

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

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CONCORD MANAGEMENT LTD,

Plaintiff-Appellant,

V

SCIO TOWNSHIP,

Defendant-Appellee.

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UNPUBLISHED

June 15, 2006

No. 259687

Washtenaw Circuit Court

LC No. 2001-000200-NZ

Before: O'Connell, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment in favor of Scio Township (the township). We affirm.

Plaintiff brought this action against the township arguing that the township's sewer ordinance was unconstitutional. Specifically, plaintiff argues that because, under the ordinance, apartment complexes are charged a higher Residential Equivalent Unit (REU) rate of 1.0 than mobile home parks that are charged a lower REU rate of .75, the township has violated the Equal Protection Clauses of the United States and Michigan Constitutions, US Const, Am XIV and Const 1963, art 1, § 2, and plaintiff's right to procedural due process under the United States and Michigan Constitutions, US Const, Am V and Const 1963, art 1, § 17. We disagree.

Constitutional challenges are reviewed de novo. *Wayne Co v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004). A township has the right to charge for the services it provides and also has the right to rationally classify its users as long as all persons within a class are treated alike. *Brittany Park Apartments v Harrison Charter Twp*, 432 Mich 798, 803-804; 443 NW2d 161 (1989). When challenging an ordinance based on equal protection guarantees, the ordinance is presumed constitutional, and the challenging party has the burden to show that the established classification is not rationally related to a legitimate state interest. *Id.* at 804. Where the proponent of an equal protection argument is not a member of a protected class, or does not

allege violation of a fundamental right, the equal protection claim is reviewed using the rational basis test.<sup>1</sup> *Yaldo v North Pointe Ins Co*, 457 Mich 341, 349; 578 NW2d 274 (1998).

In regard to an equal protection challenge to a government regulation, a two-part test is to be applied to examine:

(1) Are the enactment's classifications based on natural distinguishing characteristics and do they bear a reasonable relationship to the object of the legislation?

(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, supra* at 804; citations omitted.]

Reasonable does not mean exact, and “[p]erfect equality among users is not the standard of municipal duty in fixing sewer rates.” *Id.* at 805 (citation omitted). “All that is required under the Equal Protection Clause is that the rate structure be rationally related to the classification.” *Id.* at 811.

Plaintiff has failed to meet its burden to show that the rate structure at issue violates its equal protection rights. The township submitted testimony at trial to establish that its sewer rates were reasonable. Specifically, Spaulding Clark, the township supervisor, stated that the difference in rates between apartment complexes and mobile home parks was based on an established engineering convention. Daniel Wolf, a licensed civil engineer, supported Clark's testimony when he testified that the REU tables in issue were consistent with what he had seen as an engineer, that communities usually use a 1.0 REU as an equivalent to either 240 or 260 gallons per day, based on estimated use, that apartment complexes within the township are charged at a rate of 1.0 REU under the ordinance, that the expected use at mobile home parks was 200 gallons per day, and that 200 gallons per day is exactly 76% of 260 gallons per day but that 75% is generally accepted. Given the testimony, plaintiff failed to show that the sewer rates under the ordinance of 1.0 REU for apartment complexes and .75 REU for mobile home parks were unreasonable or arbitrary.

Plaintiff essentially argues that the township arbitrarily charges apartment complexes a higher REU rate than mobile home parks alleging that the difference in rates is because the REU tables were created in the 1950's or 1960's when mobile homes were smaller and housed fewer people. Plaintiff claims that those tables are now outdated because mobile homes today are larger and even contain their own laundry facilities. Wolf, however, disagreed with plaintiff's conclusion and stated that studies continue to indicate that 200 gallons per day is the expected use for mobile homes. Therefore, a .75 REU for mobile home parks is rationally based and continues to be a viable rate for the mobile homes of today. See *Brittany Park, supra* at 811.

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<sup>1</sup> Plaintiff does not dispute that the rational basis test applies.

Given the testimony presented, there is ample evidence to conclude that the ordinance classifications in issue are reasonable and justified.

Plaintiff also fails to establish a procedural due process violation. On appeal, plaintiff argues in a cursory fashion that a violation occurred, and we conclude that plaintiff has abandoned this issue because it has failed to provide any authority to support its proposition. *Terzano v Wayne Co*, 216 Mich App 522, 533; 549 NW2d 606 (1996). Even if we were to address the issue, it is clear from the record that plaintiff was afforded procedural due process. “Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker.” *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). In this case, plaintiff’s regional property manager admitted that the sewer ordinance provided for an informal conference and a hearing and that plaintiff did not request either.

Affirmed.

/s/ Peter D. O’Connell

/s/ William B. Murphy

/s/ Kurtis T. Wilder