STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN C. TRACHSEL and IDA K. TRACHSEL, Plaintiffs-Appellants, v AUBURN HILLS CITY COUNCIL, Defendant-Appellee.	UNPUBLISHED November 26, 2002 No. 236545 Oakland Circuit Court LC No. 2001-033468-CH

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted from a circuit court order denying their petition for a writ of mandamus. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A court may issue a writ of mandamus only if four factors are met: "(1) the party seeking the writ has a clear legal right to the performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgment, and (4) no other remedy exists, legal or equitable, that might achieve the same result." *Lickfeldt v Dep't of Corrections*, 247 Mich App 299, 302; 636 NW2d 272 (2001). The trial court's decision regarding a writ of mandamus is reviewed for an abuse of discretion, but any underlying issue of statutory interpretation is reviewed de novo. *In re MCI Telecommunications Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999).

The rules of statutory construction require the courts to give effect to the Legislature's intent. This Court should first look to the specific statutory language to determine the intent of the Legislature, which is presumed to intend the meaning that the statute plainly expresses. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996). If the language is clear and unambiguous, judicial construction is not permitted. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996).

Lot splits or divisions are governed by the Land Division Act, MCL 560.101 *et seq*. There is apparently no dispute that plaintiffs' proposed split constitutes a division, MCL 560.102(d), that it complies with the limits on the number of resulting parcels for the size of the lot as provided in MCL 560.108, or that plaintiffs' application met the criteria applicable under MCL 560.109(1)(a)-(g). Section 109(1) provides that an application for a division "shall be

approved" if it complies with § 108 and § 109(1)(a)-(g), and the term "shall" is an unambiguous statement of mandatory action. *Roberts v Mecosta Co General Hosp,* 466 Mich 57, 65; 642 NW2d 663 (2002).

The city nevertheless denied the application because it found that the proposed split was neither harmonious nor compatible with the character of the surrounding neighborhood. Pursuant to local ordinance, the city council had discretion to reject a proposed split for that reason. However, the statute does not permit such a consideration of harmoniousness and compatibility except as a factor for allowing a depth to width ratio different from that authorized by the statute or a local ordinance, and mandates approval of any proposed split that meets the requirements of § 109(1)(a)-(g). Because the local ordinance directly conflicts with the statute, it is preempted. *Rental Property Owners Ass'n of Kent Co v Grand Rapids,* 455 Mich 246, 257; 566 NW2d 514 (1997). Because plaintiffs' proposed split complied with §§ 108 and 109 of the land division act, the city was required to approve the application. Therefore, the trial court erred in denying a writ of mandamus.

Reversed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski