COURT OF APPEALS
DECISION
DATED AND FILED

April 11, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-1776

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

ST. CROIX COUNTY,

PLAINTIFF-RESPONDENT,

v.

JOHN BETTENDORF,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County: SCOTT R. NEEDHAM, Judge. *Affirmed.*

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

¶1 PER CURIAM. John Bettendorf appeals a summary judgment concluding that he violated the St. Croix County zoning ordinances by storing commercial vehicles and allowing his employees to park on land zoned agricultural-residential. He argues that these activities do not violate the ordinance and that there is a genuine issue of material fact as to whether his use of the

property in this manner was "grandfathered." We reject these arguments and affirm the judgment.

¶2 Bettendorf owns property that is zoned agricultural-residential except for a 350-foot-by-600-foot parcel that was rezoned commercial in 1985. He operates businesses on the commercial lot that he described as a truck repair shop and transfer point, a parking lot and trailer staging yard and a turnaround area for semi tractor-trailer units. He is currently operating a trucking business, a shop for repairing vehicles, and a freight trailer warehouse on that property. He also leases space to Madison Freight Company. He parks semi trailers and allows his employees to park on the adjacent agricultural-residential property. The trial court concluded that parking these vehicles in an area not zoned for commercial use violated the zoning ordinances.

¶3 Construction of the zoning ordinance is a question of law. *See* ***Sauk County v. Trager***, 113 Wis. 2d 48, 55, 334 N.W.2d 272 (Ct. App. 1983). We construe the ordinance without deference to the trial court's decision. *See* ***Eastman v. City of Madison***, 117 Wis. 2d 106, 111, 342 N.W.2d 764 (Ct. App. 1983).

¶4 The zoning ordinance enumerates the permitted uses within each of the districts. All other uses are necessarily prohibited. *See* ***Foresight Inc. v. Babl***, 211 Wis. 2d 599, 604, 565 N.W.2d 279 (Ct. App. 1987). Storing or parking semi trailers and employees' vehicles on agricultural-residential property is not included in the authorized activities enumerated in the ordinance.

¶5 Bettendorf argues that parking is also not specifically authorized in the commercial zoning ordinance and would be illegal anywhere in the county if it must be specifically authorized by ordinance. Therefore, he reasons, the absence

of specific authorization for parking does not indicate that parking on agricultural-residential property is prohibited. This argument is based on an unreasonable construction of the ordinance. The absence of authorization for parking in the ordinances demonstrates that parking and storage are considered an integral part of the underlying commercial, agricultural or residential activity. The only reasonable construction of the ordinance is that parking and storage related to commercial operations are allowed on commercial property and is not allowed on agricultural-residential property. The trucking business is made up of semi tractors, semi trailers, buildings, loading docks, forklifts and employees. Authorization for these commercial activities on commercial property necessarily includes storage and parking related to those activities on that property. However, allowing these commercial activities to spill over onto adjacent agricultural-residential property is not allowed by the ordinance.

¶6 Bettendorf argues that some of the trailers are used for storing agricultural products. The trial court noted and the County does not dispute that Bettendorf can use trailers on the agricultural-residential zoned property for storage of agricultural products he raised. However, the ordinance cannot be construed to allow storage or parking of vehicles used in Bettendorf's commercial trucking business merely because they occasionally contain agricultural products.

¶7 Bettendorf argues that a genuine issue of fact exists whether his use of the property is "grandfathered" because he has used the property for employee parking and semi trailer storage since 1971. Because the applicability and construction of the ordinances are questions of law and Bettendorf's use of the land is not in dispute, no issues of material fact exist. Ordinances in effect before 1971 zoned Bettendorf's property agricultural or agricultural-residential. The ordinances enumerated specific uses and implicitly prohibited all other

commercial uses. Bettendorf's commercial use of the land is grandfathered only if he can show that his use prior to enactment of the ordinance was lawful. *See* ***City of Lake Geneva v. Smuda***, 75 Wis. 2d 532, 534, 249 N.W.2d 783 (1977). Bettendorf argues that his use in 1971 was lawful because the ordinance specifically allowed "storage yards." He argues that parking trailers on property is using it as a storage yard. Although "storage yard" is not defined in the ordinance in effect in 1971, it cannot reasonably be construed to allow spillover from nonagricultural commercial activity like a trucking business and employee parking on adjacent parcels. Because Bettendorf's commercial use of the property in 1971 was not lawful, he obtained no vested right to continue that unlawful use.

By the Court.—Judgment affirmed.

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