

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF DETROIT,

Plaintiff-Appellee,

v

RIVERFRONT EAST ALLIANCE,

Defendant-Appellant.

UNPUBLISHED

June 29, 2001

No. 231045

Wayne Circuit Court

LC No. 00-029077-AW

Before: White, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Defendant, The Riverfront East Alliance (REAL), appeals as of right the trial court's grant of summary disposition in favor of plaintiff, The City of Detroit, in this declaratory judgment action. We affirm.

This action arises as a consequence of the adoption of Ordinance 6-99 by the Detroit City Council in furtherance of the Waterfront Reclamation and Casino Development Project. The ordinance, in pertinent part, rezoned certain properties generally bounded by East Jefferson to the north, Chene Avenue to the east, Atwater to the south, and Riopelle to the west, to SD5 (Special Development District, Casinos) zoning classifications, thereby permitting the development of casino complexes on the riverfront site.

Approximately a year after Ordinance 6-99 was adopted, defendant circulated an initiative petition titled "Petition for Initiation of a City of Detroit Ordinance Prohibiting Placement of Gambling Casinos on the East Riverfront." The petition stated:

We, the undersigned qualified and registered voters of the City of Detroit, County of Wayne, State of Michigan, petition for initiation of an ordinance to prohibit the placement of gambling casinos on the East Riverfront within the area bounded by Jefferson Avenue and the Detroit River, and therein, between the Renaissance Center and East Grand Boulevard. The full text of the proposed Ordinance is attached.

The proposed ordinance provided:

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT no gambling casino shall be located on the East Riverfront within the area bounded by Jefferson Avenue and the Detroit River, and therein, between the Renaissance Center and East Grand Boulevard.

Thereafter, plaintiff filed the instant action seeking a declaratory judgment that defendant's initiative petition constituted an unlawful attempt to amend a zoning ordinance and was invalid. The trial court subsequently granted plaintiff's motion for summary disposition and declaratory judgment and, relying on *Korash v Livonia*, 388 Mich 737; 202 NW2d 803 (1972), held that the ordinance proposed by defendant was not subject to enactment by initiative.

The City of Detroit is a home rule city. The Home Rule City Act, MCL 117.4i(g), authorizes referendum and initiative provisions to be included in city charters. Accordingly, Article 12 of the City of Detroit's charter expressly reserves to voters initiatory and referendary rights regarding ordinances. However, our Supreme Court in *Korash, supra*, held that zoning ordinances cannot be enacted by initiatory proceedings. Defendant attempts to distinguish the *Korash* holding by arguing on appeal that the proposed ordinance is not a zoning ordinance or, alternatively, that it is valid because it may be subjected to the procedural requirements of the City and Village Zoning Act (CVZA), MCL 125.584, before its submission to the electorate. We reject both arguments.

First, the proposed ordinance is clearly a zoning ordinance because it attempts to regulate the use of land. See *Square Lake Hills Condominium Ass'n v Bloomfield Twp*, 437 Mich 310, 323; 471 NW2d 321 (1991). Second, the Charter of the City of Detroit prescribes the enactment procedures regarding initiative petitions. In particular, §§ 12-107 and 12-108 provide that the ordinance proposed in a sufficient initiatory petition may be enacted by the city within thirty days of the clerk's report and, if it is not enacted, the measure must be submitted to the voters at the next city election or at a discretionary special election. Consequently, by the plain language of the Charter of the City of Detroit, enactment methods of an initiative ordinance are inconsistent with the mandated procedural methods for enactment of zoning legislation as prescribed by the CVZA, particularly, MCL 125.584. See *Korash, supra* at 745-746. Therefore, the general initiative power reserved by charter to electors of this municipality does not extend to the zoning ordinance proposed by defendant and summary dismissal was proper.

Affirmed.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot