2011 IL App (2d) 101069-U
No. 2-10-1069
Order filed September 7, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE VILLAGE OF WOODRIDGE, Plaintiff-Appellee, v. ERIC HANSEN, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Du Page County. No. 10-OV-4211 Honorable Robert A. Miller, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Bowman and Zenoff concurred in the judgment.

ORDER

Held: The trial court erred in convicting defendant of violating a zoning ordinance applicable to "residential districts," as defendant's property, even if it was used residentially, was in an office district. We reversed the trial court's judgment.

¶ 1 Following a bench trial, defendant, Eric Hansen, was found guilty of two counts of violating section 9-10-2(K)(1)(b) of the Village of Woodridge's Municipal Code (Ordinance) (Woodridge Municipal Code §9-10-2 K(1)(b) (eff. Aug. 18, 2005)), which prohibits the parking of certain types of vehicles in residential districts. Hansen was placed on court supervision and ordered to pay $475 per violation. Hansen timely appealed. On appeal, Hansen argues the following: (1) the two

properties at issue were not located within a residential district; (2) he did not own, operate, possess, or park the vehicles at issue and therefore cannot be personally charged under the Ordinance; (3) if this court "expand[s]" the Ordinance at issue to include districts other than residential, the Ordinance is unconstitutionally vague; and (4) Hansen's mere knowledge that a tenant might be violating the Ordinance cannot form the basis of Hansen's conviction. For the reasons that follow, we reverse.

¶ 2 I. BACKGROUND

¶ 3 The record in this case is sparse. It essentially consists of the charging documents and the sentencing order. The record establishes that, on June 16, 2010, the Village of Woodridge (the Village) charged Hansen with two counts of violating section 9-10-2(K)(1)(b) of the Ordinance. Count I alleged that "two (2) commercial vehicles bearing Class D designation under provisions of paragraph 5/3-815 of the Illinois Vehicle Code [(625 ILCS 5/3-815 (West 2010)], were parked on the premises at 7910 Lemont Road, which is owned by the defendant and has a legal non-conforming residential zoning." Count II alleged that "one commercial vehicle bearing Class D designation under provisions of paragraph 5/3-815 of the Illinois Vehicle Code and a tow truck were parked on the premises at 7912 Lemont Road, which is owned by the defendant and has a legal non-conforming residential zoning."

¶ 4 On October 8, 2010, following a bench trial, Hansen was found guilty of both counts. He was sentenced to court supervision. In addition, the court assessed a $475 charge per violation. Hansen timely appealed.

¶ 5 After Hansen filed his brief, the Village moved to strike Hansen's brief and dismiss the appeal, based on Hansen's failure to comply with Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005) in that Hansen failed to file either a bystander's report or an agreed statement of facts. We

denied the motion. Thereafter, Hansen filed a motion to supplement the record on appeal with "Resolution R73-91 Annexation by the Village of Woodridge, Illinois of 7908, 7910 and 7912 Lemont Road, Woodridge" (Annexation Agreement) and the "Standard Real Estate Rental Agreements with Ramirez for 7910 Lemont Road and Jirak for 7912 Lemont Road" (Real Estate Agreements). We granted the motion over objections. Defendant also asked this court to take judicial notice of the Ordinance and the Village's zoning map. Although we may take judicial notice of the Annexation Agreement, the Ordinance, and the zoning map, we may not take judicial notice of the Real Estate Agreements as they are not public documents and were not included in the record on appeal. See 735 ILCS 5/8-1001 (West 2008); *Pace v. Regional Transportation Authority*, 346 Ill. App. 3d 125, 132 (2003)). Accordingly, upon reconsideration, we deny Hansen's motion to supplement the record with the Real Estate Agreements.

¶ 6 II. ANALYSIS

¶ 7 Hansen's dispositive argument is relatively straightforward. He maintains that, because the Village's zoning map places his property in an Office, Research, and Light Industrial (ORI) district rather than a residential district, he cannot be found guilty of violating section 9-10-2(K)(1)(b) of the Ordinance. The Village disagrees. Although the Village concedes that Hansen's property lies within an ORI district, it maintains that Hansen's conviction was proper, because he used the property for residential purposes.

¶ 8 It seems clear from the zoning map that Hansen's property lies within an ORI district and the Village concedes that it does. As noted, the Village argues that Hansen was using the property for residential purposes. The Annexation Agreement establishes that, when the property at issue was annexed into the Village in 1991, it was "improved with *** non-conforming uses and structures"

and that the "[owners] and their successors and assigns may maintain and continue to use the [property] and all existing residential dwellings, sheds, storage buildings and driveways for the uses to which they are now devoted." Hansen does not concede that he was using the property for residential purposes, but the trial court presumably so found, and we have no basis to disturb that finding. See *Foutch v. O'Brien*, 99 Ill. 2d 389, 392 (1984). Thus, we must determine whether a residential use in an ORI district violates the Ordinance. This issue presents a question of law, and we apply a *de novo* standard of review (*City of Champaign v. Torres*, 214 Ill. 2d 234, 241 (2005)).

¶ 9 In construing an ordinance, the familiar principles of statutory construction apply. *Illinois Wood Energy Partners, L.P. v. County of Cook*, 281 Ill. App. 3d 841, 850 (1995). Thus, the plain language of an ordinance is the best indication of the intent of the body that enacted it. *City of Chicago v. Gomez*, 256 Ill. App. 3d 518, 519 (1993).

¶ 10 The ordinance at issue provides in relevant part:

"K. Parking And Storage Of Commercial Vehicles By District:

1. In *residential districts*:

a. Commercial vehicles bearing a designation of class B under provisions of paragraph 5/3-815 of the Illinois [V]ehicle [C]ode shall be permitted to be parked, provided that they meet the applicable parking and storage provisions contained elsewhere in this title.

b. Commercial vehicles or any other vehicles (except recreational vehicles) bearing a designation other than class B under provisions of paragraph 5/3-815 of the Illinois [V]ehicle [C]ode, or having a height from the underside of the tire to the top of the vehicle, inclusive of load, exceeding nine feet (9') or having a length exceeding

twenty feet (20') extreme overall dimension, shall not be parked or stored except when making a delivery or rendering a service at such premises.

c. Off street parking shall not be located in any front yard, except that off street parking accessory to single-family or multiple-family dwelling[s] may be located in any driveway (except as otherwise provided in this code) improved as hereinafter set forth.

d. Off street parking shall not be located in any side or rear yards; except, that off street parking accessory to single-family and multiple-family dwellings may be located in an enclosed garage or in any driveway (except as otherwise provided in this code) improved as hereinafter set forth." (Emphasis added.) Woodridge Municipal Code §9-10-2 K(1)(b) (eff. Aug. 18, 2005).

¶ 11 A plain reading of section 9-10-2(K)(1)(b) of the Ordinance establishes that it applies to "residential districts." The zoning map, and parenthetically, the Village's concession, establishes that Hansen's property is located in an ORI district. The Annexation Agreement suggests that, when the property was annexed into the Village, it was annexed with a nonconforming residential use. Section 9-2-2 of the Ordinance defines "nonconforming use" as, "[a] structure and the use thereof or the use of land that does not comply with the regulations of this title governing use in the district in which it is located, but which conformed with all of the codes, ordinances and other legal requirements applicable at the time such structure was erected, enlarged or altered, and the use thereof of the use of land was established." Woodridge Municipal Code §9-2-2 (eff. Aug. 18, 2005). However, even assuming that Hansen's property is currently being used for residential purposes as a valid nonconforming use, our review of the Ordinance does not reveal a provision that subjects

Hansen's property to residential parking restrictions, nor does the Village direct us to one. *Cf.* Marion County (OR) Zoning Code §16.48.200 (1990) ("[E]very use and premises which is nonconforming shall maintain compliance with all applicable regulations, including conditions on land use actions, by which it was governed at the time it became nonconforming."). Thus, because Hansen's property is located within an ORI district, he cannot be found guilty of violating §9-10-2 K(1)(b) of the Ordinance, which applies plainly to "residential districts."

¶ 12 III. CONCLUSION

¶ 13 Based on the foregoing, we reverse the judgment of the circuit court of Du Page County.

¶ 14 Reversed.