

STATE OF MICHIGAN
COURT OF APPEALS

WARREN'S STATION, INC.,

Plaintiff-Appellant,

v

CITY OF BRONSON and NATIONAL OIL &
GAS, INC.,

Defendants-Appellees.

UNPUBLISHED

March 30, 2001

No. 220921

Branch Circuit Court

LC No. 98-008575-AA

Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted from an order of the circuit court affirming the City of Bronson's Planning Commission's decision to grant a special land-use permit to defendant National Oil & Gas, Inc. We reverse and remand to the Planning Commission for further proceedings.

Plaintiff operates a service station in Bronson. National Oil obtained a special land-use permit to operate a convenience store and gasoline station on adjacent property. Plaintiff's primary argument on appeal is that the circuit court erred in ruling that the Planning Commission had the discretionary authority to grant a special land-use permit to National Oil under § 111 of the Bronson Zoning Ordinance. We agree.

In order to grant National Oil a special land-use permit, the Bronson ordinance had to specify the conditions which must exist in order to qualify for the special land-use permit. *Mitchell v Grewal*, 338 Mich 81, 88-89; 61 NW2d 3 (1953); *Room & Board Homes & Family Care Homes, Operators & Owners v Mayor of Detroit*, 67 Mich App 381, 384; 241 NW2d 216 (1976). After reviewing Bronson's zoning ordinance, we agree with plaintiff that the ordinance does not grant general discretionary authority to the Planning Commission to consider requests for special use permits for uses other than those listed in § 112. When the language of an ordinance is clear and unambiguous, we are bound to enforce the ordinance as written. *Kalinoff v Columbus Twp*, 214 Mich App 7, 10; 542 NW2d 276 (1995).

The parties rely upon *Reilly v Marion Twp*, 113 Mich App 584, 588-589; 317 NW2d 693 (1982). The zoning ordinance in that case contained a provision expressly allowing special exceptions to be granted for other uses not listed in the ordinance if the standards for granting

exceptions were satisfied. *Id.* A similar provision is not present in the case at bar. The ordinance in this case is therefore distinguishable from that at issue in *Reilly*.

The Bronson ordinance includes in § 112 a list of uses for which the Planning Commission may grant special land-use permits. Under the rules of statutory construction, the listing of permissive uses in § 112 “necessarily implies the exclusion of any other nonlisted use.” *Independence Twp v Murdoch*, 155 Mich App 770, 775; 400 NW2d 714 (1986), citing *Independence Twp v Skibowski*, 136 Mich App 178, 184; 355 NW2d 903 (1984). Accordingly, the Planning Commission erred in granting National Oil a special land-use permit based upon § 111 of the Bronson Zoning Ordinance alone.

In order for National Oil to operate its convenience store and sell gasoline at retail in Bronson, it is required to obtain a special land-use permit in accordance with § 112-I of the Bronson ordinance, as this Court held in a prior appeal involving this same controversy. *Warren’s Station, Inc v City of Bronson*, 241 Mich App 384; 615 NW2d 769 (2000). The prior panel determined that National Oil could only operate its facility if it obtained the permit under § 112-I. That ruling is the law of the case and it will be followed by this Court. *Ashker v Ford Motor Co*, ___ Mich App ___; ___ NW2d ___ (2001) (Docket No. 214537, rel’d 03/06/01, slip op p 3); *Freeman v DEC Internat’l, Inc*, 212 Mich App 34, 37-38; 536 NW2d 815 (1995). Because the prior panel also rejected National Oil’s alternative argument that it could operate as a fuel supply yard pursuant to § 25-B-11 of the Bronson Zoning Ordinance, *Warren’s Station, supra*, National Oil may not now challenge that holding in this appeal.

Because the Planning Commission did not squarely address whether National Oil qualified for a special land-use permit under § 112-I, we remand for the Planning Commission to decide that question. In light of the foregoing, we need not address the issue of whether the Planning Commission’s findings complied with § 111-F of the Bronson Zoning Ordinance.

Reversed and remanded for further proceedings before the Planning Commission consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Jane E. Markey