

STATE OF MICHIGAN
COURT OF APPEALS

FIRST DEWITT II, L.L.C.,

Plaintiff-Appellee,

v

CHARTER TOWNSHIP OF DEWITT,

Defendant-Appellant.

UNPUBLISHED
December 18, 2003

No. 243217
Clinton Circuit Court
LC No. 01-009315-CZ

Before: Talbot, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying its motion for summary disposition and granting judgment to plaintiff as a matter of law. MCR 2.116(I)(2). We affirm.

Defendant contends that it had authority to require plaintiff to construct sidewalks along the outer boundary of its proposed subdivision and that the trial court erred by concluding that it lacked that authority. This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The issue raised in this appeal concerns a matter of statutory interpretation, which this Court also reviews de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 458; 597 NW2d 28 (1999).

The trial court ruled that plaintiff was not required to construct sidewalks along Airport and Stoll Roads because those roads were not "within" the subdivision. We must therefore determine in this case whether Airport and Stoll Roads are "within" the subdivision. This requires interpretation of certain sections of the DeWitt Township Subdivision Control Ordinance, specifically § 101-4.32, and of the associated DeWitt Township Sidewalk Ordinance, specifically § IV(1) and § IX(13).

Section 101-4.32 provides as follows, in relevant part: "Sidewalks shall be installed by the proprietor [of a subdivision] within the dedicated non-pavement rights of way on both sides of streets *within subdivisions* developed in all zoning districts." (Emphasis supplied). The pertinent portions of the Sidewalk Ordinance provide as follows:

Section IV. Sidewalk Construction Required

1. All owners of lots and parcels *abutting dedicated streets*^[1] shall be required to construct sidewalks at the time of construction of any new principal buildings, or at the time of alteration of existing principal buildings on such lots or parcels. . . .

* * *

Section IX. Construction Standards

* * *

13. Additional Requirements and Review: At the time of site plan or plan review the DeWitt Charter Township Planning Commission or Board of Trustees may require additional conditions to be met in regards to sidewalk placement, design, or construction. [Emphasis supplied.]

The two streets involved in this dispute, Airport Road and Stoll Road, define two sides of the proposed subdivision's perimeter. None of the lots abutting these two roads have driveways or other outlets onto either road; instead, access to each lot is onto one of the streets laid out within, and forming part of, the subdivision. Defendant nevertheless contends that the plat includes up to the centerline of each street, and, therefore, the plat includes Airport and Stoll Roads "within" the subdivision plat. We disagree.

Defendant initially contends that the ordinances should be liberally construed in its favor. Const 1963, art 7, § 34.² We disagree. This constitutional provision clearly states that "[t]he provisions of *this constitution and law concerning . . . townships . . . shall be liberally construed.*" (Emphasis supplied). It does not indicate that ordinances issued by townships are to be liberally construed, but rather that constitutional provisions and statutory law granting authority to townships are to be liberally construed.

"The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances." *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). Our goal in interpreting either statutes or ordinances is to give effect to the

¹ Regarding § IV(1), we note that § III(2) of the Sidewalk Ordinance defines "Abutting or Adjacent Property" as "[a]ny lot or parcel of land adjoining, bordering, or touching a street as defined herein." Section III(7) further defines "street" as a "dedicated public right-of-way which is a state, county, or municipal roadway *affording the principal means of access to abutting property.*" (Emphasis supplied).

² Const 1963, art 7, § 34 provides: "The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution."

intent of the enactors. *Warren's Station v Bronson*, 241 Mich App 384, 388; 615 NW2d 759 (2000). We do so by examining the plain language used in the enactment. *Id.* We are directed by the Legislature that “[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language.” MCL 8.3a. “If the language is clear and unambiguous, the courts may only apply the language as written.” *Brandon Charter Twp v Tippett*, 241 Mich App 417, 422; 616 NW2d 243 (2000), citing *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486, 498; 597 NW2d 858 (1999). We may rely on dictionary definitions when attempting to determine the precise meaning of a particular word. *Ballman v Borges*, 226 Mich App 166, 168; 572 NW2d 47 (1997), citing *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 470; 521 NW2d 831 (1994).

Random House Webster's College Dictionary (2d ed), provides the following relevant definition of “within”: “in or into the interior of or the parts or space enclosed by: *within city walls.*” Thus, the plain and common sense meaning of “within” is “inside (the interior of) the subdivision.” Airport and Stoll Roads are not *inside* or *within* the subdivision – they form a portion of the *outside* perimeters of the subdivision. By way of contrast, there are several streets that clearly lie *within* (inside) the subdivision, and it is from these streets that the lot owners gain access to their property. Moreover, the portions of the lots that abut Airport and Stoll Roads are the back lot lines. Acceptance of defendant's interpretation would require plaintiff to construct sidewalks at the back of the lots abutting Airport and Stoll Roads so that pedestrians could, for at least the length of the subdivision, walk across the back yards of those lot owners.³ Furthermore, the ordinance requires that sidewalks be installed “on both sides of streets within subdivisions.” § 104-4.32. Therefore, acceptance of defendant's interpretation would require plaintiff to construct sidewalks on the far side of both Airport and Stoll Roads – sections of the roads that defendant admits are not within the subdivision. We therefore conclude that a common sense interpretation of the ordinance supports plaintiff's position that the streets referenced by the ordinance are the streets inside the subdivision and not Airport and Stoll Roads.

Additional support for this interpretation is provided by examining § IV(1). This ordinance provides that sidewalk construction is required for lots and parcels that abut “dedicated streets” and a “street” is defined by § III(7) as “[a] dedicated public right-of-way which is a state, county, or municipal roadway affording the principal means of access to abutting property.” As we have observed, the lot owners do not access their property by Airport and Stoll Roads; rather, their “principal means of access” is from the interior streets within the subdivision toward which their lots and driveways face. Therefore, the plain language of this provision also supports this Court's interpretation.

Finally, defendant cites § IX(13), which provides as follows: “At the time of site plan or plan review the DeWitt Charter Township Planning Commission or Board of Trustees may require additional conditions to be met in regards to sidewalk placement, design, or

³ There is no indication in the record that these sidewalks would connect to any other sidewalks already in place along Airport and Stoll Roads. Thus, enforcement of defendant's interpretation could result in the anomalous result of a “floating” sidewalk that existing only on one side of the portion of Airport and Stoll Roads that abutted the plaintiff's subdivision.

construction.” Defendant contends that this subsection “provides additional authority for the Defendant to condition final plat approval on the subject sidewalks.” However, § IX of the Sidewalk Ordinance covers “Construction Standards,” such as preparation of the sidewalk subgrade; the slope and width of the sidewalk (i.e. four to five feet wide and a slope of less than an inch); the placement of the sidewalk (i.e. one foot in from the right-of-way line); sidewalks ramps; forms (steel and wood); joints; depth of slab; materials; placing and finishing; curing and protection; final grading and cleanup; and the process of obtaining a permit. Thus, it appears that this “catchall” provision pertains to the physical characteristics of the sidewalks, rather than whether a sidewalk must be constructed. Indeed, those provisions are contained elsewhere in the sidewalk ordinance. Accordingly, we reject defendant’s contention that this provision provides defendant the authority to require a particular sidewalk to be constructed. The trial court did not err in denying defendant’s motion for summary disposition or in granting judgment to plaintiff as a matter of law.

Affirmed.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Karen M. Fort Hood