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

Gaëtan Gerville-Réache (P68718) Conor B. Dugan (P66901) WARNER NORCROSS & JUDD LLP Attorneys for Appellant 900 Fifth Third Center 111 Lyon Street, N.W. Grand Rapids, MI 49503 (616) 752-2000 greache@wnj.com conor.dugan@wnj.com	Craig R. Noland (P30717) Amanda M. Zdarsky (P81443) McGRAW MORRIS P.C. Attorneys for Appellee 300 Ottawa Avenue, N.W., Suite 820 Grand Rapids, MI 49503 (616) 288-3700 cnoland@mcgrawmorris.com azdarsky@mcgrawmorris.com

SUPPLEMENTAL BRIEF OF APPELLEE SPRING LAKE TOWNSHIP FILED UNDER AO 2019-6

ORAL ARGUMENT REQUESTED

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STATEMENT OF APPELLATE JURISDICTION

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

STATEMENT OF QUESTIONS PRESENTED

1. Whether the Township Board was authorized by law to deny Appellant a short-term rental license where Ordinance No. 255 prohibits the Board from granting a short-term rental license for property in the Township's R-1 District.

Court of Appeals answered:	Did not address
Appellant answers:	Did not address
Appellee answers:	Yes

2. Whether the Court of Appeals correctly considered, not only the character of the relationship that defines "family" in defining "Dwelling, Single-Family," but the full scope of the Spring Lake Township Zoning Ordinance in determining that Appellant's use of her property was never lawful within the R-1 Residential Resource District.

Court of Appeals answered:	Yes
Appellant answers:	No
Appellee answers:	Yes

3. Whether Appellant failed to demonstrate 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's amendment of its Zoning Ordinance.

Court of Appeals answered:	Yes
Appellant answers:	No
Appellee answers:	Yes

INTRODUCTION

This matter comes to this Court solely by way of administrative appeal of the decision of the Spring Lake Township Board to deny Appellant Susan Reaume a short-term rental license under regulatory Ordinance No. 255. As has been continuously overlooked by Appellant, this is not a zoning appeal. Appellant never sought an interpretive decision from the Zoning Board of Appeals or relief under the Township's Zoning Ordinance and the Township Board has no authority to deviate from the requirements of Ordinance No. 255 to grant a license where it is otherwise prohibited.

Put another way, Appellant is not contending that the Township Board erred in denying her a short-term rental license under Ordinance No. 255. She is contending that Ordinance No. 255 is, itself, unlawful. Yet, this is an administrative appeal; Appellant has not filed an original action challenging Ordinance No. 255 on its face. The question is simply whether the Township Board's decision was authorized by law and supported by competent, material and substantial evidence on the whole record.

However, given the questions raised by this Court, even if this administrative appeal properly focused on the question of grandfathering, this case would depend on whether Appellant's use of her property prior to the Township's amendment of its Zoning Ordinance was expressly permitted under the prior version of *that* Ordinance, according to its language and unique definitions. In that sense, the questions before this Court are both fact- and ordinance-specific.

Therefore, it bears repeating, this is not necessarily a case of widespread application. As Appellant stated and the Township whole-heartedly agrees, "[t]his appeal is first and foremost about giving effect to the plain meaning of the words in [the Spring Lake Township] zoning ordinance." (App Suppl Br at 7). In fact, given that Appellant never sought an interpretive decision from the Zoning Board of Appeals, this case is *exclusively* about giving effect to the plain meaning of the Zoning Ordinance.

Here, the express language of the Zoning Ordinance makes clear that Appellant's particular use of her property as a short-term rental was never lawful within the R-1 District. The decision of the Township Board must be affirmed.

Failing to read the Ordinance as a whole as the law requires, Appellant emphasizes only a small portion of the Zoning Ordinance in claiming that the Ordinance "allows any 'dwelling' to be occupied as a 'sleeping place, either permanently or temporarily.'" (App Suppl Br at 7). This narrow view omits the portion of the definition of "dwelling" that explicitly excludes "[m]otels or tourist rooms." (Zoning Ordinance at 2-9, Appx 94a). As the Court of Appeals properly recognized, the definition of "motel" controls the analysis.

Contrary to perhaps the common meaning of "motel," the Spring Lake Township Zoning Ordinance does not limit motels to traditional one-room rentals. Instead, for purposes interpreting *this* Zoning Ordinance, a "motel" includes *any* building by *any* title whatsoever "providing lodging, with or without meals, for compensation on a transient basis." (Zoning Ordinance at 2-17, Appx 99a). It was also on this basis that the Court of Appeals determined that Appellant's use, providing lodging for compensation on a transient basis, was never permitted in the R-1 District.

While the Court of Appeals also discussed the definition "family" and the way in which it was used to modify and limit the term "dwelling," it did so in line with this Court's decision in *Laketon Township v Advanse, Incorporated*, 485 Mich 933; 773 NW2d 903 (2009). It did not err in so doing. The Record makes clear that the transient nature of Appellant's successive short-term rentals resulted in the property being occupied by more than one family, prohibited under the definition of "dwelling, single-family." Yet, this was certainly not the sole focus of the Court of Appeals and should not be the sole focus of this Court. Ultimately, Appellant's commercial use of her property, advertised to the general public for transient rental no different than any hotel stay, does not fit within this strictly residential zone.

The Record on Appeal demonstrates that Appellant engaged in a commercial, not residential, use of her property, allowing it to be occupied by successive transient guests, not a single family, and falling squarely within the definition of motel, expressly prohibited within the R-1 District. The Record on Appeal is fully developed to that effect; there is no reason for remand. Accordingly, this Court should deny Appellant's Application for Leave or, in the alternative, affirm the decision of the Court of Appeals.

COUNTER-STATEMENT OF FACTS

The Property and Appellant's Short-Term Rental Activity

Appellant Susan Reaume has owned the property commonly known as 18190 Lovell in Spring Lake Township, Michigan ("Property") since 2003. (App for Leave at 5). The Property is in the R-1 Low Density Residential Resource District. (COA Opinion at 1, Appx 1a). It is undisputed that Appellant ceased living at the Property in 2014 and, in 2015, began renting it on a short-term basis. (COA Opinion at 1, Appx 1a; HomeAway.com Listings I, Appx 34b-55b).

Appellant 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. (App Suppl Br at 9). 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 Appellant was not told this by the Zoning Board of Appeals, or anyone responsible for making such determinations. 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 32b; May 8, 2017 Resolution and Report of the Township Board ("Resolution") at 3, Appx 60a). Therefore, Appellant's reference to a statement by Connie Meiste has no bearing on the case at hand.

The law makes clear that 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). The law further presumes that those dealing with municipalities know the extent and nature of the powers of municipal officers and employees, *Grand Haven Tp v Brummel*, 87 Mich App 442, 444; 274 NW2d 814, 816 (1978):

> 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).

Thus, despite Appellant's misguided statement, the statement by Ms. Meiste was not "Spring Lake's assurances." (App Suppl Br at 9). Neither the law nor the Record gives Ms. Meiste, an administrative employee, any authority to make binding statements on the interpretation of the Zoning Ordinance on behalf of Spring Lake Township.

Given that Appellant asserts that she is not making an estoppel argument, (App Suppl Br at 15), her statements as to her investments into the Property, (App Suppl Br at 9), provide no support for her position. However, the Record nonetheless reveals that Appellant made "substantial expenditures" in renovating the property for the express purpose and intention of renting it on a short-term basis. (App Suppl Br at 9-10; Petition at 2, Appx 30a). It likewise came to the Township's attention that, at some point, the Property had been converted into two units. (Feb 2, 2016 Correspondence, Appx 70a). While the property was later offered for rent only as a single unit, the property itself was not redesigned or renovated. (See App Suppl Br at 10).

In May of 2016, Appellant 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 83a-90a).

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 Appellant's rental property while the Township Board considered whether to permit short-term rentals in the area. (July 22, 2016 correspondence, Appx 39a). Supervisor Nash's July 22, 2016 correspondence never offered any opinion as to the legality of short-term rentals.

Spring Lake Township Ordinances Addressing 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 106a-113a). Ordinance No. 255 sets forth performance standards and limitations for short-term rentals and provides for the registration and licensing of all short-term rental activity, which includes "the Rental or subletting of any Dwelling for a term of 27 days or less . . ." Ordinance No. 255 explicitly provides that, in the R-1 and R-2 zoning districts, no short term rentals are permitted. (Ord. 255 Sec 6-107, Appx 111a).

Following the adoption of Ordinance No. 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 (Ord. 257, Appx 114a-116a).

Appellant's Application for a Short-Term Rental License Under Ordinance No. 255

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 16a-23a). 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 19a).

The Township's Decision to Deny Appellant a Short-Term Rental License Under Ordinance No. 255

On March 10, 2017, Carolyn 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 24a). Ms. Boersma explained that Ordinance 255 is not a zoning ordinance subject to Appellant's "grandfather[ing]" argument. (Mar 10, 2017 Denial, Appx 24a). However, Ms. Boersma nonetheless addressed "the additional arguments raised in [Appellant's] March 2, 2017 correspondence," concluding, *inter alia*, that Appellant's prior use was never permitted under the Zoning Ordinance. (Mar 10, 2017 Denial, Appx 24a).

On March 15, 2017, Appellant 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 nonconforming use. (Apr 7, 2017 Petition, Appx 27a-47a).

On April 10, 2017, the Township Board considered Appellant's appeal of the denial of a short-term rental license under Ordinance No. 255. (Apr 10, 2017 Minutes Appx 72b; Transcript of Apr 10, 2017 meeting, Appx 57b-71b). At the conclusion of arguments and 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 meeting Tr, Appx 67b). The Township does not "have the resources for that nor does any municipality." (Apr 10, 2017 meeting Tr, Appx 67b). The Township Attorney also explained "that courts have recognized short-term rentals as being a commercial operation." (Apr 10, 2017 meeting Tr, Appx 67b). The Board unanimously voted to direct the Township's attorney to draft a written response of denial to Appellant's Petition of Administrative Appeal. (Apr 10, 2017 Minutes, Appx 70b-71b).

On May 8, 2017, the Township Board of Trustees voted unanimously to approve the Resolution and appended Report to deny Appellant's appeal under Ordinance 255. (May 8, 2017 Minutes, Appx 53a; Resolution, Appx 56a-64a).

The Resolution affirming the decision of the Township Clerk and denying Appellant's Application brought under Ordinance No. 255 explicitly stated that the Township was denying the Application because Ordinance No. 255 did not allow the Township Board to grant a short-term rental license for a property in the R-1 District. (Resolution, Appx 58a-59a). Though immaterial to the Township's Board's decision under Ordinance No. 255, (Resolution, Appx 59a), the Township Board went on to address the additional arguments raised by Appellant in her Petition for Appeal, including Appellant's grandfathering argument. (Resolution, Appx 59a-64a).

Claim of Appeal and Circuit Court Decision

Appellant filed a Claim of Appeal with the Circuit Court on May 26, 2017. In now arguing for the first time that the Record on Appeal is somehow inadequate, Appellant conveniently omits that she was

permitted to extensively supplement the Record in the Circuit Court. (Order on Motion to Supplement Record, Appx 86b-87b; Index of Supplement to Record on Appeal, Appx 88b-89b).

On June 22, 2017, the Township filed the Record on Appeal pursuant to MCR 7.122(E)(1), containing the application and "all documents and material submitted by any person or entity with respect to the application, the minutes of all proceedings, and any determination of the officer or entity," MCR 7.122(E)(1). (Record on Appeal Index, Appx 14a-15a). Thereafter, Reaume was permitted to broadly supplement the Record with *all* documents maintained by the Township regarding the Property, generally, even if those documents were not submitted with respect to the application or considered by the Township Board in rendering its decision. (Order on Motion to Supplement Record, Appx 86b-87b). Without revisiting the propriety of this decision and whether it in fact includes documents far beyond what should have been included in the Record, it is disingenuous for Appellant to now contend that the Record is inadequate.

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 based upon the Record as a whole.

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 12a). "Ordinance 255 clearly and expressly prohibits the short-term rental of dwellings located in an R-1 zone," which is where Appellant's property is located. (Circuit Court Opinion at 6, Appx 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 13a).

Second, the Circuit Court found that Appellant'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 13a).

Decision of the Court of Appeals

On December 21, 2017, Appellant 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 at 1, Appx 1a).

First, the Court of Appeals rejected Appellant's argument pertaining to statements by Township employees and the Township's historical lack of enforcement against Appellant's short-term rental activity. [1] (COA Opinion at 3, Appx 3a). The Court of Appeals found that Appellant's "argument turns on making untenable extrapolations from statements made by individuals who had no authority to bind the Township," (COA Opinion at 3, Appx 3a), and that "[Appellant] mostly relies on seriously mischaracterizing statements made by individuals," (COA Opinion at 4, Appx 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

[1] Appellant continues to mischaracterize 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 Suppl Br at 15). Contrary to Appellant's position at this stage, throughout the litigation and particularly at oral argument before the Court of Appeals, Appellant placed great emphasis on statements or lack thereof by Township employees and presented an estoppel argument. Despite protesting otherwise, even in her present Application for Leave and, now, her Supplemental Brief, Appellant attempts to highlight funds expended in alleged reliance on "Spring Lake's assurances," (App for Leave at 5; App Suppl Br at 9), which would have no relevance to Appellant's claims 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).

use of her property for short-term rentals to be lawful." (COA Opinion at 5, Appx 5a).

The Court of Appeals went on to reject Appellant's argument that her short-term rental activity was a grandfathered lawful, prior nonconforming use. (COA Opinion at 5, Appx 5a). In reaching its holding, the Court of Appeals considered the plain language of the Zoning Ordinance. It did not focus solely on the definition of "family" set forth in the Zoning Ordinance but *all* applicable terms and definitions as is required in interpreting any ordinance. Appellant agrees that the following sums up the decision of the Court of Appeals:

> 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."

(App Suppl Br at 15-26, quoting COA Opinion at 6, Appx 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 generate a profit, are inconsistent with residential uses of property." (COA Opinion at 7, Appx 7a, citing *Terrien v Zwit*, 467 Mich 56, 61-65; 648 NW2d 602 (2002)).

ARGUMENT

I. This case is solely an administrative appeal of the decision of the Township Board to deny Appellant a short-term license under Ordinance No. 255. It is neither a zoning appeal nor an original action; Appellant's grandfathering arguments do not apply.

Though not directly raised by this Court, the Township would be remiss not to address the fundamental flaw underlying Appellant's argument on appeal and, again, in her Supplemental Brief.

At each stage of the proceedings, and now again before this Court, Appellant has ignored the limited scope of this litigation under Article 6, Section 28 of the Michigan Constitution. Attempting to transform this appeal into a matter of zoning ordinance interpretation, Appellant repeatedly overlooks that she never sought an interpretation of the Zoning Ordinance from the Township's Zoning Board of Appeals, the body charged with jurisdiction over the same. (Zoning Ordinance at 1-9, Appx 1b); *see Sun Communities v Leroy Twp*, 241 Mich App 665, 670; 617 NW2d 42, 45 (2000) (explaining that a township's zoning board of appeals, not a township's individual staff members, is the "municipal body charged with interpreting the ordinance . . .") (internal citations omitted).

Put simply, at the heart of her argument, Appellant is not contending that the Township Board incorrectly interpreted Ordinance No. 255, as would be the proper subject of an administrative appeal. Appellant is instead claiming that Ordinance No. 255, which explicitly and without exception prohibits short-term rentals in the R-1 District, is unlawful. This argument is not the stuff of an administrative appeal, but an original action challenging the legality of the Ordinance either on its face or as applied. It is not properly before this Court in the context of this limited administrative appeal.

When Appellant filed an Application for a Short-Term Rental License, she did so solely under Ordinance No. 255. Ordinance No. 255, a regulatory ordinance, sets forth performance standards and limitations for short-term rental activity, and provides for the registration and licensing of all short-term rentals. (Ord. 255, Appx 106a-113a). Ordinance No. 255 makes clear that "[i]n the R-1 district, no Short-Term Rentals are permitted." (Ord. 255 Sec. 6-107(a)(6), Appx 111a). It 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.

In its March 10, 2017 correspondence, the Township denied Appellant's request for an administrative license under Ordinance No. 255 because "[u]nder the Ordinance, the Property is located in a district in which short-term rentals are not allowed to operate." (March 10, 2017 Denial, Appx 24a). The Township went on to discuss "the additional arguments raised in [Appellant's] March 2, 2017 correspondence;" however, such arguments were not material to the denial. (March 10, 2017 Denial, Appx 24a).

Ordinance No. 255, under which Appellant applied, allows for an appeal to the Township Board to "determine whether to affirm, reverse, or modify the decision of the Community Development Director in accordance with this article." (Ord 255 Sec 6-109, Appx 111a). This is the only administrative appeal pursued by Appellant. (March 15, 2017 Correspondence, Appx 26a; Apr 7, 2017 Appeal, Appx 27a-47a).

The May 8, 2017 decision of the Township Board affirming the denial of Appellant's Application, as set forth in the Township's Resolution, again made clear that it was denying the Application under Ordinance No. 255 because Ordinance No. 255, a *regulatory* ordinance, did not allow the Township Board to grant a short-term rental license for a property in the R-1 District. (Resolution, Appx 58a-59a). While the Township Board again addressed the additional arguments raised by Appellant, including those related to grandfathering within the confines of *Ordinance No. 257*, the zoning amendments, (Resolution at 2, Appx 59a), those additional arguments were not material to the Township Board's decision.

The question here on appeal, governed by Article 6, Section 28 of the Michigan Constitution, is whether the law required (or even authorized) the Township Board to grant Appellant a short-term rental license even where Ordinance No. 255 said that it could not.

It is well-settled that 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 No. 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 Board the authority to deviate from the requirements set forth in Ordinance 255. Notably absent from Ordinance 255 is any authority to grant an exception, regardless of Appellant's alleged circumstances. (See Ord. 255, Sec 6-109 at 111a-112a).

Thus, the Township Board fully complied with the provisions of Ordinance No. 255 in rendering its decision. There is further competent, material and substantial evidence to support this conclusion given that there is no dispute in the Record or among the parties that Appellant's property is located in the R-1 district, where "no short term rentals are permitted. Only rental periods of 28 days or more are permitted." (Ord 255, Sec 6-107(a)(6), Appx 111a). No further factual development on remand would change that result.

If Appellant had wished to challenge Ordinance No. 255 on its face, she had every right to do so; however, she has not and cannot do so here where she has brought only a claim of appeal and not an original action. As the Circuit Court properly recognized early in this litigation:

> This case was begun with a Claim of Appeal, which is simply an appeal from an - - a Final Administrative Decision entered on May 9 of 2017. Whether or not there are complaints about the underlying ordinance on which the permit decision was made is really not raised in the pleadings here, and if there's a challenge to the constitutionality or the statutory basis on which the ordinance was adopted, that's not properly raised in an appeal. And that would have to be raised in a - - an independent action, which we don't have here. This is simply an appeal of the denial of a permit, and that's all we can focus on in this case. It may be related litigation, but that would have to be separately filed and would determine the Court's jurisdiction to hear it and address these issues here.

(July 3, 2017 Tr at 9-10, Appx 82b-83b). Appellant never appealed that decision nor sought leave to amend.

II. In focusing on the full scope of the Zoning Ordinance, including but not solely, the definition of "family," the Court of Appeals properly held that short-term rentals were never permitted in the R-1 Residential Resource District.

Even if this Court continues to view this case through the lens of a zoning appeal, the Court of Appeals correctly held that the specific manner in which Appellant used her property was never permitted within the Township's R-1 Residential Resource District. It did not err in examining the Zoning Ordinance as a whole, including relying, in part, on the definition of the term "family" to further understand the definition of "dwelling, single-family," for three primary reasons.

First and most importantly, the Court of Appeals did not err in relying on the character of the relationship that defines "family" because this was but one portion of its overall analysis and explanation for its decision.

Certainly, a court would err if it were to attempt to interpret a Zoning Ordinance by examining individual portions of the Zoning Ordinance in isolation. However, the Court of Appeals correctly analyzed the Zoning Ordinance in a holistic manner as is required. In viewing the Zoning Ordinance as a harmonious whole, the Court of Appeals also found Appellant's short-term rental use to be synonymous with the definition of "motel," explicitly excluded from all dwellings, single-family or otherwise.

Second, the Court of Appeals did not err in considering the meaning of "family" and "dwelling, single-family" in line with existing precedent. Regardless of how the term is interpreted, the Record demonstrates that Appellant's use of her property did not fit the requirements of a single-family dwelling.

Third, Appellant has entirely ignored the commercial nature of her short-term rental use in this restricted residential district. In keeping with the long-recognized power of local governments to protect single-family residential areas from commercial uses, this important point cannot be overlooked.

Ultimately, as this Court is well-aware, this Court is not constrained by the reasoning or analysis of the Court of Appeals. It instead may affirm the decision of the Township Board on any basis in

answering the limited, relevant question in this administrative appeal: whether the decision of the Township Board to deny Appellant a license under Ordinance No. 255 was "authorized by law … [and] supported by competent, material and substantial evidence on the whole record." Const. (1963), art 6, § 28. Because the decision of the Township Board satisfies this constitutional standard, it must be affirmed.

A. The Court of Appeals did not err in viewing the Zoning Ordinance in a holistic manner, focusing not solely on the definition of "family," but on the interplay of all relevant definitions and provisions.

Like statutory interpretation, ordinance interpretation requires a holistic approach, with each provision read in the context of the overall statutory scheme. *Robinson v City of Lansing*, 486 Mich 1; 782 NW2d 171 (2010). As Appellant agrees, the words must be read in context and "harmoniously to give effect to the statute as a whole." (App Suppl Br at 18, quoting *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012)).

In taking this approach, the Court of Appeals did not focus solely on the definition and non-transitory character of the relationship that defines "family," but paid equal attention to the definitions of "dwelling" and "motel." (COA Opinion at 5-6, Appx 5a-6a). It concluded:

> 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."

(App Suppl Br at 15-26, quoting COA Opinion at 6, Appx 6a).

Like the Court of Appeals, this Court should similarly focus on all relevant aspects of the Zoning Ordinance which, together as a whole, demonstrate that short-term rentals were not permitted in the R-1 District.

B. The Court of Appeals correctly determined that Appellant's use of her property failed to meet the definition of "Dwelling," which explicitly excludes any building "providing lodging, with or without meals, for compensation on a transient basis."

As even Appellant recognizes, the definition of "family," characterized by its "non-transient" nature, (Zoning Ordinance at 2-10, Appx 95a), was not the sole basis for the Court of Appeals' decision. (See App Suppl Br at 15-16). The Court of Appeals examined the full language of the Zoning Ordinance, which does not reserve its discussion of transience simply for relationships between people, but also for the relationship of people to the property. (See Zoning Ordinance at 2-6, "Bed and Breakfast," Appx 7b; Zoning Ordinance at 2-13 "Hotel," Appx 14b; Zoning Ordinance at 2-17 "Motel," Appx 99a; Zoning Ordinance at 4-21 "High Density Residential District, R-4," Appx 33b). The Court of Appeals then properly concluded, "[n]ot withstanding the possibility of some temporary occupancy, any kind of 'dwelling' excludes a 'motel.'" (COA Opinion at 6, Appx 6a). Appellant's use of her property fit this definition and, therefore, was never lawful. (COA Opinion at 6, Appx 6a).

As Appellant acknowledges, to be permitted in the R-1 District, it is not even enough for a building to be designed for use by a single-family, "the building must still fit the definition of 'dwelling.'" (App Suppl Br at 20). "Dwelling" is defined as:

> A 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 94a) (emphasis added).

While Appellant devotes much of her argument to this general definition of "dwelling," which she contends allows for both permanent and temporary occupancy, (App Suppl Br at 7; 17; 20), she does so by improperly isolating only that single phrase within the definition of "dwelling" and ignoring the critical language that follows. When

examining the definition of "dwelling" as a whole and in context with the remaining definitions of the Zoning Ordinance, it is apparent that even the general definition of "dwelling" excludes commercial uses such as Appellant's short-term rental.

The parties agree that, to fit this definition and, thereby, qualify as a dwelling, the property must meet three criteria: (1) it must be a building, (2) occupied as a home, residence or sleeping place, (3) and it must not be a motel or tourist room. (App Suppl Br at 20; Zoning Ordinance at 2-9). It therefore defies logic that Appellant would contend that "[t]he duration of occupancy does not matter." (App Suppl Br at 20). This assertion ignores the definition of "motel."

The Zoning Ordinance defines a "motel" 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 designed 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*.

(Zoning Ordinance at 2-17, Appx 99a) (emphasis added)[2].

Here, it is particularly important to note that, while this definition of motel may differ from that in other zoning ordinances or be broader than the common understanding of the term, it is only this definition that controls. Michigan law makes clear that "when a statute specifically defines a given term, that definition alone controls. Therefore, a statutory definition supersedes a commonly accepted dictionary or judicial definition of a term." *People v Williams*, 288 Mich App 67, 74; 792 NW2d 384, 388 (2010), aff'd 491 Mich 164; 814 NW2d 270 (2012). "Where, as here, a statute supplies its own glossary, courts may not import any other interpretation, but must apply the meaning of the terms as expressly defined." *Id*., quoting *People v Muzzin & Vincenti, Inc*, 74 Mich App 634; 254 NW2d 599 (1977).

Thus, in examining the Zoning Ordinance as a whole, as it is intended to be read, the Zoning Ordinance makes clear that any building, by any name, "providing lodging, with or without meals, for compensation on a transient basis" is not a dwelling, single-family or otherwise. (Zoning Ordinance at 2-9, Appx 94a; Zoning Ordinance at 2-17, Appx 99a)

Appellant continues under the faulty assumption that a "dwelling unit" includes only a portion of, but "not the entire building." (App Suppl Br at 26). This leads to the flawed assertion that, in a "motel," a single family could occupy only one room or certain rooms, but not all. Appellant provides absolutely no support of this assumption and certainly none anchored in the text of the Zoning Ordinance itself.

"Dwelling Unit" expressly means "One (1) room or a suite of two (2) or more rooms designed for use or occupancy by one (1) Family only." (Zoning Ordinance at 2-10, Appx 95a). Its definition does not discuss the building as a whole. Regardless of what may appear in "scores of other zoning ordinances," there is nothing in the Spring Lake Township Zoning Ordinance—the only ordinance at issue here—that "requires the building to be divided into more than one unit for transient occupancy." (App Suppl Br at 27). The Zoning Ordinance only specifies that even a single room is sufficient to make up a dwelling unit; however, a dwelling unit may equally consist of more than one room provided it is designed for use or occupancy by only a single family. (Zoning Ordinance at 2-10, Appx 95a). There is nothing in the Zoning Ordinance that would indicate that a single-family home could not be synonymous with a single dwelling unit, while a duplex, for example, could include two dwelling units.

Again, it is important that Appellant not force a hypothetical common understanding of a motel onto the definition set forth in the Zoning Ordinance; it was not written that way. The Zoning Ordinance specifies that a motel can include buildings which typically contain only a single dwelling unit, rented as a whole, including "transient cabins" and "cabanas." (Zoning Ordinance at 2-17, Appx 99a). The defining factor, whether the "motel" is rented by the room or the entire building, is that it is a building by any title whatsoever that "provid[es] lodging, with or without meals, for compensation on a transient basis." (Zoning Ordinance at 2-17, Appx 99a). Appellant may not artificially limit this definition to suit her goals.

Interestingly, Appellant also contends that her property cannot be categorized as a motel because the definition refers to "Dwelling Units," plural. (App Suppl Br at 26). This first fails because, regardless of the number of Dwelling Units at the Property, for purposes of interpreting the Zoning Ordinance, "words used in the plural number shall include the singular." (Zoning Ordinance at 2-3, Appx 4b). While there may be portions of the Zoning Ordinance that use both the singular and plural as Appellant contends, this express statement of how to interpret the Zoning Ordinance must control.

Separately, Appellant admits that, at the time that she began her short-term rental activity, the property did, in fact, contain more than one dwelling unit, renovated and intended to accommodate more than one group of renters. (App Suppl Br at 9-10). Thus, either way, her argument is without merit.

As the Court of Appeals properly determined, Appellant's short-term rental of her property fits squarely within the definition of "motel" and, therefore, was never lawful under the prior version of the Zoning Ordinance.

C. The Court of Appeals did not err in examining the definition of the term "family" to interpret what is meant by "dwelling, single-family."

The Court of Appeals did not take a novel path in examining the character of the relationship that defines "family" to determine what is meant by "dwelling, single-family." Instead, it did so in line with this Court's reasoning in *Laketon Township v Advanse, Incorporated*, 485 Mich 933; 773 NW2d 903 (2009), which found short-term rentals to be commercial uses not within the scope of residential, single-family use.

In *Laketon Township*, though only a memorandum order, this Court expressly found that a zoning ordinance that restricted "Residential District A" to only "single family dwellings" prohibited a short-term rental use remarkably similar to the case at bar. *Id*. There, the defendant property owner argued "that the building will still only be used by families, just a series of families over the summer instead of one. However, defendant advertised its use for short-term renting for up to ten individuals." *Laketon Township v Advanse, Incorporated*, 2007 WL 6714119 (Mich Cir Ct, Feb 9, 2007), attached as Exhibit A). Given the similar use

discussed in *Laketon Township* and this Court's decision, it is only logical that the Court of Appeals engaged in a similar analysis.

Here too, regardless of whether any particular group of renters met the definition of family, Appellant intended and offered her Property to a series of successive transient groups, up to 22 individual renters, not designed to have any connection whatsoever with one another. It is in this sense that the character of the relationship that defines "family" properly excludes Appellant's particular use of her Property.

In arguing that "dwelling, single-family" depends solely on design, (App Suppl Br at 17, 22), Appellant improperly attempts to limit the meaning of the term "design" with a building's architectural form. (App Suppl Br at 28). However, the Spring Lake Township Zoning Ordinance is not limited to its physical construction requirements. Instead, the Zoning Ordinance and the limitations of the R-1 Residential Resource District discuss single-family dwellings in terms of land *use* and include in its discussion other uses clearly not defined by their structure, such as day care facilities and places of public assembly. (Zoning Ordinance at 4-12, Appx 102a). Dimensional standards and other considerations related solely to physical construction and design are discussed separately. (See Zoning Ordinance at 4-13 – 4-15, Appx 103a-105a). There is simply no basis to apply Appellant's limited definition of "design."

Instead, a common understanding of the term "design" includes much more than an architect's rendering or the physical construction. Where, as in this Zoning Ordinance, design is used as a verb, "design" means "to create, fashion, execute, or construct according to plan;" "to have as a purpose: intend;" "to devise for a specific function or end." "Design," *Meriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/design, accessed Feb 24, 2020. Its primary synonyms when used as a verb are listed as "aim, allow, aspire, calculate, contemplate, go, intend, look, mean, meditate, plan, propose, purport, purpose." Id.

The Record demonstrates that, during the relevant time period, Appellant did not aim or intend to use the Property as a residential single-family dwelling, but to large groups of individual renters—up to 22 individuals. Through the listings contained within the Record and Appellant's acknowledged renovations and improvements to the property to cater to vacationing guests, the Court of Appeals properly concluded

that Appellant did not design or intend that the property would be occupied by only a single family with only a non-transient relationship to one another. (COA Opinion at 6, Appx 6a).

The Record evidence shows that Appellant rented her property to non-family groups of renters, not to a single-family even at any given moment. 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 67; HomeAway.com Listings I, Appx. at 52b). Another review noted that the property was a "[g]reat place to relax with friends." (HomeAway.com Listings at 17, Appx. at 50b). 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 67a; Photograph "7 cars from Illinois 18190 Lovell Road", Appx at 56b).

Moreover, even if the dwelling subsets, including "dwelling, single-family," are defined only by their physical design as Appellant contends (App Suppl Br at 20), Appellant's property was still not a single-family dwelling during the relevant time period.

As Appellant admits in her own statement of facts, at the time that Appellant began offering the property for rent on a short-term basis, she had invested a substantial sum to redesign and improve the property for use and occupancy by more than one group of vacationing guests. (App Suppl Br at 9-10). The Township understood and recognized that Appellant had converted the Property to a multi-family use. (Feb 2, 2016 Correspondence, Appx 70a). Although she changed her online listing of the Property, Appellant did not alter the Property's structure to comply with the Township's Zoning Ordinance and its single-family limitation.

Importantly, the Township does not "argue that advertising the building as two separate units was enough." (App Suppl Br at 29). That is unnecessary. The Record demonstrates, and Appellant concedes, that at some time prior to offering her property for short-term rental, Appellant physically converted the property into a multi-family property. (Feb 2, 2016 Correspondence, Appx 70a). During the relevant time period, each unit of the property contained its own separate kitchen, laundry room, dining room, living area, bedrooms, bathrooms and two-stall garage. (Feb 2, 2016 Correspondence attachments, Appx 71a-77a).

Appellant further misconstrues the record in contending that Mr. Hill simply warned Appellant "not to use her single-family home as a two-family dwelling." (App Suppl Br at 29). Mr. Hill notified Appellant that the Township learned that Appellant's single-family dwelling "ha[d] been modified into a multifamily dwelling." (Feb 2, 2016 Correspondence, Appx 70a). This was not simply a matter of how Reaume listed her property. On an appeal such as this, this Court must defer to the Township's own factual determinations, particularly where, as here, Appellant never appealed the same to the Zoning Board of Appeals.

Finally, the Zoning Ordinance contains no support for Appellant's contention that "keying in on the owner's intention to use the building a certain way … would run afoul of the Court's rules of statutory interpretation." (App Suppl Br at 29). The Township has not simply relied upon a desire or unsupported statement of intent. This would only be in line with Appellant's own claim in which she asserts that her act of simply notifying Mr. Hill that she would rent the property as a single-family home was enough to make it so. (App Suppl Br at 29, citing Appx 78a). Instead, the Township relies upon the Record evidence which demonstrates a clear design for the use of the property as two separate units, offered for rent to successive, unconnected groups of transient renters, similar to a hotel. Regardless of Reaume's own statement, the property is "designed for use and occupancy by" more than one family and, therefore, does not qualify as a lawful single-family dwelling.

Thus, regardless of how the definition is interpreted, the Court of Appeals correctly determined that the Appellant's use of her property did not fit within the definition of "Dwelling, Single-Family" set forth in the Township's Zoning Ordinance.

D. It must not be overlooked that Appellant's commercial use of her property violated the residential limitation of the R-1 Residential Resource District.

In addition to all other limiting characteristics previously discussed, the R-1 Residential Resource District remains, above all, a *residential* district. Though undefined within the Zoning Ordinance, according to its common meaning, "residential" means "of or relating to residence or residences." "Residential," Dictionary.Com, https://www.dictionary.com/browse/residential, accessed 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, accessed Aug 22, 2018. It is "the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn." "Residence," *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/residence, accessed Aug 22, 2018.

The common and ordinary meaning of "residential" cannot coincide with Appellant's short-term rental activity. One can easily see that Appellant was not using the property "as a home," but had put her property to a hotel-like use. And the impact of this plainly-commercial use upon her neighbors is no different.

The power of a local government to establish single-family residential zoning districts has long been considered a valid exercise of police power. Residential zoning districts serve to insulate areas intended for residential living from increased noise and traffic, protect children living there and their ability to utilize quiet, open spaces for play, and to maintain "the residential character of the neighborhood." *Vill of Euclid, Ohio v Ambler Realty Co*, 272 US 365, 394; 47 S Ct 114, 120; 71 L Ed 303 (1926). The United States Supreme Court has recognized that non-single-family uses, including "lodging houses, boarding houses, [and] fraternity houses," similar to the rental maintained by Reaume, are not consistent with residential, single family use: "More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds." *Vill of Belle Terre v Boraas*, 416 US 1, 9; 94 S Ct 1536, 1541; 39 L Ed 2d 797 (1974).

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman v. Parker*, [348 US 26, 35; 75 S Ct 98, 104; 99 L Ed 27 (1954)]. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Id. The photographs and complaints within the Record only further support this understanding.

III. It is undisputed that Appellant rented her property for compensation on a transient basis. To the extent relevant, the Record demonstrates that Appellant has not met her burden of demonstrating that she rented only to a single family at any given time and or even that the property remained designed and constructed as a single-family dwelling. On this basis as well, this Court should affirm.

Appellant contends that, to qualify as a single-family dwelling, the property need only be designed for use and occupancy by one family only. (App Suppl Br at 28). According to Appellant, it does not matter in the slightest how the property is actually used or whether this use falls squarely within the Zoning Ordinance's definition of "motel." If this Court chooses to adopt this interpretation, Appellant's own use still does not meet that definition.

Appellant first asserts that her property was not originally built as a duplex or "for the purpose of housing more than one family." (App Suppl Br at 28). However, the original construction is irrelevant. The relevant consideration was the property as it existed at the time of the amended Zoning Ordinance. *See Austin v Older*, 283 Mich 667, 671; 278 NW 727, 729 (1938).

As discussed in detail above, the Record demonstrates and Appellant concedes that, during the relevant time period, Appellant did not aim or intend to use the Property as a residential single-family dwelling. At some point prior to offering the property for short-term rental (the date of which is irrelevant), Appellant had converted the Property to a multi-family use. (Feb 2, 2016 Correspondence, Appx 70a). Though Appellant may have changed her online listing of the Property, she did not alter the Property's structure to comply with the Township's Zoning Ordinance and its single-family limitation.

Appellant further rented the property, not to any single family at any given time, but to large groups of up to 22 individual renters, groups of friends, and possibly corporate groups. See Section II.C. The Record contains sufficient evidence to this effect. There is no need for remand.

Appellant's contention that this case should be remanded to allow Reaume to submit additional or supplemental information, (App Suppl Br at 32), ignores the nature of this case as an administrative appeal under

Article 6, Section 28 of the Michigan Constitution and, even if viewed as a zoning appeal, the burden on the party asserting grandfathering.

First, Appellant's contention that "[t]he Township never contended that Ms. Reaume had not supplied sufficient information to satisfy [the 'dwelling, single-family'] definition" (App Suppl Br at 32), is misguided. As discussed in Section I, above, the Township was faced with an Application under Ordinance No. 255 which plainly does not permit the Township Board to grant a short-term rental license for a property located within the R-1 District. The Township Board was not entitled to consider additional information.

However, even where the Township Board addressed Appellant's grandfathering argument, the Township Board was provided with ample information in the Record, as cited throughout the briefing and this Supplemental Brief, to determine that Appellant had not met that burden[3]. It is not that the "information provided with the application is insufficient," (App Suppl Br at 32), but that the information provided demonstrated that Appellant could not prevail.

In arguing that this case should be remanded to allow Appellant to present additional evidence, Appellant continues her attempt to backdoor an as-applied challenge to Ordinance No. 255. In the case of an appeal, the Record is to contain the application and "all documents and material submitted by any person or entity with respect to the application, the minutes of all proceedings, and any determination of the officer or entity,"

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[3] Appellant refers to her having provided Mr. Hill with a revised listing, contending that his not taking further enforcement action accounts to "acceptance" or agreement with Appellant's position. (App Suppl Br at 32, n 5). This argument finds no support in the Record or the law. 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." (COA Opinion at 3, Appx 3a, quoting *Lyon Charter Tp v Petty*, 317 Mich App 482, 489-90; 896 NW2d 477, 481-82 (2016)). Similarly, "a municipality cannot be estopped by unauthorized or illegal conduct by individual officers." (COA Opinion at 3, Appx 3a, quoting *Parker v W Bloomfield Tp*, 60 Mich App 583, 594; 231 NW2d 424, 429 (1975)).

MCR 7.122(E)(1). However, a court is not to "supplement the record with something not considered by the board or with something that changes the nature of the inquiry." *Abrahamson v Wendell*, 76 Mich App 278, 282; 256 NW2d 613 (1997), citing *Lorland Civic Ass'n v DiMatteo*, 10 Mich App 129, 137-138; 157 NW2d 1 (1968). As described above, Reaume was given a full and fair opportunity to develop the Record in this matter as it relates to all issue properly before this Court.

The Township Board was provided with more than sufficient evidence—indeed, competent, material and substantial evidence—to conclude that Appellant had not met her burden of demonstrating that her specific use of her property was not lawful under the plain language of the Township's Zoning Ordinance. Accordingly, this Court should affirm the judgment in favor of the Township.

CONCLUSION

For the foregoing reasons, and as previously set forth in the Township's Answer to the Application for Leave to Appeal, this Court should deny Appellant Reaume's Application for Leave to Appeal or, alternatively, enter a peremptory order affirming the decision of Michigan Court of Appeals.

McGRAW MORRIS PC
Attorney for Defendant/Appellee

Dated: February 26, 2020 BY: *s/Amanda M. Zdarsky*

Craig R. Noland (P30717)
Amanda M. Zdarsky (P81443)
300 Ottawa Avenue, NW, Suite 820
Grand Rapids, MI 49503
(616) 288-3703/Fax (616) 214-7712
azdarsky@mcgrawmorris.com
cnoland@mcgrawmorris.com

CERTIFICATE OF COMPLIANCE

I hereby certify that Appellee's Supplemental Brief complies with the type-volume limitation pursuant to Administrative Order 2019-6. The brief contains 9,053 words of Palatino Linotype 12-point proportional type. The word processing software used to prepare this brief was Microsoft Word 2016.

Dated: February 26, 2020

McGraw Morris PC
Attorneys for Appellee

By: */s/ Amanda M. Zdarsky*

300 Ottawa Avenue, NW, Suite 820
Grand Rapids, MI 49503
(616) 288-3703/Fax (616) 214-7712
azdarsky@mcgrawmorris.com