STATE OF MICHIGAN

COURT OF APPEALS

GORDON RICHIE and DELBERTA RICHIE, Plaintiffs/Counter-Defendants-Appellants,	UNPUBLISHED March 17, 2009
v	No. 283202 Gladwin Circuit Court
GLADWIN COUNTY and GLADWIN COUNTY ZONING BOARD OF APPEALS, Defendants/Counter-Plaintiffs-Appellees.	LC No. 07-003202-CH

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right a circuit court order dismissing counts I and III of their complaint, and granting judgment in favor of defendants on count II, after the trial court denied plaintiffs' motion for summary disposition. At issue is a local zoning ordinance governing yard setbacks. We reverse and remand.

This action is based on plaintiffs' removal of a barn on their property, followed by construction of a quonset hut on the barn's foundations. Plaintiffs' property is the southwest corner lot at the intersection of Highwood and Hay Roads in Gladwin County. Plaintiffs' residence faces Highwood Road to the north. The barn was, and the hut now is, accessed from Hay Road to the east. According to the parties, the barn/hut is located 42 feet from the Hay Road right-of-way. Plaintiffs have asserted, and defendants declined to dispute,[1] that plaintiffs' lot is square, meaning all four of its sides are of equal length.

[1] Whether defendants' counsel's concession at oral argument was really intended as "a distinct, formal, solemn admission made for the express purpose of, *inter alia*, dispensing with the formal proof of some fact at trial," *Ortega v Lenderink*, 382 Mich 218, 222-223; 169 NW2d 470 (1969), is an issue best left to be resolved by the trial court. For purposes of this appeal, we presume that plaintiffs' lot is in fact a square, or at least as close to one as it is possible to measure.

According to the parties, the relevant zoning ordinance provisions are as follows:[2]

> Section 3.04 Double Frontage Lots
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> A. The front lot of a corner lot shall be the shorter of the two lot lines. Where the lot lines are of equal length, and/or the front lot line is not evident, then the Zoning Administrator shall determine the front lot line. The width of a corner lot shall be determined to be the entire dimension of that front lot line which is opposite the rear lot line.
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> B. The required front setback shall be measured from the front lot line. The remaining setbacks shall be a rear and a side setback. The rear setback shall be measured from the rear lot line which, in the case of a corner lot, shall be the lot line opposite the front lot line.
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> C. Buildings on through lots shall comply with front yard requirements on both frontage streets. The remaining setbacks shall be two side setbacks.
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> Section 3.06 Yards
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> A. Front Yards
>
> 1. Every lot or premises shall have a front yard setback of at least fifty (50) feet in depth from the right-of-way of the public or private thoroughfare frontage of the premises.
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> B. Side Yards
>
> 1. There shall be a side yard setback from each side lot line of at least ten (10) feet in each plat or site condominium which shall be created after the effective date of the Ordinance, and of at least six (6) feet for any plat or site condominium which was created prior to the effective date of this Ordinance. . . .
>
> 2. There shall be a side yard setback for a planned unit development as is established in the approved site plans, which such setback to be no less than ten (10) feet from any side line which shall abut lands not included in the planned unit development.
>
> 3. Otherwise, every lot or premises shall have a side yard setback on each side of at least twenty-five (25) feet in width.

[2] We have not been provided with an actual copy of the ordinance provisions, nor have we been able to find a copy ourselves. We presume that this language is accurate, but we cannot make a proper determination to that effect.

C. Back Yards

1. Every lot or premises shall have a back yard setback of at least twenty-five (25) feet in depth.

2. For waterfront parcels, the "front yard" shall be considered to be the waterfront side and the "back yard" shall be considered to be the thoroughfare side.

The ordinance provides the following definitions relevant to the above sections:

Lot: A lot is the parcel of land upon which the principal building, including any accessories are place[d] together with the required yards of open space, the legal description of which is on file at the Register of Deeds. A lot is not limited to a recorded subdivision plat.

Yard: Yard is the open ground space on a premises unoccupied by buildings.

A. Front yard is defined as the yard extending across the full width of a premises between the nearest line of the main building or accessory structure and the front line or highway right-of-way, as the case may be.

B. Side yard is defined as the yard extending the full depth (extending from the lot line or highway right-of-way line to the rear line of the premises) of a premises between the nearest line of the main building or accessory structure and adjacent lot line.

C. Back yard is defined as all open, unoccupied spaces on the same premises with the building, between the building and rear lot line.

Specifically at issue is whether the portion of plaintiffs' property on Hay Road is a "front yard" or a "side yard." Defendants contend that plaintiffs' property has *two* front lot lines, one on Highwood Road and one on Hay Road, so plaintiffs'property is subject to a fifty-foot setback on both sides. As a consequence, the hut is too close to the road right-of-way. Plaintiffs contend that their property has only one front lot line, on Highwood Road, so the hut is in a side yard and more than the required 25 feet from Hay Road. The trial court determined that the ordinances were poorly worded and ambiguous, and resolved the dispute in favor of defendants, primarily because defendants' interpretation had been adopted by the local Zoning Board of Appeals (ZBA) several years earlier.

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). Statutory interpretation is a question of law that is also reviewed de novo. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003). The rules of statutory construction apply to ordinances. *Livonia Hotel, LLC v City of Livonia*, 259 Mich App 116, 131;

673 NW2d 763 (2003). The trial court's interpretation of an ordinance is thus reviewed de novo. *Ballman v Borges*, 226 Mich App 166, 168; 572 NW2d 47 (1997).

The primary goal of ordinance interpretation is to give effect of the legislative body that enacted the ordinance. *Warren's Station, Inc v City of Bronson*, 241 Mich App 384, 388; 615 NW2d 769 (2000). The court should first look to the specific language of the ordinance to determine the intent of the legislative body, which is presumed to have intended the meaning plainly expressed in the ordinance. *Id.; Bendion v Penobscot Mgt Co* (*On Remand*), 225 Mich App 235, 242; 570 NW2d 473 (1997). "When a statute specifically defines a given term, that definition alone controls." *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). If the language is clear and unambiguous, judicial construction is unnecessary and the ordinance is to be applied as written. *Warren's Station, supra*; *Brandon Twp v Tippett*, 241 Mich App 417, 422; 616 NW2d 243 (2000). If an ordinance is ambiguous, it must be interpreted. *Stratton-Cheeseman Mgt Co v Dep't of Treasury*, 159 Mich App 719, 725; 407 NW2d 398 (1987). A provision is ambiguous if it irreconcilably conflicts with another provision or if it is equally susceptible to more than one meaning. *Alvan Motor Freight, Inc v Dep't of Treasury*, 281 Mich App 35, 39-40; ___ NW2d ___ (2008). "Long-standing administrative interpretations by those charged with administering a statute are entitled to considerable deference." *Stratton-Cheeseman Mgt Co, supra* at 724 (citations omitted). However, an administrative interpretation is not conclusive and is not controlling where it is contrary to the statute's plain language. *Id.*; *Chrisdiana v Dep't of Community Health*, 278 Mich App 685, 689; 754 NW2d 533 (2008).

We agree with the trial court that the zoning ordinance at issue is poorly written. However, it is readily apparent that, according to § 3.04, a double frontage lot can be a corner lot or a through lot. The parties seem to agree and the trial court found that "double frontage" means a lot fronting roads on two sides. A corner lot must be one on a corner, and thus must be fronted by roads on two adjacent sides. A through lot must therefore be something different than a corner lot and is presumably one between two parallel roads. See *State ex rel Bollenbeck v Shorewood Hills*, 237 Wis 501; 297 NW 568, 570, 572 (1941) (where through lot is defined as an interior lot with frontage on two streets, it means a lot that runs from a street on one end to a street on the opposite end); 1 Salkin, American Law of Zoning (5th ed), § 9:61, p 9-198 (a through lot is an interior lot fronting on a street at either end). According to § 3.04(C), a *through* lot must comply with "front yard" setbacks on both sides that front on roads. In contrast, § 3.04(A) clearly provides that *corner* lots will have only one "front yard" lot line, to be selected by the Zoning Administrator if the two road-frontage property lines are of equal length.

Section 3.04(B) states that in the case of a corner lot, there is a front setback, a rear setback, and a side setback. As noted, the only setbacks defined by the ordinance are for front yards, side yards, and back yards. A side yard extends the full depth of the lot on either side of a structure (Yard definition B), and is on each side of a lot, § 3.06(B)(3), so there are necessarily two side yards to every property. It can therefore be inferred that for a corner lot, one side must comply with the front yard setback requirement, one side must comply with the back yard setback requirement, and two sides must comply with the side yard setback requirement. The front yard setback is measured from the front lot line. § 3.04(B). The back yard setback is measured from the rear lot line (Yard definition C), and in the case of a corner lot, the rear lot line is "the lot line opposite the front lot line." § 3.04(B). If the ZBA's interpretation is accepted, each side fronting on a road would have a front lot line, each lot line opposite those

two sides would be a rear lot line, and there would be no place for a side yard setback even though a side yard setback is necessarily required for a corner lot. A corner lot must therefore have only one front lot line and only one front yard setback. Other provisions of the ordinance support this interpretation.

According to Yard definition A, a front yard extends back from the front line or highway right-of-way. Presumably the definition was meant to refer to the front lot line or highway right-of-way. According to § 3.06(A), the front yard setback is measured from the fronting road right-of-way. In the case of a corner lot, however, the front (front yard) setback is measured from the front lot line. § 3.04(B). Section 3.04(A) defines the front lot line of a corner lot. The first sentence reads, "The front lot of a corner lot shall be the shorter of the two lot lines." This makes no sense because a corner lot cannot have a front lot because then it would be two lots, not one corner lot. It appears that the word "line" has been omitted and thus the first sentence of § 3.04(A) should read, "The front lot *line* of a corner lot shall be the shorter of the two lot lines." Because a lot cannot have only two lot lines and the section pertains to a double frontage corner lot, this apparently means that the front lot line of a corner lot is whichever is the shorter of the two lot lines each fronting a road. The parties have agreed that plaintiffs' lot is square and a square by definition has four sides of equal length, so the first sentence of § 3.04(A) does not apply. In that case, the second sentence applies. It provides, "Where the lot lines are of equal length, . . . then the Zoning Administrator shall determine the front lot line." Because the front (front yard) setback for a corner lot is measured from the front lot line, which is the lot line designated as the front lot line by the Zoning Administrator, there cannot be two front lot lines on a corner lot and thus one of the two sides fronting a road must necessarily be a side lot line. Because the ZBA's interpretation conflicts with the ordinance, it is not controlling and thus, the trial court erred in resolving any ambiguity in favor of the ZBA's interpretation.

Additionally, the ordinance itself is unconstitutional under the circumstances of this case. A corner lot must have exactly one "front yard" and exactly one "side yard," but in the event the lot lines are of equal length, the ordinance grants the Zoning Administrator the unfettered discretion to pick one lot line as the "front." The Zoning Administrator is subject to no standards and given no guidance. The right to the free use and enjoyment of one's property may be subject to reasonable regulation where that regulation has some basis in the public health, safety, and welfare. *Mooney v Village of Orchard Lake*, 333 Mich 389, 392; 53 NW2d 308 (1952). But a zoning ordinance that wholly lacks standards for its application amounts to an invitation to abuse and must be held unconstitutional and void. *Osius v City of St. Clair Shores*, 344 Mich 693, 700-701; 75 NW2d 25 (1956).

Presuming, as we have, that the zoning ordinance reproduced in this opinion is accurate, and further presuming, as we have, that plaintiffs' lot lines are indeed of equal or indistinguishable length, only one of them may be considered the "front yard," and in the absence of a legitimate basis in the ordinance for resolving which one, we resolve it in favor of the free use of property. As a consequence, the trial court erred in granting summary disposition in favor of defendants. We reverse and remand for further proceedings or entry of a judgment consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis