STATE OF MICHIGAN

COURT OF APPEALS

TOWNSHIP OF MANSFIELD,

Plaintiff-Appellee,

v

GARRY SMEYERS and SHARON SMEYERS,

Defendants-Appellants.

UNPUBLISHED
June 25, 1996

No. 182371
LC No. 93-005025

Before: Hood, P.J., Markman and A.T. Davis, Jr.*, JJ.

PER CURIAM.

Following a bench trial, defendants appeal as of right the circuit court's judgment finding that their hunting camp was a nuisance, and ordering that it be abated. We affirm.

This action arose from Mansfield Township ("the township") seeking to abate defendants' hunting camp as a nuisance under a township ordinance. Dennis Karas, a township assessor, testified that he visited defendants' property in November 1990 after noticing a new road. The road led him to a construction site where he found cement posts, metal I-beams and framing. Karas informed defendant Garry Smeyers that he needed a building permit before building a structure on the property.

Defendants had purchased the parcel in 1985 from Garry's parents, after his parents had purchased a 40-acre parcel. At the time his parents bought the original parcel, it had a wooden structure on it that his parents had rented throughout the preceding years. However, the parcel that defendants purchased did not have any buildings on it.

In October 1991, Karas returned to the property and noticed that the structure had been completed. However, a building permit had not been filed for the structure. Karas admitted that because the structure did not add significant value to the property, he did not change the property assessment at that time. He eventually listed the assessment increase at $6,300. He listed the property as "residential (401)" for assessment purposes. Residential-type property did not need to have a

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* Circuit judge, sitting on the Court of Appeals by assignment.

structure on it to be listed as residential, but Karas used the term in this case because of the camp. He admitted that property "that is zoned prime forest but does not have commercial forest status would usually classify as timber cut over."

In May 1992, Michael Dishaw, the township building inspector and zoning administrator, became aware that defendants were erecting a structure in violation of § 211, which required a 40-acre parcel. Dishaw contacted Garry, by telephone and in writing, and informed him that the township wanted the camp removed from the property. Dishaw also indicated that, in the alternative, defendants could seek to rezone the property to "multiple use forest" under ordinance § 210 (which also requires a 40 acre parcel) and obtain a variance due to the small lot size. Defendants requested rezoning to multiple use forest. The township zoning board denied their request because of the lot size. Defendants did not appeal that ruling.

Dishaw indicated that the township had also denied a rezoning request for an adjacent 10-acre parcel owned by the Cowells based on the lot size. However, the Cowells and the township entered into a consent judgment following the township's lawsuit against them. The Cowells purchased an additional 10 acres. The new 20-acre parcel remained prime forest and the Cowells were allowed to retain a permanent structure on the property without a zoning permit.

James Butler, chairperson of the township zoning board, testified that the board had interpreted § 211 to prohibit the building of any type of permanent or seasonal residential structure. One of the purposes of § 211 was to encourage and preserve natural timber resources for the benefit of future generations. Further, the Michigan Commercial Forest Act that required a 40-acre parcel was not a "main criteria" for designating certain parcels as a prime forest zoning district.

The trial court concluded that the construction of the hunting camp did not fall within the permitted principal uses of a prime forest land district under § 211. The court ruled that the prime forest zoning classification was not arbitrary and did not unreasonably restrict defendants' use of the land; the township did not treat defendants differently than adjacent land owners who had settled their litigation and had been allowed to keep a hunting camp; additionally, the township should not be estopped from abating the camp because the township had assessed the property as "residential;" tax bills cannot be considered as a means of giving zoning information; and, finally, the zoning classification was not an unconstitutional taking of defendants' property. The court concluded as follows:

> The fact that the Defendants are not able to put this property into the Michigan Commercial Forest Reserve and obtain tax benefits from that placement is not because of the Zoning Ordinance but because, with few exceptions, a parcel must be at least 40 acres to be placed in the Commercial Forest Reserve. This last finding was not supported by evidence at trial, but the Court has taken judicial notice of the Michigan statutes relative to the Commercial Forest Reserve Act as well as the Administrative Rules established by the legislature.

The court ruled that defendants' hunting camp was a nuisance and ordered that it be abated.

Defendants first argue that § 211 of the township zoning ordinances is preempted by the Commercial Forest Act and the administrative rules adopted by the Michigan Department of Natural Resources (DNR).[1] We disagree.

The Commercial Forest Act, MCL 320.301 *et seq*.; MSA 13.221 *et seq*., applies only to private land specifically designated as "commercial forests" by the DNR after application by an owner. As of January 1, 1994, §§ 2(b) and (f)(ii) provide that a "commercial forest" is a tract of land that meets the requirements of § 3 and *is not used for residential purposes*. 1993 PA 70, effective January 1, 1994. Additionally, § 3 indicates that the property owner must apply to the DNR in order for it to designate the land as a "commercial forest." MCL 320.303; MSA 13.221.

In this case, there is no evidence that the DNR designated the defendants' property as a "commercial forest." Moreover, in their appellate brief, defendants admit that their property is not eligible for commercial forest status and the accompanying reduced tax benefits under the Act. We therefore conclude that this issue is without merit.

Defendants next claim that the township acted arbitrarily and capriciously and is estopped from seeking a court order to abate their hunting camp because the owners of the adjacent property were treated differently. We note that because defendants failed to cite any authority for their argument, this issue is not properly before this Court. *Winiemko v Valenti*, 203 Mich App 411, 419; 513 NW2d 181 (1994).

Even if we were to review this issue, we would find that it is without merit. Defendants do not challenge the constitutionality of the ordinance. Instead, they argue that the township selectively enforced the ordinance against them, allowing their neighbors to retain their cabin which, like their cabin, was built in violation of the ordinance. Contrary to defendant's argument, the township "enforced" the statute against those who violated it, and it was defendants who rendered the enforcement "unequal" by being unwilling to compromise with the township.

First, defendants have failed to show that they and the Cowells are similarly situated. See *City of Saginaw v Hargrove*, 169 Mich App 594, 598; 426 NW2d 720 (1988). The ordinance went into effect in 1983, and Garry's parents purchased the 40 acres in 1985. The lot split occurred in 1987. At the time of the lot split, defendants and the parents violated the zoning ordinance. Section 106(B) provides that:

> No person . . . shall divide any land located within the unincorporated parts of the Township which results in violation of minimum lot size and width regulations of this Ordinance. Also, no subdivisions shall be entitled to record . . . without compliance with all requirements of this Ordinance.

There is no evidence that the Cowells also violated § 106(B) at the time of their lot split.

Also, pursuant to the consent judgment, the Cowells purchased an additional 10 acres. The seller agreed to remove the pre-1983 camp from that 10-acre parcel, making the Cowells' total parcel 20 acres with only one camp. However, defendants held 17.96 acres and were unwilling to "rejoin" the original acreage and remove the parents' old camp.

Finally, the equal protection clause is concerned with acts of invidious discrimination among classes and not with mere acts of unequal enforcement which may be the result of erroneous or even arbitrary administration of facially neutral ordinances. *Recreational Vehicle United Citizens Association v City of Sterling Heights*, 165 Mich App 130, 141; 418 NW2d 702 (1987). In this case, defendants have not identified themselves as members of a particular class and have not made a facial challenge to the ordinance.

Defendants further argue that, by virtue of its establishment of a prime forest zoning classification, the township has taken their property without just compensation. We disagree.

This issue is not properly before this Court. Under Michigan law, the "doctrine of finality" requires a property owner to obtain a final decision from the governmental entity alleged to have unconstitutionally taken the property and also attempt to obtain just compensation through inverse condemnation. *Paragon Properties Co v City of Novi*, 206 Mich App 74, 76; 520 NW2d 344 (1994). The purpose of the finality requirement is to ensure that there actually was a taking. *Id.*, p 77. In this case, defendants failed to seek a variance from the board of appeals or exhaust their state remedies by making an inverse condemnation claim.

Defendants also argue that the trial court erred in holding that their construction and use of the building was not a permitted use under § 211. We disagree.

The trial court held that, based upon review of the township ordinances, § 211(B) did not permit hunting camps:

> The drafters of the Zoning Ordinance specified clearly throughout the Ordinance those districts in which hunting camps would be allowed. For example, they are allowed in Multiple Use Forest [D]istricts and also Agricultural District A-3. Clearly, if hunting camps were allowed in Prime Forest [L]ands [D]istricts[,] it would have been specified that they are allowed as in the other districts in which they are allowed.

The trial court's reasoning is correct. When statutory language is clear and unambiguous, judicial interpretation to vary the plain meaning of the statute is precluded. *US Fidelity & Guaranty Co v Amerisure Insurance Co*, 195 Mich App 1, 5; 489 NW2d 115 (1992). The maxim "expressio unius est exclusio alterius," the expression of one thing is the exclusion of another, means that the express mention of one thing in a statute implies the exclusion of other similar things. *Id.*, p 6.

Defendants, however, did not address the trial court's reasoning, but argue instead that their hunting camp is a permitted use because it does not have attached utilities. Under § 210 (Multiple Use

Forest), a hunting camp for seasonal use is permitted "provided that no public utilities or special permits shall be provided; [and] that no publicly maintained road be provided, nor any public service other than public safety." Section 211 provides the following permitted principal uses:

> (1) Growing and harvesting of forest products;
>
> (2) Public or private low-intensity recreational uses such as parks, golf courses, campgrounds, archery, and shooting ranges.
>
> (3) Hunting, fishing, and trapping.

We find that the fact that § 210 specifically enumerates hunting camps as a permitted use, but § 211 does not include such is dispositive. A hunting camp is not a permitted use under § 211.

Defendants finally argue that the township was estopped from seeking to enjoin their hunting camp because it sent them tax bills labeled "residential." Again, because defendants failed to cite any authority to support their argument, this issue is not properly before this Court. *Winiemko, supra*.

Even if we were to review this issue, we would conclude that it is without merit. There is no evidence that defendants relied on the tax classification. Furthermore, as plaintiff argues, assuming that defendants relied on the notice of assessment in believing that the township had zoned the property as residential, their reliance did not relieve them of the obligation to obtain zoning and building permits. Section 600 of the township zoning ordinances provides that "no person shall commence any use or erect or enlarge any structure without first obtaining the approval of a site plan by the Zoning Administrator . . . ." Also see § 106(A). Section 1002 provides that "no land use shall be commenced or changed and no structure shall be erected . . . until the person conducting such use or erecting . . . such structure has obtained a zoning compliance permit from the Zoning Administrator." Additionally, § 1007 provides that "[a]ny violation of this Ordinance is hereby declared to be a public nuisance per se." Therefore, defendants were still obligated to obtain zoning and building permits.

Affirmed.

/s/ Harold Hood
/s/ Stephen J. Markman
/s/ John J. McDonald

[1] We note that both parties' briefs, filed after May 1, 1995, fail to conform to MCR 7.212(C) and MCR 7.212(D).