

IN THE COURT OF APPEALS OF IOWA

No. 9-933 / 09-0511
Filed February 10, 2010

**HOLIDAY LAKE OWNERS'
ASSOCIATION, INC.,**
Plaintiff-Appellee,

vs.

**POWESHIEK COUNTY BOARD
OF SUPERVISORS,**
Defendant-Appellant.

Appeal from the Iowa District Court for Poweshiek County, Joel D. Yates,
Judge.

The Poweshiek County Board of Supervisors appeals from a district court order sustaining plaintiff's petition for writ of certiorari, annulling the Board's decision to reject plaintiff's petition for the establishment of a rural improvement zone, and directing the Board to establish the zone based on the evidence presented. **AFFIRMED AS MODIFIED AND REMANDED.**

Michael W. Mahaffey, County Attorney, for appellant.

Dennis F. Chalupa of Brierly Charnetski, L.L.P., Newton, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

POTTERFIELD, J.

The Poweshiek County Board of Supervisors (Board) appeals from a district court order sustaining Holiday Lake Owners' Association's petition for writ of certiorari, annulling the Board's decision to reject the petition for the establishment of a rural improvement zone, and directing the Board to establish the zone based on the evidence presented.

I. Background Facts.

Holiday Lake Owners' Association (Holiday) filed a petition for a public hearing concerning the establishment of a proposed rural improvement zone pursuant to Iowa Code sections 357H.1, .2 (2007). A hearing was held and Holiday presented evidence that the area surrounding the lake was in need of improvement.

The Board "unanimously voted to disallow the petition to establish the rural improvement zone at Holiday Lake." In rejecting the petition, the Board did not make any finding that the area was not in need of improvement. The Board noted concerns voiced by the local school district that establishing the rural improvement zone would have a negative impact on school funding. The Board also opined that "the increase of lot and maintenance fees would be the fairest way to finance the needed improvements at Holiday Lake."

Holiday filed a petition for certiorari with the district court. In granting Holiday's certiorari petition, the district court concluded:

[T]he Board had two alternatives after the public hearing on December 22, 2008. First, the Board could conclude that improvements were necessary, and then the Board would be obligated to grant the petition establishing the area as a rural improvement zone. In the alternative, the Board could also make a

finding that improvements were not necessary based on the evidence presented and then reject the establishment of the rural improvement zone.

. . . [T]he Board failed to consider the strong evidence presented to them of the need for improvements. Essentially no evidence was presented that improvements were not necessary. The Board based [its] decision on matters not relevant to Chapter 357H.

The district court annulled the Board's decision and directed it "to establish the rural improvement zone based on the evidence presented to the Board."

The Board now appeals.

II. Scope and Standard of Review.

A writ of certiorari shall be granted when a "board or officer, exercising judicial functions, is alleged to have exceeded proper jurisdiction or otherwise acted illegally." Iowa R. Civ. P. 1.1401; *French v. Iowa Dist. Ct.*, 546 N.W.2d 911, 913 (Iowa 1996) ("Relief through certiorari is strictly limited to questions of jurisdiction or illegality of the challenged acts."). Our review of the judgment entered by the district court in a certiorari proceeding is governed by the rules applicable to appeals in ordinary actions. Iowa R. Civ. P. 1.1412; *Geisler v. City Council*, 769 N.W.2d 162, 165 (Iowa 2009). We review a decision on a petition for writ of certiorari for correction of errors at law. *State Public Defender v. Iowa Dist. Ct.*, 728 N.W.2d 817, 819 (Iowa 2007).

III. Discussion.

"In interpreting statutes, our ultimate goal is to determine legislative intent." *City of West Branch v. Miller*, 546 N.W.2d 598, 602 (Iowa 1996). When the language of a statute is plain and its meaning is clear, we look no further than the statute's express terms and do not resort to rules of construction. *Id.*

Iowa Code section 357H.1 provides:

The board of supervisors of a county with less than twenty thousand residents . . . and with a private lake development *shall designate* an area surrounding the lake . . . a rural improvement zone *upon receipt of a petition* pursuant to section 357H.2, *and upon the board's determination that the area is in need of improvements.*

(Emphasis added.)

Section 357H.2 states that upon filing of a proper petition,¹ “[t]he board shall . . . hold a public hearing concerning the establishment of a proposed zone.” The hearing is to be held within thirty days. Iowa Code § 357H.3. At the hearing the board “may consider the boundaries,” and under certain circumstances adjust them, but the statute provides no other factor for consideration beyond the need of improvements. *Cf. Petersen v. Harrison County Bd. of Supervisors*, 580 N.W.2d 790, 794-95 (Iowa 1998) (finding the language of section 352.7(2) grants the board discretion to weigh the competing interests when making a decision concerning a proposed agricultural area; provision reads, in part “the board shall adopt the proposal or any modification of the proposal it deems appropriate, unless to do so would be inconsistent with the purposes of this chapter”).

The Board argues that the language in section 357H.4—“[w]ithin ten days after the hearing, the board shall establish the rural improvement zone by resolution or disallow the petition”—grants it discretion to disallow the petition for reasons unrelated to chapter 357H. We disagree. The statute is not ambiguous.

“[U]pon receipt of a petition” and “the board’s determination that the area is in need of improvements,” the board shall designate the area a rural

¹ The adequacy of the petition is not at issue.

improvement zone. Iowa Code § 357H.1. The term “shall” imposes a duty. *Id.* § 4.1(30)(a). Under the statute, the board’s determination is limited to whether “the area is in need of improvements.” *Id.* § 357H.1(1).²

We agree with the district court that the Board acted illegally when it declined to establish a rural improvement zone on grounds not specified by the statute. However, Iowa Rule of Civil Procedure 1.1411 provides:

Unless otherwise provided by statute, the judgment on certiorari shall be limited to annulling the writ or to sustaining it, in whole or in part, to the extent the proceedings below were illegal or in excess of jurisdiction. The judgment shall prescribe the manner in which either party may proceed, and *shall not substitute a different or amended decree or order for that being reviewed.*

(Emphasis added.) We find the district court should not have substituted its judgment for the Board, but should have directed the Board to proceed to consider the petition using the statutory factor. We therefore affirm and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

AFFIRMED AS MODIFIED AND REMANDED.

² “Improvements” are defined in section 357H.1(2) and “means dredging, installation of erosion control measures, land acquisition, and related improvements, including soil conservation practices”