

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MONROE
38TH JUDICIAL CIRCUIT

BEDFORD PARTNERS, LLC, a
Michigan Limited Liability Company

Plaintiff,

File No. 05-20841-CK

V

BEDFORD TOWNSHIP, a Michigan
Municipal Corporation,

Defendant.

EXCERPT OF NON-JURY TRIAL
COURT'S DECISION

BEFORE: HONORABLE MICHAEL W. LaBEAU, Circuit Judge.
Monroe, Michigan - February 28, 2007.

APPEARANCES:

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WITNESSES - PLAINTIFFS:

NONE

WITNESSES - DEFENDANT:

EXHIBITS

None presented

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Monroe, Michigan

Wednesday, February 28, 2007 - 4:00 p.m.

EXCERPT OF NON-JURY TRIAL - COURT'S DECISION

THE COURT: All right, the Court has considered all the testimony and reviewed the pertinent exhibits and will render a decision at this time.

The -- the Plaintiff seeks to rezone approximately 78 acres that are zoned agricultural.

Two of the parcels contain approximately 18 acres and are owned in fee simple by the Plaintiffs. One parcel contains approximately 60 acres and is being purchased on a land contract by the Plaintiffs.

The Plaintiff also purchased an 80-acre parcel that is north of the 60-acre parcel, and that 80-acre parcel is zoned residential. I believe it's R-2A.

The Plaintiff approached the Defendant Township with a rezoning request and a proposal to develop all four parcels together to contain approximately 450 units or building sites, and these four parcels are contiguous.

This case deals with actually an addition of 246 units that the Plaintiff has because they -- because they already have -- or that the Plaintiff requests to be rezoned because they already have 204 in the 80-acre parcel.

When the Plaintiffs purchased these parcels they

1 were aware of the zoning classifications.

2 Although the north parcel is zoned residential,
3 it and the 60-acre agricultural parcel have been farmed by
4 the Albring family for many years and they are still being
5 farmed by them at this time under an agreement with the
6 Plaintiffs.

7 Immediately north of the residential parcel,
8 that's the 80 acres, is Erie Road. The property direct --
9 the property directly across the street is zoned
10 residential. I believe that is R-2A. To the west of --
11 right -- to the west there is also residential property.
12 To the south and southwest of the 60-acre agricultural
13 parcel is a development called Village Meadows, and that is
14 -- Village Meadows was rezoned from agricultural to
15 residential. If I recall correctly it was around 2002.
16 The master plan was adopted on June 19th, 2002 and Village
17 Meadows was rezoned approximately 30 days, I believe the
18 testimony was, before that, but at -- but while the master
19 plan was in the process of being adopted as it exists
20 today.

21 Directly east of the 60-acre parcel is
22 residential zoning, the entire east portion of it.

23 Approximately three-quarters of the 60-acre
24 parcel is surrounded by residentially zoned land, which
25 includes the 80-acre parcel that I've already mentioned

1 that is owned by the Plaintiffs, and a little less than
2 half of the 18-acre parcel is surrounded by residential
3 land, which also includes the 80 acres.

4 Now other than the -- and this comes from the
5 Planning Commission's analysis of staff. Other than the
6 parcels that are in issue here, only about 90 acres of the
7 640 remain as farm land.

8 Now the Township Planning Commission and the
9 Monroe County Planning Commission both recommended denial.
10 Although with some reservations the Monroe County Planning
11 staff recommended granting the rezoning and said it would
12 be a logical extension and compatible with surrounding
13 areas.

14 The staff also pointed out that the Plaintiffs
15 could build 300 units on the 80-acre parcel that is zoned
16 residential at this time, and that with the volume -- with
17 the voluntarily submitted conditions that the Plaintiffs
18 have submitted here, the net yield would only be an
19 additional 150 units.

20 Now infrastructure was a big issue here. First
21 as to schools. The evidence supports that this project
22 would benefit the schools financially with increased
23 enrollment that results in more state money. While there
24 is always an additional cost, there's been no evidence
25 submitted that it would be a negative result.

1 The Court can take judicial notice of the fact
2 that schools have a certain day every year that they seek
3 highest enrollment, and -- and the reason for that is they
4 get more money.

5 The testimony and evidence submitted supports
6 that the district could accommodate an additional 225
7 students, which was the projected amount in this entire
8 area. However, there were other projects going on in the
9 Township but there is no evidence as to any effect on the
10 school, and no one testified from the school.

11 As to sewer and water, there's no evidence that
12 the water is a problem and it is available. There is some
13 dispute regarding the sewers. Plaintiff's engineer says
14 that it would have little effect on the system.
15 Defendant's supervisor says he -- he is concerned when
16 considering flow capacity and peak times during rains, and
17 the Plaintiff's engineer didn't consider that rain type of
18 situation.

19 However, it's clear that from the County's
20 engineer that the MDEQ has final say. If it was the -- if
21 -- if it has the capacity then they will approve the
22 project. If it doesn't have the capacity they won't. So
23 everyone -- all of the witnesses somewhat speculated as to
24 capacity, lack of capacity, plenty of capacity, things of
25 that nature. But the MDEQ makes this not such a

1 significant issue. Also -- that is the MDEQ having to
2 approve it. Also, new homes are charged for sewer use, so
3 it's not like they come in and get free sewers.

4 The next infrastructure issue is fire service.
5 It's -- it's clear that the fire service is stretched thin,
6 however I note that there was testimony that there is a
7 millage, a fire millage. Every taxpayer pays the fire
8 millage, and that would include new residents, so arguably
9 the extra revenue would -- would help offset any problems
10 with fire service.

11 Again, the Court also has to consider the fact
12 that this -- while it's argued that we're talking about 450
13 units, we really are not as far as what would be rezoned.
14 We're not talking about that.

15 So there's no evidence that -- that the -- the
16 fire service could not support these additional units, and
17 there has been -- and no one testified from the fire
18 department as to that aspect.

19 As to police, again it's -- it -- it's -- the
20 Court's satisfied that they are -- they are -- they are -
21 - they are -- the Township is stretched thin as far as
22 police is con -- are concerned.

23 The Township has a millage for additional
24 deputies which the Supervisor testified about. I think he
25 said there's gonna be four additional deputies.

1 Again, 450 units would mean more money for the
2 millage, but also more demand on the police services. But
3 I would also note that the -- the police services are not
4 only covered by -- by the Township and the millage.
5 There's -- there was -- there are exhibits that indicate
6 the Michigan State Police does patrol the area and -- and
7 the Court is aware that -- that there -- there was evidence
8 I believe that the Sheriff's Department does, but
9 nevertheless the Sheriff's Department is part of the
10 contract, so -- I also would note that no law enforcement
11 witnesses testified here. The Sheriff was not brought in
12 here to say, we can't handle an additional 240-some units,
13 or whatever it is, on top of the 204 that are -- are
14 permitted -- or that are approved, and possibly 300.

15 The roads, this seems to be the most significant
16 impact here. Erie Road to the north is in bad shape,
17 there's no dispute about that.

18 Temperance Road to the south, according to the
19 Supervisor, is in good condition and when asked about the
20 Village Meadows subdivision if that was a concern, I
21 believe his testimony was something to the effect that that
22 he believed the road had been redone recently before that
23 rezoning. The -- the -- the evidence -- there's no
24 evidence which road would be used the most.

25 I would note that the 204 units that are already

1 allowed are close to Erie Road. If the rezoning is
2 denied, all 204 of those units are going to use Erie Road.
3 If the rezoning is denied and the Plaintiffs put in more
4 units, which they're allowed to do under the zoning,
5 according to the testimony all of those additional units
6 would use Erie Road.

7 Now close to that number, 240-some, or -- or --
8 excuse me -- 240-some of the units, if granted, the
9 rezoning is granted, that most of those units are as close
10 or closer -- would be as close or closer to Temperance
11 Road. Of course traffic would increase, but not as
12 significantly as argued by the Defendants, because some of
13 that traffic would be on Temperance Road as opposed to Erie
14 Road, and Erie Road is the only testimony I heard about any
15 roads -- any roads in -- that are related to this project
16 being in poor shape.

17 Also, Plaintiffs, part of their proposal is to
18 con -- is to contribute to a portion of the road upgrade
19 that would be needed for the -- the entrance to the
20 subdivision.

21 The proposed rezoning is not in conflict with
22 surrounding land uses for the reasons that I've already
23 stated.

24 The master plan designates this area as
25 agricultural and it is zoned agricultural, which allows

1 Plaintiff to build five lots. Now they could build
2 approximately, it's somewhere between 11 and 15 units on
3 this property as is.

4 Lots of this size would not be compatible with
5 the surrounding area and it would be impractical for the
6 Plaintiff to do that, economically and -- and otherwise.

7 Defendants refer to the master plan as one of the
8 main concerns for denial, not the only concern, but one of
9 the main concerns, and Defendants argue that to grant this
10 request means that they can never go against the master
11 plan without being subjected to a new rezoning request, and
12 that's in reference to Village Meadows being -- being
13 raised as a -- as a big issue here and having impact on the
14 Plaintiff's property.

15 Now I disagree with the Defendants because this
16 is a unique situation partially brought on by the rezoning
17 of Village Meadows, and even other parcels in this section,
18 and I'm referring to other agricultural parcels in this
19 section, do not have the same status as the Defendant's
20 property, and while the Defendants had a good reason to
21 rezone Village Meadows, and I'm not being critical of that,
22 it's clear that the master plan is just a guide, but they
23 still have to consider the ramifications on any other
24 property by doing -- by going against the master plan, as
25 they did with Village Meadows.

1 The master plan even indicates that conflicts are
2 to be avoided between agriculture and residential property,
3 and the Defendants have shown an inconsistency in relying
4 on the master plan in part, or as they did in this case and
5 not in other circumstances.

6 Now the law, there's -- there's -- there's not a
7 great argument on the law here, but just to -- to make a
8 record of it, as Plaintiff -- or excuse me -- Defendant
9 correctly points out, the ordinances are presumed to be
10 valid and constitutional. Plaintiffs bears the burden of
11 proof on -- on the unconstitutionality claim, and the
12 courts do not sit as super zoning commissions and are not
13 concerned with the wisdom of municipal determinations.

14 Now the challenge on due process grounds contains
15 a two-fold argument. First, that there is no reasonable
16 governmental interest being advanced by the present zoning
17 classification.

18 Now I've already indicated that I believe there
19 was a -- there is a legitimate governmental interest, and
20 I've already commented on that on the directed verdict
21 motion and so I -- I won't add anything to that.

22 And the second argument or issue to consider is
23 that an ordinance may be unreasonable because of the purely
24 arbitrary, capricious and unfounded exclusion of other
25 types of legitimate land use from the area in question, and

1 that gets into, as -- as Mr. Landry argued, the challenger
2 has the burden of proving that the ordinance is an
3 arbitrary and unreasonable restriction upon the owner's use
4 of the property. That the provision in question is an
5 arbitrary fiat, a whimsical ipse dixit, and that there is
6 not room for a legitimate difference of opinion concerning
7 its reasonableness.

8 Now the -- the Defendant gave various reasons for
9 denying the request for rezoning, most of which I've
10 addressed already, but I'll just kind of go through those.

11 The first reason was the requests are not
12 consistent with the master plan which has been recently
13 revised.

14 The Court's already commented about that so I
15 don't think I need to say it further, other than a master
16 plan as everybody seems to want to point out is just a
17 guide here, at least the Defendant does.

18 The next thing is residential uses allowed on the
19 subject property by current zoning classification. The
20 agricultural use promoted by the current zoning ordinance
21 and master plan has a reasonable use for the subject
22 property is a use that has been in effect for years and is
23 a use that advances, and/or is rationally related to a
24 legitimate government interest.

25 The question here is, is it a reasonable use

1 after considering all the other property around -- around
2 the property in question, including the Village Meadows,
3 and I'm gonna comment on that in a minute.

4 The next three things deal with the Township
5 Planning Commission -- Planning Consultant, Planning
6 Commission and the Monroe Planning Commission recommending
7 that the rezoning be denied, and then the C-1 rezoning
8 would interfere with other issues, which that's been
9 withdrawn, so that's not really here in issue. And it says
10 in fact the present use of the lands and surrounding area
11 has for the most part remained a viable agricultural use.

12 For the reasons that I've already given here, I
13 disagree with that, that that is -- that is not the -- the
14 evidence does not support that.

15 The size and scope of any projects that would
16 result from the rezoning would adversely impact adjacent
17 uses.

18 I've heard no evidence how it adversely impacts
19 adjacent uses, other than possibly the argument on the
20 roads I suppose, but I've already talked about that.

21 The uses permitted as a result of the rezonings
22 would completely change the character of the neighborhood
23 lands and uses, as well as -- as -- as well as the extent
24 and added burden -- it just says as well as extent on added
25 burden and infrastructure.

1 Infrastructure I've already talked about, and
2 that is a legitimate basis if -- if it -- if the facts
3 support it. It doesn't change the character of neighboring
4 lands at all. In fact it would conform to the character of
5 the neighboring lands.

6 The next issue deals again with infrastructure
7 and I've already commented on that as well. That would be
8 a valid reason to deny zoning if the facts support it.

9 Agriculture use deserves equal protection and
10 promotion by zoning.

11 Well we're not talking about equal protection
12 anymore. That's been withdrawn.

13 Residential use as being proposed by the
14 applicant is permitted under the current zoning and master
15 plan designation, so no change in zoning is necessary for
16 the lands being requested for residential zoning.

17 Again, I've already commented about that, that it
18 is not -- is not practical and does not conform to the
19 other zoning in the area, and they adopt all the reasons by
20 the -- by the planning consultants and the like, and again
21 because your planning consultant or planning commission
22 recommends something doesn't mean that that's why you
23 should do it, but it is something to consider. I'm not
24 faulting you for considering it. That's why you have them
25 there, to consider it.

1 Then there's a question about the railroad has
2 issued a written objection to the rezonings. I don't
3 believe that that came in, the railroad exhibit, but
4 nevertheless I -- I haven't seen where that has any -- any
5 application to the circumstances of this particular
6 rezoning request.

7 The last thing is again redundant about
8 infrastructure.

9 Now the -- the -- it all boils down to this; the
10 Court has to determine whether this is arbitrary,
11 capricious and an unfounded exclusion of other types of
12 legitimate land use from the area in question, and I do
13 find that it is. I find that there is not room for a
14 legitimate difference of -- of -- of opinion. Just looking
15 at the map, without considering anything else, would make
16 one wonder how could they not rezone this property? But
17 that isn't the only reason of course for this ruling.

18 For all these reasons I have -- I'm ruling for
19 the Plaintiff in this matter, and find that the proposed --
20 that the proposed rezoning with the conditions that are
21 being indicated by the Plaintiff should be allowed, and is
22 allowed. And you can prepare an order, Ms. Bondy, or
23 whoever, alright?

24 MS. BONDY: Yes.

25 (at 4:20 p.m., this portion of the proceedings

1

concluded)

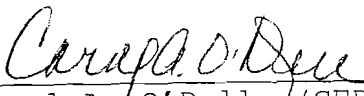
STATE OF MICHIGAN)

) SS

COUNTY OF MONROE)

I certify that this transcript, consisting of 16 pages, is a complete, true, and correct transcript, of the proceedings and testimony taken in this case, on February 28, 2007.

DATED: March 7, 2007



Carol A. O'Dell, (CER-5434)
Official Court Recorder