



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

April 15, 2020

To:

Hon. Michael O. Bohren
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Gina Colletti
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

James W. Hammes
Cramer, Multhauf & Hammes, LLP
P.O. Box 558
Waukesha, WI 53187-0558

Christine E. Ohlis
Assistant Corporation Counsel
515 W. Moreland Blvd., Rm. AC-330
Waukesha, WI 53188-2428

Erik G. Weidig
Waukesha Co. Corporation Counsel
515 W. Moreland Blvd., Ste. AC 330
Waukesha, WI 53188

You are hereby notified that the Court has entered the following opinion and order:

2019AP366

John C. and Sally A. Bergman Revocable Trust v. Waukesha
County Board of Adjustment (L.C. #2018CV900)

Before Neubauer, C.J., Reilly, P.J., and Davis, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

John C. and Sally A. Bergman Revocable Trust (the trust) appeals from a circuit court order affirming a decision of the Waukesha County Board of Adjustment (the board) dismissing as untimely the trust's appeal from a determination of the Waukesha County Department of Parks and Land Use (the department) that the trust's boathouse improvements did not comply with the Waukesha County Shoreland and Floodland Protection Ordinance (SFPO). Based upon

our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm.

The trust sought circuit court certiorari review of the board's decision. *See* WIS. STAT. § 59.694(10). We review the board's decision. *Hillis v. Village of Fox Point Bd. of Appeals*, 2005 WI App 106, ¶6, 281 Wis. 2d 147, 699 N.W.2d 636. On appeal, the trust argues that the board did not proceed on a correct theory of law when it dismissed the trust's appeal as untimely filed. We review whether the board proceeded on a correct legal theory. *Id.* The interpretation of statutes and ordinances presents a question of law that we determine independently. *Id.*

The following facts are undisputed. For purposes of this appeal, we assume without deciding that the trust's boathouse violated the SFPO by leaving patio doors installed behind a rolling garage door.² The department issued its violation notice on October 24, 2017. On November 30, 2017, thirty-seven days after the violation notice, the trust filed an application with the board for review of the October 24, 2017 decision. The board dismissed the appeal as untimely because it was commenced outside of the twenty-day appeal period set out in the SFPO, § 38(d)1 (effective Sept. 28, 2016), which states in pertinent part:

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any such decision of the zoning administrator or other Administrative Officer. Such appeal shall be taken within twenty (20) days from the date of the decision of the zoning administrator or other Administrative Officer appealed from by filing with the officer from whom the appeal is taken, and

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² The applicable ordinance requires that boathouses have a "garage type door." Waukesha County, Wis. Shoreland and Floodland Protection Ordinance, §3(s)1 (effective Nov. 13, 2008) (SFPO).

with the board of adjustment, a notice of appeal specifying the grounds thereof and together with the proper fee as established under Section 41(b)5 of this Ordinance.

WISCONSIN STAT. § 59.694(4) governs appeals to the board and states that an appeal “shall be taken within a reasonable time, as provided by the rules of the board of adjustment.” *Id.* Section 59.694(3) states that the county board “shall adopt rules for the conduct of the business of the board of adjustment ... [and t]he board ... may adopt further rules as necessary to carry into effect the regulations of the county board.” Here, as set out in the SFPO,³ the county adopted a specific rule governing the time for commencing an appeal to the board. *See State ex rel. DNR v. Walworth County Bd. of Adjustment*, 170 Wis. 2d 406, 413-14, 489 N.W.2d 631 (Ct. App. 1992) (where an appeal period is specified, that appeal period controls). We conclude that the twenty-day appeal period applies to the trust’s appeal.

While conceding that it received notice of the violation determination within the twenty-day appeal period, the trust nevertheless argues that the twenty-day appeal period was unreasonable as a matter of law. In support of its claim that the twenty-day period was unreasonable, the trust argues that the appeal period began to run before the trust was notified of the decision. Other than a reference to WIS. STAT. § 808.04 governing appeals to this court, which is not persuasive, the trust does not cite any authority in support of its argument. We will not independently develop the trust’s argument, and therefore we will not consider this issue further. *See Riley v. Town of Hamilton*, 153 Wis. 2d 582, 588, 451 N.W.2d 454 (Ct. App. 1989)..

³ The SFPO was adopted under the authority of, inter alia, WIS. STAT. ch. 59. SFPO, § 1(a) (effective Sept. 28, 2016).

We conclude that the twenty-day appeal period applied. The trust concedes that it received notice of the department's violation determination within the twenty-day appeal period. We affirm the circuit court's order affirming the board's decision dismissing the trust's appeal as untimely.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals