

STATE OF MICHIGAN
COURT OF APPEALS

NORMAN HILTS, TRUSTEE of the
Vern and Kathryn Hilts Trust,

Plaintiff-Appellee,

v

SYLVAN TOWNSHIP,

Defendant-Appellant.

UNPUBLISHED
November 22, 2005

No. 256797
Washtenaw Circuit Court
LC No. 03-001349-CE

Before: Donofrio, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order reversing the Sylvan Township zoning board of appeals (ZBA) and directing defendant township to issue plaintiff's land division application. Because the trial court failed to recognize the coexistent requirements for accessibility contained in defendant township's land division ordinance as contemplated in MCL 247.322, we vacate the circuit court's order and reinstate the ZBA decision.

Land division is controlled by §§ 108 and 109 of the Land Division Act (LDA), MCL 560.101 *et seq.* The LDA applies to all municipalities, including townships. MCL 560.102(q). Section 109 of the LDA provides that a municipality "shall approve or disapprove a proposed division" if several criteria are met. MCL 560.109(1). One of these criteria requires that "[e]ach resulting parcel is accessible." MCL 560.109(1)(e). Section 102(j)(i) of the LDA defines an "accessible" parcel as a parcel that:

Has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state transportation department or county road commission under Act No 200 of the Public Acts of 1969, being sections 247.321 to 247.329 of the Michigan Compiled Laws, and of the city or village, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.
[MCL 560.102(j)(i).]

In turn, the driveway act, MCL 247.321 *et seq.*, regulates the issuance of driveway permits and allows county road commissions to set driveway location standards. MCL 247.322 specifies that "[n]othing in this act shall be construed to prevent the application of the provisions of . . . any local ordinance which is more restrictive than this act" MCL 247.322.

Plaintiff filed a land division application with defendant township, seeking to divide a 22.92-acre parcel into two, equally-sized parcels for distribution to two trust beneficiaries. The resulting parcels would both front an adjacent county road. Because of a substantial crest in the road, neither resulting parcel would comply with the sight-distance standards for new driveway locations set by the Washtenaw County Road Commission. The road commission therefore denied driveway permits for the two proposed parcels. Plaintiff nonetheless proceeded with the land division application process, contending that because neither trust beneficiary intended to immediately develop or improve the parcels, driveways were not needed.

Defendant township has enacted a land division ordinance with the express purpose of “carry[ing] out the provisions of the State Land Division Act.” Sylvan Township Land Division Ordinance, § 2. The ordinance incorporates much of the LDA, but there are certain differences. One of these differences is the ordinance’s approach to the issue of driveway accessibility. The ordinance is more restrictive than the LDA, actually requiring “[p]roof of approval by the Washtenaw County Road Commission of a driveway permit for each lot to be created by the proposed land division,” before any application will be granted. Sylvan Township Land Division Ordinance, § 2(C). Defendant township contends that this requirement provides the best method of ensuring compliance with all road commission accessibility standards.

Because plaintiff could not obtain driveway permits for the two proposed parcels unless and until the bed of the adjacent roadway was excavated and flattened, defendant township denied plaintiff’s land division application for failure to comply with § 2(C) of the township ordinance. The Sylvan Township ZBA subsequently denied plaintiff’s requested variance for the same reason. On appeal, the circuit court reversed the ZBA decision, finding that the two proposed parcels were “accessible” within the meaning of § 102(j)(i) of the LDA. The circuit court determined that under the second clause of § 102(j)(i), the parcels qualified as “accessible” even though they did not currently meet road commission driveway standards, so long as they could be brought into compliance in the future. Because it was uncontested that plaintiff’s proposed parcels would meet the Washtenaw County Road Commission standards if the adjacent county road were excavated and re-graded, the circuit court found them “accessible” within the meaning of MCL 560.102(j)(i). The circuit court did not consider the application of the Sylvan Township Land Division Ordinance to plaintiff’s application.

We review appeals from decisions by local zoning authorities to circuit courts de novo. *Cryderman v Birmingham*, 171 Mich App 15, 20; 429 NW2d 625 (1988). The decision of a zoning board of appeals should be affirmed unless it is contrary to law, based on improper procedure, not supported by competent, material and substantial evidence, or an abuse of discretion. MCL 125.293a; *Reenders v Parker*, 217 Mich App 373, 378; 551 NW2d 474 (1996).

Townships have broad powers to enact ordinances in the area of zoning and land use. MCL 125.271(1). However, a township is precluded from enacting an ordinance when the ordinance would be preempted by state law. *City of Taylor v Detroit Edison Co*, 263 Mich App 551, 560; 689 NW2d 482 (2004), lv gtd ___ Mich ___ (2005). An ordinance is preempted when (1) the ordinance is in direct conflict with a state statutory scheme, or (2) the statutory scheme preempts the ordinance by occupying the field of regulation that the municipality seeks to enter. *Id.*, at 560-561.

A direct conflict exists when the ordinance prohibits an act which a statute permits, or permits an act which a statute prohibits. *Howell Twp v Rooto Corp*, 258 Mich App 470, 477; 670 NW2d 713 (2003) (citations omitted). Because there is no such direct conflict in the present case, this type of preemption does not apply. Nor does the LDA exhibit a legislative intent to occupy the field with respect to the definition of accessible. The LDA defines an “accessible” parcel as a parcel that “meets” or “can . . . meet” all driveway location standards set by the state and county highway authorities pursuant to the driveway act. MCL 560.102(j)(i). In turn, the driveway act provides that nothing in the driveway act “shall be construed to prevent the application of the provisions of. . . any local ordinance which is more restrictive than this act.” MCL 247.322. Therefore, by reference to the driveway act, which refers to “more restrictive” local ordinances, the LDA subordinates its own definition of accessibility to more restrictive municipal ordinances.

Further, MCL 560.109(6) provides that compliance with the terms of the LDA “is not a determination that the resulting parcels comply with other ordinances or regulations.” By requiring that a proposed parcel comply with both the LDA and such “other ordinances and regulations,” the LDA explicitly contemplates local rules that are more restrictive than those contained in the statute itself. In light of these two statutory provisions, the LDA does not occupy the field with respect to a parcel’s accessibility, or in regard to specific driveway requirements. Defendant township’s authority to adopt an ordinance mandating stricter driveway requirements than those provided in the language of the LDA was not precluded by Michigan’s statutory scheme.

Irrespective of whether plaintiff’s proposed parcels would have qualified as strictly accessible in the absence of defendant township’s land division ordinance, plaintiff’s failure to comply with the additional requirement of defendant township’s valid driveway ordinance should have been dispositive of this case. Defendant township was entitled to enforce its valid ordinance, and to reject plaintiff’s noncompliant application. We conclude that the circuit court erred when it failed to consider defendant township’s driveway requirement ordinance. The ZBA’s determination was not contrary to law. MCL 125.293a; *Reenders, supra* at 378. Because of our conclusion, we need not reach defendant township’s remaining issue on appeal.

The judgment of the trial court is vacated, and we reinstate the decision of the Sylvan Township zoning board of appeals.

Reversed.

/s/ Pat M. Donofrio
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly