

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AM RODRIGUEZ ASSOCIATES, INC.,

Plaintiff-Appellant,

v

CITY COUNCIL OF THE CITY OF THE  
VILLAGE OF DOUGLAS and CITY OF THE  
VILLAGE OF DOUGLAS,

Defendants-Appellees.

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UNPUBLISHED  
January 10, 2012

No. 299510  
Allegan Circuit Court  
LC No. 09-046065-CZ

Before: JANSEN, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7). We affirm in part, reverse in part, and remand for further proceedings with respect to plaintiff's inverse condemnation claim.

I

Plaintiff owns real property in the City of the Village of Douglas (the City) consisting of approximately 16 acres. In 2006, plaintiff submitted an application to the City to construct and develop a planned unit development (PUD) on the property. Consistent with the former MCL 125.584b, the City's zoning ordinance in effect at the time provided that PUD applications would be initially reviewed by the planning commission and subsequently approved or rejected by the city council. Douglas Zoning Ordinance (2007), § 27.05(2). Furthermore, consistent with the former MCL 125.585(3), the City's zoning ordinance provided that the city council's decision on a PUD application would be final and not appealable to the zoning board of appeals. Douglas Zoning Ordinance (2007), § 27.05(10). But the ordinance did envision that a party aggrieved by a final decision of the city council could seek review in the circuit court. Douglas Zoning Ordinance (2007), § 29.09.

After reviewing the PUD proposal, the planning commission ultimately recommended that the city council deny plaintiff's application. In April 2007, the city council voted to deny plaintiff's PUD application on the grounds that (1) the PUD would have insufficiently benefited the City, (2) a proposed road in the PUD did not comply with the City's road standards because it would have been too long and would have served too many homes without sufficient

secondary access, and (3) a proposed private access drive in the PUD would have negatively impacted sensitive wetland areas.

Plaintiff sought review of the city council's decision in the Allegan Circuit Court (Allegan Circuit Court Case No. 07-041260-AA).<sup>1</sup> The circuit court observed that it would only consider the record as it had been established before the city council, and would not take any new or additional evidence on appeal.<sup>2</sup> On May 20, 2008, the circuit court issued an opinion and order in which it concluded that there was competent, material, and substantial evidence on the record to support the city council's determination that the proposed road in the PUD did not comply with the applicable road standards because it would have been too long, would have served too many homes without adequate secondary access, and would not have allowed for sufficient emergency access. The court further concluded that, in light of this noncompliance with the applicable road standards, there was also competent, material, and substantial evidence to support the city council's determination that the PUD would provide an insufficient public benefit for the City. Accordingly, the circuit court upheld the city council's denial of plaintiff's PUD application.<sup>3</sup>

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<sup>1</sup> The former MCL 125.585(11) provided for circuit court review of a decision of a zoning board of appeals only—not a decision of a city or village council. As noted earlier, consistent with the former MCL 125.585(3), the City's zoning ordinance provided that the city council's decision on a PUD application was final and not reviewable by the zoning board of appeals. Douglas Zoning Ordinance (2007), § 27.05(10). However, the city council's denial of plaintiff's PUD application was nonetheless subject to direct review in the circuit court pursuant to Const 1963, art 6, § 28. *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 200-201; 550 NW2d 867 (1996). Because the city council's decision to deny plaintiff's PUD application was rendered following a hearing and was an administrative act rather than a legislative act, see *Paragon Properties v Novi*, 452 Mich 568, 574; 550 NW2d 772 (1996); *Kropf v Sterling Hts*, 391 Mich 139, 171; 215 NW2d 179 (1974) (LEVIN, J., concurring); *Sun Communities v Leroy Twp*, 241 Mich App 665, 669; 617 NW2d 42 (2000), the circuit court was required to review the decision to determine whether it was "supported by competent, material, and substantial evidence on the whole record," and whether it was "authorized by law," Const 1963, art 6, § 28; see also *Arthur Land Co, LLC v Otsego Co*, 249 Mich App 650, 664; 645 NW2d 50 (2002); *Carleton Sportsman's Club*, 217 Mich App at 200-201, 203; *Hessee Realty Inc v Ann Arbor*, 61 Mich App 319, 324; 232 NW2d 695 (1975).

<sup>2</sup> When reviewing the city council's administrative decision within the ambit of Const 1963, art 6, § 28, the circuit court was sitting as an appellate tribunal. *Carleton Sportsman's Club*, 217 Mich App at 201, 202-203. Therefore, the circuit court was limited to reviewing the administrative record as it existed before the city council. See Const 1963, art 6, § 28; see also *Arthur Land Co*, 249 Mich App at 664-665; *Carleton Sportsman's Club*, 217 Mich App at 202-203.

<sup>3</sup> The circuit court observed that it was "less clear" whether there was competent, material, and substantial evidence to support the city council's determination that the proposed private access drive would have negatively impacted sensitive wetland areas. Nevertheless, as noted

Plaintiff filed a delayed application for leave to appeal in this Court, but the delayed application was denied. *AM Rodriguez Assoc, Inc v Douglas City Council*, unpublished order of the Court of Appeals, entered January 20, 2009 (Docket No. 287503). Plaintiff did not seek review of this Court's order in the Michigan Supreme Court.

Meanwhile, plaintiff had filed a second action in the Allegan Circuit Court (Allegan Circuit Court Case No. 08-042693-CZ), alleging that the City's planning commission and city council had violated Michigan's zoning statutes<sup>4</sup> by denying the PUD application, that the planning commission had acted unreasonably in its initial review of the PUD application, that defendants had unconstitutionally taken plaintiff's private property without just compensation, and that defendants had violated plaintiff's constitutional rights to equal protection, procedural due process, and substantive due process. On March 3, 2008, the City removed the action to the United States District Court for the Western District of Michigan. Following the Allegan Circuit Court's resolution of plaintiff's administrative appeal in Allegan Circuit Court Case No. 07-041260-AA, defendants moved for judgment on the pleadings in the federal court action pursuant to Fed R Civ P 12(c).

The United States District Court determined that plaintiff had failed to pursue all available state court remedies with regard to its inverse condemnation claim and that the takings claim was therefore unripe for review in federal court. *AM Rodriguez Assoc, Inc v Douglas City Council*, unpublished opinion of the United States District Court for the Western District of Michigan, issued November 30, 2009 (Docket No. 1:08-CV-214). The United States District Court also concluded that plaintiff's equal protection and substantive due process claims were unripe because they were ancillary to the takings claim, and declined to exercise supplemental jurisdiction over plaintiff's claim that defendants had violated Michigan's zoning statutes. Lastly, the United States District Court ruled that it would hold plaintiff's "procedural due process claim in abeyance pending the outcome of any state court inverse condemnation claim suit."

Plaintiff filed the present action in the Allegan Circuit Court on December 29, 2009 (Allegan Circuit Court Case No. 09-046065-CZ). Plaintiff asserted that defendants had violated Michigan's zoning statutes (specifically MCL 125.3504) by denying the PUD application (count 1), and that defendants had unconstitutionally taken plaintiff's private property without just compensation (count 3). Plaintiff also alleged that that the City's planning commission had acted unreasonably in its initial review of the PUD proposal, that its deliberations had been tainted by a conflict of interest, and that the city council's ultimate decision to follow the planning commission's recommendations was therefore arbitrary and capricious (count 2).

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previously, the court upheld the city council's two other rationales for denying plaintiff's PUD application.

<sup>4</sup> In particular, plaintiff alleged that defendants had violated MCL 125.3504(3), which provides that "[a] request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in the zoning ordinance, the conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes."

On April 13, 2010, defendant moved for summary disposition, arguing that plaintiff's claims were barred by the doctrines of collateral estoppel and res judicata. Relying in part on *Choe v Flint Charter Twp*, 240 Mich App 662, 668 n 2; 615 NW2d 739 (2000), and *Krohn v Saginaw*, 175 Mich App 193, 198; 437 NW2d 260 (1989), defendants argued that plaintiff's claims had already been decided, or alternatively could have been raised and decided, in the original administrative appeal to the Allegan Circuit Court.

Plaintiff responded by arguing that its present claims were of a different nature than the claims before the circuit court in the original administrative appeal. Thus, plaintiff argued, its present claims were not barred by the doctrine of collateral estoppel. Plaintiff also asserted that its present claims could not have been raised and decided in the original administrative appeal because they were dependent on evidence outside the administrative record and the circuit court had limited its earlier review to the record established before the city council.

On July 15, 2010, the circuit court issued a detailed opinion and order. With respect to plaintiff's count 1, the circuit court ruled that the claim that defendants had violated Michigan's zoning statutes was barred by both collateral estoppel and res judicata. The court stated that "it appears that the issue of a zoning [statute] violation was litigated and determined . . . in the previous appeal," and noted that "even if [plaintiff's claim concerning] a violation of the zoning statute wasn't resolved in the first case, it certainly could have been." Likewise, the circuit court determined that plaintiff's count 2 was barred by both collateral estoppel and res judicata. The circuit court explained that it had already determined in the original administrative appeal that the city council's decision was supported by competent, material, and substantial evidence on the whole record, and that it necessarily followed that defendants' actions were not arbitrary, capricious, or unreasonable. Moreover, the court observed that even if the issue concerning the alleged conflict of interest had not been actually decided in the administrative appeal, it could have been raised and resolved in that case. Lastly, relying in part on this Court's opinion in *Krohn*, 175 Mich App at 198, the circuit court noted that plaintiff could have raised its inverse condemnation claim in the original administrative appeal but did not. Accordingly, the court ruled that plaintiff's takings claim was barred by the doctrine of res judicata.<sup>5</sup> Given its conclusion that plaintiff's claims were barred by the outcome of the previous administrative appeal, the circuit court granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(7).

## II

We review de novo the circuit court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition is properly granted pursuant to MCR 2.116(C)(7) when a claim is barred by collateral estoppel or res judicata. *Eaton Co Bd of Rd Commr's v Schultz*, 205 Mich App 371, 375; 521 NW2d 847 (1994). The applicability of the doctrines of collateral estoppel and res judicata are

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<sup>5</sup> Alternatively, the circuit court ruled that the takings claim was legally insufficient because plaintiff could not demonstrate a vested property right in the proposed PUD project.

questions of law that we review de novo. *Husted v Auto-Owners Ins Co*, 213 Mich App 547, 555; 540 NW2d 743 (1995).

### III

Plaintiff argues that the circuit court erred by concluding that its claims were barred by the doctrines of collateral estoppel and res judicata. We agree in part and disagree in part.

#### A

This Court explained the doctrine of collateral estoppel in *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006):

Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. The doctrine bars relitigation of issues when the parties had a full and fair opportunity to litigate those issues in an earlier action. A decision is final when all appeals have been exhausted or when the time available for an appeal has passed. [Citations omitted.]

In similar fashion, this Court explained the doctrine of res judicata in *Richards v Tibaldi*, 272 Mich App 522, 530-531; 726 NW2d 770 (2006):

In general, res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action is identical to that essential to a prior action. The purposes of res judicata are to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication. Res judicata requires that (1) the prior action was decided on the merits, (2) the decree in the prior action was a final decision, (3) the matter contested in the second case was or could have been resolved in the first, and (4) both actions involved the same parties or their privies. [Citations omitted.]

We note that the original administrative appeal in the Allegan Circuit Court was between the same parties or their privies. We further note that the prior administrative appeal resulted in a final decision on the merits. See *Gursten v Kenney*, 375 Mich 330, 334; 134 NW2d 764 (1965).

#### B

We conclude that plaintiff's claim that defendants violated Michigan's zoning statutes, in particular MCL 125.3504(3), was barred by res judicata. At the outset, we note that MCL 125.3504(3) does not apply in this case.<sup>6</sup> However, even if the statute did apply, count 1 of

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<sup>6</sup> The Michigan Zoning Enabling Act has completely replaced the former City and Village Zoning Act for zoning proceedings arising after July 1, 2006. MCL 125.3702(1)(a); see also 2006 PA 110. But plaintiff's PUD application was already pending when MCL 125.3504 took

plaintiff's complaint essentially challenged the methods and procedures followed by defendants in their review and ultimate denial of the PUD application. In other words, the challenges contained in count 1 of plaintiff's complaint did "not establish separate causes of action, but merely address[ed] alleged defects in the methods employed by [defendants] or the result reached by the [city council]." *Krohn*, 175 Mich App at 198. Accordingly, these challenges should have been raised in the original administrative appeal to the circuit court. *Id.* Furthermore, we note that the question whether defendants' methods and procedures violated the zoning statutes cited by plaintiff was "[n]ecessarily . . . involved" in the prior administrative appeal. *Zerfas v Eaton Co Drain Comm'r*, 326 Mich 657, 664; 40 NW2d 763 (1950). Because plaintiff's claim that defendants violated Michigan's zoning statutes could have been directly raised and decided in the original administrative appeal, and was at least impliedly at issue in that case, the circuit court properly concluded that it was barred by res judicata. *Richards*, 272 Mich App at 530-531.

### C

We also conclude that the circuit court properly determined that the claim set forth in count 2 of plaintiff's complaint was barred by res judicata. In count 2, plaintiff alleged that the City's planning commission had acted unreasonably in its initial review of the PUD proposal and that its deliberations had been tainted by a conflict of interest. As a consequence, plaintiff alleged, the city council's ultimate decision to follow the planning commission's recommendations and to deny the PUD application was arbitrary, capricious, and unreasonable. But these allegations merely challenged the adequacy of the procedures followed by the planning commission and the reasonableness of the city council's ultimate determination. Again, such challenges to defendant's procedures and methods should have been raised and resolved in the original administrative appeal to the circuit court. *Krohn*, 175 Mich App at 198. The circuit court did not err by concluding that the claim set forth in count 2 of plaintiff's complaint was barred by res judicata. *Richards*, 272 Mich App at 530-531.

### D

However, we disagree with the circuit court's decision to dismiss plaintiff's inverse condemnation claim on the basis of res judicata. Plaintiff's inverse condemnation claim was not merely a challenge to the adequacy of defendants' procedures, as were the claims set forth in counts 1 and 2 of the complaint. Nor was the question of an unconstitutional taking of private property "[n]ecessarily . . . involved" in the prior administrative appeal. *Zerfas*, 326 Mich at 664. As explained earlier, when reviewing the city council's decision in the original administrative appeal, the Allegan Circuit Court was sitting as an appellate tribunal and was limited to the administrative record as it existed before the city council. See Const 1963, art 6, § 28; see also *Carleton Sportsman's Club*, 217 Mich App at 202-203. But the city council plainly lacked the authority and jurisdiction to consider and decide plaintiff's constitutional

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effect. As the circuit court correctly determined, because plaintiff's PUD application was pending on June 30, 2006, the former City and Village Zoning Act continues to govern plaintiff's claims in this case and the Michigan Zoning Enabling Act does not apply. MCL 125.3702(2).

takings claim; the circuit court therefore could not have ruled on the inverse condemnation claim in the original administrative appeal. *Houdini Properties, LLC v Romulus*, 480 Mich 1022, 1022-1023; 743 NW2d 198 (2006).

In light of *Houdini Properties*, and given that plaintiff's inverse condemnation claim is dependent on evidence not contained in the administrative record established before the city council, we conclude that the circuit court erred by dismissing plaintiff's takings claim on the basis of res judicata. *Id.* For the same reasons, we must reject the circuit court's alternative conclusion that plaintiff's takings claim was legally insufficient because plaintiff could not demonstrate a vested property right in the proposed PUD project. We reiterate that plaintiff's inverse condemnation claim depended on additional evidence that was not, and could not have been, considered by the circuit court during the prior administrative appeal. It is fundamental that res judicata does not bar a claim in a subsequent action when the facts and evidence essential to the maintenance of the later action are different from the facts and evidence presented in the earlier action. *Old Kent Bank v Chaddock, Winter & Alberts*, 197 Mich App 372, 379; 495 NW2d 808 (1992); *Berar Enterprises, Inc v Harmon*, 101 Mich App 216, 226; 300 NW2d 519 (1980). The circuit court erred by granting summary disposition in favor of defendants with respect to plaintiff's inverse condemnation claim.

#### IV

We affirm the circuit court's grant of summary disposition in favor of defendants with respect to the claims set forth in counts 1 and 2 of plaintiff's complaint. However, we reverse the circuit court's grant of summary disposition in favor of defendants with respect to plaintiff's inverse condemnation claim and remand for further proceedings.

In light of the foregoing conclusions, we need not decide whether the claims set forth in counts 1 and 2 of plaintiff's complaint were also barred by the doctrine of collateral estoppel.

Affirmed in part, reversed in part, and remanded for further proceedings with respect to plaintiff's inverse condemnation claim. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, no party having prevailed in full.

/s/ Kathleen Jansen  
/s/ David H. Sawyer  
/s/ Douglas B. Shapiro