COURT OF APPEALS
DECISION
DATED AND FILED

August 21, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2729 **Cir. Ct. No. 01-CV-2281**

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

TOWN BOARD OF MONTROSE, JAMES D. COOLEY, AND LAURA DULSKI,

PLAINTIFFS-APPELLANTS,

V.

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN AND DANE COUNTY BOARD OF ADJUSTMENT,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Affirmed*.

Before Deininger, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. The Town of Montrose, James D. Cooley, and Laura Dulski (collectively, "the Town") appeal the circuit court's judgment affirming a decision of the Dane County Board of Adjustment. The issue is

whether the conditional use permit (CUP) issued to the University of Wisconsin Board of Regents is "null and void" under a Dane County ordinance because construction did not begin within one year of initial approval of the CUP. The Board of Adjustment affirmed the zoning administrator's determination that the CUP remained valid because construction commenced within one year of final county board action on the CUP and the actual issuance of a zoning permit. We affirm.

¶2 The CUP in question allowed the University of Wisconsin to build a radio tower for a student radio station. There has been extensive litigation concerning this CUP, the details of which we will not describe here. The present appeal concerns the Town's contention that the CUP is null and void under DANE COUNTY, WIS., ORDINANCES § 10.255(2)(L) (1999). That section provides that "in any case where a conditional use permit, issued under this ordinance, has not been instituted or construction begun within one year of the date of approval, without further action by the committee shall be null and void."[1] The Town contends that the CUP is invalid because the University did not commence construction on the radio tower within one year of the date the Zoning and Natural Resources Committee of Dane County (ZNR) initially approved the CUP.

[1] The ordinance was amended October 5, 2000, but that minor change is not relevant to this appeal.

¶3 The parties agree that our review and interpretation of this ordinance provision is de novo. *See* ***Board of Regents v. Dane County Bd. of Adjustment***, 2000 WI App 211, ¶¶11-13, 238 Wis. 2d 810, 618 N.W.2d 537.[2]

¶4 We note first that the University did not receive a zoning permit allowing it to build when the ZNR initially approved the conditional use. In accordance with customary practice in Dane County, the zoning administrator did not issue a zoning permit for construction of the tower until the county board denied the Town's challenge to the CUP. Due to intervening litigation, final county board action did not occur until three years after the ZNR approval. The Board of Adjustment determined that "[w]ithout a zoning permit the University was unable" to commence its construction or use of the tower.

¶5 We conclude that the CUP was not "issued under this ordinance" until the county board appeal process had run to completion, and that "the date of approval" of the CUP, for purposes of section 10.255(2)(L), was the date of the county board's action. Because the University began construction within one year of the date of the county board's decision, the CUP is not null and void under the ordinance. Both parties raise a host of other arguments that we do not address because we have concluded that the CUP was not issued until the county board appeal process had run. By the same token, we will not decide the merits of the

[2] We note that our conclusion in ***Board of Regents v. Dane County Board of Adjustment***, 2000 WI App 211, ¶¶11-13, 238 Wis. 2d 810, 618 N.W.2d 537, to review de novo the ordinance provision there at issue rested in part on the fact that the provision in question derived from a statute which established minimum standards for exclusive agricultural use zones, and thus the interpretation "may have an impact on zoning ordinances in other counties." ***Id***. at ¶13. The Board of Regents does not argue that the present language is of more localized concern and that we should therefore defer in some measure to the Dane County Board of Adjustment's interpretation. We accept, without deciding, the mutual position of the parties that a de novo standard governs.

Town's motion to strike a portion of the respondent's appendix volume II because we did not consider the documents in reaching our decision.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2001-02).