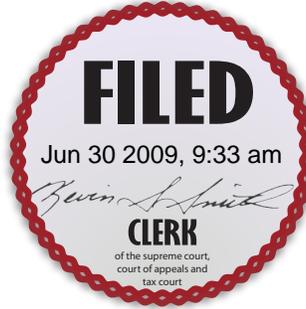


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

**KERRY THOMPSON**  
Houston and Thompson, P.C.  
Scottsburg, Indiana

**ANDREW WRIGHT**  
Andrew Wright, PC  
Salem, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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SCOTT COUNTY AREA PLAN )  
COMMISSION, )  
 )  
Appellant-Plaintiff, )  
 )  
vs. )  
 )  
TOWNES HALF-WAY HOUSE, INC., )  
 )  
Appellee-Defendant. )  
 )

No. 72A01-0812-CV-557

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APPEAL FROM THE SCOTT CIRCUIT COURT  
The Honorable Bruce Markel, III, Special Judge  
Cause No. 72C01-0712-PL-20

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**June 30, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

The Scott County Area Plan Commission appeals the trial court's judgment that Townes Half-Way House, Inc. was properly operating five houses for men and women recovering from alcohol and drug abuse in a zoning district classified as a Single Family Residential District. Specifically, the Scott County Area Plan Commission argues that the five houses qualified as "halfway houses" under the current zoning ordinance, but a halfway house is only permitted in a High-Density Housing Development District. Because zoning ordinances limit the free use of property, are in derogation of the common law, and must be strictly construed, and the evidence shows that the five properties do not meet the narrowly defined term of "halfway house" but do meet the broader term of "single-family detached dwelling," we affirm the trial court.

## **Facts and Procedural History**

Scott County, Indiana, exercises planning and zoning powers through an Area Plan Commission. The City of Scottsburg, Indiana, is located within the Scott County Area Plan Commission. The Scott County Area Plan Commission ("Plan Commission") adopted a zoning ordinance in 1974. This ordinance was repealed when a new zoning ordinance was adopted in 2004.

Townes Half-Way House, Inc. ("Townes") is a not-for-profit corporation whose purpose is to provide a minimally restricted, high quality environment for men and women who have made a decision to live without the use of alcohol or other mood altering drugs. Townes' residential programs are based on the principles and philosophy

of Alcoholics Anonymous, and “residents strive together to find a new way of life which will restore them to health, dignity, self-respect and continued sobriety.” Ex. 6.

Townes acquired five homes<sup>1</sup> in Scottsburg, Indiana, to use for its residential programs. These homes, which are all located in the R-1 Single Family Residential District, are:

- |                       |               |                                    |
|-----------------------|---------------|------------------------------------|
| (1) 232 Second Street | Townes House  | Opened January 1993/Remodeled 1998 |
| (2) 190 North Street  | Hope House    | Opened June 1997/Remodeled 1998    |
| (3) 238 Second Street | Dearing House | Opened June 2000                   |
| (4) 9 Estill Street   | Walk House    | Opened June 2001                   |
| (5) 68 Estill Street  | Grace House   | Opened June 2003                   |

Appellant’s App. p. 160.

On July 14, 1998, Townes obtained a building permit for the improvement of Townes House as a one-family dwelling. Townes next obtained a building permit on August 21, 1998, to remodel Hope House as a one-family dwelling. The building inspector who issued these permits was aware that Townes was using these residences as transitional homes for individuals recovering from alcoholism and considered such use to be a single-family use. In reliance on these permits, Townes expended approximately \$90,938.00 for the improvement of Townes House and approximately \$86,150.00 for the improvement of Hope House. After remodeling Townes House and Hope House in 1998, Townes opened Dearing House in June 2000, Walk House in June 2001, and Grace House in June 2003.

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<sup>1</sup> Townes owns two other homes that are not at issue in this appeal.

A new zoning ordinance, called the Zoning Ordinance of Scott County, Indiana (“2004 Ordinance”), took effect in June 2004. The 2004 Ordinance contains a Savings Provision, Article 1, Section K, which provides:

Any violation under previous ordinances repealed by this Ordinance shall continue to be a violation under this Ordinance and be subject to penalties and enforcement under Article 10, *unless the use, development, construction, or other activity complies with the provisions of this Ordinance.*

*Id.* at 108 (emphasis added). Pursuant to the 2004 Ordinance, “Permitted Uses” in the R-1 Single Family Residential District include *single-family detached dwellings*,<sup>2</sup> parks and playgrounds, public structures, religious facilities, and accessory uses and structures. *Id.* at 111. The 2004 Ordinance also includes a more expansive definition of the term “family” and a definition of the term “halfway house,” which was not included in the 1974 Ordinance. *Id.* at 133. Specifically, “family” is defined in the 2004 Ordinance as:

A group of individuals not necessarily related by blood, marriage, adoption, or guardianship living together in a dwelling unit as a single housekeeping unit under a common management plan based on an intentionally structured relationship providing organization and stability. This definition does not include a group occupying a hotel, motel, club, nurseing [sic] home, dormitory, or fraternity or sorority house.

*Id.* In contrast, “family” was defined in the 1974 Ordinance as:

One or more persons each related to the other by blood, marriage, or adoption, or a group of not more than four persons not all so related, maintaining a common household in a dwelling unit. A family may include not more than two roomers, boarders, or permanent guests—whether or not gratuitous.

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<sup>2</sup> “Dwelling” is defined in the 2004 Ordinance as “[a] structure or portion thereof that is used exclusively for human habitation.” Appellant’s App. p. 132. “Dwelling, single-family” is defined in the 2004 Ordinance as “[a] building that contains one dwelling unit and is not attached to any other dwelling unit.” *Id.* “Dwelling unit” is defined in the 2004 Ordinance as “[a]ny structure or portion thereof designed for or used for residential purposes as a self-sufficient or individual unit by one (1) family or other social association of persons and having permanently installed sleeping, cooking, and sanitary facilities.” *Id.*

*Id.* at 94. “Halfway house,” which is a permitted use in the R-3 High-Density Housing Development District, *id.* at 119, is defined in the 2004 Ordinance as:

A residence for those who have *completed treatment at a rehabilitation facility* but are not yet ready to return to their community.

*Id.* at 133 (emphasis added).

On August 22, 2007, the Plan Commission sent a letter to Townes stating that after it had received citizen complaints, reviewed public records, and completed an initial investigation with the aid of its attorney, it concluded that Townes’ five properties were “not in conformance with the current Scott County Zoning Ordinance.” *Id.* at 147. The letter advised Townes to contact the Plan Commission to begin discussions or actions to bring the properties into conformance by September 21, 2007; otherwise, failure to take action would necessitate action under Article 10 of the zoning ordinance. *Id.*

On December 5, 2007, the Plan Commission filed a Complaint against Townes. Specifically, it alleged that Townes was operating the five properties as “halfway houses” in R-1 zoning classifications, which are single-family residential zoning classifications, and that Townes had not received a variance or permit for special use or non-conforming use. As such, the Plan Commission alleged that Townes did not comply with the zoning ordinance as it existed in 1974 or in 2004. The Plan Commission then requested the trial court to enjoin Townes from operating the houses “in any manner that is not consistent with the zoning in effect for the location of the premises of” Townes, to enjoin Townes “from doing or causing any construction, repair, modification, or reconstruction of the premises described herein that violate the zoning classification for the location of the

properties of Townes, and for all other proper relief. *Id.* at 17. A trial was held on August 27 and 28, 2008. At the time of trial, there were approximately fifty men and women residing in the five Townes properties. *Id.* at 54-55.

On October 31, 2008, the trial court issued Findings of Fact, Conclusions of Law, and Judgment. The relevant findings provide:

3. Townes is a not for profit corporation which operates a substance abuse program which relies on self help, encouragement from other residents, and attendance at Alcoholics Anonymous . . . or Narcotics Anonymous . . . meetings.

\* \* \* \* \*

23. Townes does not claim that it is exempt from the zoning laws applicable to the City of Scottsburg.

24. Townes has not received any variance from the zoning requirements or permits for special use or for nonconforming use of its premises in the City of Scottsburg.

25. [The five properties] are used exclusively for human habitation and have permanently installed sleeping, cooking, and sanitary facilities.

26. At all times relevant hereto, each individual occupying [the five properties] pays weekly rent for room and board . . . .

27. The common denominator for residents is that they are chemically depend[e]nt or alcoholics participating in AA based substance abuse programs run by Townes.

28. Residents are monitored for compliance with prescribed residential and program rules, which residents promise to follow as a condition of occupancy, in addition to being required to participate in the AA program.

29. [The five properties] were acquired by [Townes] during the existence of the 1974 ordinance and have at all times relevant hereto been used as a single dwelling unit for multiple individuals, not related to one another, as a single housekeeping unit under a common management plan

based on an intentionally structured relationship providing organization and stability.

30. Residents are mostly voluntary admissions, but some residents come into the facilities as Court ordered placements or referrals from hospitals or other treatment programs.

31. Ten percent (10%) of residents on average have had prior inpatient treatment at other facilities, but that it is not a requirement for entry into Townes owned dwelling houses or programs.

*Id.* at 5, 8-10. As such, the court concluded:

1. [The five properties] were being operated in violation of the 1974 Zoning Ordinance.

2. Ten percent occupancy of [the five properties] by persons who have come from in patient treatment does not make these dwelling units halfway houses as defined in the 2004 Zoning Ordinance, regardless of the fact that Townes may refer to them as such.

\* \* \* \* \*

4. [The five properties] are each a “Dwelling Unit”, a “Dwelling, Single-family” and [are] occupied by a “Family” as these terms are defined under the 2004 Zoning Ordinance.

5. [The five properties] are being used by [Townes] in conformance with the 2004 Zoning Ordinance of [Scott County].

6. Article 1, Section K of the 2004 Zoning Ordinance legitimizes the use of [the five properties], without addressing the issue of whether the 1974 Zoning Ordinance is enforceable after its repeal.

\* \* \* \* \*

9. Zoning laws which limit the use of real property are strictly construed because they are in derogation of common law; therefore, such ordinances are construed to favor the free use of land and restrictions are not extended by implication.

*Id.* at 10-11. The trial court awarded judgment to Townes regarding the five properties.

*Id.* at 12. The Plan Commission now appeals.

## Discussion and Decision

The Plan Commission contends that the trial court erred by concluding that Townes was operating the five properties in compliance with the 2004 Ordinance. Specifically, the Plan Commission argues that under the 2004 Ordinance, the five Townes properties do not qualify as “single-family detached dwellings” and instead qualify as “halfway houses,” which are not permitted in the R-1 District.

Here, the trial court entered findings of fact and conclusions thereon pursuant to the parties’ request, we apply a two-tiered standard of review. *Mueller v. Karns*, 873 N.E.2d 652, 657 (Ind. Ct. App. 2007), *reh’g denied*. We determine first whether the evidence supports the findings and then determine whether the findings support the judgment. *Id.* We will not reverse the trial court’s findings or the judgment unless clearly erroneous. Ind. Trial Rule 52(A); *Mueller*, 873 N.E.2d at 657. A finding is clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support it. *Mueller*, 873 N.E.2d at 657. The judgment is clearly erroneous when it is unsupported by the findings and the conclusions. *Id.* In conducting this review, we neither reweigh evidence nor judge witness credibility and consider the evidence in a light that is most favorable to the judgment. *Id.* To conclusions of law, however, we owe no deference and therefore apply a *de novo* standard of review. *Id.*

Interpretation of a zoning ordinance is a question of law. *Story Bed & Breakfast, LLP v. Brown County Area Plan Comm’n*, 819 N.E.2d 55, 65 (Ind. 2004). Ordinary rules of statutory construction apply in interpreting the language of a zoning ordinance. *Id.* That is, an ordinance is to be interpreted as a whole, and we will give words their plain,

ordinary, and usual meaning. *Cracker Barrel Old Country Store, Inc. v. Town of Plainfield*, 848 N.E.2d 285, 290 (Ind. Ct. App. 2006). Because zoning ordinances limit the free use of property, they are in derogation of the common law and must be strictly construed. *Story*, 819 N.E.2d at 66. “To be sure, our courts interpret an ordinance to favor the free use of land and will not extend restrictions by implication.” *Cracker Barrel*, 848 N.E.2d at 290. Hence, when a zoning ordinance is ambiguous, it should be construed in favor of the property owner. *Id.* (citing *Story*, 819 N.E.2d at 66). By the same token, zoning ordinances are generally construed to be held valid where possible. *Id.* Every word in an ordinance must be given effect and meaning, and no part is to be held meaningless if it can be reconciled with the rest of the statute. *Id.*

The 2004 Ordinance provides:

The following uses are permitted in an R-1 District:

- a. Single-family detached dwellings
- b. Parks and playgrounds
- c. Public structures and uses in accord with the intent of this district
- d. Religious facilities
- e. Accessory uses and structures

Appellant’s App. p. 111. The R-1 District

is intended to accommodate medium-density single-family development in areas served by an approved municipal sanitary sewer system. . . . In order to ensure compatibility of uses, any use other than a single-family residence shall be permitted only in accordance with a Development Plan approved pursuant to Article 3 I of the Subdivision Control Ordinance of this Ordinance.

*Id.* The 2004 Ordinance defines “dwelling, single-family” as “[a] building that contains one dwelling unit and is not attached to any other dwelling unit.” *Id.* at 132. “Dwelling unit” is defined as “[a]ny structure or portion thereof designed for or used for residential

purposes as a self-sufficient or individual unit by one (1) family or other social association of persons and having permanently installed sleeping, cooking, and sanitary facilities.” *Id.* “Family” is defined as:

A group of individuals not necessarily related by blood, marriage, adoption, or guardianship living together in a dwelling unit as a single housekeeping unit under a common management plan based on an intentionally structured relationship providing organization and stability. This definition does not include a group occupying a hotel, motel, club, nurseing [sic] home, dormitory, or fraternity or sorority house.

*Id.* at 133. In addition, the 2004 Ordinance defines “halfway house” as “[a] residence for those who have *completed treatment at a rehabilitation facility* but are not yet ready to return to their community.” *Id.* at 133 (emphasis added). Halfway houses are permitted in the R-3 District. *Id.* at 119.

As the Plan Commission points out, halfway houses are not listed as a permitted use in the R-1 District. Instead, the 2004 Ordinance provides that halfway houses are a permitted use in the R-3 District. The trial court concluded, however, that the five Townes properties qualify as a “dwelling unit,” a “dwelling, single-family” and are occupied by a “family” as these terms are defined in the 2004 Ordinance. Moreover, the court concluded that the five properties do not meet the definition of a “halfway house” as defined in the 2004 Ordinance because only ten percent of the people who occupied the houses based on figures at the time of trial came from inpatient treatment. As such, the court concluded that Townes was properly operating the five properties as a single-family detached dwelling in the R-1 District.

On appeal, the Plan Commission argues that “[i]t is beyond common sense belief to determine that halfway house occupants constitute a family or that the halfway house

occupants would constitute a family occupying a Single-Family Dwelling within Single-Family Residential Zoning.” Appellant’s Reply Br. p. 4. “The Court must make a logical interpretation of the Zoning Ordinance and not reach a finding based upon an absurd definition of the term ‘family.’” *Id.* at 5.

However, we point out that we are not the ones who provided the definition of the term “family.” The Plan Commission did.<sup>3</sup> And when the Plan Commission changed the definition of family from the one contained in the 1974 Ordinance, it significantly broadened the term. Under the Plan Commission’s 2004 definition of family, those who occupied the five Townes properties at the time of trial qualify as a family and thus the property meets the definition of a single-family detached dwelling. That is, those who occupied the properties are not “a group occupying a hotel, motel, club, nurseing [sic] home, dormitory, or fraternity or sorority house.” Appellant’s App. p. 133. And pursuant to the evidence presented at trial, including a strict set of house rules and attendance at AA meetings, *see* Ex. 6, they live together in a dwelling unit as a single housekeeping unit under a common management plan based on an intentionally structured relationship providing organization and stability. Not even Jamie Knowles, the Executive Director of the Plan Commission, could dispute this at trial. *See* Appellee’s App. p. 5 (“Q: So can you tell me now how the occupants that jointly occupy 232 North Second Street are not a family by this definition? A: I cannot.”). Instead, Knowles asserted that the five properties were halfway houses.

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<sup>3</sup> The Plan Commission recommended the 2004 Ordinance, and it was then adopted in June 2004 by the Common Council of the City of Scottsburg and the Board of Commissioners of Scott County. Appellant’s App. p. 142-44.

On this point, we again note that the Plan Commission is the entity who defined the term “halfway house.” And under the Plan Commission’s extremely narrow definition of halfway house in the 2004 Ordinance, it is a residence *for* those who have completed treatment at a rehabilitation facility but are not yet ready to return to their community. On the other hand, here the trial court found that only 10% of the residents had received prior inpatient treatment at other facilities. Appellant’s App. p. 10. Because only 10% of the residents had completed treatment at a rehabilitation facility, a halfway house is defined as a residence for those who have completed treatment at a rehabilitation facility, and zoning laws which limit the use of property are strictly construed, the trial court concluded that the five Townes properties did not meet the definition of a halfway house.

On appeal, the Plan Commission does not dispute that the purpose of the five Townes properties is to “provide a minimally restrictive, high quality environment for men [and women] who have made a decision to live without the use of alcohol or other mood-altering drugs.” Ex. 6. In addition, “[r]esidents strive together to find a new way of life which will restore them to health, dignity, self-respect and continued sobriety.” *Id.* Thus, the five Townes properties are not “for” those who have completed treatment at a rehabilitation facility. Rather, the commonality among the residents is their desire to live drug and alcohol free. We cannot say that the trial court’s finding that these were not halfway houses is clearly erroneous. To the extent the Plan Commission is unhappy with its own definition of “halfway house,” we note that it cannot redefine it in *this* appeal. It must do so directly through the zoning ordinance. Because zoning ordinances limit the

free use of property, they are in derogation of the common law and must be strictly construed. *Story*, 819 N.E.2d at 66. As such, we interpret an ordinance to favor the free use of land and will not extend restrictions by implication. *Cracker Barrel*, 848 N.E.2d at 290. Given this standard, we conclude that the five Townes properties meet the definition of a “single-family detached dwelling” and do not meet the definition of a “halfway house.”

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.