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IN THE COURT OF APPEALS OF INDIANA

JON F. SCHMOLL and SANDRA SCHMOLL, Husband and Wife,	)	
Appellants-Petitioners,	)	
vs.	)	No. 64A04-0702-CV-87
JAMES C. DINES and DAWN DINES, Husband and Wife, TOWN OF PORTER, INDIANA, TOWN OF PORTER BOARD OF ZONING APPEALS, and TRINITY CONSTRUCTION,	)	
Appellees-Respondents.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford, Judge
Cause No. 64D01-0508-PL-7027

December 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Jon F. Schmoll and Sandra Schmoll appeal a trial court judgment denying their petition for a writ of certiorari and affirming a decision of the Town of Porter Board of Zoning Appeals ("BZA") upholding the decision of the Town of Porter ("the Town") to issue a building permit to James C. Dines and Dawn Dines. We affirm.

Issue

The issue on appeal is whether the BZA's interpretation of its zoning ordinance is reasonable.

Facts and Procedural History

On June 24, 2005, after review by its building officials, the Town issued a building permit for the construction of a home on property owned by the Dines. The property is located on the northeast corner of Bote Drive, which runs east/west, and Glenwood Beach Trail, which runs north/south. The permit approved the use of Glenwood Beach Trail as the front lot line. The Schmolls, owners of the Glenwood Beach Trail tract that abuts the Dineses' property on its northern boundary, objected to the building permit. They argued that the approved site plan violated minimum setbacks and that the only lawful way to orient the frontage of the Dineses' house was toward Bote Drive. The BZA held a hearing on July

20, 2005, and upheld the permit, determining that the Dineses' property was a "corner lot" pursuant to the zoning ordinance and therefore was subject to the owner's election as to whether Bote Drive or Glenwood Beach Trail would serve as its front lot line. The Schmolls filed a petition for a writ of certiorari. On August 8, 2006, the trial court heard testimony and affirmed the BZA's decision upholding the permit. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

The Schmolls contend that the BZA erred by upholding the Dineses' building permit. We review a zoning board decision to determine whether it is arbitrary, capricious, or contrary to law. *GPI at Danville Crossing, L.P. v. W. Cent. Conservancy Dist.*, 867 N.E.2d 645, 649 (Ind. Ct. App. 2007), *trans. denied*. The BZA's decision will be deemed arbitrary and capricious only if it is patently unreasonable. *Id*.

The Schmolls essentially challenge the BZA's construction of its zoning ordinance. The construction of a zoning ordinance is a question of law. *Lucas Outdoor Adver., LLC v. City of Crawfordsville*, 840 N.E.2d 449, 452 (Ind. Ct. App. 2006), *trans. denied*.

> Generally, we review questions of law decided by an agency de novo. However, an agency's construction of its own ordinance is entitled to deference. The ordinary rules of statutory construction apply in interpreting the language of a zoning ordinance. Under those rules, the express language of the ordinance controls our interpretation and our goal is to determine, give effect to, and implement the intent of the enacting body.

Hoosier Outdoor Adver. Corp. v. RBL Mgmt., Inc., 844 N.E.2d 157, 163 (Ind. Ct. App. 2006) (citations omitted), *trans. denied*. To prevent a derogation of the common law, we will construe a zoning ordinance to favor the free use of land. *Flying J., Inc. v. City of New*

Haven, Bd. of Zoning App., 855 N.E.2d 1035, 1040 (Ind. Ct. App. 2006), *trans. denied.* We will examine the evidence presented as it relates to the ordinance as a whole and "avoid excessive reliance on a strict literal meaning or the selective reading of words." *Hendricks County Bd. of Comm'rs v. Rieth-Riley Constr. Co.*, 868 N.E.2d 844, 849 (Ind. Ct. App. 2007) (citation omitted). If an ordinance is subject to more than one reasonable interpretation, the interpretation of the agency charged with enforcing it is entitled to great weight. *Hoosier Outdoor Adver. Corp.*, 844 N.E.2d at 163. If the agency's interpretation of its ordinance is reasonable, our inquiry ends. *Id*.

The Schmolls assert that the BZA erroneously concluded that the Dineses' property was a "corner lot." According to Article I, Section 7.99 of the Town's zoning ordinance, "A 'corner lot' is a lot, which is situated at the intersection of two streets; the interior angle of such intersection not exceeding one hundred thirty-five (135) degrees." In determining the orientation of a house on its property, Article I, Section 7.106 provides, 'The 'front lot line' shall be that lot line of a lot, which is parallel to an existing or dedicated street, public way, or a lake or watercourse. The owner of a corner lot may elect either street lot line as the 'front lot line.'" Article I, Section 7.172 defines "street" as "a public right of way, which affords a primary means of access to abutting property."[1] The parties agree that Glenwood Beach Trail is not a dedicated street. The question is whether it is a "public way" or "public right-of-way," neither of which is defined in the ordinance.

[1] On June 26, 2007, the Porter Town Council amended Article I, Section 7.172 to include in the definition of "street" a "private right-of-way." We may not address the amendment, as it occurred after the relevant rulings in this case.

The Schmolls challenge the reasonableness of the BZA's interpretation of "public right-of-way." When examining the reasonableness of a zoning board's interpretation of a term not defined in its ordinance, we may reference its plain and ordinary dictionary definition. *Flying J., Inc.*, 855 N.E.2d at 1040. The BZA determined that Glenwood Beach Trail is an easement. Appellant's App. at 186. Jon Schmoll admitted as much at the BZA hearing when he testified that the Dines had an ingress and egress easement on Glenwood Beach Trail. *Id*. at 235. Black's Law Dictionary defines "easement" as "a right-of-way." BLACK'S LAW DICTIONARY 548 (8th ed. 2004). The American Heritage Dictionary defines "public" as "a group of people sharing a common interest." THE AMERICAN HERITAGE DICTIONARY 1001 (2nd college ed. 1991). The owners whose property abuts Glenwood Beach Trail certainly have a common interest in using it to gain access to their homes. Thus, in a limited sense, the Glenwood Beach Trail homeowners, including the Dines and the Schmolls, fit within an accepted definition of "public." The BZA's use of the term "easement" is therefore consistent with dictionary definitions for "right-of-way" and "public," within the parameters discussed above. The Schmolls offer their own interpretation, but we need not consider it because we find the BZA's interpretation to be reasonable. We therefore conclude that the BZA acted reasonably in upholding the Dineses' building permit.

Affirmed.

DARDEN, J., and MAY, J., concur.