IOWA STATE BOARD
OF EDUCATION
(Cite as 8 D.o.E. App. Dec. 189)

In re Vernon and Deva Long	:	
Vernon and Deva Long, Appellants,	:	
v.	:	DECISION
East Union Community School District, Appellee.	:	[Admin. Doc. #3077]

The above-captioned matter was heard on November 28, 1990, before a hearing panel comprising David H. Bechtel, special assistant to the director and designated presiding officer; Dr. Mavis E. Kelley, special assistant to the director; and Mr. Richard Boyer, chief, Bureau of School Administration and Accreditation. Appellants Vernon and Deva Long were present in person, unrepresented by counsel. Appellee East Union Community School District [hereafter the District] was present in the person of Superintendent Gary Cowell, and was represented by Ms. Sue L. Seitz of Belin Harris Helmick Tesdell Lamson Blackledge McCormick PC, Des Moines.

An evidentiary hearing was held following departmental procedures found at 281 Iowa Administrative Code 6. Appellants sought reversal of a decision of the District board of directors [hereafter the Board] made at a special meeting held on October 15, 1990, denying Appellants' request to exchange parcels of land between the District and the Creston Community School District. Authority for the hearing is found in Iowa Code chapter 290.

I.
Findings of Fact

The presiding officer finds that he and the State Board of Education have jurisdiction over the parties and subject matter of this appeal.

Appellants Vernon and Deva Long reside in the District and are the parents of two school-aged children, both of whom attend school in Creston (one under open enrollment and the other as a tuition student).[1] Appellee's Exhibit 3 at p. 21. Appellants own land in both the Creston and East Union school districts, but the family residence is on the property in the (East Union) District. The assessed valuation of the two parcels of land, or parts thereof proposed for the exchange, is allegedly comparable. Appellee's Exhibits 2, 3 (p. 3), and 5 (statements of Appellants).

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[1] The required tuition payment for non-resident children is being offset by the amount of school tax Appellants pay on the property they own in Creston. See Iowa Code §282.2 (1989).

The Creston property proposed for exchange is on the Creston-East Union school district boundary line. The East Union property proposed for exchange is a strip of land contiguous to the Creston district on only approximately 120 feet or 240 feet, the narrow end of a long, narrow plot.[2] The properties abut, but do not coincide, across school district boundary lines.

Last summer Vernon Long contacted Superintendent Gary Cowell in the District inquiring about the possibility of swapping land Appellants own in Creston for land they also own in the District. The superintendent sent Mr. Long a copy of Iowa Code chapter 274. Thereafter, in September Appellants made a written request to the Board[3] for approval of the exchange. Appellee's Exhibit 2. The issue was placed on the agenda of the September 17 regular meeting of the Board, but no action was taken at that time, except to delay a decision until further information was received by the Board. Appellee's Exhibit 4.

Superintendent Cowell wrote to Appellants on September 24 informing them of the nature of the Board's concerns, specifically, the legality of the exchange ("since it would cause lands in both districts not to be contiguous"), the reason for the request, and whether Appellants would be willing to pay the legal fees associated with recording the exchange. Appellee's Exhibit 9 at p. 2. Superintendent Cowell's letter also indicated that Creston Superintendent Paul Grumley was at that time of the opinion that the exchange would not be legal because the lands to be exchanged were not contiguous.[4] Id.

On October 15, the Creston Community School District board of directors nevertheless approved the exchange, leaving the fate of Appellants' request in the hands of the District Board. Superintendent Cowell recommended that the District Board deny the request for any or all of three reasons:

> 1. Should the Longs sell their [District] property in the future, a family with children might move onto the property. This could increase our enrollment as well as affect us financially. Trading property with a dwelling for property without [a family dwelling] eliminates possible future district growth.

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[2] Appellants proposed two alternatives to the Board. One included less than half of the property in the District, hence the 120 feet figure. The other proposal involved a broader and longer portion of the property. See Appellee's Exhibits 5, 6, 7, 8, 10 (p. 2).

[3] Appellants' letter following up their request dated September 17 (Appellee's Exhibit 5), incorrectly identified one section of land in the legal description. The error was corrected in a letter from Appellants dated September 26, 1990. Appellee's Exhibit 10, p. 2.

[4] For the exchange of land to take place, Iowa law requires approval of both boards of directors.

2. It is to the district's advantage not to increase irregular boundary lines. There are many problems associated with such configurations.

3. Once a board sets a precedent of exchanging lands, future requests would, in most instances, have to be granted.

Appellee's Exhibit 12 at p. 2. Superintendent Cowell informed Appellants that the Board would make a decision on the matter at a special meeting on October 15. At that meeting, Appellants' request was denied unanimously. Appellants filed timely notice of appeal on October 29, and this hearing followed.

II.
Conclusions of Law

Iowa law provides for a mechanism for school districts to alter their boundaries. That provision reads, in pertinent part, as follows:

> The boundary lines of contiguous school corporations may be changed by the concurrent action of the respective boards of directors at their regular meetings in July, or at special meetings called for that purpose. Such concurrent action shall be subject to the approval of the area education agency board but such concurrent action shall stand approved if the said board does not disapprove such concurrent action within thirty days following receipt of notice thereof. The corporation from which territory is detached shall, after the change, contain not less than four government sections of land.

Iowa Code §274.37 (1989). As is clear from the statute, the action sought by Appellants of the Board is authorized; Creston and East Union are contiguous school districts so they can agree to change their boundary lines. Moreover, Appellants' land parcels -- at least in one proposal -- are on the boundary lines of each district, even though the parcels are not themselves fully congruent. Thus no "corridors" would have to be created under that proposal.

Establishing that the request of Appellants in this case is legally authorized does not resolve the issue on appeal, however. The State Board does not sit as a "super school board" to substitute its judgment for the judgment of the local elected officials. In re Carl Raper, 7 D.o.E. App. Dec. 352, 355 (1990); In re Jerry Eaton, et al., 7 D.o.E. App. Dec. 137, 141 (1989). Our job on appeal is to determine whether the decision complained of was made "arbitrarily, capriciously, without basis in fact, . . . or constitutes an abuse of discretion." In re Jerry Eaton, supra, at 141.

In boundary change cases, the State Board has established that a denial by the local board will not be overturned "absent a compelling, overriding interest on the part of an individual school district patron." In re Kenneth Hoksbergen, 1 D.P.I. App. Dec. 86, 88 (1975). The State Board suggested that such "compelling reasons" would be exemplified by the creation of "man-made barriers, such as large reservoirs, . . . which significantly alter the position of patrons to the rest of the district" or other equally unique circumstances. Id.

In this case, the arguments put forth by the District in support of its decision are reasonable and cogent bases for denial of Appellants' request. The fact that the Creston board approved the exchange has little bearing on the case; that district stood to receive territory including a homestead residence in exchange for farm land. It is likely that other families will own the residential property in the future and may have children who would attend Creston schools. Creston's approval is imminently logical. However, that reasoning applies equally to support the District Board's denial: the future loss of children on the property, should Appellants sell the land with the house on it or bequeath it to their older children testamentarily.

Appellants cannot succeed by challenging the decision makers as arbitrary or capricious. The other grounds for reversal are equally ill met, in our opinion. Appellants offered no unique "compelling" reason for overturning the Board's reasoned and logical decision.

Appellant Vernon Long's stated motivation for seeking the boundary change appears to stem primarily from his desire to have his children eligible for transportation from their home to their attendance centers in Creston. As non-residents or open enrollment students, they are not eligible for transportation except from a designated stop inside the Creston district. He doesn't want his children to drive to school. He also expressed a desire to be a responsible taxpaying citizen of the district in which his children attend school, and he would consider candidacy for school board in Creston. Appellant expressed his belief that he ought to have a "democratic right" to exchange the land. These reasons, while they may be reasonable and logical, do not rise to the level of "compelling" in our view.

There being no basis on which to reverse the District Board, the decision stands affirmed. Accord, In re Henderson and Reinking, 5 D.o.E. App. Dec. 39 (1986); In re Greg and Kathy Koether, 4 D.P.I. App. Dec. 282 (1986); In re Steve Pacha, 3 D.P.I. App. Dec. 31 (1982). Any motions or objections not previously ruled upon are hereby denied and overruled.

III.
Decision

For the foregoing reasons, the decision of the East Union Community School District board of directors made on October 15, 1990, denying

Appellants' request to exchange property with property in the Creston Community School District is hereby affirmed. Costs of this appeal, if any, exclusive of attorneys fees, are assigned to Appellants under Iowa Code section 290.4. Appeal dismissed.

1-14-91
DATE

RON McGAUVRAN, PRESIDENT
STATE BOARD OF EDUCATION

2/7/91
DATE

DAVID H. BECHTEL, SPECIAL ASSISTANT
TO THE DIRECTOR
AND PRESIDING OFFICER