UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NORTHVILLE DOWNS, LLC,

Plaintiff,

v.

PLYMOUTH CHARTER TOWNSHIP,

Defendant.
_____/

Case No. 2:24-cv-10492

Hon. Brandy R. McMillion
United States District Judge

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS (ECF NO. 15)

Plaintiff Northville Downs, LLC ("NVD") was denied a zoning application that would have allowed it to move its family-owned horse-racing track to Plymouth Township. Placing their bets, NVD purchased a $10,000,000 plot of land in Plymouth with the hopes of gaining zoning approval for its horse-racing operations. But they jumped the gun because ultimately negotiations with Defendant Plymouth Charter Township ("Plymouth") failed. Unable to rein it in, NVD file this suit alleging federal and state law claims. Looking to buck NVD's complaint, Plymouth quite literally exclaims "hold your horses!" because the Township is entitled to judgment on the pleadings, or alternatively dismissal for lack of subject matter jurisdiction. *See* ECF No. 15. The Court finds that NVD may have put the cart

before the horse and is not entitled to relief. And for the reasons that follow, the Court **GRANTS** the Motion for Judgment on the Pleadings (ECF No. 15).

I.

This action arises from a failed zoning approval of prime real estate that came with community strings attached. NVD, owned and operated by John and Mike Carlo (the "Carlo Brothers"), has been a horse-racing track in Michigan since 1944. ECF No. 1, PageID.3. In late fall of 2020, NVD began seeking potential relocation sites because its current racing track was being sold. *Id.* In January 2021, the Carlo Brothers met with Plymouth Township Supervisor Kurt Heise ("Heise") and Economic Director Gary Heitman ("Heitman") for lunch. *Id.* at PageID.4. During the meeting, NVD alleges, Heise and Heitman attempted to persuade them to consider property within Plymouth. ECF No. 1, PageID.5. Heise made statements that he could assure zoning approval of the land within 60 to 90 days. *Id.*

In September 2022, Heise and Heitman suggested to the Carlo Brothers that they should purchase a newly available 128-acre tract of land in Plymouth. *Id.* at PageID.9. After assessing the property, NVD purchased the land in December 2022 and began preparing for zoning approval through the Planned Unit Development Option Application ("PUD") approval process. ECF No. 1, PageID.10. Plymouth's PUD differs from traditional zoning approval, in that it

> permits flexibility in the regulation of land development, encourage[s] innovation in land use and variety in design, layout and type of structures constructed, achieve economy and efficiency in the use of land, natural resources and the provisions of public services and utilities, encourage useful open space and pedestrian and non-vehicular interconnectivity, and provide a more desirable living environment with housing, employment, recreation and/or commercial opportunities *particularly suited to the needs of the residents of the Township of Plymouth*[.]

ECF No. 1-3, PageID.68 (emphasis added). Zoning through the PUD process is first assessed by the Township's Planning Commission to determine whether "a proposed development is eligible for approval." ECF No. 1, PageID.12. If approved, the Planning Commission recommends the project to the Zoning Board for final approval. *See* ECF No. 1-3, PageID.73; ECF No. 15, PageID.284. Before final approval, applicants must create a PUD Development Plan[1] and PUD Contract, which must also be approved by the Planning Commission and Zoning Board. *See* ECF No.1-3, PageID.70-71.

NVD submitted their PUD application on January 16, 2023; and thirty days later, the Planning Commission voted to approve the application. ECF No. 1, PageID.12. The application was then considered by the Zoning Board; and at a February 28, 2023 meeting, the Township Board of Trustees voted 6-to-1 to approve

[1] The Development Plan "illustrates the general character of the proposed PUD Option" and includes things like "landscaping, buildings, parking areas, vehicular and pedestrian circulation, open space and any other special features." *See* ECF No. 1-3, PageID.71.

NVD's PUD application. ECF No.1, PageID.15. Under the Plymouth's PUD zoning ordinance, NVD then had one year to obtain approval of a PUD Development Plan and PUD Contract. During the meeting, the Board also approved Heise and Township attorney Kevin Bennett to create a Community Benefit Agreement ("CBA") "to be formally approved by both parties at a later meeting of the Township Board." *See* ECF No. 1, PageID.16.

NVD and Plymouth then began working on the Development Plan, which was conditionally approved by the Planning Commission on June 1, 2023, subject to among other things, drafting a PUD contract that included provisions for a community benefit agreement. ECF No. 15, PageID.286-287. Two weeks later, Heise sent NVD a draft of the PUD Contract, which contained the proposed terms of the CBA, including the following[2]:

> (1) NVD shall guarantee to the Township a revenue sharing check in the amount of $500,000 per year . . . to begin one year after the opening of the facility to the public. This number shall include all breakage fees under State Law. The Township agree to place all revenue sharing funds in a dedicated Plymouth Township Recreation Fund for the benefit of the community;

[2] The original terms of the CBA were amened in an email from Heise to NVD on June 27, 2023. *See* ECF No. 1, PageID.24; ECF No. 16-2, PageID.386. The parties negotiated these terms back and forth over several iterations. *See* ECF No. 16-3, PageID.388; ECF No. 1-13, PageID.128. The proposed terms included here are what is included in the CBA attached to the Complaint; and at this stage of the proceedings, the Court accepts these allegations as true. *See* ECF No. 1-13, PageID.128. Nonetheless, the Court notes that its analysis of the legal arguments would not differ under the revised CBA terms.

(2) That NVD permit the Township to host four community events on site annually;

(3) Grant the Township the right to use the infield grass of the horse racing facility for youth soccer;

(4) Allow the Township to provide "at its sole cost" fireworks or comparable display at the horse racing facility to celebrate Independence Day annually;

(5) Allow the Township to promote NVD in Township publications, website, and social media; and

(6) Allow the Township to assist NVD "administratively in working to facilitate and onsite equine veterinary center."

See ECF 1-11, PageID.115-116; ECF No. 15, PageID.307-308. NVD refused these demands, alleging that they "were not tied to any effects of a horse-racing track or proper land-use regulation, but rather to add political luster to Mr. Heise and the Township Board[.]" ECF No. 1, PageID.24. Negotiations continued until the parties reached an impasse. On December 18, 2023, Heise emailed the parties to inform them that NVD's PUD Development Plan "would not be approved unless NVD accepted the CBA[.]" *Id.*

NVD then, through counsel, requested for the Board of Trustees to vote on the PUD Contract. *Id.* at PageID.27; *see also generally* ECF No.1-13, PageID.128. On January 23, 2024, the Board of Trustees voted unanimously to rescind the authorization for negotiations for NVD's relocation. ECF No. 1, PageID.28. On January 29, 2024, the Township Planning Commission held a Special Meeting that included "Discussion and Consideration of Rescinding PC #2478 for Northville

Downs Failure to Comply" with four supposed conditions on the approval of NVD's PUD application. *Id.* at PageID.29. Ultimately, on February 6, 2024, the Board of Trustees voted to deny NVD's PUD application as the final action in the process. *Id.*

As a result, on February 27, 2024, NVD filed this action. *See* ECF No. 1. This case was originally assigned to the Honorable Jonathan J.C. Grey, then reassigned to the undersigned. *See Admin. Order* 24-AO-007. Shortly afterwards, Plymouth filed this Motion. ECF No. 15. The Motion has been fully briefed. *See* ECF Nos. 17, 18. Having reviewed the parties' briefs, the Court finds oral argument unnecessary and will decide the motion based on the record before it. *See* E.D. Mich. LR 7.1(f).

II.

In evaluating a Rule 12(c) motion for judgment on the pleadings, the Court applies the same standard it uses to evaluate a 12(b)(6) motion to dismiss. *Bates v. Green Farms Condo. Ass'n*, 958 F.3d 470, 480 (6th Cir. 2020); *Bolone v. Wells Fargo Home Mortg., Inc.*, 858 F. Supp. 2d 825, 830 (E.D. Mich. 2012); *see also E.E.O.C. v. J.H. Routh Packing Co.*, 246 F.3d 850, 851 (6th Cir. 2001). Courts must view the pleadings in the light most favorable to the nonmoving party, accept the well-pled factual allegations as true, and determine whether the moving party is entitled to judgement as a matter of law. *See Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018).

A complaint must contain sufficient facts to "state a claim to relief that is plausible on its face" to survive a motion to dismiss. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). At this stage, a probability requirement is not imposed; rather merely enough facts need to be pleaded to raise a "reasonable expectation that discovery will reveal evidence of illegal [conduct]." *Id.* at 556. The Court need not accept as true legal conclusions or unwarranted factual inferences. *Mixon v. State of Ohio*, 193 F.3d 389, 400 (6th Cir. 1999).

A motion for judgment on the pleadings may be granted only if the moving party is nevertheless clearly entitled to judgment. *Moore, Successor Tr. of Clarence M. Moore & Laura P. Moore Tr. v. Hiram Twp., Ohio*, 988 F.3d 353, 357 (6th Cir. 2021) (citation omitted). The court may consider "any exhibits attached to the complaint, public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein." *Bassett v. NCAA*, 528 F.3d 426, 430 (6th Cir. 2008).

III.

NVD brings both federal and state law claims. As a threshold matter, the Court will focus on the merits of the federal claims to determine if they will survive before addressing the merits of the claims based on Michigan state law. *See Musson Theatrical, Inc v. Fed. Exp. Corp.*, 89 F. 3d 1244, 1254-55 (6th Cir. 1996). To state

a federal claim under 42 U.S.C. § 1983, "a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *Edison v. Township of Northville*, 752 F. Supp. 3d 808, 819 (E.D. Mich. 2024) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)). A municipality may be liable under § 1983 if the plaintiff establishes that: (1) the plaintiff's harm was caused by a constitutional violation, and (2) the municipality is responsible for that violation. *Collins v. City of Harker Heigths, Tex.*, 503 U.S. 115, 120 (1992); *Doe v. Claiborne Cnty.*, 103 F.3d 495, 507 (6th Cir. 1996).

Plymouth's Motion as it relates to the federal claims rests on the following grounds: (A) this Court lacks subject matter jurisdiction because the claims are not ripe for review; (B) NVD does not have a protected property interest, and therefore all of their federal claims under the Fifth and Fourteenth Amendment fail as a matter of law; (C) NVD's substantive due process claim lacks merit; and (D) a request for injunctive relief is not an independent claim for relief. *See generally* ECF No. 15. The Court will address each in turn.

A. JURISDICTIONAL BAR: RIPENESS

Plymouth wages that NVD's claims are not ripe for judicial review. ECF No. 15, PageID.290. Plymouth argues under *Williams* finality requirement, the takings and due process claims should be dismissed because NVD did not obtain a final

decision on its PUD Development Plan or PUD Contract, there was no final determination on the ultimate zoning of the property, and NVD could pursue zoning through the standard zoning procedure. *Id*. at PageID.291; *see Williams County Reg. Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985). The Court disagrees.

The doctrine of ripeness prevents courts from deciding cases or controversies prematurely. *See* U.S. CONST. art. 3, § 2, cl. 1.; *F.P. Dev., LLC v. Chart. Twn. of Canton, Mich.*, 16 F.4th 198, 203 (6th Cir. 2021). If a case is dependent on contingent future events that may not occur as anticipated, or indeed may not occur at all, it is not constitutionally ripe. *Carman v. Yellen*, 112 F.4th 386, 399 (6th Cir. 2024) (citations omitted). Ripeness is a question of timing that prevents courts form entangling themselves in abstract disagreements through premature adjudication. *Gonidakis v. LaRoss*, 599 F. Supp. 3d 642, 659-60 (S.D. Ohio 2022) (citing *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985)). However, a claim is ripe where it is fit for judicial decision and where withholding court consideration will cause hardship to the parties. *Doe v. Oberlin College*, 60 F.4th 345, 355 (6th Cir. 2023) (citing *Hill v. Snyder*, 878 F.3d 193, 213 (6th Cir. 2017)).

Here, the Court finds that Plymouth did render a final decision on NVD's PUD application: it rescinded the Planning Commission's conditional approval after negotiations fell through. *See* ECF No. 1, PageID.15. And without that conditional

approval, the project proposal does not move forward. Under Sixth Circuit precedent, a final decision in land-use cases simply requires "the government to have adopted a 'definitive position' as to 'how the regulations at issue apply to the particular land in question.'" *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 448 (6th Cir. 2023). Ripeness, then, "requires only a relatively modest' showing that the 'government is committed to a position' as to the strictures its Zoning Ordinance imposes on a plaintiff's proposed land use." *Id.* (quoting *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479 (2021)).

Here, a denial at any point in the PUD process is a decision that ends the process, thereby giving the "agency the opportunity to exercise its flexibility or discretion in reaching a final decision." *See Pakdel*, 594 U.S. at 478 (internal quotations omitted). Plymouth adopted a definitive position when it stood firm in requiring that the CBA terms be included in the PUD Contract. And if its final decision was at all questionable then, Plymouth certainly committed to a position when the Planning Commission revoked the PUD conditional approval. This clearly shows how Plymouth considered the regulations at issue (the PUD zoning process) to the particular land in question. *See Catholic Healthcare Int'l,* 82 F.4th at 448.

Additionally, that the PUD application process is not the only way that NVD could gain Plymouth's zoning approval is without consequence. The Zoning Ordinance provides: "[i]f the Township Board denies the request to apply the

provisions of the PUD Option, 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." ECF No. 1-3, PageID.73. And while this does establish the only alternative method for approval, it is not required, nor is it within the scope of NVD's claims. Just because another method exists to pursue an action does not negate that a claim for alleged violations of the PUD process is ripe for review. Further, the finality requirement does not require administrative exhaustion where such acts would be futile. *See, e.g.*, *Knicks*, 588 U.S. at 194-95; *accord Covington v. Knox Cnty. Sch. Sys.*, 205 F.3d 912, 917 (6th Cir. 2000); *Perez v. Sturgis Pub. Sch.*, 3 F.4th 236, 239-40 (6th Cir. 2021); *L&L Wine & Liquor Corp. v. Liquor Control Com'n*, 733 N.W.2d 107, 111-12 (Mich. Ct. App. 2007). And as NVD states, "[t]he Township made [it] abundantly clear" that the CBA (which NVD refused to accept) was a deal breaker. *See* ECF No. 16, PageID.373.

The Court, therefore, finds that NVD's claims are ripe for review and the Court has subject matter jurisdiction to adjudicate these claims.

B. PROTECTED PROPERTY INTEREST

1. Takings Clause & Due Process Clause Violations

NVD's complaint seeks to hold Plymouth liable for a violation of the Takings Clause of the Fifth Amendment and the Michigan Constitution, as well as procedural and substantive due process violations of the Fourteenth Amendment.[3]

Pursuant to the Takings Clause of the Fifth Amendment, made applicable to the states and its municipalities through the Fourteenth Amendment, *see Dolan v. City of Tigard*, 512 U.S. 374, 383-84 (1994) (citation omitted), private property shall not be taken for public use without just compensation. *See* U.S. CONST. amend. V. To protect procedural and substantive due process rights, the Due Process Clause of the Fourteenth Amendment states that "no . . . state . . . shall deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. NVD pleads that each clause was violated during the zoning approval process, which resulted in a denial of their PUD application and deprived them of an economically viable use of the land they purchased in Plymouth Township. NVD argues that the

[3] NVD also seeks relief under the Federal and Michigan state constitutions for its due process claims. Both the Federal and Michigan state constitutions can be evaluated under the same standard for due process clause violations. *See Cummings v. Robinson Twp.*, 770 N.W.2d 421, 438 (Mich. Ct. App. 2009) (citing *People v. Sierb*, 581 N.W.2d 219, 221 (Mich. 1998)). As for the takings clause, Michigan's Constitution affords greater protection than that of the Federal Constitution. Nonetheless, that claim still fails, as will be discussed herein.

Township imposed unconstitutional conditions on the PUD approval process and therefore those conditions were a taking. ECF No. 16, PageID.373-378.

But before the Court considers the sufficiency of the claims themselves, contrary to NVD's assertion, a threshold question ***must*** be answered: did NVD had a protected property interest subject to constitutional protection at the time their application was denied? Failure to establish a protected property interest can be fatal to a claim for a constitutional violation. *See, e.g., Bowles v. Macob Comm. Coll.*, 558 F. Supp. 3d 539, 549 (E.D. Mich. 2021) (citing *Med Corp.*, 296 F.3d at 409). Here, the Court finds that NVD did not have a protected property interest, and for that reason its Fifth and Fourteenth Amendment claims fail.

A protected property interest is an essential element for each of the alleged federal and state constitutional violations. *See, e.g.*, *CHKS, LLC v. City of Dublin*, 984 F.3d 483, 485 (6th Cir. 2021) (citing *Coal. For Gov't Procurement v. Fed. Prison Indus., Inc.*, 365 F.3d 435, 481 (6th Cir. 2004)) ("To establish a violation of the *Takings Clause* on the merits, plaintiffs must similarly prove that the government has a taken a "cognizable" property interest.")[4]; *Green Genie, Inc. v. City of Detroit*,

[4] While Michigan's Constitution has been interpreted to give greater protection than that given under the Fifth Amendment of the U.S. Constitution, *see Rafaeli, LLC v. Oakland Co.*, 952 N.W.2d 434, 462 (Mich. 2020), a cognizable property interest is still required in order to invoke this protection, *see Charles Murphy M.D., P.C. v. City of Detroit*, 506 N.W.2d 5, 7 (Mich. Ct. App. 1993) (citation omitted) ("A 'taking' . . . means that government action has permanently deprived the property owner of any possession or use of the property.").

63 F.4th 521, 526 (6th Cir. 2023) (citation omitted) ("No matter the nature of the due-process theory asserted, [the plaintiff] must show a deprivation of a constitutionally protected right . . . ."); *McCarthy v. Middle Tenn. Elec. Membership Corp.*, 466 F.3d 399, 412 (6th Cir. 2006) ("[D]ue process and takings claims require that the plaintiffs first demonstrate that they have a legally cognizable property interest."); *Bauserman v. Unemployment Ins. Agency*, 931 N.W.2d 539, 548 (Mich. 2019) (citation omitted) ("It is well established . . . that the requirements of procedural due process are triggered only by the implication of protected property or liberty interests. . . . It is only when a protected interest has been found that we may proceed to determine what process is due.").

A protected property interest must be based on something more than unilateral anticipation in the process itself. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972); *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983) ("Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement.") Further, a property interest will be void if grant of the interest is discretionary. *Med Corp., Inc. v. City of Lima*, 296 F.3d 404, 409 (6th Cir. 2002) ("[A] party cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary."); *Bd. of Regents of State Colleges v. Roth*, 408 U.S.

564, 577 (1972). "Whether a person has a property interest is traditionally a question of state law." *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012).

As a basis for its constitutional claims, NVD asserts that it has a property interest in the PUD application approval process itself through the Zoning Ordinance. *See* ECF No. 1, PageID.34, ¶134. Not so. There is no protected property interest in a township's zoning application procedure. *See Tuscola Wind III, LLC v. Almer Charter Twp.*, 327 F. Supp. 3d 1028, 1041-42 (E.D. Mich. 2018) (citing *Pamela B. Johnson Tr. ex rel. Johnson v. Anderson*, No. 315397, 2014 WL 4087967, at *9 (Mich. Ct. App. Aug. 19, 2014); *Richardson v. Twp. of Brady*, 218 F.3d 508, 518 (6th Cir. 2000). Under Michigan law, "[p]roperty" embraces everything over which a person may have a right to exclusive control or dominion. *See Charles Murphy M.D., PC. v. City of Detroit*, 506 N.W.2d 5, 7 (Mich. Ct. App. 1993) (alteration in original). However, "'[p]roperty' cannot be defined by the procedures provided for its deprivation any more than can life or liberty." *Hasanaj v. Detroit Pub. Sch. Cmty. Dist.*, 35 F.4th 437, 452 (6th Cir. 2022) (citation omitted).

A protected property interest in a zoning application attaches only after final approval. *See EJS Props.*, 698 F.3d at 856. NVD's PUD application was only *conditionally* approved by the Planning Commission. *See* ECF No.1-4, PageID.90; ECF No. 1-6, PageID.98; ECF No. 1-3, PageID.73 ("If the township Board approves the request to apply the provisions of the PUD Option, approval by the Board shall

confer approval to develop the subject property under the requirements of the PUD Option and the conditions established in the site analysis and concept plan."). There were additional steps that had to be completed in order for the PUD Development Plan and PUD Contract to be approved, including agreeing to negotiated terms of a CBA. Just because the application was voted upon and was *approved to proceed in the process* does not mean that a cognizable property interest had vested in the application. *See Schubiner v. W. Bloomfield Twp.*, 351 N.W.2d 214, 219 (1984) ("Where the building permit has been applied for but has not been issued, 'vested rights' are not acquired even though substantial sums have been expended by the applicant."). The Court understands that NVD spent $10,000,000 on the land, spent substantial sums in scouting and developing its plan, and that denial of the PUD application was detrimental to the continued success of its horse-racing operation. However, even with a valid property interest in their business under Michigan law, that interest does not expand to that business' continued success, *see Charles Murphy M.D.*, 506 N.W.2d at 6, nor does it expand to include protections in the initial phases of the PUD approval process.

Having no protected property interest, the Court finds that NVD's Fifth and Fourteenth Amendment Claims fail as a matter of law and Plymouth is entitled to judgment on the pleadings as to Counts I, II, V, and VI.

2. Unconstitutional Conditions Doctrine

NVD argues that its takings claim is not dependent upon whether it had a protected property interest; rather, because the Township attempted to impose unconstitutional conditions as part of the PUD application process, its Fifth Amendment rights have been violated. *See* ECF No. 16, PageID.375. The Court disagrees, but for the sake of completeness will evaluate the unconstitutional conditions claim. In doing so, the Court still finds that under the unconstitutional conditions doctrine, NVD's takings claims fail as a matter of law.

The "unconstitutional conditions doctrine" states that the government may not grant a benefit on the condition that the beneficiary surrender a constitutional right, even if the government may withhold the benefit altogether. *Estate of Fluegge v. City of Wayne*, 442 F. Supp. 3d 987, 996 (E.D. Mich. 2020). NVD concedes that "a government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development." *See* ECD No. 16, PageID.375. However, it asserts that because there was no nexus between the CBA provisions and a legitimate state interest, nor a proportionality between the impacts having to pay the Plymouth millions of dollars for operation of their facilities, the Township was prohibited from imposing such unconstitutional conditions. *Id*. The Court again disagrees.

As NVD points out, "under the unconstitutional-conditions doctrine, the government may not deny a benefit to a person because he exercises a constitutional right." *Id*. at PageID.374 (citing *FP Dev, LLC v Charter Twp. of Canton, Michigan*, 16 F.4th 198, 295 (6th Cir. 2021) (quotations omitted)). But here, NVD is not able to point to any constitutionally protected right that it is forfeiting. The terms of the CBA do not require NVD to give up a constitutionally protected right. *See* ECF No.1-11, PageID.114. And the PUD application process allows for those terms to be negotiated. At no point in this process did either party lose the right to contract or negotiate. It appears simply that those negotiations broke down and the parties could not come to mutually agreeable terms. Requiring NVD to enter into a CBA that provided benefits to the Plymouth Township community is not inherently depriving it of any constitutional rights; and therefore, its takings claim under the unconstitutional conditions doctrine fails.

Further, a restriction on the right to use property effects a taking only if the use restriction bars property owners from engaging in all economically beneficial or productive use of land. *See Knights v. Metro. Gov. of Nashville & Davidson Cnty., Tenn.*, 67 F.4th 816, 823 (6th Cir. 2023) (citation omitted). Here, the CBA's terms did not do that. A municipality has the authority to regulate land use under its police power. *See MS Rentals, LLC v. City of Detroit*, 362 F. Supp. 3d 404,418-19 (E.D. Mich. 2019) (citing *15192 Thirteen Mile Road, Inc. v. City of Warren*, 626 F. Supp.

803, 823 (E.D. Mich. 1985)). Based on the pleadings, the CBA does not take anything away from NVD; it merely offers negotiable options.[5] One of the most basic ideas of legal jurisprudence is that parties have the freedom to contract and negotiate however they choose. *See Wilkie v. Auto-Owners Ins. Co.*, 664 N.W.2d 776, 782 (Mich. 2003). That being so, under Plymouth's Zoning Ordinance, the PUD Option application process requires "[a] description and/or visual of the proposed recognizable and material benefit to the ultimate users of the project *and to the community*." *See* ECF No. 1-3, PageID.71, ¶6 (emphasis added). The very nature of the PUD process, opposed to the general zoning procedures, is that it considers effects on the community and seeks to address those by adding benefits to the community. Therefore, the CBA clearly falls within the provisions of the Zoning Ordinance. That NVD did not like the terms of the CBA is insufficient to state an unconstitutional conditions claim. Thus, judgment in favor of Plymouth would also be appropriate on Count II for this reason as well.

C. SUBSTANTIVE DUE PROCESS

Plymouth also argues that regardless of the property interest, a substantive due process claim is not available here because the claim is essentially duplicative of previous allegations in the complaint (*e.g.* the Fifth Amendment Takings Clause).

[5] It is worth noting that NVD, in its Complaint, even states that it provided similar benefits (as those requested by Plymouth in the CBA) to its previous host city. *See* ECF No. 1, PageID.8.

ECF No. 15, PageID.296-299. The Court agrees, as have other Courts within this circuit. *See, e.g.*, *Miner v. Ogemaw Cnty. Rd. Comm'n*, 594 F. Supp. 3d 912, 922 (E.D. Mich. 2022) ("[S]ubstantive due process concepts are not available to provide relief when another provision of the Constitution directly address the type of illegal government conduct alleged[.]"); *Montgomery v. Carter Cnty.*, 226 F.3d 758, 765 (6th Cir. 2000).

But even if a Substantive Due Process claim could be brought in this context, the Court finds that it would still fail. Aside from not having a cognizable property interest (which is required), *see EJS Props.*, 698 F.3d at 855 (citing *Braun v. Ann Arbor Chart. Twp.*, 519 F.3d 564, 573 (6th Cir. 2008)), to sustain a substantive due process claim, NVD would also have to show that Plymouth's CBA terms deprived them through arbitrary and capricious actions which shock the conscious of the court. *See Golf Village North, LLC v City of Powell, Ohio*, 42 F.4th 593, 601 (6th Cir. 2022). The PUD approval process is a community focused zoning process. Its sole aim is to provide the community with benefits when zoning impacts their daily living. To require a CBA, that includes community benefits, does not shock the conscious of this Court. The Court finds not even a scintilla of arbitrary or capriciousness in the PUD zoning process. *See EJS Props.*, 698 F.3d at 862. The Court further notes that this is the process that NVD chose to seek zoning approval; and to refuse to enter into an agreement that serves to the benefits of the community

through a community focused zoning ordinance is at the very least disingenuous. Thus, Plymouth is entitled to judgment on Count VI.

D. INJUNCTIVE RELIEF

NVD also brings a claim for injunctive relief (Count IV). ECF No. 1, PageID.47-49. However, it is well established that a request for injunctive relief is a remedy, and not an independent cause of action. *See Redmond v. Heller*, 957 N.W.2d 357, 368 (Mich. Ct. App. 2020); *Turaani v. Sessions*, 316 F. Supp.3d 998, 1015 (E.D. Mich. 2018); *Skidmore v. Access Grp. Inc.*, 149 F. Supp. 3d 807, 809 (E.D. Mich. 2015) (collecting authorities); *Goryoka v. Quicken Loan, Inc.*, 519 F. App'x 926, 929 (6th Cir. 2013). NVD even acknowledges the same. *See* ECF No.16, PageID.381, n.9. NVD includes "Injunctive Relief" as an independent cause of action in its Complaint; and because an injunction is a remedy, not a cause of action, the Court finds dismissal of Count VII appropriate.

E. EXERCISE OF SUPPLEMENTAL JURISDICTION

Finally, NVD alleges state law violations of the Michigan Zoning Enabling Act (Count III), Promissory Estoppel (Count IV), and the Michigan Horse Racing Law of 1995 (Count VIII). The Court declines to exercise supplemental jurisdiction over these remaining state claims.

Supplemental jurisdiction is a doctrine of discretion, not of right. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). District courts have discretion

to exercise supplemental jurisdiction over state law claims if they "are so related . . . that they form part of the same case or controversy" as the federal claims over which the Court has original jurisdiction. *Michigan Paralyzed Veterans of Am. v. Charter Twp. of Oakland, Mich.*, No. 4:14-cv-14601, 2015 WL 4078142, at *4 (E.D. Mich. July 2, 2015); 28 U.S.C. § 1367(a); *see also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966). However, the district court "need not exercise its authority to invoke supplemental jurisdiction in every case in which it is possible to do so." *Estate of Johnson v. City of Detroit*, No. 4:20-cv-12791, 2022 WL 5102019, at *5 (E.D. Mich. 2022) (citing *Gibbs*, 383 U.S. at 726). Pursuant to 28 U.S.C. § 1367(c), a district court may decline to exercise supplemental jurisdiction over a pendent state claim if the district court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(2).

Here, Counts III, IV, and VIII all raise novel issues that would be best addressed in a Michigan state court. Furthermore, although the case has been on the court's docket for over a year, dismissal is appropriate because discovery has not begun, there are no pending motions for summary judgement, and significant time has not been spent in this litigation. *See, e.g., RJ Control Consultants, Inc. v. Multiject LLC*, No. 2:16-cv-10728, 2023 WL 4229012, at *2 (E.D. Mich. May 23, 2023) (citation omitted). "When all federal claims are dismissed before trial, the balance of consideration usually will point to dismissing the state law claims . . . ."

Musson Theatrical, Inc. v. Fed. Express Corp., 89 F.3d 1244, 1254-55 (6th Cir. 1996); *see also* 28 U.S.C. § 1367(c). Consequently, because the federal claims fail, the Court declines to exercise supplemental jurisdiction to address the merits of the remaining state law claims. NVD is free to refile those claims in state court, if it so desires.

IV.

Because NVD failed to plead a constitutionally protected property interest, Counts I, II, V, and VI fail as a matter of law, and judgment on the pleadings is awarded in Plymouth's favor. Further, the Court declines to exercise supplemental jurisdiction over the remaining state law claims and they can be refiled in state Court, if Plaintiff so choses.

Accordingly, the Court **GRANTS** Defendant Plymouth's Motion for Judgment on the Pleadings (ECF No. 15). The Court **DISMISSES WITH PREJUDICE** Counts I, II, V, VI, and VII. Counts III, IV, and VIII are **DISMISSED WITHOUT PREJUDICE**.

THIS IS A FINAL ORDER THAT CLOSES THE CASE.

IT IS SO ORDERED.

Dated: April 21, 2025
Detroit, Michigan

s/Brandy R. McMillion
BRANDY R. MCMILLION
United States District Judge