STATE OF MICHIGAN

IN THE SUPREME COURT

SUSAN REAUME,
Plaintiff-Appellant,

v

TOWNSHIP OF SPRING LAKE,
Defendant-Appellee.
_____/

Supreme Court No. 159874

Court of Appeals No. 341654

Ottawa County Circuit Court
No. 17-004964-AA

Gaëtan Gerville-Réache (P68718)
Conor B. Dugan (P66901)
WARNER NORCROSS + JUDD LLP
Attorneys for Plaintiff-Appellant
1500 Warner Building
150 Ottawa Avenue NW
Grand Rapids, MI 49503
616.752.2000
greache@wnj.com
conor.dugan@wnj.com

Amanda M. Zdarsky (P81443)
MCGRAW MORRIS PC
Attorneys for Defendant-Appellee
300 Ottawa Avenue NW, Suite 820
Grand Rapids, MI 49503-2314
616.288.3703
azdarsky@mcgrawmorris.com

APPELLANT SUSAN REAUME'S SUPPLEMENTAL BRIEF (CORRECTED)

FILED UNDER AO 2019-6

ORAL ARGUMENT REQUESTED

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STATEMENT OF APPELLATE JURISDICTION

The Court of Appeals issued its published decision on May 21, 2019. This Court has jurisdiction under MCL 600.215 and MCR 7.303(B)(2) to grant leave to appeal or take other action on the application.

STATEMENT OF QUESTIONS PRESENTED

1. Did the Court of Appeals improperly rely on the relationship that defines the term "family" in the zoning ordinance in order to conclude that the permitted use of a "Dwelling, Single Family" in the R-1 district does not include short-term rentals?

Plaintiff-Appellant answers: Yes.
The Court of Appeals answered: No.

2. Does the record show that Ms. Reaume's use of 18190 Lovell Road as a short-term rental complied with the permitted use of "Dwelling, Single Family" before the township adopted Ordinance 255 and Ordinance 257?

Plaintiff-Appellant answers: Yes.
The Circuit Court answered: No.
The Court of Appeals answered: No.

3. If the answer to Issue 2 is no, should the Court remand for further development of the administrative record and a determination in light of this Court's interpretation of the zoning ordinance?

Plaintiff-Appellant answers: Yes.
The Circuit Court did not answer.
The Court of Appeals did not answer.

INTRODUCTION

When a use previously allowed by zoning ordinance becomes disfavored, the local government has two options for ending the use under Michigan law. It can either (1) allow the property owner to continue the use until they abandon it, or (2) acquire the vested rights by purchase or condemnation. See MCL 125.3208. What the local government cannot do is try to regulate the use away by amending the ordinance or reinterpret the ordinance in defiance of its plain meaning. Spring Lake Township tried both illicit tactics here.

When the neighbors complained about Ms. Reaume renting her ranch-style home at 18190 Lovell Road on a short-term basis in the summer of 2016, the response from the Community Development Director was: "Nothing we can do about it as yet." The Township Supervisor essentially gave the same response, but also revealed a proposed solution: a short-term-rental ordinance that allowed unlimited short-term renting with a license in nearly every residential zone except Ms. Reaume's. The ordinance passed soon thereafter.

When Ms. Reaume applied for the license, her request was denied. The Township contended, among other things, that the state's policy of allowing lawful uses to continue after a zoning amendment did not apply because her short-term rental was never allowed under Spring Lake's Zoning Ordinance.

This appeal is first and foremost about giving effect to the plain meaning of the words in that zoning ordinance. Quite literally, the zoning ordinance allows any "dwelling" to be occupied as a "sleeping place, either permanently or temporarily." The Township's staff charged with administering and enforcing these

words readily understood their plain meaning: that the length of occupancy did not matter, i.e., short-term rentals were allowed.

To conclude, as the Court of Appeals did, that the ranch-style home Ms. Reaume previously used as her principal residence ceased to be a "single-family dwelling" because it was rented short term finds no support in the ordinance's text. All the zoning ordinance requires for a building to qualify as a "dwelling, single-family" is that it be "designed for use and occupancy by one (1) Family only." The ordinance does not say that such dwellings must be occupied long term. It doesn't even suggest that they must be used as a "residence." It instead says occupancy as a "sleeping place" will do.

The record shows that Ms. Reaume's short-term rental fit this definition exactly. It was a ranch-style house built in a zone where only single-family dwellings were allowed, and the Township has never disputed that the building was designed for use and occupancy by one (1) family only. Changing the nature of its occupancy from her permanent residence to a temporary sleeping place for short-term renters did not change that, as the ordinance makes clear that the length of stay does not matter. Accordingly, the Court should hold that Ms. Reaume's short-term rental of 18190 Lovell Road complied with its permitted use of a "Dwelling, Single Family" prior to the Township's enactment of its short-term-rental regulations.

STATEMENT OF FACTS

The Property

Plaintiff-Appellant Susan Reaume bought a single-family house at 18190 Lovell Road (the "Property") within the borders of

the Township in 2003. (4/7/2017 Reaume Aff ¶ 2, App 40a.) The Property is located within a district zoned as R-1 Low Density Residential in the Township. (Short Term Rental Registration Form, App 17a.) Until 2014, the Property was Ms. Reaume's personal residence. (4/7/2017 Reaume Aff ¶¶ 6-7, App 40a.)

In 2015, Ms. Reaume contacted Capstone Property Management to inquire about managing and renting the Property. (*Id*. ¶ 8, App 40a.) In March 2015, Barbara Hass, Capstone's Manager of Vacation Rentals, contacted Spring Lake's township offices to inquire whether there were any restrictions on renting the Property. (4/3/2017 Hass Aff ¶ 3, App 45a.)

Connie Meiste, a Spring Lake Township employee, informed Ms. Hass that Spring Lake did not restrict either short-term or long-term rentals. (*Id*.) After learning this, Ms. Reaume hired Capstone and began to rent out the property. (4/7/2017 Reaume Aff ¶¶ 9-10, App 40a.)

Relying on Spring Lake's assurances, Ms. Reaume invested over $12,000 in renovating and refurbishing the Property to improve it for potential renters. (*Id*. ¶¶ 16-18, App 41a.)

After Ms. Reaume began renting the Property, a number of neighbors of the Property, through counsel, complained to Spring Lake that the Property had been converted into a "two unit building in violation of the R1 zoning code." (1/8/2016 Concerned Homeowners Ltr to the Township, App 65a.) They attached as evidence listing documents and a HomeAway advertisement showing the lower level and upper level were advertised as

separate rental units. (*Id*., App 66a.)[1] They also contended it was "being rented as a vacation rental property for short term use by transients which violates the defined R1 zone limited as a residential area." (*Id*.)

In response, Lukas Hill, the Community Development Director of Spring Lake's Building and Planning Department—the department responsible for permitting and zoning ordinance regulations for the Township—wrote a letter to Ms. Reaume. (2/2/2016 Hill Ltr to Reaume, App 70a.) The only issue Hill raised with Ms. Reaume was the alleged conversion of the "single family dwelling . . . into a multifamily dwelling." (*Id*.) Because the Property was in an R-1 Zone, Hill informed Ms. Reaume that she could not use the Property as a multifamily building. The letter instructed her to contact the office to avoid "further enforcement action." (*Id*.)

To resolve the problem with the listing, Capstone Property corrected it to offer the entire home for rent as a single unit. (4/7/2017 Reaume Aff ¶¶ 12-13, App 40a.) After this correction, Hill informed Ms. Reaume that the new listing language was acceptable and that he would "close the file." (*Id*. ¶ 14, App 41a.) As before, Hill did not indicate any concerns regarding rental of the Property on a short-term basis. (*Id*. ¶ 15, App 41a.)

This did not stop the neighbors' complaints however. On July 22, 2016, John Nash, the Township's Supervisor, wrote to the neighbors and described various "[w]ays to deal with the Lovell rental situation which can be done right now." (7/22/2016 Nash

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[1] The exhibits appear to be scattered in the Supplemental Record provided to counsel and are redundant in substance to the one provided at Appendix page 72. Accordingly, they were not included in the Appendix.

Ltr to Concerned Owners, App 39a.) He informed them that they could call the police if there was "too much noise, trespassing, littering and/or cars and/or trailers blocking the public road—all these things are already covered in the SLT Ordinances." (*Id*.) He also informed the neighbors that Ottawa County Sheriff's Deputies were going to check the area once a weekend. In closing, he wrote, "[o]bviously, the Spring Lake Township Board will proceed with their intention to develop a short term rental draft ordinance which can be presented at a public hearing." (*Id*.)

On August 10, 2016, another neighbor emailed a complaint, asking the Township to stop the short-term rental of 18190 Lovell Road. (Supp'l Record 115, App 91a.) Connie Meiste apparently had a discussion with Mr. Hill about it because she hand-wrote his response on the email: "Lukas says nothing we can do about it as yet." (*Id*.)

Spring Lake's Short-Term Rental Ordinance (No. 255) and Zoning Ordinance Amendment (No. 257)

In response to the neighbor's complaints, the Township Board on December 12, 2016, adopted Ordinance 255. The new ordinance provided for the licensing and regulation of short-term rentals. (See generally Ordinance 255, App 106a.) The purpose of the ordinance was "to provide for and protect the welfare of full-time residents and to discourage purchasing of property for vacation Rental uses." (*Id*.) The Ordinance allowed short-term rental licenses in 5 of the 7 zoning districts, but specifically excluded the R-1 district governing 18190 Lovell Road. (*Id*. § 6-107(a)(6), App 110a-111a.) In that district (and in the R-2 district), the ordinance only allowed "limited short-term rentals," meaning the rental of "any Dwelling for any one or two Rental periods of up to 14 days,

not to exceed 14 days total in a calendar year." (*Id*. § 6-102, App 107a; see also *id*. § 6-107(b), App 110a-111a.)

Not until March 27, 2017, did the Township Board adopt Ordinance 257 to amend the zoning ordinance so that it partially mirrored Ordinance 255. It stated that it was "an ordinance to amend the Spring Lake Township Zoning Ordinance to permit short-term rentals and limited short-term rentals." (Ordinance 257, App 114a.) In short, this ordinance carried over some of the short-term-rental provisions from Ordinance 255 into the provisions of the Zoning Ordinance. But like Ordinance 255, it only allowed limited short-term rentals in the R-1 District. (*Id*.)

Ms. Reaume Applies for Short-Term-Rental Permit

Before Ordinance 257 was enacted, Ms. Reaume submitted a short-term-rental application to the Township's Community Development Department. (Short-Term-Rental Appl, App 16a.) In it, she requested a short-term-rental license for the Property under Ordinance 255. Ms. Reaume contended that the bar against short-term rentals in her zoning district was unenforceable because such restrictions had not been enacted pursuant to the proper procedure under the Michigan Zoning Enabling Act, MCL 125.3101 et seq. (Appendix to Short-Term-Rental Appl, App 20a.) She also argued that because she had previously rented the Property as a short-term rental, this was a "grandfathered nonconforming use." (*Id*., App 19a.)

Just over a week later, Carolyn Boersma, the Clerk of the Township Board, informed Ms. Reaume via letter that her application was denied. (3/10/2017 Boersma Ltr to Reaume, App 24a.) Boersma stated that the Property was within a zoning district in which short-term rentals were prohibited. (*Id*.) Boersma also

rejected Ms. Reaume's arguments that the zoning district restrictions were invalid or that she had a lawful nonconforming use. On the latter issue, Boersma contended that "the short-term rental activity on the Property" did not "qualify as a grandfather [use] under the Spring Lake Township Zoning Ordinance . . . because it was never allowed in the Township in the first place." (*Id*.)

Ms. Reaume Appeals the Township's Decision

On April 7, 2017, Ms. Reaume filed a Petition of Administrative Appeal. (Pet of Admin Appeal, App 27a.) On April 10, 2017, the Township Board, at a public meeting, considered her appeal. At the end of that meeting, the Board directed the Township's attorney to draft a response denying Ms. Reaume's appeal. (4/10/2017 Hr'g Tr 13-4, App 51a.) Then, on May 8, 2017, the Board approved a resolution and report denying the appeal. (5/8/2017 Meeting Mins, App 53a.)

The report concluded that short-term rentals had never been permitted by the Township. (Resolution & Report Adopted by Twp Bd 5/8/2017 at 2-3, App 59a-60a.) It stated that "short-term rentals are not allowed for a single-family dwelling in the Township. Therefore, the use of the Property as a short-term rental is not grandfathered as any use of the Property in that manner was never allowed by the Township in the first place under its Zoning Ordinance." (*Id*. at 2, App 59a.) The report further stated that short-term rentals "are not generally consistent with single-family dwellings." (*Id*.) The Board rejected the idea that the Township's Zoning Ordinance's "general and expansive definition of 'dwelling' " applied "to the 'single-family dwelling' subcategory." (*Id*. at 3, App 60a.) Thus, the definition of "dwelling" could not "be used to validate short-term rentals as single-family dwellings." (*Id*.)

Moreover, the report rejected Ms. Reaume's contention that she had received approval to rent the Property on a short-term basis. The report stated that the Township employees whom Ms. Reaume claimed had given her permission to engage in short-term rentals "had no authority to bind the Township." (*Id*. at 4, App 61a.) Accordingly, the Township denied the appeal.

Appeal to Circuit Court

Ms. Reaume then filed a claim of appeal with the Ottawa County Circuit Court on May 26, 2017. On July 3, 2017, the circuit court heard oral argument. On November 30, 2017, the circuit court issued its opinion and order affirming the Township Board's denial of Ms. Reaume's appeal. (11/30/2017 Order & Op, App 8a.) Without detailed analysis, the circuit court held that Ms. Reaume's use of her property as a short-term rental prior to the adoption of Ordinance 255 was not a valid nonconforming use. The court stated that "[c]onspicuously absent" from the permitted uses listed in the Township's Zoning Ordinance for the R-1 district was "short-term rental." (*Id*. at 6, App 13a.) Further, the court stated that any "representations by Township officials . . . to the contrary" were "unavailing." (*Id*.) The trial court gave no more reason than this for rejecting Ms. Reaume's appeal.

The Court of Appeals

In late 2017, Ms. Reaume filed an application for leave to appeal to the Court of Appeals. The Township opposed that application. Nevertheless, the Court of Appeals granted the application on June 4, 2018 and the case proceeded to full briefing.

On May 21, 2019, the Court of Appeals issued a published opinion affirming the circuit court for reasons different from those given by the circuit court. A large portion of the Court of

Appeals' decision is spent discussing and rejecting an argument never made by Ms. Reaume, namely, that the Township was equitably estopped from enforcing the short-term-rental prohibition. (COA Op 3-4, App 3a-4a.) She never argued that the Township was estopped from enforcing the prohibition. Rather, her entire brief argued that prior to the adoption of Ordinances 255 and 257, the Zoning Ordinance authorized short-term rentals in the R-1 District and that the Township's actions confirmed that it shared this understanding of its Zoning Ordinance before the passage of Ordinances 255 and 257. (See Reaume Br on Appeal 4-11.)

The Court of Appeals also rejected Ms. Reaume's argument that renting the Property on a short-term basis prior to the passage of Ordinances 255 and 257 was a lawful use. In rejecting her argument, the Court of Appeals analyzed the Township Zoning Ordinance's definitions of "dwelling," "motel," and "family." (COA Op 5-6, App 5a-6a.) The Court of Appeals observed that the Township's definition of dwelling is "[a]ny 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." (*Id*. at 5, App 5a.) But it nevertheless rejected Ms. Reaume's position that the short-term rental of her property to a single family qualified as "Dwelling, Single-Family" for the following reasons:

> Read as a whole, the definition of "Dwelling, Single-Family" unambiguously excludes transient or temporary rental occupation. Plaintiff focuses on the word "temporarily" in the overview definition of "Dwelling." Plaintiff fails to note that although some kinds of dwellings permit temporary occupancy, single-family dwellings do not. The definition of single-

> family dwelling emphasizes one family only, and "family" expressly excludes "transitory or seasonal" or otherwise temporary relationships. 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. [*Id*. at 6, App 6a.]

This Court has granted mini-oral argument on Ms. Reaume's application for leave to appeal from the Court of Appeals' decision and asked the parties to address two issues:

> (1) whether the Court of Appeals improperly relied on the character of the relationship that defines the term "family" in the zoning ordinance in order to conclude that the permitted use of a "Dwelling, Single Family" in the R-1 district does not include short-term rentals; and
>
> (2) whether, aside from the definition of "family," the appellant met her burden of proof to establish that her actual use of 18190 Lovell Road as a short-term

rental complied with the permitted use of the property as a "Dwelling, Single Family" before the township adopted Ordinance 255 and Ordinance 257.

ARGUMENT

I. The "dwelling, single-family" use permits short-term rentals, and the Court of Appeals erred in relying on the definition of "family" to hold otherwise.

The first question that the Court asked the parties to address would seem to be a narrow one. But to answer the question of whether the Court of Appeals' interpretation is incorrect, it is best to first examine how the zoning ordinance should be interpreted. The analysis below accordingly begins by demonstrating how the "dwelling, single-family" use permits short-term rentals. It then explains why the definition of "family" has no bearing on whether short-term rental of a single-family dwelling is allowed under the zoning ordinance.

A. The definition of "dwelling" permits temporary occupancy of a building by one family, and whether it is a "dwelling, single-family" depends solely on its design.

The Court reviews de novo the interpretation of ordinances. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003); see also *Great Lakes Soc v Georgetown Charter Twp*, 281 Mich App 396, 407; 761 NW2d 371 (2008) ("[T]he interpretation and application of a municipal ordinance presents a question of law, which this Court reviews de novo.").

Ordinances are interpreted in the same manner as statutes. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998) ("The rules governing the construction of statutes apply with

equal force to the interpretation of municipal ordinances."). The words in the ordinance should be read in "light of their ordinary meaning and their context within the statute" and should be read "harmoniously to give effect to the statute as a whole." *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012) (quoting *People v Peltola*, 489 Mich 174, 181; 803 NW2d 140 (2011)).

"Courts should not resort to judicial construction when the words of the Legislature are clear and unambiguous." *In re Estate of Erwin*, 503 Mich 1, 25; 921 NW2d 308 (2018), as modified on reh'g (Oct 5, 2018). They must, however, "give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Johnson*, 492 Mich at 177 (quoting *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002)).

The Spring Lake Zoning Ordinance ("SLZO") defines "dwelling, single-family" as a subcategory of "dwelling." The definition in full states:

> Dwelling: 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. Subject to compliance with the requirements of Section 322, a Mobile Home shall be considered to be a Dwelling.
>
> (1) Dwelling, Single-Family: A Building designed for use and occupancy by one (1) Family only.
>
> (2) Dwelling, Two-Family: A Building designed for use and occupancy by two (2) Families only and having separate living, cooking and eating facilities for each Family.

> (3) Dwelling, Multi-Family: A Building designed for use and occupancy by three (3) or more Families and having separate living, cooking and eating facilities for each Family. [SLZO § 205, App 94a-95a.]

For context, the term "Family" is defined in full 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. [SLZO § 207, App 95a (emphases added).]

Three aspects of the first provision defining "dwelling" are notable. First, the provision as a whole is entirely focused on the use and design of a building. Second, it starts from the general and moves to the specific, and its structure suggests that the building must first generally qualify as a "dwelling" before it can specifically qualify as a "dwelling, single-family." Third, while the general definition of "dwelling" focuses largely on the nature of the building's use, the specific definition of "dwelling, single-family" does not. It focuses strictly on the building's design.[2]

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[2] "Designed" has many connotations, but the wording of the ordinance mirrors the definition of "design" that means "to create or intend for a specific purpose." *Shorter Oxford English Dictionary* (6th ed, 2007), p 658. In this context, the definition of a single-family dwelling is simply a

Indeed, all of the dwelling subsets—"Dwelling, Single Family", "Dwelling, Two-Family" and "Dwelling, Multi-Family" are defined according to the building's design—not its actual use. (SLZO § 205, App 94a-95a.) Compare this to "Motel," which is defined a building containing multiple dwelling units as "designed for[] *or* occupied by transient residents." (SLZO § 214, App 99a (emphasis added.)) This distinction is meaningful. *United States Fid & Guar Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009) ("When the Legislature uses different words, the words are generally intended to connote different meanings."). It shows that this singular focus on the building's design to distinguish single-family, two-family, and multi-family dwellings, was a deliberate legislative choice.

This of course does not mean any use of a single-family dwelling will do; the building must still fit the definition of "dwelling." Three conditions must be met to satisfy this definition. First, it must be a "building or portion thereof." Second, it must be occupied as a "home, residence, or sleeping place." Third, it must not be a "Motel or tourist room."

The rest of the terms in the definition provide not limitations but clarifications. They clarify that the building may be occupied by any number of families (each of which could consist of a single individual, SLZO § 205, App 94a). They also clarify that the building may be occupied either "temporarily or permanently." The duration of the occupancy does not matter. Importantly, the ordinance expressly contemplates temporary occupancy of a building as a sleeping place by one family, *apart* from motels and

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building created or intended for use or occupancy by one family. This definition is discussed more fully below.

tourist rooms. The plain meaning of all of this is that "dwellings" can be rented short term.

Once the building qualifies as a "dwelling," determining whether it fits into the subset of "dwelling, single-family" is simply a matter of whether the structure was "designed for use and occupancy by one (1) Family only." (SLZO § 205, App 94a-95a.) When this zoning ordinance was enacted, the legislative body could have limited single-family homes to buildings "designed for *and occupied by*" one family only, but it instead decided the occupancy restrictions in the definition of "dwelling" sufficed.

While many reasons come to mind as to why Spring Lake might have chosen this broader definition—including that it actually wanted to allow short-term rental of single-family residences—the rationale does not matter; it is the plain language of the zoning ordinance that counts. The Township's own staff understood this, which is why they read the ordinance just as Ms. Reaume does—as allowing short-term rental of single-family homes. That staff reached the same conclusion as Ms. Reaume reinforces the point that her reading is consistent with the plain meaning of the words in the zoning ordinance. That literal, ordinary meaning controls here.

B. The Court of Appeals' reliance on the definition of "family" to control the length of stay is misplaced.

The Court of Appeals cursorily concluded that the that "the definition of 'Dwelling, Single-Family' unambiguously excludes transient or temporary rental occupation" because "the definition of single-family dwelling emphasizes one family only, and 'family' expressly excludes 'transitory or seasonal' or otherwise temporary relationships." (COA Op 6, App 6a.) This analysis fails to give every word in the definition of "dwelling, single-

family" its proper effect and misconstrues the definition of "family."

First, it overlooks the fact that whether a "dwelling" is a "dwelling, single-family" turns solely on whether the dwelling is "designed for use and occupancy of a single family"—not whether it is occupied by a single family. (SLZO § 205, App 94a-95a.) Second, it conflates the non-transient *relationships* of the individuals with non-transient *occupancy* of the building.

The plain meaning of the "family" definition is that the individuals must have a non-transient relationship to each other, not the property. And it does not follow from their non-transient relationship that their stay must be permanent. Nor does it follow that the building cannot be temporarily occupied as a sleeping place by one family, or designed for single family use.

Moreover, inferring that the term "single family" precludes transient occupancy creates an irreconcilable conflict with other parts of the ordinance. First, it makes a mess of the definition of dwelling. A "dwelling" by definition includes a "sleeping place, [occupied] either *permanently or temporarily*, by *one (1)* or more Families." (SLZO § 205, App 94a-95a.) If the term "single family" precludes temporary occupancy, then a dwelling would not include a sleeping place temporarily occupied by one family, contrary to the plain meaning of the words in the definition.

Even more tellingly, the Court of Appeals' interpretation renders the definition of "motel" a nullity. A "motel" is defined as:

> A Building or group of Buildings on the same Lot, whether Detached or in connected rows, containing sleeping or Dwelling Units which may or may not

> be independently accessible from the outside with garage or Parking Space located on the Lot and designed for, or occupied by transient residents. The term shall include any Building or Building groups designated as a Hotel, motor lodge, transient cabins, cabanas, or by any other title intended to identify them as providing lodging, with or without meals, for compensation on a transient basis. [SLZO § 214, App 99a.][3]

"Dwelling unit" is in turn defined as "[o]ne (1) room or a suite of two (2) or more rooms designed for use or occupancy by one (1) Family only." (SLZO § 205, App 94a.)

If occupancy by a "single family" itself precludes temporary or transient occupancy, then there is no such thing as a "motel." The dwelling unit could not be both designed for use or occupancy by one family only *and* designed or occupied by transient residents, as required for a "motel." The Court of Appeals' interpretation cannot be reconciled with the definition of "motel."

In sum, not only is there no logical reason why a single "family" could not "temporarily" or "transiently" occupy a "dwelling" as a sleeping place, but the definition of "dwelling" expressly allows it, and the definition of "motel" specifically requires it. The Court of Appeals misanalysis not only results a misinterpretation of Spring Lake's ordinance

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[3] The comma after "designed for" appears to be a scrivener's error. The entire sentence should read: "A Building or group of Buildings on the same Lot, whether Detached or in connected rows, containing sleeping or Dwelling Units which may or may not be independently accessible from the outside with garage or Parking Space located on the Lot[,] and designed for[] or occupied by transient residents." Otherwise, the preposition "for" has no object and the sentence becomes incomprehensible.

but also of countless other zoning ordinances using this term and similar definitions of "family." The Court of Appeals' published decision sets a bad precedent that this Court should reverse.

II. The Court should hold that Ms. Reaume's use of 18190 Lovell Road as a short-term rental was lawful before the adoption of Ordinances 255 and 257.

The Court should also reverse the Court of Appeals' conclusion that short-term rental of 18190 Lovell Road was not a lawful nonconforming use under MCL 125.3208. The Court has framed this second question as whether Ms. Reaume "met her burden of proof." The administrative nature of these proceedings and respective posture of the parties below advises a different approach, particularly in terms of what relief might be granted. This issue is fully discussed in the last section. The Court should not have to reach that issue, however, because the record shows that Ms. Reaume's short-term rental of 18190 Lovell Road complied with the permitted use of "Dwelling, Single Family."

To reiterate, four criteria must be satisfied for Ms. Reaume's short-term rental to qualify as a "Dwelling, Single Family." It must be a (1) a building that is (2) occupied as a sleeping place, (3) not a motel or tourist room, and (4) designed for use and occupancy by one family only. (SLZO § 205, App 93a-95a.)

The first two criteria require no discussion because they are not in dispute. When rented on a short-term basis, the house on 18190 Lovell in 2016 unquestionably qualified as a "building" occupied as a "sleeping place." Ms. Reaume did not just lease the land apart from the house, as a campsite for instance, nor did she lease the house merely for daytime events, such as weddings. She

instead leased the entire house as a temporary residence, for a "stay" of at least "3 - 6 nights" at a time. (App 88a.)

The last two criteria lie at the crux of this appeal, and Ms. Reaume's use satisfied those criteria as well.

The building on the property is a "sprawling executive ranch home" with a lower level walk-out. (App 81a-82a.) The record indicates that at one time, Ms. Reaume offered the upper level and lower level as two separate rentals. But it also shows that this advertisement was revised in early 2016, after Mr. Hill contacted her in response to neighbor's complaints that her home was being rented as a multi-family dwelling. (App 78a; Tardani Aff ¶¶ 7-12, App 46a-47a.) In 2016, Ms. Reaume rented the house as a single unit, consistent with its design. She advertised all 7 bedrooms and common areas as available for rent to a single tenant, even a long-term tenant. (App 83a.) And she did rent it as a single unit on a short-term basis 9 times in the Summer of 2016. (See Tardani Aff ¶ 14, App 47a.) Not only is there evidence of this in the record, but these facts have never been contested.

The record therefore shows—and it has never been disputed—that the house on 18190 Lovell was built for occupancy by a single family, and that the entire house was rented for occupancy as a single unit multiple times in 2016. It was neither designed for nor occupied as multiple dwelling units at that time. As explained in further detail below, these undisputed facts show that the building was not a "motel" or "tourist room" and was "designed for use and occupancy" by one family only.

A. Ms. Reaume's short-term rental of her prior home did not make the house a "motel" or "tourist room"; the house still met the definition of a "dwelling."

Because Ms. Reaume's short-term rental must generally qualify as a "dwelling," she will first address the dispute over whether her use qualifies as a "motel" or "tourist room" and therefore disqualifies the building as a "dwelling." The Court did not specifically invite briefing on this issue, but it is an issue that must be addressed because the Court of Appeals held, and the Township will once again argue, that Ms. Reaume's house was a motel. It was not.

The term "motel" is set forth in full above, but in pertinent part consists of a "Building or group of Buildings . . . containing sleeping or Dwelling Units . . . designed for[] or occupied by transient residents." [SLZO § 214, App 99a.][4] Notice that this definition refers to dwelling units only in the plural, while in several other instances, the Zoning Ordinance uses both the singular and plural. (E.g., SLZO § 214, App 99a ("A Building or group of Buildings . . ."; "any Building or Building groups . . ."); *id*. § 207, App 95a ("A single individual or individuals . . ."); *id*. § 205, App 94a-95a ("one (1) or more Families . . .").) There must be more than one dwelling unit in the building (or buildings) for it to qualify as a "motel."

Moreover, "dwelling unit" is defined as "[o]ne (1) room or a suite of two (2) or more rooms designed for use or occupancy by one (1) Family only." (SLZO § 205, App 94a-95a.) Thus, in a motel, a single family would occupy only one room or a suite among others—not the entire building.

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[4] See footnote 3 regarding the comma omitted after "designed for."

Recall that Ms. Reaume previously occupied 18190 Lovell Road herself, as her primary residence. It was undisputedly designed from the beginning to serve as a single-family home. The building did not contain more than one sleeping or dwelling units designed for transient residents, nor was it occupied by transient residents in more than one dwelling unit. Ranch homes are inherently designed for a single family to use the entire building, and she rented it out as a single unit. Her short-term rental of the ranch home did not make it a "motel."

The short-term rental of 18190 Lovell in 2016 also did not make it a "tourist room." This term is not defined in the zoning ordinance and has no definition has been found in the multiple dictionaries consulted. But it cannot be reasonably interpreted as anything other than the leasing of a single room to tourists. Just as Ms. Reaume did not rent out multiple "dwelling units" as a "motel" in 2016, she also did not rent a single room; she leased the entire house—both floors, with all 7 bedrooms and all other living spaces—as a single unit. The property was not used as a "tourist room."

The Court of Appeals did not contend that Ms. Reaume's use qualified as a tourist room, but it did hold that her house was a motel. The only basis for this holding was that motels provide "transient" lodging. This overgeneralized approach conflicts with this Court's rules of statutory interpretation. Every word must be given meaning and effect. Spring Lake's zoning ordinance—like scores of other zoning ordinances—requires the building to be divided into more than one unit for transient occupancy. While it is arguable that the house met this definition when the upper and lower level were rented separately in 2015, it did not meet this definition in 2016 when it was rented on a short-term basis as a single unit.

In sum, even when rented for a short term, 18190 Lovell Road did not qualify as either a motel or tourist room. Consequently, the house still met the definition of "dwelling" under the zoning ordinance as a building occupied as a sleeping place by one or more families.

B. The ranch house at 18190 Lovell Road was undisputedly designed for use and occupancy by one family only.

The other criterion at issue is whether 18190 Lovell Road was "designed for use an occupancy by one (1) Family only" when it was rented short term. "Designed" has many connotations, but the wording of the ordinance first of all mirrors the definition of "design" that means "to create or intend for a specific purpose." *Shorter Oxford English Dictionary* (6th ed, 2007), p 657. In the context of a building, "design" also has a special connotation of "make drawings and plans for the construction or production of (a building, machine, garment, etc.). *Id*. Relatedly, "designed" can mean "[f]ashioned according to a design." *Id*. at 658. These connotations indicate that a building "designed for" one family is one created or fashioned for use and occupancy by one family.

The building at issue—Ms. Reaume's former ranch-style home—undeniably meets this definition. The building on the property is described as a "sprawling executive ranch home" with a walk-out. (App 81a-82a.) It was not built as a duplex or apartment complex for the purpose of housing more than one family. It was created for use and occupancy by one family only.

To be sure, Ms. Reaume's property manager at one time advertised the home as two separate living quarters—one on the main floor, and one in the lower level. The advertisement claimed that each floor had its own kitchen, bathrooms, and bedrooms, and offered them as separate rentals. (Many an upscale

single-family home has bedrooms, a bathroom, and a bar counter or kitchen in the lower level.) But Ms. Reaume was warned not to use her single-family home as a two-family dwelling, and she agreed she would not in early 2016. (02/09/16 Reaume Letter to Hill, App 78a.)) It is not reasonable to infer that Mr. Hill was directing Ms. Reaume to use her the house in a way that was contrary to its true design. Quite the opposite.

The Township may argue that advertising the building as two separate units was enough. But if merely advertising a home as two separate units can make it a building "designed for use and occupancy" by more than one family, then the converse must also be true: merely advertising a home as one unit would make it a building designed for use and occupancy by only one family. And that's exactly what she did in 2016, advertise it as one unit.

Moreover, keying in on the owner's intentions to use the building a certain way, rather than how the building is designed, would run afoul of the Court's rules of statutory interpretation. The "dwelling, single-family" sub-definition does not use the phrase "occupied by" (as for "dwelling"), nor does it use the phrase "designed for or occupied by" (as for "motel"). It instead uses the phrase "designed for use and occupancy by."

> When the Legislature uses different words, the words are generally intended to connote different meanings. Simply put, "the use of different terms within similar statutes generally implies that different meanings were intended." 2A Singer & Singer, Sutherland Statutory Construction, (7th ed.), § 46:6, p. 252. If the Legislature had intended the same meaning in both statutory provisions, it would have used the same word." [*United States Fid & Guar Co v Michigan*

Catastrophic Claims Ass'n, 484 Mich 1, 14; 795 NW2d 101 (2009).]

Whether it words or phrases, the differences are presumed intentional and must be respected. If the "dwelling, single family" is defined by how the building is occupied or how the owner intends it to be occupied (which are essentially the same thing), then there is no distinction at all between these various word choices. A building "designed for use and occupancy" by one family would then be identical to a building "occupied by" one family. That cannot be right. To keep these different phrases from losing all distinction, the design of the building must be determined by the design of structure itself, not how it is occupied or advertised at any given time.

In the end, as long as the building is used as "dwelling," it only needs to be designed for use and occupancy by a single family to qualify as a "dwelling, single family." As explained above, 18190 Lovell Road was used as a dwelling, i.e., a building occupied as a sleeping place that is not a motel or tourist room. It was also designed as a single-family residence—a ranch with a lower level walkout—and was marketed as such in 2016 to long-term renters, in addition to short term renters. The fact that it was actually used as a short term residence in the summer of 2016, rather than long term residence, makes no difference under the definition of "dwelling" or the sub-definition of "dwelling, single family."

III. If the Court's interpretation differs from that of the parties, or it finds the record inadequate, it should remand for taking of further evidence and a new decision by the Township.

Some discussion of what relief should be granted is warranted, particularly in light of how the Court framed the second issue in this appeal. In the unlikely event that the Court finds that the record is inadequate to determine whether Ms. Reaume's short-term rental complied with its permitted use as a "Dwelling, Single Family" under the Court's interpretation, it would not be accurate or equitable to hold that Ms. Reaume failed to carry her burden of proof. Instead, the Court should remand for additional taking of evidence in support of her application. There are at least two reasons why this is the more appropriate approach.

First, on the off chance that the Court's interpretation is different from what the parties contemplated, the Court should not let that surprise beget prejudice to Ms. Reaume. In *Stokes v Chrysler LLC*, 481 Mich 266; 750 NW2d 129 (2008), the Court found that the correct standard was not applied below and remanded to give the plaintiff another opportunity to present proofs under the proper standard. In doing so, the court said:

> Given the inconsistent application of the *Sington* standard in the past, we believe that it would be equitable to allow claimant the opportunity to present his proofs with the guidance provided by this opinion. Accordingly, we reverse those portions of the Court of Appeals judgment and remand this matter to the magistrate for a new hearing consistent with the procedures set forth in this opinion. [*Id*. at 299.]

Similarly, if the record is inadequate under an interpretation the parties had not contemplated, the equitable course is to permit

Ms. Reaume an opportunity to show that her use complied with that new interpretation and allow the Township to decide that issue in the first instance.

The second reason to remand in the case of an inadequate record is that this appeal reviews a decision on an administrative application for a license. Administrative licensing is supposed to be a non-adversarial process, where supplementation, amendment, or re-application is typically permitted if the information submitted with the original request is not sufficient. See *McDonalds Corp v Twp of Canton*, 177 Mich App 153, 159-160; 441 NW2d 37 (1989) (affirming the trial court's judgment permitting the plaintiff to file new applications with the township with additional information). In her application, Ms. Reaume made essentially the same argument that she makes today: that her short-term rental of 18190 Lovell was lawful under the definition of "Dwelling, Single Family" because it was "a temporary residence that was always *designed to be occupied by a single family*." (ROA 7, App 19a (emphasis added).) The Township never contended that Ms. Reaume had not supplied sufficient information to satisfy this definition.[5] Had it done so, she could have either supplemented the application or reapplied with the additional information. Correspondingly, if the Court concludes that the information provided with the application is insufficient, it should not preclude Ms. Reaume from correcting that deficiency.

[5] Indeed, given the home's known design as a ranch with a walk-out, its prior use as Ms. Reaume's single-family home, the Township's familiarity with the house, and Mr. Hill's acceptance of the new listing that advertised it as a single-family house (consistent with its design), it is not surprising that the that the home's design as a single-family dwelling has never been disputed.

This is all the more true given the course of these particular administrative proceedings. First, Ms. Reaume already had prior interactions with the Township about the property noted above. Certain facts about the property, including the design of the house, were presumed to be common knowledge and undisputed, particularly given that the controversy over whether it was being improperly used as a multi-family dwelling had been resolved. Second, providing evidence of prior use as a short-term rental was not a formal requirement for obtaining a short-term-rental license under Ordinance 255.[6]

In closing, there has never been any dispute that Ms. Reaume's short-term rental of her prior single-family home at 18190 Lovell Road complied with the permitted use of "dwelling, single-family" under the interpretation that she advanced from the start and continues to advance here. And the record confirms that it met that definition. But in the unlikely event that the Court concludes otherwise based on its own interpretation, the proper course would be to remand for further development of the record and a new decision by the Township under this Court's interpretation. Cf. *Whitley v Chrysler Corp*, 373 Mich 469, 476; 130 NW2d 26 (1964) ("[i]t would seem to be questionable procedure . . . for this Court to enter upon a determination of the issue . . . where there is reason to believe that proofs as to this material issue are incomplete. . . . [I]t is better that we remand for additional proofs, as the parties may desire.").

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[6] While Ordinance 255 did not allow short-term rentals in her district, it is undisputed that those zone-specific restrictions were not enacted pursuant to the procedures in the Michigan Zoning Enabling Act ("MZEA"), MCL 125.3202. (See App 17a.) The Township enacted Ordinance 257 (mooting the issue) only after her application was denied.

CONCLUSION AND REQUESTED RELIEF

The plain meaning of the words in Spring Lake's zoning ordinance not only led Ms. Reaume to begin renting her property on a short-term basis, it also led the Township staff to conclude that use was allowed and tell complaining neighbors there was nothing that could be done about it. Michigan law does not allow a municipality to reinterpret its zoning ordinance whenever it decides a use allowed by the plain language of its ordinance is no longer desirable. Nor does it permit a municipality to regulate away such use through a new ordinance without paying just compensation for the vested rights.

The Court should reverse the Court of Appeals' interpretation of Spring Lake Township's zoning ordinance and hold that the record shows Ms. Reaume's short-term rental of 18190 Lovell complied with the permitted use of a "Dwelling, Single Family." If the record proves inadequate to make that determination, then the Court should remand for further development of the record and an initial decision from the Township under the correct interpretation of the zoning ordinance.

Respectfully submitted,

Dated: February 6, 2020

WARNER NORCROSS + JUDD LLP

By /s/ Gaëtan Gerville-Réache

Gaëtan Gerville-Réache (P68718)
Conor B. Dugan (P66901)
1500 Warner Building
150 Ottawa Avenue NW
Grand Rapids, Michigan 49503
616.752.2000
greache@wnj.com
conor.dugan@wnj.com
Attorneys for Plaintiff-Appellant

19617240

CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's Corrected Supplemental Brief complies with the type-volume limitation pursuant to Administrative Order 2019-6. The brief contains 7,713 words of Palatino Linotype 13.5-point proportional type. The word processing software used to prepare this brief was Microsoft Word 2016.

Dated: February 6, 2020

WARNER NORCROSS + JUDD LLP

By /s/ Gaëtan Gerville-Réache

Gaëtan Gerville-Réache (P68718)
Conor B. Dugan (P66901)
1500 Warner Building
150 Ottawa Avenue NW
Grand Rapids, Michigan 49503
616.752.2000
greache@wnj.com
conor.dugan@wnj.com
Attorneys for Plaintiff-Appellant