

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 30, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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

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.

**No. 98-2135**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**RIVIERA AIRPORT, INC.,**

**PLAINTIFF-RESPONDENT,**

**V.**

**PIERCE COUNTY BOARD OF ADJUSTMENT AND  
PIERCE COUNTY,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from an order of the circuit court for Pierce County:  
ROBERT W. WING, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Pierce County and the Pierce County Board of Adjustment (the board) appeal a trial court order remanding a decision on a conditional-use permit to the board. The County's zoning committee had issued a conditional-use permit to Riviera Airport, Inc., allowing it to continue to operate a

grass airstrip in a district zoned agricultural. The permit, however, contained several conditions that the airport found objectionable. The airport then appealed those conditions to the board, but the board refused to hear the appeal and instead instructed the airport to seek certiorari review of the zoning committee's decision in the trial court. The board argued that the County zoning ordinances did not give aggrieved parties an administrative appeal from the zoning committee to the board, leaving certiorari in the trial court as the only means of review of the zoning committee's conditional-use permit.

The airport then sought certiorari review from the trial court, including a request for a court order forcing the board to hear the airport's appeal of the zoning committee decision. The trial court ruled that the airport had a right under County ordinances to appeal the zoning committee decision to the board. The trial court remanded the case to the board and ordered it to conduct a de novo review of the zoning committee decision.

On appeal, the board argues that the trial court misapplied the ordinances. It claims that the ordinances force all aggrieved parties to take all zoning committee decisions on conditional-use permits directly to the trial court by certiorari proceeding. In response, the airport argues that the board's appeal is frivolous. The trial court's reading of the ordinance examined a question of law that we review de novo. See *Eastman v. City of Madison*, 117 Wis.2d 106, 112, 342 N.W.2d 764, 767 (Ct. App. 1983). We reject the board's arguments and affirm the trial court's order.

Courts read ambiguous ordinances in light of the municipality's historical construction. See *Milwaukee Fire Fighters Asso. v. City of Milwaukee*, 50 Wis.2d 9, 19, 183 N.W.2d 18, 23 (1971) (practical administrative construction

over long period deserves great weight). The board concedes that county governments may empower their boards of adjustment to hear conditional-use permit appeals. *See League of Women Voters v. Outagamie County*, 113 Wis.2d 313, 323-25, 334 N.W.2d 887, 892-93 (1983); *Town of Hudson v. Bd. of Adjustment*, 158 Wis.2d 263, 271-73, 461 N.W.2d 827, 829-30 (Ct. App. 1990). Here, the ordinances conflict on what unit of county government has final decision-making authority on such permits. They give the zoning committee the power to approve conditional-use permits. *See* PIERCE COUNTY ZONING ORD. § 18.44.010 and § 18.08.120 (hereafter “PCZO”). On the other hand, they give the board the same power to issue conditional-use permits. *See* PCZO § 18.68.010C. They also give the board the power to hear and decide appeals from an administrative official’s decision made under the zoning ordinances. *See* PCZO § 18.68.010B. They further empower the board to hear appeals from the zoning administrator’s decisions. *See* PCZO § 18.68.020.

We agree with the trial court that the airport had the right under these ordinances to appeal the zoning committee’s conditional-use permit to the board. Read together, these ordinances leave unclear what unit of county government has the final decision-making authority on conditional-use permits. Under these circumstances, the trial court correctly looked to the board’s past practice, under which the board had reviewed the merits of conditional-use permits issued by the zoning committee. Faced with ambiguous ordinances, the trial court correctly read them in a manner that was fair to the parties and consistent with the board’s past practice. The trial court’s reading worked a just integration of the various clauses and accorded the airport the same rights other county residents had enjoyed in past conditional-use permit disputes. The trial court also properly noted that the zoning committee’s own decision, together with its appeal-rights

form, had instructed the airport of its right to appeal the conditional-use decision to the board. These actions by the zoning committee lent further support to the trial court's construction. We detect no error.

We briefly address the remaining two issues. First, we uphold the trial court's decision to order the board to hold a de novo review of the zoning committee's decision. The airport directly sought such an order from the trial court on several occasions, and the board never opposed the request. Under the circumstances, we are satisfied that the board acquiesced in the airport's request and has thereby waived the issue. *See Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140,145 (1980). Second, we hold the appeal not frivolous. If the appeal raises issues about which competent attorneys could reasonably disagree, it is not frivolous. *See State v. State Farm Fire & Cas. Co.*, 100 Wis.2d 582, 604, 302 N.W.2d 827, 838 (1981). Here, the board's appeal raised such issues. The ordinances were ambiguous, and this ambiguity gave the board reasonable grounds to argue that the airport had no right to appeal the zoning committee's ruling to the board. Under such circumstances, the board could make such an argument in good faith despite its deviation from past administrative practice.

*By the Court.*—Order affirmed.

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

