

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JENSAM,
A Michigan limited liability company,

Plaintiff,

Case No. 17-10764-GAD-DRG

vs

Honorable Gershwin A. Drain

CHARTER TOWNSHIP OF OAKLAND,
A Michigan municipal body,

Defendant.

Daniel J. Kelly (P41315)
Giarmarco, Mullins & Horton, P.C.
Attorneys for Plaintiff
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Oakland

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Counsel for Plaintiff Jensam LLC

DEFENDANT CHARTER TOWNSHIP OF OAKLAND'S ANSWER

Now comes Defendant, the Charter Township of Oakland ("Township"), by and through their attorneys, Giarmarco, Mullins & Horton, P.C., and for its answer to Plaintiff Jensam LLC ("Jensam") Complaint, states as follows:

PARTIES, JURISDICTION AND VENUE

1. In response to paragraph 1, Defendant neither admits nor denies the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to its proofs.
2. In response to paragraph 2, Defendant admits the allegations contained therein.

3. In response to paragraph 3, Defendant neither admits nor denies the allegations contained therein for the reason that said allegations constitute conclusions of law rather than allegations of fact and, therefore, leave Plaintiff to its proofs.
4. In response to paragraph 4, Defendant admits the allegations contained therein.
5. In response to paragraph 5, Defendant neither admits nor denies the allegations contained therein for the reason that said allegations constitute conclusions of law rather than allegations of fact and, therefore, leave Plaintiff to its proofs.
6. In response to paragraph 6, Defendant neither admits nor denies the allegations contained therein for the reason that said allegations constitute conclusions of law rather than allegations of fact and, therefore, leave Plaintiff to its proofs.

FACTUAL ALLEGATIONS

7. In response to paragraph 7, Defendant neither admits nor denies the allegations contained therein for lack of knowledge upon which to form a belief and, therefore, leave Plaintiff to its proofs.
8. In response to paragraph 8, Defendant admits the allegations contained therein.
9. In response to paragraph 9, Defendant admits the allegations contained therein.
10. In response to paragraph 10, Defendant admits the allegations contained therein.

BACKGROUND OF THE TOWNSHIP'S SPECIAL LAND USE (ULTIMATE PAVED ROAD ZONING)

11. In response to paragraph 11, the Defendant admits in or about 1986, based upon health and safety concerns action was taken to downzone to VLRD zoning classification certain properties which were accessed by gravel roads, however, as to the remaining allegations of paragraph 11, Defendant neither admits nor denies the characterization of these facts for the reasons that Defendant lacks knowledge and, therefore, leave Plaintiff to its proofs.

12. In response to paragraph 12, Defendant admits that in or about 1986 the Township approved a process for granted special land use permits for applicants who agreed to pave unimproved roads under what is referred to as the Ultimate Paved Road Zoning Special Land Use Ordinance, but Defendant neither admits nor denies whether the Township began granted special land use permits in or about 1986 and, therefore, leave Plaintiff to their proofs.
13. In response to Paragraph 13, Defendant denies that in or about 1987 the Township's issuance of the Ultimate Paved Road Zoning Map created an understanding or implication that properties which has been rezoned to VLRD could be rezoned to higher density classifications if the unpaved roads providing ingress and egress were paved in conjunction with the new development for the reason that same is untrue and, therefore, leave Plaintiff to their proofs. Defendant further states that the Township Zoning Ordinance and Ultimate Paved Road Special Land Use Ordinance clearly sets forth that there was no implication or entitlement to a higher density zoning classification unless the criteria has been demonstrated by the applicant, recommended by the planning commission and approved by the Township Board.
14. In response to paragraph 14, Defendant admits the allegations contained therein.
15. In response to paragraph 15, Defendant admits the allegations contained therein.
16. In response to paragraph 16, Defendant denies the allegations contained therein for the reason that same are untrue.

JENSAM'S APPLICATION FOR SPECIAL LAND USE APPROVAL

17. In response to paragraph 17, Defendant admits the allegations contained therein.
18. In response to paragraph 18, Defendant admits the allegations contained therein.
19. In response to paragraph 19, Defendant denies the allegations contained therein for the reason that same are untrue.

20. In response to paragraph 20, Defendant admits the allegations of paragraph 20 except the statement that “it is presumed that deterioration of the road will not occur once it is paved” which is neither admitted nor denied for the reason that Plaintiff fails to identify which road or roads it is referring to and, therefore, Defendant leaves Plaintiff to its proofs.
21. In response to paragraph 21, Defendant denies the allegations contained therein for the reason that same are untrue.
22. In response to paragraph 22, Defendant admits the allegations contained therein.
23. In response to paragraph 23, Defendant admits the allegations contained therein.
24. In response to paragraph 24, Defendant admits the allegations contained therein.
25. In response to paragraph 25, Defendant admits the allegations contained therein.
26. In response to paragraph 26, Defendant admits that Plaintiff, through Westphal, submitted a response dated August 22, 2016, but neither admits nor denies that the response answered all questions or concerns raised in the June 20th Carlisle Report and the July 7th Planning Commission Meeting and, therefore, leave Plaintiff to its proof.
27. In response to paragraph 27, Defendant admits that the August 22nd Westphal response clarified Jensam’s agreement to pave Clarkston Road, but deny that the Westphal response clarified that the property would be entitled to 272 lots under the Ultimate Paved Road Zoning District nor did the response show that the reasons for denial set forth in the June 20th Carlisle Report were based on improper standards and or were otherwise not valid or legitimate and, therefore, leave Plaintiff to its proofs.
28. In response to paragraph 28, Defendant admits the allegations contained therein.
29. In response to paragraph 29, Defendant admits the allegations contained therein.
30. In response to paragraph 30, Defendant denies the allegations contained therein for the reason that same are untrue.
31. In response to paragraph 31, Defendant denies the allegations contained therein for the reason that same are untrue.

32. In response to paragraph 32, Defendant denies the allegations contained therein for the reason that same are untrue.

33. In response to paragraph 33, Defendant admits the allegations contained therein.

34. In response to paragraph 34, Defendant admits the allegations contained therein.

THE TOWNSHIP'S VIOLATIONS OF THE U.S. CONSTITUTION AND FEDERAL LAW

35. In response to paragraph 35, Defendant denies the allegations contained therein for the reason that same are untrue.

36. In response to paragraph 36, Defendant denies the allegations contained therein for the reason that same are untrue.

37. In response to paragraph 37, Defendant denies the allegations contained therein for the reason that same are untrue.

38. In response to paragraph 38, Defendant denies the allegations contained therein for the reason that same are untrue.

39. In response to paragraph 39, Defendant denies the allegations contained therein for the reason that same are untrue.

40. In response to paragraph 40, Defendant denies the allegations contained therein for the reason that same are untrue.

41. In response to paragraph 41, Defendant denies the allegations contained therein for the reason that same are untrue.

42. In response to paragraph 42 (a) through (c), Defendant denies the allegations contained therein for the reason that same are untrue.

COUNT I DENIAL OF SUBSTANTIVE DUE PROCESS

43. In response to paragraph 43, Defendant incorporates by reference its response contained in paragraphs 1-42 inclusive and as if fully set forth herein.

44. In response to paragraph 44, Defendant neither admits nor denies the allegations contained therein for the reason that said allegations constitute conclusions of law rather than allegations of fact and, therefore, leave Plaintiff to its proofs.

45. In response to paragraph 45, Defendant denies the allegations contained therein for the reason that same are untrue.

46. In response to paragraph 46, Defendant denies the allegations contained therein for the reason that same are untrue.

47. In response to paragraph 47, Defendant denies the allegations contained therein for the reason that same are untrue.

48. In response to paragraph 48, Defendant denies the allegations contained therein for the reason that same are untrue.

WHEREFORE, Defendant Charter Township of Oakland respectfully requests that this honorable Court deny Plaintiff's requests, enter a no cause of action and dismissal of all claims against the Charter Township of Oakland; including, any claim for violation of the constitution or any law, injunctive relief, monetary damages or any other damage or relief sought by Plaintiffs, and award the Charter Township of Oakland its costs, attorney fees, and interest so wrongfully incurred, together with any and all other relief deemed reasonable and necessary by the Court.

COUNT II VIOLATION OF EQUAL PROTECTION

49. In response to paragraph 49, Defendant incorporates by reference its response contained in paragraphs 1-48 inclusive and as if fully set forth herein.

50. In response to paragraph 50, Defendant denies the allegations contained therein for the reason that same are untrue.

51. In response to paragraph 51, Defendant denies the allegations contained therein for the reason that same are untrue.

52. In response to paragraph 52, Defendant denies the allegations contained therein for the reason that same are untrue.

53. In response to paragraph 53, Defendant denies the allegations contained therein for the reason that same are untrue.

54. In response to paragraph 54, Defendant denies the allegations contained therein for the reason that same are untrue.

WHEREFORE, Defendant Charter Township of Oakland respectfully requests that this honorable Court deny Plaintiff's requests, enter a no cause of action and dismissal of all claims against the Charter Township of Oakland; including, any claim for violation of the constitution or any law, injunctive relief, monetary damages or any other damage or relief sought by Plaintiffs, and award the Charter Township of Oakland its costs, attorney fees, and interest so wrongfully incurred, together with any and all other relief deemed reasonable and necessary by the Court.

COUNT III
VIOLATION OF 42 U.S.C. §§ 1983 AND 1988

55. In response to paragraph 55, Defendant incorporates by reference its response contained in paragraphs 1-54 inclusive and as if fully set forth herein.

56. In response to paragraph 56, Defendant admits the allegations contained therein.

57. In response to paragraph 57, Defendant neither admits nor denies the allegations contained therein for the reason that said allegations constitute conclusions of law rather than allegations of fact and, therefore, leave Plaintiff to its proofs.

58. In response to paragraph 58, Defendant neither admits nor denies the allegations contained therein for the reason that said allegations constitute conclusions of law rather than allegations of fact and, therefore, leave Plaintiff to its proofs.

59. In response to paragraph 59, Defendant denies the allegations contained therein for the reason that same are untrue.

WHEREFORE, Defendant Charter Township of Oakland respectfully requests that this honorable Court deny Plaintiff's requests, enter a no cause of action and dismissal of all claims against the Charter Township of Oakland; including, any claim for violation of the constitution or any law, injunctive relief, monetary damages or any other damage or relief sought by Plaintiffs, and award the Charter Township of Oakland its costs, attorney fees, and interest so wrongfully incurred, together with any and all other relief deemed reasonable and necessary by the Court.

Dated: April 14, 2017

Respectfully submitted,

/s/ Daniel J. Kelly

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Counsel for Plaintiff Jensam LLC

PROOF OF SERVICE

The undersigned certifies that a copy of Defendant, Charter Township of Oakland's Answer was served upon all counsel of record herein at their respective addresses as directed on the pleadings using the Court's e-filing system on April 14, 2017.

Signature: /s/ Lisa Mooney
Lisa Mooney