COURT OF APPEALS
DECISION
DATED AND FILED

December 5, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 00-0200

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

BRUCE OLSON, MICHAEL OLSON, DANIEL AND LENORE KNUDTSON, LEE AND CONNIE COLE, KRIS AND SUSAN VANWATERMEULEN, JERRY AND JEANNE HENKELS, FRANK OLSON, CHRISTOPHER AND LISA FRY, AND KEN AND LENORE RAMSDELL,

PLAINTIFFS-APPELLANTS,

V.

BURNETT COUNTY BOARD OF ADJUSTMENT AND LUTHERAN BIBLE CAMP ASSOCIATION, D/B/A LUTHER POINT BIBLE CAMP,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Burnett County: JAMES H. TAYLOR, Judge. *Affirmed.*

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

¶1 PER CURIUM. A group of neighbors, collectively referred to as Olson, appeals a circuit court judgment that affirmed a Burnett County Board of Adjustment decision that granted the Lutheran Bible Camp Association a conditional use permit to build additional dwelling units on its property.[1] They only challenge the court's conclusion that Lutheran's property is a contiguous parcel. We conclude that the circuit court properly determined that the property is contiguous. We therefore affirm the trial court's decision.

BACKGROUND

¶2 Lutheran Bible Camp Association operates Luther Point Bible Camp and sought a conditional use permit in order to expand the sleeping quarters available on its property. It proposed building a retreat center with fifteen motel-style rooms. The site for the proposed building has 920 feet of lake frontage. Lutheran also owns other property that totals approximately 3,600 feet of lake frontage. A public road separates a corner of the proposed building site parcel from the corner of Lutheran's other lake frontage property. A parcel belonging to Olson is located on the lake to the west of the proposed building site. Lutheran's other lake frontage property is directly to the west and south of this property, such that Lutheran's property surrounds Olson's parcel on three sides.

¶3 The board affirmed the zoning committee's decision to grant the conditional use permit. Olson appealed to the circuit court, arguing that the board did not consider the mandatory standards set forth in BURNETT COUNTY, WIS., LAND USE ORDINANCE § 8.1(2), "such that it was unclear what they intended to develop on the building site." The circuit court agreed with Olson and reversed

[1] The names of the plaintiffs-appellants are in the caption.

the board. It ordered that it would hold an evidentiary hearing, as permitted under WIS. STAT. § 59.694(10),[2] to determine what Lutheran intended to build and how it would use the land.

¶4 After the hearing, the court determined that the board had properly applied the ordinances regarding the parcels' square footage and linear shoreline footage requirements. It concluded that evidence of the factors of § 8.1(2) was presented and satisfied the ordinance's requirements. The court agreed with the board that the properties were contiguous (but did not specify the ordinance from which it derived its definition[3]) and affirmed the conditional use permit grant. However, based on the linear feet of lake frontage and square-foot area of the property, the circuit court reduced the number of allowable living units from fifteen to twelve and limited the maximum capacity of the meeting room to sixty. Olson now appeals the circuit court's judgment.

STANDARD OF REVIEW

¶5 Because the circuit court accepted additional evidence as allowed under WIS. STAT. § 59.694(10), we consider the record as augmented by the circuit court hearing. *See* ***Lakeshore Dev. Corp. v. Plan Comm'n***, 12 Wis. 2d 560, 565, 107 N.W.2d 590 (1961). Where the facts are undisputed, we will review challenges to the application of the zoning ordinances to those facts de novo. *See* ***Foresight, Inc. v Babl***, 211 Wis. 2d 599, 602, 565 N.W.2d 279 (Ct. App. 1997).

[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[3] The board also did not specify which ordinance it was interpreting to define "contiguous."

The parties agree to the facts and agree that a de novo standard should apply to the legal conclusion of whether the properties are "contiguous."

DISCUSSION

¶6 The parties do not dispute that lakeshore lot development is limited by a calculation that considers the lot area in square feet and a minimum lot width as measured along the shore, which varies according to lake size or classification. *See* BURNETT COUNTY, WIS., LAND USE ORDINANCE §§ 4.4(8)(a) and 4.2(2). When the parcels are considered contiguous, the entire lake frontage may be included in the calculation. If the parcels are not considered contiguous, the proposed building site parcel would be too small to satisfy §§ 4.4(8)(a) and 4.2(2).

¶7 First, Olson argues that Lutheran's parcels should not be considered contiguous to one another because the proposed building site is surrounded by private property and the lake. It concedes that Lutheran's parcels touch on a "kitty corner." However, it contends that this contact is insufficient and that the ordinance, without citing any section specifically as authority, was intended to allow only properties that shared a longer common border to be considered contiguous. Olson concedes that public roads do not divide parcels of common ownership. *See* ***Town of Delavan v. City of Delavan***, 168 Wis. 2d 566, 570, 484 N.W.2d 343 (Ct. App. 1992). Nevertheless, Olson contends that ***Delavan*** does not permit the kind of "reaching across" private parcels that Lutheran attempts. *See* ***id.*** It asserts that Wisconsin courts have interpreted "contiguous" to mean "touching along boundaries often for considerable distances." ***Id.*** at 571-72 (citing WEBSTER'S THIRD NEW INT'L DICTIONARY 492 (1976)). Olson submits that for these reasons, the circuit court erred when it found that the properties were contiguous.

¶8 We first look to the Burnett County land use ordinances for a definition of "contiguous." The interpretation of an ordinance is a question of law that this court reviews de novo. *See* ***Thorp v. Town of Lebanon***, 2000 WI 60, ¶18, 235 Wis. 2d 610, 623, 612 N.W.2d 59. The rules of statutory interpretation apply equally to statutes or ordinances. *See* ***County of Adams v. Romeo***, 191 Wis. 2d 379, 387, 528 N.W.2d 418 (1995). Our purpose in interpreting statutes is to determine and give effect to the legislature's intent. *See* ***Doe v. American Nat'l Red Cross***, 176 Wis. 2d 610, 616, 500 N.W.2d 264 (1993). First, we examine the statute's plain language. If the language is clear and unambiguous on its face, we apply that language to the facts at hand. *See* ***In re Peter B.***, 184 Wis. 2d 57, 71, 516 N.W.2d 746 (Ct. App. 1994). We must attempt to give effect to each word used in an ordinance. *See* ***Romeo***, 191 Wis. 2d at 387. Although we do not look beyond the statute's plain meaning, we will consider its parts in relationship to the whole statute and to related sections. *See* ***Elliott v. Employers Mut. Cas. Co.***, 176 Wis. 2d 410, 414, 500 N.W.2d 397 (Ct. App. 1993).

¶9 BURNETT COUNTY, WIS., LAND USE ORDINANCE § 2.1(19) states that "adjoining lands of common ownership shall be considered a contiguous parcel even if divided by a public road, easement or navigable rivers or streams." Examining the plain language of the ordinance, we conclude that the key word in this ordinance to be defined is "adjoining" rather than "contiguous." The ordinance reads that if lands are "adjoining," then they "shall be considered contiguous."

¶10 Lutheran offers a definition of adjoining as "touching or bounding at some point or on some line." WEBSTER'S THIRD NEW INT'L DICTIONARY 27

(1993).[4] Olson does not propose an alternative definition of "adjoining" and, as indicated, does not dispute that the parcels touch at one point if the road is not considered. Thus, under our interpretation of § 2.1(19), the common meaning of "adjoining" and the undisputed facts, we conclude Lutheran's lands are contiguous for purposes of obtaining the conditional use permit.

¶11 Olson nevertheless urges us to apply ***Delavan*** and reverse the conditional use permit grant. Olson perceives Lutheran to argue that it should be permitted to "reach across" the lake, thus making Lutheran's parcels contiguous. While Olson is correct that ***Delavan*** rejected "reaching across" a lake to show contiguity,[5] it misinterprets Lutheran's position. Lutheran relies primarily on the definition of contiguous in § 2.1(19). Except for the proposition that a public road is not considered a separation between parcels, ***Delavan*** has no application to the present case. We therefore reject Olson's argument.

¶12 Olson next argues that the County's shoreland protection regulations do not permit a determination that Lutheran's parcels are contiguous. It insists that a general zoning ordinance, we presume § 2.1(19), conflicts with ordinances that relate specifically to shoreland protection. Olson refers us to the rule that if ordinances conflict, the specific sections should prevail over the general ones. *See*

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[4] Dictionaries may properly be consulted for the ordinary meaning of words, and such consultation does not by itself indicate that a statute is ambiguous. *See* ***Seider v. Musser***, 222 Wis. 2d 80, 87 n.4, 585 N.W.2d 885 (Ct. App. 1998).

[5] The Wisconsin Supreme Court reviewed this court of appeals decision and agreed that in annexation cases, "we should not so expand the definition of 'contiguous' as to place distant lakeshore property owners at risk of being annexed by neighboring municipalities." ***Town of Delavan v. City of Delavan***, 176 Wis. 2d 516, 529, 500 N.W.2d 268 (1993). However, the supreme court concluded that the property in question was *de minimus* in size compared to the rest of the annexed property and saw no reason to void the annexation for lack of contiguity. *See* ***id.*** at 530-31.

AFSCME v. Brown County, 140 Wis. 2d 850, 854, 412 N.W.2d 167 (Ct. App. 1987). Thus, Olson contends, the more specific shoreland protection ordinances should prevail over the general zoning ordinance provision. *See* ***Brennan v. WERC***, 112 Wis. 2d 38, 43, 331 N.W.2d 667 (Ct. App. 1983) (specific provisions govern over general provisions).

¶13 Although Olson asserts a conflict between the shoreland protection ordinances and, as we interpret its argument, § 2.1(19), it does not identify the conflict.[6] Instead, Olson claims that Lutheran's proposed use does not satisfy the requirements of the shoreland regulations.[7] It asserts without authority that the definition of "adjoining parcel" in § 2.1(19) only applies to non-lakeshore property.

¶14 Olson applies §§ 4.4(8)(a) and 4.2(2), which require the board to consider the lot area in square feet and a minimum lot width as measured along the shore of lakeshore property, to the proposed building site parcel. Olson does not apply these requirements. Thus, Olson's argument is premised on the assumption that Lutheran's two parcels are not contiguous. They have not shown, however, that § 2.1(19), part of the same code containing §§ 4.4(8)(a) and 4.2(2), does not apply to those sections. That is, Olson fails to demonstrate why the requirements in those sections supplant the above "adjoining parcel" definition in § 2.1(19). We

[6] For example, Olson does not refer us to any shoreland protection ordinance that prohibits adjoining lands separated by a road to be considered contiguous.

[7] Olson does not identify a separate body of ordinances that applies only to lakeshore property as a separate class of property, nor has it provided an organized means (including copies of all the ordinances discussed) for this court to examine how the ordinances interrelate. The ordinances that Olson identifies as "lakeshore regulations" are from the Burnett County Land Use Ordinances, just as the general zoning ordinances are. We therefore examine the ordinances as Olson presents them.

therefore conclude that because Olson does not apply §§ 4.4(8)(a) and 4.2(2) to Lutheran's entire property, they have not shown that the trial court's conclusion regarding the permissible number of units on the property was erroneous.

¶15 Olson further argues, again without authority, that §§ 4.4(8)(a) and 4.2(2) are intended "to avoid overcrowding the lakeshore on one parcel while a separate parcel remains empty." They fail to explain why keeping a substantial portion, approximately 3,600 feet, of shoreline undeveloped, which is how the conditional use permit limits Lutheran's development plans, is contrary to the purpose of protecting water resources. Further, although it asserts as much, Olson has provided no authority that the shoreline must be continuous for the parcels to be considered adjoining or contiguous. *See* ***State v. Shaffer***, 96 Wis. 2d 531, 546, 292 N.W.2d 370 (Ct. App. 1980) (inadequate argument will not be considered.) We are unpersuaded by these unsupported arguments.

¶16 Olson advances no other grounds for challenging the permit. We therefore affirm the circuit court's judgment.

¶17 Lutheran also filed a motion contending that Olson's appeal is frivolous. We may conclude that an appeal is frivolous under WIS. STAT. § 809.25(3)(c)2 if, as Lutheran contends, Olson or Olson's counsel "knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." We consider objectively what a reasonable attorney would have, or should have, known under the same or similar circumstances. *See* ***Chase Lumber & Fuel Co. v. Chase,*** 228 Wis. 2d 179, 212-13, 596 N.W.2d 840 (Ct. App. 1999).

> Frivolous action claims are an especially delicate area since it is here that ingenuity, foresightedness and competency of the bar must be encouraged and not stifled. Many areas of the present law would not have developed without creative and innovative positions [having] been taken by attorneys for good faith development of the law. We also note that an attorney has an obligation to represent his or her client's interests zealously, and that this may include making some claims which are not entirely clear in the law or on the facts, at least when commenced. Thus, when a frivolous action claim is made, all doubts are resolved in favor of finding the claim nonfrivolous.

Id. (citations omitted).

¶18 The circuit court concluded that the properties were contiguous. Olson provided several definitions of "contiguous" supported by authority. However, we determined that the critical word in the ordinance was "adjoining" rather than "contiguous." Although Olson's appeal was not successful, we do not conclude that counsel knew, or should have known, that the appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument. Therefore, we deny Lutheran's motion.

By the Court.—Judgment affirmed; motion for frivolous costs denied.

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