STATE OF MICHIGAN

COURT OF APPEALS

DAVID A. MILLER and DOUGLAS A. MILLER,

Plaintiffs-Appellants,

v

COUNTY OF OTSEGO and OTSEGO COUNTY PLANNING COMMISSION,

Defendants-Appellees.

UNPUBLISHED
April 19, 2002

No. 228097
Otsego Circuit Court
LC No. 99-008254-CH

Before: Cavanagh, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's decision to grant summary disposition for defendants. Plaintiffs were denied a special use permit to subdivide property for a condominium development. The issue on appeal is whether easements for a private road are included in lot size when determining whether the lots meet minimum size requirements under the zoning ordinance. We affirm.

Plaintiffs' first argument on appeal is that the zoning ordinance was not properly amended to change the term "zoning lot" to "lot area." A county may amend its zoning ordinance by following the same statutory procedures required to adopt a zoning ordinance. MCL 125.214; *Lake Twp v Sytsma*, 21 Mich App 210, 212; 175 NW2d 337 (1970). The requirements are mandatory and failure to comply renders a proposed amendment invalid. *Korash v Livonia*, 388 Mich 737, 746; 202 NW2d 803 (1972); *Lake Twp*, *supra* at 212. The requirements include adoption by a majority vote of the county board of commissioners, MCL 125.210, and submission to the Department of Commerce and Industry Services for approval, MCL 125.211. An amendment is then presumed approved unless the department notifies the county clerk of its disapproval within thirty days. MCL 125.211.

The confusion in the present case arose because the county board numbered the amendments differently than did the planning commission. The county board is not required to maintain the numbering system used in the public notice and at the public hearing. The only issue is whether the amendment labeled "1999-01-01" by the county board included all four amendments recommended by the planning commission. Defendants offered sufficient evidence to establish that it did, and plaintiffs offered no evidence to the contrary. The amendment labeled "1999-01-01" was approved by the board, submitted to the state, and approved by the state. Therefore, the amendment is valid.

Plaintiffs also argue on appeal that even if the ordinance was properly amended, the term "lot area" does not exclude easements and, therefore, the easement should not be excluded when calculating lot size.

The general rules regarding statutory interpretation apply to zoning ordinances. *Macenas v Michiana*, 433 Mich 380, 397; 446 NW2d 102 (1989); *Fremont Twp v McGarvie*, 164 Mich App 611, 615; 417 NW2d 560 (1987). Judicial interpretation is appropriate only when a statute or ordinance is ambiguous. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999); *Frankenmuth Mutual Ins v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). An ordinance's language is ambiguous if reasonable minds could interpret it differently. *In re MCI*, *supra* at 411.

The zoning ordinance in the present case defines the term "lot area"; therefore, that definition controls. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996). "Lot area" is defined as "[t]he total horizontal area within the lot lines of the lot." A "lot" is defined in relevant part as "[l]and . . . having its principal frontage upon a public street or on a private road approved by the county," and the "front lot line" is defined as the line separating the lot from the street. A street or road is "[a] dedicated right-of-way, affording the principal means of access to abutting property."

Plaintiffs' plan included one private road with individual condominium lots along the road. Each property would have an easement for the road. Including the easement in the square footage would mean including part of the actual road; therefore, the issue is whether a road is excluded, not whether an easement in general is excluded from "lot area." The ordinance's definition of "lot" as having its frontage on the road implies that the road itself is not part of the lot, as does the definition of "front lot line" as the line separating the lot and road. Therefore, it is clear that "lot area" does not include the road on which the lot is located. The definition of "lot" expressly does not distinguish between county streets and private roads.

The "lot area" unambiguously excludes roads. Therefore, the planning commission properly denied plaintiffs' request for a special use permit. The trial court did not err when it granted defendants summary disposition.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Peter D. O'Connell