STATE OF MICHIGAN

COURT OF APPEALS

CONCERNED CITIZENS OF CHESANING, Plaintiff-Appellant,	UNPUBLISHED June 10, 2004
v	No. 246564 Saginaw Circuit Court
VILLAGE OF CHESANING, Defendant-Appellee.	LC No. 01-038988-AV

Before: Hoekstra, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order denying plaintiff's motion to reopen proofs and upholding an amendment to defendant's zoning ordinance. Because the offered proofs, even if accepted, do not address the basis for the trial court's decision, and the zoning amendment was a reasonable means of achieving a legitimate governmental purpose, we affirm.

The facts of the case are undisputed. Defendant amended its zoning ordinance on May 1, 2001 to allow temporary outdoor recreation and entertainment by special permit in areas zoned M-1 (manufacturing.) The amendment stated:

> Temporary Outdoor Recreation and Entertainment: An area of land use for the following on a temporary basis, but which may recur annually to: county fairs, animal shows and judging, carnivals, circuses, community meetings or recreational buildings and uses, concerts, food booths and stands, games, rides, rodeos, flea markets, tractor pulls, craft shows, antique shows, car shows, storage and theaters. Temporary campgrounds are permitted as an accessory use to any of the principal uses mentioned previously. Agricultural related office buildings may be occupied on a permanent basis as part of the use.

Principal uses permitted by right in areas zoned M-1 included manufacturing, freight terminals, laboratory and research facilities, and storage and processing of agricultural products. Other uses permitted in M-1 districts by special permit included junkyards, landfills, metal foundries, electrical power plants, and chemical manufacturing plants.

Defendant issued a special permit to the Saginaw County Agricultural Society (the Society) on June 12, 2001, allowing it to hold the Saginaw County Fair on two parcels of

property zoned M-1 owned by McDonagh Amusements, Inc., and Bernard and Georgina Coonrod, respectively. The Society had arranged a lease with the property owners to conduct the fair. Plaintiff filed suit alleging the amendment was unconstitutional, violated the village master plan, and was a nuisance. Plaintiff challenged the issuance of a special use permit to the Society in a separate action. Plaintiff filed a third action to appeal a decision of defendant's zoning board of appeals granting a special exception permit to McDonagh that allowed its employees to temporarily live in trailers on its property during certain months of the year. The trial court consolidated all three cases, but this appeal concerns only the action challenging the validity of the zoning amendment.

Plaintiff claims the trial court erred in refusing to reopen proofs because the evidence plaintiff sought to admit proved that the zoning amendment was passed purely for the benefit of McDonagh Amusements, Inc. and the Saginaw County Agricultural Society. We disagree.

We review a trial court's denial of a motion to reopen proofs for an abuse of discretion. *Fabrini Foods v United Canning*, 90 Mich App 80, 91; 280 NW2d 877 (1979). We note first that the trial court was obliged to evaluate the validity of the amendment without reference to defendant's motives in adopting it. *Pythagorean, Inc v Grand Rapids Twp* 253 Mich App 525, 527; 656 NW2d 212 (2002) quoting *People v Gibbs*, 186 Mich 127, 134-135; 152 NW 1053 (1915). The court examined the amendment in light of the village zoning act, MCL 125.581(1), which provides that a legislative body of a village may regulate the use of land to provide places of recreation for residents. The trial court found that the recreational opportunities and revenue generated from a county fair and other specially permitted uses under the amendment would benefit the community as a whole. Thus, further proof on plaintiff's point was unnecessary. The trial court's decision was not so "grossly violative of fact and logic" as to amount to an abuse of discretion. *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). Therefore, the trial court did not err in refusing to reopen proofs.

Next, plaintiff challenges the validity of the amendment. To invalidate a zoning ordinance, a plaintiff must meet a heavy burden of proof. The ordinance is accorded every presumption of validity. *Kropf v Sterling Heights*, 391 Mich 139, 162; 215 NW2d 179 (1974). The party attacking the ordinance bears the burden of proving affirmatively that it is "'an arbitrary and unreasonable restriction upon the owner's use of his property'" about which "'there is no room for a legitimate difference of opinion concerning its reasonableness.'" *Id*., quoting *Brae Burn, Inc v Bloomfield Hills*, 350 Mich 425, 432; 86 NW2d 166 (1957). The trial court found that plaintiff failed to meet this burden. This Court gives considerable weight to the findings of the trial court in equity cases. *Kropf*, *supra* at 163, quoting *Christine Building Co v City of Troy*, 367 Mich 508, 518; 116 NW2d 816 (1962).

Plaintiff argues that the failure of the planning commission to declare a valid purpose for the amendment under the village zoning act demonstrates that no legitimate government interest was advanced by the amendment. Plaintiff's argument lacks merit because defendant had no burden to establish a relationship between the amendment and a legitimate government interest. Rather, the burden was on plaintiff to show the absence of such a relationship. *Northwood Properties Co v Perkins*, 325 Mich 419, 422-423; 39 NW2d 25 (1949). As already discussed, the amendment furthers legitimate interests by providing places of recreation for the citizens of Chesaning and generating revenue for the village.

Plaintiff claims the amendment was an unreasonable means of advancing a legitimate government interest because only some M-1 land was actually suitable for the special uses permitted under the amendment. However, the very rationale for the existence of specially permitted uses is that only certain properties within a district are suitable for such uses. 83 Am Jur 2d, Zoning and Planning, § 859, p 710. Obviously, all parcels of property in the M-1 district would not be suitable for landfills, junkyards, or power plants, which are also specially permitted uses in M-1 districts. Furthermore, plaintiff has failed to demonstrate that no other M-1 property is suitable for hosting community meetings, concerts, flea markets,craft and antique, or car shows, which are other special uses permitted under the amendment. Defendant's amendment was not constitutionally deficient merely because only a few property owners had parcels large enough to host a carnival or county fair.

Plaintiff claims the amendment was unreasonable because there was no rational relationship between the regular uses allowed in M-1 districts and special uses allowed under the amendment. Plaintiff contends that there was no rational basis for excluding carnivals, rodeos, and county fairs from other districts. And plaintiff argues that allowing temporary campgrounds on M-1 land conflicts with the zoning ordinance, which prohibits residential uses on M-1 land. We disagree.

Substantive due process does not require a relationship between uses permitted by special permit and uses permitted by right. Rather, substantive due process requires a reasonable relationship between a zoning enactment and a legitimate government interest. *Kropf*, *supra* at 158. Selection of the M-1 district for temporary outdoor recreational activities was reasonable because the M-1 district was zoned for the most intensive land uses. Plaintiff has not demonstrated that any other district was more reasonable or appropriate for such activities. And allowing campgrounds on M-1 land neither conflicts with the zoning ordinance because campgrounds are not typically recognized as residential uses, nor has plaintiff shown the facts to be otherwise in this case. E.g., *Cook v Bandeen*, 356 Mich 328, 332; 96 NW2d 743 (1959); *Genesee Land Corp v Leon Allen and Associates*, 50 Mich App 296, 303-304; 213 NW2d 283 (1973).

Plaintiff next argues that the amendment is arbitrary and capricious because it adversely affected the public welfare by displacing a preferred use of M-1 land – an air park or industrial park – with a use beneficial only to McDonagh and the Society. This argument must fail because the amendment does not displace preferred uses. The amendment allows for *temporary* outdoor recreation and activities by special permit. The amendment does not provide for recreational uses on a permanent basis, nor does it permanently preclude the use of the land for other zoned purposes. The trial court noted, and we concur, the amendment does not benefit only McDonagh and the Society, it benefits the community as a whole by providing recreation and potential revenue. Therefore, the amendment is not arbitrary and capricious.

Similarly, plaintiff's claim that the amendment is an invalid exercise of the police power fails. Although it is true that "rezoning should not be approved to merely benefit a single property owner," it is equally true that where the public interest is furthered, the fact that an individual will profit is immaterial. *Baker v Algonac*, 39 Mich App 526, 535; 538; 198 NW2d 13 (1972). "Someone always profits by the development of land . . . ." *Id*.

Relying on *Raabe v City of Walker*, 383 Mich 165, 178-179; 198 NW2d 13 (1970), plaintiff argues that the amendment is invalid because it violated the village's master plan. However, *Raabe* does not support plaintiff's position. First, *Raabe* concerned the *rezoning* of agricultural land (least intensive use) to industrial land (most intensive use) in the middle of a residential area. In the instant case, the zoning amendment did not *rezone* the land in question; it remained zoned M-1. Second, the land in this case was already zoned for the most intensive uses. So allowing carnivals, fairs, and rodeos on the land was not "contradictory" or "a pig in the parlor," like the attempted rezoning in *Raabe*, *supra* at 179. Finally, the master plan refers to a survey in which more than half of the respondents indicated that limited recreational opportunities was a moderate or serious problem. The plan mentioned the need to enhance tourism. The zoning amendment allows appropriate special uses by permit that addresses and in part ameliorates citizen concerns. Therefore, the amendment is congruent with the master plan.

Plaintiff's final claims are disposed of in summary fashion. We reject the argument of de facto spot zoning because as plaintiff acknowledges, no actual spot zoning occurred. We reject plaintiff's nuisance argument because the harm contemplated by plaintiff is purely speculative and highly doubtful. "'Equity, as a rule, will not interfere in advance of the creation of a nuisance where the injury is doubtful or contingent, and anticipated merely from the use to which the property is to be put.'" *Brown v Shelby Twp*, 360 Mich 299, 311; 103 NW2d 612 (1960) (citations omitted.) Finally, plaintiff's argument concerning a conflict of interest was not raised below, so we decline to review it here. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell
/s/ Pat M. Donofrio