

STATE OF MICHIGAN
COURT OF APPEALS

BERTAKIS DEVELOPMENT, INC,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF YPSILANTI,

Defendant-Appellee.

UNPUBLISHED

July 28, 2000

No. 216379

Washtenaw Circuit Court

LC No. 97 004283-NZ

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant summary disposition. MCR 2.116(C)(10). This case arises from defendant's denial of plaintiff's request for rezoning. We affirm.

Plaintiff Bertakis Development, Inc., entered into purchase agreements for land parcels zoned for single family residential use in Ypsilanti Township. Plaintiff intended to divide the land into two parcels—developing one for general business use and the other as a mobile home park. This development would require rezoning of the parcels, and plaintiff's purchase agreements were contingent on obtaining the rezoning. Defendant Charter Township of Ypsilanti denied plaintiff's rezoning requests, and plaintiff filed a complaint seeking declaratory and injunctive relief for the alleged violations of its substantive due process rights.

We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Smith v Globe Life Insurance Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in the light most favorable to the nonmovant. *Smith, supra* at 454. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith, supra* at 454-455; *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Where a plaintiff challenges a zoning ordinance based on a denial of substantive due process rights, the zoning ordinance comes to this Court clothed with every presumption of validity. *Kirk v Tyrone Twp*, 398 Mich 429, 439; 247 NW2d 848 (1976); *Countrywalk Condominiums, Inc v City of Orchard Lake Village*, 221 Mich App 19, 23; 561 NW2d 405 (1997). Here, plaintiff suggests that the zoning ordinance at issue loses its presumption of validity because it is “plainly inconsistent with the more recently adopted Master Plan,” which contemplates changing the zoning from “single family residential” use, to “research/office” use. We do not agree.

Courts may consider a master plan as one factor in determining the reasonableness of a zoning classification. *Biske v Troy*, 381 Mich 611, 619; 166 NW2d 453 (1969); *Bell River Assoc v China Twp*, 223 Mich App 124, 131, 565 NW2d 695 (1997). It is, however, only one factor, and does not replace the balancing of interests required under an assertion of the police power. Some of the other factors to be considered are the extent to which the goals of the master plan are advanced by the use limitations imposed on a given parcel of land, the stability of the master plan, and the extent to which the master plan constitutes a commitment to a coherent development plan for the neighborhood which takes into account existing conditions and legitimate future expectations. *Troy Campus*, *supra* at 457, citing *Biske*, *supra* at 617-618.

To successfully challenge the zoning ordinance, plaintiff must prove either: (i) that there is no reasonable governmental interest being advanced by the present zoning classification itself; or (ii) that the ordinance is unreasonable because of the purely arbitrary, capricious and unfounded exclusion of other types of legitimate land use from the area in question. *Kirk*, *supra* at 439; *Kropf v Sterling Heights*, 391 Mich 139, 158; 215 NW2d 179 (1974). The reasonableness of an ordinance is a question of law that depends on the facts of each case. *Square Lake Condo Ass’n v Bloomfield Twp*, 437 Mich 310, 318; 471 NW2d 321 (1991). The burden is on the party attacking a zoning ordinance to prove that it is an unreasonable restriction. *A & B Enterprises v Madison Tp*, 197 Mich App 160, 162; 494 NW2d 761 (1992).

Here, plaintiff contends that there were disputed issues of fact regarding traffic impact, compatibility with the master plan, and the economic viability of the parcels under their present zoning status. As the trial court noted, however, there were also undisputed reasons in support of the reasonableness of the present zoning status, including the adequate supply of zoning appropriate to plaintiff’s proposed business purposes, and the benefit to the township in reducing the maximum potential home volume for the parcels. The trial court did not err in finding a reasonable governmental interest in the present zoning ordinance.

Nor are we persuaded by plaintiff’s claim that the zoning ordinance is exclusionary. Undisputed evidence was presented that the township already has ten mobile home parks, and that the master plan has twenty acres of land designated for one of them to expand. Along the same lines, there was no evidence presented by plaintiff suggesting that the township was excluding the business types proposed by plaintiff. Accordingly, the trial court did not err in concluding that the zoning ordinance was reasonable and that plaintiff was unable to satisfy its burden as a matter of law.

Plaintiff also argues that the trial court improperly weighed witness credibility in making its determination. Assuming the veracity of the affidavit testimony of the witnesses, as required in reviewing a motion for summary disposition, all that is established is that plaintiff's proposed uses would be more economical. Plaintiff cites no authority stating that a zoning ordinance is unreasonable merely because alternative uses might be more profitable to the owner.

Next, plaintiff contends that the trial court erred by granting summary disposition prior to completing discovery on a disputed issue of fact. We disagree. Generally, summary disposition is premature if granted before discovery on a disputed issue is complete. *Prysak v R.L. Polk Co*, 193 Mich App 1, 11; 483 NW2d 629 (1992). However, summary disposition may be proper before discovery is complete where further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion. *Id.*

In the instant matter, plaintiff contends that "there are numerous questions of fact as to whether there is a reasonable governmental interest being advanced by the denial of Plaintiff's zoning request." The proper inquiry, however, concerns whether there is a reasonable governmental interest being advanced by the present zoning ordinance. *Kirk, supra* at 439. Thus, any discovery concerning the reasonableness of plaintiff's proposed use is irrelevant. There is an undisputed factual basis in this case for the trial court's conclusion that the zoning ordinance advances legitimate governmental interests. Therefore, discovery was not necessary to resolve any material issue in dispute, and the trial court did not err in granting summary disposition.

Finally, plaintiff raises two challenges to the trial court's findings regarding plaintiff's proposed uses. Erroneous trial court findings which are not essential to a decision do not constitute an error requiring reversal. *In re Approximately Forty Acres in Tallmadge Tp*, 223 Mich App 454, 463; 566 NW2d 652 (1997). In other words, even if the trial court made erroneous findings regarding plaintiff's proposed uses, reversal is not warranted because plaintiff failed to meet its burden in proving the unreasonableness of the zoning ordinance. In any event, the trial court conceded that plaintiff's proposed use was reasonable but correctly emphasized that the proper inquiry concerned the reasonableness of the zoning ordinance rather than plaintiff's proposed use. Summary disposition was appropriate.

Affirmed.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin