STATE OF MICHIGAN

COURT OF APPEALS

DF LAND DEVELOPMENT, L.L.C., Plaintiff-Appellant,	UNPUBLISHED October 23, 2008
v	No. 275859 Washtenaw Circuit Court
CHARTER TOWNSHIP OF ANN ARBOR, Defendant-Appellee.	LC No. 06-000491-CZ

Before: Fitzgerald, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

In this case arising out of plaintiff DF Land Development, L.L.C.'s attempt to have a parcel of property rezoned, plaintiff appeals by leave granted the order granting summary disposition to defendant Ann Arbor Township on the ground that plaintiff's claims were not ripe for review.[1] We reverse and remand.

I

This case concerns a 54-acre tract of land (the property) located off US-23 in Ann Arbor Township (the township) between Ford Road and Earhart Road, adjacent to Domino's Farm. The property is 40 to 45 percent wetlands and natural drainage courses, and contains areas of steep slopes. Ford Road is a narrow, hilly, gravel road, and Earhart Road is very steep. The property is zoned as general agricultural (A-1). Plaintiff petitioned the Ann Arbor Township Commission to rezone the property to low density, multiple-family residential (R-7). The application was accompanied by a "conceptual site plan" of plaintiff's proposed multiple-family development. During a series of public hearings regarding plaintiff's rezoning petition, the township expressed concern over traffic, site access, utilities, natural features, preserving the character of the area, and injecting a higher density area between areas of low to moderate density contrary to the township's master plan. Township commissioners also noted that, regardless of the merits of plaintiff's proposed development, rezoning would allow plaintiff or any subsequent developer to develop the site in any manner permitted in an R-7 district, up to six

[1] In granting summary disposition for defendant, the trial court dismissed plaintiff's complaint without prejudice.

residential units an acre, without being bound by plaintiff's proposal. The commissioners also noted that plaintiff's plan would require variances in the height of buildings and the distance between buildings permitted in the R-7 district. In response to a question posed to it, plaintiff indicated that it did not apply for a planned unit development (PUD) because such an option "lacked flexibility." The township board eventually denied the rezoning application. Plaintiff thereafter submitted an application for a variance to the zoning board of appeals (ZBA) in which it sought seven variances. The ZBA denied plaintiff's application for lack of jurisdiction.

On May 2, 2006, plaintiff filed its complaint, alleging claims of "unreasonable zoning – substantive due process" (count I), "exclusionary zoning – denial of equal protection and substantive due process" (count II), and "declaratory relief – ripeness and finality; MCR 2.605" (count III). The complaint alleges generally that the township's zoning ordinance "as presently constituted does not accommodate the objectives of the [master plan] because of its failure to provide for balanced land uses throughout the Township and for uses compatible with surrounding development and future use patterns through the exclusion of R-7 and other low and moderate density, multi-family Zoning Districts and land uses." In count I, plaintiff alleges that its proposed rezoning to R-7 would constitute a reasonable use of the property that would serve a demonstrated need, and that it would be consistent with the goals and objectives stated in the master plan. Plaintiff alleges that the current zoning of the property is unreasonable and fails to advance a legitimate governmental interest. Lastly, plaintiff alleges that defendant's denial of its rezoning petition was unreasonable, did not promote a legitimate or reasonable government interest, was arbitrary and capricious, and violated its right to substantive due process.

In count II, plaintiff alleges that the township "by its actions and inactions, and the effect of the Township's administration of its Ordinance, has effectively excluded land uses consistent with" plaintiff's petition, "(1) on the face of the Zoning Ordinance and Zoning framework; (2) in the interpretation of the Zoning Ordinance and zoning framework; and (3) through the various administrative and legislative decisions of the Township." Plaintiff alleges that R-7 uses are lawful land uses, that there is a demonstrated need for them, and that rezoning the property to R-7 will not have an adverse effect on defendant's ability to provide services. Plaintiff alleges that defendant cannot show that there is a "compelling governmental interest" that justifies the current A-1 zoning of the property, and that defendant's "actions and position" in denying plaintiff's rezoning petition "have had the effect of prohibiting" R-7 uses within the township, in violation of the Township Rural Zoning Act ("TZA"), MCL 125.297(a), and the Michigan Constitution. Plaintiff alleges that its rezoning petition is reasonable, and that defendant's denial of the petition is unreasonable, does not advance a legitimate or reasonable government interest, is arbitrary and capricious, and violates plaintiff's right to substantive due process and equal protection.

In count III, plaintiff maintains that it has taken all reasonable and necessary steps to secure a final decision "regarding the requested use of the Property." Plaintiff alleges that it has suffered an actual and concrete injury "resulting from Ann Arbor Township's collective actions," and therefore plaintiff's constitutional and statutory claims are ripe for judicial review.

The parties filed cross-motions for summary disposition, with the township asserting that plaintiff's claims are not ripe for judicial review because plaintiff did not pursue alternative forms of relief such as a PUD or a conditional zoning agreement under MCL 125.3405. At the hearing on the motion, plaintiff characterized count I as alleging "an as applied constitutional

deprivation." Plaintiff also asserted that its count II constituted a 'facial challenge" to the zoning ordinance because although R-7 zoning is permitted, no land in the township has ever been zoned R-7. Plaintiff further asserted that facial challenges and assertions of constitutional deprivation that are not claims of inverse condemnation or takings are not subject to the rule of finality. The court asked about defendant's argument that the matter was not ripe because plaintiff never pursued a PUD type of rezoning. Plaintiff replied that it was not eligible for a PUD under the ordinance because the density plaintiff was asking for was inconsistent with the township's master plan and because the ordinance states that a PUD cannot be granted where multi-family housing is proposed. Plaintiff maintained that finality had been achieved because plaintiff applied for a variance after being denied rezoning.

Defendant denied that the PUD option was unavailable to plaintiff because "if the PUD process that exists does not satisfy their requests then the Township Board through appropriate processes can change these PUD requirements." Defendant contended that plaintiff's claims were not ripe because it could have asked for a change to the PUD ordinance. Defendant also argued that the fact that plaintiff sought a variance is not dispositive because "what they sought was a variance that would allow the development that had already been denied." Defendant argued that plaintiff was bound to seek the minimum variance that would put its property to productive use.

The trial court relied on *Braun v Ann Arbor Twp,* 262 Mich App 154; 683 NW2d 755 (2004), in finding that plaintiff was required to seek the minimum variance. The court held that count I was not ripe because PUD classification was a possibility. The court dismissed count II because it "is one of exclusionary zoning and as such it is not merely a facial challenge." The court dismissed plaintiff's complaint without prejudice.

II. "As Applied" Claim

Plaintiff argues that the trial court erred in finding that its "as applied" claim in count I was not ripe for judicial review. Specifically, plaintiff contends that the trial court erred by applying a takings case finality test to its substantive due process claim. Rulings on motions for summary disposition are reviewed de novo on appeal. *Maiden v Rozwood,* 461 Mich 109, 118; 587 NW2d 817 (1999).

A. Ripeness

"A challenge to the validity of a zoning ordinance 'as applied,' whether analyzed under 42 USC 1983 as a denial of equal protection, as a deprivation of due process under the Fourteenth Amendment, or as a taking under the Just Compensation Clause of the Fifth Amendment, is subject to the rule of finality." *Paragon Properties Co v City of Novi*, 452 Mich 568, 576; 550 NW2d 772 (1996). An "as applied" challenge alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution." *Id.* "[T]he finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury." *Id.* at 577 (citation omitted). "In other words, where the possibility exists that a municipality may have granted a variance – or some other form of relief – from the challenged provision of the ordinance, the extent of the alleged injury is unascertainable unless these alternative forms of potential relief are

pursued to a final conclusion." *Conlin v Scio Twp*, 262 Mich App 379, 382; 686 NW2d 16 (2004).

B. *Braun*

In *Braun, supra* at 156, the plaintiffs asserted that the defendant's denial of their rezoning petition violated substantive due process and equal protection, amounted to exclusionary zoning, and constituted an unconstitutional taking of property without just compensation. Addressing the plaintiff's argument that the trial court erred in dismissing their claims on the basis of ripeness, this Court quoted *MacDonald, Sommer & Frates v Yolo Co*, 477 US 340, 349; 106 S Ct 2561; 91 L Ed 2d 285 (1986), a takings only cases, where the Court stated that "[u]ntil a property owner has obtained a final decision regarding the application of the zoning ordinance and subdivision regulations to its property, it is impossible to tell whether the land retain[s] any reasonable beneficial use or whether [existing] interests ha[ve] been destroyed." *Braun, supra* at 158. The *Braun* Court also noted that the Supreme Court stated in *MacDonald* that "[o]ur cases uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it." *Braun, supra* at 158.

The *Braun* Court then quoted *Palazzolo v Rhode Island*, 533 US 606, 620-621; 121 S Ct 2448; 150 L Ed 2d 592 (2001), an inverse condemnation action, where the United States Supreme Court similarly stated:

> Under our ripeness rules *a takings claim* based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and *a regulatory taking* has not yet been established. [*Id.* at 159 (emphasis added).]

The *Braun* Court recognized that

> [b]oth *Palazzolo* and *MacDonald* counsel that a determination of alternative uses of property as zoned is a condition precedent to a valid *takings claim*. In other words, the landowner must show that he sought alternative uses of the property as zoned and was denied, thus leaving the property owner with land having no economically productive or reasonably beneficial use. [*Id*. (emphasis added).]

Based on *Palazzolo* and *MacDonald*, the *Braun* Court found that, because the plaintiffs had not applied for a variance, or sought review of the board of trustees' decision before the ZBA, there was "no way to discern whether the land as zoned has any reasonable beneficial use, or whether plaintiff's expectation interests have been destroyed." *Id.* The *Braun* Court concluded that the trial court had correctly found that the plaintiff's *inverse condemnation claim* was not ripe for judicial review. *Id*. at 160.

However, the *Braun* Court then added:

> The Supreme Court decision in *MacDonald* dealt with claims arising under the takings clause of the Fifth Amendment. Unlike the case at bar, *MacDonald* did not involve any other constitutional claims. In *Paragon Properties* . . . our Supreme Court held that a judicial challenge to the constitutionality of a zoning ordinance, as applied to a particular parcel of land, is not ripe for judicial review until the plaintiff has obtained a final, nonjudicial determination regarding the permitted use of the land. The Court stated specifically that, "[a] challenge to the validity of a zoning ordinance 'as applied,' whether analyzed under 42 USC 1983 as a denial of equal protection, as a deprivation of due process under the Fourteenth Amendment, or as a taking under the Just Compensation Clause of the Fifth Amendment, is subject to the rule of finality." The purpose of this requirement is to ensure that the plaintiff has suffered an "actual, concrete injury."
>
> As we stated above, we are not satisfied plaintiffs established that a final decision was made regarding the permitted uses of the property. For this reason, in accordance with *Paragon*, we find that plaintiffs' remaining constitutional claims are likewise not ripe for judicial review. Summary disposition of plaintiffs' remaining constitutional claims pursuant to MCR 2.116(C)(4) was appropriate. [*Id*. at 160-161 (internal quotations and citations omitted).]

The *Braun* Court correctly recognized that ripeness and finality are required for all "as applied" claims. As recognized by the *Braun* Court, *Paragon* involved only a takings claim. *Paragon*, *supra* at 571-572. The language requiring *finality* of all constitutional "as applied" claims should not be taken to imply that the *particular ripeness test* applied by the *Paragon* Court to the takings claim before it is the test that should be applied, generally, to all constitutional "as applied" claims, regardless of their nature. This is because the holding in *Braun* stands for the proposition that in zoning cases where the plaintiffs assert a takings claim as well as one or more "as applied" constitutional claims, the plaintiffs must establish finality with regard to the takings claim before the entire matter is ripe for judicial review. In other words, if finality has not been established with regard to the takings claim, the attendant "as applied" constitutional challenges cannot be ripe because while resolving the land use claim administratively, if the plaintiff's land use claim is resolved, that resolution renders the original takings claim and attendant constitutional issues moot. Once rendered moot, those constitutional claims should not be adjudicated. See *Eller v Metro Contracting*, 261 Mich App 569, 571; 683 NW2d 242 (2004) stating, "[a]n issue is moot and should not be reached if a court can no longer fashion a remedy." A failure at the administrative level on the land use claim allows all the issues to be joined in one proceeding rather than carving out those issues to be remanded for administrative review, namely, the land use issues, while at the same time proceeding judicially on the attendant constitutional issues.

The Takings Clause of the Fifth Amendment of the United States Constitution "is designed not to limit the governmental interference with property rights per se, but rather to secure *compensation* in the event of otherwise proper interference amounting to a taking." *Lingle v Chevron USA, Inc*, 544 US 528, 536-537; 125 S Ct 2074; 161 L Ed 2d 876 (2005)

(emphasis in the original). Accordingly, the tests for determining whether there has been a regulatory taking focus "directly upon the severity of the burden that government imposes upon private property rights." *Lingle, supra*, 544 US at 538-539. In other words, a court must ascertain the limits of the development that would be permitted on the property, if any, in order to ascertain the diminution in value (if any) resulting from the alleged taking—such that the plaintiff may be provided "just compensation." *Id*. at 536-540. That is the goal of a ripeness test in a takings case. See *Pearson v City of Grand Blanc*, 961 F2d 1211, 1214-1215 (CA 6, 1992) ("the federal court cannot know what has been taken or what compensation has been afforded until state remedies have been utilized. Until that time, the federal court cannot determine whether a taking has occurred, whether compensation is due, or, if it has been afforded, whether it is just").

Conversely, issues such as the remaining value of the land or what productive uses might be allowed by the municipality are not relevant where, as here, the plaintiff does not raise a takings claim and does not make a demand for damages based on diminution in value or otherwise. Rather, in the present case, plaintiff simply claims that, as applied, the ordinance does not substantially advance a legitimate government interest, and is arbitrary and capricious.

The United States Supreme Court has recognized that the substantially advances test "prescribes an inquiry in the nature of *due process*, not a takings test." *Lingle, supra*, 544 US at 540-541 (emphasis added). It is a test for ascertaining the validity of the underlying regulation. *Id*. at 542-543. If an action is so arbitrary as to violate due process, that is the end of the inquiry, and "[n]o amount of compensation can authorize such action." *Id*. at 543. The *Lingle* Court recognized that commingling the two tests is understandable, but concluded that doing so is invalid, inappropriate, and imprecise. *Id*. at 541-542, 545, 548.

At least one federal court has warned against applying a takings ripeness test to claims alleging other constitutional "as applied" violations. See *Neuenfeldt v Williams Twp*, 356 F Supp 2d 770, 773-776 (ED Mich, 2005). In *Neuenfeldt*, the plaintiff was denied site plan approval because he refused to include expensive "stub streets"—intended to allow future connections to future adjacent subdivisions—as part of his subdivision plan. *Id.* at 771-772. The plaintiff was subsequently denied a variance from the stub street requirement. *Id*. at 772. However, the plaintiff did not appeal the defendant's decision, and did not file an inverse condemnation action in state court. *Id*. Rather, the plaintiff filed a federal action, alleging violations of equal protection and substantive due process. *Id*. The defendant moved to dismiss, arguing that the constitutional claims were not ripe for review because the plaintiff had not sought just compensation. *Id*. at 772-773.

The district court agreed that, *if the plaintiff had asserted a takings action*, the case would not be ripe for review. *Id*. at 773-774. However, the plaintiff alleged that the stub street requirement had been disparately enforced, to his detriment, thereby alleging equal protection and substantive due process claims—not a takings claim. *Id.* at 775-776. Accordingly, given the defendant's denial of site plan approval and the denial of a variance application, the plaintiff's claims were sufficiently ripe for judicial review. *Id*.; see also *Pearson, supra*, 961 F2d at 1214-

1215 (trial court erred in applying a takings ripeness test to a substantive due process claim); *Nasierowski Bros Inv Co v City of Sterling Hts*, 949 F2d 890, 893-894 (CA 6, 1991) (trial court erred in applying a takings ripeness test to a procedural due process claim).[2]

The holding in *Braun* stands for the proposition that in zoning cases where the plaintiffs assert a takings claim as well as one or more "as applied" constitutional claims, the plaintiffs must establish finality with regard to the takings claim before the entire matter is ripe for judicial review. *Braun* articulates its ripeness test as follows: whether plaintiffs "sought alternative uses of the property as zoned and was denied," or applies for the "minimum variance that is necessary to place the land in productive economic use within the zoning classification." But *Braun* only applies to those claims that combine a takings claim with one or more "as applied" constitutional challenges. The present case does not involve a takings claim. Thus, the trial court erred by relying on *Braun* and concluding that the "as applied" claims were not ripe for judicial review because plaintiff failed to seek the minimum variance.

In sum, plaintiff filed a rezoning petition and applied for a use variance, and both were denied. Therefore, plaintiff's "as applied" claims are ripe for appellate review because plaintiff has exhausted all administrative remedies available for the particular narrow injury alleged (the refusal to rezone the property R-7), and defendant has arrived at a definitive position on that particular issue. The trial court erred by finding that plaintiff's as applied claim is not ripe for judicial review.

II. Exclusionary Zoning

Plaintiff argues that the trial court erred in finding that plaintiff's exclusionary zoning claims were not ripe for judicial review.

Plaintiff alleged in count II of its complaint that defendant engaged in exclusionary zoning in violation of former MCL 125.297a[3] and the Michigan Constitution.

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[2] Regrettably, *Pearson* went on to apply the *Nasierowski* procedural due process ripeness test to the substantive due process claim before it. *Pearson*, *supra*, 961 F2d at 1215. However, the Court found that, even if a more stringent test were applied, requiring the plaintiff to file one meaningful application, and seek a variance, the plaintiff's claims were ripe for review. *Id*. (The *Nasierowski* test found that, because the plaintiff alleged that the procedures were in themselves unfair, the claim was immediately cognizable in federal court, without a need to exhaust administrative remedies. *Nasierowski*, *supra*, 949 F2d at 894.)

[3] Although repealed by 2006 PA 110, effective July 1, 2006, which enacted the Michigan Zoning Enabling Act, MCL 125.301 *et seq.*, the TZA still controls this case. MCL 125.3702(2). We note that the prohibition against exclusionary zoning formerly found in MCL 125.297a was recodified with nearly identical language in § 207 of the Michigan Zoning Enabling Act. MCL 125.307.

A. MCL 125.297a

MCL 125.297a provides that:

> A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a township in the presence of a demonstrated need for that land use within either the township or surrounding area within the state, unless there is no location within the township where the use may be appropriately located, or the use is unlawful.

The language of the statute does not address the application of the ordinance to a particular plaintiff's individual parcel of land. Rather, to establish an exclusionary zoning claim, the statute requires a showing that the ordinance has "the effect of totally prohibiting the establishment of a land use within the township or surrounding area within the state." In light of the plain language of the statute, the *Braun* ripeness test cannot apply to statutory exclusionary zoning challenges.

When considering the specific language of the statute, in the context of a ripeness analysis, if finality in the *Braun* sense were required, it would be an insurmountable requirement for plaintiffs and the statute would be rendered nugatory for all reasonable intents and purposes. This is because the holding in *Braun* requires that plaintiffs must establish finality with regard to a takings claim before the entire matter is ripe for judicial review by requiring that plaintiffs "sought alternative uses of the property as zoned and was denied," or applied for the "the minimum variance that is necessary to place the land in productive economic use within the zoning classification." In exclusionary zoning claims brought under MCL 125.297a, making this showing would be impossible. Pursuant to MCL 125.297a, the denial of a petition to rezone one's singular parcel of property within a township cannot show that the municipality has reached a final decision on whether to totally prohibit a particular use within an entire township, but only that parcel of land on which the request has been submitted. In other words, a *Braun*-type finality test is inappropriate for exclusionary zoning cases because requiring a plaintiff to petition to rezone someone else's property or to rezone the entire township to test the outside limits of the rezoning denial would be inapposite to the plain language of the statute.

Nonetheless, even though the *Braun* finality test does not apply to claims brought under MCL 125.297a, a plaintiff remains obligated to first submit a rezoning request or request for a variance to the appropriate legislative body before seeking relief from the court system. Whether a municipality will allow a particular requested use in the township must be decided with reference to what the municipality has authorized and will authorize in its comprehensive zoning map of the township. While a plaintiff need not satisfy the stringent requirements of the *Braun* test, a plaintiff seeking relief under the statute must seek and receive an administrative determination on a request regarding a particular parcel of land because a use is not necessarily excluded simply because it does not yet exist in the zoning map. See *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 168-169; 667 NW2d 93 (2003).

In *Landon*, the plaintiffs did not apply for rezoning or for a special land use permit for the particular use of manufactured housing before filing suit. The *Landon* Court found that while the zoning plan allowed for the use, and regardless of the fact that the municipality had not yet designated land for that use because it had not yet been requested, there could be no exclusionary

zoning violation. *Landon, supra* at 157-158, 160. *Landon* means that exclusionary zoning exists *only after* a request has been submitted to the proper administrative body, considered by that body, and ultimately denied. A plaintiff's request before the proper administrative body provides the township the opportunity to revisit its zoning plan and make an administrative determination on a plaintiff's particular request. It is in this exercise that the township, in its legislative function, is provided with public comment, expert analysis, use analysis, community analysis, needs analysis, and other expert opinions relative to its proper legislative role in zoning to ensure that it does not violate the prohibition against exclusionary zoning. Thus, failing to make the initial zoning request before the township administrative body denies a township the opportunity to consider designating land for the requested land use. Denying the municipality the opportunity to make the initial determination improperly usurps decision-making authority from the municipality and inappropriately transforms the judiciary into a kind of "super-zoning" authority making zoning decisions for particular communities.

In sum, while "finality" in the *Braun* context is not required to establish ripeness in exclusionary zoning claims, at a minimum, a plaintiff must submit a zoning request for consideration before the proper administrative body for a suitability and needs determination in that particular community for the claim to be ripe and judicial review appropriate. Because plaintiff submitted its request for rezoning to the township zoning commission, and also sought a variance before the ZBA, plaintiff's statutory claim for exclusionary zoning is ripe for judicial review.

B. Constitutional Exclusionary Zoning Claim

Ordinances are usually presumed to be valid. *Smookler v Wheatfield Twp*, 394 Mich 574, 581; 232 NW2d 616 (1975). However, "an ordinance which totally excludes from a municipality a use recognized by the constitution and other laws of this state as legitimate also carries with it a strong taint of unlawful discrimination and a denial of equal protection of the law as to the excluded use." *Id*., quoting *Kropf v City of Sterling Hts*, 391 Mich 139, 156; 215 NW2d 179 (1974). Like the statutory exclusionary zoning challenge under MCL 125.297a, a constitutional exclusionary zoning challenge requires a proponent to establish that the use is excluded in the municipality. See *id*. As the Court in *Smookler* observed, "when confronted with a regulation invalid on its face, it is not necessary for this Court to examine the reasonableness of the ordinance *as applied* to plaintiff's land." *Smookler*, *supra* at 581 (emphasis added). For this reason, plaintiffs' constitutional exclusionary zoning claim, whether labeled as an "as applied" claim or a facial claim, as a matter of law can in substance only be a facial claim. *Id*. And "[f]inality is not required for facial challenges because such challenges attack the very existence or enactment of an ordinance." *Paragon Properties*, *supra* at 577. The analysis does not stop there, however. While in this facial challenge "it is not necessary for this Court to examine the reasonableness of the ordinance as applied to plaintiff's land," *Smookler*, *supra* at 581, still, the trial court must have some manner available to it to determine whether the zoning ordinance at issue indeed is "invalid on its face."

Like statutory exclusionary zoning challenges, in constitutional exclusionary zoning claims, a plaintiff must submit a zoning request for consideration before the proper administrative body for a suitability and needs determination for the claim to be ripe for judicial review. This is because whether a plaintiff's exclusionary zoning challenge is brought pursuant to the statute or under the constitution, the zoning map underlying the challenge is part of the

zoning ordinance. See MCL 125.271; MCL 125.280; see also *Paragon*, *supra* at 573-574. And a use not yet present in the zoning map is not necessarily excluded simply because it does not yet exist in the zoning map. See *Landon, supra* at 168-169. *Landon* also applies in exclusionary zoning claims brought under the constitution.[4] Thus, like statutory exclusionary zoning claims, while a plaintiff need not satisfy the stringent requirements of the *Braun* finality test, a plaintiff seeking constitutional redress must first seek and receive an administrative determination on a request regarding a particular parcel of land. Because plaintiff here submitted a request for rezoning to the township zoning commission, as well as a request for a variance before the ZBA, plaintiff's constitutional claim for exclusionary zoning is ripe for judicial review. The trial court erred by finding that plaintiff's exclusionary zoning claims are not ripe for judicial review.

Reversed and remanded. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Pat M. Donofrio

[4] Just because a community has not designated a certain land use within its borders that exclusionary zoning exists on its face. For example, merely because the administrative body responsible for zoning in Mackinac Island has not zoned land for industrial purposes does not mean that exclusionary zoning exists on its face. There must be a request and an appropriate determination for that community by the administrative body responsible for zoning. In other words, a community cannot engage in exclusionary zoning if there is no "demonstrated need" for the zoning requested in that community. See *Landon, supra* at 168-169.