

11-21-2007

# Black Labrador Investing v. Kuna City Council Appellant's Brief Dckt. 34513

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IN THE SUPREME COURT OF THE STATE OF IDAHO

BLACK LABRADOR INVESTING, LLC,

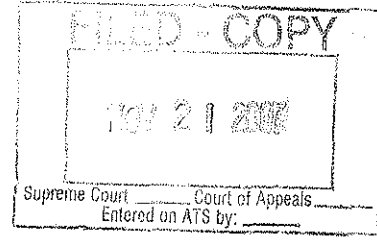
Petitioner-Respondent,

vs.

KUNA CITY COUNCIL and the CITY OF  
KUNA, IDAHO, a political subdivision of  
The State of Idaho,

Respondents-Appellants.

Docket No. 34513



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APPELLANTS' BRIEF

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Appeal from a Memorandum Decision and Orders granting relief on a Petition for Judicial  
Review in the District Court of the Fourth Judicial District for Ada County.

Honorable D. Duff McKee, District Judge presiding.

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## STATEMENT OF THE CASE

This case is an appeal from a Memorandum Decision and Orders entered by a district judge in favor of a petitioner on a petition for judicial review, challenging decisions by the Kuna City Council ("Council" hereafter) at a regularly scheduled meeting on December 5, 2006. In this case Petitioner had applied for (1) annexation of a parcel of ground in Ada County lying contiguous to land within the boundaries of the City of Kuna, (2) a zoning designation for the parcel under Kuna's zoning classifications, and (3) a split of the parcel into three separate lots.

Petitioner requested these things and proposed a development agreement that would further describe and/or limit the proposed development. These applications were reviewed by the City's Planning and Zoning staff and a public hearing was properly noticed before the Kuna Planning and Zoning Commission ("Commission" hereafter). That hearing was held on October 24, 2006. From the report prepared by the City staff and the recommendation made by the Commission, it is clear that neither entity opposed Petitioner's requests.

The applications were then scheduled for another public hearing before the Council. This hearing was initially scheduled for November 21, 2006 and then rescheduled for December 5, 2006. At the meeting on November 21 the City's Planning and Zoning Director ("Director" hereafter) addressed an issue with the Council that was generating significant interest from developers, including Petitioner. That issue was whether the Council would support development inside the City using septic systems for wastewater treatment rather than the City's wastewater collection and treatment system. Based on discussions from the November 21

meeting and the December 5 public hearing, the Council denied Petitioner's request for annexation.

Petitioner timely sought judicial review of this denial. The issues were briefed and argued before the Honorable D. Duff McKee, District Judge, on June 6, 2007 at the Ada County Courthouse and a Memorandum Decision was filed on July 11, 2007. In his Decision, Judge McKee questioned the propriety and timing of the proceedings before the Council and ordered the Council's action vacated and directed the matter be returned to the Council to proceed again. It is from this Decision and a subsequent order requiring the City to pay Petitioner's costs that this appeal is taken.

#### ISSUES PRESENTED ON APPEAL

1. Whether the District Court erred in holding the annexation decision in this case subject to judicial review.
2. Whether the District Court erred in holding and applying a quasi-judicial standard of due process to the annexation decision in this case.

#### ARGUMENT

##### A. The Annexation Decision in this Case was not Subject to Judicial Review

Although briefed, the issue of whether the annexation decision was subject to judicial review is not directly addressed in the Court's Memorandum Decision. Review under the Local Land Use Planning Act ("LLUPA" hereafter), however, is limited to "final action[s] on. .

.permit[s] required or authorized under this chapter.” Idaho Code § 67-6521(b). A City’s ability to annex land is not required or authorized under the LLUPA. *Coeur D’Alene Industrial Park Property Owner’s Assoc. Inc. v. City of Coeur D’Alene*, 108 Idaho 843, 845, 702 P.2d 881, \_\_\_\_ (Ct. App. 1985). This authority is found in Idaho Code Section 50-222. The Administrative Procedures Act, Idaho Code Sections 67-5201 *et. seq.*, by itself, applies only to review of certain state boards, commissions, departments or officers. The City of Kuna does not fall within this definition.

In *Burt v. City of Idaho Falls*, 105 Idaho 65, 665 P.2d 1075 (1983), the Idaho Supreme Court addressed this same issue. For the majority, Chief Justice Donaldson wrote: “we hold that in the annexation of land, the subsequent amendment of the comprehensive plan and the zoning of the annexed land, the city acted in a legislative manner, and that such actions are not subject to direct judicial review” (citations omitted). *Id.* at 68. In that case, like in this case, a petition for judicial review was filed under the LLUPA. There appears to be no subsequent Idaho case authority that challenges Justice Donaldson’s conclusion.

In his Decision, Judge McKee distinguishes the *Burt* case from the case presented here in deciding whether the Council was acting in a legislative or quasi-judicial capacity to determine the appropriate level of due process, but he does not answer the question presented here. The question does, however, appear to be answered in Rule 84(a)(1) of the Idaho Rules of Civil Procedure, wherein we read: “Actions of state agencies or officers or actions of a local government, its officers or its units are not subject to judicial review unless expressly authorized by statute.” Turning to Idaho’s annexation statute, judicial review is expressly authorized for

category B and C annexations only. Idaho Code § 50-222(6). As this case was a category A annexation request, there is no express statutory authority for judicial review.

#### B. Annexation is a Legislative, not Quasi-Judicial Matter

In his Decision, Judge McKee has relied heavily on the case of *Cooper v. Board of Commissioners of Ada County*, 101 Idaho 407, 614 P.2d 947 (1980) in determining that the case at hand is a small annexation affecting only one property owner and is more akin to a quasi-judicial action than a legislative action. He then applies the higher due process standard of a quasi-judicial action to the Council's decision in this case and concludes that it does not meet the standard. There is one very significant difference, however, between this case and the one in *Cooper*. *Cooper* was a county rezone case, not a city annexation case. As counties do not annex land, there is no discussion anywhere in that decision about the appropriate standard for an annexation decision.

This standard is discussed in other cases. Annexation under Idaho law is a legislative act, not one that is considered quasi-judicial. "While it is true that city councils on occasion act in a quasi judicial capacity, annexation is not such an occasion." *Crane Creek Country Club v. City of Boise*, 121 Idaho 485, 487, 826 P.2d 446, \_\_\_\_ (1990). "Rather, annexation is a legislative act of city government accomplished by the enactment of an ordinance." *Id.* As such, the due process standards of a quasi-judicial action simply do not apply to annexation decisions.

Annexation is, and should always be, a legislative action rather than quasi-judicial. At its core, annexation is a decision whether to extend a city's legislative authority and that city's



municipal services to new areas. Actions under the LLUPA, on the other hand, are essentially the application of existing legislation to particular parcels of land and are appropriately termed quasi-judicial actions. The fact that a city may apply a municipal zoning designation at the same time a property is annexed does not change the nature of the annexation. In that circumstance, there would be both a legislative action, annexation, and a quasi-judicial action, rezoning. Different standards apply to the different decisions.

At issue in this case is just the annexation denial by the Council. Because the Council denied annexation it had no authority to consider the requests to rezone the property and to split it into three separate parcels. The Council had, in effect, declined to extend its legislative authority over the land at issue. Until this parcel is annexed by a city it remains subject to the zoning authority of Ada County. Petitioner may reasonably expect that annexation will happen at some point in the future, but such expectation does not create an entitlement to annexation.

## CONCLUSION

Annexation is a legislative, not a quasi-judicial function. As such, the legislative standard of due process applies to this decision and there is no statutory authority providing for direct judicial review.

DATED this 21 day of November, 2007.

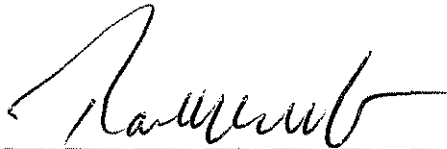


Randall S. Grove  
Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of November, 2007, I caused two true and correct copies of the foregoing document to be placed in the U.S. Mail, postage prepaid, and delivered to:

Eric R. Clark  
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Eagle, Idaho 83616



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