STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM BYNUM and LORI BYNUM,

Petitioners-Appellees,

v

GROSSE ILE TOWNSHIP and GROSSE ILE TOWNSHIP ZONING BOARD OF APPEALS,

Respondents,

and

DAVID J. DOWHAN and MONICA DOWHAN,

Respondents-Appellants.

UNPUBLISHED
June 10, 2004

No. 245842
Wayne Circuit Court
LC No. 02-212229-AV

WILLIAM BYNUM and LORI BYNUM,

Petitioners-Appellees,

v

GROSSE ILE TOWNSHIP and GROSSE ILE TOWNSHIP ZONING BOARD OF APPEALS,

Respondents-Appellants,

and

DAVID J. DOWHAN and MONICA DOWHAN,

Respondents.

No. 248087
Wayne Circuit Court
LC No. 02-212229-AV

Before: Saad, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

I

This appeal[1] stems from a decision of respondent Grosse Ile Township Zoning Appeals Board on where to locate landscaping on respondents David and Monica Dowhan's property to maximize the lakefront views of adjacent property owners (plaintiffs William and Lori Bynum and the Dowhans). The Board attempted to accommodate adjacent homeowners' views of riverfront property in connection with the placement of landscaping, but the Bynums disagreed with the Board's decision. The trial court agreed with the Bynums and reversed the Board's decision. Accordingly, the Board's appeal of the trial court's decision raises the legal question of whether the trial court granted proper deference to the Board's determination of factual predicates to the Board's interpretation of its own ordinances. The ordinances in question, and their application by the Board, attempt to maximize waterfront property owners' views of the river and each decision depends on a number of interrelated and mutable factors such as changing shore lines, the positioning of houses to the waterfront, angles of view, and the like. Because the trial court failed to give proper deference to the Board, and because the Board properly exercised its discretion, we reverse the trial court and reinstate the Board's decision.

II

The Board argues that the trial court failed to give sufficient deference to the factual findings of the Township and the Board in the interpretation of a local ordinance pertaining to the placement of landscaping on waterfront lots. We agree.

This Court reviews appeals from decisions by city zoning boards to circuit courts de novo. *Cryderman v Birmingham*, 171 Mich App 15, 20; 429 NW2d 625 (1988). Considerable weight is accorded the findings of fact of the board of appeals. *Abrahamson v Wendell*, 72 Mich App 80, 83-84; 249 NW2d 302 (1976). MCL 125.293a(1) mandates that a reviewing court defer to factual findings made by a zoning board of appeals if the determinations are supported by competent, material, and substantial evidence on the record. *The Jesus Center v Farmington Hills Zoning Bd of Appeals*, 215 Mich App 54, 60; 544 NW2d 698 (1996).

Our review of the record reveals that the Township conducted extensive fact finding before reaching its conclusions. Further, our review of the circuit court record reveals that the trial court failed to recognize that the 1998 setback line was not permanently established. We find that that the Township properly used its discretion and expertise in interpreting the relevant ordinance in its application to the subject property. The Township interpreted the ordinance based on the actual configuration of the homes to effectuate both the intent and the language of the ordinance. It is entirely logical and consistent that once setbacks are determined for the construction of structures in accordance with Article 3 of the ordinances, the Township is not estopped from reconsidering the setback for purposes of landscaping placement pursuant to Article 17. The zoning officers responded to the reality of the environmental constraints that existed due to the angling of the homes, their previously compromised setbacks and the irregular nature of the lots. The compromise developed by the Township, and affirmed by the Board, is

[1] By leave granted.

reasonable as it effectuates the intent of the ordinance, while not unduly restricting or burdening either landowners' use and enjoyment of their property.

The discretion exercised by the Board is consistent with that granted by statute. MCL 125.293. A municipality's interpretation of its own ordinance is to be given deference, *Macena v Michiana*, 433 Mich 380, 398; 446 NW2d 102 (1989), and considerable weight is to be afforded to the findings of the trier of fact, who occupies a better position to test the credibility of the witnesses, *Id.* at 392. Further, when we review whether a decision was based on competent, material, and substantial evidence, this Court must give due deference to the regulatory expertise of the agency and may not invade the province of the exclusive administrative fact finder by displacing an agency's choice between two reasonably differing views. *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405-406; 534 NW2d 143 (1995).

The Bynums contend the decision for location of the setback line was arbitrary. We disagree. The record reveals that two zoning officers went to the location to perform an onsite inspection in an effort to fairly determine the means to calculate the clear vision triangle and satisfy both parties. While ultimately the line selected for calculation of the setback is a compromise, the determination of that line was not arbitrary. The record is clear that the zoning officers involved were familiar with the properties and had participated in the original negotiation of setbacks for construction on the respective and neighboring lots. The Board discussed the matter at length and formulated questions and sought responses and comments from members of the Board, owners of the property, and others present for the meetings. Based on the record, the determination was "supported by competent, material, and substantial evidence on the record." MCL 125.293a(1)(c). Given the sufficiency of the factual findings by the Board, the circuit court should not have substituted its judgment for that of the Board. *C & W Homes, Inc v Livonia Zoning Bd of Appeals*, 25 Mich App 272, 274; 181 NW2d 286 (1970). We therefore reverse the decision of the trial court and reinstate the decision of the Grosse Ile Township Zoning Board of Appeals.

Because we hold that the trial court erred in its application of the facts and law in this case, we need not address the other issues raised by the parties on appeal.

We reverse the judgment of the circuit court and reinstate the decision of the Grosse Ile Township Zoning Board of Appeals.

/s/ Henry William Saad
/s/ Michael J. Talbot
/s/ Stephen L. Borrello