

STATE OF MICHIGAN
COURT OF APPEALS

JUDITH K. HURST,

Plaintiff-Appellant,

v

CHARTER TWP OF MERIDIAN and
MERIDIAN TOWNSHIP PLANNING
COMMISSION,

Defendants-Appellees.

UNPUBLISHED

August 23, 2002

No. 232084

Ingham Circuit Court

LC No. 99-090501-CZ

Before: Zahra, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition for defendants and denying plaintiff's motion to amend her complaint in this case involving rezoning of property. We affirm.

I. Basic Facts and Procedure

In March 1999, Mark Rysberg filed an application with Meridian Township (Township), seeking to rezone an 8.37-acre parcel from "RAA" and "RB" (residential) to "PO" (professional office). The property sought to be rezoned borders plaintiff's property on the west and north. A neighboring landowner added her property to the request for rezoning. Thereafter, the Rysberg matter reflected a request to rezone a total of 9.1 acres.

On June 28, 1999, a public hearing was held before the Meridian Township Planning Commission (Planning Commission). Plaintiff acknowledged that she attended the hearing and lodged an objection to the rezoning. At a hearing on July 12, 1999, the Planning Commission recommended rezoning two acres of the proposed 9.1-acre area. Plaintiff again attended that hearing and lodged objections at the close of the hearing. Thereafter, plaintiff wrote a letter to the Township, indicating the desire to "appeal" the Planning Commission's decision. A Township representative informed plaintiff that she could not appeal the Planning Commission's recommendation, but plaintiff's letter and appeal were forwarded to the Meridian Township Board of Trustees (Township Board).

On August 6, 1999, plaintiff filed this action in circuit court, seeking declaratory and injunctive relief. Plaintiff claimed defendants failed to give proper notice of the rezoning

hearings and violated the open meetings act, MCL 15.261 *et seq.* Defendants moved for summary disposition, claiming that plaintiff failed to exhaust her administrative remedies and that plaintiff's specific claims fail as a matter of law.

On November 16, 1999, the Township Board approved the Planning Commission's recommendation to rezone two acres. Thereafter, plaintiff filed a motion to amend her complaint, seeking to add allegations regarding the Township Board's decision. On September 20, 2000, the trial court heard plaintiff's motion to amend and defendants' motion for summary disposition. On December 31, 2000, the court issued its opinion and order denying plaintiff's motion to amend and granting summary disposition for defendants.

II. Analysis

On appeal, plaintiff argues that the trial court erred in granting summary disposition on the basis that plaintiff failed to exhaust her administrative remedies. We consider de novo a trial court's decision on a motion for summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Likewise, interpretation of an ordinance is reviewed de novo on appeal. *Gora v Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998); see *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). In reviewing a motion under MCR 2.116(C)(7), we accept the contents of the plaintiff's complaint as true unless contradicted by documentation submitted by the movant. *Maiden, supra* at 119. A motion under MCR 2.116(C)(7) may be granted on the basis that the plaintiff failed to exhaust administrative remedies. *Mollett v Taylor*, 197 Mich App 328, 332; 494 NW2d 832 (1992).

As discussed, plaintiff brought the present action in circuit court after the Township refused to allow her to appeal the Planning Commission's July 12, 1999 recommendation to the Township Board. Township ordinances provide that the Planning Commission's responsibilities in regard to zoning matters include considering applications for rezoning, holding hearings on these matters, and issuing recommendations. The Planning Commission lacks authority to rezone property. Meridian Township Ordinance, § 88-3.1; § 88-3.2; § 88-3.3. The Township Board reviews Planning Commission recommendations in regard to rezoning and has authority to rezone property. Meridian Township Ordinance, § 88-1; § 88-3.5. Given that plaintiff's action in circuit court challenged the Planning Commission's mere recommendation, and not a final decision by the Township Board, plaintiff's claim was properly dismissed on the basis that she failed to exhaust her administrative remedies. MCR 2.116(C)(7); *Mollett, supra*.

The fact that Planning Commission Rule of Procedure 10.2 allows a party to appeal actions of the Planning Commission does not alter that conclusion. Township Ordinance 119-5 provided the Planning Commission authority to adopt rules of procedure. Principles of statutory interpretation require that statutory provisions be considered in the context of the entire statute so as to produce a harmonious whole. *Kokx v Bylenga*, 241 Mich App 655, 662; 617 NW2d 368 (2000); see *House Speaker v State Administrative Bd*, 441 Mich 547, 568-569; 495 NW2d 539 (1993). Because Rule of Procedure 10.2 was enacted directly pursuant to the authority provided in the ordinance governing establishment of the Planning Commission, the rule must properly be considered in the context of the ordinances detailing Planning Commission procedures. Considered in that context, a recommendation on a rezoning application is not an appealable "action" under the rule because rezoning recommendations, as a matter of procedure, are sent to

the Township Board for consideration. The recommendation has no effect until the Township Board rules it on. To allow an appeal to the Township Board from a Planning Commission recommendation would be redundant given that it is already the Township Board's duty to consider recommendations and rule on their appropriateness.¹ In this case, despite the fact that plaintiff was not allowed to appeal the Planning Commission recommendation, the propriety of the recommendation was ultimately reviewed by the Township Board.²

Plaintiff also argues that the trial court erred in denying her motion to amend her complaint. Plaintiff claims she should have been allowed to add allegations that the Township Board engaged in ultra vires activity when it approved the Planning Commission recommendation that originated in violation of statute and ordinance. The proposed amended complaint plaintiff attached below contains allegations that plaintiff was deprived due process and that her civil rights were violated when the Township Board approved the rezoning without allowing her to appeal the Planning Commission's recommendation. Thus, the proposed amendment again related to the propriety of the Planning Commission's recommendation. As discussed, such a challenge fails because plaintiff did not exhaust her administrative remedies.³ Therefore, plaintiff's proposed amendment would have been futile, and the trial court acted within its discretion in denying amendment of the complaint. *Weymers v Khera*, 454 Mich 639, 654, 658; 563 NW2d 647 (1997); *Lane v Kindercare Learning Centers, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

Finally, plaintiff argues that the order granting summary disposition is void because it was issued on Sunday, December 31, 2000, in violation of MCL 600.1425. We disagree. We take judicial notice of the fact that Ingham Circuit Court Judge Carolyn Stell's term of office expired December 31, 2000. Therefore, issuance of the opinion and order on December 31, 2000 was pressing and necessary under MCL 600.1425.

Affirmed.

/s/ Brian K. Zahra
/s/ Harold Hood
/s/ Kathleen Jansen

¹ By all indications, the Township Board received the documents related to plaintiff's intended appeal from the Planning Commission recommendation and, therefore, the Township Board was apprised of plaintiff's objections to rezoning.

Furthermore, we reject plaintiff's assertion that Rule of Procedure 10.2 is meaningless if interpreted to prohibit an appeal from a Planning Commission recommendation on rezoning. Rule of Procedure 5 describes several duties of the Planning Commission, many of which could lead to an appeal under Rule 10.2.

² Because plaintiff's suit is barred due to her failure to exhaust her administrative remedies, we need not consider plaintiff's several arguments challenging the propriety of the Planning Commission's recommendation.

³ Plaintiff's proposed civil rights claim was based on 42 USC 1983, not the Elliott Larsen Civil Rights Act. Cf. *Womack-Scott v Dep't of Corrections*, 246 Mich App 70, 77; 630 NW2d 650 (2001).