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 REPLY BRIEF

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ORAL ARGUMENT REQUESTED

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INTRODUCTION

Spring Lake's response completely loses sight of the standards that apply to ordinance interpretation and review of an administrative agency decisions on appeal. The interpretive standards do not permit courts to ignore words in a zoning ordinance, as Spring Lake has done. They also do not permit the court to use general preambles and nomenclature to reach results inconsistent with the specific terms of the ordinance. And the standard of review does not permit this Court to decide factual issues in the first instance, unless there is no substantial evidence to support a different determination. Applying the correct standards, the Court should conclude that the zoning ordinance permitted dwellings designed for single families to be rented short-term as a temporary sleeping place, and that no substantial evidence supports any finding but that Ms. Reaume used her property accordingly prior to enactment of Ordinances No. 255 and 257. This Court should therefore reject Spring Lake's arguments, reverse the Court of Appeals, and hold that Ms. Reaume's application for a short-term-rental permit should have been approved.

REBUTTAL ARGUMENT

I. Spring Lake's interpretation of "motel" should be rejected because it improperly ignores most of the words in the definition.

Through a series of compounding interpretive faux-pas, Spring Lake contends that the term "motel" just means "*any* building by *any* title whatsoever 'providing lodging, with or without meals, for compensation on a transient basis.' " (Appellee Br 3, 18.) This interpretation should be rejected because it treats most of the words in the definition as surplusage and fails to read

it as a harmonious whole. See *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998); *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012).

The full definition of "motel" includes the following words:

> Motel: 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. [Zoning Ord § 214, App 99a (emphasis added).]

Spring Lake's analysis improperly washes out the first sentence and part of the second to leave only the last clause, "providing lodging, with or without meals, for compensation on a transient basis."

Starting with the first sentence, Spring Lake argues that the phrase "containing sleeping or Dwelling Units" includes the singular, i.e., buildings with only one dwelling unit, based on an interpretive rule in the ordinance that states:

> Unless the context clearly indicates to the contrary: (1) words used in the present tense shall include the future tense; (2) words used in the singular number shall include the plural number; and (3) words used

> in the plural number shall include the singular number. [Zoning Ord § 200, App 002b.]

Spring Lake relies on clause (3), but omits the opening qualifier that this rule applies "[u]nless the context clearly indicates to the contrary." The context here clearly indicates that the legislative body intended "motels" to mean buildings with more than one dwelling unit.

The definition carefully identifies the elements that matter in identifying a "motel" and those that do not. It makes clear that a motel may consist of one or more buildings, that these can be detached or in connected rows, and that it can provide access to the units from the outside or not, and it may offer lodging with or without meals. In fact, the only two limitations in the entire definition are that the building must contain "dwelling units" and they must be designed for or occupied by "transient residents." If it did not matter whether the building contained more than one dwelling unit, then the legislative body would have said so in this context. That was clearly not the intent.

Moreover, even if the definition could be read as a building "containing one or more dwelling units," this clause still must be read as a limitation on the building's design. The term "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." Use of this term indicates that only a room or suite in the building is designed for use and occupancy by one family, and not the whole building.

To read it as "any building"—as Spring Lake does—treats the phrase "containing Dwelling Units" as surplusage. If the legislative body had intended "motel" to include any building that is

"designed or occupied for transient residents," it would have said so, instead of using the phrase "containing Dwelling Units."

Spring Lake not only artificially expands the "motel" definition to "any building," it also improperly expands the scope to a building with "any title whatsoever."[1] The definition is quite clear that "motel" includes buildings "designated . . . by any other title providing lodging . . . for compensation on a transient basis," *not* by any title "whatsoever."[2] Ms. Reaume has always designated her building a home. She called it her "home" when she lived in it. (App 40a.) She called it a "home" when it was leased for long-term occupancy. (App 72a.) And she called it a "home" when it was leased for shorter periods of occupancy. (App 76a.) The fact that Spring Lake has to significantly distort the definition of "motel" in so many ways to bar short-term rental of a home only demonstrates that the plain language of the ordinance simply does not support such an interpretation.

Spring Lake looks for support in the Court of Appeals' opinion, and contends that it "properly recognized[] the definition of 'motel' controls the analysis." (Appellee Br 3.) That is simply not true. The Court of Appeals said Ms. Reaume's use "*seemingly* fits

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[1] Spring Lake also misquotes the word "designated" as "designed." (Appellee Br 17.) It is not clear how this affected the Township's analysis, but the Court should not be misled to believe the second sentence in the "motel" definition is focused on the building's design. It is only concerned with the building's title.

[2] At the same time, this misreading artificially narrows the scope to lodging "for compensation." The first sentence defining the type of buildings and occupancy does not say compensation is a requirement. The second sentence cannot be interpreted as narrowing the type of building and occupancy in the first sentence because it starts with the phrase "[t]he term shall include." It does not say it shall "only include."

the definition of a 'motel'," revealing doubt as to whether it actually does. (App 6a.) And it offered no analysis as to how her use seemingly fit that definition—as if this were an afterthought. The Court of Appeals' analysis is no help at all.

Spring Lake Township cannot retroactively alter the policy that it previously enacted by ignoring the words it used, as it has done with the definition of motel. The Court should reject Spring Lake's interpretation and hold that Ms. Reaume's building does not fit the definition of a "motel."

II. Labeling districts as "residential" and discussing general purposes in a preamble will not override the ordinance's specific terms or inherently preclude rentals.

In addition to misinterpreting the specific definitions discussed above, Spring Lake argues that Ms. Reaume's use is commercial because it generates a profit and is therefore excluded from districts labeled as "residential." This is simply not how zoning ordinance interpretation works.

First of all, labels and general preambles may inform the interpretation of specific terms in the zoning ordinance, but such general provisions cannot override the specific ones. The zoning ordinance's specific terms for the R-1 District do not limit the land to "residential" uses, but allow many uses other than "residences." Zoning Ord § 407, App 102a. Moreover, the ordinance allows dwellings in particular to be used not just as a residence but also as just a "sleeping place." *Id*. § 205, App 94a.

Second, as Spring Lake Township should know, zoning ordinances generally do not deem property as "commercial" just because the occupants are tenants rather than owners. Spring Lake's zoning ordinance is no exception. Zoning ordinances are

generally concerned with the use and development of the land, not the financial arrangements between parties with an interest in the land. See 2006 PA 110 ("AN ACT to codify the laws regarding local units of government regulating the development and *use* of land." (emphasis added)). Under Michigan's Zoning Enabling Act:

> A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other *uses* of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare. [MCL 125.3201 (emphasis added).]

The general focus of such regulations is on how the land itself is *used*, not the nature of the particular property interests of those using it or whether that use generates a profit. Generic, undefined terms in a zoning ordinance, such as "residential" and "commercial" should be interpreted in light of the general purpose of zoning regulations, which are to ensure appropriate locations for land uses. A land use does not inherently cease to be "residential" just because the resident is a tenant.

Spring Lake's zoning ordinance proves the point. It does not discriminate between single-family, two-family, or multi-family dwellings that are occupant-owned versus rented. The definitions are focused on the use of the land, not whether it is used by an owner or a tenant or generates a profit. See Zoning Ord § 205, App 93a-94a. Moreover, the R-4 "High Density Residential District" preamble specifically contemplates the rental of housing in a residential district, Zoning Ord § 410, App 033b, disproving Spring Lake's interpretation that the label "residential" precludes rental.

III. Spring Lake's arguments regarding the home's design do not comport with the record or the appellate review standard.

Spring Lake's arguments on the question of whether Ms. Reaume's home is designed as a single-family dwelling appears scattershot, but tends to go as follows: First, Spring Lake argues that the Township Board below lacked authority to decide that issue. Then it argues that the issue was decided already by Mr. Hill and that the Court must defer to this determination. Then it argues the Court itself should find that her home was designed as a two-family dwelling. These arguments are all flawed. The first one ignores the Court's authority to review the Township's decision to ensure it is authorized by law—i.e., non-conforming use law. The second one seriously overstates the significance of Mr. Hill's letter to Ms. Reaume after neighbors complained. And the third argument disregards the applicable review standard, as explained below.

In an agency appeal, the Court reviews the decision below to determine whether it is authorized by law and supported by

"competent, material and substantial evidence on the whole record." Const 1963, art 6, § 28; see *Carleton Sportsmans Club v Exeter Township*, 217 Mich App 195; 550 NW2d 867 (1996). Evidence is "competent" if it is authoritative and reliable. *Goff v Bil-Mar Foods, Inc*, 454 Mich 507, 514 n 5; 563 NW2d 214 (1997), overruled on separate grounds by *Mudel v Great Atl & Pac Tea Co*, 462 Mich 691; 614 NW2d 607 (2000). Evidence is "substantial" if it is "solid," *id*., and is the "amount of evidence that a reasonable mind would accept as sufficient to support a [particular] conclusion" after looking at both sides of the record. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994).

Spring Lake opens by arguing that the issue of whether Ms. Reaume has a lawful non-conforming use could not be resolved by the Township Board because Ordinance No. 255 is not a zoning ordinance and not subject to non-conforming use law. To start, the Court of Appeals rejected the argument that non-conforming use law does not apply (App 5a-7a), and this Court already declined to review that decision. Spring Lake raised the issue in response to Ms. Reaume's application, but the Court did not invite the parties to address that issue in their supplemental briefing. If the Court were to entertain that issue now, it should affirm the Court of Appeals' conclusion that the Township Board's decision was subject to non-conforming use law. (App 7a.) After all, the Township Board denied Ms. Reaume's permit precisely because her property was not located in the correct zoning district. (App 24a.) That is a zoning decision, and it is subject to the non-conforming use limitations in MCL 125.3208.

Given that non-conforming use law applies, the question remains of whether the Township Board's decision to deny Ms. Reaume a short-term-rental permit based on her zoning district

was authorized by non-conforming use law. It would be surprising if the Township Board lacked authority to decide that question, but if it did not, then it would be an issue for the Circuit Court to decide as an original matter. See, e.g., *Houdini Props LLC v City of Romulus*, 480 Mich 1022; 743 NW2d 198 (2008). Regardless, the question of law principally at issue in this appeal—whether the term "single-family" precludes short-term rental of a home—should still be decided by the Court, as it is a dispositive issue of law affecting countless municipalities that was decided by the Court of Appeals and is now squarely before this Court.

As Ms. Reaume explained in her supplemental brief, the Court should also decide now that her use lawfully conformed to the zoning ordinance before it was amended, provided that her interpretation prevails, because the record in that event is one-sided. (Appellant Br 28-29.)[3] "A court will not set aside findings [of an agency] merely because alternative findings also could have been supported by substantial evidence on the record." *In re Payne*, 444 Mich 679, 692; 514 NW2d 121, 127-128 (1994). So it also is not the Court's role to choose between alternative findings that are both supported by substantial evidence when no finding has been

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[3] Spring Lake misconstrues Ms. Reaume's brief as arguing that the record is inadequate and, in a rather inflammatory fashion (Appellee Br 7), characterizes it as "disingenuous." Spring Lake also unfairly accuses her of "conveniently" omitting the fact that the record was supplemented from her brief. (*Id.*) First of all, it is not Ms. Reaume's position that the record *is* inadequate; her position is that *if* the record is inadequate, the Court should remand. Second, Ms. Reaume never hid from the fact that the record was supplemented; that fact is mentioned in footnote 1 on page 10 of her supplemental brief, and every supplemental record is identified as such in her appendix.

made—that is still the agency's job. But if the record is adequately developed and only supports one finding, then remanding to the agency for a factual determination is unnecessary.

Spring Lake argues that Mr. Hill notified Appellant that the Township learned that Appellant's single-family dwelling "ha[d] been modified into a multifamily dwelling," citing Hill's letter from February 2, 2016 (Appx 70a), and argues the Court should defer to this factual determination given it was not appealed to the zoning board of appeals. (Appellee Br 22.) It would be incorrect to treat this letter as a factual determination or a final decision subject to appeal.

The letter states that, based on information attached (advertisements), "it appears that the single family dwelling at the subject location has been modified into a multifamily dwelling." (App 70a.) It then requests that Ms. Reaume contact the office to avoid a civil infraction. (*Id*.) The record shows that she did contact the office, with an advertisement showing the advertisement was changed to describe it as a single-family dwelling. (App 78a-82a.) No civil infraction issued, so there was no final determination against Ms. Reaume that could be appealed.

Finally, Spring Lake invites the Court to make factual determinations itself, saying "[t]he 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," based on the fact that amenities were installed on the lower floor. (Appellee Br 21.) The Court should decline that invitation.

To begin, Ms. Reaume has never conceded that she physically converted the property into a multi-family dwelling. Moreover, if

the term "design" refers strictly to the building's physical design instead of its use, as Spring Lake suggests, there is still no evidence her home was ever designed as a two-family dwelling.

It is common knowledge that buildings truly designed for use and occupancy by two families—as a matter of both custom and practical necessity—have separate main entrances, separate furnaces, separate air conditioning systems, separate water heaters, separate water meters, separate mailboxes, separate doorbells, and so on. There is no evidence in the record that Ms. Reaume's property had any of that. Note that the definition of "dwelling, single-family" is focused on the "building." The building itself does not become designed for use and occupancy of two families just because there are extra appliances.

CONCLUSION AND REQUESTED RELIEF

For the reasons given above and in Ms. Reaume's supplemental brief, the Court should reverse the Court of Appeals and hold that the denial of Ms. Reaume's short-term rental application was not authorized by law or supported by substantial evidence on the whole record.

Respectfully submitted,

Dated: March 11, 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

19703455

CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's Supplemental Reply Brief complies with the type-volume limitation pursuant to Administrative Order 2019-6. The brief contains 3,012 words of Palatino Linotype 13.5-point proportional type. The word processing software used to prepare this brief was Microsoft Word 2016.

Dated: March 11, 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