STATE OF MICHIGAN

COURT OF APPEALS

AUSTRIAN PINES LIMITED PARTNERSHIP, BERTAKIS DEVELOPMENT, LYDIA KLOHA, ERNEST ZEILINGER and WILMA ZEILINGER,

Plaintiffs-Appellants,

v

FRANKENLUST TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED
October 31, 1997

No. 192492
Bay Circuit Court
LC No. 93-003091-CE

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order denying their claims of exclusionary zoning and regulatory taking. We affirm.

Plaintiff Bertakis Development entered into option contracts with plaintiffs Lydia Kloha, Ernest Zeilinger, and Wilma Zeilinger to purchase several parcels of land, which were zoned for agricultural and single family residential uses. Plaintiffs planned to develop this land as a manufactured home community, which would be called Austrian Pines, Ltd. Plaintiffs attempted to have the land re-zoned for the development of their community, but defendant refused. Alleging exclusionary zoning and a regulatory taking, plaintiffs brought this action to force defendant to re-zone the property.

Plaintiffs present several grounds for their argument that the trial court erroneously determined that they had failed to establish a claim of exclusionary zoning. However, the matter may be resolved much more simply than their argument indicates. A zoning ordinance may not totally exclude a lawful land use where (1) there is a demonstrated need for the land use in the township or surrounding area, and (2) the use is appropriate for the location. *English v Augusta Twp*, 204 Mich App 33, 37-38; 514 NW2d 172 (1994). In our opinion, plaintiffs have failed to meet its burden of proof regarding a demonstrated need for such land use. For example, according to the testimony of Edward Hicks, who worked as a consultant for Bertakis Development when they were planning this community, two communities that were similar to the one that plaintiffs had planned were located within a few miles of

plaintiffs' proposed site. In addition, these communities were expanding and continued to maintain vacancies. Therefore, in our opinion, the trial court did not err in finding that plaintiffs had failed to establish that the township engaged in exclusionary zoning.

Plaintiffs also argue that the court erred in finding that the property had economic viability as zoned, thus concluding that no regulatory taking had occurred. In making this argument, plaintiffs incorrectly focus on a comparison between the economic benefits of the zoned uses with the economic benefits of developing the land as a manufactured home community. The proper focus is the approach taken by the court, i.e., whether the property was unsuited for the zoned use or unmarketable as zoned. *Bevan v Brandon Twp*, 438 Mich 385, 403; 475 NW2d 37 (1991). The evidence established that this property was zoned for agricultural or single family residential uses. For example, the testimony indicated that the property had value and had been generating income as farmland, and that each half-acre lot was worth $15,000 if sold for single family residential purposes. The evidence indicated that the property was suitable for the zoned use and marketable as zoned. In our opinion, plaintiffs simply have not carried their burden to establish a regulatory taking.

Affirmed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Robert P. Young, Jr.