STATE OF MICHIGAN

COURT OF APPEALS

CHICAGO AREA COUNCIL, INC., BOY SCOUTS OF AMERICA,

Plaintiff-Appellant,

v

BLUE LAKE TOWNSHIP,

Defendant-Appellee,

and

BLUE LAKE TOWNSHIP PLANNING COMMISSION, DONALD STUDAVEN, and LYLE MONETTE,

Defendants.

UNPUBLISHED
March 18, 2010

No. 285691
Muskegon Circuit Court
LC No. 06-044536-AW

Before: K. F. KELLY, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Plaintiff, Chicago Area Council, Inc., Boy Scouts Of America, appeals as of right the trial court's dismissal of the Boy Scouts' claims against defendant Blue Lake Township. This case involves the Boy Scouts' challenge to a new zoning classification that the Township adopted. According to the Boy Scouts, the Township's new zoning classification only allows the Boy Scouts to use their 4,748 acres located in Blue Lake Township for the single purpose of operating a youth camp. The Boy Scouts contend that this limitation on their use of the land improperly precludes them from using it in any economically viable way; specifically, they object to the zoning's exclusion of residential development. The Township responds that the zoning classification is consistent with the historical use of the land and promotes important community interests. For the reasons explained below, we conclude that the new zoning classification did not violate the Boy Scouts' constitutional rights and did not constitute inverse condemnation. Accordingly, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

A. BASIC FACTS

Since 1911, the Council has operated a private scouting camp, Camp Owasippe, in Blue Lake Township. Camp Owasippe is the oldest Boy Scout camp in America and is located on a 4,748-acre property, making the Boy Scouts the largest private property owner in Blue Lake Township.

In 1981, the Township adopted its Zoning Ordinance, which created seven zone classifications, including "Forestry-Recreation" (FR). Under the 1981 ordinance, the Township zoned Camp Owasippe as FR. In an FR district, permitted uses included agriculture, forestry, golf courses, public parks, parkways, sanitary landfills, and uses permitted in a Conversancy District. Permitted special uses included campgrounds, recreational trails, and use by hunting and fishing organizations. The Zoning Ordinance prohibited single-family dwellings unless they were used "in conjunction with allowed or special uses" and were on lots of at least 2 ½ acres. However, the record reflects that some non-camp related residences were constructed in the FR zone.

In 1996, the Township adopted its Comprehensive Development Plan (their "master plan"), which precipitated a several-year-long planning commission study and amendment of the township's zoning ordinances. During this process, it was proposed that the FR classification be divided into several sub-classifications to accommodate both camps and residences. On November 17, 2002, the Township published notice that a special meeting of the planning commission would be held on December 9, 2002, to receive comments regarding the proposed amendments to the Zoning Ordinance. The notice did not disclose the details of the proposed amendments, but did state that the complete text of the proposed amendments would be available for review at the town hall during regular business hours.

On December 9, 2002, the planning commission meeting occurred as announced, and the planning commission voted to recommend approval of the amendments, including a new "Forestry-Recreation: Institutional" (FR-I) classification, to preserve the unique camp-like characteristics of the Township. Two days later, on December 11, 2002, the township board approved the amendments, which rezoned the entire Camp Owasippe property from FR to FR-I. The township board explained that the zoning change was made to bring the zoning code into compliance with the master plan. Specifically, the FR-I classification stated, "This zone change includes camper housing, staff housing, dining facilities, instruction and classroom facilities, performance and practice facilities, outdoor facilities such as playgrounds, archery ranges etc.; and any other facilities normally related to the conduct of youth camps. . . ." The heading to the FR-I classification indicated that it applied to "youth camps, music camps, [and] scout camps of Blue Lake Township." In total, the Zoning Ordinance rezoned over 9,000 acres (approximately 50 percent of the township) to FR-I.

The Boy Scouts did not learn of the zoning change until mid-2003. After several unsuccessful attempts to discuss the rezoning with the Township, the Boy Scouts were able to object publicly to the rezoning at a regularly scheduled township board meeting in February 2004. The Township directed the Boy Scouts to submit a rezoning plan if it desired a change in the zoning classification. The Boy Scouts then retained a planning and design firm to assist in

preparation of a plan for rezoning Camp Owasippe. The Boy Scouts' plan, which they completed in July 2004, allowed for less intensive development than the old FR classification, and, consistent with the master plan, would have resulted in overall density in the range of one home for every five acres. The plan also provided for large areas that would not be developed and environmental buffer zones. If granted, the new rezoning would have permitted the construction of approximately 1,278 residential houses on Camp Owasippe.

Despite the Boy Scouts' requests, the Township failed to schedule a meeting to consider the rezoning petition for a year. So, in late-September 2005, the Boy Scouts moved for a writ of mandamus from the Muskegon Circuit Court, requesting an order that the Township comply with its statutory duty to schedule a meeting to consider the Boy Scouts' rezoning petition. On October 2, 2005, the circuit court, pursuant to a stipulation, ordered the Township to hold a meeting on the Boy Scouts' petition no later than January 15, 2006.

On January 14, 2006, the Township held a public meeting at which it took public comments. The Boy Scouts expressed their willingness to adjust their plan to respond to the Township's concerns. On March 15, 2006, the planning commission held a meeting for the purpose of deliberating the rezoning petition. The planning commission read a pre-written resolution and the commissioners voted 5-0 to recommend rejection of the plan. The resolution explained that the planning commission had received several thousand letters and petitions voicing disfavor for the Boy Scouts' rezoning request. In April 2006, the Muskegon County planning commission unanimously voted to agree with the Township's planning commission's decision to reject the plan. And on May 8, 2006, the township board, without deliberations, tabled the Boy Scouts' rezoning petition to an unspecified date.

In June 2006, the township board unanimously accepted the planning commission's recommendation to deny the Boy Scouts' rezoning plan. The township board members commented that the current infrastructure could not support the rezoning plan.

B. PROCEDURAL HISTORY

On May 17, 2006, the Boy Scouts filed a complaint, alleging that the Township made its FR-I zoning change in response to the Boy Scouts' October 2002 announcement that they were exploring options to sell all or a portion of their property to raise money for operations and improvements. The Boy Scouts claimed that the Township purposefully delayed making any final decision on the rezoning petition. According to the Boy Scouts, the new FR-I classification effectively prohibited use of Camp Owasippe for anything other than operation of a youth camp. The Boy Scouts claimed that the FR-I zoning classification, which was unique in the State of Michigan, was inconsistent with the master plan that called for residential use of Camp Owasippe, and altered the historic zoning designations for the property. The Boy Scouts alleged a facial Substantive Due Process violation, an "as applied" Due Process violation, a Procedural Due Process violation, an inverse condemnation, and an Equal Protection violation.

The Township moved for summary disposition. After hearing oral arguments on the motion, the trial court issued its written opinion granting the Township's motion in part and denying it in part. The trial court found that the Township was entitled to summary disposition on the Boy Scouts' facial Substantive Due Process claim, Equal Protection claim, Procedural Due Process claim, and inverse condemnation categorical taking claim. However, the trial court

denied the Township's motion on the Boy Scouts' as applied Substantive Due Process and on the Boy Scouts' inverse condemnation claim under the *Penn Central*[1] balancing test. Accordingly, the case proceeded to trial on the Boy Scouts' two remaining claims.

After a 10-day bench trial, the trial court issued its written opinion. With respect to the Boy Scouts' as applied Substantive Due Process claim, the trial court found that there was evidence that Camp Owasippe would be worth more if zoned to allow residential development. However, the trial court noted, the Constitution does not require that the Township zone property to allow for its most profitable use. And, according to the trial court, the record showed that the Boy Scouts' property did retain marketable value as a camp under the FR-I zone. Indeed, the trial court pointed out, a conservancy organization had expressed an interest in purchasing the property for over $12 million. The trial court acknowledged the Boy Scouts' argument that the court must also consider whether the ordinance is an unfounded exclusion of residential use; however, the court found it significant that the previous FR zoning also did not allow for general residential use. The trial court also acknowledged that despite the prohibition, some residences were built in the old FR zone. However, the trial court pointed out that the new FR-I zoning ordinance apparently drew the zone boundaries to exclude those areas of nonconformity. The trial court found it significant that the camp areas in the FR-I zone did not have the proper infrastructure to support similar residential development. The trial court stated, "That is a sound rational and reasonable explanation for zoning to allow residential development in areas that had sufficient infrastructure and not on the camp (FRI) [sic] properties." Therefore, the trial court concluded that the zoning was not an *unfounded* exclusion of residential development. The trial court went on,

> The bottom line is that, *as applied to the [Boy Scouts'] property*, the 2002 zoning amendment which broke up the FR into FRI [sic] and several residential zones did not change anything. *As applied to the camps*, there was no change from the previous FR zoning scheme. While there were a limited number of houses constructed in *other areas of the former FR zone* that are now zoned for residential use, the camps in the former FR zone that are now designated FRI are permitted the same uses as allowed under the FR ordinance. Non-camp related residential uses were not allowed in the FR zone and, in fact, none were constructed in the area that became FRI. The new zoning simply continued that exclusion. Thus, is cannot be said that the FRI, *as applied to the [Boy Scouts'] property*, arbitrarily excluded residential development.[2]

The trial court also rejected the Boy Scouts' argument that several township board members' motives were relevant to the analysis. The trial court noted that motive could be relevant in cases of fraud, personal interest, or corruption. However, the trial court found it dispositive that two of the three named officials were no longer on the township board when the Township adopted the zoning ordinance, and, although the third named member arguably should

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[1] See *Penn Central Transportation Co v New York*, 438 US 104, 124; 98 S Ct 2646; 57 L Ed 2d 631 (1978).

[2] Emphasis in original.

have recused himself, it was immaterial because the resolution was approved by the other four township board members' unanimous vote.

The trial court then acknowledged that there was a difference in opinion between the parties' "two highly qualified experts" regarding whether the FR-I zoning was an unfounded exclusion of residential uses. However, the trial court found that the Boy Scouts had not met their burden to show more than a fair difference of opinion. The trial court explained that there was no significant disagreement with the Township's expert testimony that the zoning was reasonable due to the historical use of the property, the harmony with surrounding parcels, and compatibility with the current infrastructure. The only point of cognizable dispute was the zoning's consistency with the master plan. The Boy Scouts emphasized that the master plan declared that residential use should be allowed in the FR zone. But the trial court found that the facts did not support that the FR-I zone was inconsistent with this declaration. Indeed, according to the trial court, allowance of residential use was fulfilled when the FR zone was re-zoned into the several sub-classifications, including the FR-I zone and four separate smaller residential zones. The trial court added that this consistency with the master plan was further support for a finding that the FR-I zoning was neither an arbitrary nor an unfounded exclusion of residential use. The trial court added that the Boy Scouts had not shown more than a fair difference of opinion regarding whether the zoning furthered the Township's goals in protecting the environment. The trial court acknowledged that camping facilities or a conference center would impact the ecosystem, but also found that any such impact would not be as egregious as residential development scattered throughout the property. And after reviewing the experts' opinions on the property's environmental issues, the trial court found that "[a]t the very least, there is a difference of opinion and a debatable question" regarding the impact of residential development on the property. The trial court concluded:

> After analyzing all of the relevant factors, this Court is not satisfied by a preponderance of the evidence that the FRI is an arbitrary, capricious and unfounded exclusion of residential development. There are specific and well founded reasons for this zoning scheme involving its consistency with the Master Plan, the character of the Township, harmony with contiguous properties, inadequacy and degradation of the infrastructure and impact on the environment. At a minimum there are debatable questions and fair differences of opinion.

The trial court then turned to the Boy Scouts' inverse condemnation claim under the *Penn Central* balancing test. The trial court found that the first factor under the balancing test—the character of the Township's actions—weighed in favor of the Township. The trial court found that there was "an abundance of evidence that the FRI ordinance serves the public good" and that the Boy Scouts were not being singled out to bear the burden of the government interests. The trial court pointed out, "The ordinance applies to all of the camps in the zone."

The trial court also found that the second factor—economic impact of the regulation—weighed in favor of the Township. The trial court found that, despite the FR-I zoning restrictions, the Boys Scouts still had several options for putting the property to an economically viable use, including selling portions of the property to other camp operators. The trial court further found that the ordinance did not severely affect the marketable value of the Boy Scouts' property. The trial court acknowledged that the parties' experts disagreed about the value of the property under the FR-I zone: the Boy Scouts' expert valued the land at $2.8 million while the

Township's expert valued the land at $12.3 million. However, the trial court accepted the Township's valuation over the Boy Scouts' because (1) the comparable sales employed by the Township's expert involved actual camp properties, (2) the Township's expert had more experience valuing similar properties, (3) the Boy Scouts' expert erroneously assumed that the FR-I zone only permitted non-profit camp organizations, and (4) the Boy Scouts' expert erroneously limited his research to Boy Scout organizations. In sum, the trial court concluded that the Township's expert's opinion was "more thoroughly researched, was supported by more accurate assumptions and employed more analogous comparables[.]" The trial court then noted that, based on evidence of a pending offer, without the FR-I zone the value of the property was $19.3 million. This was 36 percent more than the $12.3 million value with the FR-I zoning. Although recognizing that this was a significant difference in value, the trial court nonetheless explained that "there are numerous cases that fail to find a taking in the context of considerably greater diminishments in value."

Last, the trial court found that the third and final factor—interference with reasonable investment-backed expectations—also weighed in favor of the Township. The trial court first noted that it was "interesting . . . that [the Boy Scouts] presented no evidence of objections to the FR for the 20 years it was in place notwithstanding the fact that the FR zone was limited to youth camps and housing associated therewith." The trial court also noted that the Boy Scouts voiced no objection at the public hearing preceding adoption of the FR-I zone. The trial court then explained that the lack of objection was "not surprising" because the Boy Scouts had always used the land for camping operations and had invested millions of dollars into those operations. The trial court further found,

> There was no evidence that [the Boy Scouts] had any expectations for residential development when it acquired the property or when the ordinance was passed. On the contrary, it is quite apparent that the [Boy Scouts] had expectations of using Owasippe in a manner that it permitted in the FRI zone both when the property was purchased and when the ordinance was adopted. It was long after the FRI zone was in place that the most recent offer to purchase surfaced and generated expectations for residential development. Furthermore, the Township presented testimony that it would be willing to consider a Planned Unit Development (PUD) proposal if one were submitted by [the Boy Scouts]. The evidence does not support a finding that any reasonable investment-backed expectations have been defeated by adoption of FRI zoning.

In sum, the trial court found that the Boy Scouts had failed to prove their taking claim. And the trial court added, "[T]his Court declines the invitation to thwart the will of the public as expressed through the Township board."

In May 2008, the trial court entered its final order of judgment in favor of the Township. The Boy Scouts now appeal.

II. MOTION FOR SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Under MCR 2.116(C)(10), a party may move for dismissal of a claim on the ground that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment as a matter of law. The moving party must specifically identify the undisputed factual issues and support its position with documentary evidence.[3] The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party.[4] We review de novo the trial court's ruling on a motion for summary disposition.[5] We also review de novo constitutional issues.[6]

B. CATEGORICAL TAKING

The Boy Scouts argue that they were entitled to judgment as a matter of law on their inverse condemnation claim because the Township effected a categorical taking when it changed its zoning scheme to FR-I. According to the Boy Scouts, this change meant that they could only use their land for a youth camp, thereby depriving them of any economical beneficial or productive use of their property. According to the Boy Scouts, in ruling that the Township had not effected a categorical taking, the trial court erroneously analyzed whether the Boy Scouts' property retained some economic "value" as rezoned. The Boy Scouts explain that *value* is a consideration under the balancing test; when analyzing a categorical taking, the focus is on the remaining economically beneficial *use*. The Boy Scouts contend that they cannot operate a camp in an economically viable way and that there is no market for the property without allowing further development.

Article 10, § 2, of the Michigan Constitution prohibits the state or a local unit of government from taking a private property owner's land without just compensation.[7] "[A] 'taking' for purposes of inverse condemnation means that governmental action has permanently deprived the property owner of any possession or use of the property."[8] An "inverse condemnation may occur . . . where the effect of a governmental regulation is 'to prevent the use of much of [the] plaintiffs' property . . . for any profitable purpose.'"[9] "[T]he government may effectively 'take' a person's property by overburdening that property with regulations."[10]

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[3] MCR 2.116(G)(3)(b) and (4); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

[4] MCR 2.116(G)(5); *Maiden*, 461 Mich at 120.

[5] *Tillman v Great Lakes Truck Ctr, Inc*, 277 Mich App 47, 48; 742 NW2d 622 (2007).

[6] *Tolksdorf v Griffith*, 464 Mich 1, 5; 626 NW2d 163 (2001).

[7] Const 1963, Art X, § 2.

[8] *Electro-Tech, Inc v H F Campbell Co*, 433 Mich 57, 88-89; 445 NW2d 61 (1989).

[9] *Peterman v Dep't of Natural Resources*, 446 Mich 177, 190; 521 NW2d 499 (1994), quoting *Grand Trunk W R Co v Detroit*, 326 Mich 387, 392-393; 40 NW2d 195 (1949).

[10] *K & K Construction v Dep't of Natural Resources*, 456 Mich 570, 576; 575 NW2d 531 (1998).

Whether the government's regulation of the use of property is tantamount to a taking depends on the facts of an individual case.[11]

There are two avenues to establish a regulatory taking: (1) showing that the regulation does not substantially advance a legitimate state interest, or (2) showing that the regulation denies an owner economically viable use of the land.[12] Because the Boy Scouts have conceded that the Township has several legitimate governmental interests in zoning the land, the first avenue to establish a regulatory taking is not at issue. Thus, we limit our analysis to the second avenue, under which a taking can be established by: (1) showing a categorical taking that involves a physical invasion or deprives the owner of all economically beneficial or productive use of the land, or (2) applying a balancing test.[13] We will discuss categorical taking directly below. And we will discuss the balancing test *infra* in § III.B.

Applying the categorical taking test, we first note that there is no dispute that this case does not involve a physical invasion of the Boy Scouts' property. Thus, the issue is whether the Township's regulation forced the Boy Scouts to "'sacrifice *all* economically beneficial uses [of their land] in the name of the common good . . .'"[14]

Here, the trial court found that there was no categorical taking. The trial court acknowledged that there was a factual dispute regarding whether the property could generate a profit as a camp. Nevertheless, the trial court found that there was no dispute that, even under the FR-I zoning, the land retained substantial economic value. The Boy Scouts correctly contend that the trial court erroneously analyzed whether the Boy Scouts' property retained some economic "value" as rezoned. When analyzing a categorical taking, the proper focus is on the remaining "economically beneficial use." Nevertheless, even applying the proper "economically beneficial use" test, we conclude the Boy Scouts are still not entitled to relief.

The Boy Scouts contend that, by precluding residential development and limiting the land to use as a campground, the Township has rendered the Boy Scouts' property "economically idle." To support their argument, the Boy Scouts point to the United States Court of Appeals for the Ninth Circuit's decision in *Del Monte Dunes at Monterey, Ltd v City of Monterey*,[15] in which the court pointed out that "several courts have found a taking even where the 'taken' property retained significant value."[16] According the Ninth Circuit, a court should look to "'whether the property use allowed by the regulation is sufficiently desirable to permit property owners to sell

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[11] *Id*.

[12] *Id*.

[13] *Id.* at 576-577; see *Lucas v South Carolina Coastal Council*, 505 US 1003, 1015-1016; 112 S Ct 2886; 120 L Ed 2d 798 (1992); *Penn Central*, 438 US at 124.

[14] *K & K*, 456 Mich at 577, quoting *Lucas*, 505 US at 1019 (emphasis in *Lucas*).

[15] *Del Monte Dunes at Monterey, Ltd v City of Monterey*, 95 F3d 1422 (CA 9, 1996).

[16] *Id.* at 1432-1433.

the property to someone for that use.'"[17] For example, "where . . . government action relegates permissible uses of property to those consistent with leaving the property in its natural state (e.g., nature preserve or public space), and no competitive market exists for the property without the possibility of development, a taking may have occurred."[18] Similarly, as stated by the United States Supreme Court, "requiring land to be left substantially in its natural state" invokes a "heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm."[19] "[A] 'State, by *ipse dixit*, may not transform private property into public property without compensation . . .'"[20]

The record does not support the Boy Scouts' argument that the Township has rendered their land economically idle by pressing their property into public service.[21] Contrary to the Boy Scouts' contentions, the Township is not requiring that the Boy Scouts keep their land substantially in a natural state.[22] The zoning ordinance allows them to pursue campground development on the land, although not necessarily the type of residential development that the Boy Scouts would prefer to pursue.

The categorical taking test also does not guarantee property owners a certain minimum economic profit from the use of their land.[23] "[I]t is well established that a municipality is not required to zone property for its most profitable use, and that 'mere diminution in value does not amount to [a] taking.'"[24] A "[p]laintiff cannot establish a confiscation by simply showing a disparity in value between uses."[25] "A plaintiff who asserts that he was 'denied economically viable use of his land' must show something more—'"that the property was either unsuitable for use as zoned or unmarketable as zoned."'"[26] To establish a categorical, regulatory taking, "the property owner must be *completely deprived* of economically beneficial use of his property[.]"[27]

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[17] *Id.* at 1433, quoting *Park Ave Tower Assoc v City of New York*, 746 F2d 135, 139 (CA 2, 1984) (internal quotations omitted).

[18] *Del Monte Dunes*, 95 F3d at 1433.

[19] *Lucas*, 505 US at 1018.

[20] *Id.* at 1031, quoting *Webb's Fabulous Pharmacies, Inc v Beckwith*, 449 US 155, 164; 66 L Ed 2d 358; 101 S Ct 446 (1980).

[21] See *id.* at 1018.

[22] See *Del Monte Dunes*, 95 F3d at 1433.

[23] *Paragon Properties Co v Novi*, 452 Mich 568, 579 n 13; 550 NW2d 772 (1996); *Sun Oil Co v City of Madison Heights*, 41 Mich App 47, 56; 199 NW2d 525 (1972) ("The test of a zoning ordinance's constitutionality is not profitability.").

[24] *Dorman v Twp of Clinton*, 269 Mich App 638, 647; 714 NW2d 350 (2006), quoting *Bell River Assocs v China Twp*, 223 Mich App 124, 133; 565 NW2d 695 (1997).

[25] *Gackler Land Co v Yankee Springs Twp*, 427 Mich 562, 572; 398 NW2d 393 (1986).

[26] *Dorman*, 269 Mich App at 647, quoting *Bell River*, 223 Mich App at 133, quoting *Bevan v Brandon Twp*, 438 Mich 385, 403; 475 NW2d 37, amended 439 Mich 1202 (1991).

[27] *K & K*, 456 Mich at 586 (emphasis added).

For example, applying this test, one court has held that a campground was not denied "all use" of its property when, although it was prohibited from constructing any new buildings or reconstructing damaged buildings, the campground operators could still use the property for camping activities: "Meals could be cooked, games played, lessons given, tents pitched."[28]

Nothing in the record suggests that the Boy Scouts' property is unsuitable for continued camp use. Indeed, camp use is the historical established use of this land. And the evidence shows that the land is suitable for continued camp use.[29] The Boy Scouts are not prohibited from selling the land to another camp organization, including by breaking the land into smaller parcels for sale. While the restrictions that FR-I places on the land may have reduced its value, the restrictions have not rendered the land worthless or economically idle.

Additionally, the Boy Scouts contend that "the Township's own appraiser discovered that the property use allowed by the new zoning ordinance—operation of a *youth* camp—has no competitive market in the State of Michigan and leaves the Scouts with no opportunity to sell the property to someone else for that same use."[30] However, contrary to the Boy Scouts' contention, the FR-I zone does not limit use to youth camps. It also allows use for music camps and scout camps.

Accordingly, we affirm the trial court's grant of summary disposition to the Township because the Boy Scouts failed to create a factual dispute that the Township's FR-I zoning ordinance amounted to a regulatory taking of their property under the categorical taking test.

C. FACIAL SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION

The Boy Scouts argue that they were entitled to judgment as a matter of law on their facial Substantive Due Process and Equal Protection claims.

A plaintiff who alleges an unconstitutional taking of his or her property may challenge the validity of the zoning ordinance as a violation of his or her substantive due process or equal protection rights.[31] The FR-I zoning classification is presumed to be constitutional, and the

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[28] *First English Evangelical Lutheran Church v County of Los Angeles*, 210 Cal App 3d 1353, 1367 (Cal App 2d Dist, 1989). The Boys Scouts argue that *First English* was overruled by *Lucas*, 505 US 1003. However, this contention is without merit. *Lucas* merely stated that land could not be relegated in such a way as to essentially transform it into public land, which is not the case here.

[29] See *Del Monte Dunes*, 95 F3d at 1433.

[30] Emphasis added.

[31] *Muskegon Area Rental Ass'n v City of Muskegon*, 465 Mich 456, 460; 636 NW2d 751 (2001); *Dorman*, 269 Mich App at 650.

burden is on the Boy Scouts to prove the contrary.[32] We review this case while remaining mindful that this Court is not a "'superzoning commission.'"[33]

Facial Substantive Due Process and Equal Protection claims are both subject to rational basis review.[34] That is, a zoning ordinance is facially invalid as a matter of substantive due process "if it fails to advance a legitimate governmental interest or if it is an unreasonable means of advancing a legitimate governmental interest."[35] Similarly, absent a suspect classification, the plaintiff in an equal protection challenge has the burden of establishing that a zoning ordinance is arbitrary and not rationally related to a legitimate governmental interest.[36] In general, to show that a zoning ordinance is not rationally related to a legitimate governmental interest, the plaintiff must negate "'every conceivable basis' supporting the ordinance, or show that it 'is based "solely on reasons totally unrelated to the pursuit of the State's goals[.]"'"[37]

> "Rational basis review does not test the wisdom, need, or appropriateness of the legislation, or whether the classification is made with 'mathematical nicety,' or even whether it results in some inequity when put into practice." Rather, it tests only whether the legislation is reasonably related to a legitimate governmental purpose. The legislation will pass "constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable."[38]

Here, there is no question that that the rezoning of the property did advance legitimate and reasonable governmental interests. Preserving the character of a township has been held to be a legitimate governmental interest.[39] Similarly, protection of infrastructure is a recognized concern for local government.[40] And the protection and preservation of natural resources is a

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[32] *Dorman*, 269 Mich App at 650; *Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998).

[33] *Brae Burn v Bloomfield Hills*, 350 Mich 425, 430; 86 NW2d 166 (1957).

[34] See *Conlin v Scio Twp*, 262 Mich App 379, 391 n 2; 686 NW2d 16 (2004) (noting that "where there are no suspect classifications or fundamental rights involved, and the ordinance does not completely exclude a particular use, the substantive due process and equal protection tests are essentially the same.").

[35] *Hecht v Nile Twp*, 173 Mich App 453, 461; 434 NW2d 156 (1988).

[36] *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173; 667 NW2d 93 (2003).

[37] *Conlin*, 262 Mich App at 391, quoting *Muskegon*, 465 Mich at 464 (internal citations omitted).

[38] *Muskegon*, 465 Mich at 464 (internal citations and emphasis omitted).

[39] See *New Orleans v Dukes*, 427 US 297; 96 S Ct 2513; 49 L Ed 2d 511 (1976).

[40] *Johnson v Lyon Twp*, 45 Mich App 491, 494; 206 NW2d 961 (1973).

legitimate concern for a township.[41] Further, neighbors' opposition to proposed zoning is relevant to whether a proposed project is harmonious with existing land use.[42]

Further, the Boy Scouts cannot show that the FR-I zoning restriction was based solely on reasons totally unrelated to the pursuit of the Township's interests.[43] Nor can the Boys Scouts negate every conceivable basis that might support the restrictions.[44] Here, the evidence showed that the land at issue has been historically used by camping and outdoor recreational enterprises. And the FR-I ordinance advances the several legitimate purposes cited by the Township, including protecting the township's unique, camp character and habitat.

To the extent that the Boy Scouts argue that, in practice, the ordinance will not protect the Township's environmental interests because the FR-I zone allows for large developments like convention centers and hotels, as long as used for camp purposes, this argument is without merit. The Township had several goals in implementing the zoning, including promoting the educational, recreational, and historical character of the property, none of which would be furthered by allowing private, residential development. The Township had the discretion to allow development that was in harmony with all of its public interest goals, while limiting development that was not.

Accordingly, we affirm the trial court's grant of summary disposition to the Township because the Boy Scouts failed to create a factual dispute that the Township's FR-I zoning ordinance was not rationally related to a legitimate governmental interest.

D. PROCEDURAL DUE PROCESS

The Boy Scouts argue that they were entitled to judgment as a matter of law on their Procedural Due Process claim because the Boy Scouts proved unequivocally that the Township's bad faith conduct violated their Procedural Due Process rights. The Boy Scouts contend that the Township changed its zoning ordinance specifically to prevent the Boy Scouts from selling any of their land for residential development. And, according to the Boy Scouts, in making that change, the Township (1) failed to give the them actual notice of the planning commission's hearing where the change was discussed, (2) failed to give notice of what change the planning commission was considering, (3) rushed to hold a township board meeting to enact the change, (4) ignored the Boy Scouts' written request to be heard before adopting the change, and (5) refused to give the Boy Scouts a copy of the new zoning ordinance.

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[41] *Frericks*, 228 Mich App at 592-593.

[42] *Davenport v City of Grosse Point Farms ZBA*, 210 Mich App 400, 407-408; 534 NW2d 143 (1995).

[43] See *Conlin*, 262 Mich App at 391.

[44] *Id*.

No person may be deprived of life, liberty, or property without due process of law.[45] In its most fundamental sense, this guarantee limits arbitrary power, and due process provisions are to be liberally construed in favor of citizens.[46] Due process generally requires notice, an opportunity to be heard, and a written statement of findings.[47] The determination whether a party has been afforded due process is a question of law subject to de novo review on appeal.[48]

The trial court dismissed the Boy Scouts' procedural due process claim on the ground that public policy does not allow for a procedural due process challenge after a four-year delay.[49] However, even giving the Boy Scouts the benefit of the doubt and accepting their argument that any delay in their bringing a claim was caused by the Township's "charade of 'considering'" their application for rezoning, we nevertheless conclude that the Township was entitled to summary disposition on this claim.

To claim a procedural due process violation, a plaintiff must allege more than an abstract need, desire, or unilateral expectation of the claimed interest. There must be a legitimate claim of entitlement to it.[50] Due process clauses protect vested property interests.[51] And a protected property interest is present when an individual has a reasonable expectation of entitlement to the perpetuation of a prior zoning ordinance.[52] A landowner does not possess a vested property interest in a particular zoning classification unless the landowner holds a valid building permit and has completed substantial construction.[53] The Boy Scouts neither held a building permit for residential construction nor had begun any residential construction. Thus, they did not possess a protected property interest under Michigan law. Further, because the Township's action in adopting the new zoning ordinance was part of the legislative process, rather than an administrative function, the Boy Scouts had no constitutional right to procedural due process.[54]

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[45] US Const, Am V; Const 1963, art 1, § 17; *Sidun v Wayne Co Treasury*, 481 Mich 503, 508-509; 751 NW2d 453 (2008); *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 209; 761 NW2d 293 (2008).

[46] *Lockwood v Comm'r of Revenue*, 357 Mich 517, 557; 98 NW2d 753 (1959).

[47] *Dusenbery v United States*, 534 US 161, 167; 122 S Ct 694; 151 L Ed 2d 597 (2002); *Republic Bank v Genesee Co Treas*, 471 Mich 732, 742; 690 NW2d 917 (2005).

[48] *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

[49] *Richmond Twp v Erbes*, 195 Mich App 210, 217; 489 NW2d 504 (1992); *Northville Area Non-Profit Housing Corp v Walled Lake*, 43 Mich App 434; 204 NW2d 274 (1972).

[50] *Williams v Hofley Mfg Co*, 430 Mich 603, 610; 424 NW2d 278 (1988); *York v Civil Service Comm*, 263 Mich App 694, 702-703; 689 NW2d 533 (2004).

[51] *Sherwin v State Hwy Comm'r*, 364 Mich 188, 200; 111 NW2d 56 (1961).

[52] *Mettler*, 281 Mich App at 209.

[53] *City of Lansing v Dawley*, 247 Mich 394, 396-397; 225 NW 500 (1929); *Schubiner v West Bloomfield Twp*, 133 Mich App 490, 497; 351 NW2d 214 (1984).

[54] *Sun Communities v Leroy Twp*, 241 Mich App 665, 669; 617 NW2d 42 (2000).

Moreover, we reject the Boy Scouts claims that they were denied notice of the zoning change. On November 17, 2002, the Township published notice that a special meeting of the planning commission would be held on December 9, 2002, to receive comments regarding the proposed amendments to the Zoning Ordinance. And while the notice did not disclose the details of the proposed amendments, it did state that the complete text of the proposed amendments would be available for review at the town hall during regular business hours. Having given proper public notice, we cannot fault the Township for the Boy Scouts' failure to actually learn of the zoning change until mid-2003.

We will not reverse the lower court when the court reaches the correct result albeit for the wrong reason.[55] Accordingly, we affirm the trial court's grant of summary disposition to the Township because the Boy Scouts failed to demonstrate a factual dispute that they were denied procedural due process.

III. JUDGMENT AFTER TRIAL

A. STANDARD OF REVIEW

A trial court's findings of fact may not be set aside unless clearly erroneous.[56] A trial court's findings of fact are clearly erroneous only if "on review of the entire record, the [Court] is left with the definite and firm conviction that a mistake has been made."[57] We also review de novo constitutional issues.[58]

B. *PENN CENTRAL* BALANCING TEST

The Boy Scouts argue that they were entitled to judgment on their inverse condemnation claim because the Township effected a taking under the *Penn Central* balance test. According to the Boy Scouts, the trial evidence showed that the Township's zoning change was intentionally designed to stop development on the Boy Scouts' property, deprived the Boy Scouts of any economically viable use of their land, and adversely interfered with the Boy Scouts' investment-backed expectations.

As stated, there are two avenues to establish an inverse condemnation regulatory taking claim: (1) a categorical taking, as discussed above in § II.B., or (2) application of a balancing test, which we now discuss.

Application of the balancing test involves "essentially ad hoc, factual inquiries."[59] The balancing test requires a court to consider (1) the character of the government's actions; (2) the

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[55] *Tipton v William Beaumont Hosp*, 266 Mich App 27, 37-38; 697 NW2d 552 (2005).

[56] MCR 2.613(C).

[57] *Peters v Gunnell, Inc*, 253 Mich App 211, 221; 655 NW2d 582 (2002).

[58] *Tolksdorf*, 464 Mich at 5.

[59] *Penn Central*, 438 US at 124; see *K & K*, 456 Mich at 577.

economic effect of the regulation on the property; and (3) the extent of any interference with the property owner's distinct, investment-backed expectations.[60]

After trial, the court found that the Boy Scouts' failed to prove their inverse condemnation claim under the balancing test. The trial court found that all three factors weighed in favor of the Township. The trial court found that the FR-I zoning served a public good, while not singling out the Boy Scouts. The trial court also found that the property was marketable as a campground and that the ordinance did not severely diminish the marketable value of the Boy Scouts' property. And the trial court found that the Boy Scouts had not shown any reasonable investment-backed expectations that were been defeated by adoption of the FR-I zone.

1. THE CHARACTER OF THE GOVERNMENT'S ACTIONS

With respect the first factor under the balancing test, "A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good."[61] Here, the Township's zoning clearly does not amount to a physical taking. Thus, "[t]he relevant inquiries are whether the governmental regulation singles plaintiff[] out to bear the burden for the public good and whether the regulatory act being challenged here is a comprehensive, broadly based regulatory scheme that burdens and benefits all citizens relatively equally."[62] Here, the Boy Scouts concede that in implementing this zoning, the Township has multiple interests in promoting the common good, but they essentially argue that the burden on them is too severe. This argument is without merit.

This Court has recognized that zoning regulations are generally "comprehensive, universal, and ubiquitous, and provide an 'average reciprocity of advantage' for all property owners[.]"[63] And the FR-I zoning is no exception: the FR-I zone includes properties owned by several different camp organizations, and the zoning applies equally to all of the property owners in the zoned area. As the trial court held, all of those owners are equally burdened by the land use restrictions, but they all also equally benefit from preserving the unique camp character of the land. And contrary to the Boys Scouts' argument, there is no evidence that the Boy Scouts were specifically singled out to bear the burden. The Boy Scouts point out that township commissioner Lyle Monette admitted that the goal of implementing the FR-I zoning was to prevent the Boy Scouts from selling their land for residential development. However, Monette testified that the planning commission had been working on drafting the FR-I zoning well before the Boy Scouts announced their plans to sell their land and that the announcement merely sped up the implementation process to ensure protection of the Township's goals. The fact that the

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[60] *Penn Central*, 438 US at 124; *K & K*, 456 Mich at 587-588.

[61] *Penn Central*, 438 US at 124 (internal citation omitted).

[62] *K & K Construction, Inc v Dep't of Environmental Quality*, 267 Mich App 523; 705 NW2d 365 (2005).

[63] *Id.* at 531.

Boy Scouts' intentions influenced the Township's actions does not negate the fact that the Boy Scouts were not singled out in implementation of the zoning. All property owners within the zone bear the burden of the restriction.

The Boy Scouts emphasize that the Township's FR-I zone is unique. However, as the Township points out, the uniqueness of the FR-I zone was a reasonable response to the unique nature of the land in question. The Boy Scouts further argue that, in practice, the new zoning scheme will do nothing to promote the Township's *post hoc* governmental interest of protecting the environmental interests of the property because the FR-I zone allows large developments like convention centers and hotels, as long as used for camp purposes. However, as stated, protecting the natural habitat is not the only governmental interest at issue. The Township had several goals in implementing the zoning, including promoting the educational, recreational, and historical character of the property. And the Township had the discretion to allow development that was in harmony with all of its public interest goals.

The Boy Scouts cannot establish that the Township's FR-I zoning has the effect of singling out the Boys Scouts to bear the burden of a public benefit. Thus, we conclude that the trial court correctly found that this factor weighed in the Township's favor.

2. THE ECONOMIC EFFECT OF THE REGULATION ON THE PROPERTY

With respect the second factor, the Boy Scouts argue that the economic effect of the zoning on their property has been severe. They point out that, before the zoning change, they had been offered $19.3 million for their property. But, according to their expert, their land was only worth $2.8 million after the zoning change. And on this latter point, the Boy Scouts contend that the trial court erred in relying on the Township's expert's $12 million appraisal. The Boy Scouts argue the Township's appraisal was not supported when the Township's expert admitted that no camp in Michigan had been sold as a camp for at least seven years. The Boy Scouts also discount the trial court's finding that the land was worth $12 million. They contend that that figure was based on an offer from a prospective buyer with insufficient assets to complete the purchase.

"While there is no set formula for determining when a taking has occurred under this test, it is at least 'clear that the question whether a regulation denies the owner economically viable use of his land requires at least a comparison of the value removed with the value that remains.'"[64] "A comparison of values before and after a regulation becomes effective is relevant in determining whether the regulation is so onerous as to constitute a 'taking,' but is by no means conclusive."[65] "[A] property owner must prove that the value of his land has been destroyed by

[64] *K & K*, 456 Mich at 588, quoting *Bevan*, 438 Mich at 391.

[65] *Bevan*, 438 Mich at 403 n 18.

the regulation or that he is precluded from using the land as zoned."[66] "[A] mere diminution in property value which results from regulation does not amount to a taking"[67]

Although the Boy Scouts argue that the trial court erred in relying on the Township's appraisal, we must give deference to the trial court's superior ability to judge the credibility of the witnesses who appeared before it.[68] The trial court thoroughly explained its reasons and rationale for preferring the Township's appraisal testimony. And we cannot say that the trial court's conclusions were clearly erroneous.

Moreover, as the trial court held, the decrease in marketable value is not prejudicially severe. In *Penn Central*, the United States Supreme Court recognized that "in instances in which a state tribunal reasonably concluded that 'the health, safety, morals, or general welfare' would be promoted by prohibiting particular contemplated uses of land, this Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests."[69] Moreover, "[t]he Taking Clause does not guarantee property owners an economic profit from the use of their land."[70] Here, the trial court found that the zoning change effected a 36 percent diminution in value in the Boy Scouts' property. And as the trial court stated, "This is, to be sure, a significant decline." However, "[d]ecisions sustaining other land-use regulations, which, . . . are reasonably related to the promotion of the general welfare, uniformly reject the proposition that diminution in property value, standing alone, can establish a 'taking,' see *Euclid v Ambler Realty Co*, 272 US 365 (1926) (75% diminution in value caused by zoning law); *Hadacheck v Sebastian*, 239 US 394 (1915) (87 1/2% diminution in value)[.]"[71]

The Boy Scouts cannot establish that the Township's FR-I zoning caused such an excessive diminution in value as to amount to a showing that the value of their land has been destroyed by the regulation or that they are precluded from using the land as zoned.[72] Thus, we conclude that the trial court correctly found that this factor weighed in the Township's favor.

3. INTERFERENCE WITH INVESTMENT-BACKED EXPECTATIONS

With respect the third and final factor, the Boy Scouts argue that the zoning change interfered with their distinct investment-backed expectations. They contend that, at the time that the zoning change was adopted, the Boy Scouts were negotiating a $19 million sale of the property, which was based on the expectation of residential development. However, as the

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[66] *Id.* at 403.

[67] *Id.* at 402-403.

[68] *Brooks v Rose*, 191 Mich App 565, 570; 478 NW2d 731 (1991).

[69] *Penn Central*, 438 US at 125.

[70] *Paragon Properties*, 452 Mich at 579 n 13.

[71] *Penn Central*, 438 US at 131. See also *Cryderman v City of Birmingham*, 171 Mich App 15; 429 NW2d 625 (1988).

[72] See *Bevan*, 438 Mich at 403.

Township points out, mere negotiation for a potential sale does not equate to evidence of actual investments. This Court has declined to find a taking where the property owner is not actively investing in a particular use of the property. "To claim a vested interest in a zoning classification, the property owner must 'hold[] a valid building permit and [have] completed substantial construction.'"[73] Indeed, this Court has declined to find a valid investment-backed expectation where a municipality rezoned property while the property owner's application for a building permit was pending.[74] In order to protect one's property rights, a property owner must demonstrate that he or she has taken *substantial* action to begin construction on the property.[75] "[P]reliminary operations such as ordering plans, surveying the land, and the removal of old buildings are insufficient . . . ."[76]

Here, the Boy Scouts have no investment-backed expectations in residential development. They have not invested anything in the construction of residential housing on their land. To the contrary, all the of the Boy Scouts' investments to date have been directed to camping and recreational development. We note that the *Penn Central* Court found it significant that the Penn Central station had been historically used as a railroad terminal and that the new law did not interfere with that continued use:

> [T]he New York City law does not interfere in any way with the present uses of the Terminal. Its designation as a landmark not only permits but contemplates that appellants may continue to use the property precisely as it has been used for the past 65 years: as a railroad terminal containing office space and concessions. So the law does not interfere with what must be regarded as Penn Central's primary expectation concerning the use of the parcel.[77]

Here, the Boys Scouts have solely been using their land for camping operations for nearly 100 years. Therefore, the Boy Scouts cannot establish that the Township's FR-I zoning interfered with any distinct investment-backed expectations in residential development. Thus, we conclude that the trial court correctly found that this factor weighed in the Township's favor.

Accordingly, we conclude that the trial court properly weighed all of the *Penn Central* factors in favor of the Township, and we affirm the trial court's judgment in favor of the Township on this claim.

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[73] *Dorman*, 269 Mich App at 649, quoting *Seguin v Sterling Hgts*, 968 F2d 584, 590-591 (CA 6, 1992). See also *Dawley*, 247 Mich at 396-397 (finding no vested right to construct the proposed building where the property owner had only ordered the construction plans and conducted a survey of the land).

[74] *Schubiner*, 133 Mich App at 497.

[75] *Dorman*, 269 Mich App at 649.

[76] *Id.*, quoting *Gackler*, 452 Mich at 574-575.

[77] *Penn Central*, 438 US at 136.

C. "AS APPLIED" SUBSTANTIVE DUE PROCESS

The Boy Scouts argue that they were entitled to judgment on their "as applied" Substantive Due Process challenge. According to the Boy Scouts, the evidence showed that the Township's zoning change arbitrarily prevented the Boy Scouts from using their property in an economically productive way.

As stated previously, "[a] plaintiff who alleges an unconstitutional taking of his or her property may also challenge the validity of the zoning ordinance as a violation of his or her right to substantive due process."[78] The FR-I zoning classification is presumed to be constitutional, and the burden is on the Boy Scouts to prove the contrary.[79] And we remain mindful that we do not sit as a "'superzoning commission.'"[80] Therefore, we give considerable weight to the trial court's findings.[81]

A plaintiff may establish that a land use regulation is unconstitutional "as applied"' by showing "'(1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) 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.'"[82] "An 'as applied' challenge alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution."[83] "'[I]t is the burden of the party attacking to prove affirmatively that the ordinance is an arbitrary and unreasonable restriction upon the owners use of this property."[84] A determination of the validity of an ordinance, requires consideration of "the character of the district, its peculiar suitability for particular uses, the conservation of property values and the general trend and character of building and population development; unsuitability for residential purposes; lack of market for such purpose, and whether the land will become 'dead land' or nonincome-producing land without residential value."[85] The question is "[a]s to this property, in this city, under this particular plan (wise or unwise though it may be), can it fairly be said there is not even a debatable question? If there is, we will not disturb."[86] The Court requires "more than a fair difference of opinion."[87]

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[78] *Dorman*, 269 Mich App at 650.

[79] *Id.*; *Frericks*, 228 Mich App at 594.

[80] *Brae Burn*, 350 Mich at 430.

[81] *Conlin*, 262 Mich App at 390.

[82] *Dorman*, 269 Mich App at 650-651, quoting *Frericks*, 228 Mich App at 594.

[83] *Paragon Properties*, 452 Mich at 576.

[84] *Brae Burn*, 350 Mich at 432; see also *Kirk v Tyrone Twp*, 398 Mich 429; 247 NW2d 848 (1976).

[85] *Alderton v Saginaw*, 367 Mich 28, 34; 116 NW2d 53 (1962) (internal citations omitted).

[86] *Brae Burn*, 350 Mich at 433.

[87] *Id.* at 432.

As we have explained previously, there was no question of fact that the Township's FR-I zoning ordinance was rationally related to a legitimate governmental interest. Nevertheless, the Boy Scouts argue that the Township's alleged legitimate governmental interests were merely a pretext. They contend that the rezoning decision was based solely on a desire specifically to prevent the Boys Scouts from selling their land for residential development. However, a plaintiff cannot challenge the constitutionality of a law simply by attacking the motives of the legislators who authored it.[88] Further, although the Boy Scouts argue that the rezoning of their property was prompted by the Township's ulterior motives, we do not agree that the township board's ultimate decision was arbitrary and capricious. The land had a historical camp use and the Boy Scouts' proposed residential development was clearly a nonconforming use. Precluding such nonconforming residential use to retain the land's conformity with its historical use was not an arbitrary or capricious act.

The Boys Scouts argue that the FR-I zoning unreasonably denied them of all economically productive use of their property. But, as we explained in § II.B., the FR-I zoning has not denied the Boy Scouts of *all* economically productive use of their property. The Boy Scouts might not be able to sell their land for private residential development. But they still have alternative, economically viable campground uses. And while they may not be able to realize the highest economic profit from such camp use, the Constitution does not require the Township to zone the Boys Scouts' property to allow its most profitable use.[89]

The Boy Scouts also argue that the FR-I exclusion of residential development was inconsistent with the master plan and, therefore, was an arbitrary, capricious, and unfounded exclusion of residential development. However, as the trial court recognized, this residential exclusion was consistent with the historical use of the property: the prior FR zone never allowed for private residential development either. Consistency with a master plan in and of itself is evidence of reasonableness in the evaluation of an as applied due process challenge.[90]

The trial court made extensive findings in support of its conclusion that the FR-I zoning classification was reasonable and not an arbitrary, capricious, or unfounded exclusion of residential development. The trial court found that the land was marketable for sale to other camp organizations and that the current infrastructure did not support residential development. And the trial court acknowledged that the expert's disagreed regarding whether the zoning ordinance was an unfounded exclusion of residential development. But the trial court then concluded that their disagreements were nothing more than fair differences of opinion, which are insufficient to show a constitutional violation.[91] The trial court's findings are entitled to

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[88] See *People v Gardner*, 143 Mich 104, 106; 106 NW2d 541 (1906); *Pythagorean, Inc v Grand Rapids Twp*, 253 Mich App 525, 527-528; 656 NW2d 212 (2002).

[89] *Equitable Bldg Co v Royal Oak*, 67 Mich App 223, 227; 240 NW2d 489 (1976).

[90] *Parkdale Homes v Clinton Twp*, 23 Mich App 682, 686-687; 179 NW2d 232 (1970).

[91] See *Brae Burn*, 350 Mich at 432.

substantial deference.[92] Accordingly, we affirm the trial court's judgment in favor of the Township on this claim.

IV. CONCLUSION

We conclude that the trial court properly granted summary disposition to the Township. The Boy Scouts failed to demonstrate a factual dispute that the Township's FR-I zoning ordinance amounted to a regulatory taking of their property under the categorical taking test. They failed to show that the Township's FR-I zoning ordinance was not rationally related to a legitimate governmental interest. They also failed to show that they were denied procedural due process.

We further conclude that the trial court properly entered judgment in favor of the Township after trial when it properly weighed all of the *Penn Central* factors in favor of the Township, and when the Boy Scouts failed to show that the FR-I zoning was an arbitrary, capricious, and unfounded exclusion of residential development.

We affirm.

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

[92] *Conlin*, 262 Mich App at 390.