IN THE COURT OF APPEALS OF IOWA

No. 0-810 / 10-0692
Filed January 20, 2011

GALINSKY FAMILY REAL ESTATE, L.L.C.,
Plaintiff-Appellee,

vs.

CITY OF DES MOINES ZONING BOARD OF ADJUSTMENT,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson, Judge.

The City of Des Moines Zoning Board of Adjustment appeals from the district court's conclusion that the municipal ordinance Galinsky Family Real Estate was found to have violated did not apply to the subject properties. **AFFIRMED.**

Michael F. Kelley, Assistant City Attorney, Des Moines, for appellant.

Elizabeth N. Overton and Louis R. Hockenberg of Sullivan & Ward, P.C., West Des Moines, for appellee.

Heard by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

The City of Des Moines Zoning Board of Adjustment appeals from the district court's decision overturning the Board's finding of violations of the municipal code with respect to two properties owned by Galinsky Family Real Estate (Galinsky). Because we conclude Des Moines Municipal Code section 2A-25(F) (1983) is inapplicable to the vehicle display lots at issue, we affirm the district court's ruling, which reversed the Board's decision finding Galinsky violated the setback and wheel barrier requirements of that ordinance.

I. Background Facts and Proceedings.

Properties: Galinsky owns two properties at issue in this appeal locally known as 1711 S.E. 14th Street (occupied by and hereinafter referred to as Diaz Autos) and 1717 S.E. 14th Street (Big Guy Auto Sales), Des Moines. Both properties are—and have been for several years—used for vehicle sales. For each property, the owner received an "Auto Dealership Zoning Confirmation" letter in 2005, signed by a then-deputy zoning enforcement officer, stating in part:

> The above referenced property is zoned properly and meets the standards to be utilized as a vehicle display lot, a **Dealership License** may be issued at this time.
>
> **Conditions associated with grandfather rights for auto sales lot:** All vehicles for sale as well as customer and employee parking must be conducted from areas of the property that have been improved with hard-surfaced paving.

Notice of violation of ordinances: On January 27, 2009, Galinsky was issued a notice of violation from an inspector of the development zoning division with respect to Diaz Autos stating:

> The present use is subject to setback and landscaping standards per 1983 Zoning ordinance standards, as follows:

> Sec. 2A-25F)2.b. Failure to provide a 5 foot landscaped setback area along the S.E. 14th frontage, with wheel barriers installed 2 feet back of said area, to prevent encroachment into the required setback.
>
> Sec. 2A-25F)3. Failure to provide a 6 inch curb or wheel barriers, except at ingress, egress and drainage locations, at least 2 feet from the edge of the required setback areas. Failure to provide a permeable area at least 2 feet back of the required setback area.

On February 2, 2009, Galinsky was issued a notice of violation with respect to Big Guy Auto Sales:

> The present use is subject to setback and landscaping standards per 1983 Zoning ordinance standards, as follows:
>
> Sec. 2A-25F)2.b. Failure to provide a 5 foot landscaped setback area along the S.E. 14th frontage, with wheel barriers installed 2 feet back of said area, to prevent encroachment into the required setback.
>
> Sec. 2A-25F)3. Failure to provide a 6 inch curb or wheel barriers, except at ingress, egress and drainage locations, at least 2 feet from the edge of the required setback areas. Failure to provide a permeable area at least 2 feet back of the required setback area.
>
> Sec. 134-1377[](f)(5)—Failure to pave a portion of the off-street parking area to south of the business office where vehicles are being parked. This area constitutes an illegal expansion of the vehicle sales lot and may only be used with the consent of the Planning and Zoning Commission.[1]

Appeal to the Board: Galinsky appealed both notices, stating in each instance:

> The Applicant is appealing the decision of the zoning enforcement official that the property must be in compliance with Sec. 2A-25F)2.6 and Sec. 2A-25F)3. The Applicant's property has been used in the manner for a lengthy period of time. The Applicant and/or it's [sic] lessee has received an Auto Dealership Zoning Confirmation letter indicating the property was in

[1] The issue of paving this "holding lot" of Big Guy Auto Sales under section 134-1377(f)(5) is referred to in the decision of another panel of our court with regard to the zoning violations litigated by Galinsky against the Zoning Board of Adjustment in October 2008 and is not the subject of Galinsky's appeal here.

> compliance with all zoning standards. No changes have been made to the property since receiving that letter.

On May 27, 2009, a hearing was held before the the City of Des Moines Zoning Board of Adjustment (Board). Galinsky appeared by counsel and, with respect to Big Guy Auto Sales, Galinsky argued the property had been "consistently used as a vehicle sales display operations . . . for about 30 years"; the physical characteristics of the operations had not changed; the setback, landscaping, and wheel barrier ordinances had "never been required"; and the characteristics of the property existed at the time staff issued zoning compliance letters. Counsel for Galinsky stated the standards cited were "to apply to parking lots. This is not a parking lot." Substantially similar arguments were offered with respect to Diaz Autos.

Eric Lundy, senior city planner, presented the staff recommendation that the zoning officer's violation notices be upheld. Lundy informed the Board:

> Previous to the design guidelines that were established in the site plan regulations,[2] the interpretation or the application of the zoning ordinance was consistently applied in terms of using the district parking lot regulations for vehicle display.
>
> Vehicle display is one of the only forms of merchandising within the front yard setback that the ordinance permits. So while it doesn't specifically speak to vehicle display, it has been consistently applied to vehicle display lots previous to those current standards that were adopted in the site plan regulations.

He stated at that time there were not separate standards in the ordinance identified for vehicle display.

The Board upheld the inspector's notices of violations, finding:

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[2] In 2002, new standards were apparently adopted and any expansion or new vehicle display lots were thereafter subject to deeper setbacks and more detailed landscaping specifications. Galinsky was not required to meet these new standards.

> The appellant has not provided any compelling evidence that would demonstrate the existence of any legal non-conforming rights to display vehicles in the required five foot setback or to not provide necessary wheel barriers to prevent encroachment of displayed vehicles into the required setback[, or to use the unpaved portions of the property for vehicle storage]. Therefore the vehicle display lot requirements in effect in 1983 are applicable to the subject property. Prior to the enactment of specific design guidelines for vehicle display lots by Ordinance 14,018 on November 19, 2001, the Zoning Officer applied off-street parking requirements for vehicle display lots as a comparable use.
>
> The appellant indicated that the use of the land has not changed since being issued a letter of compliance July 20, 2005 by the former Zoning Officer. However, the existing conditions determined by the inspection of the property on January 23, 2009 continued to indicate that the property did not comply with provisions applicable from standards in place since 1983. The existing paving with vehicle display has continued to be located within the required five-foot setback along Southeast 14th Street right-of-way[, and vehicles have continued to be displayed on unpaved areas within the eastern portion of the property].

(The Board's decision for both properties was worded identically, except the bracketed portions, which were included in the decision related to Big Guy Auto Sales at 1717 S.E. 14th.)

Challenge in the district court. Galinsky filed writs of certioriari in the district court challenging the Board's decisions for both properties. Galinsky alleged the decisions were "illegal" because they were "arbitrary, capricious and made in a grossly negligent manner" as they "failed to recognize the property's legal non-conforming use rights and because the Defendant applied rules and regulations to the Property which have no legal application."

The district court sustained the writs and reversed the Board's decisions. The court concluded municipal code section 2A-25A did not apply to the subject

properties as they were not "parking lots as contemplated by the ordinance in question."[3] The district court wrote:

> The Court's attention has not been directed to a definition per se of the terms "parking area" or "parking lot." However, Municipal Code Section 2A-25(A) does state at the outset that "[r]equired off-street parking facility shall be primarily for the parking of private passenger automobiles of occupants, patrons, or employees of the principal use served." The subject properties and, in particular, those portions of same which give rise to the alleged violations clearly are not parking areas or parking lots as contemplated by the ordinance in question. Those areas or lots to which the ordinance makes reference are expressly the places where "occupants, patrons, or employees of the principal use served" park their own automobiles, not display lots for inventory. Consequently, the decisions of the Board are illegal and void to the extent they affirm the citations for violations of Section 2A-25[(F)](2) and (3).[4]

The district court thus reversed the Board's decisions and the Board now appeals.

II. Scope and Standard of Review.

Our review of the judgment entered by the district court in a certiorari proceeding is governed by the rules applicable to appeals in ordinary actions.

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[3] The district court received additional evidence over the Board's objection. Robert Knudson, development zoning inspector for the city, testified that he inspected the subject properties as part of a city council directive to inspect, research, and bring vehicle display lots into compliance with the zoning ordinances.

Daniel James, testified he had "run Big Guy Auto Sales" at 1717 S.E. 14th Street for about two years and received his occupancy permit after going to city offices and talking to Phil Poorman and Joe Bohlke. James stated he was told that because the property was already a car lot it was "grandfathered in." When asked what that meant, he testified,

> I didn't have to actually do an official site plan scaled. I didn't have to mark where the parking for the employees is. I didn't have to do any of that stuff. I didn't have to do any of the setbacks for the trees and all that type of thing.

[4] The district court cited section 2A-25(A)(2) and (3), which appears to be a typographical error.

Iowa R. Civ. P. 1.1412; *Geisler v. City Council of City of Cedar Falls*, 769 N.W.2d 162, 165 (Iowa 2009).

III. Did Board Act Illegally in Applying Municipal Ordinance Section 2A-25 to the Galinsky Vehicle Display Lots?

We begin with the ordinance language at issue:

> 2A-25 OFF STREET PARKING AREA REQUIRED
> A) In all districts, except the "C-3" Commercial District in connection with every industrial, commercial, business, trade, institutional, recreational, or dwelling use, and similar uses, space for parking and storage of vehicles shall be provided in accordance with the following schedule. Required off-street parking facilities shall be primarily for the parking of private passenger automobiles of occupants, patrons, or employees of the principal use served.
> . . . .
> F) District Parking Lot Requirements: Every parcel of land hereafter used as a public or private parking area, including a commercial parking lot, shall be developed and maintained in accordance with the following [access drive, setback, wheelbarrier, screening, paving, lighting, and marking] requirements: . . . .

There is no question the Galinsky properties do not meet the requirements found in subsection 2A-25(F).[5] The district court concluded, however, that the ordinance was inapplicable because display lots for inventory were not "parking areas" or "parking lots" as contemplated by the ordinance.

The Board contends the language of the ordinance expressly covers the subject properties, relying on the language, "Every parcel of land hereafter used as a public or private parking area . . . ." The Board argues the district court failed to give proper deference to the interpretation and expertise of the Board.

[5] As previously noted, on December 7, 2010, another panel of our court heard arguments in a case involving the same parties and an October 22, 2008 decision of the Board. *Galinsky Family Real Estate, LLC v. City of Des Moines Zoning Board of Adjustment*, No. 10-0356. The issue in that case is whether Galinsky enjoyed non-conforming use status such as would excuse non-compliance with Des Moines municipal code section 134-1087(4) (requiring that storage of vehicles be on paved surfaces). Section 2A-25 of the 1983 municipal code was not at issue in that case.

We are not required to give deference to the Board's construction and interpretation of the zoning ordinance. *See Lauridsen v. City of Okoboji Bd. of Adjustment*, 554 N.W.2d 541, 543 (Iowa 1996) ("Although we give deference to the board of adjustment's interpretation of its city's zoning ordinances, final construction and interpretation of zoning ordinances is a question of law for us to decide.").

To decide the issue we consider the interpretation and application of the pertinent Des Moines zoning ordinance. We apply the general rules of construction of statutes in interpreting municipal ordinances. *Id.* "We resort to rules of statutory construction *only* when the terms of the ordinance are ambiguous." *State v. Wiederien*, 709 N.W.2d 538, 541 (Iowa 2006); *accord City of Okoboji v. Okoboji Barz, Inc.*, 717 N.W.2d 310, 314 (Iowa 2006); *Meduna v. City of Crescent*, 761 N.W.2d 77, 80 (Iowa Ct. App. 2008). Ambiguity exists if reasonable persons can disagree on the meaning of an ordinance. *Okoboji*, 717 N.W.2d at 314. "An ambiguity may arise from the meaning of particular words or from the general scope and meaning of a statute in its totality." *Id.*

> Controlling rules of construction are well settled. "Ordinarily, where the legislature defines its own terms and meanings in a statute, the common law and dictionary definitions which may not coincide with the legislative definition must yield to the language of the legislature." We have used dictionary definitions to interpret terms in zoning ordinances. The dictionary is consulted to give words their plain and ordinary meaning in the absence of a legislative definition. In interpreting words we consider the context in which the words of the statute are used.

Lauridsen, 554 N.W.2d at 543–44 (citations omitted). Further, "[z]oning restrictions are construed strictly to favor the free use of property and will not be extended by implication or interpretation." *City of Okoboji*, 717 N.W.2d at 314.

Section 2A-25 has a heading: "OFF STREET PARKING AREA REQUIRED." It has been said that "[a]lthough the title of a statute cannot limit the plain meaning of the text, it can be considered in determining legislative intent." *T & K Roofing Co., Inc. v. Iowa Dep't of Educ.*, 593 N.W.2d 159, 163 (Iowa 1999). The several subsections of 2A-25 relate to the number of off street parking spaces required for specific types of principal uses; the method for calculating the number of spaces required; handicapped parking "in accordance with State requirements"; a definition of "gross floor area" for calculation purposes; residential off street parking; and specific parking lot requirements. We conclude the specific parking lot requirements of subsection "F" must be read in the context of the section's general topic—off-street parking. *See Griffin Pipe Products Co. v. Guarino*, 663 N.W.2d 862, 865 (Iowa 2003) ("To ascertain the meaning of the statutory language, we consider the context of the provision at issue and strive to interpret it in a manner consistent with the statute as an integrated whole.").

The meaning of "off street parking" would appear to be plain—parking a vehicle off the street. The language of subsection "A" appears consistent with such an interpretation. It reads in part,

> space for parking and storage of vehicles shall be provided in accordance with the following schedule. Required off-street parking facilities shall be primarily for the parking of private passenger automobiles of occupants, patrons, or employees of the principal use served.

In *Ermels v. City of Webster City*, 246 Iowa 1305, 1308, 71 N.W.2d 911, 912 (1955), our supreme court found off-street parking constitutes a "public use" within the purview of eminent domain. The *Ermels* court noted the "voluminous

. . . number of cars using the City streets" and the "woes of the officials in handling traffic," and accepted the city council's determination that off-street parking was beneficial in alleviating those public safety issues. 246 Iowa at 1309, 71 N.W.2d at 913. Section 2A-25 appears designed to address such issues in that the amount of off-street parking required under subsection "A" is directly related to the size and traffic related to the principal use of the property. For instance, a barber shop must have two off-street parking spaces per operator. Municipal Code § 2A-25(A)(2). But a funeral home is required to have one parking space for "each five (5) seats in the principal auditorium." *Id*. § 2A-25(A)(10).

"Off street parking," that is, public parking of vehicles in an area off the street, reduces congestion on the street. The district court concluded that the ordinance does not apply to display lots of inventory. We agree. Viewing the section as a whole, we too believe the ordinance at issue was not intended to apply to used car display lots.

The Board argues that the language of subsection 2A-25(F)—"[e]very parcel of land hereafter used as a public or private parking area"—is not so limited. However, the subsection must be read in the context of "off street parking," the general topic of the section. We agree with Galinsky that section 2A-25(F) does not apply to its properties because the "parking areas" referred to were limited to those off street parking areas where occupants, patrons, or employees of the principal use park their own cars, relying on language found in 2A-25(A). As already noted, section 2A-25(A) states in part that, "[r]equired off-street parking facilities shall be primarily for the parking of private passenger

automobiles of occupants, patrons, or employees of the principal use served." *See Fjords N., Inc. v. Hahn*, 710 N.W.2d 731, 739 (Iowa 2006) ("We seek to interpret statutes consistently with their language and purpose, and avoid interpretations that are unreasonable.").

In light of our ruling, we need not address Galinsky's additional contention that the properties have been used as vehicle display lots for several years without complying with the ordinance and application of the ordinance is unfounded.

Subsection 2A-25(F) regulates the setback and wheelbarrier[6] requirements for required off-street parking as determined under the other provisions of section 2A-25. The Galinsky auto sales display lots do not constitute required off-street parking. The district court found the Board had acted illegally in applying the ordinance to the subject properties. We agree and therefore affirm.

AFFIRMED.

[6] In section 2A-25(F)(4) and (7), there are also screening and stall marking requirements for required off-street parking. We note the zoning enforcement officer did not cite Galinsky for violation of those provisions even though it appears the Galinsky properties did not meet those requirements.