

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

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CROFT, L.L.C., a Michigan limited  
liability company,

Plaintiff/Appellant,

v

Case No. 08-26558-AA  
HON. PHILIP E. RODGERS, JR.

PENINSULA TOWNSHIP,  
a Michigan Township,

Defendant/Appellee.

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Kurt M. Bowden (P35936)  
Attorney for Plaintiff

Michael I. Conlon (P43954)  
Richard W. Ford (P13569)  
Attorneys for Defendant

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DECISION AND ORDER ON APPEAL

This is an appeal from the decision of the Defendant/Appellee Peninsula Township zoning board of appeals ("Township"), pursuant to MCL 125.3606, denying the Plaintiff/Appellant Croft, L.L.C.'s ("Croft") request for a land use permit. That decision became final on April 10, 2008.

Factual and Procedural Background

Croft owns approximately 22 acres of land in the Township that is zoned R-1B Coastal Zone Residential District, pursuant to the Township Zoning Ordinance. Croft's land is bisected by Center Road (M-37). The land east of Center Road is a total of approximately 6,498 square feet, with 369.50 linear feet of shoreline on East Grand Traverse Bay. The remaining 21.97 acres lies directly across Center Road. All uses of right in an R-1A Rural and Hillside

Residential District are permitted as uses of right in the R-1B Coastal Zone Residential District, including Shared Waterfront Ownership pursuant to § 7.4.2. Ord. § 6.3.2.

Croft initially applied for a land use permit for Shared Waterfront Ownership on January 8, 2008 for the land east of Center Road with the permitted number of seven boat hoists for which the Ordinance requires seven parking spaces. In that application, Croft proposed that the parking be located along Center Road, at least five feet from the driving lane, off the traveled portion of the road.

The Zoning Administrator submitted Croft's plan to the Michigan Department of Transportation ("MDOT"). MDOT responded:

The plan as submitted should not be approved by the township. Administrative Rule 65 regulating *driveways* states: 'Adequate storage for vehicles parking or waiting to be serviced shall be provided so as not to interfere with pedestrian movements, vision requirements, or traffic operations on the highway.' [Emphasis added.]

The Township's Zoning Administrator denied the application because "[p]roposed parking along Center Rd. does not meet ordinance requirements and is not approved by MDOT."

On February 18, 2008, Croft again applied for a land use permit for Shared Waterfront Ownership. This time it proposed Shared Waterfront Ownership for the entire 22 acres, with the required parking on the other side of Center Road completely off the road right-of-way. The Township Zoning Administrator denied this second application, saying: "The proposed parking lot is not a permitted use in R-1B district."

Croft appealed the Zoning Administrator's decisions on his applications to the ZBA. The ZBA upheld the Zoning Administrator's decisions. Croft filed this appeal.

#### Standard of Review

The applicable standard of review is set forth in MCL 125.3606(1) which states as follows:

(1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

- (a) Complies with the constitution and laws of the state.

- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

Applicable Zoning Ordinance Provisions

Under the Township Zoning Ordinance, the uses permitted by right in an R-1B district are “[a]ll uses permitted by ‘Right,’ ‘Under Special Conditions’ or by ‘Special Use Permit’ in the R-1A District, subject to all restrictions specified therefore,” and two-family dwellings. Ord. § 6.3.2.

Under § 6.2.2, one of the Customary Uses and Structures allowed of right in an R-1A district is the following:

(c) Boat Hoists and Docks:

1. A maximum of one (1) dock per parcel plus one boat hoist, is permitted per fifty (50) feet of shore line, measured at the ordinary high water line, provided that a pre-existing lot of record is allowed at least one dock and one boat hoist.
2. Boat hoists and docks are allowed on properties of insufficient size for a single-family dwelling, provided the lot is a pre-existing lot of record or has a minimum width of fifty (50) feet and also provided that provision is made for a minimum of two (2) parking places off the adjacent road right-of-way. In the event of properties owned by the same party being separated by a thoroughfare, parking may be provided on the inland parcel and need not be in excess of that required for a single-family dwelling.
3. No dock shall be wider than seven (7) feet and no longer than necessary to provide adequate water depth for the boat using the dock or boat hoist.
4. Shared waterfront ownership is allowed pursuant to Section 7.4.2.

Section 7.4.2 establishes the intent of the shared waterfront ownership use as being “to reduce the conflicts that occur between residential single family use and shared waterfront use, such as a number of families using the beach, making noise, trespassing, temporarily storing boats, boat hoists and other equipment.” It requires a land use permit when more than one family shares the ownership of waterfront property.

The application for land use permit shall indicate the number of families with access rights, the name and address of a principal family member for each family, the name and address of one person who shall receive the tax bill in the event that all families do not have taxable real property in Peninsula Township and a site plan showing compliance with the minimum requirements of this Section 7.4.2.

The length of shoreline determines the number of boat hoists the owners can have. The number of boat hoists determines the number of parking spaces that are required. § 7.4.2(3). It is undisputed that Croft would be allowed to have seven boat hoists and would be required to have seven parking spaces. With respect to parking requirements, § 7.4.2(3) provides, in pertinent part, as follows:

- (c) One parking space for each boat hoist shall be provided off the traveled portion of the road such that all portions of a parked vehicle are at least five (5) feet from the driving lane to provide safe egress from the vehicle.
- (c)[sic] Each parking space shall be a minimum of twenty-three (23) feet in length. The parking space does not have to be paved or graveled.

The off-street parking and loading regulations, which were relied upon by the Zoning Administrator to deny Croft's first application, provide, in pertinent part, as follows:

Section 7.6.1 Requirements: There shall be provided in all Districts, at the time of erection or enlargement of any main building or structure, automobile off-street parking space adequate access to all spaces. The proper number of parking spaces for any given use as specified in this Section are based upon considerations of the maximum number of motor vehicles that can be expected on the premises at the same time during an average day.

- (1) Location of Residential Off-Street Parking spaces may be within a rear yard or side yard. Off-street parking shall not be permitted within a minimum front yard setback unless otherwise provided in this Ordinance.
  - (a) Required residential off-street parking spaces shall consist of parking strip, parking bay, driveway, garage, or combination thereof and shall be located on the premises they are intended to serve.
- (2) Location of Off-Street Parking for Other Than Residential Use: Shall be either on the same lot or within three hundred (30) feet of the building it is intended to serve . . .

Croft filed its second land use application under the Boats and Boat Hoists provisions of § 6.2.2(c), with the required parking located on the inland portion of the 22 acres. Section 6.2.2(c)(2) provides, in pertinent part, as follows:

1. A maximum of one (1) dock per parcel plus one boat hoist, is permitted per fifty (50) feet of shore line, measured at the ordinary high water line, provided that a pre-existing lot of record is allowed at least one dock and one boat hoist.
2. Boat hoists and docks are allowed on properties of insufficient size for a single-family dwelling, provided the lot is a pre-existing lot of record or has a minimum width of fifty (50) feet and also provided that provision is made for a minimum of two (2) parking places off the adjacent road right-of-way. *In the event of properties owned by the same party being separated by a thoroughfare, parking may be provided on the inland parcel and need not be in excess of that required for a single-family dwelling.* [Emphasis added.]

#### I. January 8, 2008 Application

In its appeal brief, the Township argues that Croft did not appeal the Zoning Administrator's denial of his first application for a Shared Waterfront Ownership land use permit and, therefore, that issue is not before this Court. As a practical matter, Croft can resubmit his original application. From reviewing the record, the Court has no doubt that the Zoning Administrator would again deny it and the parties would eventually be back before this Court. Therefore, in the interest of conserving resources and doing justice, the Court will address the issue of whether the Zoning Administrator's decision to deny the permit and the ZBA's acquiescence in that decision complies with the Zoning Ordinance, is supported by competent, material, and substantial evidence on the record, and represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

At the hearing before the ZBA, the Administrator explained that he denied Croft's January 8, 2008 land use permit application which included parking along the Center Road right-of-way because, while it met the requirements of the shared waterfront ownership section of the ordinance, it did not meet all of the requirements of the off-street parking section of the zoning ordinance. In addition, he denied the application because it was not approved by MDOT.

### A. Ordinance Requirements

Where a statute is clear and unambiguous, judicial construction or interpretation is precluded. *Lorenz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992). If judicial construction or interpretation is necessary, the primary goal is to ascertain and give effect to the intent of the Legislature. *Id*; *People v Hawkins*, 181 Mich App 393, 396; 448 NW2d 858 (1989). If two statutes address the same subject, courts must strive to read them harmoniously in order to give both statutes a reasonable effect. *House Speaker v State Administrative Bd*, 441 Mich 547, 568; 495 NW2d 539 (1993). Where two statutes conflict, and one is specific to the subject matter while the other is generally applicable, the specific statute prevails as an exception to the general one. *People v Tucker*, 177 Mich App 174, 179; 441 NW2d 59 (1989). In other words, where, in the same statute, there is a specific provision and also a general provision which would include matters embraced in the specific provision, the specific provision shall control. *Bannan v City of Saginaw*, 120 Mich App 307, 319; 328 NW2d 35 (1982), citing *William's Delight Corp v Harris*, 87 Mich App 202, 208; 273 NW2d 911 (1978); *Evanston YMCA Camp v State Tax Comm*, 369 Mich 1, 8; 118 NW2d 818 (1962). These rules of statutory construction also apply to ordinances. *Albright v Portage*, 188 Mich App 342, 350, n 7; 470 NW2d 657 (1991).

Ordinance § 7.6 contains general off-street parking and loading regulations. It is evident from reading this section that it does not apply to Shared Waterfront Ownership because it applies "at the time of erection or enlargement of any main building or structure." There is no main building or structure on land used for shared waterfront ownership. In addition, § 7.6.1(2) requires that the off-street parking be on the same lot as the main building or structure or within 300 feet of the building it is intended to serve. But, according to 7.4.2(6), "[n]o dwelling units or clubhouses are allowed on shared waterfront parcels."

Furthermore, the section regarding off-street parking contains general off-street parking provisions. Ordinance § 7.4.2(3)(c) contains parking regulations specific to Shared Waterfront Ownership. The latter, more specific regulations, control and Croft's January 8, 2008 land use permit application met those requirements.<sup>1</sup>

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<sup>1</sup> See Chairman Sanger's analysis beginning at page 42, line 1, and continuing through page 45, line 6, of the transcript.

Therefore, Croft's January 8, 2008 land use permit application should have been granted. The application met the requirements of the zoning ordinance and the decision to deny it is not supported by competent, material, and substantial evidence on the record nor does it represent the reasonable exercise of discretion granted by law to the zoning board of appeals.

#### B. MDOT Approval

According to the record, the Zoning Administrator sent Croft's January 8, 2008 site plan to MDOT for review. By letter, dated January 31, 2008, MDOT advised the Zoning Administrator as follows:

We have reviewed the proposed site plan. The plan as submitted should not be approved by the township. Administrative Rule 65 **regulating driveways** states 'Adequate storage for vehicles parking or waiting to be serviced shall be provided so as not to interfere with pedestrian movements, vision requirements, or traffic operations on the highway.' The plan as submitted will interfere with traffic operations on the highway, as it allows for unrestricted access to and from a highway with an existing 55 mph speed limit. [Emphasis added.]

The site plan not being approved by MDOT was one of the reasons cited by the Zoning Administrator for denying Croft's application.

Const. 1963, Article 7, § 29 provides, in pertinent part, as follows:

Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

This section reserves to townships the right of reasonable control of highways and streets within their borders. *Compton Sand & Gravel Co v Dryden Twp*, 125 Mich App 383; 336 NW2d 810 (1983). The Township controls the highways and streets within its borders by ordinance. Section 7.4.2 of the Township zoning ordinance specifically allows for parking to be located as proposed by Croft.

Perhaps recognizing its lack of authority, MDOT did not disapprove of Croft's site plan. It simply recommended that the Township not approve it. The basis for this recommendation was an administrative rule that *regulates driveways* and has nothing to do with parking along a state trunk line right-of-way.

The only pertinent statutory provision regarding parking on a state trunk line highway is MCL § 257.672 which provides, in part, as follows:

Outside of the limits of a city or village, a vehicle shall not be stopped, parked, or left standing, attended or unattended, *upon the paved or main traveled part of the highway*, when it is possible to stop, park, or to leave the vehicle off the paved or main traveled part of the highway. [Emphasis added.]

According to Croft's site plan, the proposed parking was not "upon the paved or main traveled part of the highway." It was located six feet outside of the main traveled part of the highway. Therefore, even if MDOT had authority to review Croft's permit application, there was no basis for MDOT to disapprove of it.

In conclusion, the Zoning Administrator should not have denied Croft's January 8, 2008 application for a land use permit on the basis of MDOT's review.

## II. February 18, 2008 Application

Having failed to obtain a Shared Waterfront Ownership land use permit because of the proposed location of the parking along Center Road, Croft reapplied on February 18, 2008 for a land use permit for Shared Waterfront Ownership for the entire 22 acres, with parking for 7 vehicles on the west side of Center Road. The Zoning Administrator denied this application because the "proposed parking lot is not a permitted use in R-1B district."

According to the record, the Zoning Administrator did not consider the entire 22 acres as one parcel under the Zoning Ordinance because the 22 acres is bisected by Center Road and only the sliver on the east side of Center Road is waterfront and can have shared ownership. He did not consider the 21.97 acres on the west side of Center Road to be waterfront. At the ZBA meeting, the following exchange occurred between the Zoning Administrator and the Chairman of the ZBA:

Mr. Uecker: [Croft] want[s] to somehow say that this parcel is connected with this parcel, and that merely changing the parking from one side to the other is not a big deal, and my opinion is that it's not tied with the waterfront parcel.

The term waterfront is very obvious. It's a waterfront. [The Zoning Ordinance] doesn't talk about shared internal properties. It says shared waterfront properties. This parcel [on the west side of Center Road] is not waterfront. It is zoned R-1B, which is residential, and residential does not permit parking lots for any reason. Any parking that would go on this would have to be in connection with the construction of a residential structure.



Chairman Sanger: Is this like normal residential? I mean, a lot of the township has a situation where you have an unbuildable lot on the water, and you have a home on the other side. And in my experience with the township, we do not count, for zoning you can't put the two together and say they're one. You can't, for example, include the square footage on the water side with the square footage on the other side in terms of density calculation, structure coverage.

Mr. Uecker: That's correct.

Chairman Sanger: So that was your basis for the second denial was you felt that the parking was, in effect, unrelated to the use of the shared waterfront, which is on the other parcel?

Mr. Uecker: That's correct.

\* \* \*

It's my opinion under the ordinance they are two stand-alone parcels, and they do not have any connection between the two other than perhaps ownership, which I said I'm not concerned with. The ordinance does not deal with ownership. It deals with use. And the proposed use by the applicant is for a parking lot on a residential lot, and that's not a permitted use.

In affirming the decision of the Zoning Administrator, the ZBA adopted his rationale that the property on the east side of Center Road is waterfront and the property on the west side of Center Road is not, regardless of ownership, and, therefore, the property on the west side of Center Road could not have shared waterfront ownership.

In support of his interpretation, the Zoning Administrator cited § 3.2 of the zoning ordinance for the definition of a "Lot":

*The parcel of land having frontage along a street or right-of-way on which one principal building and its accessories are located or intended to be located together with any open spaces required by this Ordinance. Two (2) or more parcels, lots of legal record, or platted lots, when contiguous and when held in common ownership, may be treated together as a single lot for purposes of this Ordinance. Unless otherwise provided in this Ordinance; public and private streets and road rights-of-way, and easements for ingress and egress shall divide lots (including parcels and sites) for the purposes of this Ordinance. [Emphasis added.]*

The ZBA agreed with the Zoning Administrator that the highlighted portion of the definition did not apply in this case because the property on the east side of Center Road and the property on the west side of Center Road are not "contiguous." As the Zoning Administrator put it, "... the road divides [them] ... They are, as I said before, stand-alone lots."

The Zoning Administrator also relied on his determination that parking for seven vehicles, even if it is to be used exclusively by the owners of a shared ownership interest in the waterfront, is a "parking lot." Under § 7.6.1(2), which governs off-street parking and loading, residential off-street parking must be on the premises it is intended to serve whereas non-residential off-street parking must be either on the same lot or within three hundred (300) feet of the building it is intended to serve.

Since neither of these possibilities applies to the situation at hand, § 7.6.1(2) does not govern off-street parking for Shared Waterfront Ownership. This conclusion brings us full circle to the specific provisions of § 7.4.2 governing the parking for Shared Waterfront Ownership.

The entire 22 acres of the subject property is zoned R-1B District: *Coastal Zone Residential District*. As stated in § 6.3.1 of the Zoning Ordinance, the intent and purpose of establishing the R1-B Coastal Residential District, was to set standards for the development of residential properties of a semi-rural character *along lake shore drives*. Center Road, particularly in this area where it runs in such close proximity to the shoreline, is clearly a "lake shore drive." The property on both sides of Center Road is "along [a] lake shore drive[]." Under § 7.4.2, "[a]ny waterfront land that is to be used by more than one family" can have Shared Waterfront Ownership. Section 7.4.2 does not talk about a "lot" which, by definition, includes "plot," "tract," or "parcel." Ord. § 3.1(4). In fact "Shared Waterfront Ownership" is defined in § 3.2 as "[p]roperty with frontage on Grand Traverse Bay that is owned by more than one family through deed, land contract, non-exclusive easement or other form of ownership."

Since the entire 22 acres is in a "*Coastal Residential District*," the Court is hard pressed to understand how it is not "waterfront land." The entire 22 acres has "frontage on Grand Traverse Bay." If it is "owned by more than one family," it should be governed by the Shared Waterfront Ownership provisions of the zoning ordinance and we are back to applying the specific parking provisions of § 7.4.2(3)(c). The definition of "Lot" in § 3.2 simply does not apply.

Section 6.2.2(2)(c), on the other hand, would apply if it were not for the specific Shared Waterfront Ownership provisions. That section regulates boats and boat hoists on property that is of insufficient size for a single-family dwelling. It provides for parking "off the adjacent

road right-of-way” or, alternatively, “[i]n the event of properties owned by the same party being separated by a thoroughfare, parking may be provided on the inland parcel and need not be in excess of that required for a single-family dwelling.” [Emphasis added.]

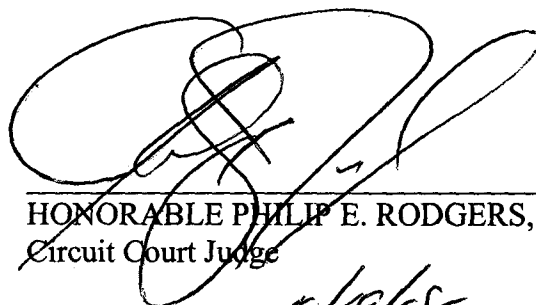
The Zoning Administrator’s rationale for denying Croft’s second permit application was flawed. The provisions of § 6.2.2(2)(c) would apply and allow for parking “on the inland parcel” except those provisions are trumped by the specific provisions of the Ordinance for Shared Waterfront Ownership.

Conclusion

The ZBA’s decision affirming the Zoning Administrator’s denial of Croft’s land use permit applications should be and hereby is reversed. The January 8, 2008 permit application complied with the specific provisions of the zoning ordinance regulating Shared Waterfront Ownership. The February 18, 2008 permit application complied with the Boats and Boat Hoists regulations in the zoning ordinance. Complying with these regulations was Croft’s only option after the Zoning Administrator determined that the provisions regulating Shared Waterfront Ownership did not apply to Croft’s property. The decision to deny Croft’s permit applications was not supported by competent, material, and substantial evidence on the record. In addition, denying them did not represent a reasonable exercise of discretion.<sup>2</sup>

IT IS SO ORDERED.

This Decision and Order resolves the last pending claim and closes the case.

  
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HONORABLE PHILIP E. RODGERS, JR.  
Circuit Court Judge

Dated: \_\_\_\_\_ 10/09/08

<sup>2</sup> The Court appreciates the fact that it would probably be safer for the parking to be located on the inland portion of Croft’s property. Unfortunately, unless the parties mutually agree, that probably will not happen because Croft has a right to locate the parking off the road right-of-way, pursuant to §7.4.2(3)(c) of the zoning ordinance.