STATE OF MICHIGAN

COURT OF APPEALS

RAYMOND HUGHES,

Plaintiff-Appellant,

v

EMMET COUNTY SANITARY CODE and NORTHWEST MICHIGAN COMMUNITY HEALTH AGENCY,

Defendants-Appellees.

UNPUBLISHED
February 15, 2002

No. 225008
Emmet Circuit Court
LC No. 97-004340-AS

WALTER A. HARBUS,

Plaintiff-Appellant,

v

EMMET COUNTY SANITARY CODE and NORTHWEST MICHIGAN COMMUNITY HEALTH AGENCY,

Defendants-Appellees.

No. 225010
Emmet Circuit Court
LC No. 97-004342-AS

Before: Griffin, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's dismissal of their request for superintending control. Plaintiffs sought superintending control after defendants denied their requests for groundwater variances to install septic systems on their properties. We affirm.

Plaintiffs first argue that defendants violated their equal protection rights under the United States Constitution, US Const, Am XIV, and the Michigan Constitution, Const 1963, art 1, § 2. This Court applies three different levels of review to equal protection claims. *Crego v Coleman*, 463 Mich 248, 259; 615 NW2d 218 (2000); *People v Pitts*, 222 Mich App 260, 272; 564 NW2d 93 (1997). In the present case, rational basis review applies because there is no inherently suspect classification and no fundamental right was affected. *Vargo v Sauer*, 457

Mich 49, 60; 576 NW2d 656 (1998); *Frame v Nehls*, 452 Mich 171, 183; 550 NW2d 739 (1996). Under rational basis review, the plaintiff must demonstrate that the legislation is not rationally related to a legitimate government purpose. *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 73; 592 NW2d 724 (1998).

In the present case, plaintiffs challenge defendants' application of the code to their properties, rather than any classification inherent in the code. Plaintiffs' argument is based entirely on the Sanitary Code Board of Appeals' decisions to grant other property owners variances. The board had no duty to repeat past mistakes. *Blackman Twp v Koller*, 357 Mich 186, 189; 98 NW2d 538 (1959); *Orion Twp v State Tax Comm*, 195 Mich App 13, 17; 489 NW2d 120 (1992). Further, defendants claim there were differences in the properties' soil, which would form a rational basis for approving certain variances while denying plaintiffs' requests. The board was not required to treat persons under different circumstances equally. *In re AH*, 245 Mich App 77, 82; 627 NW2d 33 (2001).

Plaintiffs offer no evidence of discrimination beyond the granting of variances for other similar but not identical properties. Mere speculation is insufficient to establish an equal protection violation. *Palo Group Foster Care, Inc v Michigan Dep't of Social Services*, 228 Mich App 140, 151; 577 NW2d 200 (1998). Plaintiffs failed to meet their burden of demonstrating that defendants violated their equal protection rights.

Plaintiffs also argue that the Emmet County Sanitary Code is unconstitutional on its face because it fails to provide fair notice and rational standards for the decision-making body. An ordinance is unconstitutionally vague if it fails to provide fair notice of the conduct it prohibits or fails to provide sufficient standards and thereby encourages subjective and discriminatory enforcement. *Plymouth Charter Twp v Hancock*, 236 Mich App 197, 200; 600 NW2d 380 (1999); *West Bloomfield Charter Twp v Karchon*, 209 Mich App 43, 49, 54; 530 NW2d 99 (1995). Fair notice does not exist if persons of common intelligence must guess at the ordinance's meaning. *West Bloomfield Charter Twp*, *supra* at 49. Due process requires that grants of legislative authority include standards as reasonably precise as the subject matter requires and allows. *Champion's Auto Ferry, Inc v Michigan Public Service Comm*, 231 Mich App 699, 720; 588 NW2d 153 (1998).

In the present case, plaintiffs challenge the terms "exceptional or extraordinary circumstances or conditions" and "unnecessary hardship." This Court should give the words their ordinary meaning. *West Bloomfield Charter Twp*, *supra* at 49. The terms are admittedly subject to different interpretations. However, the code's authors presumably wanted the code to apply to a wide range of situations; therefore, it would be difficult to be more precise. Unlike the ordinance in *Osius v St Clair Shores*, 344 Mich 693, 700; 75 NW2d 25 (1956), cited by plaintiffs, the challenged code here does contain standards. The terms provide sufficient notice and are as precise as the subject matter permits; therefore, they are not unconstitutionally vague. *Plymouth Charter Twp*, *supra* at 200.

Finally, plaintiffs argue that defendants improperly applied the code requirements to their properties. This Court must affirm decisions of administrative bodies unless they are either contrary to law or are not supported by competent, material, and substantial evidence on the whole record. *Gordon v Bloomfield Hills*, 207 Mich App 231, 232; 523 NW2d 806 (1994). This standard applies to a county sanitary appeals board. *Murphy v Oakland Co Dep't of Health*, 95

Mich App 337, 339; 290 NW2d 139 (1980). The same standard also applies when a plaintiff seeks an order of superintending control. *In re Payne*, 444 Mich 679, 689-690; 514 NW2d 121 (1994).

Substantial evidence is "the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion." *In re Payne*, *supra* at 692; see also *Dowerk*, *supra* at 72. If two conclusions were reasonable, this Court must defer to the board's expertise. *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405-406; 534 NW2d 143 (1995); *In re Kurzyniec Estate*, 207 Mich App 531, 537; 526 NW2d 191 (1994). This Court must also give great weight to the board's interpretation of the code. *Ansell v Dep't of Commerce (On Remand)*, 222 Mich App 347, 354; 564 NW2d 519 (1997).

In the present case, plaintiffs claim they met the requirements for a variance, which are the following: (1) it is physically impossible to apply the code or it would cause unnecessary hardship; (2) the variance is in accord with the code's intent and public health, safety, and welfare; and (3) there are exceptional or extraordinary circumstances. Although we question one board member's interpretation of "unnecessary hardship," it was reasonable for the board to determine that plaintiffs failed to demonstrate exceptional or extraordinary circumstances. It is also unclear what effect the variances would have on public health and safety. It also may have been reasonable for the board to grant the variances; however, it is not sufficient to show that another decision was also reasonable. *Davenport*, *supra* at 405-406; *In re Kurzyniec Estate*, *supra* at 537. The decision was based on competent, material, and substantial evidence on the whole record.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra