

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 30, 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. 98-1196

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF CALUMET,

PLAINTIFF-RESPONDENT,

V.

MICHAEL SCHROEDER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Calumet County:
BRUCE SCHMIDT, Judge. *Affirmed.*

BROWN, J. Michael Schroeder appeals from a judgment finding him in violation of a Calumet County zoning ordinance. Schroeder's property is in an exclusive agricultural district. The circuit court found that Schroeder was running a commercial dog breeding business, and thus was in violation of the zoning ordinance. The record supports this finding, so we affirm.

Schroeder argues that the zoning ordinance is vague and ambiguous and that it does not clearly prohibit him from keeping as many dogs as he wishes, as long as they are solely pets and not part of a commercial operation. Calumet County responds that the ordinance clearly prohibits a commercial dog breeding business and that Schroeder operates such a business.

While the parties assert that the issue before the court is a question of law, it is a mixed question of law and fact. Interpretation of an ordinance is a question of law which this court reviews de novo. *See Village of Sister Bay v. Hockers*, 106 Wis.2d 474, 483, 317 N.W.2d 505, 509 (Ct. App. 1982). Whether the ordinance allows a commercial dog breeding facility in an exclusive agricultural district is such a question. However, whether the Schroeders' keeping of dogs was a commercial dog breeding business is a fact question. Therefore, we will not disturb the trial court's finding unless it is against the great weight of the evidence. *See id.* at 478, 317 N.W.2d at 507.

We agree with the County that the ordinance clearly prohibits the running of a commercial dog breeding business in an exclusive agricultural district. The ordinance first lists the purposes of the exclusive agricultural district. *See CALUMET COUNTY, WIS., ZONING ORDINANCE § 7.01*. After defining the included lands, the ordinance goes on to list permitted and conditional uses. *See id.* at § 7.011-.013. Dog breeding is not listed. However, dog breeding *is* listed as a conditional use in a nonexclusive agricultural district. *See id.* at § 7.033(m). Where an ordinance contains a given provision, the omission of that provision from another ordinance dealing with a similar subject shows a difference in legislative intent. *See R.W.S. v. State*, 162 Wis.2d 862, 879, 471 N.W.2d 16, 23 (1991). Here, the absence of commercial breeding as a permitted or conditional use in an exclusive agricultural district, coupled with its inclusion as a conditional

use in a nonexclusive agricultural district, demonstrates that the county board meant *not* to allow commercial dog breeding facilities in exclusive agricultural districts.

This conclusion is shored up by the stated purposes of the exclusive agricultural district. *See* ORDINANCE § 7.01. The exclusive agricultural district is meant to, *inter alia*, preserve land for food production, protect existing farms from encroachment by non-farm land uses, prevent conflicts between incompatible uses and control non-farm growth. *See id.* Limiting commercial enterprises to farming ventures is consistent with these goals.

Having determined that the ordinance clearly prohibits a commercial dog breeding business, we turn to the trial court's finding that Schroeder had a dog breeding business on his land. This finding is strongly supported by the record. Schroeder and his spouse, Rumi Schroeder, had previously petitioned the county board to amend the zoning ordinance to allow commercial dog breeding. Rumi testified that she sells two to three litters of puppies per year. The Schroeders at times have an announcement on their answering machine that they have puppies for sale. Furthermore, Rumi testified that, in the past, the Schroeders had attempted to tax deduct their dog expenses as business expenses. Given these facts, the trial court had ample evidence to conclude that "to classify [the breeding] as a hobby stretches the definition of 'hobby' and ... crosses the line into a business."

This case is not about whether a farmer can keep a few, or even several, dogs on his or her farm. The crucial finding here was that the Schroeders are in the business of breeding dogs. This is a nonagricultural use of the land. Because the ordinance clearly prohibits commercial dog businesses in exclusive

agricultural districts and because the trial court's finding that the Schroeders ran a dog breeding business is not clearly erroneous, we affirm the judgment of the trial court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

