

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

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NAPOLEON COUNTRY ESTATES, LLC,

Plaintiff-Appellant,

v

TOWNSHIP OF NAPOLEON,

Defendant-Appellee.

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UNPUBLISHED

May 29, 2003

No. 236630

Jackson Circuit Court

LC No. 01-002431-CZ

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Plaintiff Napoleon Country Estates, L.L.C., appeals as of right from a grant of summary disposition in favor of Napoleon Township. We affirm.

**I. FACTS**

Plaintiff owns a 4.75-acre parcel in Napoleon Township currently zoned RS-1 (Single-Family Suburban Residential District). This dispute arose after defendant denied plaintiff's request to rezone the parcel to MH-1 (Mobile Home Residential District). After the denial, plaintiff sued the township, seeking damages and an injunction forbidding the township from interfering with plaintiff's plans to build a mobile home park on the parcel. The township moved for summary disposition under MCR 2.116(C)(10), which was granted by the trial court. This appeal followed.

**II. DISCOVERY AND MOTION FOR SUMMARY DISPOSITION**

Plaintiff first argues that the trial court should have denied the township's motion because discovery on whether the zoning ordinance was exclusionary to mobile homes was not complete. Plaintiff failed to include this issue in its list of questions presented as required by MCR 7.212(C)(5); therefore, we decline to consider it. *Monroe Beverage Co v Stroh Brewery Co*, 224 Mich App 366, 368; 568 NW2d 689 (1997).

**III. DUE PROCESS**

Plaintiff next contends that it was error for the trial court to grant the township's motion for summary disposition on plaintiff's claim that the refusal to rezone plaintiff's parcel amounted to a deprivation of due process. We review a trial court's ruling on a summary disposition

motion de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A trial court's ruling on a constitutional challenge to a zoning ordinance is also reviewed de novo, although its factual findings are given great weight. *Bell River Assoc v China Charter Twp*, 223 Mich App 124, 129; 565 NW2d 695 (1997). When reviewing a motion granted under MCR 2.116(C)(10), this Court must examine all relevant documentary evidence in a light most favorable to the nonmoving party and determine whether there exists a genuine issue of material fact on which reasonable minds could differ. *Progressive Timberlands, Inc v R & R Heavy Haulers, Inc*, 243 Mich App 404, 407; 622 NW2d 533 (2000). The nonmoving party may not rest on its pleadings but must demonstrate a factual issue using documentary evidence. *Id.*

A zoning ordinance is "clothed with every presumption of validity." *Gackler Land Co v Yankee Springs Twp*, 427 Mich 562, 571; 398 NW2d 393 (1986). To prevail in a claim that a zoning classification amounts to a deprivation of substantive due process, a plaintiff must show either "that there is no reasonable governmental interest being advanced by the present zoning classification itself," *id.*, citing *Kirk v Tyrone Twp*, 398 Mich 429, 434; 247 NW2d 848 (1976), or that the ordinance is "unreasonable because of the purely arbitrary, capricious and unfounded exclusion of other types of legitimate land use from the area in question." *Gackler, supra* at 571. Neither circumstance exists here.

The first reason for the township's denial of plaintiff's rezoning request was that "[t]he size of the proposed district is smaller than the 10 acres required per section 5.06, C [sic] of the Zoning Ordinance." Along with other area requirements in Section 5.06(C), this requirement is designed to provide adequate outdoor space for the residents of mobile home parks, to give them sufficient recreation space, and to provide a buffer between the residents of the park and their neighbors – all reasonable governmental interests. The second reason for the denial was that "[t]he proposed change is a land use that is not consistent with the intent and purpose of the Township Land Use Plan." A township may consider its master plan when determining whether to grant a rezoning. *Bell River, supra* at 131-132. The Napoleon Township master plan designates no property for the construction of new mobile home parks or for the expansion of existing mobile home parks. Thus, the township acted reasonably when it denied the rezoning request. The third reason for the denial was that "[t]he property under consideration along Stoney Lake Rd., does not abut, nor is it adjacent to such other land uses which support, compliment [sic] or serve such a density and intensity [sic] therefore defeats a pre-condition of MH-1 zoning." Plaintiff argues that it is sufficient under the ordinance that the property abuts an existing mobile home park. Section 5.06(A) of the ordinance, which governs MH-1 zoning, reads in relevant part as follows:

The regulations of this district are designed to permit a density of population and an intensity of land use in those areas which are served by a central water supply system and a central sanitary sewage system, and which abut or are adjacent to such other uses, buildings, structures, or amenities which support, complement, or serve such a density and intensity.

Thus, the relevant inquiry is whether the proposed mobile home park would abut "uses, buildings, structures, or amenities" that "support, complement, or serve" a "density of population" and an "intensity of land use" that would accompany the new park. The existing mobile home park is not a factor in this analysis, because it is a mobile park, not a use building, structure, or amenity that supports, complements, or serves one. The kinds of facilities that

should be considered in this inquiry are “urban facilities, including schools, hospitals, and community services.” *Bell River, supra* at 131. The Napoleon Township Planning Commission rightly considered whether plaintiff’s proposed park could be served by surrounding services, not whether it abutted an existing park. In summary, there are reasonable governmental interests being advanced by the requirements in the Township’s zoning ordinance that formed the basis of the Planning Commission’s denial of plaintiff’s zoning request. The trial court properly dismissed plaintiff’s substantive due process claim.

#### IV. TAKING OF PRIVATE PROPERTY

Plaintiff next contends that it was error for the trial court to grant the township’s motion for summary disposition on plaintiff’s claim that the refusal to rezone plaintiff’s parcel amounted to a taking of private property without just compensation. Article 10, § 2.

Michigan courts recognize two situations in which a regulation can amount to a taking: (1) a categorical taking, where the governmental physically invades property or an owner is deprived of all economic benefit of its land; and (2) a taking under the traditional balancing test. *K & K Construction v Dept of Natural Resources*, 456 Mich 570, 576-577; 575 NW2d 531 (1998). Plaintiff did not allege a categorical taking, and the facts do not suggest that the RS-1 zoning deprived plaintiff of all the economic benefit of its property; therefore, the traditional balancing test is implicated. Under this test:

A reviewing court must engage in an “ad hoc, factual inquiry,” centering on three factors: (1) the character of the government’s action, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations. [*Id.* at 577.]

An analysis of the three factors enumerated by our Supreme Court shows that no taking occurred. The first factor is the character of the government’s action. *K & K, supra* at 577. Here, the township simply enacted a zoning ordinance, the validity of which is not disputed. It was, moreover, enacted in 1970, long before plaintiff purchased the disputed parcel in 2000. The second factor is the economic effect of the regulation on the property. *K & K, supra* at 577. This involves a comparison of the value removed by the regulation and the value that remains. *Id.* at 540. The record contains no figures showing the diminution in value, if any, caused by the RS-1 zoning. Moreover, the fact that plaintiff could build multiple unit dwellings on the property even with the RS-1 zoning shows that the zoning does not deprive plaintiff of a meaningful amount of development value. The third factor is “the extent by which the regulation has interfered with distinct, investment-backed expectations.” *K & K, supra* at 577. Plaintiff’s case fails utterly on this factor, since the RS-1 zoning was in place at the time plaintiff bought the property. Balancing these three factors shows that no taking occurred.

#### V. EXCLUSIONARY ZONING

Plaintiff next contends that it was error for the trial court to grant the township’s motion for summary disposition on plaintiff’s claim that the township’s policy regarding mobile homes amounts to exclusionary zoning. MCL 125.297a.

Our Supreme Court has identified the requirements necessary to prove exclusionary zoning as follows:

(1) the challenged ordinance section [must have] the effect of totally prohibiting the establishment of the land use sought . . . (2) there is a demonstrated need for the land use . . . (3) a location exists . . . where the use would be appropriate, and (4) the use would be lawful, otherwise. [*Adams Outdoor Advertising, Inc v City of Holland*, 463 Mich 675, 684; 625 NW2d 377 (2001).]

“Totally prohibiting” means that the land use sought does not exist anywhere in the township. See *id.* at 685; *Guy v Brandon Twp*, 181 Mich App 775, 788; 450 NW2d 279 (1989). There are over three hundred mobile homes in Napoleon Township, making up about twelve percent of the total housing stock. Thus, plaintiff has failed to carry its burden of showing that the township ordinance, as applied, amounts to total exclusion. Plaintiff further argues that the lack of additional area zoned MH-1, together with the township’s policy of phasing out non-confirming uses, shows exclusion, but the possibility that a desired use might eventually be eliminated does not satisfy the plaintiff’s burden of showing exclusion. *Adams, supra* at 685 n 11.

## VI. MICHIGAN MOBILE HOME COMMISSION ACT

Finally, Plaintiff contends that it was error for the trial court to grant the township’s motion for summary disposition on plaintiff’s claim that the area requirements in the township’s zoning ordinance violates or is preempted by provisions of the Michigan Mobile Home Commission Act [MHCA], MCL 125.2307 *et. seq.* This issue involves a question of statutory interpretation, which, like a grant of a motion for summary disposition, is reviewed *de novo*. *Ass’n of Co Clerks v Lapeer Circuit Judges*, 465 Mich 559, 566; 640 NW2d 567 (2002).

We have recently stated that “zoning laws regulate the development and proper use of land; the MHCA does not.” *Silver Creek Twp v Corso*, 246 Mich App 94, 98; 631 NW2d 346 (2001). It is the Township Rural Zoning Act, MCL 125.271 *et. seq.*, that “vests a township with the authority to regulate land development and use through the adoption of zoning ordinances.” *Id.* The MHCA provides “minimum construction and safety standards with regard to mobile home businesses and parks.” *Id.* In *Gackler Land Co, supra*, 427 Mich at 579-580, our Supreme Court held that a zoning ordinance that restricted where mobile homes could be located within the township was not preempted by the MHCA. The Court held that ordinances validly enacted under the Township Rural Zoning Act were not preempted by provisions of the MHCA. *Id.* at 581. A failure to submit a validly enacted zoning provision to the Mobile Home Commission does not render the provision invalid. *Id.* Moreover, the requirement that mobile home standards be submitted to the Mobile Home Commission in Section 7(1) of the MHCA applies to the Section 5 construction standards, licensure of mobile home sellers and businesses, and setup and installation of mobile homes in parks. See MCL 125.2307. Nothing in Section 5 governs the area requirements for mobile home parks. See MCL 125.2305.

The other area requirements that plaintiff challenges are simply not the kind of regulations that impinge on the authority of the MHCA.

Plaintiff goes on to argue that the ordinance is exclusionary to mobile homes generally because the area requirements make the building of mobile home parks economically unviable. The record in this case makes clear that the Township's ordinance does not generally exclude mobile homes, because there are approximately three hundred mobile homes in the Township, making up over twelve percent of the residential housing. Moreover, plaintiff submitted no evidence to show that the area regulations make the construction of mobile homes economically unviable or that the decline in the number of mobile homes in the Township from 1973 to 1994 was caused by the provisions of the zoning ordinance.

Affirmed.

/s/ Richard A. Bandstra

/s/ Hilda R. Gage

/s/ Bill Schuette