UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NORTHVILLE DOWNS, LLC, a
Michigan limited liability company,

Plaintiff,

Case No. 2:24-cv-10492
Hon. Brandy R. McMillion

v.

PLYMOUTH CHARTER TOWNSHIP,
a Michigan municipal corporation,

Defendant.

DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR TO DISMISS FOR LACK OF JURISDICTION

Defendant, PLYMOUTH CHARTER TOWNSHIP, through its counsel Rosati Schultz Joppich & Amtsbuechler PC, submits this Reply in support of its Motion for Judgment on the Pleadings. The City incorporates the arguments in the Motion and Brief and the exhibits as if fully set forth herein.

Plaintiff fails to establish that its claims are ripe and therefore this Court lacks subject matter jurisdiction over the federal claims. The pleadings have established that Plaintiff never made it past the PUD Option approval, therefore it never obtained a final decision on final PUD approval, nor on any conditions that might have been included in the PUD Contract, nor on the applicability of the general ZO regulations

to Plaintiff's property. To the extent that the Board and PC rescinded its approval of the PUD Option, the only effect of that decision was to rescind the preliminary authorization to pursue the PUD process, which by itself is not a determination on the ultimate applicability of the ZO to Plaintiff's property and is expressly deemed to "not constitute approval of a . . . final site development plan." ZO § 23.7(1)(b)(3). Moreover, the PUD regulations provide that, where the PUD Option is denied, "development of the subject property can be made only in accordance with the provisions of the Zoning Ordinance for the district where the property is located." (ZO § 23.7(1)(b)). Thus, in the absence of PUD approval, Plaintiff continues to have the ability to pursue a final decision on a project in accordance with the standard procedures of the ZO, which it has not done. Because there has been no final decision, Plaintiff's constitutional claims are not ripe and must be dismissed.

Moreover, Plaintiff fails to establish a protected property interest, rather, Plaintiff merely states that it has one. Lacking a final decision, building permit, or substantial completion of the project, Plaintiff lacks the protected property right necessary to pursue its due process and takings claims. In Michigan, a protected property interest in a development does not vest until a permit has been issued and substantial construction commenced. As explained in the moving brief, the Board was not presented with a final Development Plan or PUD Contract for an up or down vote. Thus, Plaintiff never obtained a final decision on its Development Plan or PUD

Contract, nor obtained a building permit, nor commenced substantial construction. Thus, Plaintiff's claim of a protected property right fails, as it is not claiming a protected property right in an issued permit with respect to which substantial construction has commenced, but rather is claiming it relative to an application for an unissued first-time permit, contrary to entrenched law providing that such claims do not open the door to a due process cause of action. *Seguin,* 968 F.2d at 591, *Bevan,* 475 N.W.2d 37,at 46 and *Wojcik,* 257 F.3d 600 . Plaintiff tries to bolster its claim by stating that it has spent enormous time and money on preparations for the project but this is precisely the type of claim of a property right that the Courts reject. *Seguin, supra*. Lacking a protected right, judgment for the Township should be entered on Counts I, II, V, and VI.

Plaintiff seeks a taking under the *Nollan/Dolan* theory. However, Plaintiff improperly argues that Count I, the "unconstitutional conditions takings claim", does not depend on allegations that it has a protected property interest. ECF No. 16, PageID.375. An unconstitutional conditions argument only works if the property owner surrenders cognizable constitutional rights. *Benjamin v. Stemple,* 915 F.3d 1066, 1068 (6th Cir. 2019). Plaintiff must also cross the threshold of establishing that the alleged conditions coerced Plaintiff into giving up a constitutional right to just compensation for a taking. *Koontz v. St. Johns River Water Management Dist.,* 570 U.S. 595, 604 (2013). Plaintiff must have had a constitutional entitlement to the

benefit sought, which it has not. Where a plaintiff fails to "plausibly allege any constitutional violation resulting from" the targeted condition, then there is no viable unconstitutional conditions claim. *Norris v. Stanley*, 73 F.4th 431 (6th Cir. 2023). Here, there is no plausibly pled constitutional violation because Plaintiff's lack of a property right in the PUD approval fails to support a claim for just compensation.

Furthermore, regardless of whether Plaintiff has a protected property right, a substantive due process claim is not available here, and Plaintiff fails to provide a compelling argument to the contrary. Plaintiff labels the Township's description of events as "over simplification", however, the facts of the matter are straightforward. The Complaint alleges nothing more than a breakdown in negotiations of a contract and the failure of Plaintiff to complete the tasks requiring to advance to final PUD approval within a year. This rational basis for the PC's and Board's vote to rescind the PUD Option approval cannot be refuted, nor can it be said to reach the level of shocking the conscience.

Moreover, Plaintiff concedes that there is no statutory authority for a civil action for damages under the MZEA. ECF No. 16, PageID.381. Therefore, that portion of Count III must be dismissed. See, e.g., *Moskovic v. City of New Buffalo*, 638 F.Supp.3d 770, 783 (W.D. Mich. 2022). Furthermore, Plaintiff fails to establish a valid claim under the MZEA. Rather, it merely cites a section of the MZEA and makes a conclusory legal statement, with no support, that the Township's denial of

its approval is a violation of due process. The anticipated CBA was ultimately being negotiated as a component of the PUD Contract negotiation. ECF No. 1-2, PageID.61. The ZO expressly authorizes a PUD Contract to include conditions, provisions to effectuate the intent of the PUD provisions, and to provide for the public health, safety, morals, and general welfare. ZO § 23.8(7); which is consistent with the MZEA. Mich. Comp. Laws § 125.3503(2), (4), (8). Accordingly, Count III fails as a matter of law, and judgment should be entered for the Township.

As for Plaintiff's claim of estoppel, Plaintiff's allegations stem from their improper belief that the Township Supervisor has some sort of political control over the PC and Board. The Supervisor lacks the independent authority to bind the Township to a promise guaranteeing a particular outcome and Plaintiff fails to provide any caselaw to the contrary. *Saginaw Co. v. Kent,* 209 Mich. 160, 167-168 (1920). Plaintiff is charged with knowledge that the PUD approval process is within the realm of the PC and the Board, that these bodies speak collectively through their resolutions and ordinances, and that the Supervisor is just one of seven votes on the Board. Plaintiff also fails to provide any caselaw to rebut the Township's argument that it has been repeatedly held by Michigan Courts that such "casual private advice" is not sufficient to support an estoppel claim. Rather, Plaintiff cites *Howard Twp. Bd. of Trustees v. Waldo*, 168 Mich. App. 565, 576 (1988). However, in *Howard,* the defendants allegedly received approval for the mobile home in private

conversations with township officials, and the court found that defendants did not demonstrate the requisite exceptional circumstances to justify estoppel. Thus, Count IV fails as a matter of law and judgment must be entered for the Township.

Plaintiff fails to acknowledge how the Horse Racing Law supposedly provides Plaintiff with a private civil cause of action for damages or any other relief. Plaintiff concedes a defense when they fail to respond to a defendant's argument. *Humphrey v. U.S. Att'y Gen.*, 279 F. App'x 328, 331 (6th Cir. 2008). Rather, Plaintiff merely states that the Township imposed a license tax and its "illegal". ECF No. 16, PageID.383. The only remedies referenced in the Horse Racing Law authorize appeals of denials of race meeting licenses by the state (Mich. Comp. Laws § 431.314(6)), and misdemeanor prosecutions. Mich. Comp. Laws § 431.329. Lacking a private civil cause of action, judgment of Count VIII should be entered for the Township.

Plaintiff fails to provide any support for its contention that injunctive relief is an independent cause of action, because it is not. *Goryoka v. Quicken Loan, Inc.*, 519 Fed.Appx. 926, 929 (6th Cir. 2013). Thus Count VIII should be dismissed.

Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court grant its motion for judgment on the pleadings and/or to dismiss the Complaint, dismiss the Complaint with prejudice, enter judgment in

Defendant's favor, award Defendant attorney fees and costs so wrongfully incurred in defending this action, and grant any other relief deemed appropriate.

Respectfully submitted,

ROSATI SCHULTZ JOPPICH
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DATED: October 17, 2024

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 17, 2024.

/s/ Julie Doll