

STATE OF MICHIGAN
COURT OF APPEALS

AGRIS PAVLOVSKIS,

Plaintiff-Appellant,

v

CITY OF EAST LANSING and EAST LANSING
CITY CLERK,

Defendants-Appellees.

UNPUBLISHED

December 20, 2007

No. 275236

Ingham Circuit Court

LC No. 05-000523-NZ

Before: Donofrio, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants. This dispute involves the City and Village Zoning Act (CVZA), MCL 125.581 *et seq.*,¹ and provisions of the City of East Lansing Charter and Code of Ordinances. Because Ordinance 1035C vests ultimate authority with the municipal legislative body to enact proposed zoning amendments, plaintiff's argument that Ordinance 1097 is void fails, and, because Ordinance 1035C advances reasonable government interests and Ordinance 1097 is neither arbitrary nor capricious, nor invalid spot zoning, we affirm.

I

Plaintiff owns certain residential real property located in the Central Bailey-Strathmore Neighborhood (Bailey-Strathmore) of the City of East Lansing. It was originally zoned R-2, Medium Density Single-Family Residential, which permits the principal use of single-family dwellings, along with the rental of such dwellings. See East Lansing Zoning Ordinance, §§ 50-6, 50-262(1), (3); East Lansing Ordinance, §§ 6-175, ES-1000.1 *et seq.* In 2004, East Lansing adopted Substitute Ordinance 1035C, which amended the city's zoning ordinance to create three "Residential Rental Overlay Districts," designated R-O-1, R-O-2, and R-O-3. East Lansing Zoning Ordinance, § 50-772. These districts allow the residents of certain residential districts to

¹ The Michigan Zoning Enabling Act, MCL 125.3101 *et seq* replaced the CVZA which was repealed by 2006 PA 110. See MCL 125.3702.

preclude “all or certain types of rental properties” within the boundaries created by the overlay. East Lansing Zoning Ordinance, § 50-773. Ordinance 1035C includes a citizen-initiated mechanism for proposing the adoption of these overlay districts, though the ultimate adoption of the overlay is within the discretion of the East Lansing City Council. East Lansing Zoning Ordinance, § 50-775.

Following the adoption of Ordinance 1035C, residents of Bailey-Strathmore circulated petitions for the adoption of an overlay district in that neighborhood. The petition was verified and a proposed ordinance, Ordinance 1097, was drafted in conformity therewith. Following various proceedings, the city council ultimately adopted Ordinance 1097. East Lansing Zoning Ordinance, § 50-777(7). Plaintiff filed the instant action seeking a declaratory judgment that Ordinance 1035C and Ordinance 1097 are invalid. The court granted summary disposition to defendants and plaintiff now appeals as of right.

II

We review summary disposition rulings de novo. *McClements v Ford Motor Co*, 473 Mich 373, 380; 702 NW2d 166 (2005). A motion under MCR 2.116(C)(10) entitles the movant to summary disposition where no genuine issue of material fact remains. *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). We consider the evidence submitted by the parties in the light most favorable to the non-moving party. *Nastal v Henderson & Assoc*, 471 Mich 712, 721; 691 NW2d 1 (2005).

III

Plaintiff first argues that Ordinance 1097 is invalid by virtue of defendants’ failure to comply with the procedures prescribed in Ordinance 1035C for the promulgation of such ordinances. The CVZA prescribed various procedures that needed to be followed when a municipality enacted a zoning ordinance. See MCL 125.584. Where those procedures were not adhered to, the enactment was deemed invalid. *Korash v Livonia*, 388 Mich 737, 746; 202 NW2d 803 (1972). But, the CVZA also specifically provided that “[t]he legislative body of a city or village may provide by ordinance for the manner in which regulations and boundaries of districts or zones shall be determined and enforced or amended, supplemented or changed.” MCL 125.584(1).

While Ordinance 1035C allows citizens to petition the East Lansing City Council for adoption of a zoning amendment, East Lansing Zoning Ordinance, § 50-775, the council has discretion to take any action it deems appropriate on the submission of such a petition, East Lansing Zoning Ordinance, § 50-775(2)(a), (e). Further, the city council has authority to initiate zoning measures absent a citizen’s petition. East Lansing Zoning Ordinance, § 50-31(a) (“The city council may of its own motion . . . prepare an ordinance amending or changing the district boundaries or the regulations herein established.”). Thus, plaintiff’s argument that Ordinance 1097 is void because it was enacted in violation of the procedures prescribed in Ordinance 1035C fails because Ordinance 1035C vests ultimate authority to enact a proposed zoning amendment with the municipal legislative authority. East Lansing Zoning Ordinance, § 50-775(2)(e); see *Penning v Owens*, 340 Mich 355, 360; 65 NW2d 831 (1954). Also, the East Lansing City Council plainly enjoys the authority to independently propose and enact zoning

ordinances. East Lansing Zoning Ordinance, § 50-31(a); see *Penning, supra* at 362. Accordingly, we assume that the East Lansing City Council “proposed and recommended the adoption of [Ordinance 1097] upon its own initiative.” *Penning, supra* at 360. By virtue of the council’s independent action enacting Ordinance 1097--which plaintiff does not dispute fully complied with the CVZA--it is unnecessary for us to address plaintiff’s argument that the procedures underlying the enactment of Ordinance 1097 did not conform to Ordinance 1035C.

IV

Plaintiff also argues that both Ordinance 1035C and Ordinance 1097 fail to advance reasonable governmental interests. We review constitutional challenges to zoning ordinances de novo. *Jott, Inc v Clinton Charter Twp*, 224 Mich App 513, 525-526; 569 NW2d 513 (1997). Zoning ordinances are presumed valid and the challenging party has the burden of proving otherwise. *Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998).

An individual may “challenge the validity” of a “zoning ordinance as a violation of his or her right to substantive due process.” *Dorman v Clinton Twp*, 269 Mich App 638, 650; 714 NW2d 350 (2006). Such a challenge may be made “by showing ‘(1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) that an ordinance is unreasonable because of the purely arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question.’” *Id.*, quoting *Frericks, supra* at 594. A zoning ordinance will not survive a substantive due process challenge where “it does not advance a reasonable governmental interest or because it does so unreasonably.” *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 174; 667 NW2d 93 (2003).

Ordinance 1035C creates residential rental overlay districts designed

to preserve the attractiveness, desirability, and privacy of residential neighborhoods by precluding all or certain types of rental properties and thereby preclude the deleterious effects rental properties can have on a neighborhood with regard to property deterioration, increased density, congestion, noise and traffic levels and reduction of property values. The goal of the overlay district is to allow owners of property within residential neighborhoods to control the types of rental properties, if any, that are permitted in one-family dwellings within their neighborhood. It is also the purpose of the districts to achieve the following objectives:

(1) To protect the privacy of residents and to minimize noise, congestion, and nuisance impacts by regulating the types of rental properties;

(2) To maintain an attractive community appearance and to provide a desirable living environment for residents by preserving the owner occupied character of the neighborhood;

(3) To prevent excessive traffic and parking problems in the neighborhoods. [East Lansing Zoning Ordinance, § 50-773.]

The goal of “preserving the residential nature of a neighborhood” is a legitimate interest “that may be advanced by a zoning regulation.” *Dorman, supra* at 651-652. Permissible governmental action of this type includes limiting the character of a neighborhood to owner-occupied dwellings to avoid the “deleterious effects rental properties can have” on neighborhoods located within a college community. See East Lansing Zoning Ordinance, § 50-773. This Court has recognized that

there are legitimate governmental interests underlying the creation of single-family zones. Furthermore, the family, while undergoing dramatic changes in the last half-century, remains a fundamental building block of society. This is true whether we speak of the traditional family or the modern concept of a functional family. . . .

. . . To say that a family is so equivalent to a ragtag collection of college roommates as to require identical treatment in zoning decisions defies the reality of the place of the family in American society, despite any changes that institution has undergone in recent years. Only the most cynical among us would say that the American family has devolved to the point of no greater importance or consideration in governmental decision making than a group of college roommates. [*Stegeman v Ann Arbor*, 213 Mich App 487, 492; 540 NW2d 724 (1995).]

The record shows that single-family residences could be rented in the R-2 district prior to the enactment of Ordinance 1035C. East Lansing Zoning Ordinance, § 50-6; East Lansing Zoning Ordinance, § 50-262(3)(d); East Lansing Ordinance, §§ 6-175, ES-1001.1 through ES-1001.2. Ordinance 1035C allows residents to limit or preclude such rentals within specified districts. East Lansing Zoning Ordinance, §§ 50-772 through 50-777. Zoning to preserve the residential character of a neighborhood by limiting the number of transient college students who can live in single-family dwelling housing has been recognized as a legitimate and reasonable governmental interest. *Stegeman, supra* at 492. Accordingly, Ordinance 1035C survives plaintiff’s substantive due process challenge. *Dorman, supra* at 650.

Plaintiff nevertheless claims that Ordinance 1035C is superfluous, and thus unreasonable, because other East Lansing Ordinances proscribe the very conduct Ordinance 1035C was designed to address. Plaintiff’s argument misconstrues the nature of Ordinance 1035C. East Lansing enacted general conduct restrictions on parking, noise, rental property maintenance, and disturbances prior to the enactment of Ordinance 1035C. See East Lansing Ordinance, § 6-175, 100.1 (property maintenance code constitutes the “minimum standards” for structures and premises); East Lansing Ordinance, §§ 26-51 *et seq.* (proscribing disorderly conduct), 26-81 *et seq.* (noise), 26-141 *et seq.* (“nuisance parties”); East Lansing Ordinance, §§ 44-294, 298, 300, 303 (conduct relating to vehicular parking). Assuming, but not concluding that Ordinance 1035C serves only these interests, it is nevertheless an alternative designed to service them. Though the state may regulate conduct and behavior, individuals will and do disregard regulations. It is entirely reasonable for East Lansing to conclude that its ordinances regulating noise, traffic levels, and property maintenance will often be disregarded, requiring the

application of the coercive power of the state. Ordinance 1035C attempts to avoid the need to apply coercive power while still meeting the goals outlined by treating a reasonably presumed major cause, college rental housing, of the expected violations.

Plaintiff's argument also necessarily implies that government may punish behavior, but may not seek to preclude it. Michigan jurisprudence plainly belies plaintiff's assertion. See *Delta Charter Twp v Dinolfo*, 419 Mich 253, 277; 351 NW2d 831 (1984); *Stegeman*, *supra* at 492.

Plaintiff also argues that Ordinance 1097 is unreasonable because it was not enacted pursuant to a master plan, but was enacted arbitrarily. MCL 125.581(2) directed that "[t]he land development regulations and districts authorized by this act shall be made in accordance with a plan designed to promote and accomplish the objectives of this act." The "plan" referenced in this section is a municipality's "master plan" created under the Municipal Planning Act, MCL 125.31 *et seq.* See *Nolan Bros of Texas, Inc v Royal Oak*, 219 Mich App 611, 614; 557 NW2d 925 (1996). "[T]he adoption of a master plan is tantamount to a legislative act." *Inverness Mobile Home Community, Ltd v Bedford Twp*, 263 Mich App 241, 249; 687 NW2d 869 (2004). The reasonableness of zoning classifications must be evaluated in light of a city's master plan. *Id.*

After reviewing the East Lansing comprehensive plan, we reject plaintiff's argument that Ordinance 1097 was not enacted in accordance with that plan. East Lansing has adopted a comprehensive plan dividing the totality of its jurisdiction into eight "planning" areas. East Lansing Comprehensive Plan, Planning Areas 1-8, pp 9-110. Bailey-Strathmore is overwhelmingly located within Planning Area 5. See East Lansing Comprehensive Plan, Planning Areas 3, 5, pp 32, 56. According to the comprehensive plan, the rate of owner-occupancy of single-family dwellings in Planning Area 5 has declined with the advent of student housing. East Lansing Comprehensive Plan, Planning Area 5, pp 57-58. In an effort to reverse this trend, the plan recommends that "[c]reative ways" be implemented to increase the presence of "owner-occupied single-family homes" in the area, and that existing policies doing so "be supported." East Lansing Comprehensive Plan, Planning Area 5, p 65.

Ordinance 1097 created a R-O-1 district in Bailey-Strathmore, thereby limiting the rental of single-family dwellings in that district. East Lansing Zoning Ordinance, § 50-777(7). It thus achieves precisely the result sought by the master plan by limiting the capacity of Bailey-Strathmore homeowners to rent their dwellings. East Lansing Zoning Ordinance, § 50-774, 777(7). Accordingly, Ordinance 1097 is reasonable and therefore neither arbitrary nor capricious. MCL 125.581(2); *Inverness Mobile Home Community, Ltd*, *supra* at 249.

V

Plaintiff also argues that Ordinance 1097 constitutes invalid spot zoning. Zoning regulation is designed to achieve the orderly development and use of land to promote the general welfare. See MCL 125.581. To ensure this, zoning "should proceed in accordance with a definite a reasonable policy." *Essexville v Carrollton Concrete Mix, Inc*, 259 Mich App 257, 273; 673 NW2d 815 (2003), quoting *Anderson v Highland Twp*, 21 Mich App 64, 75; 174 NW2d 909 (1969); see MCL 125.581(2) ("The land development regulations and districts authorized by this act shall be made in accordance with a plan designed to promote and accomplish the

objectives of this act.”). As a result, ““zoning in a haphazard manner is not favored.”” *Essexville, supra* at 273, quoting *Anderson, supra* at 75.

Spot zoning occurs where a zoning ordinance creates ““a small zone of inconsistent use within a larger zone.”” *Essexville, supra* at 272, quoting *Penning, supra* at 367-368. Such zoning is invalid and void ““where it is without a reasonable basis.”” *Id.* at 273, quoting *Anderson, supra* at 75.

[W]hen a discrete zoning decision is made regarding a particular parcel of property—typically a decision involving an amendment or variance that results in allowing uses for specific land that are inconsistent with the overall plan as established by the ordinance—the courts will apply greater scrutiny. Those isolated or discrete decisions are more prone to arbitrariness because they are micro in nature, i.e., the decisions are based on the particular land and circumstance at issue in the request for amendment or variance. [*Id.* at 274 (citation omitted).]

Ordinance 1097 was enacted pursuant to Ordinance 1035C and created an R-O-1 overlay district in Bailey-Strathmore. Ordinance 1097 did not alter that designation, but merely added a restriction precluding the rental of single-family dwellings. See East Lansing Zoning Ordinance, § 50-774, 50-777(7). Thus, no small zone of inconsistent use was created within a larger zone. *Essexville, supra* at 272; cf. *Penning, supra* at 367-368. Rather, the uses are essentially consistent throughout. Nor did Ordinance 1097 apply merely to a “particular parcel.” See *Essexville, supra* at 275-276. It in fact governed hundreds of contiguous parcels within downtown East Lansing. See East Lansing Zoning Ordinance, § 50-777(7).

Plaintiff attempts to characterize Ordinance 1097 by reference only to his property, suggesting that it was impermissible spot zoning because he is “surrounded” by rental properties. However, plaintiff cannot isolate his parcel from Bailey-Strathmore in an effort to demonstrate spot zoning. See East Lansing Zoning Ordinance, § 50-777(7). Moreover, Ordinance 1097 was not zoning in a “haphazard manner.” *Essexville, supra* at 273, quoting *Anderson, supra* at 75. It applied to a residential district to preserve the residential character of that district, East Lansing Zoning Ordinance, § 50-773, and was thus planned and orderly in development, see MCL 125.581. Nor was it a “discrete zoning decision . . . made regarding a particular parcel of property.” *Essexville, supra* at 274. As a consequence of being “clothed with a presumption of validity,” *id.*, Ordinance 1097 is not void as impermissible spot zoning.

VI

Because Ordinance 1035C vests ultimate authority with the municipal legislative body to enact proposed zoning amendments, plaintiff’s argument that Ordinance 1097 is void fails.

Ordinance 1035C advances reasonable government interests and Ordinance 1097 is neither arbitrary nor capricious, nor invalid spot zoning.

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Mark J. Cavanagh