STATE OF MICHIGAN

COURT OF APPEALS

PARAGON PROPERTIES, INC, Plaintiff-Appellee,	UNPUBLISHED December 1, 2000
v	No. 209233 Oakland Circuit Court
CITY OF NOVI and NOVI ZONING BOARD OF APPEALS, Defendants-Appellants.	LC No. 95-494243-AA

Before: Fitzgerald, P.J., and Holbrook, Jr. and McDonald, JJ.

PER CURIAM.

Defendants appeal by leave granted the order reversing a decision of defendant Zoning Board of Appeals and ruling that plaintiff is entitled to a variance to use its seventy-five acre parcel for a mobile home development on the grounds of exceptional circumstance, undue hardship, and the inability to use the property as zoned. We reverse.[1]

Plaintiff, Paragon Properties, Inc., owns a seventy-five acre parcel of land located in the city of Novi. This matter arises out of plaintiff's request for a variance to use the property for a mobile home park. Plaintiff's earlier constitutional challenge against the zoning ordinance was before our Supreme Court in *Paragon Properties Co v Novi*, 452 Mich 568; 550 NW2d 772 (1996). In that case, the Court found that the Novi city council's denial of Paragon's request to rezone its property was not a final decision appealable to the circuit court and that Paragon's constitutional claim was not ripe for review. *Id.* at 581-583. The Court made no determination regarding the correctness of the decision to deny the rezoning request.

While the earlier action was still in the appellate courts, the city rezoned plaintiff's land from A-R1, large lot, single family residential to OS-2/PD-4, planned office service district. Shortly thereafter, plaintiff filed an application for a use variance[2] pursuant to § 3104(b) of the Novi city zoning ordinance seeking to use its seventy-five acre parcel for a mobile home park

[1] The history of the nearly fifteen years of legal wrangling is well-presented in the Supreme Court opinion.

[2] As opposed to the earlier *rezoning* request.

instead of the commercial uses permitted by its OS-2/PD-4 classification. At the January 3, 1995, Zoning Board of Appeals (ZBA) hearing on plaintiff's petition, plaintiff asserted that the parcel could not be used for office space because the presence of a gravel pit across the street, two mobile home parks, and an asphalt plant nullified the potential placement of a mental health clinic, hospital, restaurant, or bank. Brandon Rogers, Novi's planning consultant, disagreed. He testified that the property was well-suited for OS-2/PD-4 future land use, noting that an iron works, steel plant, and car dealership are in the immediate neighborhood. Rogers indicated that the adjacent gravel pit would soon be closed and would have little effect on the parcel in the future. Rogers indicated that the parcel had good access from both Grand River and I-96, and that its present zoning allowed for broad possibilities. Board member Harrington opined that plaintiff failed to support its variance request with the facts needed and that neither plaintiff's oral statements nor information packet established exceptional difficulties using the parcel for its zoned use. Board members Harris and Pfeffer indicated that plaintiff failed to meet its burden to produce evidence that would lead a reasonable person to believe that the property could not be used for any of the uses permitted by the zoning ordinance. The board voted unanimously to deny the use variance based on plaintiff's failure to demonstrate exceptional practical difficulty or undue hardship.

Following this denial, plaintiff filed a revised application for a variance that the ZBA treated as a request for reconsideration. Plaintiff attached the affidavit of Joel Feldman, a senior vice president of a commercial real estate firm hired by plaintiff to review the feasibility of using the parcel under the present zoning. Feldman opined that the zoning posed practical difficulties and exceptional hardship because the land could not be developed because of its lack of frontage on a major thoroughfare, its close proximity to a cement plant, Novi's lack of need for premium office space, the lack of city water or sewer, and the inability to get financing based on these conditions.

In response, Rogers indicated that the parcel abutted two major paved thoroughfares and that the area within one mile of plaintiff's parcel was filled with research offices, industrial parcels, and general businesses. According to Rogers, sewers could be extended to the land or, in the alternative, an on-site treatment facility could be created. In discussion of the matter, ZBA member Harrington noted that Feldman's affidavit was the only germane evidence plaintiff provided and noted that the positions of Feldman and Rogers were in stark conflict but that most of Feldman's statements were conclusions. The board voted unanimously to deny the variance.

Plaintiff filed a petition for review in the circuit court, arguing that the parcel was unsuitable for any use other than a mobile home development and that the board's decision to deny either rezoning or a variance was clearly erroneous and against the great weight of the evidence and constituted a taking. Defendants responded by arguing that the ZBA may grant a use variance only when it can be clearly shown that the parcel cannot be used as zoned. According to defendants, the parcel's zoning allowed for a broad range of uses and plaintiff had failed to show that the parcel could not be used for any of these permitted uses.

On January 7, 1998, the court issued a written opinion, noting that plaintiff asserted that the property could not be used as zoned, that the city previously admitted that there was a demand for manufactured housing, and that the ground does not percolate. The court also noted

that the city's planning consultant, Rogers, indicated that current zoning permits numerous uses and that the property had good access routes. The court ruled that the ZBA's decision was not supported by competent, material, or substantial evidence and did not constitute the reasonable exercise of discretion. The court found that plaintiff established that the property cannot be used as zoned because of the two mobile home parks to the south, the gravel pit to the west, the nearby concrete plant, the abutting dirt road, the lack of location on a prominent thoroughfare, lack of sewer system, the substantial distance to the nearest highway connection, and the soil's inability to percolate. The court concluded that plaintiff's evidence presented a compelling case that the parcel could not be used as zoned, that plaintiff would suffer practical difficulties, and that failure to grant a variance would result in undue hardship. The court stated that Rogers conceded that the parcel was only suited for OS-2/PD-4 use in the future, ruling that Rogers' testimony implicitly supported plaintiff's position that the parcel could not presently be used as zoned. The court found that Rogers' testimony regarding alternative water sources and water treatment systems was irrelevant because there was no evidence that these alternatives were feasible for plaintiff. According to the court, the ZBA's decision rested on nothing more than a scintilla of evidence, did not represent the reasonable exercise of discretion, and was not supported by competent, material, and substantial evidence.

On appeal, defendants argue that the circuit court grossly applied the substantial evidence test and applied incorrect legal principles by failing to recognize that the burden of proof for the variance was on plaintiff. This Court reviews the circuit court's review of an agency action to determine whether the circuit court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *York v Wayne Co Sheriff's Dep't*, 227 Mich App 514, 516-517; 576 NW2d 436 (1998). This latter standard is indistinguishable from the clearly erroneous standard of review. *Boyd v Civil Service Comm*, 220 Mich App 226, 235; 559 NW2d 342 (1996). A finding is clearly erroneous when, on review of the whole record, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

A. General law of zoning

The zoning of land is a reasonable exercise of government police power. *Village of Euclid, Ohio v Ambler Realty Co*, 272 US 365; 47 S Ct 114; 71 L Ed 303 (1926). Zoning regulations are a legitimate means to protect important property interests and accommodate competing uses of property within a community. *The Jesus Center v Farmington Hills Zoning Bd of Appeals*, 215 Mich App 54, 67; 544 NW2d 698 (1996). However, because zones established by ordinance will not always reflect the realities of all land controlled by a zoning ordinance, the City and Village Zoning Act provides a process by which a property owner may seek a variance from the application of an ordinance. MCL 125.585(9); MSA 5.1935(9). A land use variance is, in essence, a license to use property in a way that would not be permitted under a zoning ordinance. *Paragon, supra* at 575 n 3; *Fredericks v Highland Twp*, 228 Mich App 575, 582; 579 NW2d 441 (1998). Variances should be sparingly granted so that the award of one variance in an area where many parcels are similarly situated does not result in a material change to the zoning district. *Puritan-Greenfield Improvement Ass'n v Leo*, 7 Mich App 659, 671; 153 NW2d 162 (1967). Variances fall within one of two broad categories: use variances or non-use variances. *Nat'l Boatland, Inc v Farmington Hills Zoning Bd of Appeals*, 146 Mich App 380.

387; 380 NW2d 472 (1985). Use variances permit a use of the land that the zoning ordinance otherwise proscribes. *Id.* Non-use variances are not concerned with the use of the land, but rather, with changes in a structure's area, height, and setback. Plaintiff sought a use variance by seeking to use the property for a purpose other than those the zoning ordinance allowed.

B. The Novi zoning ordinance and the zoning of plaintiff's property

The preamble to the Novi Code of Zoning Ordinances states that its purpose is to regulate the use of land to ensure, inter alia, the health and safety of residents. It provides:

> Pursuant to the authority conferred by the Public Acts of the State of Michigan in such case, made and provided and for the purpose of promoting, and protecting the public health, safety, peace, morals, comfort, convenience, and general welfare of the inhabitants of the City of Novi, by protecting and conserving the character and social and economic stability of the residential, commercial, industrial and other use areas; by securing the most appropriate use of land; preventing overcrowding of the land and undue congestion of population; providing adequate light, air and reasonable access; and facilitating adequate and economical provision of transportation, water, sewers, schools, recreation and other public requirements, and by other means, all in accordance with a comprehensive plan [this city adopts this ordinance]. [§ 125.13, Novi Zoning Ordinance.]

Plaintiff's property has been zoned OS-2, planned office service district since 1994. This classification provides:

> The OS-2 Planned Office Service District is designed to provide for various types of office uses performing administrative, professional and personal services and for businesses which provide a service as opposed to selling a product. These districts are intended to be located and planned so as to provide convenient customer parking and pedestrian movement within the District and a minimum of conflict with traffic on abutting major thoroughfares. To assure optimum site planning relationships with minimum internal and external traffic conflict, each use will be reviewed as it relates to its site and abutting properties. [§ 2301.]

The use of property in an OS-2 district is limited to:

> 1. Office buildings, offices and office sales and service activities for any of the following occupations: Executive, administrative, professional, accounting, writing, clerical, stenographic, drafting, sales and engineering and data processing; corporate offices and headquarters and office support functions, such as conference rooms, dining facilities, photographic facilities and record storage facilities.
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> 2. Medical offices, including laboratories and clinics.

3. Facilities for human care, such as hospital, sanitariums, convalescent homes, hospice care facilities and assisted living facilities subject to the requirements of subsection 1101.3.

4. Off-street parking lots.

5. Accessory structures and uses customarily incident to the above permitted uses.

6. Publicly owned and operated parks, parkways and outdoor recreational facilities. [§ 2301.]

However, the property is also zoned PD-4, which provides for a number of other uses subject to the approval of the planning commission. These uses are accessory to the principal used of the OS-2 district:

1. One or more of the following secondary uses which is accessory to and located in the same building as a principal use authorized by Section 2301: A pharmacy or apothecary shop, medical supply store, optical services, restaurants, barber shops or beauty shops, gift shops, travel agencies, health studios and related services for employees of offices[.]

2. Sit down restaurants, except those possessing the character of a drive-in, drive-through, fast food, or fast food carry out or delivery facility[.]

3. Public owned buildings, telephone exchange buildings, and public utility offices, but not including storage yards, transformer stations, substations or gas regulator stations.

4. Banks, credit unions, savings banks, savings and loan associations and other types of financial institution uses with drive-in facilities as an accessory use only.

5. Public or private indoor recreational facilities, including, but not limited to, health and fitness facilities and clubs, swimming pools, tennis and racquetball courts, roller skating facilities, ice skating facilities, soccer facilities, baseball and softball practice areas, indoor archery ranges and similar indoor recreational uses, and private outdoor recreational facilities, including, but not limited to, play fields, playgrounds, soccer fields, swimming pools, tennis and racquetball courts and ice skating facilities. [§ 2302, Principal Uses Permitted Subject to Special Conditions.]

C. The variance procedures

The ordinance further provides that a landowner may seek a variance if a zoning requirement causes an undue hardship when coupled with unique circumstances related to the land. The ordinance defines a variance as:

A modification of the literal provisions of the Zoning Ordinance granted when strict enforcement of the Zoning Ordinance would cause undue hardship

> owing to circumstances unique to the individual property on which the variance is granted. *The crucial points of variance are: (a) undue hardship, (b) unique circumstances, and (c) applying to property. A variance is not justified unless all three elements are present in the case.* A variance is not an exception. [Novi Zoning Ordinance, Definitions, emphasis added.]

The ordinance also directs a landowner's method for seeking such a variance:

> 1. The Zoning Board of Appeals shall not have the power to alter or change the zoning district classification of any property, nor to make any change in the terms of this Ordinance but *shall have the power to authorize a use in a zoning district in which it is not otherwise permitted, provided it is clearly shown that the land cannot be used for a zoned use*, and shall be further empowered to act on those matters where this Ordinance provides for an administrative review, interpretation, exception or special approval permit and to authorize a variance as defined in this Section and laws of the State of Michigan. Said powers include:
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> * * *
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> b. *Variance.* To authorize, upon an appeal, a variance from the strict application of the provisions of this Ordinance *where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of this Ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to or exceptional undue hardship upon the owner of such property provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Ordinance.* In granting a variance, the Board may attach thereto such conditions regarding the location, character and other features of the *proposed uses* as it may deem reasonable in furtherance of the purpose of this Ordinance. In granting or denying a variance, the Board shall state the grounds upon which it justifies the granting or denying of a variance. The decision shall be in writing and delivered to the applicant by registered or certified mail. [Novi Zoning Ordinance, § 3104, emphasis added.].

D. Does the zoning ordinance provide different standards for an award of a use variance as opposed to a non-use variance?

Defendants argue that the wording of the ordinance differentiates between property owners seeking use variances and those seeking non-use variances. The ordinance itself does not use the terms "use variance" and "non-use variance." However, the trial court ruled that the property could not be used as zoned without suffering from exceptional practical difficulties and that failure to grant a variance would result in an undue hardship. Defendants contend that a use variance may be granted only when the property may not be used as zoned, and that it is a non-use variance that may be granted when the strict application of the regulations would result in

peculiar or exceptional practical difficulties or exceptional undue hardship. Defendants assert that the court merged the standard for a use variance with the standard for a non-use variance and that it was improper for the court to consider exceptional practical difficulties and undue hardship.

The zoning ordinance is confusing because it defines as crucial to a variance both an undue hardship and unique situation. At the same time, the ordinance states that the ZBA may permit an otherwise unauthorized use in a district if the property cannot be used as zoned. The ordinance also provides that when property is narrow, shallow, oddly shaped, or has some other exceptional condition and the zoning caused the landowner exceptional practical difficulties or exceptional undue hardship, a variance may be granted if it would create no substantial detriment to the public good or the intent of the ordinance. While this latter language seems to be directed at the award of a non-use variance, that same paragraph provides that the ZBA may attach conditions to an award of a variance in relation to the proposed *uses*. While the ordinance is not a model of clarity, the key aspect for a variance from a use restriction is in § 3104(1), which provides that the board may authorize an otherwise prohibited use if it clearly shows that the property may not be used as zoned. Even if the ordinance can be read to include the exceptional difficulty or undue hardship language when a use variance is considered, the plain language of the ordinance mandates that first it must be shown the land is not useable as it is currently zoned.

E. Did the circuit court use the proper standard of review?

The circuit court's review of ZBA decisions is limited to whether the decision is authorized by law and supported by competent, material, and substantial evidence on the whole record. *Dowerk v Oxford Twp*, 233 Mich App 62, 72; 592 NW2d 724 (1998). "Substantial evidence" is evidence that a reasonable person would accept as sufficient to support a conclusion. *Tomczik v State Tenure Comm*, 175 Mich App 495, 499; 438 NW2d 642 (1989).

Here, the circuit court did not limit itself to this review. In its written opinion, the court acknowledged that defendants presented testimony that the property had good access and that its zoning permitted a number of uses. The court nonetheless found that competent, material, and substantial evidence did not support the ZBA's denial and that the property could not be used as zoned because of the adjacent mobile home parks to the south, the gravel pit to the west, the nearby concrete plant, the abutting dirt road, the lack of a prominent thoroughfare, lack of sewer system, the substantial distance to the nearest highway connection, and the soil's inability to percolate. According to the court, plaintiff and its expert, Joel Feldman, presented a compelling case that the parcel could not be used as zoned, that plaintiff would suffer from exceptional practical difficulties, and that failure to grant a variance would result in undue hardship. The court also based its decision on Brandon Rogers' testimony that the parcel would only be suited for OS-2/PD-4 in the future.

The court's opinion makes clear that the court exercised nearly a de novo standard of review, and with regard to the water and sewage issues actually shifted the burden of proof to defendants to show that alternative methods were feasible for plaintiff. The city presented testimony that the property could be used for research and office development, had good access routes, was close to other commercial office developments, that plaintiff could use other methods of receiving water and had the potential of using alternative methods of receiving water and

sewage treatment. At the very least, the testimony of Rogers and Feldman was a draw. In such an instance, it cannot be said that plaintiff met its burden of proof. *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 402; 534 NW2d 143 (1995).

F. Is the zoning based on existing conditions?

Another basis for the trial court's ruling was its finding that the zoning classification for plaintiff's property was not grounded in the current status of the land and area, but directed at future potential. The court based its finding on a comment by Rogers that the gravel pit would soon be closed and therefore in the future would not cause a problem for plaintiff's property. *Id.* While speaking before the ZBA, Rogers specifically stated:

> [F]rom a planning standpoint and looking beyond just the limits of the City of Novi, looking at Lyon Township, looking at Wixom, looking at Milford and even getting into Brighton, this is a developing corridor, because the area to the east is in Farmington[,] in Southfield[,], in Farmington Hills, is getting occupied and the movement is to the west. So I see the value to retain the OS-2/PD-4 classification for the subject property. I think its reasonable and I think in the foreseeable future it will be reasonable.

A zoning ordinance is subject to a rebuttable presumption of validity. *A & B Enterprises v Madison Twp*, 197 Mich App 160, 164; 494 NW2d 761 (1992). The validity of a zoning regulation must be tested by existing conditions. *Troy Campus v City of Troy*, 132 Mich App 441, 457; 349 NW2d 177 (1984). In *Gust v Canton Twp*, 342 Mich 436, 442; 70 NW2d 772 (1955), the Court stated:

> The extent of the owner's right to the free use of his property in the manner deemed best by him is not to be determined by such speculative standards. The test of validity is not whether the prohibition may at some time in the future bear a real and substantial relationship to the public health, safety, morals or general welfare, but whether it does so now.

The reasonableness of a zoning regulation must be gauged against existing facts and conditions and not conditions that might exist in the future. *Comer v Dearborn*, 342 Mich 471, 477; 70 NW2d 813 (1955). In this case, the trial court seized on Rogers' statement as an admission that the property could not currently be used as zoned. However, Rogers' statement followed nine transcript pages in which Rogers discussed all the development in the areas adjacent to plaintiff's land, the highway and street access sites, and the possibility of alternative water and sewer systems. The circuit court's interpretation of Rogers' statement is strained in light of Rogers' extensive testimony about the amount of commercial development occurring in the area surrounding plaintiff's lot. In light of the surrounding commercial uses, the zoning bears a real and substantial relationship on the current status of the property, not merely its status in the future. *Gust, supra* at 442.

F. Plaintiff's taking and substantive due process arguments

Plaintiff claimed that the zoning ordinance constituted a taking and that the ZBA's denial of a variance violated its right to substantive due process. A land-use regulation effectuates a taking where the regulation does not substantially further a legitimate governmental interest, or where the regulation deprives the owner of economically viable use of the land. *K & K Construction, Inc v Dep't of Nat'l Resources*, 456 Mich 570, 576; 575 NW2d 531 (1998). Here, the city's stated purpose for the zoning ordinance is, inter alia, to promote and protect the public health, safety, peace, morals, comfort, and convenience, and facilitates adequate provisions of transportation, water, sewers, schools, recreation, and other public requirements. This provision for the public safety is clearly a legitimate governmental interest. *Bevan v Brandon Twp*, 438 Mich 385, 399-400; 475 NW2d 37 (1991).

Since the purpose of the zoning is permissible, the question becomes whether the regulation denied plaintiff any economically viable use of its land. *Dowerk, supra* at 67. Our Supreme Court has used two factors in determining whether zoning regulation effects a taking by removing an economically viable use of land: whether the owner has shown that the property is either unsuitable for use as zoned or that it is unmarketable as zoned. *Bevan, supra* at 403. Mere diminution in value does not amount to taking. *Bell River Associates v China Charter Twp,* 223 Mich App 124, 133; 565 NW2d 695 (1997).

In *Bell River,* the plaintiff owned 292 acres in a rural township with 2,500 residents. The property was zoned for agricultural use, but the plaintiff sought to develop some of the property for use of a 454-unit mobile home park with a projected 1,000 residents. *Id.* at 126. The zoning ordinance permitted a number of uses for the property: (1) one-family detached dwellings, (2) farms and agricultural activities, (3) sales of agricultural products, (4) public parks, recreational facilities, and schools, (5) garage sales, and (6) accessory buildings and uses customarily incident to the above-mentioned uses. *Id.* at 130. A number of other uses were permissible with permission of the township including airports, cemeteries, raising of livestock and farm animals, large-scale recreation, kennels and animal clinics, mining and extraction, and commercial composting facilities. *Id.* at 130. The property was not serviced by public water or sewer and the closest connections were four miles away. *Id.* The township denied that rezoning request. *Id.* at 126. The plaintiff then sued to compel the township to change the zoning, but the circuit court denied the rezoning and found that the township had properly denied the zoning change based on the unavailability of public utilities, the proposed use's incompatibility with the area, the remoteness of the site, and the impact that the influx of a relatively large population would have on township resources. *Id.* at 127. The circuit court further ruled that the plaintiff had not shown that the existing agricultural zoning classification precluded use of the property for other purposes. *Id.* The plaintiff appealed, emphasizing that leasing its property as farmland was not economically viable, but this Court noted that the mere diminution in value alone cannot constitute a taking. *Id.* at 133. This Court ruled that the plaintiff had not established that the land could not be used for other adaptable purposes and failed that to show that the agricultural zoning precluded use of the property for any purpose. *Id.* The plaintiff claimed that the circuit court erred in focusing on the parcel's lack of water and sewer services in affirming the denial, contending that any large development would be subject to the same sewer and water considerations. *Id.* at 134. This Court stated that a large development on plaintiff's property, given its remote location, would demand a costly and complex solution to the existing water- and sewer-connection problem. *Id.*

Here, the OS-2/PD-4 zoning classification permits plaintiff to use the property in a multitude of ways, including office buildings; offices and office sales and service activities for executive, administrative, professional, accounting, writing, clerical, stenographic, drafting, sales and engineering and data processing; facilities for human care, such as hospitals, sanitariums, convalescent homes, hospice care facilities and assisted living facilities; off-street parking lots; publicly owned and operated parks, parkways and outdoor recreational facilities; corporate offices and headquarters and office support functions, such as conference rooms, dining facilities, photographic facilities and record storage facilities, medical offices, laboratories and clinics, banks, credit unions, savings banks, savings and loan associations; indoor recreational facilities, including, but not limited to, health and fitness facilities and clubs, swimming pools, tennis and racquetball courts, roller skating facilities, ice skating facilities, soccer facilities, baseball and softball practice areas, indoor archery ranges and similar indoor recreational uses; and private outdoor recreational facilities, including, but not limited to, play fields, playgrounds, soccer fields, swimming pools, tennis and racquetball courts and ice skating facilities. Further, secondary uses accessory to and located in the same building as a principal use may be operating on this property. These accessory uses include: a pharmacy, medical supply store, optical services, restaurants, barber shops or beauty shops, gift shops, travel agencies, health studios; sit down restaurants, publicly owned buildings, telephone exchange buildings, and public utility offices. The broadness of the options open to a developer of this land is made clear by ordinance. Even assuming Paragon showed that a premium office tower was not appropriate for the site, plaintiff did not present any evidence or an argument that the land could not be used for the myriad of other approved uses.

A substantive due process claim requires proof that there is no reasonable governmental interest being advanced by the present zoning classification or 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. *Fredericks, supra* at 594; *Kropf v Sterling Heights*, 391 Mich 139, 158; 215 NW2d 179 (1974). Here, the city presented evidence that the property's location was near the site of many industrial and high tech developments and that the area was envisioned as being a high tech corridor. Plaintiff presented no evidence that the zoning was arbitrary or capricious. The permitted uses under the OS-2/PD-4 classification are extremely broad.[3] Accordingly, we reject plaintiff's constitutional challenges.

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[3] A large portion of plaintiff's factual statement and argument relates to findings made and testimony taken in its original action in the Oakland Circuit Court arising out of its efforts to have the land rezoned from single family residential to a classification allowing mobile homes. The decision in that case was reversed by our Supreme Court in *Paragon, supra*, 452 Mich at 579-582, based on that Court's ruling that plaintiff was obligated to seek a variance before filing a circuit court action based on the alleged unconstitutionality of the ordinance as applied.

This Court has defined "reverse" to mean to overthrow, vacate, set aside, make void, annul, repeal, or revoke; as to reverse a judgment, sentence or decree of a lower court by an appellate court, or to change to the contrary or to a former condition. *Hopkins v Michigan Parole Bd*, 237 Mich App 629, 642; 604 NW2d 686 (1999). To reverse a judgment means to overthrow

(continued…)

Reversed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald

(…continued)

it by contrary decision, make it void, undo or annul it for error. *Id.* In this instance, our Supreme Court reversed the previous circuit court decision, and therefore its ruling can have no bearing on this matter other than being of historical interest. Additionally, the testimony taken during the trial in that use would also be of no efficacy because at the time it was taken, plaintiff's land was zoned single family residential. By the time plaintiff sought the variance that is the subject of this appeal, its land was zoned for commercial use. This is a significant change in the zoning scheme making that earlier trial testimony irrelevant.