2015 IL App (2d) 100674-U
Nos. 2-10-0674 & 2-13-1045 cons.
Order filed August 6, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF STATE OF ILLINOIS *ex rel.* THE GENEVA PUBLIC LIBRARY DISTRICT, Petitioner-Appellant, v. BATAVIA PUBLIC LIBRARY DISTRICT, Respondent-Appellee.	)	Appeal from the Circuit Court of Kane County. No. 07-MR-108 Honorable Michael J. Sullivan, Judge, Presiding.

THE PEOPLE OF STATE OF ILLINOIS *ex rel.* BATAVIA PUBLIC LIBARY DISTRICT, Plaintiff-Appellee and Cross-Appellant, v. THE GENEVA PUBLIC LIBRARY DISTRICT, Defendant-Appellant and Cross-Appellee,	)	Appeal from the Circuit Court of Kane County. No. 07-MR-594 Honorable Michael J. Sullivan Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: In competing annexations, the trial court erred in considering Geneva's intent in passing its annexation ordinance leading to an erroneous determination that the annexation was a legal gimmick to block Batavia's annexation of same territory. The trial court correctly held that a flawed legal description resulting in the discontiguity of 100 acres of the territory to be annexed rendered Batavia's annexation ordinance invalid.

¶ 2 In these consolidated cases, the parties, the Geneva Public Library District (Geneva) and the Batavia Public Library District (Batavia), appeal the judgment of the circuit court of Kane County,[1] regarding various annexation ordinances passed by the boards of the respective districts. In appeal No. 2-10-0674, Geneva appeals the dismissal of its petition for leave to file a complaint in *quo warranto*. In Appeal No. 2-13-1045, Geneva appeals the trial court's grant of Batavia's complaint in *quo warranto*, holding that Geneva's ordinance was an improper gimmick to block Batavia's future attempts to annex certain territory, and Batavia cross-appeals, challenging the trial court's holding that its annexation ordinance was invalid because the legal description of a portion of the annexation territory was flawed resulting in the discontiguity of about 100 acres of the territory to be annexed, and because Batavia did not comply with the Open Meetings Act. We dismiss as moot Appeal No. 2-10-0674, and we affirm in part and reverse in part Appeal No. 2-13-1045, and we remand the cause.

¶ 3 I. BACKGROUND

¶ 4 Geneva and Batavia are both public library districts organized pursuant to the Illinois Public Library District Act (Act) (75 ILCS 16/1-1 *et seq.* (West 2006)). Geneva provides library

[1] The judges of the circuit court of Kane County all recused themselves from hearing this matter. Judge Sullivan of the circuit court of McHenry County was designated to preside over this cause.

service to certain portions of Kane County; Batavia provides library services to certain portions of Kane and Du Page Counties. At issue in this appeal is land commonly referred to as Blackberry Township, which both parties have attempted to annex. Blackberry Township is located at the west end of unincorporated portions of the Village of Geneva and is within the boundaries of the Geneva School District.

¶ 5 According to Geneva, the genesis of this matter lies in a "gentlemen's agreement" between the various nearby library districts, including the parties. In 1987, the Du Page Library System called a meeting of its constituent library districts, and they all discussed the course of future development and annexation within the library districts. According to Geneva, at the conclusion of the meeting, the library districts all informally agreed not to annex territory that lay within other school districts, meaning that Geneva would have the right to annex territory in the Geneva School District, but not within the Batavia school districts. Geneva apparently interpreted the informal agreement as promoting the alignment of the library district with its local school districts, and this apparently became a guiding light to Geneva.

¶ 6 In 1989, Geneva attempted to annex the territory in Blackberry Township through a referendum. The referendum was defeated and Geneva learned that the landowners residing in Blackberry Township, who were farmers, did not want to incur the taxes for library services while their lands were undeveloped and used for agricultural purposes. Geneva instituted a policy to wait until after the farmland had been developed before seeking its annexation. Additionally, Geneva developed a Long Range Plan in which it would seek to align its borders with those of the Geneva School District.

¶ 7 From the genesis of the informal agreement until the present controversy, Geneva reiterated its commitment only to annex within boundaries of the Geneva School District.

Geneva points to a letter sent to Batavia about 10 months before the passage Batavia's annexation ordinance, Ordinance No. 2006-011, as an example of its unvarying position regarding annexations. During that time, Geneva engaged in a number of voluntary annexations that would occur as the farmland or other undeveloped property was developed for residential uses. The developers would request that the property be annexed into Geneva, and Geneva would accept.

¶ 8 In 2002, Geneva was approached by the developer of the Settlements of La Fox seeking a voluntary annexation into the district. The territory of the development, however, was within several school districts. Geneva called a meeting with the interested library districts and the developer to discuss how to accomplish the annexation consistent with limiting each district's annexation to territory within the library district's school district. The annexation of the Settlements at La Fox development saw that each of the affected library districts only annexed that portion of the development that was within the district's school district.

¶ 9 Likewise, Geneva was approached to annex the Dillonfield subdivision. A portion of the subdivision was outside of the Geneva School District. Geneva agreed to annex only the territory that was located within the boundaries of the Geneva School District.

¶ 10 In 1994, Geneva was approached to voluntarily annex the land being developed in the Mill Creek subdivision. As Mill Creek continued to be developed, the developer continued to request that Geneva voluntarily annex the current expansion. In one of the expansions, the newly developed territory lay within both the Geneva School District and the Batavia School District. Geneva contacted Batavia to see if Batavia wished to annex the portion of the Mill Creek subdivision that was within the Batavia School District. Apparently, that land was not yet contiguous to Batavia and would require a series of annexations to bring the land into contiguity

with Batavia. Batavia declined to annex the territory and Geneva, pursuant to the developer's request, annexed the new expansion of the Mill Creek subdivision, including the portion of the expansion within the Batavia School District.

¶ 11 Turning specifically to Blackberry Township, before October 18, 2006, it was not a part of any local library district. On October 18, 2006, Batavia passed Ordinance No. 2006-011, which purported to annex Blackberry Township. The passage of Batavia Ordinance No. 2006-011 occurred at a special meeting; the meeting agenda included an item entitled "Property for Use of the Public Body." The next day, following the passage of the ordinance, Geneva sent an email inquiry to Batavia asking about Batavia's plans to annex territory in the future. Batavia responded that it did not know and did not mention the annexation ordinance passed the night before.

¶ 12 Batavia did, however, send notice of the passage of Batavia Ordinance 2006-011 to the neighboring library district, but, according to Geneva, the notice it received did not include a map. The notice did, however, state that any petitions seeking to take the annexation to a referendum had to be submitted to Batavia no later than November 26, 2006. Geneva noted that, eventually, it received a map of the proposed annexation territory.

¶ 13 According to Geneva, the map was "crudely drawn," and Geneva drew three conclusions from the map about the annexation. First, the territory of the annexation was Blackberry Township.[2] Second, the annexation encompassed land wholly within the Geneva School

[2] Geneva further noted that it did not annex Blackberry Township itself out of deference to the wishes of the property owners and taxpayers in Blackberry Township. Geneva included words to this effect in its statement of facts; we emphasize this (as we have throughout this

District. Third, the annexation carved out the residences in the territory, leading Geneva to surmise that Batavia was seeking to avoid the possibility of objectors attempting to bring the matter to a referendum. Further, "Geneva was shocked and surprised[3] that Batavia would pass an ordinance to annex territory within the Geneva School District in light of the 'gentlemen's agreement.' "

¶ 14 Geneva held meetings to advise its constituents about Batavia's annexation of Blackberry Township and to brainstorm about ways it could preserve Blackberry Township for Geneva. The minutes of the meetings reflect the board members' negative reactions to the Batavia annexation of Blackberry Township. Eventually, Lori Ott, the sister of one of Geneva's employees, contacted her sister and asked if she could do something to help Geneva. Ott and her husband had lost their daughter, who had loved coming to the library for story time, and they had made contributions in her memory to Geneva. The Otts resided in the annexation territory, and the legal description included in Batavia Ordinance No. 2006-011 purportedly did not exclude the

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section of our order) to demonstrate the argumentative nature of Geneva's statement of facts and caution Geneva, and especially its counsel, to carefully adhere to the proscriptions of Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) (the statement of facts "shall contain the facts necessary to an understanding of the case, stated fairly and accurately without argument or comment"). See also *Estate of Prather v. Sherman Hospital Systems*, 2015 IL App (2d) 140723, ¶ 32 (Illinois Supreme Court Rules are not suggestions; they have the force of law and must be complied with).

[3] See *Casablanca* (Warner Brothers 1942) (Captain Renault: "I'm shocked, shocked to find that gambling is going on in here!").

Ott residence from the annexation.[4] Geneva assisted the Otts in filling out one of the petitions to bring Batavia's annexation to a referendum. On November 24, 2006, Geneva coordinated the filing of the referendum petition just after the Otts had registered to vote from the residence purportedly located in the annexation territory.

¶ 15 Daniel Zack contested the Ott's petition before the Kane County Election Board.[5] The election board overruled Zack's objection and ordered that a referendum on the annexation be held during the April 2007 election. Zack appealed. This court eventually affirmed the election board's decision. *Zack v. Ott*, No. 2-08-1035 (2009) (unpublished order under Supreme Court Rule 23).

¶ 16 While Geneva and the Otts were planning to attempt to bring Batavia's annexation to a referendum, Geneva also sought to create an annexation that would safeguard Blackberry Township from future annexation attempts should Batavia's annexation pursuant to Ordinance No. 2006-011 fail or be invalidated. Following advice of its counsel, on November 17, 2006, Geneva passed Ordinance No. 2006-7, which purported to annex a block of the Blackberry Township territory extending 500 feet in depth and nearly 4,000 feet in width. The parties stipulated that the Geneva annexation, if given effect, would have precluded Batavia from annexing northwards into Blackberry Township. No petitions were filed seeking to bring this

[4] While the Ott residence was purportedly included in the annexation, the legal description of the area in which the Otts resided was defective, the effect of which will be discussed below.

[5] Geneva refers to Zack as a "strawman for Batavia," another example of argumentation in Geneva's statement of facts. See Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013).

annexation to a referendum.

¶ 17 While these activities were occurring, Batavia realized that there may have been issues with its annexation ordinance. To remedy the issues, Batavia's director crossed out the incorrect legal description and rerecorded the ordinance. Evidence showed that the director did not receive approval from the Board of Trustees; rather the director acted on his own volition to do this. In addition, the defective legal description included to the Otts' property in Blackberry Township. On December 6, 2006, Batavia passed Ordinance No. 2006-013. This ordinance formally vacated the portion of Ordinance No. 2006-011 that included the Otts' property along with some other parcels of land. On December 14, 2006, Batavia passed Ordinance No. 2006-014, which added back into the annexation some of the land stricken by the rerecording and Ordinance No. 2006-013. On December 19, 2006, Batavia passed Ordinance No. 2006-015, which sought to provide a proper legal description encompassing the territory in Blackberry Township less the carve outs in the immediately preceding ordinances.

¶ 18 On February 16, 2007, Geneva filed a petition for leave to file a complaint in *quo warranto*. Geneva sought to challenge all of Batavia's annexation ordinances. On November 7, 2007, Batavia filed a petition for leave to file a complaint in *quo warranto*, attacking the Geneva annexation of the block of Blackberry Township territory. The cases were consolidated by agreement of the parties and the trial court, but they stayed the matter during the pendency of the appeal in *Zack v. Ott*. Following the resolution of the appeal, each party filed a motion to dismiss the other's petition for leave to file a complaint in *quo warranto*. On June 3, 2010, the trial court granted Batavia's motion and dismissed Geneva's petition for leave to file a complaint in *quo warranto*. The trial court also denied Geneva's motion and Batavia thereafter filed a complaint in *quo warranto*. Geneva timely filed a notice of appeal of the trial court's dismissal

of its petition (appeal No. 2-10-0674). The appeal was stayed until Batavia's complaint in *quo warranto* was resolved.

¶ 19 On August 17, 2010, Batavia filed its complaint in *quo warranto*. In 2013, following discovery and motion practice, Batavia's complaint in *quo warranto* advanced to a hearing. The facts summarized above were elicited, and the trial court took the matter under advisement.

¶ 20 On September 19, 2013, the trial court issued its decision. The court divided its decision into two parts: first, it considered Batavia's *quo warranto* challenge to the validity of Geneva's annexation ordinance No. 2006-7. Then, the court considered Geneva's affirmative defense to Batavia's complaint in *quo warranto*, which challenged Batavia's annexations of the territory in Blackberry Township. The trial court limited its consideration of Batavia's annexation to Batavia Ordinances Nos. 2006-011 and 2006-014.

¶ 21 Regarding Geneva's annexation ordinance, the court made several factual findings based on the evidence elicited during the hearing along with the parties' stipulated facts. Specifically, the trial court determined, as a matter of fact, Geneva sought to provide library services to all residents within the Geneva School District, including Blackberry Township as it became developed. The 500-foot-deep block of land, if the Geneva annexation were given effect, would physically preclude Batavia from annexing northwards into Blackberry Township. Geneva's annexation had the purposes of maintaining Geneva's future opportunities to align its boundaries with those of the Geneva School District and blocking Batavia from annexing territory within the Geneva School District in Blackberry Township. The court held that Geneva Ordinance No. 2006-7 was "a legal gimmick aimed at preventing Batavia from exercising its lawful, even if unneighborly, right to annex territory" under the Public Library District Act of 1991 (Library Act) (75 ILCS 16/1-1 *et seq.* (West 2006)). The court further held that "Geneva failed to meet its

burden" as the defendant to a *quo warranto* action and that Geneva's annexation ordinance was "null and void and of no effect."

¶ 22 The trial court then turned to Geneva's affirmative defense to Batavia's complaint in *quo warranto*. The court noted that Geneva's affirmative defense had a general allegation that Batavia's annexation of the "Batavia annexed territory" was invalid and also noted that the remainder of the affirmative defense expressly attacked Batavia Ordinances Nos. 2006-011 and 2006-014. The affirmative defense expressly alleged that the annexation ordinances had not been put to referendum thereby rendering Ordinance No. 2006-011 invalid, which in turn rendered Ordinance No. 2006-014 invalid, because without the territory annexed in Ordinance No. 2006-011, the territory included in Ordinance No. 2006-014 was not contiguous to any land in Batavia. The trial court also considered arguments raised by Geneva during the hearing, including the claims of the violation of the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2006)); the flawed legal description of the territory to be annexed; the unauthorized rerecordation of Ordinance No. 2006-011; and the lack of a severability clause in Batavia Ordinance No. 2006-011.

¶ 23 The trial court initially rejected Geneva's argument regarding Batavia's failure to submit Ordinance No. 2006-011 to referendum. The court concluded that the *Zack v. Ott* case was not the same case as the instant matter and concluded that collateral estoppel did not apply to preclude Batavia's arguments regarding the referendum issue.

¶ 24 Next, the court concluded that Batavia's agenda item from the October 18, 2006, special meeting, "Property for the Use of the Public Body (Action Item)," was "clearly insufficient" and violated the requirements of the Open Meetings Act because it was not germane or closely related to the annexation of the Blackberry Township territory. The court held that the violation

of the Open Meetings Act was "sufficient grounds for the Court to declare that Batavia Ordinance [No.] 2006-011 [was] null and void and of no effect."

¶ 25 The trial court also considered the effect of the purportedly flawed legal description. The court noted that the governmental department with responsibility for extending the taxes in Kane County informed Batavia's director that it could not extend the taxes to the annexed territory due to errors in the legal description of the territory to be annexed, because some of the territory was noncontiguous. The department stated that the legal description issue had to be resolved before the taxes could be extended to the annexed property. The affected territory was over 100 acres out of a total territory of over 1,600 acres. Batavia's director rerecorded the ordinance with handwritten corrections in order to rectify the problem with the legal description.

¶ 26 The trial court held that the attempt to rerecord Batavia Ordinance No. 2006-011 was invalid because the board neither authorized the rerecordation nor ratified it. The court also rejected Batavia's argument that the territory affected by the flawed legal description was *de minimis* to the entirety of the annexation because the Kane County department responsible for extending taxes itself did not consider the error to be so trifling it could be ignored, and Batavia's supporting authority was readily distinguishable. Further, the court noted that the lack of a severability clause in Ordinance No. 2006-011 meant that the discontiguity between the 100 acres and the rest of the annexation territory could not be ignored.

¶ 27 Finally, the trial court held that Batavia Ordinance No. 2006-014 was also invalid because it depended on the validity of the annexation of the territory from Ordinance No. 2006-011. In other words, the territory in Ordinance No. 2006-014 was contiguous only to the territory in Ordinance No. 2006-011 and not other territory within the district. If the territory in Ordinance No. 2006-011 was not validly annexed, then the territory in Ordinance No. 2006-014

could not be contiguous to any of Batavia's existing territory.

¶ 28 Geneva timely filed a notice of appeal. After Geneva's notice of appeal, Batavia filed a timely postjudgment motion seeking to modify the September 19, 2013, judgment. On December 11, 2013, the trial court denied Batavia's motion for reconsideration.[6] Batavia timely cross-appeals.

¶ 29 II. ANALYSIS

¶ 30 On appeal, Geneva contends that, in Appeal No. 2-10-0674, the trial court erroneously dismissed its petition for leave to file a complaint in *quo warranto*. Geneva contends that, in Appeal No. 2-13-1045, the trial court erred in considering Geneva's "intent" behind its Ordinance No. 2006-7 because "intent" or "purpose" is irrelevant to the issue of whether an annexation complied with the requirements of the Act. Geneva further argues that the trial court erred in holding that Geneva's annexation ordinance was a "legal gimmick" to prevent Batavia from exercising its lawful annexation powers in Blackberry Township. On cross-appeal in Appeal No. 2-13-1045, Batavia argues that the trial court erred in holding that Ordinance No. 2006-011 was invalid due to a flawed legal description and for Batavia's failure to comply with the Open Meetings Act. We shall address the parties' arguments in turn.

¶ 31 As an initial matter, we agree with Batavia that the disposition of the substantive issues ruled on by the trial court in considering Batavia's complaint in *quo warranto* and Geneva's affirmative defense will be helpful in determining the outcome of Geneva's appeal in Appeal No. 2-10-0674. If Geneva does not prevail substantively, then it will be clear that its complaint in

[6] Pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. June 4, 2008), Geneva's notice of appeal, filed before the postjudgment motion, became effective upon its denial.

quo warranto cannot succeed; if its substantive arguments about the annexation are well founded, then we will have to consider its arguments in detail. Either way, we will first take up the arguments of both parties in Appeal No. 2-13-1045 and thereafter turn to Geneva's arguments in Appeal No. 2-10-0674 as necessary.

¶ 32 A. Appeal No. 2-13-1045

¶ 33 1. Geneva's Appeal

¶ 34 a. Intent or Purpose Is Irrelevant to Annexation's Validity

¶ 35 Geneva first argues that its intent or purpose for passing its annexation ordinance, Geneva Ordinance No. 2006-7, was not relevant to the ordinance's validity. The trial court held that Geneva's ordinance was invalid because it was enacted for an improper purpose, namely, to block Batavia from performing a future annexation in Blackberry Township. According to Geneva, the trial court's judgment was outside of the scope allowed by the Act and particularly section 15-15 (75 ILCS 16/15-15 (West 2006)), and it was beyond the scope of inquiry allowed in a *quo warranto* proceeding (*Reserve at Woodstock v. City of Woodstock*, 2011 IL App (2d) 100676, ¶ 35 ("the proper scope of a *quo warranto* proceeding is to challenge the *authority* to act, not the *manner* of exercising authority" (emphasis in original))). Batavia counters, arguing that courts are free to step in "to prevent a public body from engaging in literal compliance chicanery, gimmickry and subterfuge intended to prevent the exercise of a public or private party's rights in connection with annexation and other boundary matters." Batavia argues that Geneva's annexation was improper manipulation of the Act, pure and simple, designed to interfere with Batavia's lawful annexation rights, thereby violating public policy. We review the trial court's judgment following a bench trial to determine whether it was against the manifest weight of the evidence. *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶

84. A judgment is against the manifest weight of the evidence where the opposite conclusion is clearly apparent or where the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 36 In order to resolve this issue, we look first to the annexation statute used by Geneva in its attempt to annex territory in Blackberry Township. Section 15-15 of the Act provides, relevantly:

> "(a) A district may, by ordinance, annex territory if that territory is:
>
> (1) located within the boundaries of a municipality or school district that is included, entirely or partially, within the district;
>
> (2) contiguous to the district; and
>
> (3) without local, tax-supported public library service.
>
> An ordinance under this subsection must describe the territory to be annexed.
>
> (b) Within 15 days of the passage of the annexation ordinance, the library district shall send notice of the adoption of the ordinance, a copy of the map showing the boundaries of the territory to be annexed, and a copy of the text of the publication notice required in this Section to the president of the board of trustees of each public library with territory within one mile of the territory to be annexed. Within 15 days after the adoption of the ordinance it shall be published as provided in Section 1-30. The board may vacate an annexation ordinance before its publication.
>
> (c) The publication or posting of the ordinance shall include a notice of (i) the specific number of voters required to sign a petition requesting that the question of the adoption of the ordinance be submitted to the voters of the district or the territory to be annexed or both, (ii) the time in which the petition must be filed, and (iii) the date of the

prospective referendum. The district secretary shall provide a petition form to any individual requesting one.

(d) If no petition is filed with the library district within 30 days after publication or posting of the ordinance, the annexation shall take effect. If, however, within the 30 day period, a petition is filed with the Board of Trustees of the library district, signed by voters of the district or the territory to be annexed, or both, equal in number to 10% or more of the total number of registered voters in the district, the territory to be annexed or both, asking that the question of the annexation of the territory be submitted to the voters of the territory, the board of trustees may vacate the annexation ordinance or certify the question to the proper election authority, who shall submit the question at the next regular election. ***

(e) If a majority of votes cast upon the proposition in the district, and also a majority of votes cast upon the proposition in the territory to be annexed, are in favor of the proposition, the Board of Trustees of the library district may conclude the annexation of the territory." 75 ILCS 16/15-15 (West 2006).[7]

¶ 37 Resolution of Geneva's contention requires that we interpret section 15-15 of the Act. The goal of statutory interpretation is to ascertain and give effect to the intent of the legislature, the best indication of which is the plain and ordinary meaning of the statutory language. *Austin Bank of Chicago v. Village of Barrington Hills*, 396 Ill. App. 3d 1, 8 (2009). Issues of statutory

[7] This provision has been amended subsequently, but the 2006 version of the provision is the one that was in effect at the time of the passage of Ordinance No. 2006-7.

interpretation are reviewed *de novo*. *People ex rel. T-Mobile USA, Inc. v. Village of Hawthorn Woods*, 2012 IL App (2d) 110192, ¶ 38.

¶ 38 Geneva argues that the intent or purpose of an annexation under the Act is outside of the trial court's consideration. In our view, Batavia reads this argument to mean that, in any annexation, the intent or purpose of the annexing body is beyond challenge. This, under Batavia's construction of Geneva's argument, is plainly false. In annexations proceeding under the annexation and disconnection provisions of the Illinois Municipal Code (see 65 ILCS 5/7-1-1 *et seq.* (West 2014)), courts have repeatedly considered the purpose and manner a party has attempted to annex specific territory. *E.g.*, *In re Petition to Annex Certain Real Estate to the City of Joliet*, 144 Ill. 2d 284, 290-92 (1991) (considering circumstances of conveyance with relation to annexation petition and the petitioners' possible "bad faith and subterfuge" in determining the validity of the proposed annexation); *In re Petition of the Village of Kildeer to Annex Certain Territory*, 124 Ill. 2d 533, 547, 550 (1988) (court examined manner and purpose of annexation which showed that the village was attempting to technically comply with statutory requirements while seeking to complete indirectly what it could not do directly); *People ex rel. Nelson v. Village of Long Grove*, 169 Ill. App. 3d 866, 872 (1988) (court considered the village's fraudulent intent to prevent the plaintiffs from filing a timely objection to annexation). However, one unifying principle to these disparate cases is the Municipal Code: all of the annexations were sought and analyzed under sections 7-1-1 *et seq.* of the Municipal Code (now codified at 65 ILCS 5/7-1-1 *et seq.* (West 2014)). An annexation under the Municipal Code, statutorily speaking, is a very different animal than an annexation under the Act.

¶ 39 This court, in *In re Petition for Annexation to the Village of Bull Valley*, 392 Ill. App. 3d 577 (2009), explored the court's role in considering both the sufficiency and the validity of an

annexation pursuant to the Municipal Code. In *Bull Valley* we noted that section 7-1-3 of the Municipal Code (65 ILCS 5/7-1-3 (West 2006)) set forth four objections to the sufficiency of an annexation petition that could be raised by an objector, and that section 7-1-4 of the Municipal Code (65 ILCS 5/7-1-4 (West 2006)) set forth the four situations under which the trial court must dismiss the petition requesting annexation, which expressly included the circumstance of whether the petition or ordinance was otherwise invalid. *Bull Valley*, 392 Ill. App. 3d at 583. We held that *City of East St. Louis v. Touchette*, 14 Ill. 2d 243, 248 (1958), settled any ambiguity between sections 7-1-3 and 7-1-4, and allowed an objector to raise the four enumerated objections in section 7-1-3 as well as any other issues going to the validity of the petition. *Bull Valley*, 392 Ill. App. 3d at 583. Based on *Touchette*'s rationale, we held that the Municipal Code allowed for review of the sufficiency of the petition or ordinance based on section 7-1-3 objections as well as matters raised by an objector under section 7-1-4 going to the validity of the petition or ordinance. *Id.* at 583, 584 (declining to follow *In re Annexation of Certain Territory to the Village of Deer Park*, 358 Ill. App. 3d 92 (2005), which factually distinguished *Touchette*).

¶ 40 *Touchette*, 14 Ill. 2d at 248, and *Bull Valley*, 392 Ill. App. 3d at 583-84, are squarely based on the statutory interpretation of the annexation provisions in the Municipal Code (65 ILCS 5/7-1-1 *et seq.* (West 2006)), and key in pointing out the structural differences between the Municipal Code and the Act. In those cases, sections 7-1-3 and 7-1-4 provided the statutory justification to allow a court to consider an objector's generalized challenge to the validity of the annexation, including claims that the petitioner had an improper motive or purpose in seeking annexation. *Touchette*, 14 Ill. 2d at 248 ("We conclude from a reading of the entire [annexation] statute that it contemplates the filing of objections to the petition or ordinance for any matter going to the validity thereof by any interested person, as well as for the four specific objections

set forth in section [7-1-3]."); *Bull Valley*, 392 Ill. App. 3d at 584 ("a party objecting to a petition for annexation may object for the reasons listed in section 7-1-3, which go to the sufficiency of the petition, as well as for any reason that undermines the validity of the proposed annexation (and thus the validity of the petition)").

¶ 41 The statutory scheme in the Municipal Code, however, is significantly different than that in the Act. Section 7-1-2 of the Municipal Code (65 ILCS 5/7-1-2 (West 2006)) sets forth the timing requirements for an annexation petition or ordinance, along with certain technical requirements. This roughly corresponds with section 15-15(a) of the Act, which sets forth the minimum elements necessary to be included in a sufficient ordinance. Section 7-1-3 of the Municipal Code lists the available objections to challenge the sufficiency of the petition or ordinance. There is no corresponding section in the Act. Section 7-1-4 lists the items the trial court must consider and determine when passing on the validity of the annexation petition or ordinance. Further, once the court determines the petition or ordinance is valid, it shall direct the question of annexation be submitted to the electors or the municipal authorities for final action. 65 ILCS 5/7-1-4 (West 2006). Section 15-15, by contrast does not contemplate a judicial hearing to consider either objections to the sufficiency or the validity of the petition or ordinance. Instead, it provides for the filing of a petition seeking to take the question of the annexation to a referendum of the voters residing in the library district and the voters in the territory to be annexed. 75 ILCS 16/15-15(c), (d) (West 2006). Following a favorable referendum result, the library district's board of trustees "may conclude the annexation of the territory." 75 ILCS 16/15-15(e) (West 2006). If there is no petition, then the annexation takes effect with no further proceedings or other intervention. 75 ILCS 16/15-15(d) (West 2006).

¶ 42 The comparison between the annexation provisions in the Municipal Code and the Act shows a significant difference between the two. Under the Municipal Code, a judicial hearing is required, even in the absence of any objections to the sufficiency or the validity of the annexation petition or ordinance. 65 ILCS 5/7-1-4 (West 2006). By contrast, the Act contemplates only a referendum on the issue of the annexation as a means to challenge an annexation. 75 ILCS 16/15-15(c), (d), (e) (West 2006). Based on the significant textual difference between the two statutes, we draw two conclusions. First, because the challenges to the petitioners' or municipality's motives in seeking an annexation under the Municipal Code are statutorily based, the lack of a statutory basis for similar objections under the Act precludes the consideration of such a challenge under the Act. See *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 398 Ill. App. 3d 510, 523 (2009) (when interpreting a statute, we may not read into or out of the statute limitations and conditions not expressed by the legislature in enacting the statute). Second, the cases interpreting challenges to the underlying motives of an annexation arise under the Municipal Code, and therefore, they are of extremely limited value in analogizing to annexations under the Act. In other words, the vastly different statutory regime of the Municipal Code renders it and cases interpreting it largely inapposite as examples of how to interpret questions about annexation under section 15-15 of the Act.

¶ 43 The upshot of our analysis on this issue leads us to accept Geneva's argument. Because there is no statutory basis for investigating the library district's motive in seeking to annex territory, evidence of the district's motive or purpose is irrelevant to the trial court's consideration of an annexation under section 15-15.

¶ 44 Of course, because section 15-15 does not provide for judicial consideration of the annexation the question arises: how do we reach the point at which the trial court was

considering the propriety of Geneva's annexation ordinance? Through Batavia's complaint in *quo warranto*. However, a *quo warranto* action challenges the library district's authority to act, not the manner in which it exercises the authority. *Reserve at Woodstock*, 2011 IL App (2d) 100676, ¶ 35. This principle translates in this case to the trial court's consideration of whether Geneva's annexation ordinance followed the dictates of the Act (thus acting within its authority) rather than considering its motivation, purpose, or reason for the annexation (the manner it exercised its authority). Accordingly, while section 15-15 does not, unlike section 7-1-4 of the Municipal Code, automatically require a judicial proceeding to consider an annexation ordinance, a judicial proceeding to consider an annexation ordinance may be obtained pursuant to a *quo warranto* action, even if the annexing party is proceeding pursuant to section 15-15 of the Act. With that said, the scope of the inquiry is limited to compliance with the statutory requirements, as that reflects the library district's authority to act, and the inquiry does not consider the library district's reason, purpose or motivation to act, as that corresponds to the manner of exercising its authority.

¶ 45 Batavia argues that, as the defendant in a *quo warranto* action, "Geneva must demonstrate that its actions were proper and not an abuse of power and unlawful exercise of authority." Batavia correctly characterizes this principle as requiring the defendant in a *quo warranto* action to prove its compliance with the statutes at the time the ordinance was passed. See *People ex rel. Village of Long Grove v. Village of Buffalo Grove*, 160 Ill. App. 3d 455, 459-60 (1987) (the petition for annexation under the Municipal Code must be valid and comply with the requirements of the statute). Batavia maintains that the purpose, motive, or reason behind an annexation, however, remains fair game for judicial inquiry in a *quo warranto* proceeding. We disagree. As we have discussed above, section 15-15 of the Act does not include the same sort

of generalized judicial inquiry into "validity" as does section 7-1-4 of the Municipal Code. Batavia's argument, therefore, fails.

¶ 46 In support of this point, Batavia points to *Reserve at Woodstock*, *Bull Valley*, and *People ex rel. Ryan v. City of West Chicago*, 216 Ill. App. 3d 683 (1991), each of which, Batavia argues, justifies an inquiry into Geneva's purpose in passing Ordinance No. 2006-7. We disagree. In *Reserve at Woodstock*, the court held expressly that *quo warranto* was not a proper mechanism to challenge the defendant's exercise of its discretion in accomplishing a disconnection but allowed the plaintiff to proceed with a declaratory judgment action questioning that exercise of discretion. *Reserve at Woodstock*, 2011 IL App (2d) 100676, ¶ 37. In our view, *Reserve at Woodstock* supports the idea that, even in a *quo warranto* proceeding challenging an annexation, the court may only review the defendant's compliance with the applicable statute, and not its reasons for seeking the annexation. In *Bull Valley*, the court related the inquiry into the validity of the annexation ordinance to section 7-1-4 of the Municipal Code. *Bull Valley*, 392 Ill. App. 3d at 583-84. In the absence of equivalent or even similar statutory language in section 15-15 of the Act (or nearby sections of the Act), *Bull Valley* is inapposite to the circumstances of this case. Moreover, *Bull Valley* must be limited to the terms of the Municipal Code and cannot stand for a broad statement about all annexations because *Bull Valley* was expressly interpreting section 7-1-3 and 7-1-4 of the Municipal Code in reaching its conclusion. Finally, in *City of West Chicago*, the court held that a *quo warranto* action was appropriate to challenge the defendant's delegation of annexation powers to another body, which did not have the right to exercise those powers. *City of West Chicago*, 216 Ill. App. 3d at 691. We see this, as did the court in *City of West Chicago*, as raising a question about the defendant's authority to act, and not a question about the wisdom, purpose, or motive of the defendant in acting. Here, in seeking

to claim that Geneva's purpose for annexing the territory in Blackberry Township was improper, Batavia is challenging the manner of acting and not the authority to act, and this is improper under the three cases discussed above.

¶ 47 Next, Batavia argues that it is proper for the court to consider " 'any reason that undermines the annexation,' " quoting *Bull Valley*, 392 Ill. App. 3d at 584. However, as noted repeatedly above, *Bull Valley* considered whether such objections were authorized by the particular statute under which the annexation was attempted. Indeed, the full passage reads: "pursuant to *Touchette*, a party objecting to a petition for annexation may object for the reasons listed in section 7-1-3, which go to the sufficiency of the petition, as well as for any reason that undermines the validity of the proposed annexation (and thus the validity of the annexation)." *Id.* The passage itself makes it clear that *Bull Valley* pertains only to the annexation provisions of the Municipal Code. Accordingly, Batavia's reliance is misplaced.

¶ 48 Batavia makes a similar argument in reliance on *In re Petition to Annex Certain Territory to Village of North Barrington*, 144 Ill. 2d 353 (1991). Batavia argues that our supreme court implied that, had there been evidence of overreaching, it would have been proper to consider it. We disagree. The court clearly stated that the role of the court in annexation proceedings (under the Municipal Code, mind) is neither to determine "what factors shall constitute a sufficient petition for annexation" nor to determine the reasonableness of an annexation. *North Barrington*, 144 Ill. 2d at 369. Instead, the court considered only the objectors' objections to the petition pursuant to sections 7-1-3 and 7-1-4 of the Municipal Code. *Id.* at 370. Batavia again misplaces its reliance. Accordingly, we hold that the trial court erred in considering Geneva's purpose, motive, or reason for annexing the territory in Blackberry Township pursuant to its annexation ordinance No. 2006-7.

¶ 49 b. Legal Gimmickry

¶ 50 Geneva next argues on appeal that the trial court's determination that its Ordinance No. 2006-7 was a "legal gimmick" passed in order to prevent Batavia from exercising its lawful authority to annex territory in Blackberry Township was against the manifest weight of the evidence. We need not devote much time to Geneva's argument in light of our analysis in subsection a above. As we read Geneva's contention, the trial court compounded its error of determining the applicable law with the application of that erroneously determined law to matters outside of its purview, namely Geneva's intentions behind the annexation. This result flows from our determination that the trial court could not investigate Geneva's intent in annexing territory in Blackberry Township. If the trial court could not consider intent, then to hold that Geneva's intent was improper simply compounds the error and evidences the trial court's incorrect choice of legal principles to guide its decision. Accordingly, we agree with Geneva and hold that the trial court erred in determining that Ordinance No. 2006-7 was a legal gimmick designed to interfere with and frustrate Batavia's ability to exercise its lawful authority to annex territory in Blackberry Township because the consideration of Geneva's intent was outside of its purview in reviewing an annexation under section 15-15 of the Act.

¶ 51 Batavia argues that the trial court properly determined that, based on the testimony elicited during the hearing, Geneva intended to block Batavia from annexing into Blackberry Township. We agree. Among the evidence presented at the hearing was Geneva's "Q&A Fact Sheet," in which Geneva explained that the territory it was annexing in Blackberry Township was the "minimum amount" of territory necessary to "block Batavia from annexing into [the] Geneva School District" and to "protect" Geneva's borders. With that said, however, the factual determination is legally irrelevant. As we have noted, under section 15-15 of the Act, there are

simply no objections available that are similar to the objections that may be raised in municipal annexation under sections 7-1-3 and 7-1-4 of the Municipal Code. Because there is no generalized objection that the annexing body's conduct undermines the validity of the annexation (see *Bull Valley*, 392 Ill. App. 3d at 584 ("a party objecting to a petition for annexation may object for the reasons listed in section 7-1-3, which go to the sufficiency of the petition, as well as for any reason that undermines the validity of the proposed annexation (and thus the validity of the petition) [under section 7-1-4]")), Geneva's intent, purpose, or reasoning in annexing the territory in Blackberry Township is simply outside of the trial court's consideration of the validity of Ordinance No. 2006-7. Instead, the trial court is limited to considering whether Geneva complied with the statutory elements listed in section 15-15 of the Act. Accordingly, while we accept Batavia's contention that the trial court's factual determination that Geneva's annexation ordinance was passed with the intent to block Batavia from annexing into Blackberry Township, we reject Batavia's contention that the fact has any further legal significance in the context of its *quo warranto* action seeking to invalidate Geneva's Ordinance No. 2006-7.

¶ 52 Next, Batavia argues that the "very shape of Geneva's annexed territory shows" Geneva's malignant purpose in conducting the annexation. We note that our supreme court rejected a similar argument when considering an annexation under the Municipal Code, a statute which actually allows, in proper circumstances, the consideration of the annexing body's intent when considering matters that may undermine the validity of the annexation. *North Barrington*, 144 Ill. 2d at 370 ("Objectors merely argue that the irregular shape of the territory to be annexed and the noninclusion of [certain] parcels appear curious. Absent evidence of overreaching or use of an improper means of annexation, we cannot further consider [the] objectors' assertions."). Obviously, Batavia is arguing that the shape of the territory to be annexed plus the other

evidence demonstrates Geneva's malignant purpose, but Geneva's purpose is not relevant here. We reject Batavia's contention.

¶ 53 Next, Batavia argues that the territory Geneva is trying to annex is only a strip annexation. Generally, annexations (again, under the Municipal Code) have been rejected for a lack of contiguity (see 65 ILCS 5/7-1-3(1) (West 2006) (lack of contiguity is expressly allowed as an objection to an annexation petition)) where the evidence shows that the municipality has engaged in a strip annexation or impermissible cornering. *People ex rel. Ropac v. City of Edwardsville*, 345 Ill. App. 3d 414, 416 (2003). Batavia argues that Geneva's territory to be annexed is a "spite strip," 500 feet in depth and extending east to west for nearly 4,000 feet. We note that *Ropac* concluded that the contiguity of an annexation connecting the 750-acre irregularly shaped territory to be annexed with a 250-foot border was not a strip annexation because of the length of the border plus the overall size of the territory. Here, the length of the connecting border is not actually specified, but the 500-foot depth is twice as large as the 250-foot border that was deemed sufficient in *Ropac*. The area of the challenged territory of 500 feet by nearly 4,000 feet is about 45 acres, which, while much less than the territory in *Ropac*, is still a substantial amount of territory. See also *JLR Investments, Inc. v. Village of Barrington Hills*, 355 Ill. App. 3d 661, 669 (2005) (noting that contiguity was maintained where the border of the parcel was 512 feet on one end and 303 feet on the other in a 45-acre corridor; and distinguishing as a strip annexation an annexation that included a total of 2 acres of territory in a corridor of land 33 feet in width). Based on these dimensions, we cannot say that the parcel of 500 feet in depth and nearly 4,000 feet in width constitutes an improper strip annexation.

¶ 54 Batavia argues that, "[r]egardless of the size of the original point of physical contact, *** courts will not find [that] contiguity exists where the result is an engineered, sham strip

annexation." In support, Batavia cites six cases, several of which are readily distinguishable. In *City of Mount Carmel v. Partee*, 74 Ill. 2d 371, 377-78 (1979), the court held that a 2-acre, 60 feet by 1,587 feet area of land constituted an improper strip annexation. Here, the dimensions of the territory are much less like the narrow strip of land in *City of Mount Carmel*. In *Village of Morgan Park v. City of Chicago*, 255 Ill. 190, 192 (1912), the court invalidated an annexation that included land that was unincorporated and within the boundaries of a third municipality. Here, there is no concern of a third body's territory being infringed. In *In re Annexation of Certain Territory to Village of Chatham*, 245 Ill. App. 3d 786, 788 (1993), the Village attempted to annex a narrow, U-shaped property extending for about a mile-and-a-quarter and a mile along the arms of the U, about a half-mile for the base of the U, and about 335 feet at the narrowest point in width. The court held that the annexation was not a subterfuge, but it was a strip annexation and did not constitute a natural extension of the Village's boundaries. *Id.* at 794. Here, again, the configuration of the territory to be annexed is less strip-like than 335 feet by 5,200 feet. In *People ex rel. Village of Long Grove v. Village of Buffalo Grove*, 160, Ill. App. 3d 455, 462 (1987), the court held that 600-foot common boundary with the annexing municipality was insufficient for purposes of contiguity when compared with the 95-acre territory to be annexed and the fact that, with the exception of the 600 feet, the territory was bounded on all other sides by the objecting municipality. Here, the territory to be annexed is not otherwise fully surrounded by Batavia. In *People ex rel. Marre v. Countryside Sanitary District*, 5 Ill. App. 3d 747, 753 (1972), the sanitary district sought to annex territory of 50 feet in width and 1,580 in length; here, the dimensions of the territory are much less like the narrow strip of land in *Marre*.

¶ 55 In *People ex rel. Village of Forest View v. Village of Lyons*, 218 Ill. App. 3d 159, 165 (1991), the court invalidated a number of annexations of territories 300 feet in width and nearly

2,700 feet in length extending perpendicularly from the annexing municipality's eastern border. We cannot so readily distinguish this case as we can the others cited by Batavia. With that said, some of the difficulty in *Forest View* is the fact that Lyons attempted to annex 23 strips of territory with dimensions of 300 feet by 2,700 feet. Thus, even though each individual annexation complied with maximum territory requirements, together, they did not, and Lyons was attempting to do indirectly what it could not do directly. Further, the court, in holding that the 300 foot by 2,700 foot strip of territory was not contiguous, considered only cases in which territory was no wider than 300 feet. *Id.* at 166. Here, the territory is 500 feet in width, which is significantly greater than in *Forest View* and the cases it relied upon. Last, the ratio of width to length in *Forest View* was 1:9; here it is less than 1:8. Based on these considerations, we believe that this case is sufficiently distinct from *Forest View*.

¶ 56 Further, Batavia appears to argue that a court can always intercede where there is a sham annexation. We disagree. Whether an annexation is a sham goes to the annexing body's intent, purpose, or motivation in attempting the annexation. This is not a proper area of inquiry under section 15-15 of the Act. The "sham" inquiry, however, is distinct from whether other requisites of the statute, like contiguity, have been met.

¶ 57 Batavia next argues that the territory to be annexed by Geneva is not contiguous to Geneva. We note that the parties stipulated that the territory to be annexed is physically contiguous to Geneva. The trial court, however, reserved ruling as to whether the territory was "meaningfully contiguous." We read Batavia's contiguity argument not as a change in position from its stipulation, but as endorsing the trial court's determination that the territory was not "meaningfully contiguous." By this term, the trial court meant that it would take evidence on and determine "whether the adoption of Geneva Ordinance No. 2006-7 was an appropriate and

lawful exercise of the annexation authority under section 15-15 done for a proper purpose and representing a natural and gradual extension of its boundaries." The trial court ultimately held that Geneva's annexation was for the purpose of "preventing Batavia from exercising its lawful *** right to annex" the territory in Blackberry Township. However, the purpose of the annexation is irrelevant under the Act and has no bearing on the determination of contiguity. In effect, we read the trial court's order to say that contiguity was destroyed by Geneva's intent in conducting the annexation. This is based on an incorrect interpretation of section 15-15, and we reject the trial court's holding on that point, as well as Batavia's argument, to the extent that it endorses the trial court's reasoning.

¶ 58 Batavia correctly argues that the trial court was required to consider the contiguity of the territory to be annexed with Geneva in passing upon the annexation ordinance. See 75 ILCS 16/15-15(a)(2) (West 2006) (in order to annex territory, it must be contiguous to the library district). It argues, however, that, as a strip annexation, the territory to be annexed is not contiguous to Geneva, citing to *Forest View*. We considered all of Batavia's "strip annexation" cases, including *Forest View*. Based on those cases, we cannot conclude that the annexation of the territory here constituted a strip annexation. Accordingly, we reject Batavia's argument that the territory to be annexed is not contiguous to Geneva because it is a strip annexation.

¶ 59 Batavia also argues that Geneva's annexation was conceived to technically comply with the requirements of section 15-15 of the Act while actually attempting to interfere with Batavia's ability to annex territory. To the extent that this argument goes to Geneva's intent, we have fully answered the question and reject the contention. Batavia also suggests that Geneva's proposed annexation into Blackberry Township did not represent a natural and gradual extension of its boundaries. While the natural and gradual extension of an annexing body's boundaries is a

proper question under the contiguity inquiry (see *People ex rel. St. Clair County v. City of Belleville*, 84 Ill. 2d 1, 12 (1981) (the contiguity requirement is "to permit the natural and gradual extension of municipal boundaries to areas which 'adjoin one another in a reasonably substantial physical sense' ") (quoting *Western National Bank v. Village of Kildeer*, 19 Ill. 2d 342, 352 (1960))), the only argument raised by Batavia was that the territory to be annexed constituted a strip annexation. Further, the natural and gradual extension is linked to the requirement that the territory to be annexed also adjoins with the annexing body's territory in a reasonably substantial physical sense. Batavia has pointed to no case holding that 500 feet is insufficiently substantial (with the exception of *Long Grove*, 160 Ill. App. 3d at 462 (which held that, because the territory was wholly bordered by Long Grove with the exception of a 600-foot section of its border, the 600 feet was insubstantial compared to the remainder of the territory's border with Long Grove)) to satisfy the reasonably substantial physical touching requirement of contiguity, other than the exception noted. Accordingly, we reject Batavia's arguments on contiguity.

¶ 60 Next, Batavia argues that Geneva did not have the authority to annex the territory in Blackberry Township, because its purpose in conducting the annexation was to block Batavia's access to Blackberry Township. In support, Batavia cites to *Village of Fox River Valley Gardens v. Lake County Forest Preserve District*, 224 Ill. App. 3d 919 (1992). At issue in that case was whether the Village could accept the conveyance of a 20-foot wide strip of land beneath the Fox River in order to render the subject territory discontiguous to the Forest Preserve District. This court held that the Village had no proper purpose in accepting the conveyance of the river-bottom land, other than to impede the Forest Preserve District's lawful condemnation of the subject territory. *Id.* at 934-35. Batavia argues that Geneva's annexation is the same quality of action as the Village's in *Village of Fox River Valley Gardens*, and the same result should obtain.

¶ 61 Batavia's argument seems to squarely present the basic issue in a *quo warranto* action: whether Geneva had the authority to act rather than whether Geneva's choice or manner of acting was proper. *E.g.*, *Reserve at Woodstock*, 2011 IL App (2d) 100676, ¶ 35 ("the proper scope of a *quo warranto* proceeding is to challenge the *authority* to act, not the *manner* of exercising authority" (emphasis in original)). However, how the question is posed seems to dispose of the argument: Did Geneva have the authority to interfere with Batavia's exercise of its powers of annexation (no); did Geneva have the authority to annex territory in Blackberry Township (yes). Any annexation is going to affect another body's ability to annex that territory. This suggests that, in a *quo warranto* action, the former question is not quite the initial point of inquiry, and the latter question is the more appropriate question, else any annexation could be challenged by a nearby governmental body on the ground that it was interfering with its ability to annex the same territory. This preference is reinforced by the presumption that a municipal ordinance is valid, albeit not immune from challenge. *Ruisard v. Village of Glen Ellyn*, 406 Ill. App. 3d 644, 661 (2010). Finally, the question is settled by looking at the statute under which the offending body proceeded. Here, it was section 15-15 of the Act; in *Fox River Valley Gardens*, it was the Downstate Forest Preserve Act (Ill. Rev. Stat., 1990 Supp., ch. 96½, par. 6300 *et seq.*) and the Municipal Code (Ill. Rev. Stat. 1989, ch. 24, par. 2-2-12), which were in conflict in that case. The court reasoned that the Village's ability to acquire land meant that the land had to be put to use; the Forest Preserve District similarly had the ability to acquire land, but the uselessness of the land under the river allowed the court to engage in balancing in reaching its result. *Fox River Valley Gardens*, 224 Ill. App. 3d at 934-35. Unlike in that case, here, both parties utilize section 15-15 of the Act, which, as we have noted, does not provide for an inquiry into the motives behind the annexations. Thus, we find *Fox River Valley Gardens* to be

distinguishable. Moreover, the territory to be annexed was within the Geneva School District and so, while the trial court believed that Geneva's primary purpose was to block other districts and particularly Batavia from annexing into Blackberry Township, we cannot say that "we can think of *no* way" ((emphasis in original) (*id.* at 934)) in which Geneva could legitimately utilize the annexed territory, as there was extensive evidence presented about aligning the boundaries of the library district with those of the school district. As a result, we cannot say that the annexation of the territory in Blackberry Township was beyond Geneva's powers and authority.

¶ 62 Batavia argues that a court may step in when the challenged party's actions violate public policy and the spirit of the law it is ostensibly following. The cases Batavia cites in support (and which we have discussed above) deal with annexations or disconnections attempted under the Municipal Code,[8] which, as we have repeatedly noted, provides for a generalized objection to the annexation's validity, unlike section 15-15 of the Act. Further, public policy, as embodied by the Act, allows a library district to annex territory so long as it is (1) within the boundaries of a municipality or school district that is at least partially within the annexing district, (2) contiguous to the district, and (3) without library service. 75 ILCS 16/15-15 (West 2006). Geneva's annexation complied with the public policy embodied in the Act. Accordingly, we do not accept Batavia's argument.

¶ 63 Batavia contends that section 30-55 of the Act (75 ILCS 16/30-55 (West 2006)) compels Geneva to "carry out the spirit and intent" of the Act. Section 30-55 provides that "[t]he board

[8] *Wild v. People ex rel. Stephens*, 227 Ill. 556 (1907) was decided in the context of a municipal incorporation, but it analyzed whether territory that cornered or was connected by strips of land 50 feet wide was contiguous.

of trustees of a district shall carry out the spirit and intent of this Act in establishing, supporting, and maintaining a public library or libraries within the district and for providing library service." *Id.* We do not see how annexing territory (the power to enact ordinances and to encourage additions to the district is expressly granted (75 ILCS 16/30-55.5, 55.65 (West 2006))), is against either public policy or the "spirit and intent" of the Act. Batavia's reliance on section 30-55 is unavailing.

¶ 64 Batavia contends, relying upon *Gary-Wheaton Bank v. City of West Chicago*, 194 Ill. App. 3d 396, 402 (1990), that Geneva's Ordinance No. 2006-7, while adopted under the general grant of power in the Act, is nevertheless contrary to "the spirit of State Law" and "is repugnant to the State's general policy," and is therefore invalid. *Gary-Wheaton Bank*, however, is inapposite, even as its general statement of the law is not incorrect. There, the city had passed a zoning ordinance that eliminated one of the requirements for a valid protest under the Municipal Code. *Id.* Here, by contrast, there is no abrogation of State law embodied in Geneva Ordinance No. 2006-7, and we perceive no conflict between the ordinance and State law. The principle in *Gary-Wheaton Bank* is inapplicable to the circumstances present here.

¶ 65 In this vein of contending that Geneva's annexation contravenes public policy, Batavia focuses again on *Fox River Valley Gardens* and *Austin Bank*. Batavia argues that Geneva's action of annexing territory in Blackberry Township is no different than the Village's action of accepting the conveyance of 20 feet of land at the bottom of a stream in order to create a discontiguity and defeat the Forest Preserve's condemnation of the subject property in *Fox River Valley Gardens*, 224 Ill. App. 3d at 936. While we can certainly understand and appreciate Batavia's argument on this point, we nevertheless discern a key difference in the quality of Geneva's action versus the Village's. In *Fox River Valley Gardens*, the land conveyed to the

Village was literally useless and violated the requirement that the municipality put acquired land to use. *Id.* at 934. By contrast, the land annexed by Geneva has at least a twofold use: it provides revenue to the district in the form of taxes (although Geneva did not seek to burden the landowners of the farmland in Blackberry Township with a greater tax burden in deference to their expressed wishes) and it aligns the district with the borders of the Geneva School District, opening the way to continue to annex into Blackberry Township as and when it is developed. Further, the annexation complies with the public policy embodied in the Act (and especially section 15-15). Thus we see that the annexation has a purpose beyond the simple frustration of Batavia's desire to annex the same territory. To be sure, frustration of Batavia's desire and ability to annex the territory is one of the effects, as well as one of the purposes, but it is not the sole purpose, and the utility of the annexation to Geneva serves to distinguish this case from *Fox River Valley Gardens*.

¶ 66 Likewise, *Austin Bank* involved a disconnection blocked by "barrier parcels," 301 feet in width. *Austin Bank*, 396 Ill. App. 3d at 6. Disconnection differs from annexation (especially under the Municipal Code which requires the court to pass on the annexation's validity even in the absence of objections (see 65 ILCS 5/7-1-4 (West 2006))) because "disconnection is favored when the statutory requirements for disconnection are met, regardless of the [disconnection's] purpose." *LaSalle National Trust, N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 562 (1993). In *Austin Bank*, the court decried the Village's attempt to prevent disconnection, noting that the barrier parcels created an artificial hardship to disconnection and frustrated the statutory purpose to liberally permit disconnection. *Austin Bank*, 396 Ill. App. 3d at 13. Again, we believe that Geneva's purpose was qualitatively different. Its action is both permitted and permissible.

While it may be engaging in border protection, we cannot say, on this record, that it is improper. Accordingly, Batavia's reliance on *Austin Bank* is similarly unavailing.[9]

¶ 67 Based on the foregoing, we hold that the trial court's judgment that Geneva's Ordinance No. 2006-7 was legal gimmickry was erroneous because it was based on incorrect legal principles. Accordingly, we reverse the trial court's judgment on that point.

¶ 68 2. Batavia's Cross-Appeal

¶ 69 On cross-appeal, Batavia argues that we should give effect to Batavia Ordinance No. 2006-011, or at least the portions of the ordinance that remain and are contiguous with Batavia after the rerecording of the ordinance struck the descriptions of the noncontiguous portions of the territory to be annexed. Batavia argues first that the rerecordation of Ordinance No. 2006-011 should be given effect. We disagree.

¶ 70 On October 18, 2006, Batavia enacted Ordinance No. 2006-011. It was promptly recorded. At some point, Batavia became aware that the legal description of the territory to be annexed was faulty, resulting in a portion of the territory being discontiguous. In order to remedy the flaw, Batavia's director manually struck the offending portion of the description and

[9] Batavia also cites *Indian Valley Golf Club, Inc. v. Village of Long Grove*, 135 Ill. App. 3d 543, 550 (1985), for the proposition that the Village's interference with the property owner's actions was improper. This case, too, is wide of the mark. Both Batavia and Geneva are seeking to annex the subject property and not interfering with the property owners' attempts to annex or disconnect their property, and this fact serves to distinguish *Indian Valley*. Moreover, it involves disconnection, which is favored, and, seemingly, courts are more reluctant to brook any interference with disconnection.

then submitted the ordinance, as modified, for rerecording. The director had not been authorized to make the corrections, and Batavia's board of trustees had neither authorized nor requested that Ordinance No. 2006-011 be corrected and rerecorded in the manner undertaken unilaterally by the director. In fact, Batavia later passed Ordinance No. 2006-013, which vacated that portion of Ordinance No. 2006-011 corresponding to the flawed legal description. Batavia also passed Ordinances No. 2006-014, adding in territory on the northern part of the territory to be annexed, and No. 2006-015, which purported to annex all of the territory previously sought in the preceding annexation ordinances, excluding any residences.

¶ 71 Batavia contends that the act of correcting Ordinance No. 2006-011 was essentially ministerial, and the action of rerecording did not attempt to do anything other than what the ordinance attempted to do, but only properly. We reject this line of argument. In "correcting" the ordinance, the director struck roughly 100 acres from the annexation. Admittedly, the 100 acres so stricken were not contiguous with Batavia, either directly or through the territory to be annexed, and so the 100 acres could not have been annexed in that ordinance. However, we view the act of striking the 100 acres (questions of validity of the annexation ordinance aside for the moment) as fundamentally changing the ordinance from that passed by the Batavia's board, and doing so without any authorization from the board. Simply put, there was no authority to change the ordinance from that enacted by the board, and without authority, the action was impermissible.

¶ 72 Batavia cites to *People v. Reid v. Zellar*, 224 Ill. 408, 413 (1906), for the proposition that the act of recording Ordinance No. 2006-011 was a permissible amendment of official records, not an unauthorized action. In *Reid*, the commissioners of a drainage district erroneously filed a record of meetings approving a drainage district. The court held that the commissioners could

file an amended record to reflect the proceedings as they actually occurred. *Id.* To hold otherwise, according to the court, "would permit great injustice to be done to the public," because a "public body proves its acts by the record, and, if there is a mistake or omission therein, those in charge of that record have a perfect right to amend it." *Id.* *Reid* is wholly inapposite. To be analogous, Batavia's board would have to seek to annex the territory without the noncontiguous portion. Plainly, Batavia sought to annex the entirety of the territory, including that portion made discontiguous due to the flawed legal description. Batavia did not seek to amend the record of the public meeting at which it took action; rather, it sought, through the unauthorized action of the director, to change the ordinance it had passed. This action has no sanction in fact or the law, and we reject Batavia's argument on the point.

¶ 73 Batavia argues, with closer factual congruity, that *People ex rel. City of North Chicago v. City of Waukegan*, 116 Ill. App. 3d 88 (1983), permits the rerecordation of the ordinance, because it corrected the action to conform to Batavia's actual intent. In *North Chicago*, the court held that the trial court erred because North Chicago did not allege in its motion for judgment on the pleadings the territory Waukegan sought to annex did not lack contiguity as described in its annexation petition. *Id.* at 94. The court further held that the court erred by refusing to allow Waukegan to amend its answer to the complaint in *quo warranto* with a second, corrected annexation ordinance that solved the description error. While, at first glance, the facts appear to be somewhat similar, the procedural posture, amending an answer and pleading a lack of contiguity, render the case inapposite. Further, here, Batavia did not pass and record a second annexation ordinance correcting the description error until after Geneva had passed its annexation ordinance. This circumstance also serves to factually distinguish the case. Finally, in *North Chicago*, the court held that it was error not to allow the second, validly enacted

annexation ordinance to be used to amend the answer to the complaint in *quo warranto*; Batavia is not asking for a similar result, rather, it is asking that we provide a judicial imprimatur to the director's unauthorized and unilateral correction and rerecordation of the original annexation ordinance. We will not do so.

¶ 74 Batavia appeals to "common sense" and argues that the 100 acres comprising the discontiguous territory that was the subject of the flawed legal description is *de minimis* considering the roughly 1,600-acre territory sought to be annexed in Ordinance No. 2006-011. We see at least two problems with this contention. First, we are not prepared to call 100 acres such a small amount of land that it is necessarily *de minimis*, even if it is roughly 1/16th or 6.25% of the area sought to be annexed. Second, and significantly, the authority mustered by Batavia deals with a small sliver of land 7 feet wide by 250 feet long (*People v. Knapp*, 28 Ill. 2d 239, 244 (1963)), or a strip of roadway 33 feet wide and of undescribed length (*People ex rel. Village of Northbrook v. City of Highland Park*, 35 Ill. App. 3d 435, 440-442 (1976). In *Knapp*, the sliver of land is about 0.04 acres; in *Northbrook*, we cannot determine the acreage, but we note that, for the land under the roadway to equal an acre, it would have to extend about a quarter-mile, so a reasonable guess as to the maximum area of the land under the roadway would be 4 acres (33 feet wide by 5,260 feet long). If the areas of land held to be *de minimis* in the authority cited by Batavia are a guide, then 100 acres is likely *not* to be *de minimis*.

¶ 75 Stepping away from numbers, we also note that Batavia Ordinance No. 2006-011 did not have a severability clause. The effect of a severability clause is to preserve the efficacy of an ordinance should a part of it be found to be unconstitutional or invalid. *Ball v. Village of Streamwood*, 281 Ill. App. 3d 679, 685-86 (1996). Even with a severability clause, the rest of the ordinance will stand only if what remains after the invalid portion is stricken is complete in

itself and is capable of being executed independently of the portion which is rejected. *Id.* at 686. Without the severability clause, then, if a portion of the annexation ordinance were invalid, it would render the entire ordinance invalid. Here, the trial court determined that flawed description rendered the entire ordinance invalid because it was not *de minimis* and it was so important that the county could not extend taxes on the territory to be annexed. We hold that this determination was not against the manifest weight of the evidence.

¶ 76 Batavia argues that the description of territory in annexation need not be as precise as that in a deed or conveyance. Because there is greater latitude given to legal descriptions in annexations, the flawed description here should not invalidate the annexation. Batavia's argument fails because the fact that the county was unable to extend taxes on the territory to be annexed as a result of the flawed description shows that the territory of the flawed legal description was integral to the entire annexation. This determination was not against the manifest weight of the evidence, and it fully rebuts Batavia's argument.

¶ 77 Batavia argues that, when the specific 100 acres corresponding to the flawed legal description was removed, the county was able to extend the taxes on the remaining territory to be annexed. Batavia concludes that we should give effect to just that portion of its annexation ordinance. This argument fails because the ordinance did not possess a severability clause. Had there been one, the fact that the removal of the territory might militate in favor of the result Batavia advocates. However, without a severability clause, we would be wholly rewriting the ordinance, and this we cannot do. Because we determine that the trial court did not err in concluding that the flaw in legal description invalidated Batavia's Ordinance No. 2006-011, we need not consider the trial court's determination that Batavia also violated the Open Meetings Act and Batavia's challenges to that determination.

¶ 78 For the reasons state above, we affirm the trial court's judgment as regards Batavia's cross-appeal.

¶ 79 B. Appeal No. 2-10-0674

¶ 80 In Appeal No. 2-10-0674, Geneva argues that the trial court erroneously denied it leave to file a complaint in *quo warranto*. In such a complaint, Geneva would have challenged the efficacy of Batavia's annexation ordinances, Nos. 2006-011, 2006-013, 2006-014, and 2006-015. Practically, Geneva was allowed to challenge Batavia Ordinances Nos. 2006-011 and 2006-014 in its affirmative defense to Batavia's complaint in *quo warranto*. We have resolved, in Geneva's favor, the issues related to those ordinances above. We see no need to further address Geneva's claims under Appeal No. 2-10-0674, as it has received the relief it sought.

¶ 81 We note that Geneva contends that its arguments against Ordinance No. 2006-011 should also be extended to Ordinance No. 2006-015, because the trial court, seemingly, neglected to expressly refer to Ordinance No. 2006-015 in its ruling even thought that ruling should apply to Ordinance No. 2006-015. We have carefully reviewed the record and cannot discern where in its affirmative defense it included, either expressly or by implication, any challenge to Batavia Ordinance No. 2006-015. Accordingly, we believe that the trial court resolved the matters before it, and those matters simply did not include Ordinance No. 2006-015.

¶ 82 C. Summation

¶ 83 Geneva sought reversal of the trial court's judgment regarding its intent behing the annexation embodied in Geneva Ordinance No. 2006-7. We held that that intent cannot be considered under the Act and that the trial court's judgment on that point was erroneous. Geneva also sought reversal of the trial court's judgment that its annexation ordinance was only a gimmick to impede Batavia's lawful exercise of annexation rights. We held that the trial court's

judgment on that point was based on incorrect legal principles. We therefore reverse the trial court's judgment holding that Geneva Ordinance No. 2006-7 is null and void and of no legal effect. Following this decision, however, Batavia can challenge Geneva's ordinance on permissible grounds, such as contiguity.

¶ 84 Batavia challenged on cross-appeal, the trial court's judgment that its Ordinances Nos. 2006-011 and 2006-014 were invalid. We held that the flawed legal description in concert with a lack of a severability clause rendered Ordinance No. 2006-011 invalid and affirmed the trial court's judgment on that point. Batavia did not argue the validity of Ordinance No. 2006-014 on cross-appeal, at least independently from Ordinance No. 2006-011. The record supports linking the validity of Ordinance No. 2006-014 to that of Ordinance No. 2006-011 so that if Ordinance 2006-011 is valid, then so is Ordinance No. 2006-014, and vice versa. We therefore affirm the trial court's judgment as to Ordinance Nos. 2006-011 and 2006-014. Batavia Ordinance No. 2006-015 is not at issue in this matter and stands unchallenged. Following this decision, Geneva may challenge its validity in any appropriate manner.

¶ 85 We declined to expressly address Geneva's arguments in Appeal No. 2-10-0674, because in resolving Appeal No. 2-13-1045 and its cross-appeal, we granted Geneva the relief it sought. We note that, by holding that Geneva Ordinance No. 2006-7 was not invalid (at least for the reasons stated by the trial court and raised by the parties), while Batavia Ordinance No. 2006-11 was invalid, we have reversed the priority between the parties regarding their attempted annexations. We believe that the better practice in this situation is to allow another challenge to the annexation ordinances, this time involving only proper grounds, such as contiguity and priority. Accordingly, we remand with directions to allow the parties to make appropriate challenges to the ordinances. As substantial evidence has been taken, albeit on irrelevant issues,

we do not foresee that the parties will need to elicit much, if any, more evidence. Instead, any appropriate challenges should be able to be resolved on the existing factual record (although the parties may apply to the trial court on good cause shown to augment the existing factual record as needed).

¶ 86 III. CONCLUSION

¶ 87 For the foregoing reasons, Appeal No. 2-10-0674 is dismissed as moot. The judgment of the circuit court of Kane County in Appeal No. 2-13-1045 is affirmed in part, reversed in part, and the cause is remanded with directions.

¶ 88 Appeal No. 2-10-0674: Dismissed.

¶ 89 Appeal No. 2-13-1045: Affirmed in part and reversed in part and remanded with directions.