

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT ADKINS, JACQUELINE ADKINS,
WILLIAM BACON, RICHARD DEMING,
AUDREY DEMING, GARY DENSLOW,
PATRICIA DENSLOW, WALTER H.
FORSBERG, GREGORY E. THOMPSON,
BONNIE L. THOMPSON and ALGONQUIN
LAKE WATERFRONT OWNERS ALLIANCE,

Plaintiffs-Appellants,

v

RUTLAND CHARTER TWP ZONING BOARD
OF APPEALS, RUTLAND CHARTER TWP, and
RUTLAND CHARTER TWP ZONING
ADMINISTRATOR,

Defendant-Appellees.

UNPUBLISHED
January 26, 2010

No. 286888
Barry Circuit Court
LC No. 07-000210-AA

Before: Stephens, P.J., and Gleicher and M. J. Kelly, JJ.

PER CURIAM.

In this zoning dispute, plaintiffs appeal by leave granted the trial court's order affirming defendant Rutland Charter Township Zoning Board of Appeal's (the Board) interpretation of the Rutland Township Zoning Ordinance (zoning ordinance). On appeal, the primary issue is whether the zoning ordinance at issue prohibits the owners of riparian lots from allowing the owners of non-riparian lots to use the riparian owners' property to access the lake for seasonal boating. We conclude that, under the plain and unambiguous language of the zoning ordinance, multiple families may not use a single-family lot for access to the lake. For that reason, the Board erred when it failed to enforce the ordinance as written and the trial court erred when it affirmed the Board's erroneous interpretation. For these reasons, we reverse the trial court's decision, vacate its order affirming the Board, and remand for entry of an order reversing the Board's decision.

Rutland Township has promulgated regulations designed to limit access to lakes and rivers within its boundaries. The relevant zoning ordinance is § 104.2029. This provision is commonly referred to as the "anti-funneling" provision or "keyhole" provision and, in relevant part, provides:

a. In all zoning districts, there shall be at least one hundred feet (100') of lake or stream frontage . . . for each single-family home, dwelling unit, cottage, condominium unit, site condominium unit, or apartment unit utilizing or accessing the lake or stream frontage.

* * *

g. In addition to the above limitations, no easement, private park, common area, lot, abutting or adjoining a lake or stream shall be used to permit access to the lake or stream for more than one (1) single-family home, dwelling unit, condominium unit, site condominium unit, apartment unit or any other use unless such additional access use is approved as a special use or as a planned unit development.

* * *

k. In the event this Section conflicts with any other section, this section shall control.

Plaintiffs, owners of property abutting Algonquin Lake, filed an application for an interpretation of the anti-funneling provision after several non-riparian landowners began docking and mooring their boats on neighboring lakefront property lots with the permission of the owners of those lots. Plaintiffs asked the Board to interpret and enforce the zoning ordinance to prevent the non-riparian landowners' use of the lakefront lots for lake access. After holding two public hearings and conducting a survey, the Board determined that, under the preamble to the ordinance, the anti-funneling provision applied only to developers and not residential property owners. Thus, the Board determined that the riparian owners could permit non-riparian owners to use the riparian lots for access to the lake. The trial court affirmed the Board's decision regarding the proper interpretation of the ordinance. Plaintiffs then appealed to this Court.

This Court reviews de novo a circuit court's decision on an appeal from a zoning board, but defers to the Board's factual findings. *Hughes v Almena Twp*, 284 Mich App 50, 60; 771 NW2d 453 (2009). We will uphold a zoning board's decision if: "(1) it comports with the law, (2) was the product of proper procedure, (3) was supported by competent, material, and substantial evidence on the record, and (4) was a proper exercise of reasonable discretion." *Norman Corp v City of East Tawas*, 263 Mich App 194, 198; 687 NW2d 861 (2004). This Court also reviews de novo the proper interpretation of a zoning ordinance. *Brandon Charter Twp v Tippett*, 241 Mich App 417, 427; 616 NW2d 243 (2000).

This Court applies the rules of statutory construction when construing a zoning ordinance. *Kalinoff v Columbus Twp*, 214 Mich App 7, 10; 542 NW2d 276 (1995). "Therefore, when the language used in an ordinance is clear and unambiguous, [this Court] may not engage in judicial interpretation, and the ordinance must be enforced as written." *Id.* (citations omitted). While we construe an ordinance as a whole, see *Winchester v W A Foote Mem Hosp*, 153 Mich App 489, 501; 396 NW2d 456 (1986), a preamble "'is no part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous. . . .'" *Nat'l Pride At Work, Inc, v Governor*, 481 Mich 56, 79 n 20; 748 NW2d 524 (2008), quoting

Yazoo & M V R Co v Thomas, 132 US 174, 188; 10 S Ct 68; 33 L Ed 302 (1889). “That is, a ‘preamble no doubt contributes to a general understanding of a [provision], but it is not an operative part of the [provision],’ and ‘[w]here the enacting or operative parts of a [provision] are unambiguous, the meaning of the [provision] cannot be controlled by language in the preamble.’” *Id.*, quoting *Nat’l Wildlife Federation v EPA*, 351 US App DC 42, 57-58; 286 F3d 554 (2002) (citations omitted).

In this case, the Board’s interpretation of the anti-funneling provision was contrary to the unambiguous provisions of the anti-funneling provision and, therefore, contrary to the law. *Norman Corp*, 263 Mich App at 198; MCL 125.3606(1). Under zoning ordinance § 104.2029g (emphasis added), “no ... lot, abutting a lake or stream *shall be used* to permit access to the lake ... for more than one (1) single-family home” unless otherwise approved. This language is unambiguous and plainly limits the use of a given lakefront lot for access to the lake to the owners of one single-family home—that is, § 104.2029 contemplates that the access provided with a riparian lot will be linked to a single-family home and will include only the access incidental to use by the owners of that single-family home. Further, there is no language within the ordinance that specifically limits application of this language to developers, and we will not read such a limitation into the ordinance. Rather, because this language is unambiguous, we must enforce it as written. *Kalinoff*, 214 Mich App at 10.

Here, the riparian owners have permitted non-riparian lot owners to use the riparian owners’ lakefront lots to regularly store, dock, or moor their boats and gain access to Algonquin Lake. The riparian owners’ grant of semi-permanent access to non-riparian owners is not incidental to the use of the lots as a single-family home. Rather, the lakefront lots are effectively being used to provide access to the lake for more than one single-family home: they are providing access for the single-family home on the lot itself and access for the owners of lots that are non-riparian. Consequently, the lakefront lot owners who have allowed the docking, storage or mooring of boats by non-riparian lot owners are acting in violation of the anti-funneling provision of the zoning ordinance.

We also do not agree that the anti-funneling provision can be circumvented by classifying the riparian owners’ grant of permission to use the lot for lake access as an accessory use of the riparian owners’ lot. The anti-funneling provision of the zoning ordinance states that, “[i]n the event this Section conflicts with any other section, *this section shall control.*” § 104.2029k (emphasis added). Thus, even if the challenged conduct were an “accessory use” within the meaning of § 104.2008 of the zoning ordinance, the prohibition stated in the anti-funneling provision would control over the permissive uses described under § 104.2008.

In light of our conclusion with respect to the anti-funneling provision, we need not address plaintiffs’ arguments that the Board’s decision was not a product of proper procedure and was not supported by competent, material, and substantial evidence on the record. For the reasons stated, we reverse the trial court’s decision, vacate its order affirming the Board’s decision, and remand for entry of an order reversing the Board’s decision.

Reversed and remanded for entry or an order reversing the Board's decision. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens

/s/ Elizabeth L. Gleicher

/s/ Michael J. Kelly