

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAPLE PROPERTIES, INC. : CIVIL ACTION
 :
v. : NO. 00-4838
 :
 :
TOWNSHIP OF UPPER PROVIDENCE :
& BOARD OF SUPERVISORS OF :
UPPER PROVIDENCE TOWNSHIP, et al. :

MEMORANDUM and ORDER

Juan R. Sánchez, J.

November , 2004

Plaintiff, Maple Properties, Inc. ("Maple"), claims its substantive due process rights, procedural due process rights, and equal protection rights were violated under 42 U.S.C. § 1983 when Defendants, Township of Upper Providence and its Supervisors ("the Township"), rezoned Maple's property.¹ The Township asks this Court to enter summary judgment in its favor as to all three counts because: 1) Maple cannot show the Township's actions "shock the conscience" of the Court; 2) the Pennsylvania Municipalities Planning Code ("the MPC") provides sufficient redress for a perceived property deprivation; and 3) the Township has a rational basis for its actions.² We agree.

¹ The purpose of § 1983 is to provide a cause of action to parties deprived of constitutional rights by a state official's abuse of his position while acting under color of state law. *Benn v. Universal Health System, Inc.*, 371 F.3d 165, 169-70 (3d Cir. 2004).

² Maple admits in its response to the motion for summary judgment that their equal protection claim should be dismissed. This count, therefore, will not be discussed.

FACTS

This dispute concerns a nine acre parcel of property that lies partially in the Borough of Collegeville and partially in the Township of Upper Providence. Sherwood Associates ("Sherwood") owned the property and used it for a golf cart maintenance and sales operation. The property was zoned R-2 (Residential) until 1997, when Sherwood asked the Township to rezone the property so they could expand and renovate their existing facility. The Township agreed to rezone the property to NC (Neighborhood Commercial) if Sherwood would sign a restrictive covenant, limiting the uses permitted on the property. The Township believed this was necessary because they feared a NC district would permit too many high traffic commercial uses, either by right or as a special exception. Sherwood signed the restrictive covenant on July 13, 1998.

On April 30, 1998, more than 70 days before Sherwood signed the restrictive covenant, Sherwood and Maple entered into an agreement of sale for the property at issue. Maple was interested in buying the property and ultimately building a Burger King and a Seven Eleven store in Collegeville, and a CVS store in Upper Providence. Maple examined the zoning ordinances in each municipality to determine the uses permitted on the property. Maple found they would need a special exception in Collegeville for the Burger King and Seven Eleven stores, but their proposed CVS in Upper Providence was permitted by right.

Maple applied and was granted a special exception in Collegeville. The zoning relief, however, contained a condition of approval. The uses in Collegeville, the Burger King and Seven Eleven store, had to be serviced by an access drive which crossed a portion of the Upper Providence property. Maple subsequently began the engineering work necessary to file for land development and subdivision approval in Upper Providence. Maple filed its application in Upper Providence on

April 23, 1999, but the Township's Zoning Officer denied those plans because they were incomplete.

The Township voted on May 3, 1999 to change the zoning of the Upper Providence property from NC (Neighborhood Commercial) to PBO (Professional Business Office). This rezoning prohibited construction of the CVS store and made it impossible for Maple to fulfill the conditions Collegeville imposed in provisionally approving the Burger King and Seven Eleven uses.

DISCUSSION

A motion for summary judgment will only be granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corporation v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986).

The moving party bears the burden of proving no genuine issue of material fact is in dispute and the court must review all of the evidence in the record and draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348 (1986). Once the moving party has carried its initial burden, the nonmoving party must then "come forward with specific facts showing there is a genuine issue for trial." *Matsushita*, 475 U.S. at 587 (citing Fed.R.Civ.P. 56(e)). A motion for summary judgment will not be denied because of the mere existence of some evidence in support of the nonmoving party. The nonmoving party must present sufficient evidence for a jury to reasonably find for them on that issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

Maple's complaint contains three counts, alleging the Township violated their substantive

due process, procedural due process, and equal protection rights. The Township filed a motion for summary judgment as to all three counts. In their response to the motion, Maple concedes their equal protection count should be dismissed. This Court, consequently, will only discuss the substantive and procedural due process counts.

Substantive Due Process

In order to succeed in a substantive due process claim under Section 1983, a plaintiff must establish as a threshold matter that he has a property interest protected by the Fourteenth Amendment's due process clause. *Independent Enterprises Inc. v. Pittsburgh Water and Sewer Authority*, 103 F.3d 1165, 1179-80 (3d Cir. 1997) (indicating only fundamental property interests are entitled to substantive due process protection). Here, Maple owns a property that is subject to local land use regulation and, therefore, has a property interest entitled to substantive due process protection. *Id.* (citing *DeBlasio v. Zoning Bd. of Adjustment for the Township of West Amwell*, 53 F.3d 592, 600 (3d Cir. 1995)).

Maple must also show the government violated the relevant standard in depriving it of its property interest. The Third Circuit recently held in *United Artists Theatre Circuit v. The Township of Warrington* that the new standard to determine whether a substantive due process violation has taken place, in the land use context, is whether the government's action "shocks the conscience." 316 F.3d 392, 400-01 (3d Cir. 2003). This new heightened standard the Third Circuit enunciated replaced the "improper motive" test established in *Bello v. Walker* and its progeny. 840 F.2d 1124 (3d Cir. 1988) (holding substantive due process violation established if plaintiff showed government's actions were based on improper motives); *See, e.g., Woodwind Estates, Ltd. v. Gretkowski*, 205 F.3d 118 (3d Cir. 2000); *DeBlasio v. Zoning Board of Adjustment*, 53 F.3d 592 (3d

Cir. 1995); *Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667 (3d Cir. 1991).

In *United Artists Theatre Circuit*, the Third Circuit stated "[I]and use decisions are matters of local concern, and such disputes should not be transformed into substantive due process claims based only on allegations that government officials acted with 'improper motives.'" *United Artists Theatre Circuit*, 316 F.3d at 402. Maple cannot simply "give these state law claims constitutional labels such as 'due process' or 'equal protection' in order to raise a substantial federal question under section 1983." *Id.* The heightened 'shocks the conscience' test was implemented "to avoid converting federal courts into super zoning tribunals. What 'shocks the conscience' is only the most egregious official conduct." *Eichenlaub v. Township of Indiana*, 385 F.3d 274, 285 (3d Cir. 2004) (quoting *United Artists Theatre Circuit*, 316 F.3d at 400).

Maple claims the Township's conduct 'shocks the conscience' because the rezoning of Maple's property was not rationally related to planning considerations. Maple further asserts the Township's actions were egregious because this case involves the "deliberate premeditated use of government power to deprive Plaintiff of its property interest, done with the luxury of time to ponder its illegitimacy and its intended impact" Plaintiff's Mem. Opp. Summ. J. at 20.

This Court, however, does not find the Township's actions rise to the heightened 'shocks the conscience' standard. The Township states it rezoned Maple's property from NC (Neighborhood Commercial) to PBO (Professional Business Office) because a NC District would permit too many high traffic commercial uses either by right or special exception and a PBO District would be more consistent with the existing and recommended use in the area. The Township's decision to rezone, therefore, was rationally related to land use planning. Furthermore, federal courts must "largely defer to legislative judgment on such matters as zoning regulation 'because of the recognition that the

process of democratic political decisionmaking often entails the accommodation of competing interests, and thus, necessarily produces laws that burden some groups and not others." *Pace Res., Inc. v. Shrewsbury Township*, 808 F.2d 1023, 1035 (3d Cir. 1987) (quoting *Rogin v. Bensalem Township*, 616 F.2d 680 (3d Cir. 1980)). Here, the rezoning of Maple's property was for the benefit of local land use planning and a burden for Maple. This Court will not, however, substitute its judgment for that of the local legislative decision-makers.

The 'shocks the conscience' test is not a precise test and it "varies depending on the factual context." *United Artists Theatre Circuit*, 316 F.3d at 400. This Court, after carefully reviewing the facts of this case, does not find evidence of corruption or self-dealing. Rather, the Township's actions were justified with legitimate land use concerns and were not so egregious as to 'shock the conscience.'

Procedural Due Process

To establish a procedural due process cause of action, "a plaintiff in addition to proving that a person acting under color of state law deprived it of a protected property interest, must establish that the state procedure for challenging the deprivation does not satisfy the requirements of procedural due process." *Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667, 680 (3d Cir. 1991), *overruled on other grounds*, *United Artists Theatre Circuit*, 316 F.3d 392. The Township admits Maple has a property interest as an equitable owner in the property and does not deny it acted under color of state law. Defendant's Mem. Supp. Summ. J. at 19. The parties do, however, disagree as to whether state procedure for challenging the deprivation of property satisfies procedural due process requirements.

In *Rogin*, the Third Circuit stated, "[i]n Pennsylvania the procedure for challenging zoning

ordinances substantially conforms with the general due process guidelines enunciated by the Supreme Court." *Rogin*, 616 F.2d at 695. The Third Circuit further stated:

[t]he Pennsylvania legislature has enacted a system for processing challenges to zoning ordinances A landowner who wishes to challenge the validity of a zoning ordinance or amendment that restricts the use or development of its land may file a challenge with the zoning hearing board and may appeal from any decision by the zoning officer applying the ordinance If the landowner is dissatisfied with the Board's decision, it then has the right to appeal to the Court of Common Pleas. The appeal may take the form of direct judicial review of the Board's decision, or the court may take new evidence and enter its own findings of fact after trial de novo. The Court is authorized to declare any ordinance or map invalid and to set aside or modify any action, decision, or order of the Township, Zoning Officer, or Zoning Hearing Board.

Rogin, 616 F.2d at 694-95. In a state such as Pennsylvania, which affords a full judicial mechanism to challenge administrative decisions, the state provides adequate procedural due process regardless of whether the plaintiff avails herself of that appeal mechanism. *DeBlasio*, 53 F.3d at 597, *overruled on other grounds*, *United Artists Theatre Circuit*, 316 F.3d 392.

Pennsylvania provides adequate safeguards to ensure the procedural due process rights of disgruntled land owners are preserved. After Maple's property was rezoned on May 3, 1999, Maple timely filed an application to the local Zoning Hearing Board (ZHB), challenging the validity of the amended zoning ordinance on both procedural and substantive grounds. The ZHB held several hearings on this issue and ultimately upheld the validity of the ordinance. Maple subsequently filed an appeal with the Montgomery County Court of Common Pleas.³ Maple has taken advantage of Pennsylvania's procedures for zoning appeals. Consequently, Maple's procedural due process claim lacks merit. Accordingly, we enter the following:

³The Court of Common Pleas reversed the ZHB's decision and declared the rezoning was invalid for lack of strict compliance with 53 P.S. § 10609(c), which requires presentation of the proposed ordinance to the Township Planning Commission at least 30 days prior to a vote.

ORDER

AND NOW, this 10th day of November, 2004, Defendants' Motion for Summary Judgment (document #31) is GRANTED.

BY THE COURT:

Juan R. Sánchez, J.