

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1518

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**DOOR COUNTY ENVIRONMENTAL COUNCIL, INC. AND
GIBRALTAR PRESERVATION COUNCIL, INC.,**

PLAINTIFFS-APPELLANTS,

V.

**DOOR COUNTY AND DOOR COUNTY BOARD OF
ADJUSTMENT,**

DEFENDANTS-RESPONDENTS,

CLEMENS V. HEDEEN, JR.,

**INTERVENING DEFENDANT-
RESPONDENT.**

THE DOOR PROPERTY OWNERS ASSOCIATION,

PLAINTIFF,

V.

**DOOR COUNTY AND DOOR COUNTY BOARD OF
ADJUSTMENT,**

DEFENDANTS,

CLEMENS V. HEDEEN, JR.,

INTERVENING DEFENDANT.

APPEAL from a judgment of the circuit court for Door County:
PETER C. DILTZ, Judge. *Affirmed.*

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

¶1 PER CURIAM. Door County Environmental Council, Inc., and Gibraltar Preservation Council, Inc. (collectively the councils) appeal a judgment affirming the Door County Board of Adjustment's (board) decision to grant Clemens Hedeem a special exception permit to reopen a ski hill and operate a putting course. The councils argue that Hedeem's application was so lacking in detail at the time of the public hearing that the board was precluded from approving the application under *Weber v. Town of Saukville*, 209 Wis. 2d 214, 237-38, 562 N.W.2d 412 (1997). They also argue that Hedeem's late filing of plans for the putting course violated the ordinance and voided the application. We reject these arguments and affirm the judgment.

¶2 Hedeem owns a seventy-seven acre tract, part of which had been used as a ski hill twenty years ago. At the time he requested the special exception permit, he had already received necessary zoning approval for construction of housing units and a retail/lodge facility on the site, including permits for the structures and parking facilities. Hedeem submitted an application to the Resource

Planning Committee for authorization to use twenty-seven acres of the subject property as a ski hill and putting course. After a public hearing, the committee granted the application subject to numerous conditions.

¶3 The councils appealed the committee's decision to the board. Following two nights of public hearings, the board affirmed the committee's decision with minor variations. The board required Hedeem to submit more detailed plans regarding the putting course within 120 days of issuance of the permit. Hedeem submitted additional plans after the 120-day deadline.

¶4 The councils then challenged the board's decision in circuit court. The circuit court affirmed the decision granting the permit as to the ski hill development, but modified the board's decision as to the golf development. It retained jurisdiction and ordered that Hedeem submit a more specific plan to the board within thirty days and that the board conduct an additional public hearing after receiving the plan. The board conducted the hearing and granted the permit for the putting course. The circuit court then entered its final judgment affirming the board's decisions.

¶5 The zoning ordinance requires the planning committee and the board to consider whether the proposed use at the proposed location is contrary to public interest or detrimental to public health, safety or the character of the surrounding area. To facilitate that review, the application for a special exception permit must contain certain information concerning the use and the construction plans. The ordinance provides that "no application shall be accepted by the Zoning Administrator until complete as judged by the Zoning Administrator"

¶6 As to the ski hill, the councils argue that Hedeem's application was more deficient than the one found to be insufficient in *Weber* because the plan had

not progressed beyond the conceptual stage at that time and provided no detail regarding the ski lift towers and machinery, light and sound towers, wells, pumping machinery and snowmaking structures, maintenance and equipment structures, roadways, driveways and parking areas. The degree to which these factors are relevant varies according to the special exceptions sought. Unlike the ordinance in *Weber*, which was narrowly designed to restrict mining activities, Door County's general zoning ordinance specifically gives discretion to the zoning administrator to determine when an application for a particular use provides sufficient information. The zoning administrator determined that Hedeem's application provided sufficient information regarding the skiing activity to allow the citizens, the committee and the board to make an informed decision. The ordinance does not compel the zoning administrator to require exhaustively detailed plans from an applicant who would be burdened with the extra expense of obtaining the detailed plans without knowing whether the underlying concept would be accepted.

¶7 In *Weber*, the court held that unless a zoning ordinance provides to the contrary, the sufficiency of a conditional use application should be measured at the time the notice of the final public hearing is first given. See *Weber*, 209 Wis. 2d at 237-38. This will insure that interested individuals have a meaningful opportunity to express an informed opinion at the public hearings. Hedeem's application did not provide sufficient information regarding the golf activity before the public hearing. Therefore, the trial court required additional information and another public hearing.¹ The board's final decision authorizing

¹ The court's order replaced the previous board's order that imposed the 120-day deadline for submitting additional information.

the putting course therefore complies with the requirements set out in **Weber**. The councils do not attempt to demonstrate why the trial court could not compel another hearing upon notice and then affirm the resulting decision. Therefore, any challenge to that procedure was waived by the councils' failure to develop the argument. See **W.H. Pugh Coal Co. v. State**, 157 Wis. 2d 620, 634, 460 N.W.2d 787 (Ct. App. 1990).

By the Court.—Judgment affirmed.

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

