STATE OF MICHIGAN

COURT OF APPEALS

RAY REINBOLT and MARY JO REINBOLT,

Plaintiffs-Appellants,

v

CITY/VILLAGE OF CLARKSTON and CLARKSTON CITY COUNCIL,

Defendants-Appellees,

and

CLARKSTON VILLAGE WEST CONDOMINIUM JOINT VENTURE, INC.,

Defendant.

UNPUBLISHED
September 16, 1997

No. 190030
Oakland Circuit Court
LC No. 94-480163

Before: Wahls, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's order granting summary disposition, sua sponte, for defendants pursuant to MCR 2.116(I)(2). We vacate the trial court's order and remand this case in order for the trial court to dismiss the claim.

The facts are not in dispute. In October, 1987, defendant Clarkston Village West Condominium Joint Venture, Inc. (hereinafter, the Venture) sought site plan approval from defendant City/Village of Clarkston (hereinafter, the city) for an eight unit condominium development to be known as Village Condominiums West. Located on the property for the proposed condominium complex was a stone structure which at one time was a carriage house. The city approved a final site plan for the condominium development which mandated preservation of the stone structure.

Plaintiffs entered into a purchase agreement with the Venture to purchase one of the condominium units. The stone structure at issue was located on this property. Included in the purchase

agreement were conflicting provisions regarding preservation of the stone structure. Paragraph 1 of the purchase agreement stated that plaintiffs agreed to abide by the terms of the condominium site plan. However, paragraph 15(a) stated that it was within plaintiffs' sole discretion "to build on the existing stone structure or destroy same and build anew."

Plaintiffs sought to build a single family residence which incorporated the stone structure on their newly acquired property. Plaintiffs sought a "lot split" from defendant in order to incorporate this stone structure into the proposed house. The lot split was also required in order for plaintiffs' property to be in conformity with all requisite zoning ordinances. Pursuant to plaintiffs' request, defendant Clarkston City Council unanimously approved a resolution amending the Master Deed for the subject property and granting the requested lot split. This resolution also stated that the walls of the stone structure were to be preserved.

Plaintiffs initially sought to incorporate the stone structure into their plans for the property, but the increased cost proved prohibitive. Plaintiffs then pursued the present action claiming that the resolution prohibiting the destruction of the stone structure was unreasonable, arbitrary, and capricious, and that it constituted a taking of property without compensation. The trial court found that the resolution was both reasonable and did not constitute an unconstitutional taking.

On appeal, plaintiffs argue that the trial court erred in determining that the resolution does not constitute an unconstitutional taking without just compensation. Alternatively, plaintiffs claim that whether the resolution was unreasonable constitutes a question of fact precluding the trial court's grant of summary disposition.

While not raised by either party, we find that the present action is not ripe for review. Plaintiffs present an "as applied" challenge to the city's land use regulation. An "as applied" challenge alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution. *Paragon Properties Co v Novi*, 452 Mich 568, 576; 550 NW2d 772 (1996). An "as applied" claim is subject to the rule of finality. *Id.*; *Lake Angelo Assocs v White Lake Twp*, 198 Mich App 65, 73; 498 NW2d 1 (1993). In order for this rule to be satisfied, the landowner must have exhausted all necessary administrative remedies as well as have pursued a state inverse condemnation claim. *Paragon Properties*, *supra*, pp 577-578. Otherwise, an "as applied" challenge is not ripe for review. *Id.*, p 578.

In the present case, plaintiffs did not seek a variance or pursue any other administrative remedies. Rather, plaintiffs present the general allegation that the city would not grant a variance which did not preserve the stone structure. In light of the large increase in cost which would be born by plaintiffs without a variance, we believe that plaintiffs were premature in making such an allegation. *Id.*, p 583; *Lake Angelo Assocs*, *supra*, p 74.

Reversed and remanded in order for the trial court to dismiss the claim so that plaintiffs may pursue the proper administrative remedies. We do not retain jurisdiction.

/s/ Myron H. Wahls

/s/ Harold Hood
/s/ Kathleen Jansen