

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 24, 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 No. 2006AP1610

Cir. Ct. No. 2004CV689

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

WILLIAM E. COLLINS,

PETITIONER-APPELLANT,

V.

CITY OF EDGERTON,

RESPONDENT,

CITY OF EDGERTON ZONING BOARD OF APPEALS,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Rock County:
R. A. BATES, Judge. *Affirmed.*

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

¶1 PER CURIAM. William Collins appeals a judgment affirming a City of Edgerton Zoning Board of Appeals decision finding that Collins’ use of six intermodal storage containers violated a city ordinance. The ordinance prohibits the use of vehicles for storage purposes. Collins argues the board erred by concluding the storage containers were vehicles as defined by the ordinance. We disagree and affirm the judgment.

BACKGROUND

¶2 Collins purchased six intermodal storage containers from Warehouses on Wheels. A letter from the company stated the containers were “designed and manufactured for the carriage of general cargo by marine, road, and rail.” Collins placed the storage containers on his property in the City of Edgerton for use as warehouses.

¶3 At the time Collins placed the containers on his property, the municipal code provided in part:

Trucks, travel trailers, mobile homes, and vehicles intended for “over the road hauling” which are either on or off the frame, shall not be permitted in any district as a principal or accessory building. Said vehicles shall not be used for or converted for office, mercantile, residential, or storage purposes....

CITY OF EDGERTON, WI, MUNICIPAL CODE, CHAPTER 22: ZONING ORDINANCE, SUBSECTION 22.301(8) (2003).¹ The City requested that Collins remove the containers because they were in violation of the ordinance.

¹ This is the version of the ordinance that was in effect when Collins placed the containers on his property. The board changed the ordinance in November 2003.

¶4 Collins appealed to the board arguing the containers are not vehicles because they do not have wheels and are not capable of self-propulsion. The board disagreed and upheld the determination of a violation. Collins appealed to the circuit court, which affirmed the decision.

DISCUSSION

¶5 Review of the board’s decision is limited to determining:

1) whether the board kept within its jurisdiction; 2) whether it proceeded on a correct theory of law; 3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and 4) whether the board might reasonably make the order or determination in question based on the evidence.

State ex rel. Ziervogel v. Washington County Bd. of Adj., 2004 WI 23, ¶14, 269 Wis. 2d 549, 676 N.W.2d 401. Collins argues the board acted upon an incorrect theory of law by misinterpreting the ordinance to include intermodal storage containers as vehicles.²

¶6 The rules governing interpretation of ordinances and statutes are the same. *State v. Ozaukee County Bd. of Adj.*, 152 Wis. 2d 552, 559, 449 N.W.2d 47 (Ct. App. 1989). We begin with the language of the ordinance. *State ex rel. Kalal v. Circuit Court*, 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

² Collins also argues the board’s decision was “arbitrary and capricious because it was without any rational basis, was not based upon the evidence in the record, and was contrary to the dictionary definition of “vehicle” considered by the zoning board of appeals.” However, this argument is simply a repackaging of his first argument, and he concedes in his reply brief that there is only one issue on appeal.

surrounding or closely related ordinances. *Id.*, ¶46. Where the language is “unambiguous, there is no need to consult extrinsic sources or interpretation, such as legislative history.” *Id.* An ordinance is not ambiguous unless it “reasonably gives rise to different meanings.” *Id.*, ¶47. “Statutory interpretation involves the ascertainment of meaning, not a search for ambiguity.” *Bruno v. Milwaukee County*, 2003 WI 28, ¶25, 260 Wis. 2d 633, 660 N.W.2d 656.

¶7 The board’s decision is accorded a presumption of validity and correctness. *Miswald v. Waukesha County Bd. of Adj.*, 202 Wis. 2d 401, 408, 550 N.W.2d 434 (Ct. App. 1996). The board is entitled to a degree of deference in its interpretation and application of the zoning ordinance. *Roberts v. Manitowoc County Bd. of Adj.*, 2006 WI App 169, ¶16, 295 Wis. 2d 522, 721 N.W.2d 499.

¶8 Subsection 22.301(8) of the City’s zoning ordinance prohibits the use of “vehicles intended for ‘over the road hauling’ *which are either on or off the frame*” for storage purposes. (Emphasis added.) While the storage containers are not self-propelled, they are designed to be loaded onto trucks, ships, and trains for the transportation of goods. They are therefore vehicles that are “off the frame.”

¶9 This interpretation is further supported by the definition of “vehicle” Collins cites: “a means of carrying or transporting something : CONVEYANCE: as **a** : MOTOR VEHICLE **b** : a piece of mechanized equipment.” WEBSTER’S NEW COLLEGIATE DICTIONARY 1287 (1973). As noted above, the storage containers are designed and manufactured to be loaded onto trucks and used to transport goods. While Collins focuses on the fact that the containers were not mechanized, there is nothing in either the ordinance or the dictionary definition that suggests a vehicle must be mechanized. Rather, it is apparent from the definition that a motor vehicle is simply one type of vehicle. This is further

clarified by Webster's Third New International Dictionary. That definition states a vehicle is: "a means of carrying or transporting something : CONVEYANCE: as **a** : carrier of goods or passengers ... *specif* : MOTOR VEHICLE ... **b** : a container in which something is conveyed ... **c** : a piece of mechanized equipment." The dictionary definition of vehicle includes "a container in which something is conveyed" WEBSTER'S THIRD NEW INT'L DICTIONARY 2538 (unabr. 1993) (emphasis added). While the storage containers are not *motor* vehicles or pieces of mechanized equipment, they are containers in which something can be conveyed and are in fact designed for the conveyance of goods. Therefore, under the plain and unambiguous language of the statute, Collins' storage containers are vehicles. Thus, the board did not misinterpret the ordinance.³

By the Court.—Judgment affirmed.

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

³ Both parties argue about the effect of an amendment to the ordinance that was made after Collins' citation. Because we conclude the ordinance is unambiguous, there is no need to examine extrinsic sources such as the intent of the board as evidenced by any subsequent revisions to the ordinance. *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. We therefore do not address this argument.

