntary procedure under section 368.7 on the basis that the board violated the provisions of section 368.6 and/or misinterpreted section 368.7 and/or did not adhere to the requirements of rule 263 7.7(2)



/s/ Scott Campbell  
2480 N.E. 102<sup>nd</sup> Ave.  
Ankeny, Iowa 50021  
515-984-0655

Court rulings and decisions send to [scott@ankenywatch.com](mailto:scott@ankenywatch.com).

Original filed. Copies to:

Attorney Representing The City Development Board of Iowa

Eric Dirth  
Hoover State Office Building  
1305 E. Walnut St.  
Des Moines, IA 50319  
Polk County

City Development Board of Iowa

Dennis Plautz - Board chair  
Iowa Economic Development Authority  
1963 Bell Avenue, Suite 200  
Des Moines, Iowa 50315 USA

**IN THE DISTRICT COURT FOR POLK COUNTY**

<p>SCOTT GLENN CAMPBELL,</p> <p>Petitioner,</p> <p>v.</p> <p>CITY DEVELOPMENT BOARD OF THE STATE OF IOWA,</p> <p>Respondent.</p>	<p>CASE NO. CVCV065474 NC23-02</p> <p>RULING</p>
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Before the Court is an administrative appeal of the City Development Board’s action approving the City of Ankeny’s annexation application NC23-02. The appeal was filed May 3, 2023, by Scott Campbell, who is self-represented, and hearing on the matter took place September 15, 2023. Respondent City Development Board of the State of Iowa was represented at the hearing by Assistant Attorney General Eric Dirth. Scott Campbell and did not appear at the hearing nor did Campbell file any brief in the case. For the following reasons, the Court **AFFIRMS** the City Development Board’s decision and denies Campbell’s Petition for Judicial Review.

**STATEMENT OF THE CASE/STATEMENT OF THE FACTS**

The City of Ankeny (“City”) approved a resolution for a voluntary annexation of 77.75 acres, subject to City Development Board (“Board”) approval, at its City Council meeting on December 19, 2022. CDB 080–82. Of the 77.75 acres being annexed, 2.94 acres were publicly owned, 62.43 acres were owned by one property owner who consented to the annexation, and 12.38 acres were owned by nonconsenting property owners. CDB 046. Scott Campbell (“Campbell”) was one of the nonconsenting property owners. CDB 212.

On January 13, 2023, the City submitted the annexation application to the Board. CDB 046. On February 8, 2023, the Board reviewed the annexation proposal numbered NC23-02 and

determined the annexation was complete and properly filed and that a date for public hearing be scheduled. CDB 027–28.

On March 9, 2023, the Board issued a notice that a public hearing on the NC23-02 annexation would be held on April 12, 2023. CDB 035. The April 12, 2023 hearing took place with the City and Campbell participating. The Board found the City’s annexation application to substantially comply with Iowa law and be in the public interest. CDB 011. The Board voted to approve the City’s annexation application, including the land without the owners’ consent to avoid the creation of islands and make the boundaries of the City more uniform. CDB 008–12. Campbell appealed the decision.

### STANDARD OF REVIEW

Iowa Code section 368.22(2) governs the standard and scope of review for Board decisions, and reads in pertinent part as follows:

The judicial review provisions of this section and chapter 17A shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of that agency action. 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.

### CONCLUSIONS OF LAW

#### **Failure to File Brief and Appear at the Hearing**

In exercising its judicial review power, a district court acts in an appellate capacity. *Hill v. Fleetguard*, 705 N.W.2d 665 (Iowa 2005). It is a well-established rule of appellate procedure that “[t]he scope of appellate review is defined by the issues raised by the parties’ briefs.” *In re Dull’s Estate*, 303 N.W.2d 402, 407 (Iowa 1981); see *Penn Mut. Life Ins. Co. v. Doyen*, 233 N.W. 790, 791 (Iowa 1930) (refusing to consider appeal when “no list of errors relied upon for reversal [and] no brief points of law” were filed). Issues not raised in the appellate briefs are deemed waived or



abandoned. *Hubby v. State*, 331 N.W.2d 690, 694 (Iowa 1983). Thus, if the petitioning party fails to raise issues by not filing any brief, the reviewing court has nothing to consider. *Aluminum Co. of America v. Musal*, 622 N.W.2d 476, 479 (Iowa 2001).

Campbell failed to file a brief in this case and did not attend oral argument, so any issues raised in the petition are deemed waived or abandoned. As such, this Court has nothing to consider. Therefore, this case is dismissed.

### **Board's Decision Complied with Agency Rules**

In the alternative, the Court affirms the Board's decision on the merits. The NC23-02 annexation was an "80/20" voluntary annexation. CDB 010–11. An "80/20" voluntary annexation is where at least 80 percent of the landowners by land area approve of the annexation. Iowa Code § 368.7(1)(a). An 80/20 voluntary annexation is considered voluntary even though up to twenty percent of the area's landowners may not be "volunteering" to be annexed. *See Pruss v. Cedar Rapids/Hiawatha Annexation Special Loc. Comm.*, 687 N.W.2d 275, 284 (Iowa 2004) ("[T]he terms [voluntary and involuntary] are merely shorthand appellations used by the legislature to describe the form of the action.").

The process for an 80/20 voluntary annexation begins with "[a]ll the owners of land in a territory adjoining a city . . . apply[ing] in writing to the council . . . requesting annexation of the territory." Iowa Code § 368.7(1)(a). "Territory comprising not more than twenty percent of the land area may be included in the application without the consent of the owner to avoid creating an island or to create more uniform boundaries." *Id.* After council approval, the annexation application goes to the Board for review. Iowa Code § 368.7(1)(f); Iowa Admin. Code r. 263—7.8(3).

Once the annexation goes to the Board, the Board must first decide whether the application is complete and properly filed. Iowa Admin. Code r. 263—7.8(3). The Board then holds a hearing to determine whether to approve the annexation. Iowa Admin. Code r. 263—7.8(3)(c). The Board reviews whether the annexation serves the public interest and may consider a variety of factors to reach its decision. *Id.* The Board is prohibited from approving any annexation “which includes the property of nonconsenting owners unless the Board finds the land of the nonconsenting owners was included in order to (1) avoid creating an island, or (2) create more uniform boundaries.” *Id.*; Iowa Code § 368.7(1)(a). The Board’s decision is to be upheld if supported by substantial evidence. *See City of Des Moines v. City Dev. Bd.*, 473 N.W.2d 197, 200 (Iowa 1991) (“[I]t was shown by substantial evidence that [the city] will be able to provide [new] services and benefits . . . and that the annexation was in the public interest.”). Because 80/20 voluntary annexations include “territory comprising not more than twenty percent of the land area without consent of the property owners,” four members of the Board must vote to approve the annexation. Iowa Code §368.7(1)(f).

The Board complied with its legal requirements when reviewing and approving the annexation. The Board properly reviewed the territory to be annexed as an 80/20 voluntary annexation because 16.55% of the territory was owned by nonconsenting landowners. CDB 017. The Board notified all relevant parties and allowed the parties to present at the hearing. CDB 027, 035. The Board found the inclusion of nonconsenting territory was necessary to avoid the creation of islands and to provide more uniform boundaries. CDB 010. The Board then determined the annexation was in the public interest and approved the annexation by unanimous vote. CDB 011.

### **Board Properly Applied a Presumption of Validity**

Campbell’s challenge to the Board’s use of a presumption of validity for this voluntary annexation is without merit. Campbell fails to consider Iowa Code section 368.6 in conjunction

with section 368.7. A fundamental canon of statutory construction is that “[a]ll parts of the enactment should be considered together and undue importance should not be given to any single or isolated portion.” *City of Des Moines v. City Dev. Bd.*, 335 N.W.2d 449, 453 (Iowa Ct. App. 1983). Iowa Code section 368.7(1)(a) states territory may be voluntarily annexed by application of “*all the owners of land* in a territory adjoining a city.” (emphasis added). Iowa Code section 368.6 explains a voluntary annexation is presumed to reflect the wishes of the residents of the territory to be annexed and is therefore entitled to a presumption of validity. See Iowa Code § 368.6. Campbell’s interpretation of the statutory language renders Iowa Code section 368.7(1)(a) meaningless.

When read together, the text in section 368.6 and 368.7 provides for a presumption of validity for all voluntary annexations, even those circumstances where some resident property owners who have not consented to the annexation are included. *See City of Asbury v. City Dev. Board*, 723 N.W.2d 188, 194 (Iowa 2006) (“applications for voluntary annexation are expressly afforded a presumption of validity.”); *Concerned Citizens of Se. Polk Sch. Dist. v. City Dev. Bd.*, Case No. CVCV046875 p. 4 (Iowa Dist. Ct. Polk Cty, July 11, 2014) *appeal dismissed*, 872 N.W.2d 399 (Iowa 2015) (finding that the presumption of validity did apply even though not all the owners of the parcels were residents of the territory being annexed). While the legislature showed interest in the wishes of residents, the legislature also directed the Board to apply a presumption of validity toward all voluntary annexation approvals as laid out in section 368.7.

Even if the Court determined the presumption of validity did not apply here, the Board’s decision was still supported by substantial evidence. More than 80% of the landowners by area requested the City annex their property. CDB 046. The City presented to the Board that the proposed annexation was in accordance with the City’s Comprehensive Plan. CDB 049. The City

showed the immediate fiscal and physical capability of extending substantial municipal services to the annexation territory. CDB 053–56. The City also articulated a compelling need for the developable land. CDB 051. A reasonable mind could conclude the annexation was in the public interest based on the evidence presented, so the Board’s decision is to be upheld. *See City of Des Moines*, 473 N.W.2d at 200 “[I]t was shown by substantial evidence that [the city] will be able to provide [new] services and benefits . . . and that the annexation was in the public interest.”).

**IT IS THEREFORE ORDERED, ADJUGED AND DECREED** that the decision of the City Development Board of the State of Iowa is **AFFIRMED IN ITS ENTIRETY**.



State of Iowa Courts

**Case Number**  
CVCV065474

**Case Title**  
SCOTT G CAMPBELL VS CITY DEVELOPMENT BOARD OF  
STATE OF IOWA  
**Type:** ORDER FOR JUDGMENT

So Ordered

A handwritten signature in black ink, appearing to read "Paul D. Scott".

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Paul D. Scott, District Court Judge,  
Fifth Judicial District of Iowa

Electronically signed on 2023-09-18 09:47:24

IN THE IOWA DISTRICT COURT  
FOR Polk COUNTY

SCOTT GLENN CAMPBELL,

Petitioner,  
v.

CASE NO. CVCV065474  
NC23-02

CITY DEVELOPMENT BOARD OF THE STATE OF IOWA,

**NOTICE OF APPEAL**

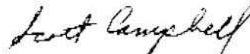
Respondent.

To: The clerk of the district court for Polk County, the clerk of the supreme court and  
ERIC DIRTH PIN:AT0013752 Attorney for Appellee CITY DEVELOPMENT BOARD OF THE STATE OF IOWA

*(insert names of unrepresented parties and attorneys of record).*

Notice is given that Scott Glenn Campbell *(insert the names of the parties who are taking the appeal)* appeal(s) to the Supreme Court of Iowa from the final order entered in this case on the 18th day of September, 20 23, and from all adverse rulings and orders inhering therein.

Dated this 9th day of October, 20 23.



*(signature of appellant or appellant's attorney)  
Name, address, telephone number, fax number, and  
e-mail address of appellant or appellant's attorney.*

/s/ Scott Campbell  
2480 NE 102nd Ave.  
Ankeny, IA 50021  
515-984-0655  
scott@ankenywatch.com

**CERTIFICATE OF SERVICE**

The undersigned certifies a copy of this notice was served via EDMS on the 9th day of October, 2023 under compliance with rules of of Appellate Procedure to ERIC DIRTH PIN:AT0013752 attorney for Appellee CITY DEVELOPMENT BOARD OF THE STATE OF IOWA and the Supreme Court.

 /s/ Scott Campbell

*(signature of person making service)*



State of Iowa Courts

**Type:** CERTIFIED NOTICE OF APPEAL

**Case Number**      **Case Title**  
CVCV065474      SCOTT G CAMPBELL VS CITY DEVELOPMENT BOARD OF  
STATE OF IOWA

So Ordered

*Cindi Richey*

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Cindi Richey, Clerk of Court Designee,  
Polk County Iowa

Electronically signed on 2023-10-11 08:14:05 page 2 of 2



IN THE SUPREME COURT OF IOWA

SCOTT CAMPBELL,  
*Plaintiff/Appellant,*  
v.

CITY DEVELOPMENT BOARD OF  
THE STATE OF IOWA,

ERIC DIRTH PIN:AT0013752,,  
*Defendants/Appellees.*

CASE NO. CVCV065474  
NC23-02

**COMBINED CERTIFICATE**

COME NOW the Plaintiff/Appellant, Scott Campbell, and for his Combined Certificate, states as follows:

1. A Notice of Appeal was filed in the Polk County District Court on October 9, 2023 from the Ruling on Motions for Summary Judgment filed on September 19, 2023.

2. Appellant has not ordered a transcript pursuant to Iowa Rules of Appellate Procedure 6.804(2), there were no oral arguments or recordings to be transcribed.. No arrangements have been made or suggested to delay the preparation thereof. No payments will be made since no transcript is being requested.

3. I will not prepare a statement of the evidence or proceedings pursuant to Iowa R. App. P. 6.806.

4. Iowa Rules of Appellate Procedure 6.303(2), 6.803(3) and/or 6.902(1) do not apply to this case.

5. I assert in good faith that this appeal meets jurisdictional requirements and is from a final judgment, order or decree and a timely notice of appeal has been filed.

6. The names of the parties involved in this appeal and their designations in district court are shown below under Column A. Their respective attorneys' names, law firms, addresses and telephone numbers are shown below under

<u>Column A</u> Parties	<u>Column B</u> Attorney
Appellant:  Scott Campbell 2480 NE 102nd Ave. Ankeny, IA 50021 515-984-0655 Email: <a href="mailto:scott@ankenywatch.com">scott@ankenywatch.com</a>	None

<u>Column A</u>	<u>Column B</u>
Parties Appellee:  City Development Board of the State of Iowa 1963 Bell Ave, Des Moines, IA 50315	Attorney  Eric Dirth PIN:AT0013752 Hoover State Office Building 1305 East Walnut St. Des Moines, IA 50319

The undersigned certifies a copy of this notice was served via EDMS on the 16th day of October, 2023 under compliance with the rules of Appellate Procedure to ERIC DIRTH PIN:AT0013752 attorney for Appellee CITY DEVELOPMENT BOARD OF THE STATE OF IOWA and the Supreme Court.

/s/ Scott Glenn Campbell  
Scott Glenn Campbell  
2480 NE 102nd Ave.  
Ankeny, IA 50021  
515-984-0655  
Email: [scott@ankenywatch.com](mailto:scott@ankenywatch.com)  
APPELLANT



Administrative Code Rule 263 7.7(2):

Initial board review. The board shall review each request for approval of an application for voluntary annexation of territory within an urbanized area to determine compliance with the requirements of Iowa Code chapter 368 rules.