

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LYON COUNTRY ESTATES,  
  
Plaintiff-Appellee,

UNPUBLISHED  
September 3, 1996

v

No. 176394  
LC No. 92-440107

CITY OF SOUTH LYON,  
  
Defendant-Appellant.

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Before: Wahls, P.J., and Murphy and C.D. Corwin,\* JJ.

PER CURIAM.

This case arises out of defendant's<sup>1</sup> denial of plaintiff's request to rezone a forty-acre parcel of land owned by plaintiff from light industrial to residential. The trial court ruled that the denial of plaintiff's request was not based on competent, material, and substantial evidence, and reversed the city council's decision. Defendant filed a delayed application for leave to appeal the trial court's ruling. This Court granted leave, and we now reverse the trial court's ruling and reinstate the city council's denial of plaintiff's requested rezoning.

Defendant first claims that the trial court erred in ruling that the city council improperly denied plaintiff's rezoning request. We agree.

This Court reviews the findings of the circuit court de novo. *Macenas v Michiana*, 433 Mich 380, 394; 446 NW2d 102 (1989). The decision of the zoning board of appeals is final. *Id.* at 393. However, the circuit court, when acting as an appellate court from a zoning decision by a zoning board of appeals, may make a determination whether the decision by a zoning board of appeals is supported by competent, material, and substantial evidence on the record. *Id.* at 393-394; MCL 125.585(11); MSA 5.2935(11).

In this case, the city council was presented with sufficient evidence to justify their denial of plaintiff's request for rezoning. For example, it was indicated that the recently updated master zoning plan for the City of South Lyon relied upon plaintiff's property being zoned as industrial. There was

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

evidence that the city had a low percentage of property zoned for industrial use; only 3.6 percent of the property in the city was zoned industrial, as opposed to 78 percent of the property zoned for residential. It was pointed out that a bypass was being constructed near the property that would make the area more attractive and suitable to industrial development. There was also testimony that indicated that several residents in the area preferred the property to remain zoned industrial.

The decision of the city council was based on competent, material, and substantial evidence, and does not show caprice, abuse of discretion, or arbitrary action. Therefore, it must be affirmed. *Sinelli v Birmingham Bd of Zoning Appeal*, 160 Mich App 649, 654; 408 NW2d 412 (1987). It was error for the circuit court to substitute its own judgment and impose its own views.

Next, defendant claims that the trial court erred in ruling that the city council's denial of plaintiff's request amounted to an unconstitutional confiscation of property. We agree.

This Court's review of the trial court's ruling on a constitutional challenge to a zoning ordinance is de novo. *English v Augusta Twp*, 204 Mich App 33, 37; 514 NW2d 172 (1994). A zoning ordinance is presumptively valid unless the constitutional objections thereto are supported by competent evidence or appear on their face. *Bevan v Brandon Twp*, 438 Mich 385, 398; 475 NW2d 37, amended 439 Mich 1202 (1991). In order to show that an unconstitutional confiscation has taken place, a plaintiff must prove that the property is either unsuitable for use as zoned or is unmarketable as zoned. *Id.* at 403. A claim of confiscation will not succeed by simply demonstrating a disparity in value between uses. *Id.* at 405.

In this case, plaintiff has failed to satisfy its burden and overcome the presumption of validity. Plaintiff did not present evidence that the property was unsuitable for use as zoned, nor did plaintiff show that the industrial zoning classification rendered the property completely unmarketable. At best, plaintiff showed a disparity in the value of properties when zoned for residential use and when zoned for industrial use. Such a showing is insufficient to support plaintiff's claim. *Id.*

The trial court erred in ruling that the city council's denial of plaintiff's request was not supported by the evidence, and in ruling that the industrial zoning classification acted as a confiscation of plaintiff's property. The city council's denial of plaintiff's requested rezoning must be reinstated.

Reversed.

/s/ Myron H. Wahls  
/s/ William B. Murphy  
/s/ Charles D. Corwin

<sup>1</sup> Defendant's city council was acting as the city's zoning board of appeals pursuant to MCL 125.585(1); MSA 5.2935(1).