COURT OF APPEALS
DECISION
DATED AND RELEASED

AUGUST 6, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0316-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

KAUKAUNA AREA SCHOOL DISTRICT,

Petitioner-Appellant,

v.

STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, SCHOOL DISTRICT BOUNDARY APPEAL BOARD, AGNES SCHUMACHER and LITTLE CHUTE SCHOOL DISTRICT,

Respondents-Respondents.

APPEAL from an order and a judgment of the circuit court for Outagamie County: DENNIS C. LUEBKE, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. The Kaukauna Area School District appeals a trial court order and judgment that upheld a decision of the School District

Boundary Appeal Board.[1] The appeal board approved a transfer of an unoccupied seventeen acre parcel from the Kaukauna school district to the Little Chute school district. The parcel's owners intend to develop the parcel by dividing it into separate residential lots. The appeal board sanctioned the redistricting on the ground that the Little Chute schools were significantly closer to the parcel than the Kaukauna schools. The board accepted the owner's position that the transfer would benefit future students by shortening their travel times and by possibly eliminating the need for bussing.

A trial court properly upholds the board's decision as long as it was not arbitrary and capricious. ***City of Beloit v. State Appeal Bd.***, 103 Wis.2d 661, 663, 309 N.W.2d 392, 393 (Ct. App. 1981). The Kaukauna district raises several arguments on appeal: (1) the board lacked jurisdiction to transfer an unoccupied parcel; (2) the board's reliance on comparative school distances was arbitrary and capricious; (3) the board wrongly considered the effect redistricting could have on the transferred parcel's value; and (4) the board could have had no legitimate basis for approving this parcel's transfer while having earlier disapproved an adjacent's parcel's transfer. We reject these arguments and affirm the trial court's order and judgment.

The appeal board had jurisdiction to hear the appeal, despite the parcel's lack of student occupants. The board's jurisdiction is statutory. *See* ***Beloit***, 103 Wis.2d 665-66, 309 N.W.2d at 395-96. It does not require that children currently occupy a parcel. The statute contains no such jurisdictional restriction. *See* § 117.15, STATS. Rather, the board's jurisdiction requires the proper subject matter, a school district decision on the subject matter, and a timely appeal by one of the parties under ch. 117. In other words, the board may hear appeals concerning any parcel within either of the school districts involved, regardless of whether students currently occupy it. Although § 117.15 requires the board to make such decisions on students' educational welfare, the board may base its decisions not only on the educational welfare of a parcel's present students, but also on that of a parcel's future students.

The board's decision was not arbitrary and capricious. It rested on a rational basis. *See* ***Beloit***, 103 Wis.2d at 667, 309 N.W.2d at 396. The board

[1] This is an expedited appeal under RULE 809.17, STATS.

approved the redistricting on the basis of comparative school distances. The Little Chute schools were significantly closer to the parcel than the Kaukauna schools. One such school was within sight of the parcel. This was a rational basis for the board's decision. Reduced student travel times always supply a relevant basis for redistricting. *See* § 117.15(1), STATS. Here, the differences in distances were sufficiently compelling to permit redistricting. Further, the board could easily evaluate such matters from the parcel's and respective schools' locations, regardless of the parcel's current lack of occupants. In sum, the board could reasonably conclude that the redistricting promoted future students' best educational interests.

The board was also free to consider the effect the redistricting would have on the value of the parcel. Although the statutes do not require the board to consider such a factor, the board retains the freedom to base its decision on all relevant matters, which the statute describes as "other appropriate factors." *See* § 117.15, STATS. The board was making a partly legislative determination and was thereby free to consider any information that it might consider relevant, *see* ***Joint Sch. Dist. No. 2 v. State Appeal Board***, 83 Wis.2d 711, 725-26, 266 N.W.2d 374, 381 (1978), provided the board considered all information in conjunction with the students' educational welfare. If property values will likely rise as a result of reducing future students' travel times, the statutes do not bar the board from weighing such collateral consequences. The board has the freedom, but not the duty, to grant redistricting after considering such concerns, provided that it considers such matters in a nonarbitrary manner. In sum, this is no basis for challenging the board's decision.

Last, the board had no obligation to adhere to a decision it made in an earlier proceeding involving an adjacent parcel. The board's decision involves a winnowing and sifting of the facts the parties have placed in the record. *See* ***Joint School Dist.***, 83 Wis.2d at 720, 266 N.W.2d at 378. Each property owner has the right to make his own case for redistricting; each case stands on its own merits and its own facts. The fact that the property owner in the prior case did not or could not make a satisfactory case for his parcel's detachment has no bearing on the strength of the case made before the board this time. As a result, the board's arguably contradictory decision rejecting an adjacent parcel's transfer in ***Vanden Heuvel v. Little Chute Area School Dist.***, No. 95-1431-FT, slip op. (Wis. Ct. App. Nov. 21, 1995), does not make its current decision arbitrary, irrational, or unreasonable. Further, if the adjacent parcel's

owners believe that the board's views on the matter's quasi-legislative aspects have now evolved in a new direction, those owners have the freedom to re-petition the respective school districts and the board itself for redistricting.

By the Court.—Order and judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.