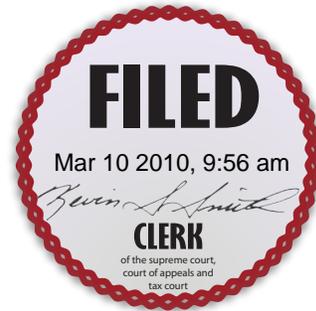


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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HENDRICKS COUNTY PLANNING AND )  
BUILDING DEPARTMENT, )  
 )  
Appellant-Plaintiff, )

vs. )

No. 32A01-0907-CV-329

THOMAS I. GOODE, )  
 )  
Appellee-Defendant. )

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APPEAL FROM THE HENDRICKS CIRCUIT COURT  
The Honorable Jeffrey V. Boles, Judge  
Cause No. 32C01-0801-PL-11

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**March 10, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

The Hendricks County Planning and Building Department (the “County”) appeals the trial court’s judgment for Thomas Goode on its ordinance violation complaint. We reverse and remand.

### Issue

The County raises one issue, which we restate as whether the trial court’s finding that Goode did not violate the County’s zoning ordinance is clearly erroneous.<sup>1</sup>

### Facts

The property in question is located in North Salem in Hendricks County and was formerly used as a greenhouse business. The property is zoned as “general business” under the County’s zoning ordinances. Tr. p. 18. In 1999, Goode purchased the property. Goode claims that he is in the “salvage” business, but he admitted that “[s]ome people call it [a] junkyard.” *Id.* at 152. Goode testified that he is a “scrapper,” which he described as “one who . . . demolishes things and . . . distributes the . . . material to other people.” *Id.* at 153. Goode stores various items outside on the property, including numerous vehicles, pieces of equipment and machinery, a semi tractor and trailer, a mobile construction office, a storage tank, construction materials, and sewer pipes. The greenhouses on the property are partially dismantled, and the buildings are in a “state of

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<sup>1</sup> The County also argues that the trial court abused its discretion by not admitting the County’s amended zoning ordinance, which was effective October 1, 2008. Because we find that Goode violated the 1991 and 2001 zoning ordinances, we need not address this issue.

disrepair.” Id. at 20. After complaints from neighboring property owners, Goode surrounded the property with a “junkyard fence.” Id. at 158.

In 2007, the County notified Goode that he was in violation of the zoning ordinances.<sup>2</sup> In particular, the County alleged that Goode was violating Section 58.08B of the zoning ordinances, which prohibits outdoor storage as an accessory use in any zoning district. The County noted that the “outside storage of junk and debris, commercial vehicles, machinery, trailers or salvage” was not allowed in a general business zoning classification. Exhibits at 664.

In January 2008, the County filed a complaint against Goode seeking an order that he “immediately cease the improper use of the real property,” and remove all junk, debris, commercial vehicles, machinery, trailers, and all dilapidated and unsafe buildings from the property. App. p. 9. In October 2008, the County filed a motion for leave to amend its complaint because the County had adopted a new zoning ordinance on October 1, 2008, and the trial court granted the motion.

Goode remedied some of the violations, and the bench trial focused on use of the property for outdoor storage and the condition of the buildings.<sup>3</sup> After the trial, the trial court issued findings of fact and conclusions thereon at the parties’ request. The trial

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<sup>2</sup> The 1991 zoning ordinance was in effect when Goode purchased the property. A new ordinance was adopted in 2001. According to Goode, the 2001 ordinance “has essentially the same language and application to this case as the 1991 ordinance.” Appellee’s Br. p. 1. The trial court and the parties applied the 2001 zoning ordinance, and on appeal, the parties’ arguments concern the language of the 2001 zoning ordinance. Consequently, we apply the 2001 zoning ordinance.

<sup>3</sup> At the trial, the County offered the amended zoning ordinance, which was effective October 1, 2008, into evidence. Goode objected to the admission of the 2008 zoning ordinance because he had never been issued a citation pursuant to the 2008 zoning ordinance. The trial court sustained Goode’s objection.

court found that the materials stored by Goode “are not junk, unusable, discarded or in a state of disrepair, but are useful and usable materials and equipment.” Id. at 5. The trial court found that Goode’s outdoor storage was an “accessory use in accordance with Section 28.03C” of the 2001 zoning ordinance. Id. at 6. Further, the trial court found that Section 58.08B of the 2001 zoning ordinance is intended to be an “anti-trash provision, not an anti-storage provision for all property that is not trash.”<sup>4</sup> Id. at 7.

### **Analysis**

The County argues that the trial court’s finding that Goode did not violate the County’s zoning ordinances is clearly erroneous. We review actions to enjoin zoning violations for an abuse of the trial court’s discretion. Society for Prevention of Cruelty to Animals and Humane Soc. of Delaware County, Inc. v. City of Muncie ex rel. Scroggins, 769 N.E.2d 669, 672 (Ind. Ct. App. 2002). In cases where the trial court enters findings and conclusions in support of the judgment, the standard is two tiered. Id. We first determine whether the evidence supports the findings and then whether the findings support the judgment. Id.

The County argues that Goode’s outdoor storage of materials is clearly prohibited by the zoning ordinances, while Goode argues that only the outdoor storage of junk is prohibited and that his materials are usable, not junk. Thus, we are called upon to interpret the zoning ordinances. The interpretation of a zoning ordinance is a question of law. Story Bed & Breakfast, LLP v. Brown County Area Plan Comm’n, 819 N.E.2d 55,

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<sup>4</sup> The trial court also found that the buildings on the property were “structurally sound and pose no hazard to any person.” App. p. 5. The County does not appeal the trial court’s judgment regarding the condition of the buildings.

65 (Ind. 2004). The ordinary rules of statutory construction apply in interpreting the language of a zoning ordinance. Id. Words are to be given their plain, ordinary, and usual meaning, unless a contrary purpose is shown by the statute or ordinance itself. Hall Drive Ins, Inc. v. City of Fort Wayne, 773 N.E.2d 255, 257 (Ind. 2002). Where possible, every word must be given effect and meaning, and no part is to be held meaningless if it can be reconciled with the rest of the ordinance. Id. Because zoning ordinances limit the free use of property, they are in derogation of the common law and must be strictly construed. Story, 819 N.E.2d at 66. When a zoning ordinance is ambiguous, it should be construed in favor of the property owner. Id.

The trial court found that Goode’s outdoor storage of materials on his property was an accessory use to his retail salvage business. Retail businesses are a permitted use in a general business district classification.<sup>5</sup> “Accessory uses” are also permitted “provided the accessory use does not change the character of the district.” Exhibits p. 313 (back). However, Section 58.08 of the zoning ordinance provides:

The following accessory uses are not permitted in any zoning district within Hendricks County.

\* \* \* \* \*

B. Outdoor storage, such as but not limited to: junk, lumber, building materials, parking of inoperative, junk, abandoned or unlicensed motor vehicles or similar items of property that are unusable, discarded or in a state of disrepair, shall not be permitted in any District unless specifically permitted by the specific zoning district regulations.

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<sup>5</sup> We express no opinion regarding whether a salvage business is allowed in the general business zoning classification. The parties’ arguments focused only on the zoning ordinances governing the outdoor storage of materials.

Id. at 387 (back). The zoning ordinance defines “outdoor storage” as “[t]he keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours . . . .” Id. at 267.

The trial court found that Section 58.08B applied only to the outdoor storage of junk. However, given the language of Section 58.08B and the definition of outdoor storage, we find that the ordinance clearly and unambiguously regulates all outdoor storage of materials, not just the outdoor storage of junk. The definition of outdoor storage clearly applies to “any goods, junk, material, merchandise, or vehicles,” and Section 58.08B clearly prohibits all outdoor storage. Id. Neither the definition of outdoor storage nor Section 58.08B limit the ordinance’s application to “junk.”<sup>6</sup> Further, the testimony and our review of the photographs admitted at the trial reveal that Goode has a substantial amount of equipment and material stored outside on his property in violation of Section 58.08B.<sup>7</sup>

Goode’s claim that his outdoor storage is an accessory use for his salvage business is also unavailing. Section 58.08B provides that outdoor storage is one of the “accessory uses . . . not permitted in any zoning district within Hendricks County.” Id. at 387

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<sup>6</sup> Goode poses hypothetical situations, such as the “outdoor storage” of a doormat or flower box, in an attempt to show that this interpretation would have absurd results. However, we are constrained to review the facts before us, not hypothetical situations.

<sup>7</sup> Goode argues that Saurer v. Bd. of Zoning Appeals, 629 N.E.2d 893 (Ind. Ct. App. 1994), is controlling here. However, in Saurer, Bartholomew County argued that the property owner was operating a junkyard in violation of an ordinance prohibiting the operation of a junkyard in the particular zoning classification. Here, the ordinance at issue prohibits the outdoor storage of materials and is not limited to the operation of a junkyard.

(back). As a result, the trial court's conclusion that Goode's outdoor storage was an allowable accessory use to his salvage business is clearly erroneous.

Goode also argues that our interpretation of the ordinances "would have the ordinance exceeding its enabling statute," Indiana Code Section 36-7-4-601. Appellee's Br. p. 10. According to Goode, "[u]nsightliness or lack of aesthetic value" are not conditions falling within the purpose of the zoning ordinance statutes. Id. Indiana Code Section 36-7-4-601(c) provides: "When it adopts a zoning ordinance, the legislative body shall act for the purposes of: . . . (3) promoting the public health, safety, comfort, morals, convenience, and general welfare; and (4) otherwise accomplishing the purposes of this chapter." Indiana Code Section 36-7-4-601(d) provides that the legislative body may "regulate how real property is developed, maintained, and used." The aesthetic quality of the property is an appropriate consideration in promoting general welfare and regulating how the property is maintained. We conclude that the County did not exceed its statutory authority when it enacted the outdoor storage ordinance.

### **Conclusion**

We conclude that Goode violated the prohibition against outdoor storage contained in Section 58.08B of the zoning ordinance. The trial court's judgment for Goode is clearly erroneous. We reverse and remand.

Reversed and remanded.

MATHIAS, J., and BROWN, J., concur.