

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JENSAM LLC,
a Michigan limited liability company,

Plaintiff,

v.

Case No. 17 -
Hon:

CHARTER TOWNSHIP OF OAKLAND,
a Michigan municipal body,

Defendant.

COMPLAINT

Plaintiff Jensam LLC (“Jensam”), by its attorneys, states as follows for its Complaint against Defendant Charter Township of Oakland (“Township”):

Summary of the Case

This case arises out of the Township’s unconstitutional denial of Jensam’s lawful request for Special Land Use (Ultimate Paved Road Zoning) approval to allow Jensam to develop certain property located in the Township for residential development at a density previously permitted by the Township on the property at issue and permitted on the property under the Township’s Ultimate Paved Road Zoning District.

Parties, Jurisdiction and Venue

1. Plaintiff Jensam is a Michigan limited liability company with a registered office located at 2301 W. Big Beaver Road in Troy, Michigan.
2. Defendant Township is a Michigan municipal body located in Oakland County, Michigan.
3. This Court has original subject matter jurisdiction over the federal questions asserted herein pursuant to 28 U.S.C. §1331.
4. The actions or occurrences alleged in this Complaint occurred in Oakland County, Michigan.
5. The Township is subject to personal jurisdiction in this Court.
6. Venue is proper in the Eastern District of Michigan, Southern Division, pursuant to 28 U.S.C. §1391(b) and (c).

Factual Allegations

The Property

7. Jensam is the fee simple owner of approximately 247 acres of land commonly known as 2275 Clarkston Road in the Township (“Property”). The Property consists of five parcels of vacant land, Parcel I.D. Nos. 10-17-100-010, 10-17-200-001, 10-17-200-002, 10-17-200-003 and 10-17-200-04.
8. The Property is located south of Clarkston Road, west of Lake George Road and east of Adams Road in the Township.

9. The Property is currently zoned Very Low Residential Density (“VLRD”) by the Township, with the exception of an approximately twenty (20) acre parcel on the northeast corner of the Property, which is zoned Medium Residential Density (“MRD”).

10. The VLRD zoning district requires a minimum lot area of 100,000 square feet. The MRD zoning district has a minimum lot area of 26,000 square feet.

Background of the Township’s Special Land Use (Ultimate Paved Road Zoning)

11. In or about 1986, in response to community concerns over proper access for emergency vehicles on unpaved roads and traffic volume generated by future development using the then current zoning designations, the Township downzoned all properties with access limited to gravel roads to the VLRD zoning classification.

12. In conjunction with rezoning property to VLRD in or about 1986, the Township began granting special land use permits to applicants who agreed to pave unimproved roads under the Special Land Use (Ultimate Paved Road Zoning) (“Special Land Use (UPRZ)”).

13. In 1987, the Township issued an Ultimate Paved Road Zoning Map showing the parcels that were rezoned to VLRD, with the understanding and implication that such properties could be rezoned to higher density zoning

classifications if the unpaved road(s) providing ingress and egress to such parcels were paved in conjunction with new development. (Ex. A.)

14. The zoning classifications shown on the Ultimate Paved Road Zoning Map are the zoning classifications for properties in the Township prior to the Township rezoning numerous properties VLRD in or about 1986.

15. Section 05.04.09 of the Oakland Township Zoning Ordinance states, in relevant part (Ex. B):

For property classified in the Very Low (Intensity) Residential District, a density modification as specified below may be applied for and granted if the applicant demonstrates, and the Township Board finds, after recommendation from the Planning Commission, that a modification of the density clearly would not result in, and/or contribute to, a deterioration of one or more of the public roads providing access to the property in question. For purposes of this section, a modification in density will result in, and/or contribute to, a deterioration of a road if, based upon generally applicable statistics, the modification will result in an expectation that there shall be 800 vehicle trips per day or more on an unpaved road, taking into consideration all existing users of the road and potential users, assuming full development of property in accordance with the then existing zoning. It shall be presumed that the modification of density would not result in and/or contribute to a deterioration of a road if such road were paved. If a density modification is approved, the authorized density shall not be in excess of that density which is set forth on the Ultimate Paved Road Zoning Map.

16. Thus, Jensam developed a reasonable expectation, based both on the Township Zoning Ordinance regarding Special Land Use (UPRZ) and other similarly-situated properties and developments approved by the Township for Special Land Use (UPRZ), that the Township would grant Jensam a Special Land Use

(UPRZ) that would allow Jensam to develop the Property with densities consistent with the Ultimate Paved Road Zoning Map, i.e. the same densities permitted on the Property prior to the 1986 downzoning.

Jensam's Application for Special Land Use Approval

17. On May 17, 2016, Jensam submitted an Application to the Township for Special Land Use (UPRZ) approval to develop the Property for a single family residential development ("Special Land Use Request"). (Ex. C.)

18. Jensam's Special Land Use Request sought the Township's approval of MRD zoning density on a portion of the northern half of Property and the density of Low Residential Density ("LRD") zoning on a portion in the middle of the Property in accordance with the Ultimate Paved Road Zoning Map dated 1987. (See Ex. D.)¹ Jensam proposed that the density of three portions of the Property along the south and east sides would remain VLRD. (*Id.*) In addition, the density of the northeast corner of the property would remain consistent with MRD zoning. (*Id.*)

19. Jensam's Special Land Use Request met the standards for granting a Special Land Use (UPRZ), particularly the main criteria of showing that the requested increased density would not result in the deterioration of a public road.

¹ The map attached at Exhibit D refers to the proposed density modifications as "rezonings," but Jensam did not request any rezoning; Jensam simply requested that that MRD and LRD densities be restored to certain portions of the Property.

20. Jensam agreed as part of its Special Land Use Request that, if the Township granted the Special Land Use Request, Jensam would pave the portion of Clarkston Road along the Property's frontage consistent with Oakland County Road Commission standards, with connection to the intersection of Stoney Creek, Lake George and Clarkston Roads. Per Section 05.04.09 of the Township Zoning Ordinance, it is presumed that deterioration of the road will not occur once it is paved.

21. Jensam's Special Land Use Request also demonstrated that Jensam met the eight standards for granting a Special Land Use under Section 24.04.01 of the Township Zoning Ordinance.

22. On June 20, 2016, the Township's planning firm, Carlisle Wortman Associates, Inc., issued a Special Land Use Review regarding Jensam's Special Land Use Request ("June 20 Carlisle Report"). (Ex. E.)

23. The June 20 Carlisle Report (a) requested certain clarifications and additional information from Jensam, including verifying the extent of Clarkston Road that Jensam would pave if Township granted the Special Land Use Request and (b) set forth claimed reasons why the Township Planning Commission should deny the Special Land Use Request.

24. The June 20 Carlisle Report specifically acknowledged: "The applicant's proposed density matches the Ultimate Pave Road Density Map

referenced in Section 05.04.09 and depicted on the Map dated May 23, 1987.” (Ex. E, p. 3.)

25. On July 7, 2016, the Township Planning Commission held a public hearing regarding the Special Land Use Request. At the July 7, 2016 Planning Commission meeting, Jensam’s planning firm, Donald C. Westphal Associates, L.L.C. (“Westphal”), requested that the Planning Commission table any action on the Special Land Use Request to allow Jensam to respond in detail to the June 20 Carlisle Report and public comments at the July 7 Planning Commission meeting.

26. On August 22, 2016, Jensam, through Westphal, submitted a Response to the June 20 Carlisle Report (“August 22 Westphal Response”), which responded to the questions and concerns raised in the June 20 Carlisle Report and at the July 7 Planning Commission meeting. (Ex. F.)

27. The August 22 Westphal Response (a) clarified that Jensam would agree to pave Clarkston Road beyond the boundary of the Property to include all of Clarkston Road between Adams Road and Lake George Road, (b) clarified that Jensam was seeking to develop 182 lots on the Property (the “Project”), although 272 lots would be permitted under the UPRZD and (c) showed that the reasons set forth in the June 20 Carlisle Report regarding why the Township Planning Commission should deny the Special Land Use Request were based on improper standards and/or otherwise were not valid or legitimate.

28. On August 30, 2016, Carlisle submitted a revised report in response to the August 22 Westphal Response (“August 30 Carlisle Report”). (Ex. G.)

29. The August 30 Carlisle Report reaffirmed that “[t]he applicant’s proposed density matches the Ultimate Pave Road Density Map referenced in Section 05.04.09 and depicted on the Map dated May 23, 1987.” (Ex. G, p. 3.)

30. However, the August 30 Carlisle Report continued to recommend that the Planning Commission deny the Special Land Use Request for reasons that were based on improper standards and/or otherwise were not valid or legitimate.

31. On September 6, 2016, the Township Planning Commission held a public meeting at which it recommended that the Township Board of Trustees (“Board”) deny Jensam’s Special Land Use Request based on the baseless, invalid and illegitimate reasons set forth in the August 30 Carlisle Report.

32. On October 11, 2016, the Board denied Jensam’s Special Land Use Application, based on the same baseless, invalid and illegitimate reasons set forth in the August 30 Carlisle Report and relied upon by the Planning Commission. (Ex. H.)

33. Jensam timely appealed the Board’s denial of its Special Land Use Application to the Township Zoning Board of Appeals (“ZBA”) on October 31, 2016.

34. At a public meeting on December 20, 2016, the Township ZBA denied Jensam's appeal to reverse the decision of the Board denying Jensam's Special Land Use Request.

The Township's Violations of the U.S. Constitution and Federal Law

35. The denial of Jensam's Special Land Use Request and ultimately its proposed development of the Property, was not based upon a good faith, objective and proper regard for the Township's zoning ordinances, established principles of land use planning, or legitimate public interest, in part due to the fact that the Township has in the past granted special land use permits and rezoning for several residential developments under very similar circumstances.

36. No legitimate or reasonable governmental or public interest is served, promoted or advanced by the denial of Jensam's Special Land Use Request and ultimately its proposed development of the Property, and such action by the Township, through its agencies and boards, is a misuse of municipal authority and power, which renders the Township's zoning ordinance constitutionally invalid as it applies to the Property.

37. The Township's denial of Jensam's Special Land Use Request was unreasonable, arbitrary, capricious, and discriminatory, and is, in fact, a pretext for Township's wrongful intention to deny Jensam the opportunity to develop the Property.

38. Denial of Jensam's Special Land Use Request constitutes an arbitrary, capricious, unfounded, discriminatory, and unreasonable refusal to permit a legitimate and reasonable use of the Property.

39. Denial of Jensam's Special Land Use Request has denied Jensam its economically viable use of the Property and does not substantially advance any legitimate governmental interest.

40. Denial of Jensam's Special Land Use Request bears no substantial or reasonable relationship to the public health, safety or welfare of Defendant Township.

41. Jensam's Special Land Use Request and proposed development of the Property are compatible and harmonious with, and not detrimental to, the adjacent and surrounding areas.

42. The Township's denial of Jensam's Special Land Use Request and proposed development of the Property has caused, and continues to cause, Jensam to suffer damages, including but not limited to:

- a. Loss of income that would be generated by the development and use of the Property;
- b. Increase in construction and other development costs and expenses; and
- c. Other expenses, including but not limited to, reasonable attorney fees, consultant and expert fees, and related costs.

COUNT I
DENIAL OF SUBSTANTIVE DUE PROCESS

43. Plaintiff incorporates Paragraphs 1 through 42 as if set forth here.

44. Jensam has legally protected property and liberty interests in utilizing the Property for all lawful purposes.

45. Jensam's proposed use of the Property is lawful under federal, state and local law.

46. The Township, by its actions and inactions on October 11, 2016, through the Board's denial of Jensam's Special Land Use Request, has denied Jensam its right to substantive due process under the 5th and 14th Amendments to the United States Constitution.

47. No reasonable or rational governmental interest which bears a substantial relation to the public health, safety or welfare was advanced by the Township's denial of the Special Land Use Request.

48. The Township's decision to deny approval of the Special Land Use Request on October 11, 2016 was arbitrary and capricious, shocks the conscience and fails to advance any legitimate governmental interest or purpose.

WHEREFORE, Plaintiff Jensam LLC respectfully requests that Court grants the following relief:

- a. Enter an Order compelling the Township by affirmative injunction to issue all approvals and permits necessary to reasonably accommodate Jensam's Special Land Use Request and the Project.

- b. Enter an Order enjoining the Township from interfering with Jensam's use of the Property consistent with the Special Land Use Application and the Project, as supported by accompanying engineering and design materials submitted by Jensam to the Township.
- c. Grant Jensam its attorney fees, expert fees and other damages as provided by 42 U.S.C. § 1988(b), 42 U.S.C. §1983 and/or other law.
- d. Grant any other relief this Court deems fair and just.

COUNT II
VIOLATION OF EQUAL PROTECTION

49. Plaintiff incorporates Paragraphs 1 through 48 as if set forth here.

50. The denial of Jensam's Special Land Use Request is unreasonable, arbitrary and capricious, especially given that the Township has granted such requests to develop property in the Township consistent with the UPRZD in the past to several similar developers with similar properties.

51. The Township, by refusing to grant Jensam's Special Land Use Request, has precluded Jensam from developing its Property in a commercially feasible manner.

52. The denial of Jensam's Special Land Use Request, the granting of similar requests by the Township in the past, and maintenance of the current zoning restriction in the VLRD district, is not rationally or reasonably related to any legitimate governmental interest, and the denial of Jensam's Special Land Use

Request thus violates Jensam's right to equal protection of the law in contravention of the United States Constitution.

53. The Township's denial of Jensam's right to equal protection of the laws has caused and will continue to cause Jensam to sustain loss and damages and to incur irreparable injury and harm, for which there is no adequate remedy at law.

54. The denial of Jensam's request further denies Plaintiff equal protection of the laws because it is tantamount to discriminatory classification of the Property when compared with other properties similarly situated, without any reasonable basis for such discrimination.

WHEREFORE, Plaintiff Jensam LLC respectfully requests that Court grants the following relief:

- a. Enter an Order compelling the Township by affirmative injunction to issue all approvals and permits necessary to reasonably accommodate Jensam's Special Land Use Request and the Project.
- b. Enter an Order enjoining the Township from interfering with Jensam's use of the Property consistent with the Special Land Use Application and the Project, as supported by accompanying engineering and design materials submitted by Jensam to the Township.
- c. Grant Jensam its attorney fees, expert fees and other damages as provided by 42 U.S.C. § 1988(b), 42 U.S.C. §1983 and/or other law.
- d. Grant any other relief this Court deems fair and just.

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

55. Plaintiff incorporates Paragraphs 1 through 54 as if set forth here.

56. 42 U.S.C. § 1983 provides that every person who under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

57. The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988(b) specifically provides for an award of attorney's fees payable by the defendant to the prevailing plaintiff in any action or proceeding to enforce 42 U.S.C. §1983.

58. The Township is a "person" for purposes of 42 U.S.C. § 1983 and 42 U.S.C. § 1988(b).

59. As described above, the actions and inactions of the Township, acting under color of state law, in violating Jesnam's rights to substantive due process rights under the United States Constitution, constitute a continuing violation of 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Plaintiff Jensam LLC respectfully requests that Court grants the following relief:

- a. Enter an Order compelling the Township by affirmative injunction to issue all approvals and permits necessary to reasonably accommodate Jensam's Special Land Use Request and the Project.
- b. Enter an Order enjoining the Township from interfering with Jensam's use of the Property consistent with the Special Land Use Application and the Project, as supported by accompanying engineering and design materials submitted by Jensam to the Township.
- c. Grant Jensam its attorney fees, expert fees and other damages as provided by 42 U.S.C. § 1988(b), 42 U.S.C. §1983 and/or other law.
- d. Grant any other relief this Court deems fair and just.

Respectfully submitted,

/s/ Richard D. Rattner

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