

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 6, 1998

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. 98-0878

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ARTHUR A. JACOBS AND ELLEN A. JACOBS,

PLAINTIFFS-APPELLANTS,

v.

**WASHBURN COUNTY BOARD OF ADJUSTMENTS,
WASHBURN COUNTY ZONING COMMITTEE,
WASHBURN COUNTY, YELLOW RIVER SAND &
GRAVEL COMPANY AND ALVIN TODD,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Washburn County:
JAMES A. TAYLOR, Judge. *Affirmed.*

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

PER CURIAM. Arthur and Ellen Jacobs appeal an order upholding a decision of the Washburn County Board of Adjustment that approved a conditional use permit to operate a gravel pit. The board approved the permit,

requiring all excavation to be completed within fifteen years and subject to construction of safety berms separating the pit from the highway. The Jacobs argue that the pit and/or berm will violate the county's mandatory setback requirements and that the permit violated an ordinance by allowing a fifteen-year project when the maximum allowed by the ordinance is five years.¹ We reject these arguments and affirm the order.

The Washburn County Zoning Ordinance requires highway setbacks for any "structure." A structure is defined in relevant part as "any man[-]made object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground" Even if we assume that the safety berms and pits will be placed closer to the road than the ordinance allows, a fact not found in the record, we conclude there is no violation of the ordinance. The board reasonably concluded that the gravel pit and the temporary berm are not "structures" as that term is used in the ordinance. An expansive interpretation of "structures" would prohibit placement of mail boxes, street signs, lamp posts and fences in the setback area. The safety berms will function substantially like a fence or screen which the ordinance allows the zoning committee to require for conditional uses. The gravel pit itself is simply a hole in the ground, neither constructed nor capable of repair or destruction. Giving appropriate deference to the board's interpretation and application of the setback ordinance, *see Marris v. City of Cedarburg*, 176 Wis.2d 14, 32-33, 498 N.W.2d 842, 850 (1992), we

¹ The Jacobs also refer to the requirements of the ordinance that the applicants provide specific information regarding the reclamation plan. However, their brief does not identify any specific defect in the reclamation plan. Because this issue was not adequately addressed in the brief, it will not be considered on appeal. *See Fryer v. Conant*, 159 Wis.2d 739, 746 n.4, 465 N.W.2d 517, 520 n.4 (Ct. App. 1990).

conclude that the board reasonably determined that the gravel pit and safety berms are not “structures” as used in the setback ordinance.

The permit does not violate Article XXVI, § 263 of the zoning ordinance by exceeding the five-year limitation. The permit mandates that all excavation be completed within fifteen years. We do not construe the permit to circumvent the requirement that the permit be reviewed after five years. The permit sets a fifteen-year cap on the excavation activities, not a fifteen-year approval.

By the Court.—Order affirmed.

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

