STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

SUSAN REAUME,

Plaintiff/Appellant,

v.

SPRING LAKE TOWNSHIP,

Defendant/Appellee.
_____/

Supreme Court No.: 159874

Court of Appeals No.: 341654

Ottawa County Circuit Court
No.: 17-4964-AA

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ANSWER OF APPELLEE SPRING LAKE TOWNSHIP TO APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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INTRODUCTION

In the last several years, listing sites such as Airbnb, VRBO and HomeAway have begun allowing homeowners to advertise worldwide and connect directly with customers to rent rooms or entire homes on a short-term basis, much like hotels or resorts. While Spring Lake Township ("Township") has long addressed traditional motels and bed and breakfasts within its ordinances, it had not previously had reason to specifically address or allow this new short-term rental business within its Zoning Ordinance. Accordingly, in late-2016 and early-2017, Spring Lake Township considered the needs of its community and adopted both a regulatory ordinance and a zoning amendment to permit short-term rental use within certain zoning districts of the township.

The R-1 Low Density Residential Resource District ("R-1 District"), in which the property owned by Appellant Susan Reaume ("Reaume") is located, is not one of those zoning districts. Even prior to the amendment to the Township's Zoning Ordinance, the R-1 District was restricted to residential, single-family use, inconsistent with the manner in which Reaume had used her property as a short-term vacation rental to transient guests. Therefore, when Reaume submitted a Short Term Rental Application under the Township's regulatory ordinance, requesting Short Term Rental and Limited Short Term Rental Licenses, the Township Board denied her Application.

In perhaps recognizing the flaws in her arguments over the course of two appeals—one to the Circuit Court and one by leave to the Court of Appeals—Reaume now advances arguments divorced from the facts of this case as contained within the Record. Yet, this remains a "grandfathering" case, coming to this Court by way of administrative appeal. It must be analyzed based upon the manner in which Reaume used her property prior to the zoning amendment, with strict adherence to the Record, and substantial deference to the factual findings of the Township Board.

The nature of this case as a fact-specific administrative appeal also dictates that it is inherently local. While zoning ordinances throughout the state may share similar phrases and terms, these terms are not to be read in isolation. Like statutes, zoning ordinances must be read as a whole, taking into account the interplay between their many pieces. Likewise, it is important to bear in mind that Spring Lake Township has taken but one approach to regulating short-term rentals within its community, as is its prerogative. Other communities will treat short-term rentals differently according to the needs of their own constituents.

Moreover, the decision by the Court of Appeals to affirm the Township Board's denial of Reaume's short-term rental license is fully in line with the prior decisions of this Court and the Court of Appeals. Contrary to Reaume's unsupported assertions, the May 21, 2019 Opinion of the Court of Appeals did not create any conflict with the prior decisions of this Court or of the Court of Appeals.

Finally, no substantial harm would result in allowing the decision of the Court of Appeals to stand. Reaume has been afforded two opportunities to present her arguments on appeal. Each time, the lower courts properly applied the law and correctly analyzed the evidence within the Record to find that the manner in which Reaume had used her property prior to the amendment of the Zoning Ordinance was not a lawful, prior nonconforming use.

Additionally, as this Court is well aware, this Court is not limited to the reasons stated by the Court of Appeals for its decision but has the authority to affirm on any basis in the Record. Therefore, alternatively, just as the Township pointed out when denying Reaume's Application, reiterated through its Resolution denying Reaume's appeal to the Township Board, and raised at each stage of these proceedings, while a nonconforming use may be entitled to continue despite a *zoning* ordinance, it is not excused from a *regulatory* ordinance such as Ordinance 255.

Indeed, Reaume was presumably aware that zoning principles were not at issue, applying for a *license* under Ordinance 255, rather than seeking an interpretive decision or a variance under the Zoning Ordinance from the Zoning Board of Appeals, the body charged with making such decisions. Under Ordinance 255, the Township Board had no authority to do anything other than deny Reaume's Application.

Accordingly, for any of the foregoing reasons, this Court should deny Reaume's Application for Leave to Appeal or, alternatively, enter a peremptory order affirming the decision of Michigan Court of Appeals.

COUNTER JURISDICTIONAL STATEMENT

Spring Lake Township concurs with Reaume's Statement of Appellate Jurisdiction.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

Whether this Court should deny leave to appeal where this matter involves an administrative appeal following a local ordinance determination where the decisions of the Circuit Court and Court of Appeals were based upon the Record evidence, consistent with well-established principles of statutory construction, and squarely in line with the prior decisions of the Court of Appeals and this Court.

Reaume answers: No.

Spring Lake Township answers: Yes.

Whether the Circuit Court and the Court of Appeals properly determined that the manner in which Reaume used her property as a short-term vacation rental to transient guests was not a lawful, prior nonconforming use because her use was not authorized under the prior version of the Spring Lake Township Zoning Ordinance which restricted the property to residential, single-family use.

Reaume answers: No.

Spring Lake Township answers: Yes.

Circuit Court answered: Yes.

Court of Appeals answered: Yes.

Whether the decision of the Township Board to deny Reaume a short-term rental license under Ordinance 255, a regulatory ordinance, was authorized by law and supported by competent, material and substantial evidence on the Record where grandfathering principles did not apply and Ordinance 255 did not authorize the Township Board to deviate from the requirements set forth in within the Ordinance.

Reaume answers: No.

Spring Lake Township answers: Yes.

Circuit Court answered: Yes

COUNTER-STATEMENT OF FACTS

I. FACTUAL BACKGROUND

Appellant Susan Reaume ("Reaume") has owned the property commonly known as 18190 Lovell in Spring Lake Township, Michigan since 2003. (App. for Leave at 5). It is undisputed that Reaume ceased living in the home on the property in 2014 and, in 2015, began renting it on a short-term basis. (COA Opinion at 1, Appx. at 1a[1])

However, Reaume mischaracterizes the Record in describing the nature of her short-term rental use and asserting that she rented her property only "to a single family."[2] (App. for Leave at v., 4, 11). The Record evidence demonstrates that, in 2015 and 2016, Reaume rented her property as a "vacation rental" to short-term transient guests, with no concern for the relationship of those guests. (HomeAway.com Listings I, Appx. 1b-22b). The HomeAway.com Listings indicated that monthly rentals were available during the off-season, but that monthly rentals were not similarly available during the summer months. (Jan. 8, 2016 correspondence, Appx. at 60a-63a;

[1] Per MCR 7.312(D)(4), the Township has identified those documents appearing in Appellant's Appendix as Appx. 1a, Appx. 2a, etc. Materials not included in Appellant's Appendix, but referenced herein have been filed separately as Appellee's Appendix and identified as Appx. 1b, Appx. 2b, etc.

[2] This appears to be a deliberate attempt to confuse the issues given the language within the Zoning Ordinance that limits property within the R-1 residential zone to "single family" residential uses.

HomeAway.com Listings, Appx. at 13b, "Rates"). Additionally, the listings referred to renters as "guests," not "tenants," and explained that the guests must bring their own meals during their stay. (Jan. 8, 2016 correspondence, Appx. at 60a-63a; HomeAway.com Listings, Appx. at 1b-22b). The HomeAway.com "Renter Review 2" referred to "the team," "suggesting that the rental may have been a corporate organizational group, not a family." (Jan. 8, 2016 correspondence, Appx. at 60a-63a; HomeAway.com Listings, Appx. at 19b). Another review noted that the property was a "[g]reat place to relax with friends." (HomeAway.com Listings, Appx. at 17b). Neighbors also informed the Township that the property had, on an occasion, been occupied by guests with seven different cars from Illinois. (Jan. 8, 2016 correspondence, Appx. at 60a-63a; Photograph "7 cars from Illinois 18190 Lovell Road", Appx. at 23b).

Reaume claims that, in 2015, the property manager that she had hired was told by "Connie Meiste at the Spring Lake Township offices" that the Township did not restrict short- or long-term rentals. (Appx. at 59a). While the Township must accept such allegations given the nature of this zoning appeal and its strict adherence to the Record, it must also be made clear that Reaume was not told this by the "Zoning Administrator" or any Township Board or elected official. At all times, Lukas Hill served as the Township's Zoning Administrator, otherwise known as the "Community Development Director" under the Township's Zoning Ordinance. (Zoning Ordinance at 2-31, Appx. at 59b; May 8, 2017 Resolution and Report of the Township Board ("Resolution") at 3, Appx. at 18a). There is also no support in the record that Meiste, an administrative employee, served as Hill's "delegate" or "designee" under the Zoning Ordinance. (Resolution at 4, Appx. at 19a).

Reaume never sought an interpretive decision from the Township's Zoning Board of Appeals ("ZBA") as to whether short-term rentals were permitted under the Zoning Ordinance

then in effect, and there is no indication in the Record that any interpretive decision was ever offered. (See Resolution at 4, Appx. at 19a).

In May of 2016, Reaume continued to advertise her property for short-term rental under the category of "vacation-rental" as sleeping 22 people for a minimum stay of only 3-6 nights. (HomeAway.com Listings II, Appx. at 68b-73b).

On July 22, 2016, Township Supervisor John Nash wrote to concerned residents regarding actions that they may take to address noise, trespassing, littering and/or cars or trailers blocking the public road coming from Reaume's rental property while the Township Board considered whether to permit short-term rentals in the area. (July 22, 2016 correspondence, Appx. at 65a). Contrary to Reaume's assertions throughout this case, the July 22, 2016 correspondence never offered any opinion as to the legality of short-term rentals.

On December 12, 2016, the Township Board adopted a regulatory ordinance, the Short-Term Rental Regulations Ordinance, Ordinance No. 255, addressing short-term rental practices within the Township. (Ord. 255, Appx. at 82a-89a). It sets forth performance standards and limitations for short-term rental activity and provides for the registration and licensing of all Short-Term Rentals, which includes "the Rental or subletting of any Dwelling for a term of 27 days or less . . ." (Ord. 255 at 2-5). It further makes clear that "[i]n the R-1 district, no Short-Term Rentals are permitted. Only Rental periods of 28 days or more are permitted." (Ord. 255 at 6, Sec. 6-107(a)(6), Appx. at 87a). Ordinance 255 does not provide any exception to this prohibition, nor does it give the Township's Board any authority to depart from the terms of the ordinance.

Following the adoption of Ordinance 255, the Township adopted a separate ordinance—Ordinance 257—addressing the zoning applicable to short-term rentals, which amended the Township's existing Zoning Ordinance. Circuit Court Opinion. (Ord. 257, Appx. at 90a-93a).

On March 2, 2017, Reaume presented the Township's Community Development Department with a Short-Term Rental Application, requesting Short-Term Rental and Limited Short-Term Rental Licenses per Ordinance 255. (Application, Appx. at 49a-55a). As part of her Application, Reaume submitted an appendix, arguing, *inter alia*, that the "short term rental activity at 18190 Lovell Road is a 'grandfathered' nonconforming use." (Application, Appx. at 51a-53a).

On March 10, 2017, Ms. Boersma, Clerk for the Township Board, notified Reaume that her Application was denied because, "[u]nder the Ordinance, the Property is located in a district in which short-term rentals are not allowed to operate." (Mar. 10, 2017 Denial, Appx. at 66a-67a). Ms. Boersma explained that Ordinance 255 is not a zoning ordinance subject to Reaume's "grandfather[ing]" argument and, even if it were, her prior use was never permitted under the Zoning Ordinance. (Mar. 10, 2017 Denial, Appx. at 66a-67a).

On March 15, 2017, Reaume notified the Township that she intended to appeal the March 10, 2017 decision and, on Friday, April 7, 2017, provided the Township Board with her Petition of Administrative Appeal, again arguing that operation of her property as a short-term rental enterprise was grandfathered as a prior nonconforming use. (Apr. 7, 2017 Petition, Appx. at 38a-48a).

On April 10, 2017, the Township Board considered Reaume's appeal of the denial of her short-term rental license. (Apr. 10, 2017 Minutes Appx. at 74b-75b; Transcript of Apr. 10, 2017 meeting, Appx. at 23a-37a). Counsel for Reaume stressed that "Mrs. Reaume is grandfathered in and allowed to use short-term rental activity in the future as she's done for the last two seasons." (Apr. 10, 2017 Tr. at 5, Appx. at 27a). Several members of the public spoke out against Reaume's Application with their appreciation for the Township in passing Ordinance 255, which assures that

the "property is preserved as a residential neighborhood" while still allowing for 14 days of short-term rental. (Apr. 10, 2017 Tr. at 8, Appx. at 30a).

At the conclusion of public comment, the Township Attorney noted the Township's history with complaint-based enforcement, rather than "do[ing] patrols going up and down the streets looking for [ordinance] violations." (Apr. 10. 2017 Tr. at 11, Appx. at 33a). The Township Attorney also explained "that courts have recognized short-term rentals as being a commercial operation." (Apr. 10, 2017 Tr. at 11, Appx. at 33a). Board Member Terpstra noted that Ordinance 255 had been passed as a regulatory, not a zoning ordinance, and that the concerns raised by Reaume were addressed at the time that Ordinance 255 was passed. (Apr. 10, 2017 Tr. at 13, Appx. at 35a). Thereafter, the Board unanimously voted to direct the Township's attorney to draft a written response of denial to Reaume's Petition of Administrative Appeal. (Apr. 10, 2017 Minutes, Appx. at 74b-75b).

On May 8, 2017, the Township Board of Trustees voted to unanimously to approve the Resolution and appended Report to deny Reaume's appeal under Ordinance 255. (May 8, 2017 Minutes, Appx. at 77b; Resolution, Appx. at 14a-22a). In that Report, the Township explained that "Ordinance 255 regulates activity, as opposed to land usage," (Resolution at 1, Appx. at 14a), but that even if zoning principles applied, Reaume's grandfathering argument fails as short-term rentals were never permitted in the R-1 District, (Resolution at 2, Appx. at 15a).

II. PROCEDURAL HISTORY

Reaume filed a Claim of Appeal with the Circuit Court on May 26, 2017. Pursuant to Section 28 of Article 6 of the Michigan Constitution, and MCR 7.103(A)(4), the Circuit Court reviewed the Claim of Appeal limited solely to the denial of her Application under Ordinance 255.

The Ottawa County Circuit Court entered its Opinion and Order on November 30, 2017, affirming the decision of the Township Board. In its Opinion and Order, the Circuit Court first determined that the decision of the Township Board was "authorized by law, specifically by ordinance 255." (Circuit Court Opinion at 5, Appx. at 12a). "Ordinance 255 clearly and expressly prohibits the short-term rental of dwellings located in an R-1 zone," which is where Reaume's property is located. (Circuit Court Opinion at 6, Appx. at 13a). It further determined that the minutes of the April 10, 2017 meeting, adopted by Resolution of May 8, 2017, provide the requisite "competent, material, and substantial evidence on the record" to support of the Board's decision. (Circuit Court Opinion at 6, Appx. at 13a).

Second, the Circuit Court found that Reaume's use of her property as a short-term rental did not exist lawfully prior to the adoption of Ordinance 255. (Circuit Court Opinion at 6, Appx. at 13a).

On December 21, 2017, Reaume filed an Application for Leave to Appeal to the Michigan Court of Appeals, which was granted on June 4, 2018.

Following briefing and oral argument, the Court of Appeals also affirmed the decisions of the Circuit Court and Township Board in its published Opinion of May 21, 2019. (COA Opinion, Appx. at 1a-7a).

First, the Court of Appeals rejected Reaume's argument pertaining to statements by Township employees and the Township's historical lack of enforcement against Reaume's short-term rental activity. [3] (COA Opinion at 3, Appx. at 3a). The Court of Appeals found that Reaume's

[3] Reaume mischaracterizes the decision below in claiming that the Court of Appeals spent a "large portion" of its decision "discussing and rejecting an argument never made by Ms. Reaume." App. for Leave at 9. Contrary to Reaume's position at this stage, throughout the litigation, Reaume has placed great emphasis on statements or lack thereof by Township employees. Indeed, even in her present Application for Leave, Reaume attempts to highlight funds expended in alleged reliance

"argument turns on making untenable extrapolations from statements made by individuals who had no authority to bind the Township," (COA Opinion at 3, Appx. at 3a), and that "[Reaume] mostly relies on seriously mischaracterizing statements made by individuals," (COA Opinion at 4, Appx. at 4a). The Court of Appeals did not find any evidence in the Record to indicate that any individual with any authority to bind the Township or otherwise interpret the Township's Zoning Ordinance issued any interpretive decision as to the propriety of short-term rental activity. Therefore, the Court of Appeals "f[ound] no merit to plaintiff's contention that the Township had itself determined plaintiff's use of her property for short-term rentals to be lawful." (COA Opinion at 5, Appx. at 5a).

The Court of Appeals went on to reject Reaume's argument that her short-term rental activity was a grandfathered lawful, prior nonconforming use. (COA Opinion at 5, Appx. at 5a). It determined that, "[r]ead as a whole, the definition of 'Dwelling, Single-Family' unambiguously excludes transient or temporary rental occupation." (COA Opinion at 6, Appx. at 6a). Unlike motels or other transient lodging, "[t]he definition of single-family dwelling emphasizes one family only, and 'family' expressly excludes 'transitory or seasonal' or otherwise temporary relationships." (COA Opinion at 6, Appx. at 6a). "The Ordinance clearly forbids short-term rental uses in property in R-1 zones, irrespective of whether the Ordinance does so in those exact words." (COA Opinion at 6, Appx. at 6a).

The Court of Appeals further explained that its decision was "consistent with case law establishing that commercial or business uses of property, generally meaning uses intended to

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on "Spring Lake's assurances," App. for Leave at 5, which would have no relevance other than with respect to an argument of equitable estoppel. *See Lyon Charter Twp v Petty*, 317 Mich App 482, 490; 896 NW2d 477 (2016), vacated in part on other grounds by 500 Mich 1010; 896 NW2d 11 (2017).

generate a profit, are inconsistent with residential uses of property." (COA Opinion at 7, 7 Appx. at 7a, citing *Terrien v Zwit*, 467 Mich 56, 61-65; 648 NW2d 602 (2002)).

COUNTER STANDARD OF REVIEW

Contrary to Reaume's attempts to characterize this as a simple question of de novo review, App. for Leave at 11, this case does not come to this Court by way of original action but as an administrative appeal. Therefore, the applicable standard of review is set forth in Section 28 of Article 6 of the Michigan Constitution which provides:

> All final decisions, findings, ruling and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by laws. This review shall include, as a minimum, the determination of whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

Const. (1963), art 6, § 28; *see Carleton Sportsman's Club v Exeter Twp.*, 217 Mich App 195, 200 (1996). While this Court applies de novo review to questions of law and ordinance interpretation, it always must accord great weight to the factual findings of the local governing body. *Macenas v Vill of Michiana*, 433 Mich 380, 394; 446 NW2d 102, 109 (1989).

As the Court of Appeals aptly recognized, "there is no single standard of review applicable to the appeal itself, because zoning cases typically entail questions of both fact and law." (COA Opinion at 2, Appx. at 2a, quoting *Macenas*, 433 Mich at 394-395). Courts must defer to factual findings "to the extent they are 'supported by competent, material, and substantial evidence on the record.'" (COA Opinion at 2, Appx. at 2a, quoting *Macenas*, 433 Mich at 395). In turn, this Court is to review the lower court's determination to determine "whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the [Board's] factual findings." *Hughes v Almena Twp*, 284 Mich App 50, 60; 771 NW2d 453, 460 (2009), quoting *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996).

This standard is "the same as the familiar 'clearly erroneous' standard." *Id*. Thus, a decision of a lower court can be overturned only where, "on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made." *In re Gant*, 250 Mich App at 18, quoting *Boyd*, 220 Mich App at 235.

ARGUMENT

I. THERE IS NO REASON FOR THIS COURT TO REVIEW OR DISTURB THE PUBLISHED OPINION OF THE COURT OF APPEALS.

A. This is a Matter of Local Ordinance Interpretation and Local Decision-Making, Not of Great Public Policy as Reaume Suggests.

The nature of this case sets it apart. This is not a matter of simple de novo review in which the Spring Lake Township Zoning Ordinance may be interpreted in a vacuum, governed by the hypothetical concepts advanced by Reaume. This case also does not involve weighing the costs and benefits of short-term rentals, nor does it challenge the propriety of the Township's policy decisions. Those are legislative actions committed to the discretion of the local governing body, *see Kropf v City of Sterling Hts*, 391 Mich 139; 215 NW2d 179 (1974), and presently being considered by the State legislature, see Mich HB 4046 (2019).

Instead, this matter comes to this Court by way of administrative appeal of a decision of the local Township Board based upon the Township Board's interpretation of its own Zoning Ordinance and its local policy decision to permit short-term rentals in some locations and not others. It is a fact-specific inquiry, involving a review of the Township Board's decision as to whether the particular manner in which Ms. Reaume used her property as a short-term rental was "grandfathered" as a lawful, prior nonconforming use, with great deference to the Board's understanding of the underlying facts. *See Macenas*, 433 Mich at 394-395

While other zoning ordinances may share common terms with that of the prior Spring Lake Township Zoning Ordinance, this commonality alone will not dictate a result similar to that reached by the Court of Appeals. With the rise of the short-term rental business, local governments have taken different paths, welcoming and restricting the activity according to the needs of their individual communities. Just as each municipality may structure its zoning ordinance differently, each prior use may look different, with each governing body interpreting the facts before it through its individual lens.

In an appeal such as this concerning whether a particular use is grandfathered as a lawful, prior nonconforming use, the facts matter, not in isolation, but as contained within the Record and as seen through the eyes of each individual local governing body. With this in mind, this Court should decline Reaume's Application for Leave to Appeal and allow the decision of the Township Board to stand.

B. The Well-Reasoned Decision of the Court of Appeals is Consistent with the Prior Decisions of this Court and of the Court of Appeals.

In Reaume's attempt at framing short-term rentals, generally, as a new issue, given rise by recent "disruptive technologies," App. for Leave at 1, Reaume ignores the established body of case law consistently finding short-term rentals and similar uses to be inconsistent with residential, single-family use. The decision by the Court of Appeals in no way "conflicts with this Court's decisions," App. for Leave at 16, (of which Reaume does not cite even a single one) but falls squarely in line with this Court's jurisprudence and prior unpublished decisions by the Court of Appeals. Accordingly, there is no reason for this Court to disturb the decisions of the Court of Appeals, which for the second time on appeal, affirmed the decision of the Township Board.

In *O'Connor v Resort Custom Builders, Inc*, 459 Mich 335; 591 NW2d 216 (1999), this Court held that "interval ownership," dividing a home into one-week timeshare units that could be

bought or exchanged similar to a short-term rental, was not a "residential purpose." In affirming the decision of the Circuit Court, this Court agreed:

> 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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> * * *
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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....

Id. at 345-346.

This Court's decision in *Laketon Township v Advanse, Incorporated*, 485 Mich 933; 773 NW2d 903 (2009), is further instructive, demonstrating this Court's consistent commitment to the concept that that short-term, seasonal rental is a commercial, rather than residential use.

In *Laketon Township,* a prior property owner had first rented four cottages "on a short-term, seasonal basis." *Laketon Township v Advanse, Inc*, 2009 WL 763447, at *1 (Mich Ct App

March 24, 2009) ("*Laketon Township II*"), attached hereto as Exhibit A[4]. At the time, the property was zoned as *commercial*. *Id.*

In 1979, the property was re-zoned as residential. *Laketon Township,* 485 Mich 933. Like the case at bar, the ordinance then in effect contained a broad definition of "Dwelling,[5]" while also specifying that the particular area where the property was located, "*Residential* District A, was restricted to '*single family* dwellings.'" *Id.* (emphasis added) However, the particular area where the property was located, "Residential District A, was restricted to 'single family dwellings.'" *Id.*

In 2003, the current property owner began renting the main house as a short-term rental, in addition to the cottages. *Laketon Township II,* 2009 WL 763447, at *1.

Then, in 2004, the zoning ordinance and its definition of dwelling was amended to expressly exclude short-term rentals. *Id.* at *1-2.

The question in *Laketon Township* was whether the cottage and/or main-house rentals would be permitted as legal, nonconforming uses. *Id.* at *3. This Court determined that while the short-term rental of the four cottages (beginning when the area was zoned commercial) was a lawful, nonconforming use, the short-term rental of the main house (beginning when the area was zoned residential, single-family) was not lawful at the time that it began.

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[4] *Laketon Township,* 485 Mich 933, relied upon by the Township in its Resolution, is a memorandum order of this Court, reversing the judgment of the Court of Appeals and reinstating the opinion and order of the Circuit Court. It does not contain a detailed recitation of the facts, the judgment of the Court of Appeals, or the Circuit Court's opinion and order which was reinstated. Therefore, the Township also refers to the unpublished decision of the Court of Appeals in *Laketon Township II,* 2009 WL 763447, for that additional information.

[5] In *Laketon Township*, "Dwelling" was defined as "[a] building or portion thereof, designed or used exclusively as the residence or sleeping place of one or more persons, including one-family, two-family, and multiple family dwellings, apartment-hotels, boarding and lodging houses." *Laketon Township,* 485 Mich 933.

The Court of Appeals determined "that the 1979 zoning ordinance allowed, or more accurately stated, did not prohibit, short-term rentals," allowing the rental of the main house as a lawful, nonconforming use. *Id*. at *4. However, this Court *reversed*.

> Under § 200 of the 1979 zoning ordinance, use of the subject premises, which were zoned Residential District A, was restricted to "single family dwellings." Single family dwellings were a subset of the 1979 ordinance's more expansive definition of "dwelling." Therefore, the defendant's expansion of the rental use of the subject premises to include the main residence situated on the property, after purchasing it in 2003, constituted an impermissible expansion of an existing nonconforming use lawful under the 1979 ordinance.

Laketon Township, 485 Mich 933. In other words, the broad definition of dwelling (which would have permitted hotel-like, transient rentals) did not apply; the property fell under the more specific designation of "single-family" dwelling. Thus, while the rental of the cottages could continue as lawful when the property was originally zoned as *commercial* (grandfathered in when the property was re-zoned in 1979), the short-term rental of the main house, which began when the property was zoned as *residential*, *single-family* under definitions similar to the case at bar, had not been lawful.

More recently, in *Eager v Peasley*, 322 Mich App 174, 188–89; 911 NW2d 470, 478 (2017), the Court of Appeals confirmed that transient, short-term rental use was a commercial, rather than a residential use. There, the plaintiffs sued a neighboring property owner for breach of the restrictive covenant and nuisance where the neighboring property owner rented out a lake house for transient, short-term use. The plaintiffs alleged that the rentals violated the deed restrictions limiting defendant's use of the premises to "private occupancy" and prohibiting "commercial use" of the premises. *Id*. at 177. In keeping with this Court's decision in *O'Connor* and in *Terrien v Zwit*, 467 Mich 56, 63-64; 648 NW2d 602 (2002)[6], the Court of Appeals held that transient, short-

[6] In *Terrien*, this Court noted:

term rental usage violated the terms of the restrictive covenant. Just like Reaume, the defendant rented the property to a variety of groups—tourists, families, business groups—that had no right to leave their belongings on the property and rentals were available throughout the year, "advertised on at least one worldwide rental website." *Id*. at 188-89.

The Court of Appeals, in prior unpublished decisions, also rendered decisions consistent with that in the present case, determining that short-term rentals like those once offered by Reaume are not consistent with single-family dwellings or residential purposes because such uses are inherently "commercial," given that the dwellings were "essentially being treated like hotels for guests." *Enchanted Forest Prop Owners Ass'n v Schilling*, No 287614, 2010 WL 866148, at *7 (Mich Ct App Mar 11, 2010), attached hereto as Exhibit B (holding that the "use of property to provide temporary housing to transient guests is a commercial purpose, as that term is commonly understood."). While "[t]he term 'residential' means 'pertaining to residence or to residences,'" and 'residence' means "'the place, esp[ecially] the house, in which a person lives or resides; dwelling place; home,'" "'[c]ommercial' is commonly defined as 'able or likely to yield a profit,'" *Enchanted Forest Prop Owners Ass'n*, 2010 WL 866148, at *5, *quoting Random House Webster's College Dictionary* (1997). A short-term rental to transient guests on a bi-nightly basis, similar to a hotel or a bed and breakfast, does not fit within the residential character of a "single family dwelling." *Id.*

> The operation of a "family day care home" for profit is a commercial or business use of one's property. We find this to be in accord with both the common and the legal meanings of the terms "commercial" and "business." "Commercial" is commonly defined as "able or likely to yield a profit." *Random House Webster's College Dictionary* (1991). "Commercial use" is defined in legal parlance as "use in connection with or for furtherance of a profit-making enterprise." Black's Law Dictionary (6th ed.). "Commercial activity" is defined in legal parlance as "any type of business or activity which is carried on for a profit." *Id*.

Terrien, 467 Mich. at 63–64; 648 NW2d 602.

The same was true in *Concerned Prop Owners of Garfield Twp, Inc v Charter Twp of Garfield*, No. 342831, 2018 WL 5305235, at *1 (Mich Ct App, October 25, 2018), attached hereto as Exhibit C, cited by the Court of Appeals in the present case as reason for publishing its consistent decision. There too, the terms "residential" and "single-family dwelling" controlled. *Id.* at 2, 3. The zoning ordinance at issue

> 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.

Id. at *2.

Despite her protestations, Reaume fails to point to a single case involving short-term rentals or short-term uses inconsistent with the foregoing and the present Court of Appeals decision.

C. This is an Administrative Appeal Necessarily Limited to the Facts Contained Within the Record and Arguments Presented to and Considered by the Township Board. Hypothetical Questions of Hypothetical Uses Are Not Properly Before this Court.

Contrary to Reaume's new argument, raised for the first time in this Application for Leave to Appeal, the question before this Court is *not* whether Reaume can claim "a vested right to use her home for short-term rentals *to single families*." App. for Leave at 12 (emphasis added). This is a plain mischaracterization of the facts.

Reaume argues that "[t]here is no reason why a single 'family' could not 'temporarily' occupy a 'dwelling.'" App. for Leave at 14-15. While this statement improperly attempts to conflate temporary residence with short-term rental to transient guests, as will be discussed in

greater detail below, it also suffers from a flawed underlying assumption—that the issue before this Court involves only rental to "a single 'family'". It does not.

There is nothing in the Record to support this claim, raised for the first time before this Court, that Reaume rented her property only to a single family. This was also not an argument presented to the Township Board or raised at any previous point in this litigation. Accordingly, Reaume's hypothetical question of "short-term rentals *to single families*" is not properly before this Court.

It bears repeating that this is not an original civil action. Over the course of two separate appeals, one to the Circuit Court and another by leave to the Court of Appeals, Reaume repeatedly attempted to expand the facts beyond those contained within the Record, even being permitted to do so in the Circuit Court, supplementing the Record with all Township documents having anything to do with the property, regardless of whether such documents were considered by the Township Board in rendering its decision. However, the law is clear: Reaume is only permitted to challenge the decision of the Township Board based upon the evidence presented to it and have this Court determine whether the decision "was authorized by law and the findings were supported by competent, material, and substantial evidence *on the whole record*." MCR 7.122(G)(2) (emphasis added); Const. (1963), art 6, § 28. Rule 7.122 further provides that, unless otherwise stated, MCR 7.101 through 7.115 apply. MCR 7.122(A)(1). And, like all appeals, MCR 7.109(A) makes clear that "[a]ppeals to the circuit court are heard on the original record . . . as defined in MCR 7.210(A)(2)." Reaume is not entitled to present new evidence or raise new allegations concerning the manner in which she used her property or ask this Court to decide hypothetical questions divorced from the decision by the Township Board or the Record evidence.

It is well settled that this Court, when exercising its appellate jurisdiction, may not act as a "super zoning commission." *Robinson v City of Bloomfield Hills*, 350 Mich 425, 430; 86 NW2d 166, 169 (1957). Once a claim of appeal is filed, the Circuit Court and the courts that follow reviewing the underlying decision in an appellate capacity. *Macenas v Vill of Michiana*, 433 Mich 380, 387 (1989). Therefore, the parties are not permitted to add to the record, and "an appellate court exceeds its function when it measures a zoning appeals board order against evidence which the board did not consider." *Lorland Civic Assoc v Dimatteo*, 10 Mich App 129, 138; 157 NW2d (1968). Further, the appellant may not raise issues that were not presented to the board below for consideration. *Town & Country Dodge, Inc v Dept of Treasury*, 420 Mich 226, 228 n l; 362 NW2d 618 (1984).

In reviewing the Township Board's decision under the "substantial evidence" test, "[s]uch review must be undertaken with considerable sensitivity in order that the courts accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views." *Vanzandt v State Employees Ret Sys*, 266 Mich App 579, 588; 701 NW2d 214, 220 (2005), quoting *Michigan Employment Relations Comm v Detroit Symphony Orchestra, Inc*, 393 Mich 116, 124; 223 NW2d 283 (1974). Therefore, "[g]reat deference is accorded to the circuit court's review of the [administrative] agency's factual findings . . ." *Mericka v Dep't of Cmty Health*, 283 Mich App 29, 36; 770 NW2d 24, 28 (2009) (internal citations omitted).

In determining whether Reaume acquired a vested right to continue her prior nonconforming use of the property, this Court must examine "the manner it was used prior to the adoption of a zoning ordinance." *Bevan v Brandon Tp*, 438 Mich 385, 401; 475 NW2d 37, 45 (1991), quoting *Gackler v Yankee Springs Twp*, 427 Mich 562, 573-574; 398 NW2d 393 (1986).

This case cannot be analyzed in a vacuum or divorced from the particulars of Reaume's property use; it must be based only upon the facts contained within the Record.

D. The Court of Appeals Correctly Applied Established Principles of Statutory Construction in Finding that Reaume's Short-Term Rental Activity was not a Lawful, Prior Nonconforming Use.

This case is not about short-term rentals generally, but whether the manner in which Reaume used her property as a short-term rental to groups of transient guests was grandfathered as a prior nonconforming use under the Township's prior Zoning Ordinance. Both the Township's Zoning Ordinance and Michigan law make clear that a use which was not *lawful*, prior to a new or amended ordinance is not entitled to "nonconforming use" status. Specifically, the Township Zoning Ordinance provision regarding nonconforming uses provides:

> Nonconforming Buildings, Structures, Lots, and uses which do not conform to one (1) or more of the provisions or requirements of this Ordinance or any subsequent amendments thereto, but *which are lawfully established* prior to the adoption of this Ordinance or subsequent amendment, may be continued.

(Zoning Ordinance at 3-29, Appx. at 76a (emphasis added)). This is consistent with MCL 125.3208, "Regulation of nonconforming uses and structures; elimination of nonconforming uses and structures," which provides in relevant part:

> If the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment.

There is no dispute that Reaume used her property as a short-term rental—specifically that she rented the property to vacationing "guests" for as little as two days at a time—prior to the adoption of Ordinances 255 and 257. The only question that remains is whether Reaume's use was permitted under the prior version of the Zoning Ordinance. It was not.

1. The manner in which Reaume used her property—renting to transient guests on a short-term basis—was not permitted under the prior version of the Zoning Ordinance.

It is undisputed that there is no *express* mention of "Short-Term Rentals" anywhere in the prior version of the Township's Zoning Ordinance. However, Reaume fails to recognize that any use not expressly permitted by a zoning ordinance is considered a nuisance per se and is prohibited. MCL 125.3407.

This Court must look to the text of the Zoning Ordinance to determine whether the manner that Reaume had used her property, as detailed above, was permitted under the prior version of the Zoning Ordinance.

In her Application for Leave, Reaume focuses on the interpretation of "Dwelling, Single-Family," but ignores the critical overarching classification of the R-1 District as Residential. (Zoning Ordinance at 4-1, 4-12, Appx. at 61b, 67b). The plain language of the Zoning Ordinance categorizes the R-1 District under "Residential Districts," and, specifically, as the "Low-Density Residential-Resource" District. (Zoning Ordinance at 4-1, Appx. at 61b; Zoning Ordinance at 4-12, Appx. at 78a). "The R-1 Low-Density Residential Resource District is intended for low-Density Single Family uses . . ." (Zoning Ordinance at 4-12, Appx. at 78a). Thus, for purposes of this appeal, the R-1 District is most critically defined by both its "residential" and "single-family" restrictions.

The first term, "residential," is not defined within the language of the Zoning Ordinance. See Zoning Ordinance, Section 2. However, "[o]rdinances are treated as statutes for the purposes of interpretation and review." *Great Lakes Soc v Georgetown Charter Tp*, 281 Mich App 396, 407–08; 761 NW2d 371, 380 (2008), citing *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003). Therefore, where undefined, "[t]erms used in an ordinance must be given their

plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions." *Great Lakes Soc*, 281 Mich App at 407–08; 761 NW2d at 380, citing *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004).

According to the dictionary, "residential" means "of or relating to residence or residences." "Residential," Dictionary.Com, https://www.dictionary.com/browse/residential, Aug. 22, 2018. "Residence" is defined as "the place, especially the house, in which a person lives or resides; dwelling place; home." "Residence," Dictionary.com, https://www.dictionary.com/browse/residence?s\=t, Aug. 22, 2018. It is "the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn[;]" "a building used as a home." "Residence," Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/residence, Aug. 22, 2018.

While a tenant is certainly capable of making a property his or her *home*, the common and ordinary meaning of "residential" cannot coincide with Reaume's short-term rental activity. See also "Resident," Merriam-Webster Thesaurus, https://www.merriam-webster.com/thesaurus/resident, Aug. 22, 2018 (listing "tenant" as a synonym of "resident"). One can easily see that Reaume was not using the property "as a home," but was instead marketing it as a "vacation rental" to "guests," or, put another way, a "place of temporary sojourn."

Per the HomeAway.com Listings, those renting the property for as short as two days were referred to as "guests." Merriam-Webster lists "guest" and "transient" as antonyms of "resident." "Resident," Merriam-Webster Thesaurus, https://www.merriam-webster.com/thesaurus/resident, Aug. 22, 2018. Indeed, the distinction between "guests" and renters or tenants is aptly illustrated by the reminder in the HomeAway.com Listings that the property's guests must bring their own meals. A reminder that the landlord will not be providing meals is certainly not necessary when entering into a lease agreement with tenants making the property their home. (See Jan. 8, 2016

correspondence, Appx. at 60a-63a; HomeAway.com Listings, Appx. at 1b-22b). Plainly, using the property on a nightly basis is simply not the same as a resident or tenant making the property his or her home, even on a temporary basis.

The Zoning Ordinance's classification of the R-1 District as "Residential" is plain and unambiguous when compared with the manner in which Reaume was using her property for profit, as a commercial venture; therefore, no further judicial construction is necessary. *See In re Certified Question from US Court of Appeals for Sixth Circuit*, 468 Mich 109, 113; 659 NW2d 597, 600 (2003). However, even if this Court chooses to look further, established case law discussed in detail above demonstrates that short-term rentals such as those offered by Reaume are commercial, not residential uses. *See Laketon Township*, 485 Mich 933; *O'Connor*, 459 Mich 335; *Eager*, 322 Mich App 174; *Concerned Prop Owners of Garfield Twp, Inc*, No. 342831, 2018 WL 5305235; *Enchanted Forest Prop Owners Ass'n*, 2010 WL 866148; *see also Terrien*, 467 Mich. at 63–64. In line with this Court's reasoning in *O'Connor* and in *Terrien*, this was not a situation in which guests had any continuity of presence, whether they lived their full-time or not. Guests could not store their belongings there and had no right to return after being away. Reaume's short-term rental use was, as advertised, a profit-making enterprise. *See Terrien*, 467 Mich. at 63–64.

The second pertinent restriction of the R-1 District permits only "single family" dwellings. (Zoning Ordinance at 4-1- 4-5, Appx. at 61b-64b; Zoning Ordinance at 4-12, Appx. at 78a).

The Zoning Ordinance defines "Dwelling," in relevant part, as

> Any Building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, by one (1) or more Families, but not including Motels or tourist rooms.

(Zoning Ordinance at 2-9, Appx. at 70a). The Zoning Ordinance then narrows this definition with three specific subsets under the definition of Dwelling: "Dwelling, Single-Family," "Dwelling,

Two-Family," and "Dwelling, Multi-Family." (Zoning Ordinance at 2-9, Appx. at 70a). The R-1 District does not permit all Dwellings, but only Single-Family Dwellings. As ordinances are construed as statutes, "'it is a settled rule of statutory construction that where a statute contains a specific statutory provision and a related, but more general, provision, the specific one controls.'" *Odom v Wayne Co*, 482 Mich 459, 471; 760 NW2d 217 (2008) (internal citation omitted).

Under the Zoning Ordinance, "Dwelling: single family" is "[a] Building designed for use and occupancy by one (1) Family only." (Zoning Ordinance at 2-9, Appx. at 70a). "Family" is then defined as

> A single individual or individuals, domiciled together, whose relationship is of a continuing non-transient domestic character and who are cooking and living together as a single, nonprofit housekeeping unit, but not including any society, club, fraternity, sorority, association, lodge, coterie, organization, or group of students, or other individuals whose relationship is of a transitory or seasonal nature, or for anticipated limited duration of school terms, or other similar determinable period of time.

(Zoning Ordinance at 2-10, Appx. at 71a). Critically, "family" specifically excludes "individuals whose relationship is of a transitory or seasonal nature, or for a limited duration." (Zoning Ordinance at 2-10, Appx. at 71a).

Again, though "transient" is not defined within the Zoning Ordinance, the term has a common and ordinary meaning of "staying only a short time;" "a person or thing that is transient, especially a temporary guest, boarder, laborer, or the like." "Transient," Dictionary.com, https://www.dictionary.com/browse/transient, Aug, 20, 2018. Therefore, Reaume's rental of the property to temporary "guests" on a nightly and seasonal basis was explicitly prohibited within the R-1 District prior to Ordinances 255 and 257.

Put another way, "Dwelling" is an umbrella term; *conceptually*, Dwellings can be fully or only partially homes, occupied permanently or temporarily, and could include one family or perhaps many families. (Zoning Ordinance at 2-9, Appx. at 70a). Simply because a general term—in this case "Dwelling"—is defined within an ordinance, does not mean that it is permitted in all forms within any specific location.

The Zoning Ordinance contemplates that certain Dwellings may be permitted, while others may not, explaining that ". . . Dwellings . . . used, erected, altered, razed, or converted in violation of any provision of this Ordinance or regulations adopted under the authority of this Ordinance, are declared to be a nuisance per se. (Zoning Ordinance at 1-18, Appx. at 50b).

The R-1 District did not allow for all Dwellings. R-1 District Dwellings must be "Single-Family." Unlike Dwellings generally, Single-Family Dwellings could not be only partially homes; they could not include multiple families; most importantly, they could not accommodate temporary residence by individuals "whose relationship is of a continuing non-transient domestic character," "transient," or "seasonal." (Zoning Ordinance at 2-10, Appx. at 71a). This more specific provision governs the R-1 District, making Reaume's prior use for transient and seasonal rental a nuisance per se.

While Reaume offers, hypothetically, that "[t]here is no reason why s single 'family' could not 'temporarily' occupy a 'dwelling,'" App. for Leave at 14-15, that hypothetical question is not properly before this Court in this grandfathering issue, mischaracterizing the Record evidence, and further fails to read the Zoning Ordinance as a whole, as it is intended to be read. *See* ***Robinson v City of Lansing***, 486 Mich 1, 15; 782 NW2d 171 (2010); *People v Cousins*, 480 Mich 240, 249; 747 NW2d 849 (2008) ("[W]ords and phrases used in an act should be read in the context of the entire act and assigned such meanings to harmonize with the act as a whole.").

Examining the Zoning Ordinance as a whole, the manner in which Reaume used her property falls under the Zoning Ordinance's definition of "Hotel": a facility offering "transient lodging" and accommodations to the general public. (Zoning Ordinance at 2-13, Appx. at 57b). Hotels, used interchangeably with "Motel" under the Zoning Ordinance, (Zoning Ordinance at 2-15, Appx. at 73a), and other tourist rentals are explicitly excluded under the definition for "Dwelling." (Zoning Ordinance at 2-9, Appx. at 70a; 2-13, Appx. at 57b; 2-15, Appx. at 73a). As the Court of Appeals properly recognized,

> Notwithstanding the possibility of some temporary occupancy, *any* kind of "dwelling" excludes a "motel." "Motels" expressly provide transient lodging, or "tourist rooms," which are undefined but reasonably understood as also referring to transient lodging. Plaintiff's use of her property for short-term rentals seemingly fits the definition of a "motel." Finally, it is notable to contrast the descriptions of the R-1 through R-3 zones with the description of R-4 zoning, which suggests that some kind of temporary occupancy might be permitted in two-family or multiple-family dwellings. The Ordinance clearly forbids short-term rental uses of property in R-1 zones, irrespective of whether the Ordinance does so in those exact words.

(COA Opinion at 6, Appx. at 6a).

Further text of the Zoning Ordinance continues to demonstrate that Reaume's actions in renting to transient, "vacationing guests" for a week or even two nights at a time does not equate to rental for the temporary home of a single family permitted in the R-1 District. The Zoning Ordinance clarifies that rental for transient guests is an "operation" which could occur within a dwelling but is not expressly permitted. Specifically, the Zoning Ordinance describes "Bed and Breakfast" as

> [a]n operation in which transient guests are provided a sleeping room and board in return for payment, which operation is located in a Single Family Dwelling which is used to house a Family as its principle place of residence.

(Zoning Ordinance at 2-4). Bed and Breakfast operations—rental to transient guests in Single Family Dwellings—was expressly *prohibited* in the R-1 residential district. (Zoning Ordinance at 4-1 - 4-5, Appx. at 61b-64b).

In sum, the Zoning Ordinance plainly and unambiguously prohibited Reaume's use of the property as a short-term vacation rental to transient guests in the R-1 District prior to any zoning amendment. However, again, even if this Court looks beyond the plain language of the Zoning Ordinance, the consistent decisions of this Court and the Court of Appeals, discussed in detail above, demonstrate that short-term rental of the type offered by Reaume is inconsistent with residential, single-family use. *See Laketon Township,* 485 Mich 933; *Concerned Prop Owners of Garfield Twp, Inc*, No. 342831, 2018 WL 5305235.

2. The interpretation of a Zoning Ordinance is subject to this Court's de novo review with deference to the body charged with interpreting the Ordinance. It is not concerned with the purported opinions of Township employees.

Despite Reaume's focus throughout the proceedings below, Reaume now asserts that the Court of Appeals placed undue emphasis on Reaume's arguments as to the representations of Township employees.

As the Court of Appeals aptly recognized, "a historical failure to enforce a particular zoning ordinance, standing alone, is insufficient to preclude enforcement in the present." *Lyon Charter Tp v Petty*, 317 Mich App 482, 489-90; 896 NW2d 477, 481-82 (2016), quoting *Marzo v Abington Tp Zoning Hearing Bd,* 30 Pa Cmwlth. 225, 230, 373 A.2d 463 (1977) ("[M]ere delay in enforcement does not create a vested right to use property in violation of zoning regulations." (alterations in *Lyon Charter Twp*.). As was explained at the April 10, 2017 meeting of the Township Board:

> the township has gone on record . . . for years as being a complaint based township. We do not generally do patrols going up and down the streets looking for violations. If we see something, we react. There is nothing illegal about that.

(Apr. 10, 2017 Tr. at 11, Appx. at 33a).

Reaume continues to place great emphasis on funds she claims to have expended in alleged reliance on "Spring Lake's assurances," App. for Leave at 5. However, according to the extensive Record, even considering the self-serving affidavits submitted by Reaume, the Zoning Administrator never told Reaume that there were no restrictions that would prohibit her short-term rental of the property, and Connie Meiste, an administrative employee, was not a Township official or designee of the Zoning Administrator for zoning enforcement purposes. (Resolution at 4, Appx. at 19a).

Cited by the Township in its Resolution, Michigan law is clear: "[n]o official of a municipality, other than the legislative body itself or some public body charged with the responsibility, may bind a municipality in a zoning matter. (Resolution at 3, Appx. at 18a), quoting *Nickola v Grand Blanc Tp*, 47 Mich App 684; 209 NW2d 803 (1973), aff'd 394 Mich 589; 232 NW2d 604 (1975). A township's zoning board of appeals, not a township's individual staff members, is the "municipal body charged with interpreting the ordinance . . ." *Sun Communities v Leroy Twp*, 241 Mich App 665, 670; 617 NW2d 42, 45 (2000), citing MCL 125.288-125.293, MSA 5.2963(18)-5.2963(23), and *Szluha v Avon Charter Tp*, 128 Mich App 402; 340 NW2d 105 (1983). Indeed, in keeping with the goal of determining the legislative intent of a zoning ordinance, this Court in *Macenas* gave some weight to "a zoning board's construction of its own ordinance," not to the opinions of Township employees. 433 Mich at 397-398.

Ultimately, the Township can speak and act only through its minutes and resolutions. *46th Circuit Court v Crawford Co,* 266 Mich App 150, 161; 702 NW2d 588 (2005), rev'd on other grounds 476 Mich 131; 719 NW2d 553 (2006), amended 476 Mich 1201 (2006).

> It is fundamental that those dealing with public officials must take notice of their powers.
>
> * * *
>
> Persons dealing with a municipal corporation through its officers must at their peril take notice of the authority of the particular officer to bind the corporation, and if his act is beyond the limits of his authority, the municipality is not bound.

Superior Ambulance Serv v City of Lincoln Park, 19 Mich App 655, 660–61; 173 NW2d 236, 238 (1969) (internal citations omitted).

The nature of this proceeding demonstrates that there has been no material injustice. Reaume has been afforded her full due process in not one but two appeals from the Township Board's decision. Reaume was given ample opportunity to submit additional evidence to the Circuit Court, even beyond what is traditionally contained within the Record.

In deferring to the factual findings of the Township Board and reviewing the plain language of the Township's Zoning Ordinance, accompanied by the decisions of this Court and the Michigan Court of Appeals, it is apparent that the Circuit Court did not commit clear error, but appropriately affirmed the decision of the Township Board in denying Reaume's Application for a short-term rental license.

E. Alternatively, the Decision of the Township Board to Deny Reaume a Short-Term Rental License Under Ordinance 255 was Authorized By Law and Supported by Competent, Material and Substantial Evidence on the Record.

While Reaume focusses and has focused her arguments on whether her use was grandfathered as a lawful nonconforming use, this Court "may affirm for reasons other than those

stated by the court below when there is sufficient support in the record."[7] *Groves v Dept of Corr*, 295 Mich App 1, 13; 811 NW2d 563, 571 (2011) (internal citations omitted); *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 82; 592 NW2d 112, 116 (1999).

Given the nature of this case, this Court need not address Reaume's "grandfathering" argument. Though it was not necessary for the circuit court or Court of Appeals to reach this issue, the nature of the regulatory ordinance and rejection of Reaume's "grandfathering" argument was explained by the Township in denying Reaume's initial Application, detailed by the Township Board in denying her appeal, and briefed by the Township in the Circuit Court and Court of Appeals. It remains that the "prior nonconforming use" argument applicable to a zoning ordinance does not apply to a regulatory ordinance such as Ordinance 255 under which Reaume submitted her Application. *See Casco Twp v E Brame Trucking Co*, 34 Mich App 466, 470; 191 NW2d 506, 508 (1971). Thus, on this basis as well, this Court must affirm the judgment of the Court of Appeals.

Casco Township is dispositive on this issue. In *Casco Township*, the court was faced with the following question: "Is the Casco township soil removal ordinance subject to the portion of the township rural zoning act pertaining to nonconforming users?" *Id*. at 468. In other words, the court asked, is it a regulatory ordinance in which there are no rights given to nonconforming users or is it a zoning ordinance in which the laws pertaining to nonconforming users apply? *Id*.

The ordinance in question was passed pursuant to MCL 41.181, which permits a township board to "adopt ordinances regulating the public health, safety and general welfare" of persons and

[7] "[A]n appellee need not file a cross appeal in order to argue an alternative basis for affirming the trial court's decision, even if that argument was considered and rejected by the trial court." *Kosmyna v Botsford Cmty Hosp*, 238 Mich App 694, 696; 607 NW2d 134, 136 (1999), citing *Middlebrooks v Wayne Co.*, 446 Mich 151, 166, n 41; 521 NW2d 774 (1994) and *In re Herbach Estate*, 230 Mich App 276, 284; 583 NW2d 541 (1998).

property within the township. *Id*. at 469, quoting MCL 41.181. While a township's zoning power is made subject to the rights of nonconforming users, providing that a use "existing and lawful at the time of enactment of a Zoning ordinance [or an amendment to a zoning ordinance, then that use] may be continued although the use does not conform to the zoning ordinance or amendment," its regulatory power is not. *Id*. at 470-71. "Such regulatory ordinances must be reasonable and not confiscatory. Such power is not encumbered by a nonconforming use provision." *Id*. at 471.

As the Record demonstrates, Reaume did not present the Township or its Zoning Board of Appeals with a request for an interpretive decision. She did not challenge the Zoning Ordinance. Instead, she simply submitted a Short-Term Rental Application, requesting Short-Term Rental and Limited Short-Term Rental Licenses per the Short-Term Rental Ordinance, Ordinance 255. Application.

The Township Board affirmed the denial of Reaume's Application on the basis that, "[u]nder the Ordinance [255], the Property is located in a district in which short-term rentals are not allowed to operate." (Mar. 10, 2017 Denial, Appx. at 66a). The question on appeal is whether this decision was "authorized by law" and "supported by competent, material and substantial evidence on the whole record." Const. (1963), art 6, § 28. Under both state and local law, the Township Board was simply not permitted to reach any other result.

A township's board is "imbued with no inherent powers, and thus possesses only those powers expressly invested in it by statute or ordinance." *Kethman v Oceola Twp.*, 88 Mich App 94, 102; 276 NW2d 529 (1979); *see also Conlin v Scio Twp*, 262 Mich App 379, 385; 686 NW2d 16, 21 (2004).

Section 6-109 of Ordinance 255, providing for an appeal of a decision by the community development director, states in no uncertain terms: "The township board shall determine whether to affirm, reverse, or modify the decision of the community development director *in accordance with this article*." (Emphasis added). Nothing in the Township's ordinances or in the law grant the Township's Board with the authority to deviate from the requirements set forth in Ordinance 255.

Ordinance 255 explicitly provides: "A Dwelling that is issued a License under this article may be Rented subject to the following limitations . . . In the R-1 district, no Short-Term Rentals are permitted." (Ord. 255 at 6, Appx. at 87a). Absent from Ordinance 255 is any authority to grant a variance or special use exception, regardless of Reaume's alleged circumstances. (See Ord. 255, Section 6-109, Appx. 87a-88a).

It is the Zoning Board of Appeals, not the Township Board, that has the authority to render interpretive decisions related to grandfathering under the Zoning Ordinance, (Zoning Ordinance 1-9, Appx. at 41b); the Ordinance 255, under which Reaume submitted her request, does not provide the Township Board with such authorization.

Therefore, the Township Board fully complied with the provisions of Ordinance 255 in denying Reaume's Application as Reaume did not meet the criteria necessary for a short-term rental license. There is competent, material and substantial evidence to support this conclusion given that there is no dispute in the Record or among the parties that Reaume's property is located in the R-1 district, where "no short term rentals are permitted." (Ord. 255, Section 6 -107(a)(6), Appx. at 87a). If Reaume instead wished to challenge the propriety of the Ordinance itself which establishes those requirements, she has every right to do so; however, she cannot do so in a Claim of Appeal.

Accordingly, for this reason as well, the Township Board's decision denying Reaume's Application under Ordinance 255 was authorized by law and supported by competent, material and substantial evidence and should be upheld.

CONCLUSION

Wherefore, for the foregoing reasons, this Court should deny Appellant Reaume's Application for Leave to Appeal where this matter involves an administrative appeal of a local ordinance determination in which both the decisions of the circuit court and Court of Appeals were based upon Record evidence, consistent with well-established principles of statutory construction, and in line with existing precedent. Alternatively, this Court should enter a peremptory order affirming the decision of Michigan Court of Appeals as that the manner in which Reaume used her property as a short-term vacation rental to transient guests was not a lawful, prior nonconforming use in a zoning district previously limited to residential, single-family uses and, as demonstrated by the Record, the Township Board fully complied with the provisions of Ordinance 255 in denying Reaume's Application as Reaume did not meet the criteria necessary for a short-term rental license under the Township's regulatory ordinance.

Respectfully submitted,

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BY: *s/ Amanda M. Zdarsky*

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