

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

DECEMBER 10, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1458-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JEAN LOGSDON,

Petitioner-Respondent,

v.

SAWYER COUNTY ZONING COMMITTEE,

Respondent-Appellant.

APPEAL from an order of the circuit court for Sawyer County:
ROBERT E. EATON, Judge. *Reversed and cause remanded with directions.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. The Sawyer County Zoning Committee appeals a trial court order that overturned its decision to grant Vaughn Skille a conditional use permit to operate a gravel pit.¹ The committee issued the permit at a second hearing, after one committee member had missed the first hearing. The committee also asked Skille some questions at the second hearing after stating at the first hearing that it would take no further evidence. On

¹ This is an expedited appeal under RULE 809.17, STATS.

certiorari review, the trial court agreed with area resident Jean Logsdon that the committee member who missed the first hearing improperly cast a vote on the conditional use permit and that the committee improperly took additional evidence at the second hearing without giving interested citizens proper notice.

The trial court properly reversed the committee if (1) the committee acted outside its jurisdiction, (2) violated the law, (3) issued an arbitrary, oppressive, or unreasonable decision, or (4) disregarded the evidence. *Metro Holding v. Milwaukee Review Bd.*, 173 Wis.2d 626, 630, 495 N.W.2d 314, 316 (1993). On appeal, the committee argues that it properly took additional public commentary at the second hearing and that a member who missed the first hearing could lawfully cast a vote on the conditional use permit. In response, Logsdon argues that the trial court properly invalidated the conditional use permit. We agree with the committee. We therefore reverse the trial court order and remand the matter for the trial court to issue an order upholding the conditional use permit.

We reject Logsdon's arguments. First, committee members who miss hearings may make decisions as long as they have considered the information taken at the missed hearing through a transcript or other adequate means. See *State ex rel. Cities S. O. Co. v. Bd. of Appeals*, 21 Wis.2d 516, 540-42, 124 N.W. 809, 821-22 (1963). Here, the absent committee member reviewed the hearing's audio tape and the documentary information presented at that hearing. This was sufficient under the *Cities S. O.* decision. Second, although Logsdon claims that the committee provided faulty advance notice of the second hearing, Logsdon has not shown that the committee learned anything at the second hearing that was both material to its decision and refutable by Logsdon with proper notice. Zoning opponents who claim faulty notice must show that such faulty notice was prejudicial, see *id.* at 533-35, 124 N.W.2d at 818-19, and Logsdon has not shown such prejudice. In sum, the defects Logsdon alleges did not invalidate the conditional use permit, and the trial court improperly overturned the committee's decision.

By the Court.—Order reversed and cause remanded for the trial court to issue an order affirming the committee's decision.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.