

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 27, 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. 99-2198

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

RIVIERA AIRPORT, INC.,

PLAINTIFF-RESPONDENT,

V.

PIERCE COUNTY,

DEFENDANT-APPELLANT,

STATE OF WISCONSIN,

DEFENDANT-CO-APPELLANT.

APPEAL from a judgment and an order of the circuit court for
Pierce County: ROBERT W. WING, Judge. *Reversed.*

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

¶1 PER CURIUM. Pierce County and the State of Wisconsin (collectively the State) appeal from a summary judgment granted in favor of Riviera Airport, Inc. The State additionally appeals from an order denying its motion for reconsideration. The State argues that the circuit court erred by determining that a grass airstrip is a permitted use under the County's St. Croix Riverway Zoning Ordinance. Because use of the land as an airstrip is inconsistent with the overall purpose behind the ordinance's enactment, we reverse.

BACKGROUND

¶2 The relevant facts are undisputed. Riviera owns real estate located adjacent to the St. Croix River and zoned agricultural under Pierce County's general zoning ordinance. A portion of this property, described as the "W ½ of the NW ¼ of Section 12, Township 26 North, Range 20 West," is concomitantly governed by the St. Croix Riverway Zoning Ordinance. The parties have long disputed whether using the property as a grass airstrip is legally permissible.¹

¶3 In October 1998, Riviera sought a judgment declaring that a grass airstrip was a permissible use of property in the riverway district. Both parties

¹ In *Citizens for the Preservation of the St. Croix, Inc. v. Riviera Airport, Inc.*, No. 97-0501, unpublished slip op. (Ct. App. July 31, 1997), this court concluded that the airstrip operation violated Pierce County's comprehensive zoning ordinance and did not otherwise constitute a grandfathered nonconforming use.

Riviera subsequently applied for and was granted a conditional use permit by the County's land use committee. Because Riviera disagreed with the conditions under which the permit was granted, it sought to appeal to the Pierce County Board of Adjustment. The board refused to hear the appeal and instead instructed the airport to seek certiorari review in the trial court. The circuit court concluded that Riviera had a right under the County's ordinances to appeal to the board and this court affirmed the circuit court's order. See *Riviera Airport, Inc. v. Pierce Cty. Bd. of Adjust.*, No. 98-2135, unpublished slip op. (Ct. App. March 30, 1999).

subsequently moved for summary judgment. The circuit court, granting judgment in favor of Riviera, concluded that the grass airstrip, as a nonstructural open space use, was permitted in the riverway district. The court further held that because the riverway district overlay an agriculture district under which Riviera had been granted a conditional use permit, use of the airstrip would be governed by the more restrictive conditional use permit. The State's motion for reconsideration was denied and this appeal followed.

ANALYSIS

¶4 Whether summary judgment was appropriately granted presents a question of law that we review independently of the circuit court. *See Fortier v. Flambeau Plastics Co.*, 164 Wis. 2d 639, 651-52, 476 N.W.2d 593 (Ct. App. 1991). When reviewing summary judgments, we utilize the same analysis as the circuit court and must apply the standards set forth in WIS. STAT. § 802.08(2). *See Schultz v. Industrial Coils, Inc.*, 125 Wis. 2d 520, 521, 373 N.W.2d 74 (Ct. App. 1985). In general, "summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Kenefick v. Hitchcock*, 187 Wis. 2d 218, 224, 522 N.W.2d 261 (Ct. App. 1994).

¶5 The issue of whether the property's use as an airstrip is permissible in the riverway district involves the interpretation of the riverway zoning ordinance, a question of law that we review de novo. *See Welter v. City of Milwaukee*, 198 Wis. 2d 636, 643, 543 N.W.2d 815 (Ct. App. 1995). In interpreting an ordinance, the rules of statutory construction apply. *See Marris v. City of Cedarburg*, 176 Wis. 2d 14, 32, 498 N.W.2d 842 (1993). "The purpose of all such construction is to discern the intention of the legislative body." *Schroeder*

v. Dane Cty. Bd. of Adjust., 228 Wis. 2d 324, 333, 596 N.W.2d 472 (Ct. App. 1999). We must first look to the plain language of the ordinance. *See id.* at 334. If the ordinance is clear on its face, our inquiry into the legislature’s intent terminates and we must simply apply the ordinance to the facts of the case. *See Northwest Properties v. Outagamie County*, 223 Wis. 2d 483, 488, 589 N.W.2d 683 (Ct. App. 1998). An ordinance is ambiguous, however, if its language is subject to more than one reasonable interpretation. If the language is ambiguous, “then we consider the scope, history, context, subject matter and object of the ordinance.” *See Schroeder*, 228 Wis. 2d at 333. Further, we read ordinances in context such that the entire section of an ordinance and related sections are to be considered in its interpretation. *See Waukesha State Bank v. Village of Wales*, 188 Wis. 2d 374, 382, 525 N.W.2d 110 (Ct. App. 1994).

¶6 Turning to the ordinance, ch. 19.20 governs permitted and conditional uses in the riverway district. Section 19.20.010 delineates a number of permitted uses under the ordinance. Consistent with the circuit court’s determination, Riviera argues that the grass airstrip was permissible under subsec. B of § 19.20.010, which permits: “[n]onstructural open space uses associated with maintaining the value of certain lands for natural areas, scenic, recreation, wildlife management, water and soil conservation, and other such purposes.” *See PIERCE COUNTY ST. CROIX RIVERWAY ZONING ORDINANCE* § 19.20.010B.² Specifically, Riviera contends that the airstrip constitutes a

² Other permitted uses under the ordinance include:

- A. Single-family detached dwellings;
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- C. Agriculture (nonstructural) including silvaculture in compliance with Section 19.16.070;
- D. Highway waysides, rest areas and scenic overlooks;

(continued)

nonstructural open space use associated with maintaining the value of the land for recreational purposes. The State, however, argues that the airstrip is not “recreational” within the context of the entire ordinance. We agree.³

¶7 The term “recreation” must be interpreted to comply with the overall purpose of the ordinance. *See Waukesha State Bank*, 188 Wis. 2d at 382-83. The St. Croix Riverway Zoning Ordinance was adopted under the authority granted the County by WIS. STAT. § 30.27, which provides, in pertinent part:

The Lower St. Croix River, between the dam near St. Croix Falls and its confluence with the Mississippi River, constitutes a relatively undeveloped scenic and recreational asset. The preservation of this unique scenic and recreational asset is in the public interest and will benefit the health and welfare of the citizens of Wisconsin. The state of Wisconsin is therefore determined that the Lower St. Croix River be included in the national wild and scenic rivers system under the wild and scenic rivers act, as amended, 16 USC 1271 to 1287, and the Lower St. Croix

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- E. Governmental structures used as information centers or for resource management to improve the fish and wildlife habitat;
 - F. Signs as approved by state or local governments which are necessary for public health and safety; signs indicating areas that are available or not available for public use; and signs that are otherwise lawful, provided they are not visible from the river;
 - G. Accessory buildings, provided they are not located closer to the bluffline than the principal structure;
 - H. Private swimming pools, as defined in Section 19.08.280 ...;
 - I. Docks and piers that have a permit from the Army Corps of Engineers.

See PIERCE COUNTY ST. CROIX RIVERWAY ZONING ORDINANCE § 19.20.010. In turn, § 19.20.020D, governing conditionally permitted uses and activities, provides: “Conditional uses include the following: 1. Land divisions; 2. Transmission services; 3. Filling, grading and rock riprapping for shoreline protection; 4. Stairways or lifts.”

³ To the extent the airstrip’s impermissibility within the riverway district conflicts with Riviera’s conditional use permit under the general zoning ordinance, the more restrictive ordinance controls. *See* PIERCE COUNTY ST. CROIX RIVERWAY ZONING ORDINANCE § 19.04.020.

River act of 1972, 16 USC 1274(a)(9). The purpose of this section is to ensure the continued eligibility of the Lower St. Croix River for inclusion in the national wild and scenic rivers system and to guarantee the protection of the wild, scenic and recreational qualities of the river for present and future generations.

¶8 The ordinance itself further explains that its purpose

is to protect and maintain the natural, rugged and wooded appearance of the shorelands, the bluffs, and the bluffs along the St. Croix, to prevent soil erosion, to avoid hazards connected with structural development of these lands, and to reduce the adverse effects of overcrowding and poorly planned shoreland development.

PIERCE COUNTY ST. CROIX RIVERWAY ZONING ORDINANCE § 19.04.010B.⁴

Although the airstrip at issue undoubtedly serves a general recreational function for some or all of its users, we must interpret “recreation” in context of the stated purpose behind the ordinance’s enactment. Recreational use of the land within the riverway district is permissible only if it relates to the preservation of the area’s natural, rugged and scenic qualities, as contemplated by the ordinance and its authorizing statute.

¶9 Riviera questions the ordinance’s stated purpose in light of its allowance for developments such as “single-family detached dwellings.” It places much emphasis on the fact that the airstrip, a relatively innocuous grass field, prevents the proliferation of structural developments that would otherwise interfere with the riverway district’s scenic beauty. Although these arguments are intuitively persuasive, it is not for this court to substitute its will for that of the zoning authority that drafted the ordinance. See *Schmeling v. Phelps*, 212 Wis. 2d

⁴ See also WIS. ADMIN. CODE § NR 118, which delineates standards and criteria governing the Lower St. Croix National Scenic Riverway.

898, 917, 569 N.W.2d 784 (Ct. App. 1997). Developments such as the single-family detached dwellings are specified permissible uses under the ordinance, while the airstrip is permissible only if its use is associated with maintaining the value of the land for recreational purposes within the greater scheme of protecting the riverway district's natural environment. Because an airstrip is inconsistent with the ordinance's overall purpose to preserve the riverway district's natural environment, we conclude that Riviera's airstrip is not a permitted use under § 19.20.010 of the riverway ordinance.⁵

By the Court.—Judgment and order reversed.

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

⁵ We refrain from addressing any alternative arguments because only dispositive issues need be addressed. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983).

