

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LAMAR OCI NORTH CORPORATION,

Plaintiff-Appellee,

v

CITY OF NORTON SHORES,

Defendant-Appellant.

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UNPUBLISHED

May 1, 2008

No. 272583

Muskegon Circuit Court

LC No. 05-043703-AA

Before: Jansen, P.J., and Donofrio and Davis, JJ.

PER CURIAM.

Defendant appeals by leave granted the circuit court's judgment reversing the decision of the Norton Shores Zoning Board of Appeals (ZBA) and ordering defendant to issue the building permit requested by plaintiff. We affirm.

This action involves plaintiff's request to complete certain billboard repairs and alterations. Plaintiff acquired the billboard in 1998, but the billboard had been in existence at the same location since before defendant enacted its Zoning Ordinance in 1981. Plaintiff's billboard does not comply with the Ordinance because freestanding, off-premises signs are not permitted in the zoning district where the billboard is located. However, it is undisputed that the billboard constitutes a valid nonconforming use.

In 2002, plaintiff began work to replace the billboard's supports and facing and to reduce the billboard's overall size by 21 percent. However, Norton Shores police officers ordered plaintiff to stop work and defendant refused to allow plaintiff to finish the project. Plaintiff applied for building permits to complete the project in 2003 and 2004, but defendant did not respond to these requests. When plaintiff again applied for a permit in September 2004, a Norton Shores community development official informed plaintiff that its request required a variance from the ZBA. Plaintiff then filed a variance request with the ZBA. The ZBA denied plaintiff's request, and plaintiff appealed that ruling to the circuit court pursuant to the former

MCL 125.585.<sup>1</sup> The circuit court remanded the case to the ZBA, concluding that the record was inadequate to conduct the review required by the former MCL 125.585(11).

The ZBA again denied plaintiff's request, and that ruling was again appealed to the circuit court. The circuit court examined Norton Shores Ordinance § 14.101(13), reversed the ZBA's ruling, and ordered defendant to issue the building permit requested by plaintiff. Defendant now appeals the circuit court's judgment, arguing that the court erroneously construed Norton Shores Ordinance § 14.101(13) to give plaintiff a vested right to reconstruct its billboard without permission from defendant.

This appeal raises questions concerning the proper interpretation of defendant's zoning ordinance. The interpretation and application of a municipal ordinance presents a question of law that is reviewed de novo. *City of Riverview v Sibley Limestone*, 270 Mich App 627, 630; 716 NW2d 615 (2006).

In construing an ordinance, we must "give effect to the legislative body's intent." *Brandon Charter Twp v Tippet*, 241 Mich App 417, 422; 616 NW2d 243 (2000). The most reliable evidence of intent are the words used in the ordinance itself. See *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 156; 719 NW2d 553 (2006). When language is clear and unambiguous, we do not engage in judicial interpretation, but enforce the ordinance as written. *Kalinoff v Columbus Twp*, 214 Mich App 7, 10; 542 NW2d 276 (1995). Moreover, we will not read anything into the ordinance that is not within the manifest intention of the drafting body as gathered from the words of the ordinance itself. See *Mich State Bldg & Constr Trades Council, AFL-CIO v Dep't of Labor*, 241 Mich App 406, 411; 616 NW2d 697 (2000).

It is undisputed that the billboard at issue in this case is a nonconforming sign in the C-2 district. Norton Shores Ordinance § 14.101(13) provides in pertinent part:

Every sign or other advertising structure in existence on adoption of this Sign Ordinance which violates or does not conform to the provisions hereof, shall not be renovated, altered or moved unless it be made to comply with the provisions of this Sign Ordinance, except that this provision shall not prevent the owner from changing the advertising copy of a nonconforming sign and except further that this provision shall not prevent the Board of Appeals from granting authorization to alter, renovate or move a nonconforming sign or substitute another sign for a nonconforming sign if said authorization reduces the degree of nonconformance. An existing freestanding sign may be repaired or replaced with a new freestanding sign not to exceed the height of the existing sign, twenty (20) feet, or the maximum size permitted in the corresponding zoned district, whichever is less.

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<sup>1</sup> The Legislature has repealed MCL 125.581 through 125.600, effective July 1, 2006. 125.3702(1)(a). However, "[t]his section shall not be construed to alter, limit, void, affect, or abate any pending litigation, administrative proceeding, or appeal that existed on the effective date of this act or any ordinance, order, permit, or decision that was based on the acts repealed by this section." MCL 125.3702(2).

Norton Shores Ordinance § 14.101(13) contains two separate and distinct provisions. The first provision applies to the renovating, altering, or moving of every nonconforming sign or other advertising structure. The second provision—contained in the final sentence of the section—applies to the repairing or replacing of existing freestanding signs.

For purposes of the first provision of § 14.101(13), it is clear that plaintiff's billboard is a nonconforming "sign or other advertising structure" that was "in existence on adoption of this Sign Ordinance." However, the first provision only prohibits the renovation of existing, nonconforming signs and advertising structures "unless [the sign or structure] be made to comply with the provisions of this Sign Ordinance . . . ." Accordingly, and as set forth more fully below, plaintiff's proposed renovations were necessarily permitted under the first section of § 14.101(13) because those proposed renovations would have complied with the second provision § 14.101(13).

Plaintiff's billboard is attached to the ground by one or more poles or upright supports. Norton Shores Ordinance § 2.217(1) defines a "freestanding sign" as "one attached to the ground by one or more poles or standards." The instant billboard is therefore a freestanding sign, and the second provision of § 14.101(13) applies in the instant case as well.

The second provision of Norton Shores Ordinance § 14.101(13) provides that "[a]n existing freestanding sign may be repaired or replaced with a new freestanding sign not to exceed the height of the existing sign, twenty (20) feet, or the maximum size permitted in the corresponding zoned district, whichever is less." The plain language of this provision restricts the height of a replacement sign, not the type of sign. Under the plain language of this provision, an existing freestanding sign may be replaced with a new sign that is shorter than the old sign, shorter than 20 feet in height, or shorter than the maximum size permitted in the corresponding district, whichever is less. According to the testimony, plaintiff's new freestanding sign would be 21 percent smaller than the old sign. The old sign was 12 feet by 25 feet, while the new billboard would have been 10 feet, 6 inches by 22 feet, 9 inches. The evidence demonstrated that the new billboard would have been longer than it was tall.

We conclude that plaintiff's new freestanding sign was permitted under the second provision of § 14.101(13) because the new sign would have been shorter than plaintiff's existing billboard and it would have been shorter than 20 feet in height. Defendant argues that the proposed, new billboard would nonetheless violate the second provision of § 14.101(13) because it would exceed the height of "the maximum size permitted in the corresponding zoned district . . . ." Specifically, defendant argues that because freestanding signs containing advertising are not generally permitted in the C-2 district at all, "the maximum size permitted in the corresponding zoned district" is "zero," and plaintiff's new sign would therefore be disallowed.

In the C-2 zoning district, there is a size requirement for freestanding signs that are related to churches, schools, public institutions, and nonprofit organizations. These signs may not contain advertising. Off-premises, freestanding signs that contain advertising are treated much differently in the C-2 district. We fully acknowledge that off-premises, freestanding signs containing advertising are not permitted in the C-2 district under defendant's zoning scheme, and that there is consequently no maximum size set forth for such signs. Nevertheless, we reject

defendant's self-serving assertion that "the maximum size permitted" for freestanding signs containing advertising in the C-2 district is "zero."

Although plaintiff's billboard is a *type* of sign that is not generally permitted in the C-2 district, the second provision of Norton Shores Ordinance § 14.101(13) contemplates only a specific *size* limitation. The ordinance restricts the replacement of existing freestanding signs according to *size* only. By arguing that the maximum size allowed for freestanding signs in the C-2 district is "zero," defendant essentially asks us to read into the ordinance the additional requirement that existing, freestanding signs be replaced only with those *types* of signs that are otherwise permitted in the district. We will not read into the ordinance this additional requirement, which was not included by the drafters. *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999). Because the second provision of § 14.101(13) is written in terms of *size* only, and because the C-2 district has no *size* restriction for freestanding signs containing advertising, we conclude that plaintiff was permitted to replace its existing billboard with the proposed new sign under the second provision of § 14.101(13).

Defendant suggests that the circuit court erred in construing Norton Shores Ordinance § 14.101(13) to give plaintiff a vested right to reconstruct its billboard without seeking permission from defendant. "A prior nonconforming use is a vested right in the use of particular property that does not conform to zoning restrictions, but is protected because it lawfully existed before the zoning regulation's effective date." *Heath Twp v Sall*, 442 Mich 434, 439; 502 NW2d 627 (1993); see also *Belvidere Twp v Heinze*, 241 Mich App 324, 328; 615 NW2d 250 (2000). Thus, while the circuit court erroneously stated that it was the ordinance, itself, that gave plaintiff a vested right, this error was clearly harmless. It is undisputed that plaintiff had a valid nonconforming use before defendant's sign ordinance went into effect; thus, plaintiff had a vested right. See *Heath Twp, supra* at 439.

Because plaintiff's proposed, new billboard is permitted under the second provision of § 14.101(13), it necessarily "compl[ies] with the provisions of this Sign Ordinance" and is permitted under the first provision of § 14.101(13) as well. Plaintiff was permitted to reconstruct its freestanding billboard in the C-2 district in the manner proposed, and did not need a variance from defendant's ZBA in order to do so.

In light of our resolution of the issues, we need not address the remaining arguments raised by the parties on appeal.

Affirmed.

/s/ Kathleen Jansen  
/s/ Pat M. Donofrio  
/s/ Alton T. Davis