STATE OF MICHIGAN

COURT OF APPEALS

CONCERNED PROPERTY OWNERS OF GARFIELD TOWNSHIP, INC., Plaintiff-Appellant,	UNPUBLISHED October 25, 2018
v	No. 342831 Grand Traverse Circuit Court
CHARTER TOWNSHIP OF GARFIELD, Defendant/Counterplaintiff-Appellee,	LC No. 2017-032273-CZ
and	
JOHN NOWLAND, KEN BURRITT, TERESA BURRITT, TOM BRADY, MARIAN BRADY, TOM EDWARDS, SARA EDWARDS, KURT BURRIT, EMILY BURRITT, MIKE KAZMIERSKI, KELLY KAZMIERSKI, KEN PORTE, and LORRIE PORTE, Counterdefendants-Appellants.	

Before: MURPHY, P.J., and SAWYER and SWARTZLE, JJ.

PER CURIAM.

In this zoning ordinance dispute, plaintiff and counterdefendants appeal by right the trial court's order denying their motion for summary disposition. We affirm.

I. BACKGROUND

Appellants are individual property owners who own a number of houses around Silver Lake in defendant Garfield Township's R-1B District, located in Grand Traverse County. The individual appellants are all members of appellant Concerned Property Owners of Garfield Township, Inc. (Concerned Property Owners), a Michigan nonprofit domestic corporation.

From 1974 to 2015, zoning Ordinance 10 was in effect in the township. For a number of years prior to 2015, appellants rented out their Silver Lake homes as vacation houses for short-

term intervals, usually for about one week in duration. In September 2013, Zoning Administrator Jim Reardon sent a letter to appellants Jim and Sue Bock regarding their concerns over short-term renting. Although he acknowledged that the proper body for interpreting Ordinance 10 was the zoning board of appeals, he concluded that, as long as one family was occupying the dwelling at a time, the ordinance permitted the use regardless of the length of the occupation. A few months later, however, Zoning Administrator Sara Kopriva was asked to provide an interpretation of short-term and weekly rentals. She concluded that "one-week rentals are not for residential purposes . . . [and] that short term rentals or other transient uses are prohibited in the R-1B Zoning District" under Ordinance 10. Thus, beginning in 2014, Kopriva sent letters to all individual appellants except John Nowland, informing them that short-term renting of their homes was in violation of the township's zoning ordinance.

In 2015, the township passed Ordinance 68, which replaced Ordinance 10. The purpose of Ordinance 68 was to "update and reorganize the Charter Township of Garfield's Zoning Ordinance" and it explicitly prohibited short-term vacation rentals in the R-1B District. Concerned Property Owners filed a complaint against the township in September 2017, alleging that the property owners held a prior nonconforming use to rent their houses out as short-term vacation homes. The township then filed a counterclaim alleging that appellants' short-term renting had not been authorized under prior Ordinance 10, preventing them from holding a prior nonconforming use. The township sought an injunction to prevent appellants from continuing to rent out their properties. Appellants filed a motion for summary disposition under MCR 2.116(C)(10), which the trial court denied base on its conclusion that Ordinance 10 had prohibited short-term renting. Shortly thereafter, the trial court granted the township an injunction barring appellants from continuing to short-term rent their houses.

This appeal followed.

II. ANALYSIS

Appellants argue that the trial court erred by denying their motion for summary disposition. "A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the claim, and is appropriately granted when, except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." *Tomra of North America, Inc v Dep't of Treasury*, ___ Mich App ___, ___; ___ NW2d ___ (2018) (Docket No. 336871); slip op at 2. "A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue on which reasonable minds could differ." *Campbell v Kovich*, 273 Mich App 227, 230; 731 NW2d 112 (2006).

The parties agree that short-term rentals are prohibited under the new Ordinance 68. On appeal, appellants argue that Ordinance 10 permitted their short-term rentals, meaning that they were entitled to continue the practice after the passage of Ordinance 68 as a prior nonconforming use. "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." *Lyon Charter Twp v Petty*, 317 Mich App 482, 489; 896 NW2d 477 (2016) (cleaned up). "To be protected, the nonconforming use must have been legal at one time; a use that violates the zoning ordinances since its inception does not draw such protection." *Id*.

Therefore, for appellants to have succeeded in their motion for summary disposition, they must have shown that the short-term rental usage of their homes was permitted under the prior Ordinance 10. If this usage was permitted under Ordinance 10, then it would be protected as a nonconforming use under the new Ordinance 68.

Ordinances are interpreted in the same way as statutes. *Brandon Charter Twp v Tippett*, 241 Mich App 417, 422; 616 NW2d 243 (2000). "If the language is clear and unambiguous, the courts may only apply the language as written. However, if reasonable minds could differ regarding the meaning of the ordinance, the courts may construe the ordinance." *Id*. (cleaned up). In interpreting an ordinance, our overriding duty is to give effect to the legislative body's intent. *Id*.

In this case, prior to the passage of Ordinance 68 in 2015, appellants' homes were covered by Ordinance 10, Section 6.3, which covered R-1B Districts. Under this section, R-1B Districts were termed "One-Family Residential." Subsection 6.3.2 permitted the following uses in an R-1B District: "All uses permitted by 'Right,' or 'Under Special Conditions' in the R-1A District, subject to all restrictions specified therefore." In turn, as pertinent to this dispute, Subsection 6.2.2 permitted by "right" in the R-1A District a "Single-Family . . . Dwelling."

The parties agree that the interpretation of the term "single-family dwelling" controls this case. Thus, if the term includes short-term rental properties, then appellants' use would be a prior nonconforming use that continues after the passage of Ordinance 68. If the term excludes short-term rental properties, then the use would not have been permitted under Ordinance 10 and would not qualify as a prior nonconforming use.

Ordinance 10, Section 3.2 defined "single-family dwelling" as a "dwelling unit designed for exclusive occupancy by a single family which may be detached or semi-detached" and "dwelling unit" as a "building or portion thereof designed exclusively for residential occupancy by one (1) family, and having cooking facilities." In turn, Section 3.2 defined "family" to include relationships of a "non-transient domestic character," but to exclude those "whose domestic relationship [was] of a transitory or seasonable nature or for an anticipated limited duration of a school term or other similar determinable period." Because short-term rentals are inherently transitory, by limiting the use to "family" dwelling units, Ordinance 10 plainly prohibited short-term rentals. Thus, because appellants' prior rentals violated Ordinance 10, they do not qualify as a prior nonconforming use.

Appellants argue that this Court should look to Ordinance 10's definition of the term "dwelling"—instead of the term "dwelling unit"—when interpreting the term "single-family dwelling." Section 3.2 defined "dwelling" to include any "building or structure or part thereof occupied as the home, residence or sleeping place of one or more persons either permanently or transiently." Thus, appellants argue that the term "single-family dwelling" includes transitory uses such as the short-term rentals at issue here. We disagree. Although the word "dwelling" does make up part of the term "single-family dwelling," the latter is explicitly defined in Section 3.2. Moreover, the definition provided for "single-family dwelling" uses the term "dwelling unit"—which is also explicitly defined—over the more general term "dwelling." When, as here, the ordinance includes a specific and a general provision, the specific provision controls. *Stocker v Tri-Mount/Bay Harbor Bldg Co, Inc*, 268 Mich App 194, 197; 706 NW2d 878 (2005). Thus,

the relevant definition is that of "dwelling unit," which excludes transitory uses, as explained earlier.

Our conclusion is similarly supported by Ordinance 10's use of the term "residential occupancy." The ordinance did not define "residential" or "residential occupancy." When the ordinance itself does not define the term, we may look to caselaw to give the term its ordinary meaning. See *Risko v Grand Haven Charter Tp Zoning Bdof Appeals*, 284 Mich App 453, 460; 773 NW2d 730 (2009). In *O'Connor v Resort Custom Builder, Inc*, 459 Mich 335, 345-346; 591 NW2d 216 (1999), the Supreme Court concluded that the term "residence" excludes uses of a transitory nature, adopting the trial court's reasoning as follows:

> Well, a residence most narrowly defined can be a place which would be one place where a person lives as their permanent home, and by that standard people could have only one residence, or the summer cottage could not be a residence, the summer home at Shanty Creek could not be a residence if the principal residence, the place where they permanently reside, their domicile is in some other location, but I think residential purposes for these uses is a little broader than that. It is a place where someone lives, and has a permanent presence, if you will, as a resident, whether they are physically there or not. Their belongings are there. They store their golf clubs, their ski equipment, the old radio, whatever they want. It is another residence for them, and it has a permanence to it, and a continuity of presence, if you will, that makes it a residence.
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> I don't think that's true of weekly—of timeshare units on a weekly basis of the kind, at least, of the kind being discussed here, which includes trading, and is a traditional—usually associated with condominiums, but in this case happens to be instead of an apartment happens to be a building that is a single family building other than this arrangement for its joint ownership by, at least, up to forty-eight people in this case. The people who occupy it, or who have these weekly interests in this property, they have the right to occupy it for one week each year, but they don't have any rights, any occupancy right, other than that one week. They don't have the right to come whenever they want to, for example, or to leave belongings there because the next resident, who is a one-fiftieth or one forty-eighth co-owner has a right to occupy the place, too, and the weekly owner has no right to be at the residence at anytime other than during their one week that they have purchased. That is not a residence. That is too temporary. There is no permanence to the presence, either psychologically or physically at that location, and so I deem that the division of the home into one-week timeshare intervals as not being for residential purposes as that term is used in these building and use restrictions. [See also *Eager v Peasley*, 322 Mich App 174, 185-189; 911 NW2d 470 (2017) (holding that *O'Connor* constitutes precedent with to what is a residence).]

We see no reason not to apply the *O'Connor* definition of residence in this case. Thus, to conform with Ordinance 10's single-family restriction, the use must have been more than transitory, evidencing an intent to establish a permanence to the occupants' presence there.

Because the weekly short-term rentals in this case do not establish the type of permanence needed to establish a single-family dwelling, appellants' prior use did not conform to Ordinance 10. Thus, appellants failed to show that they had a valid prior nonconforming use and the trial court properly denied their motion for summary disposition.

Affirmed.

/s/ David H. Sawyer
/s/ Brock A. Swartzle