STATE OF MICHIGAN

COURT OF APPEALS

CITY OF HOLLAND, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED January 11, 2018
v	No. 336057 Ottawa Circuit Court LC No. 16-004433-CH
MCBR PROPERTIES LLC and VBH PROPERTIES LLC, Defendants/Counter-Plaintiffs-Appellants,	
and	
RANDALL L VANKLOMPENBERG, Defendant.	

Before: METER, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Defendants/counterplaintiffs MCBR Properties, LLC (MCBR) and VBH Properties, LLC (VBH) (collectively, "defendants"), appeal by right the trial court's order denying their motion for summary disposition under MCR 2.116(C)(8) (failure to state a claim on which relief can be granted) and MCR 2.116(C)(10) (no genuine issue of material fact, moving party entitled to judgment as a matter of law) and granting summary disposition in favor of plaintiff/counterdefendant the City of Holland (the city) under MCR 2.116(I)(2) (opposing party entitled to judgment). We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The city filed a complaint for injunctive relief against defendants,[1] alleging that defendants were in violation of § 39-284(b)(4) of the Holland City Code (the City Code). That section provides that: "A maximum of six parked vehicles are allowed per property" (hereinafter "the six-vehicle rule"). Defendants filed a countercomplaint against the city, seeking injunctive relief and challenging the constitutionality of the six-vehicle rule on substantive due process and equal protection grounds. Defendants filed a motion for summary disposition under MCR 2.116(C)(8) and (C)(10). The city opposed the motion and requested entry of summary disposition in favor of the city under MCR 2.116(I)(2).

Although the city's complaint initially contained allegations regarding seven real properties owned by three defendants, the case was eventually narrowed to three properties owned by two defendants: MCBR's residential rental properties located at 42 E. 13th Street and 264 E. 13th Street, and VBH's real property located at 339 Lincoln Ave., all located within the city. The city alleged that these were multi-unit properties that defendants rented to multiple tenants and that defendants routinely allowed their tenants to park more than six vehicles on each property in violation of the six-vehicle rule. The city therefore alleged that defendants maintained a nuisance per se on their real properties and requested that the trial court order defendants to abate the nuisance per se existing on their properties.

Defendants' residential rental properties are located within the city's Traditional Residential Neighborhood (R-TRN) Zone District, which immediately abuts the adjoining Education (ED) Zone District. In addition, the Hope Neighborhood Area (HNA) is an "overlay zone" that covers portions of each of these zone districts. The parties agree that the HNA is an overlay zone in and around the Hope College campus, and that properties within the HNA may be classified as a part of one of several different possible zone districts, including R-TRN and ED. The parties further agree that the ED Zone District consists almost entirely of the Hope College campus, and that the six-vehicle rule only applies to those properties within the HNA that are classified as part of the R-TRN Zone District.

The trial court denied defendants' motion for summary disposition under MCR 2.116(C)(8) and (C)(10) and granted summary disposition in favor of the city under MCR 2.116(I)(2). The trial court's findings of fact were as follows:

> The material facts necessary for a resolution of the parties' cross-motions are not in dispute. This case concerns real property located in the heart of the City of Holland within what is known as the "Hope Neighborhood Area" (HNA). HNA consists mostly of the campus buildings that comprise Hope College but also includes residential parcels located near campus. Most of HNA is zoned ED (educational district). The ED zoning designation permits large parking lots to accommodate access and egress by students, faculty, and members of the public

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[1] Although the city initially named Randall VanKlompenberg as a defendant, he was dismissed from the suit by stipulation, and he is not a party to this appeal.

> attending the classroom buildings, laboratories, and dormitories that comprise Hope College. However, a portion of HNA is zoned R-TRN (traditional residential). In addition to the campus parcels that Hope owns, Hope also owns a few parcels of residential property located in HNA. Dwellings on these parcels are rented to Hope students by the College. Like Hope's campus parcels, the residential parcels that Hope owns — hereinafter referred to as "Hope's residential properties" — are zoned ED. The City of Holland does not impose any restrictions on the number of vehicles that may be parked on property zoned ED.
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> The City permits ten parking spaces on property zoned R-TRN. However, after studying the development patterns emerging in HNA, the Holland Planning Commission and the Holland City Council (Council) decided that in order to preserve and protect the traditional residential character of property zoned R-TRN, it was necessary to limit the number of vehicles that could lawfully be parked at one time on property zoned R-TRN. To this end, in January 2012, Council amended Holland City Ordinance 39-284(c) to prohibit the parking of more than six vehicles at one time on property zoned R-TRN (hereinafter, "the six-vehicle rule"). The upshot of the six vehicle rule is that though a property owner of property zoned R-TRN is permitted to have ten parking spaces on his property, only six of these spaces may be used at any one time.

The trial court ruled that defendants could not prevail on their substantive due process claim, stating:

> Defendants have failed to provide affirmative proof that persuades the Court that the six vehicle rule is an arbitrary and unreasonable restriction on defendants' use of their property and that there is no room for a legitimate difference of opinion as to the reasonableness of the six vehicle rule. As to the reasonableness element, the reasonable governmental interest that is advanced by the six vehicle rule is the improvement in the quality of life in residential areas by the reduction of traffic, noise, and noxious fumes. This hardly constitutes an arbitrary, capricious, or unfounded exercise of governmental power. And defendants have not shown that if the six vehicle rule is applied as written, they will be precluded from using their property for any of the purposes to which it is reasonably adapted. Indeed, defendants are using their property precisely for the purpose for which they purchased it.

The trial court further ruled that defendants could not prevail on their equal protection claim, stating:

> In the case at bar, defendants — the party challenging the six vehicle rule — and Hope College — the comparator — are not identical in all relevant respects. Nor are they directly comparable in all material respects. Defendants are residential landlords. Hope College is an institution of higher education. It would be difficult to imagine two parties that are more different in every relevant

> and material respect. Therefore, defendants' equal protection challenge fails at the threshold level of analysis.
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> But even if defendants and Hope College were identical [in] all relevant respects or directly comparable in all material respects, the six vehicle rule is rationally related to a legitimate state interest. Automobiles produce traffic, noise and noxious fumes. More automobiles produce more traffic, more noise, and more noxious fumes. The City of Holland has a legitimate interest in limiting the amount of noise, traffic, and noxious fumes to which residents of areas of the City zoned R-TRN are exposed. Limiting the number of vehicles that may park on property zoned R-TRN is a rational method for advancing this interest.

The trial court issued a judgment granting injunctive relief to the city, enjoining defendants from "parking, or allowing to be parked, more than six vehicles on 42 E. 13th Street, 264 E. 13th Street, and 339 Lincoln Ave. in the City of Holland." This appeal followed.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's ruling regarding the constitutionality of a zoning ordinance, *Kropf v Sterling Hts*, 391 Mich 139, 152, 163; 215 NW2d 179 (1974), as well as due process and equal protection challenges to zoning ordinances, *Houdek v Centerville Twp*, 276 Mich App 568, 573; 741 NW2d 568 (2007). We also review de novo a trial court's grant or denial of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A court properly grants a motion for summary disposition under MCR 2.116(C)(8) when, considering only the pleadings, the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id*. at 119. A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Lichon v American Universal Ins Co*, 435 Mich 408, 414; 459 NW2d 288 (1990). MCR 2.116(C)(10) permits summary disposition when, except with regard to the amount of damages, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. In reviewing such a motion, this Court considers the pleadings, affidavits, depositions, admissions, and documentary evidence and grants the benefit of any reasonable doubt to the nonmoving party. *Skinner v Square D Co*, 445 Mich 153, 161-162; 516 NW2d 475 (1994). The court is not permitted to assess credibility or to determine facts on a motion for summary disposition. Instead, the court's task is to review the record evidence and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial. *Id*. The trial court must give the benefit of any reasonable doubt to the nonmoving party. *Schultes v Naylor*, 195 Mich App 640, 645; 491 NW2d 240 (1992). Finally, a trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law. *Sharper Image Corp v Dep't of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996).

III. SUBSTANTIVE DUE PROCESS

Defendants argue that the trial court erred by denying their motion for summary disposition with respect to their substantive due process claim, and by granting summary disposition in favor of the city on that claim. We disagree that the trial court erred by denying summary disposition in favor of defendants, but hold that the trial court erred by granting summary disposition in favor of the city.

In *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173-174; 667 NW2d 93 (2003), this Court addressed the test to be used for evaluating both substantive due process and equal protection challenges to zoning ordinances:

> The state and federal constitutions guarantee equal protection of the laws. US Const, Am XIV; Const 1963, art 1, § 2; *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999). When no suspect or somewhat suspect classification can be shown, the plaintiff has the burden of establishing that the statute is arbitrary and not rationally related to a legitimate governmental interest. *Crego v Coleman*, 463 Mich 248, 259; 615 NW2d 218 (2000). This test specifically applies to zoning ordinances. *Cryderman v Birmingham*, 171 Mich App 15, 26; 429 NW2d 625 (1988).
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> The state and federal constitutions also guarantee that no person will be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17; *Marlin v Detroit (After Remand)*, 205 Mich App 335, 339; 517 NW2d 305 (1994). Unless a fundamental right is involved, the statute need only be rationally related to a legitimate governmental interest. *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 549; 656 NW2d 215 (2002). The essence of a claim of violation of substantive due process is that the government may not deprive a person of liberty or property by an *arbitrary* exercise of power. *Id*.
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> The Supreme Court has specifically said that zoning ordinances must be reasonable to comply with due process. *Silva v Ada Twp*, 416 Mich 153, 157-158; 330 NW2d 663 (1982). A zoning ordinance may be unreasonable either because it does not advance a reasonable governmental interest or because it does so unreasonably. *Hecht v Niles Twp*, 173 Mich App 453, 461; 434 NW2d 156 (1988); see also *Cryderman*, *supra*.

However, in this case, the trial court relied on our Supreme Court's decision in *Kropf v City of Sterling Heights*, 391 Mich 139, 156; 215 NW2d 179 (1974), with regard to the test used to evaluate defendants' substantive due process claim. The trial court articulated the test it used as follows:

> The party attacking the constitutionality of an ordinance bears the burden of proof. *Kropf v City of Sterling Heights*, 391 Mich 139, 156; 215 NW2d 179 (1974). A substantive due process challenge to a local ordinance is subject to a tripartite test. First, the ordinance comes before the court clothed with every

> presumption of validity. *Kropf v City of Sterling Heights*, 391 Mich 139 at 158 & 162. Second, the property owner must provide affirmative proof that the ordinance is an arbitrary and unreasonable restriction [of] his use of the property and that there is no room for a legitimate difference of opinion as to the reasonableness of the ordinance. *Id*. at 162. This second element — the "reasonableness" element — requires that the property owner show either that no reasonable governmental interest is being advanced by the ordinance or that the ordinance is arbitrary, capricious, and an unfounded exclusion of land uses. *Id*. at 161. Third, the property owner must show that if the ordinance is enforced as written, the property owner will be precluded from using the property for any of the purposes to which it is reasonably adapted. *Id*. at 162-163.

The trial court applied an incorrect standard of law to defendants' substantive due process claim. This Court examined the *Kropf* decision and its progeny in detail in *Hecht*, 173 Mich App at 458-460, and noted that a series of four rules had been developed in the caselaw of this state, to be applied to constitutional challenges to zoning ordinances:

> 1. [The] ordinance comes to us clothed with every presumption of validity.
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> 2. [It] is the burden of the party attacking to prove affirmatively that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of his property . . . . It must appear that the clause attacked is an arbitrary fiat, a whimsical *ipse dixit*, and that there is no room for a legitimate difference of opinion concerning its reasonableness.
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> 3. Michigan has adopted the view that to sustain an attack on a zoning ordinance, an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions on his property preclude its use for any purpose to which it is reasonably adapted.
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> 4. This Court, however, is inclined to give considerable weight to the findings of the trial judge in equity cases. [*Hecht*, 173 Mich App at 458-459, quoting *Kropf*, 391 Mich at 162-163 (quotation marks and citations omitted; ellipsis in original).]

The *Hecht* Court then explained how these four rules apply to different types of challenges to a zoning ordinance:

> We believe that a careful reading of *Kropf*, in particular the context from which these rules were extrapolated, reveals what we perceive as the proper application of the four rules:
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> 1. Rule No. 1 applies to all ordinances, regardless of the theory under which a property owner makes a challenge as to its constitutionality;
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> 2. Rule No. 2 applies to a challenge to a zoning ordinance which has as its basis the reasonable relationship of land use regulation under the police power of a governmental unit to public health, safety, morals, or general welfare;

> 3. Rule No. 3 applies to a challenge to a zoning ordinance which has as its basis a claim of confiscation or wrongful taking under the Fifth or Fourteenth Amendments;
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> 4. Rule No. 4 applies to an appellate court's review of a trial court's findings regardless of the theory or theories advanced. [*Hecht*, 173 Mich App at 459-460.]

Therefore, the first rule to be applied to defendants' substantive due process claim is that "the ordinance comes to us clothed with every presumption of validity." *Kropf*, 391 Mich at 162 (quotation marks and citations omitted). This rule applies to all local zoning ordinances, regardless of the theory under which a property owner challenges its constitutionality. *Hecht*, 173 Mich App at 459. However, presumptions are generally rebuttable unless specifically designated as conclusive. *Black's Law Dictionary* (6th ed), pp 1185-1186. To rebut a presumption, the challenging party must generally produce credible or competent evidence to the contrary; when that happens, the presumption no longer possesses any force. *Reed v Breton*, 475 Mich 531, 539; 718 NW2d 770 (2006). Section 39-284(b)(4) of the City Code consequently is clothed with a presumption of validity, but defendants may rebut that presumption with credible or competent evidence to the contrary.

The second rule to be applied to defendants' substantive due process claim is that defendants must prove "that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of his property." *Kropf*, 391 Mich at 162 (quotation marks and citations omitted). This rule applies to "a challenge to a zoning ordinance which has as its basis the reasonable relationship of land use regulation under the police power of a governmental unit to public health, safety, morals, or general welfare." *Hecht*, 173 Mich App at 459. This type of "reasonableness" challenge to a zoning ordinance on substantive due process grounds includes a disjunctive: "a zoning ordinance is invalid if it fails to advance a legitimate governmental interest *or* if it is an unreasonable means of advancing a legitimate governmental interest." *Hecht*, 173 Mich App at 461 (emphasis added).

The trial court ruled that the six-vehicle rule was intended to advance a legitimate governmental interest, i.e., "the reduction of traffic, noise, and noxious fumes." We agree that "the reduction of traffic, noise, and noxious fumes" caused by vehicular traffic is a reasonable governmental interest. See, i.e., *Curto v Harper Woods*, 954 F 2d 1237, 1242-1243 (CA 6, 1992) (holding that "preventing traffic congestion and overflow of parked vehicles into surrounding properties or the street, controlling harmful fumes and odors . . . and preserving the aesthetic value of the property and surrounding neighborhood" qualified as a reasonable governmental interest for purposes of a substantive due process challenge to a local zoning ordinance.).

However, defendants argue that the trial court failed to analyze and failed to rule upon the second element of the reasonableness analysis: whether the six-vehicle rule "was an unreasonable means of advancing a legitimate governmental interest." *Hecht*, 173 Mich App at 461. Defendants argue that the six-vehicle rule was an unreasonable means of advancing the stated governmental interest of reducing "traffic, noise, and noxious funds" from vehicles, for two reasons: (1) nothing in the record establishes that the six-vehicle rule has any impact on reducing traffic, noise, or noxious fumes in the HNA; and (2) the six-vehicle rule does not in any

meaningful way accomplish its stated objective because it only applies to some, but not all, of the residential-rental properties in the HNA.

Defendants argue that the six-vehicle rule does not reduce vehicular traffic in the HNA or reduce the number of vehicles parked in the HNA. Defendants note that, although the City Code prohibits the simultaneous parking of more than six vehicles on some (but not all) properties within the HNA, the City Code allows those vehicles to park in the street for 21 hours per day (apart from 2:00 a.m. to 5:00 a.m.) for the majority of the year, and allows those vehicles to park in the street 24 hours per day during the summer months (between May 15 and October 15), with certain exceptions.[2] Defendants also argue that prohibiting more than six vehicles from parking on specific parcels of residential property does not mean that those vehicles will not be driving through the neighborhood. Indeed, the city and defendants agree that if the tenants in defendants' properties have too many cars, defendants or the tenants can buy parking passes from Hope College to park their cars overnight in the nearby Hope College lots. Because the six-vehicle rule does not prevent vehicles from entering the HNA, parking in the street, or parking in the Hope College parking lots, defendants argue that the six-vehicle rule does not in any meaningful way accomplish the stated objective of "the reduction of traffic, noise, and noxious fumes" caused by vehicular traffic in the HNA. Rather, the six-vehicle rule simply encourages more vehicles to park on the public street or a few blocks away (but still within the HNA) at the large parking lots on the Hope College campus. After a review of the entire lower court record, we conclude that defendants have raised a genuine issue of material fact regarding whether the six-vehicle rule is "an unreasonable means of advancing a legitimate governmental interest." See *Hecht*, 173 Mich App at 461. Therefore, the trial court erred by granting summary disposition in favor of the city, but correctly denied summary disposition in favor of defendants as this question of fact must be resolved at a trial on the merits. MCR 2.116(C)(10).

Further, defendants have raised a genuine issue of material fact regarding whether the six-vehicle rule is an unreasonable means of advancing a legitimate governmental interest because the limit of six parked vehicles per property is not related to the size of the real property in question. Defendants point specifically to the property located at 42 E. 13th Street, which is a double lot, large enough to permit the construction of two homes. Defendants note that if a single home exists on a double lot, the City Code limits the property owner to a maximum of six parked vehicles. However, if defendant were to sever the double lot into two separate parcels and build a second home on the second parcel, then the City Code would permit a maximum of 12 parked vehicles on the two parcels, even though exactly the same geographic area would be involved in either example. Defendants' argument is similar to an argument considered by the United States Court of Appeals for the Sixth Circuit in *Curto*, 954 F2d at 1243-1244. In that case, the complaining property owner operated a vehicle service facility. The city's zoning ordinance attempted to limit the number of vehicles that could be parked at the defendant's

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[2] See the city's parking ordinance, City Code Section 18-27(b). This Court may take judicial notice of a city ordinance. *People v Miller*, 77 Mich App 381, 387; 258 NW2d 235 (1977). See MRE 202(a), which provides that "A court may take judicial notice without request by a party of . . . ordinances and regulations of governmental subdivisions or agencies of Michigan."

service station at any one time, regardless of the size of the parking lot. *Id*. at 1239. The defendant argued that:

> the ordinance is unreasonable because the arbitrary figure of three cars per [service] bay bears no rational relationship to the actual problems which the ordinance is supposedly designed to correct. Specifically, the ordinance makes no distinction with regard to the size of the physical area which a service station actually has for parking in applying the 'three car per bay' limit. [*Id*. at 1243-1244.]

The Sixth Circuit concluded that "this suggests the possibility that the ordinance could be arbitrary and capricious" as applied to the property owner and remanded the matter back to the trial court for further development of the record. *Id*. at 1244-1245. Likewise, in the present case, defendants' argument suggests the possibility that the six-vehicle rule could be arbitrary and capricious as applied to defendants because the rule has no relation to the size of the parcel in question. Therefore, the trial court correctly denied defendants' motion for summary disposition, but erred by granting summary disposition in favor of the city, as this question of fact also must be resolved at a trial on the merits. MCR 2.116(C)(10).

Defendants also argue that the trial court applied an erroneous burden of proof in deciding their substantive due process claim, because Michigan case law is clear that unless the aggrieved property owner is claiming that the zoning ordinance results in a confiscation of his property, it is not necessary to establish that the ordinance precludes any reasonable use. We agree. In non-confiscatory substantive due process zoning challenges, such as the present case, the aggrieved property owner need only establish that the zoning ordinance fails to advance a legitimate governmental interest, or does so unreasonably. *Hecht*, 173 Mich App at 461.

In *Hecht*, the plaintiffs "did not attack the zoning ordinance on a . . . confiscation ground." *Hecht*, 173 Mich App at 457. Yet, the trial court granted the township's motion for summary disposition, "holding that plaintiffs could not meet the burden of proving that the restriction on their property precluded its use for any purposes to which it was reasonably adapted." *Id*. On appeal, this Court considered "whether, in order to sustain an attack on a zoning ordinance, an aggrieved property owner must, without exception, show that if the ordinance is enforced the consequent restrictions on his property preclude its use for any purpose to which it is reasonably adapted." *Id*. Because the plaintiffs in that case were not alleging that the township zoning ordinance was confiscatory as applied to their property, the *Hecht* Court held "that they do not need to show that the [zoning] classification precludes use of their land for any purposes to which it is reasonably adapted." *Id*. at 466.

In the present case, defendants did not allege that the City Code was confiscatory as applied to their property. Therefore, as a matter of law, defendants are not required to show that the City Code "precludes use of their land for any purposes to which it is reasonably adapted." *Id*. at 466. In its opinion denying defendants' motion for summary disposition and granting summary disposition in favor of the city, the trial court stated that "the property owner must show that if the ordinance is enforced as written, the property owner will be precluded from using the property for any of the purposes to which it is reasonably adapted." Applying that erroneous standard to defendants in this case, the trial court then held that "defendants have not

shown that if the six vehicle rule is enforced as written, they will be precluded from using their property for any of the purposes to which it is reasonably adapted." We therefore conclude that the trial court erred as a matter of law by imposing this erroneous burden of proof on defendants.

For these reasons, we affirm the trial court's decision denying defendants' motion for summary disposition under MCR 2.116(C)(8) and (C)(10) and reverse the trial court's decision granting summary disposition in favor of the city with regard to defendants' substantive due process claim, and remand this case to the trial court for further proceedings consistent with this opinion.

IV. EQUAL PROTECTION

Defendants also argue that the trial court erred by denying their motion for summary disposition with respect to their equal protection claim, and by granting summary disposition in favor of the city on that claim. We again disagree that the trial court erred by denying summary disposition in favor of defendants, but hold that the trial court erred by granting summary disposition in favor of the city.

As this Court explained in *Dowerk v Charter Twp of Oxford*, 233 Mich App 62, 73-74; 592 NW2d 724 (1998) (some citations omitted):

> Equal protection of the law is guaranteed by both the federal and state constitutions. US Const, Am XIV, § 1; Const 1963, art 1, § 2. These constitutional provisions are coextensive. The doctrine mandates that persons in similar circumstances be treated similarly. However, unless the dissimilar treatment alleged impinges on the exercise of a fundamental right or targets such protected classifications as those based on race or gender, the challenged regulatory scheme will survive equal protection analysis if it is rationally related to a legitimate governmental interest. In such cases, the party raising the equal protection challenge has the burden of proving that the challenged law is arbitrary and thus irrational.

The first step in analyzing defendants' equal protection challenge to the City Code is to determine whether defendants (the challengers) and Hope College (the comparator) are similarly situated. To be considered similarly situated for purposes of an equal protection challenge, "the challenger and his comparators must be '*prima facie* identical in all relevant respects or directly comparable . . . in all material respects.' " *Lima Twp v Bateson*, 302 Mich App 483, 503; 838 NW2d 898 (2013) (ellipsis in original), quoting *United States v Green*, 654 F3d 637, 651 (CA 6, 2011).

Defendants argue that the trial court erred by holding that defendants and Hope College were not similarly situated for purposes of analyzing defendants' equal protection challenge to the City Code. We agree. Defendants argue that they and Hope College both own traditional residential structures within the HNA overlay district, that the properties owned by defendants and Hope College are both used as rental housing for college students, and that both defendants and Hope College compete for the same rental customers, i.e., Hope College students. Defendants further argue that the trial court erred by focusing on the fact that Hope College is an

educational institution and that defendants are not. We agree that Hope College's status as an educational institution has nothing to do with its operation of residential rental properties or the parking of vehicles and is not relevant to defendants' equal protection claim. Defendants presented proofs below (and the city does not contest the accuracy of those proofs) that Hope College owns a large number of traditional residential structures in the HNA that it rents to Hope College students for housing, and that these properties are virtually indistinguishable from the properties owned by private-sector landlords, such as defendants, that are similarly rented to Hope College students for housing. Defendants provided evidence below that many of the rental housing properties owned by Hope College and the rental housing properties owned by defendants are in close physical proximity to one another and generally rent to similar customers. A vehicle owned by a college student renter does not generate more noise or noxious fumes while parked at a rental property owned by defendants than it would generate while parked at a Hope College rental property that may be located next door or across the street. Because defendants and Hope College are both residential landlords operating rental properties in the same neighborhood, we conclude that they are similarly situated for purposes of defendants' equal protection challenge to the City Code.

The next step in analyzing defendants' equal protection challenge to the City Code is to consider whether the City Code treats these similarly situated parties differently. The city argues that the majority of the homes owned by Hope College are located within the ED Zone District of the HNA and admits that the six-vehicle rule does not apply to any of those Hope College rental properties. The city further argues that Hope College owns only a few houses in the R-TRN Zone District of the HNA and represents that those houses are subject to the six-vehicle rule to the same extent as defendants' real properties located in the R-TRN Zone District of the HNA. Therefore, the city argues that all rental properties located within both the R-TRN and the HNA are treated the same because they are all subject to the six-vehicle rule. In contrast, defendants argue that the proper comparison is between defendants' real properties in the R-TRN Zone District and Hope College's properties in the ED Zone District because the city drew the boundaries of those districts and essentially created a zoning district for a single important property owner, i.e., Hope College.[3] Defendants argue that the city cannot justify disparate treatment of two similarly situated parties simply by drawing different zoning district boundaries around their properties.

We might agree with the city if the properties owned by defendants and the properties owned by Hope College were not located within the identical overlay zone. While it is true that

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[3] Defendants presented evidence that the ED Zone District in and around the HNA comprises 167.06 acres, and that Hope College owns all but 1.61 acres of that property, meaning that Hope College owns 99% of the properties in the ED Zone District. Therefore, while any rental property that Hope College may own within the R-TRN Zone would be subject to the six-vehicle rule, no private landlord (or at best, only a very few, assuming that those few ED Zone District properties not owned by Hope College could even be used as multi-residential rental properties) may own rental property that is exempt from the six-vehicle rule by virtue of its inclusion in the ED Zone District.

defendants' rental properties are located within the R-TRN Zone District and Hope College's rental properties are primarily located within the ED Zone District, both sets of rental property are located within a single and unified overlay district, the HNA. Indeed, the six-vehicle rule was designed to address conditions in the HNA, yet applies *only* to properties located simultaneously in both the R-TRN Zone District and the HNA. Because the properties owned by defendants and the properties owned by Hope College are located within the identical overlay zone, the HNA, we conclude that defendants are not comparing "apples to oranges," as the city claims. Rather, the record indicates that the city created a single zoning overlay district (the HNA), but created different rules for different property owners within that single zoning overlay district. By virtue of the existence of the ED Zone District and its exemption from the six-vehicle rule, there is effectively one rule for Hope College (unlimited vehicle parking) and a different rule for private landlords (the six-vehicle rule). Therefore, we conclude that the six-vehicle rule treats similarly situated entities differently.

Defendants also argue that the trial court erroneously ruled that the six-vehicle rule is rationally related to a legitimate state interest. We conclude that the trial court misapplied the applicable law. The trial court stated:

> But even if defendants and Hope College were identical [in] all relevant respects or directly comparable in all material respects, the six vehicle rule is rationally related to a legitimate state interest. Automobiles produce traffic, noise and noxious fumes. More automobiles produce more traffic, more noise, and more noxious fumes. The City of Holland has a legitimate interest in limiting the amount of noise, traffic, and noxious fumes to which residents of areas of the City zoned R-TRN are exposed. Limiting the number of vehicles that may part on property zoned R-TRN is a rational method for advancing this interest.

With regard to an equal protection challenge to a governmental regulation, our Supreme Court has stated that a two-part test is to be applied:

> (1) Are the enactment's classifications based on natural distinguishing characteristics and do they bear a reasonable relationship to the object of the legislation?
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> (2) Are all persons of the same class included and affected alike or are immunities or privileges extended to an arbitrary or unreasonable class while denied to others of like kind? [*Brittany Park Apartments v Harrison Charter Twp*, 432 Mich 798, 804; 443 NW2d 161 (1989) (quotation marks and citation omitted).]

Because the trial court did not apply this standard to defendants' equal protection challenge to the City Code, we remand this matter to the trial court for further proceedings consistent with this opinion, so that the trial court may have the opportunity to apply the correct legal standards to defendants' equal protection claim involving similarly situated entities.

In sum, the trial court erred as a matter of law by concluding that defendants and Hope College are not similarly situated with regard to their leasing of residential housing in the HNA

overlay district to primarily college students. Furthermore, the trial court erred as a matter of law by failing to apply the standard articulated by our Supreme Court for an equal protection challenge to a legislative enactment. Consequently, while the trial court properly denied defendants' motion for summary disposition on their equal protection claim, it erred by granting summary disposition in favor of the city on that claim.

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

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra