STATE OF MICHIGAN

COURT OF APPEALS

LANDON HOLDINGS, INC., SALLIE HULST, Trustee of the ROY C. NOFFKE TRUST and JERRY GOOD, Plaintiffs-Appellants,	UNPUBLISHED July 12, 2005
v	No. 253434 Barry Circuit Court
THORNAPPLE TOWNSHIP, Defendant-Appellee.	LC No. 02-000442-CZ

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

PER CURIAM.

Plaintiffs appeal as of right from the trial court's entry of a judgment of no cause of action rejecting their constitutional challenge to defendant's zoning regulations. We affirm.

The parcels in dispute, owned by plaintiffs Jerry Good and the Roy C. Noffke Trust and under option to plaintiff Landon Holdings, Inc. (Landon), are presently zoned "agricultural/residential" (AR). Manufactured homes are not permitted in an agricultural district under the Thornapple Township Zoning Ordinance. Landon unsuccessfully sought to rezone these parcels to residential, so that it could construct a manufactured home community of about 650 homes. After Landon was unable to obtain the requested rezoning, it filed the present lawsuit, asserting that the existing zoning violates substantive due process, constitutes inverse condemnation, and deprives plaintiffs of equal protection. After a bench trial, the court concluded that plaintiffs "have failed to demonstrate that the Defendant's zoning regulations are unreasonable, confiscatory or otherwise unlawful."

I

Plaintiffs argue that the zoning ordinance violates their due process and equal protection rights because it fails to advance a legitimate governmental interest; is arbitrary, capricious and contrary to the public health and safety, as well as to the stated goal of protecting and preserving the rural character of the township; and treats plaintiffs' property differently than other similar property. We disagree.

A

This Court reviews de novo a constitutional challenge to a zoning ordinance. *Bell River Associates v China Charter Twp*, 223 Mich App 124, 129; 565 NW2d 695 (1997). However, this Court gives considerable weight to the factual findings of the trial court. *Id.* Findings of fact by the trial court may not be set aside unless clearly erroneous. MCR 2.613(C). Ordinances are presumed valid and constitutional. *Bell River Associates, supra* at 129. When no suspect classification can be shown, plaintiffs have "the burden of establishing that the statute is arbitrary and not rationally related to a legitimate governmental interest." *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173; 667 NW2d 93 (2003).

In *Muskegon Area Rental Ass'n v Muskegon*, 465 Mich 456, 464; 636 NW2d 751 (2001), our Supreme Court, quoting *TIG Ins Co, Inc v Dep't of Treasury*, 464 Mich 548, 557-558; 629 NW2d 402 (2001), addressed the parameters of the rational basis test as follows:

> "Rational basis review does not test the wisdom, need, or appropriateness of the legislation, or whether the classification is made with 'mathematical nicety,' or even whether it results in some inequity when put into practice." *Crego v Coleman*, 463 Mich 248, 260; 615 NW2d 218 (2000). Rather, it tests only whether the legislation is reasonably related to a legitimate governmental purpose. The legislation will pass "constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable." *Id.* at 259-260. To prevail under this standard, a party challenging a statute must overcome the presumption that the statute is constitutional. *Thoman v Lansing*, 315 Mich 566, 576; 24 NW2d 213 (1946)[, overruled on other grounds in *East Grand Rapids Sch Dist v Kent Co Tax Allocation Bd*, 415 Mich 381; 330 NW2d 7 (1982)]. Thus, to have the legislation stricken, the challenger would have to show that the legislation is based "solely on reasons totally unrelated to the pursuit of the State's goals," *Clements v Fashing*, 457 US 957, 963; 102 S Ct 2836; 73 L Ed 2d 508 (1982), or, in other words, the challenger must "negative every conceivable basis which might support," the legislation. *Lehnhausen v Lake Shore Auto Parts Co*, 410 US 356, 364; 93 S Ct 1001; 35 L Ed 2d 351 (1973).

"A zoning ordinance may be unreasonable either because it does not advance a reasonable governmental interest or because it does so unreasonably." *Landon Holdings, supra* at 173-174.

B

The record establishes at least two rational bases for the existing AR zoning ordinance—the preservation of the rural character of the area and the channeling of high density developments close to public services. Public services, utilities, and fire protection are centered in Middleville, and placing a large manufactured housing development in a rural area would increase the cost of providing these services. Directing high density developments to areas where the infrastructure is already equipped to handle them reduces the impact to adjacent landowners in what is essentially an agricultural community. Indeed, plaintiffs' own expert testified that directing high density growth to more urban areas is a reasonable government

objective. He also opined that preserving rural and agricultural property is a legitimate government interest.

There is an obvious relationship between the two goals of preserving the rural character of the area and channeling high density development to more urban areas on the one hand, and the AR zoning ordinance on the other. The current zoning, and the denial of rezoning, of the property are reasonably related to these goals.

C

Plaintiffs argue that the zoning ordinance is unreasonable as applied to the property. We disagree.

Testimony supported that the property at issue is found in a rural area and that the 650-700 unit development would tax the infrastructure in that area well beyond what is contemplated by the existing AR zoning scheme. Further, the proposed development is more dense than would be permitted in the property plaintiffs claim is comparable, but zoned RR. Plaintiffs also rely on the asserted benefits of Landon's plan over the development allowed under the present zoning. Landon intends to install a waste water treatment plant on site and construct a berm along M-37, and suggests the proposed development would be safer for schoolchildren than if the area is developed under the existing AR zoning scheme. Such arguments are, however, legally irrelevant because they do not undermine the rational relationship of the zoning ordinance to the governmental interests discussed above. *Muskegon Area Rental, supra* at 464, and focus instead on the advisability of the present zoning classification. Under *Muskegon Area Rental*, the wisdom of the zoning of this property is legally irrelevant.

II

Next, plaintiffs argue that the trial court erred in finding that the property could be profitably developed under the existing AR zoning ordinance, and rejecting their taking challenge. Again, we disagree.

To establish an unconstitutional taking, a plaintiff must show that if the ordinance is enforced the consequent restrictions on the property would preclude its use for any purpose to which it is reasonably adapted. *Bell River Associates, supra* at 133. A plaintiff alleging that the zoning has the effect of denying the economically viable use of the land 'must show that the property is either unsuitable for use as zoned or unmarketable as zoned.' *Id.*, quoting *Bevan v Brandon Twp*, 438 Mich 385, 403; 475 NW2d 37, amended 439 Mich 1202 (1991). Mere diminution in value does not amount to taking. *Bell River Associates, supra* at 133. Under the traditional balancing test, this Court must review "(1) the character of the government's action, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations." *K & K Construction, Inc v Dep't of Natural Resources*, 456 Mich 570, 577; 575 NW2d 531 (1998). Plaintiffs have not made the requisite showing.

Under the first prong of the test, this Court examines the character of the township's actions. The property is zoned AR in order to preserve the rural character of the area, to manage traffic problems that would arise from a high density development, and to channel high density development to communities where public services and utilities are adequate for the population. These objectives are rationally based and reasonably related to the AR zoning scheme.

Plaintiffs assert that the trial court erred in concluding that the property can be profitably developed under the existing zoning ordinance. Plaintiffs assert that the case involves irrefutable mathematics rather than a credibility contest between the experts. However, plaintiffs' argument rests on the premise that the testimony of Daniel Dykstra, a local excavator and developer, was flawed in its assumptions. In this regard, we will defer to the trial court's reasoned opinion, which found Dykstra's testimony to be more reliable. MCR 2.613(C). After reviewing all the testimony, we conclude that the court's determination that the parcels can be profitably developed under the existing zoning is adequately supported by the record.

Lastly, we reject plaintiffs' assertion that the trial court clearly erred in concluding that capital appreciation in the value of the property had provided a reasonable rate of return to its owners. There was ample testimony to support the court's finding that the property appreciated at a reasonable rate. Plaintiffs have not shown that the zoning ordinance interfered with investment-backed expectations.

In light of the foregoing, the trial court correctly concluded that plaintiffs failed to carry their burden of demonstrating a violation of due process or equal protection rights, or a constitutional taking.

Affirmed.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Michael J. Talbot