

STATE OF MICHIGAN
COURT OF APPEALS

RITA REID, as Trustee of the RITA G. REID
TRUST,

UNPUBLISHED
March 2, 2010

Plaintiff-Appellant,

v

LINCOLN CHARTER TOWNSHIP and RED
RIDGE PROPERTIES, L.L.C.,

No. 287002
Berrien Circuit Court
LC No. 2005-003282-CZ

Defendants-Appellees,

and

KEVIN GILLETTE and LINCOLN CHARTER
COMMITTEE,

Defendants.

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Plaintiff Rita Reid, as trustee of the Rita G. Reid Trust, appeals as of right the July 16, 2008 final order granting summary disposition to defendant Lincoln Charter Township (the Township) on her claims for regulatory taking and inverse condemnation. Reid also appeals several other orders entered by the trial court: the May 18, 2007 order denying in part her motion for leave to file an amended complaint; the October 5, 2007 order granting summary disposition to the Township and defendant Red Ridge Properties (Red Ridge) on the nuisance per se claims in the original complaint and granting the Township's motion to strike the second amended complaint; and the May 30, 2008 order denying her motion for leave to file a third amended complaint. We affirm in part, reverse in part, vacate in part, and remand for further proceedings.

I. Basic Facts

The Rita G. Reid Trust owns the property located at 4508 Red Arrow Highway (the trust property). The 7.14-acre parcel is long and narrow, and has been split-zoned since 1947. The eastern three acres, the land abutting the Red Arrow Highway, is zoned C-3; the western four acres are zoned R-1. The only access to the trust property is from the Red Arrow Highway.

In 2000, the Township board approved a plat (the Plat) submitted by Red Ridge for the development of the Sanctuary Subdivision (the Subdivision). The eastern section of the Subdivision would border the trust property on the north. Pursuant to the Plat, Sanctuary Drive, the only road in the Subdivision, would be a 1,200-foot cul-de-sac. It would not be stubbed to the trust property or to any of the Subdivision's boundaries. Access to the Subdivision would be from Ridge Road.

Reid listed the trust property for sale in 2003. According to Reid, because there was no residential access to the trust property, there was little interest, if any at all, in the western portion of the trust property. By December 2005, when Reid sued the Township and Red Ridge, at least 21 lots in the Subdivision had been purchased and houses built thereon. Red Ridge still owned a few lots, including two adjacent lots in the southeastern corner of the Subdivision.

Reid's original complaint contained two claims for nuisance per se. In the first count, Reid claimed that, because Sanctuary Drive violated the Township's Subdivision Control Ordinance, which prohibited cul-de-sacs longer than 600 feet and required streets in a subdivision to be stubbed if the land adjoining the subdivision was not subdivided, the Subdivision was a nuisance per se. In the second count, Reid claimed that the Township violated the Land Division Act (LDA), MCL 560.01 *et seq.*, because by approving the Plat, the Township board isolated the trust property. Reid requested the trial court to issue an order for superintending control requiring the Township to enforce the stubbed road requirement or, in the alternative, to grant her damages for the loss of value to the trust property.

Twice during the course of the proceedings below, Reid requested the Township board to rezone the trust property. In March 2007, the Township board denied Reid's request to rezone the western portion of the trust property to R-3. In January 2008, the Township board denied Reid's request to rezone the western portion to C-3.

II. The May 18, 2007 Order Denying in Part and Granting in Part Reid's Substituted Motion for Leave to File First Amended Complaint

Reid moved for leave to file an amended complaint. The amended complaint contained eight counts. In counts I and II, Reid alleged that, because Sanctuary Drive was not stubbed, the Subdivision was in violation of the Subdivision Control Ordinance and the LDA. She requested that the trial court issue an order of superintending control requiring the Township to comply with the stubbed road requirement. In count III, Reid alleged that the Subdivision, because it did not include a stubbed road, was a nuisance per se. In count IV, Reid alleged a regulatory taking by the Township. In counts V and VI, Reid claimed that the Township's failure to require that Sanctuary Drive be stubbed deprived her of procedural and substantive due process. In count VII, Reid alleged that agents of the Township and Red Ridge entered into a "clandestine agreement" that the Township would not enforce certain laws and ordinances regarding the Subdivision and would not grant any request to rezone the trust property. She claimed that, because of the agents' adherence to the agreement, she was denied due process and the trust property was the subject of a taking. Finally, count VIII was a claim for inverse condemnation.

In its May 18, 2007 order, the trial court granted Reid leave to file claims for regulatory taking and inverse condemnation. It denied leave with respect to the other counts in the proposed amended complaint. According to the trial court, because Reid did not file a timely,

direct appeal of the Township board's decision to approve the Plat, it did not have jurisdiction to hear an appeal of the board's decision. Regarding the counts for superintending control, the trial court concluded that amendment would be futile because Reid could not obtain relief on the claims. It reasoned that because Reid had an adequate remedy in the form of a direct appeal, Reid could not maintain an action for superintending control. Regarding the counts for nuisance per se and violations of due process, the trial court concluded that amendment would be futile because it lacked subject matter jurisdiction to hear the claims. It reasoned that the claims related directly to the Township board's decision to approve the Plat and the methods employed by the Township board to reach its decision and, therefore, the claims should have been raised in a direct appeal of the Township board's decision. Regarding the conspiracy count, the trial court concluded that amendment would be futile because the count failed to state a claim on which relief could be granted. It reasoned that the conspiracy claim was a restatement of the due process and taking claims and that Reid was "either entitled to recover on the underlying claims, or she is not"

On appeal, Reid argues that the trial court erred in holding that she had an available remedy by way of a direct appeal of the Township board's decision to approve the Plat. According to Reid, because no statute provides for an appeal of a township board's decision to approve a subdivision plat, her only method of seeking review of the Township board's decision was through a complaint for superintending control. Reid further claims that, because she could appeal the Township board's decision to approve the Plat through a complaint for superintending control, the trial court erred in denying her leave to file an amended complaint.

A. Standard of Review

We review a trial court's decision on a motion for leave to amend a pleading for an abuse of discretion. *Titan Ins Co v North Pointe Ins Co*, 270 Mich App 339, 346; 715 NW2d 324 (2006). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Questions concerning the jurisdiction of the trial court are questions of law reviewed de novo. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 527; 695 NW2d 508 (2004).

B. Analysis

The Michigan Constitution grants the circuit courts "appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law." Const 1963, art 6, § 13. Article 6, section 28 of the Constitution provides:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

In *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 200-201; 550 NW2d 867 (1996), this Court held that a township board's quasi-judicial decision is final and subject to direct review by the circuit courts under art 6, § 28 where no further review is provided. Neither the Subdivision Control Ordinance nor the LDA provided for further review of the Township board's decision to approve the Plat. Accordingly, the Township board's decision was final and subject to direct review by the trial court.¹

The holding of the Court in *Carleton* appears to be in conflict with pre-November 1990 decisions from this Court. Pre-November 1990 cases, such as *Eckstein v Kuhn*, 160 Mich App 240; 408 NW2d 131 (1987), and *Robertson v Detroit*, 131 Mich App 594; 345 NW2d 695 (1983), provide that art 6, § 28, itself, does not provide a right to appeal. According to those cases, unless a statute provides the right to appeal an administrative decision, a party cannot seek direct review of the decision. To the extent that *Eckstein* and *Robertson* conflict with *Carleton*, we are required to follow *Carleton*. MCR 7.215(C)(2), (J)(1); *Valeo Switches & Detection Sys, Inc v Emcom, Inc*, 272 Mich App 309, 313; 725 NW2d 364 (2006).

Having determined that direct review of the Township board's decision to approve the Plat was available to Reid in the trial court, we now turn to the question whether the trial court abused its discretion in denying Reid leave to file an amended complaint with respect to the counts for superintending control, nuisance per se, due process violations, and conspiracy. "Leave [to amend a pleading] shall be freely given when justice so requires." MCR 2.118(A)(2). A motion to amend must ordinarily be granted, and may only be denied for particularized reasons, including that the amendment would be futile. *Titan Ins Co*, 270 Mich App at 346. "An amendment would be futile if (1) ignoring the substantive merits of the claim, it is legally insufficient on its face; (2) it merely restates allegations already made; or (3) it adds a claim over which the court lacks jurisdiction." *PT Today, Inc v Comm'r of the Office of Financial & Ins Services*, 270 Mich App 110, 143; 715 NW2d 398 (2006).

¹ On appeal, Reid argues that the Township board's decision to approve the Plat was a legislative, rather than an administrative, decision and, therefore, the Township board's decision was not subject to direct review by the trial court. An agency's administrative decisions are subject to review under art 6, § 28, *McAvoy v H B Sherman Co*, 401 Mich 419, 441-442; 258 NW2d 414 (1977), but its legislative actions are not subject to review under art 6, § 28, *Arthur Land Co, LLC v Otsego Co*, 249 Mich App 650, 665; 645 NW2d 50 (2002). Reid did not make this argument below. Consequently, the issue is waived. *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 377; 761 NW2d 353 (2008). Nonetheless, while Reid is correct that the zoning of property is a legislative act, *Sun Communities v Leroy Twp*, 241 Mich App 665, 669; 617 NW2d 42 (2000), the Township board, in approving the Plat, did not zone or rezone any property. Case law suggests that decisions by a township board that do not amend the zoning ordinance are administrative decisions. See *Inverness Mobile Home Community v Bedford Twp*, 263 Mich App 241, 247; 687 NW2d 869 (2004) ("The granting of a use variance from a zoning ordinance . . . does not amend the ordinance itself and, therefore, is an administrative function."). Based on *Inverness Mobile Home Community*, and in the absence of any argument by Reid, there is no basis for us to conclude that the Township board's decision to approve the Plat was a legislative act.

A complaint for superintending control is an original action, *Shepherd v Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 346; 675 NW2d 271 (2003), and it may not be filed if another adequate remedy is available to the party, MCR 3.302(B). If an appeal is available, “that method of review must be used,” and any “complaint for superintending control must be dismissed.” MCR 3.302(D)(2). Reid had an adequate remedy available—an appeal to the trial court for direct review of the Township board’s decision to approve the Plat—and, therefore, Reid cannot maintain a complaint for superintending control. Because any claim by Reid for superintending control was required to be dismissed, *id.*, the trial court did not err in concluding that the claims for superintending control in the proposed amended complaint failed to state claims on which relief could be granted. Consequently, the trial court did not abuse its discretion in denying leave to file an amended complaint as to the counts for superintending control; amendment was futile.

Due process claims and nuisance per se claims that arise from an agency’s decision that is subject to direct appeal under art 6, § 28 must be raised in the direct appeal of the decision. *Krohn v Saginaw*, 175 Mich App 193, 197; 437 NW2d 260 (1988). Failure to raise the due process and nuisance per se claims in the direct appeal requires dismissal of the claims. *Id.* Reid’s claims for due process violations and nuisance per se in the proposed amended complaint related to the Township board’s approval of the Plat. Accordingly, the claims were required to have been raised in a timely, direct appeal of the Township board’s decision. The trial court did not abuse its discretion in concluding that amendment as to the due process and nuisance per se counts was futile.

Reid’s conspiracy claim was a restatement of the counts for due process violations and a taking. In the claim, Reid did not claim that agents of the Township and Red Ridge entered into the “clandestine” agreement to deprive her of her rights to due process and to subject the trust property to a taking. Rather, she alleged that as a result of the actions of the Township’s agents and the agents of Red Ridge, she was deprived of due process and the trust property was subject to a taking. Because the conspiracy claim was a restatement of other claims, the trial court did not abuse its discretion in denying Reid leave to file an amended complaint as to the conspiracy count.

Finally, we reject Reid’s assertion that the trial court had equitable jurisdiction to hear her claims. While Reid may be correct that a complaint for superintending control is an equitable action, this does not change the fact that a complaint for superintending control may not be filed if an appeal was available to the plaintiff. MCR 3.302(B), (D)(2). In addition, Reid cites no legal authority to support her claim that, because she has “no special knowledge of zoning, land use or other sophisticated concepts and no knowledge of Township activities or subdivision review procedure,” it would “be unrealistic and inequitable to nonsuit” her. Reid has abandoned the argument. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

III. The October 5, 2007 Orders for Summary Disposition in Respect to Counts 1 and 2 and Order Granting Motions to Strike

A. The Orders Granting Summary Disposition on the Original Complaint

After the trial court issued its May 18, 2007 order, the Township submitted a proposed order granting it summary disposition on the two nuisance per se claims in Reid's original complaint. Reid objected to the proposed order, claiming that the trial court's order did not address, much less dismiss, the claims in the original complaint. The trial court held that the Township's proposed order was "superfluous" because the May 18, 2007 order resolved the issue. It directed Reid to file a first amended complaint that only pleaded claims of regulatory taking and inverse condemnation.

Reid followed the trial court's directive, but she also filed a second amended complaint. The second amended complaint contained four counts: claims for regulatory taking and inverse condemnation and two claims for nuisance per se. Reid explained that she filed the second amended complaint because the trial court's orders left her with the "draconian choice" of filing an amended complaint and voluntarily dismissing the nuisance per se claims in the original complaint, or not filing an amended complaint and proceeding solely on the two claims of nuisance per se. Reid wanted the trial court to clarify the status of the nuisance per se claims. The trial court, based on its previous holding that any claims for nuisance per se should have been raised in a timely appeal of the Township board's decision to approve the Plat, entered an order granting summary disposition to the Township and Red Ridge on the nuisance per se claims in the original complaint.

On appeal, Reid argues that the trial court, by ordering her to file a first amended complaint that only contained claims for regulatory taking and inverse condemnation, forced her into the "untenable position" of having to choose between proceeding on the two claims of nuisance per se in the original complaint or forsaking those claims to proceed on claims of regulatory taking and inverse condemnation. Reid also argues that, because discovery may have provided factual support for her nuisance per se claim against Red Ridge, the trial court erred in granting summary disposition to Red Ridge on the original complaint. Underlying Reid's argument is her assertion that the nuisance per se claim against Red Ridge was not required to have been raised in a direct appeal of the Township board's decision to approve the Plat.

1. "Untenable Position"

Reid's argument that the trial court forced her to choose to either proceed on the nuisance per se claims in the original complaint or on the regulatory taking and inverse condemnation claims is without merit. Reid believed that, absent an order from the trial court granting summary disposition to the Township and Red Ridge on the two nuisance per se claims in the original complaint, she would be forced to choose between proceeding on the nuisance per se claims or on claims for regulatory taking and inverse condemnation. The trial court, to alleviate Reid's concerns, entered an order granting summary disposition to the Township and Red Ridge on the nuisance per se claims. Reid, therefore, was not forced to choose between proceeding on the nuisance per se claims or the regulatory taking and inverse condemnations claims. Reid's claim is without record support.

2. Red Ridge

The trial court granted summary disposition to Red Ridge on the nuisance per se claims based on its conclusion, articulated in the May 18, 2007 order, that it did not have subject matter jurisdiction to hear the nuisance per se claim in the proposed amended complaint. As already

discussed, the trial court correctly concluded that, because the nuisance per se claims arose from the Township board's decision to approve the Plat, the claims were required to have been raised in a direct appeal of the Township board's decision. See *Krohn*, 175 Mich App at 197. Although it was the Township board, not Red Ridge, that approved the Plat, the nuisance per se claim against Red Ridge in the original complaint arose solely from the Township board's approval of the Plat. Reid alleged that Red Ridge created a nuisance per se because it developed the Subdivision in violation of the Subdivision Control Ordinance. Red Ridge, however, built the Subdivision pursuant to the Plat, which had been approved by the Township board. Thus, the Township board's approval of the Plat was the basis for Reid's nuisance per se claim against Red Ridge. Accordingly, we find no merit to Reid's argument that the nuisance per se claim against Red Ridge was not required to have been raised in a direct appeal of the Township board's decision to approve the Plat. Furthermore, because the nuisance per se claim was not properly before the trial court, the trial court's grant of summary disposition to Red Ridge was not premature. Discovery would have been fruitless. The trial court did not err in granting summary disposition to Red Ridge on the original complaint.

B. The Order Granting the Township's Motion to Strike the Second Amended Complaint

In her claims for regulatory taking and inverse condemnation in the second amended complaint, Reid alleged that three acts by the Township deprived her of the use of the trust property: (1) the split-zoning of the property; (2) the Township board's failure to enforce the stubbed road requirement in the Subdivision Control Ordinance; and (3) the Township board's denial of her first rezoning request. Pursuant to a motion by the Township, the trial court struck from the second amended complaint all allegations referencing the Subdivision, the Subdivision Control Ordinance, and the Township board's approval of the Plat. Consequently, the Township board's approval of the Plat was no longer a basis for Reid's claims for regulatory taking and inverse condemnation.

On appeal, Reid claims that the trial court erred in granting the Township's motion to strike. According to Reid, all the allegations relating to the Township board's approval of the Plat were relevant to the claims for regulatory taking and inverse condemnation.

1. Standard of Review

We review a trial court's decision on a motion to strike for an abuse of discretion. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 469; 666 NW2d 271 (2003).

2. Analysis

A complaint must include a statement of the facts and "the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." MCR 2.111(B)(1). MCR 2.115(B) governs motions to strike. It provides:

On motion by a party or on the court's own initiative, the court may strike from a pleading redundant, immaterial, impertinent, scandalous, or indecent matter, or may strike all or part of a pleading not drawn in conformity with these rules.

The rules of statutory construction apply to the construction of a court rule. *Nelson v American Sterilizer Co (On Remand)*, 223 Mich App 485, 490; 566 NW2d 671 (1997). “All words and phrases are to be construed and understood according to the common and approved usage of the language. Reference to a dictionary is appropriate to ascertain the ordinary meaning of a word.” *Id.* at 690-691 (internal citation omitted). “[W]ords grouped in a list should be given related meaning.” *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 533; 697 NW2d 895 (2005) (quotation omitted).

“Redundant” is defined as “characterized by verbosity or unnecessary repetition in expressing ideas.” *Random House Webster’s College Dictionary* (1992). “Immaterial” is defined as “of no essential consequence; not pertinent; unimportant,” while “impertinent” is defined as “intrusively presumptuous; rude.” *Id.* “Scandalous” is defined as “disgraceful; improper or immoral,” and “indecent” is defined as “offending against standards of morality or propriety.” *Id.* Black’s Law Dictionary (7th ed) defines an “immaterial averment” as “[a]n averment that alleges something in needless detail; a statement that goes far beyond what is in issue.” We conclude that the terms contained in MCR 2.115(B), when their definitions are read together, permit a trial court to strike material that goes beyond what is necessary to inform the adverse party of the nature of the claims against it. Nothing in the language of MCR 2.115(B) suggests that the court rule may be used as a means to test the legal sufficiency of the pleadings’ allegations.

In moving to strike from the second amended complaint all allegations relating to the Subdivision, the Township argued that, while the absence of any residential access to the western portion of the trust property may be relevant to whether there was a taking of the property, the reason(s) for the lack of access was irrelevant. Thus, the Township deemed the fact that the Township board did not require Sanctuary Drive to be stubbed to be irrelevant to Reid’s claims for regulatory taking and inverse condemnation. Through its motion to strike, the Township wanted the trial court to hold that the Township board’s approval of the Plat could not legally support Reid’s claims. And, when the trial court granted the motion to strike, the trial court essentially made such a holding.² However, as we have stated, the purpose of a motion to strike

² We note that the Township never provided the trial court with any legal authority to support its claim that the Township board’s approval of the Plat was irrelevant to Reid’s claims for regulatory taking and inverse condemnation. Nor has the Township provided any such authority to this Court. In fact, the Township presents us with a different reason for why the trial court did not err in granting its motion to strike; an argument that we find mischaracterizes the record. The Township argues that the trial court granted Reid leave to file claims for regulatory taking and inverse condemnation because the claims were based on the split-zoning of the property, rather than the Township board’s approval of the Plat and, therefore, the allegations concerning the Township board’s approval were irrelevant to the claims. However, in its May 18, 2007 order, the trial court allowed Reid to assert claims for regulatory taking and inverse condemnation because it rejected the Township’s argument that the “rule of finality” applied to the claims. The trial court’s reasoning for permitting Reid to assert claims for regulatory taking and inverse condemnation was not that the claims were based on the split-zoning of the trust property. The trial court specifically recognized that Reid “claim[ed] that the Township’s failure to stub roads from the Subdivision has rendered the residentially-zoned portion of her land

(continued...)

is not to test the legal sufficiency of the allegations in a pleading, but to challenge whether the allegations are necessary to inform the adverse party of the nature of the claims it is forced to defend. The Township made no argument that the allegations concerning the Township board's approval of the Plat were not necessary to inform it of the nature of the regulatory taking and inverse condemnation claims it was defending. Such an argument would have clearly been without merit; the Township board's approval of the Plat was one of the three bases for Reid's claims for regulatory taking and inverse condemnation. Because the allegations concerning the Township board's approval were necessary to inform the Township of the nature of Reid's claims, the trial court abused its discretion in granting the Township's motion to strike the second amended complaint. We reverse the October 5, 2007 order to the extent it struck from the second amended complaint all the allegations referring to the Township board's approval of the Plat.

IV. The May 30, 2008 Order Denying Reid's Motion for Leave to File Third Amended Complaint

After the trial court granted the Township's motion to strike, Reid moved for leave to file a third amended complaint. She wanted to (1) add new factual allegations related to the Township board's denial of her second rezoning request, (2) revise the claims for regulatory taking and inverse condemnation, (3) add claims for violations of substantive and procedural due process, and (4) add claims relating to a possible rezoning of the trust property.³ The trial court denied the motion.

On appeal, Reid argues that, because the proposed third amended complaint contained new and different claims of due process violations, the trial court erred when it denied her leave to file a third amended complaint. We agree, in part.

A. Standard of Review

We review a trial court's decision on a motion for leave to amend a pleading for an abuse of discretion. *Titan Ins Co*, 270 Mich App at 346.

B. Analysis

In the proposed third amended complaint, Reid included claims for due process violations, as well as a claim for inverse condemnation, that related to a proposed rezoning of the trust property. Because the Township board had not yet approved the new zoning ordinance that would have rezoned the trust property, these claims were not ripe for adjudication. See *Duncan v Michigan*, 284 Mich App 246, 292; 774 NW2d 89 (2009) (“[A]n action is not ripe if it rests on contingent future events that may not occur as anticipated or may not occur at all.”).

(...continued)

‘virtually worthless.’”

³ Under a proposed new zoning ordinance, the trust property would remain split-zoned. The eastern portion of the property would be zoned CMU (commercial mixed use) and the western portion would be zoned CR (community residential).

Accordingly, the trial court did not abuse its discretion in denying Reid leave to file claims that related to a possible rezoning of the trust property.

Reid also included claims for violations for substantive and procedural due process in the proposed third amended complaint. Contrary to the Township's argument on appeal, these due process claims were not "substantively indistinct" from the due process claims that the trial court declared to be futile in the May 18, 2007 order.

In the proposed amended complaint, Reid alleged that the Township board's decision not to require Sanctuary Drive to be stubbed violated her right to substantive due process. Reid also alleged that the actions of the Township board in failing to enforce the stubbed road requirement "lacked justification in fact and law and was based on politics" and she "therefore was not afforded a meaningful opportunity to be heard." Unlike these claims, which were based on the Township board's decision to approve the Plat, the due process claims asserted by Reid in the proposed third amended complaint were not based on the Township board's decision not to require Sanctuary Drive to be stubbed. In the proposed third amended complaint, Reid alleged that the split-zoning of the trust property, along with the Township board's decision to retain the R-1 zoning of the western portion of the property (despite two rezoning requests), violated her right to substantive due process. Reid also alleged that the Township had restricted her participation in Township activities and, therefore, she was not afforded a full and meaningful opportunity to be heard on her two rezoning requests, the development and adoption of the 2007 development plan, and the development of the proposed new zoning ordinance. Because the due process claims were new claims, we conclude that the trial court abused its discretion in denying Reid leave to amend to add the new due process claims.⁴ We reverse, in part, the May 30, 2008 order denying Reid's motion for leave to file a third amended complaint.

V. The July 16, 2008 Order Granting the Township's Second Motion for Summary Disposition

The Township moved for summary disposition under MCR 2.116(C)(7) on Reid's claims for regulatory taking and inverse condemnation. The Township argued that the claims were governed by either a 6-year or 15-year limitations period, but that it was not necessary to decide which limitations period applied because the only Township action directed at the trust property occurred in 1947, when the Township adopted its first zoning ordinance and the trust property was split-zoned. The trial court granted the motion. It held that, because the basis of the claims for regulatory taking and inverse condemnation was the same—the overburdening of the trust property with land use regulations—the two claims were "indistinguishable in both substance and remedy" and would be treated as one claim. After holding that the "stabilization doctrine," see *US v Dickinson*, 331 US 745; 67 S Ct 1382; 91 L Ed 1789 (1947), did not apply to the case, it concluded that the claim was barred under either a 6-year or 15-year limitations period. It

⁴ The trial court's order also prohibited Reid from adding certain language to the regulatory taking and inverse condemnation claims. On appeal, Reid does not claim that the trial court abused its discretion in denying her leave to amend these two claims. However, on remand, Reid may utilize the phraseology of her choosing in stating her claims for regulatory taking and inverse condemnation.

reasoned that, because the split-zoning of the trust property occurred in 1947, and this was the alleged wrong upon which the claim was based, Reid's taking claim accrued in 1947.

On appeal, Reid argues that the trial court erred in "merging" her claims for regulatory taking and inverse condemnation. Reid also argues that the applicable limitations period is 15 years and that the trial court erred in concluding that the stabilization doctrine did not apply. She further argues that the trial court erred in granting summary disposition based on a 1947 zoning ordinance when it had previously limited discovery to matters occurring after January 1, 1996.

The July 16, 2008 order granted summary disposition to the Township on the second amended complaint, from which the trial court had erroneously struck all the allegations concerning the Township board's approval of the Plat. We believe that Reid is entitled to file an amended complaint—one in which she is allowed to assert the Township board's approval of the Plat as a basis for her taking claims—and to have that complaint litigated before the trial court. Accordingly, we vacate the trial court's order granting summary disposition to the Township. Because we vacate the July 16, 2008 order, we need not address the merits of Reid's arguments on appeal, and we decline to address them. We do note, however, that because Reid filed the original complaint within six years after the Township board approved the Plat in December 2000, Reid's claims for regulatory taking and inverse condemnation may possibly not be barred by a 6-year limitations period.⁵

Affirmed in part, reversed in part, vacated in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck

⁵ We emphasize that we have not decided whether the claims were timely filed.