

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 17, 2007

David R. Schanker
Clerk of Court of Appeals

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.

**Appeal Nos. 2006AP2656-FT
2006AP2657-FT
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2006CV90
2006CV91**

**IN COURT OF APPEALS
DISTRICT III**

CITY OF SHAWANO,

PLAINTIFF-RESPONDENT,

V.

MIDWEST PROPERTIES OF SHAWANO, LLC,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Shawano County:
THOMAS G. GROVER, Judge. *Reversed.*

¶1 PETERSON, J.¹ Midwest Properties of Shawano, LLC appeals a judgment concluding it violated a City of Shawano zoning code section regulating

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b). Furthermore, this is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

off-street parking. Midwest argues the code section in question applies only to businesses that are required to provide off-street parking for their customers. We agree and reverse the judgment.

¶2 Midwest operates a racetrack outside the Shawano city limits. It also owns eight acres inside the city limits. On July 23 and July 30, 2006, Midwest allowed a number of its racetrack patrons to use the eight acres for overflow parking. Midwest used a shuttle bus to transport the patrons to and from the racetrack, which was slightly over a mile away. The City cited Midwest on both occasions for violating its zoning code.

¶3 The eight acres are zoned “HB II Highway Business District.” Businesses in HB II must, among other things, provide a certain number of off-street parking spaces for their customers. CITY OF SHAWANO, WIS., ZONING CODE § 10.05(8) (2006).² The number of parking spaces required is determined by formulas for different types of businesses.³ ZONING CODE §§ 10.05(7)(e), 10.05(8)(c).

¶4 In addition to the specific rules for each zone, the City zoning code has a series of supplementary regulations that apply to all zones. ZONING CODE § 10.06(1). One of these supplementary regulations provides:

Off-lot parking. Required off-street parking spaces shall be located on the same lot with the principal use, or, when this requirement cannot be met, such parking spaces may be located off-lot, as a special exception, provided that the

² All subsequent references to the CITY OF SHAWANO, WI., ZONING CODE are to the code sections in effect in 2006 and are noted as “ZONING CODE.”

³ For example, restaurants must provide one parking space per 150 square feet of floor area. Hotels must provide one space per sleeping room. ZONING CODE § 10.05(7)(e).

parking spaces are located in a district where similar off-street parking facilities are permitted.

ZONING CODE § 10.06(5)(c). Midwest's citation was for a violation of this supplementary regulation. Both the municipal court and the circuit court concluded this section prohibited Midwest from allowing overflow parking on its lot.

¶5 The meaning of an ordinance is a question of law we review independently. *Hillis v. Village of Fox Point Bd. of Appeals*, 2005 WI App 106, ¶6, 281 Wis. 2d 147, 699 N.W.2d 636. The rules governing interpretation of ordinances and statutes are the same. *State v. Ozaukee County Bd. of Adjust.*, 152 Wis. 2d 552, 559, 449 N.W.2d 47 (Ct. App. 1989). We begin with the language of the statute or ordinance. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. That language is given its common, ordinary, and accepted meaning. *Id.* It is interpreted in the context in which it is used and in relation to the language of surrounding or closely related statutes or ordinances. *Id.*, ¶46.

¶6 Midwest argues ZONING CODE § 10.06(5)(c) applies only to parking spaces a business is required to provide on site under ZONING CODE § 10.05.⁴ So, for example, a restaurant in zone HB II is required to have one parking space per 150 square feet of floor area. ZONING CODE § 10.05(7)(e). Under § 10.06(5)(c), those required parking spaces must be on the same lot as the restaurant or, if that is not possible, must be located off-lot under a special exception.

⁴ Midwest also contends that ZONING CODE § 10.06(5)(c) is unconstitutional. We need not reach this alternative argument. See *Patrick Fur Farm, Inc. v. United Vaccines, Inc.*, 2005 WI App 190, ¶8 n.1, 286 Wis. 2d 774, 703 N.W.2d 707 (court of appeals decides cases on the narrowest possible grounds).

¶7 We agree with Midwest’s interpretation. The only way to explain the words “required off-street parking spaces” in ZONING CODE § 10.06(5)(c) is as a reference to the sections requiring various amounts of off-street parking for different types of businesses found in ZONING CODE § 10.05. This interpretation is bolstered by § 10.06(1), which provides that the provisions in § 10.06 “shall supplement or modify the regulations” found in § 10.05. ZONING CODE § 10.06(1). Interpreting § 10.06(5)(c) as a stand-alone provision is not consistent with the use of the term “required” in § 10.06(5)(c) or with § 10.06(1).

¶8 The City does not respond to Midwest’s argument that ZONING CODE § 10.06(5)(c) refers only to parking spaces mandated under ZONING CODE § 10.05. Instead, the thrust of its argument is that overflow parking is not a permitted use in an HB II zone under ZONING CODE § 10.05(8).

¶9 The City misunderstands the scope of this case. The question here is not whether Midwest can use its lot for overflow parking. It is whether the citations are valid. The City cited Midwest for two violations of ZONING CODE § 10.06(5)(c), and its only theory at trial was that Midwest violated § 10.06(5)(c). If the City believes Midwest is or was in violation of ZONING CODE § 10.05(8), it must establish that violation through the proper procedure.

By the Court.—Judgment reversed.

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

