**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**November 16, 2005**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal Nos. 2005AP1143**
**2005AP1144**
**2005AP1145**
**2005AP1146**

**Cir. Ct. Nos. 2004FO677**
**2004FO679**
**2004FO680**
**2004FO681**

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

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**COUNTY OF WALWORTH,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ALLEN T. RITCHEY,**

**DEFENDANT-APPELLANT.**

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APPEALS from an order of the circuit court for Walworth County: JOHN R. RACE, Judge. *Affirmed*.

¶1 SNYDER, P.J.[1] Allen T. Ritchey appeals from an order finding him guilty of violating several county ordinances. Of the six citations issued to Ritchey, the circuit court dismissed two and ordered forfeitures for the remaining four. Ritchey contends that the County of Walworth had no authority to issue the citations without giving him prior notice of the violations and further that the court's factual findings were erroneous. We disagree and affirm the order of the circuit court.

¶2 The facts are brief and undisputed. Ritchey owns a five-acre parcel of land in Walworth county which is zoned C-2 upland resource conservation district. Two of the acres are used for an auto body shop and three are dedicated to what Ritchey terms his "arboretum."[2] Ritchey cultivates a collection of approximately 10,000 plants comprised of 300 to 400 varieties of hostas, a widely cultivated lily-like shade garden plant. Ritchey also maintains a Web site describing his hosta collection and advertising an event he calls "Hosta Fest."

¶3 In May 2004, Ritchey's Web site stated that the "4th Annual Hosta Fest" would take place on Memorial Day weekend and June 5 and 6, 2004. The site also advertised that hostas would be displayed and sold in two- or three-gallon pots. In addition to the Web site, Hosta Fest was advertised on signs posted along roads in the community.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[2] The body shop existed prior to the enactment of the zoning code and is a lawful nonconforming use of the property.

¶4 On Memorial Day, 2004, Nicholas Sigmund, a code enforcement officer from the Walworth County Land Use and Resource Management Department, attended Hosta Fest. While there, Sigmund documented temporary tents set up with plants in one and a cash register in another. He noted that the plants had price tags on them, and Ritchey was at the cash register exchanging plants for money. Sigmund and another colleague also documented the Hosta Fest and plant sale signs posted at various intersections. Some of the signs were posted in the road right-of-way, which is reserved for official signs and utilities. Finally, Sigmund documented a structure added onto the auto body shop building. The new structure had a metal roof, lumber framing around the roof, and what appeared to be pink insulation on the sides. Sigmund then cited Ritchey for six zoning code violations: (1) operating an unapproved business, (2) not having clearly marked parking stalls and having vehicles parked in areas not intended for parking, (3) placing signs in the right-of-way, (4) erecting signs advertising an unapproved business, (5) construction of an addition without a permit, and (6) expansion of a nonconforming use.

¶5 On January 10, 2005, a bench trial ensued. The circuit court concluded that the sale of hostas was not contemplated by the term "arboretum" and that Ritchey's hosta sale brought his activity within the definition of a commercial greenhouse. As a result, the court held that Ritchey's hosta sale violated the zoning code. The court further ruled that Ritchey violated the code because his hosta sale signs were posted in the road right-of-way and because the structure added to the body shop building was a "cooler, electrified, with a walk-in

door and glass doors on one side" and was "anything but minor and movable." The court imposed forfeitures related to these code violations.[3]

¶6 Ritchey appeals, first challenging the procedure by which the County issued the citations. Ritchey does not contest the County's ability to enforce its zoning code by issuing citations; rather, he argues that the County was required to provide written notice of the violations before citing him. Whether the County failed to comply with notice procedures or otherwise violated Ritchey's rights is a question of law subject to our de novo review. *See* ***Tateoka v. City of Waukesha Bd. of Zoning Appeals***, 220 Wis. 2d 656, 669, 583 N.W.2d 871 (Ct. App. 1998).

¶7 Ritchey directs us to the description of the zoning administrator's duties under WALWORTH COUNTY, WIS., ZONING ORDINANCE § 74-117, which states: "It shall be the duty of the zoning administrator to … *[i]nvestigate* all complaints [and] … give notice of all violations of this ordinance to the owner … or occupant of the premises, and report uncorrected violations to the corporation counsel in a manner specified by him." He contends that the County failed to give him notice of the violations, which conceivably would have allowed him to correct them before he would face any citations.

¶8 The County responds that the citations afford the required notice and that the procedure complies with WIS. STAT. § 66.0113(1)(a) and (2)(b), which

[3] The circuit court dismissed the citation for failure to provide parking stalls and the citation for expansion of a nonconforming use. Neither party appeals from this portion of the court's order.

state in relevant part: "[T]he governing body of a county … may by ordinance adopt and authorize the use of a citation under this section to be issued for violations of ordinances .... The issuance of a citation by a person authorized to do so under par. (a) shall be deemed adequate process to give the appropriate court jurisdiction over the subject matter of the offense …."

¶9 The legislature has decided that a citation for a zoning ordinance violation is "adequate process"; accordingly, a preliminary written notice, such as that promoted by Ritchey, would be superfluous. Ritchey does not direct us to any language in the statutes or zoning ordinances that would require precitation written notice of code violations. If the plain language of a statute applied to the undisputed facts resolves the issue, we need not pursue the matter further. *See* ***Reyes v. Greatway Ins. Co.***, 227 Wis. 2d 357, 365, 597 N.W.2d 687 (1999) ("If the language of the statute clearly and unambiguously sets forth the legislative intent, it is the duty of the court to apply that intent to the case at hand and not look beyond the statutory language to ascertain its meaning.").

¶10 Ritchey next challenges two of the circuit court's factual determinations. First, he disputes that he operated a greenhouse instead of an arboretum, and second, he disputes that the walk-in cooler was a structure that required a zoning permit for construction. We apply a highly deferential standard of review to a circuit court's findings of fact and determinations of credibility. ***Jacobson v. American Tool Cos.***, 222 Wis. 2d 384, 389, 588 N.W.2d 67 (Ct. App. 1998). The circuit court's findings of fact will not be set aside unless we conclude that they are clearly erroneous. WIS. STAT. § 805.17(2).

¶11 Here, the circuit court heard testimony from Sigmund, Ritchey, and Ritchey's expert witness, Roy Klehm, who holds a degree in ornamental horticulture and is a member of the Arboretum and Garden Botanical Association. Klehm testified that he believed Ritchey operated an arboretum because "[m]ost of the property has plants planted and they are artistically for people to enjoy and learn from; they're not for sale. A very small part of the property has a few plants for sale." The court also looked to the Walworth county zoning code itself for relevant definitions, observing that a "commercial greenhouse" under WALWORTH COUNTY, WIS., ZONING ORDINANCE § 74-131 is a "structure or nursery used to raise vegetables, flowers, and similar materials for retail sale excluding roadside stands." Because the code did not define "arboretum," the court turned to the following dictionary definitions: "A place where trees and shrubs are cultivated for scientific or education purposes" and "a botanical garden devoted to trees."[4] Holding that Ritchey's activities fall under the definition of a greenhouse, the court concluded that "the mere raising of the hostas is not the violation. It is the commercial sale of the hostas that brings the violation." There is adequate evidence in the record to support the trial court's conclusion.

¶12 The second contested finding involves the structure that was on the side of the body shop. Ritchey contends that this is a minor structure and, therefore, exempt from the zoning permit requirement pursuant to WALWORTH COUNTY, WIS., ZONING ORDINANCE § 74-37. A "minor structure" is defined as a "small, 100 square feet or less, movable accessory erection or construction, such

[4] The court used the definitions found in WEBSTER'S NEW INTERNATIONAL DICTIONARY (unabr. 2d ed. 1947) and THE NEW OXFORD AMERICAN DICTIONARY (2001).

as birdhouses, pethouses, play equipment, and arbors." WALWORTH COUNTY, WIS., ZONING ORDINANCE § 74-131.

¶13 At trial, Sigmund testified that the structure looked like a walk-in cooler. He acknowledged that the cooler could have been under 100 square feet and did not have a foundation, but disputed that it was a movable structure. Ritchey explained that the walk-in cooler was used to store plants and keep them dormant until the proper planting time. He testified that the cooler was approximately ten feet by nine feet and six inches, had electricity, and was mounted on railroad ties. The circuit court reviewed photographs of the cooler and concluded that it was not a minor structure under the code, but rather was "anything but minor and movable." Our review of the record presents no compelling reason to overturn the court's factual finding. If more than one inference can be drawn from the evidence, we will not disturb the fact finder's determination. ***Jacobson***, 222 Wis. 2d at 389.

¶14 We conclude that the plain language of WIS. STAT. § 66.0113(2)(b) supports the circuit court's determination that the citation procedure used by the County provided adequate notice of the zoning code violations to Ritchey. We further conclude that the court's factual findings were not clearly erroneous and therefore we will not disturb them on appeal. *See* WIS. STAT. § 805.17(2).

*By the Court.*—Order affirmed.

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