

LEXSEE 1995 US DIST LEXIS 12084

**PHILIP G. TANNIAN and BEVERLY D. TANNIAN, Plaintiffs, v. CITY OF GROSSE
POINTE PARK, Defendant.****CIVIL ACTION NO. 94-72587****UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION***1995 U.S. Dist. LEXIS 12084***July 31, 1995, Decided****CASE SUMMARY:**

PROCEDURAL POSTURE: Plaintiff residents filed a state court action against defendant City of Grosse Pointe Park, which alleged that a zoning ordinance passed by the City was unconstitutional. The ordinance prohibited the residents from parking their recreational vehicle in their yard. The City removed the action, and the parties filed cross-motions for summary judgment.

OVERVIEW: The residents understood that the ordinance prohibited them from keeping their motor home in their yard because they filed the instant action. Therefore, it was not unconstitutionally vague. Also, because the ordinance did not relate to free speech, the residents had to show that it was incapable of any valid application. The residents' own statement was that many residences were in open and notorious violation. The overbreadth doctrine only applied to First Amendment claims. In order to state a substantive due process claim, the residents had to show that the ordinance was not rationally related to legitimate state land use concern. The residents were unable to do so even though the director of public safety told them that there were no safety concerns related to the ordinance. The residents' claim for taking without just compensation was not ripe because they had not pursued the State's inverse condemnation procedure. Even if the claim was ripe, it failed because the ordinance substantially advanced legitimate state interests and did not deny an owner economically viable use of his land. There was no equal protection violation when the residents did not allege unequal treatment.

OUTCOME: The court denied the residents' motion for summary judgment and granted the City's motion for summary judgment.

LexisNexis(R) Headnotes

*Governments > Local Governments > Duties & Powers
Real & Personal Property Law > Zoning & Land Use >
Zoning Generally*

[HN1] Pursuant to the Zoning Enabling Act, Mich. Comp. Laws § 125.581(1), a city may regulate and restrict the use of land structures to insure that uses of the land shall be situated in appropriate locations and relationships to promote public health, safety, and welfare.

*Civil Procedure > Summary Judgment > Burdens of
Production & Proof*

*Civil Procedure > Summary Judgment > Summary
Judgment Standard*

[HN2] Under Fed. R. Civ. P. 56(c), summary judgment may be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material and precludes grant of summary judgment if proof of that fact would have the effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would necessarily affect the application of appropriate principles of law to the rights and obligations of the parties. A court must view the evidence in a light most favorable to the nonmovant as well as draw all reasonable inferences in the nonmovant's favor. The movant bears the burden of demonstrating the absence of all genuine issues of material fact. The initial burden on the movant is not as formidable as some decisions have indicated. The moving party need not produce evidence showing the absence of a genuine issue of material fact; rather, the burden on the moving party may be discharged by showing that there is an absence of evidence to support the nonmoving party's case. Once the moving party discharges that burden, the burden shifts to the nonmoving party to set forth specific facts showing a genuine triable issue. Fed. R. Civ. P. 56(e).

Civil Procedure > Summary Judgment > Burdens of

Production & Proof***Civil Procedure > Summary Judgment > Summary Judgment Standard***

[HN3] To create a genuine issue of material fact and prevent summary judgment, the nonmovant must do more than present some evidence on a disputed issue. There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the nonmovant's evidence is merely colorable, or is not significantly probative, summary judgment may be granted. The standard for summary judgment mirrors the standard for a directed verdict under Fed. R. Civ. P. 50(a). Consequently, a nonmovant must do more than raise some doubt as to the existence of a fact; the nonmovant must produce evidence that would be sufficient to require submission of the issue to the jury. The evidence itself need not be the sort admissible at trial. However, the evidence must be more than the nonmovant's own pleadings.

Real & Personal Property Law > Zoning & Land Use > Constitutional Limits

[HN4] A zoning ordinance is presumed to be constitutionally valid with the burden of unreasonableness being cast upon those who challenge the ordinance.

Constitutional Law > Fundamental Freedoms > Overbreadth & Vagueness

[HN5] Because courts assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. If a statute clearly applies to an individual's conduct, that individual cannot successfully challenge the statute for vagueness.

Constitutional Law > Fundamental Freedoms > Overbreadth & Vagueness

[HN6] A challenged ordinance need not be cast in mathematically precise terms so long as it gives fair warning of the conduct proscribed in light of common understanding and practices.

Constitutional Law > Fundamental Freedoms > Overbreadth & Vagueness

[HN7] Laws that do not reach constitutionally protected conduct such as free speech may be considered unconstitutionally vague if the complainant demonstrates that the law is impermissibly vague in all of its applications.

Constitutional Law > Fundamental Freedoms > Overbreadth & Vagueness

[HN8] The overbreadth doctrine only applies to constitutionally protected conduct and is limited to First Amendment claims.

Constitutional Law > Substantive Due Process > Scope***of Protection***

[HN9] The right not to be subject to "arbitrary or capricious" actions is commonly referred to as a "substantive due process right." The Sixth Circuit has established a very deferential standard of review for substantive due process attacks on zoning ordinances. A plaintiff would have to show that the zoning ordinance was not rationally related to legitimate state land use concerns.

Constitutional Law > Procedural Due Process > Eminent Domain & Takings

[HN10] Where a plaintiff claims that the zoning is so stringent as to constitute a taking without just compensation, the United States Supreme Court requires what amounts to exhaustion of state judicial remedies, including the bringing of an inverse condemnation action, if the state affords such a remedy. A deprivation of economic viability is also a prerequisite.

Constitutional Law > Procedural Due Process > Eminent Domain & Takings

[HN11] A land use regulation does not effect a taking if it substantially advances legitimate state interest and does not deny an owner economically viable use of his land. Government could not go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.

Constitutional Law > Equal Protection > Level of Review***Constitutional Law > Substantive Due Process > Scope of Protection***

[HN12] In a zoning case, where a plaintiff is not a member of a protected class or a discrete, insular minority, equal protection claims merge with substantive due process claims, and are subject to the same review standard.

COUNSEL: [*1] For PHILIP G. TANNIAN, BEVERLY D. TANNIAN, plaintiffs: Kathleen A. Tannian, Macuga, Swartz, Detroit, MI.

For GROSSE POINTE PARK, CITY OF, defendant: Dennis J. Levasseur, James J. Walsh, R. Carl Lanfear, Bodman, Longley, Detroit, MI.

JUDGES: HONORABLE PAUL V. GADOLA, U.S. DISTRICT JUDGE

OPINIONBY: PAUL V. GADOLA

OPINION:

MEMORANDUM OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANT'S MOTION FOR SUMMARY

JUDGMENT

Plaintiffs Philip and Beverly Tannian filed this action against defendant City of Grosse Pointe Park ("City") alleging that an ordinance passed by the City is unconstitutional. The City denies that the ordinance is unconstitutional. Before the court are cross-motions for summary judgment.

I. Facts

Plaintiffs have owned and resided in a home on 1117 Yorkshire in the City of Grosse Pointe Park since 1983. In December 1986, Mr. Tannian purchased a Pace Arrow motor home. Initially, plaintiffs paid to park the motor home at a motor home storage facility. However, after two years of keeping the motor home at this location, plaintiffs' motor home was burglarized. Plaintiffs then decided to park their motor home in their backyard. n1

n1 These facts are taken from plaintiffs' motion for summary judgment. They are not supported by affidavits, other than attorney's affidavit. Affidavits of counsel do not support facts. See, e.g., *RTC v. Juergens*, 965 F.2d 149, 152-53 (7th Cir. 1992). Therefore, the court cannot take these facts as true for determination of this motion, but cites them for purposes of background information.

[*2]

Philip Tannian, along with his contractor, Mr. Kajowski, approached the City of Gross Pointe Park ("City"), about building a special parking pad for the plaintiffs' motor home behind their house next to their garage. The plaintiffs obtained permission from the City to build this parking pad. The City also recommended that, because of the size and weight of the vehicle, plaintiffs should build the concrete parking pad with six inches instead of the four inches used in a normal driveway. In addition, the City recommended that plaintiffs use steel reinforcing rods in the parking pad. Plaintiffs followed the City's recommendations. The plaintiffs also received permission to run electricity out to the parking pad. n2

n2 These facts are taken from plaintiffs' motion for summary judgment. They are not supported by affidavit, other than attorney's affidavit. Affidavits of counsel do not support facts. See, e.g., *RTC v. Juergens*, 965 F.2d 149, 152-53 (7th Cir. 1992). Therefore, the court cannot take these facts as true for determination of this motion, but cites them for purposes of background information.

[*3]

The City is a municipality organized under Michigan law. [HN1] Pursuant to the Zoning Enabling Act, Mich. Comp. Laws Ann. § 125.581(1), the City may "regulate and restrict the use of land structures ... to insure that uses of the land shall be situated in appropriate locations and relationships ... to promote public health, safety, and welfare ..." On March 28, 1994, the City Council of the City passed an amendment to Ordinance No. 154, Section 1002. The Council set July 1, 1994, as the date on which the amendment was to take effect. According to plaintiffs, as of the date of the filing of their motion for summary judgment, the City had not issued any tickets regarding violations of this section of the Ordinance.

The amended Section 1002 states in relevant part:

1. Storage restricted. No part of a rear yard located (i) between a side lot line and a line extending from the closest side of a building to the rear lot line, or (ii) within ten feet of a street, no side yard, and no front yard in R-A, R-B, R-C, or R-D Residential Districts shall be used for the storage of boats, trailers, recreational vehicles, busses, trucks, or other personal property, and no more than one boat, [*4] trailer, recreational vehicle, bus, truck, or other item of personal property (or combination thereof as a boat or vehicle on a trailer) shall be stored in any other portion of a rear yard outside the confines of a garage. Provided, however, that no boat, trailer, recreational vehicle, bus, truck, or other item of personal property stored outside the confines of a garage (i) shall be a size in excess of twelve (12) feet high, twelve (12) feet wide, or thirty two feet in length, or (ii) occupy an area (determined by the maximum length and width of such item) which, when added to the area of the lot occupied by buildings, including accessory buildings, exceeds applicable lot coverage requirements.

2. Permit for temporary storage. The Department of Public Service may issue a permit to the owner of any zoning lot allowing the temporary storage of a boat, trailer, recreational vehicle, bus, truck, or other item of personal property on an access drive or in any portion of a side or rear yard for a period of not more than 7 days notwithstanding the restrictions contained in subsection 1002.1. No more than one such permit for one boat, trailer, recreational, vehicle, bus truck, or other [*5] item of personal prop-

erty shall be issued with respect to any zoning lot in any calendar month.

Shortly after the amendment was passed, plaintiffs filed suit in Wayne County Circuit Court. The City removed this action to this court. Both parties have filed motions for summary judgment.

II. Standard of Review

[HN2] Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "A fact is 'material' and precludes grant of summary judgment if proof of that fact would have [the] effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would necessarily affect [the] application of appropriate principle[s] of law to the rights and obligations of the parties." *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984) (quoting Black's Law Dictionary 881 (6th ed. 1979)) (citation omitted). The Court must view the evidence in a [*6] light most favorable to the nonmovant as well as draw all reasonable inferences in the nonmovant's favor. See *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 8 L. Ed. 2d 176, 82 S. Ct. 993 (1962); *Bender v. Southland Corp.*, 749 F.2d 1205, 1210-11 (6th Cir. 1984).

The movant bears the burden of demonstrating the absence of all genuine issues of material fact. See *Gregg v. Allen-Bradley Co.*, 801 F.2d 859, 861 (6th Cir. 1986). The initial burden on the movant is not as formidable as some decisions have indicated. The moving party need not produce evidence showing the absence of a genuine issue of material fact; rather, "the burden on the moving party may be discharged by 'showing' — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). Once the moving party discharges that burden, the burden shifts to the nonmoving party to set forth specific facts showing a genuine triable issue. Fed. R. Civ. P. 56(e); *Gregg*, 801 F.2d at 861.

[HN3] To create a genuine issue of material fact, however, the nonmovant must do more [*7] than present some evidence on a disputed issue. As the United States Supreme Court stated in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986),

There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the [nonmovant's] evidence is merely colorable, or is not significantly probative, summary judgment may be granted.

(Citations omitted); see also *Celotex*, 477 U.S. at 322-23; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986). The standard for summary judgment mirrors the standard for a directed verdict under Fed. R. Civ. P. 50(a). *Anderson*, 477 U.S. at 250. Consequently, a nonmovant must do more than raise some doubt as to the existence of a fact; the nonmovant must produce evidence that would be sufficient to require submission of the issue to the jury. *Lucas v. Leaseway Multi Transp. Serv., Inc.*, 738 F. Supp. 214, 217 (E.D. Mich. 1990), aff'd, 929 F.2d 701 (6th Cir. 1991). The evidence itself need not be the sort admissible at trial. *Ashbrook v. Block*, [*8] 917 F.2d 918, 921 (6th Cir. 1990). However, the evidence must be more than the nonmovant's own pleadings. Id.

III. Analysis

Plaintiffs allege that Section 1002 is unconstitutional on its face because it is vague and overbroad. Further, plaintiffs argue that Section 1002 constitutes a taking without just compensation and violates plaintiffs' substantive due process and equal protection rights. [HN4] A zoning ordinance is presumed to be constitutionally valid "with the burden of unreasonableness being cast upon those who challenge the ordinance." *Curto v. City of Harper Woods*, 954 F.2d 1237, 1242 (6th Cir. 1992). Defendants argue that Section 1002 is constitutional because it clearly applies to plaintiffs, it does not regulate a constitutional right, and it is based on legitimate safety, health, and welfare concerns.

A. Unconstitutionally Vague

Plaintiffs argue that Section 1002 is unconstitutional because Ordinance 154 fails to define the following terms: storage, recreational vehicle, truck, other personal property, trailer, "closest side of a building" and standards for temporary permits. The Supreme Court provided the standard for evaluating vagueness in [*9] *Grayned v. City of Rockford*, 408 U.S. 104, 109, 33 L. Ed. 2d 222, 92 S. Ct. 2294 (1972):

[HN5] because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to

know what is prohibited, so that he may act accordingly.

Id. at 109. If a statute clearly applies to an individual's conduct, that individual cannot successfully challenge the statute for vagueness. *Parker v. Levy*, 417 U.S. 733, 756, 41 L. Ed. 2d 439, 94 S. Ct. 2547 (1974). Therefore, the issue in this case is whether Ordinance 154, Section 1002, clearly applies to plaintiffs' conduct.

There is no question that the term "recreational vehicle" applies to plaintiffs' motor home and that plaintiffs are storing it. Although plaintiffs argue that they do not understand the ordinance, by filing this lawsuit, plaintiffs basically admit that the ordinance applies to them. [HN6] A challenged ordinance "need not be cast in mathematically precise terms so long as it gives fair warning of the conduct proscribed in light of common understanding and practices." *Rumpke Waste, Inc. v. Henderson*, 591 F. Supp. 521, 529 [*10] (S.D. Ohio 1984). It is clear that Section 1002 applies to the plaintiffs and that plaintiffs understood that Section 1002 would prohibit them from keeping their motor home in its current location because they filed this action.

Plaintiffs argue that the individuals who were to enforce the Ordinance could not explain the definition of truck, trailer, and other personal property. [HN7] Laws that do not reach constitutionally protected conduct such as free speech may be considered unconstitutionally vague if the complainant demonstrates that the "law is impermissibly vague in all of its applications." *Village of Hoffman v. Flipside*, 455 U.S. 489, 498, 71 L. Ed. 2d 362, 102 S. Ct. 1186 (1982). To maintain a facial challenge, plaintiffs must show that the law is "invalid in toto—and, therefore, incapable of any valid application." *Id. at 494 n.5.* Plaintiffs' own statement is that "a very large number of residences [are] in open and notorious violation" of section 1002.1. See plaintiffs' brief, at 3. Therefore, there are certainly some applications which are clearly valid. Therefore, plaintiffs have not sustained their burden of demonstrating that Section 1002 is unconstitutionally [*11] vague.

B. Overbreadth Doctrine

Plaintiffs argue that Section 1002 is overbroad because it forbids the keeping of any "other personal property" on the real property owned by plaintiffs and other citizens of the City. Particularly, plaintiffs argue that Section 1002 would make it illegal to store patio furniture, or any other multitude of items of personal property in the backyard or anywhere other than in a garage. [HN8] The overbreadth doctrine only applies to constitutionally protected conduct. *Village of Hoffman*, 455 U.S. at 495. There is

no constitutional right to outside storage. Furthermore, the overbreadth doctrine is limited to First Amendment claims. *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129, 135 (6th Cir. 1994).

C. Substantive Due Process

Plaintiffs claim that section 1002 is unconstitutional because it makes arbitrary and capricious distinctions between the sizes of objects and their rational relation to health, safety and welfare concerns. [HN9] The right not to be subject to "arbitrary or capricious" actions is commonly referred to as a "substantive due process right." See *Curto*, 954 F.2d at 1243. The Sixth Circuit has established a very [*12] deferential standard of review for substantive due process attacks on zoning ordinances. *Pearson*, 961 F.2d at 1223. A plaintiff would have to show that the zoning ordinance was not rationally related to legitimate state land use concerns. *Id.*

The preamble to the City's Zoning Ordinance states that its purpose is to promote public health, safety, peace and general welfare of City residents. Defendant attaches the affidavit of Dale Krajniak, the City's City Manager since 1988. Mr. Krajniak cites six reasons for the passage of the amended section 1002: (1) reducing the safety hazards associated with storage of boats, trailers, recreational vehicles, buses, trucks and other similar items of personal property in purely residential areas; (2) providing access to homes in the event of fire, health, or police emergencies; (3) controlling overcrowding of purely residential areas; (4) protecting property values; (5) allowing City residents adequate access to light, air, and sunshine; and (6) promoting aesthetics and preserving the residential character of residential neighborhoods. Clearly there is a rational relation here between the ordinance and the health, safety and welfare concerns [*13] for the citizens of the City.

Plaintiffs are unable to prove that Section 1002 is not rationally related to legitimate state concerns. Plaintiffs attach the affidavit of Philip Tannian, who asserts that at a Council meeting, he asked each of the Council members if Section 1002 was passed for aesthetic reasons only and each Council member present said "yes." Further, Mr. Tannian states that he had an opportunity to speak with the Director of Public Safety for the City, who informed Mr. Tannian that there were no safety reasons for Section 1002. The City has established that Section 1002 is rationally related to legitimate state concerns such as the safety, health, and welfare of its citizens and the aesthetics of the neighborhood. Under the deferential standard of review in the Sixth Circuit, Mr. Tannian's affidavit is insufficient to show that Section 1002 is not rationally related to legitimate state concerns.

Plaintiffs question the size limitations in Section 1002 as being arbitrary. Presumably, plaintiffs are arguing that smaller vehicles may pose similar problems. The Constitution does not require the City to deal with every aspect of a particular problem. See *Semler v. Oregon* [*14] *State Board of Dental Examiners*, 294 U.S. 608, 610, 79 L. Ed. 1086, 55 S. Ct. 570 (1935).

D. Taking Without Just Compensation

Plaintiffs argue that Section 1002 constitutes a taking because the language is so overbroad that it would prevent plaintiffs from having patio furniture, keeping a hose at the side of their house, or parting any vehicle in their driveway. In *Pearson v. City of Grand Blanc*, 961 F.2d 1211 (6th Cir. 1992), the court found that [HN10] where "plaintiff claims that the zoning is so stringent as to constitute a taking without just compensation, the Supreme Court requires what amounts to exhaustion of state judicial remedies, including the bringing of an inverse condemnation action, if the state affords such a remedy." *Id.* at 1214. n3 See also, *Curto*, 954 F.2d at 1245. A deprivation of economic viability is also a prerequisite. *Id.* at 1214. Plaintiffs have not pursued Michigan's inverse condemnation procedure. Therefore, plaintiffs' claim that Section 1002 constitutes a taking without just compensation is not ripe for adjudication.

n3 Plaintiffs seem to think that the City is requesting that plaintiffs seek a variance in order to exhaust their administrative remedies. The court does not find that plaintiffs must seek a variance. Rather, the law states that plaintiffs must institute inverse condemnation proceedings before a claim for taking without just compensation is ripe for the court to hear.

[*15]

Even if plaintiffs had a ripe claim, they could not prevail. [HN11] A land use regulation does not effect a taking if it "substantially advance[s] legitimate state interest" and does not "deny an owner economically viable use of his land." *Dolan v. City of Tigard*, 129 L. Ed. 2d 304, 114 S. Ct. 2309, 2316 (1994) (quoting *Agins v. Tiburon*, 447 U.S. 255, 260, 65 L. Ed. 2d 106, 100 S. Ct. 2138 (1980)). As the Supreme Court recognized long ago, government could not go on "if to some extent values incident to property could not be diminished without paying for every such change in the general law." *Pennsylvania Coal Co. Mahon*, 260 U.S. 393, 413, 67 L. Ed. 322, 43 S. Ct. 158 (1922). Further, Section 1002 does not constitute a taking because it clearly permits alternative uses for plaintiffs' property and does not deny them economically viable use of their land.

In support of their argument, plaintiffs cite *Dolan v. City of Tigard*, 129 L. Ed. 2d 304, 114 S. Ct. 2309, 2316 (1994). In *Dolan*, the city forced the landowner to dedicate a certain portion of her property as a public bicycle path. The Supreme Court distinguished the case from ordinary zoning regulations cases by [*16] stating that "the conditions imposed were not simply a limitation on the use petitioner might make of her own parcel, but a requirement that she deed portions of her property to the city." *Id.* at 2316. In the instant action, Section 1002 does not even remotely require that plaintiffs deed a portion of their property to the City.

The court finds analogous the situation in *Recreational Vehicle UCA v. Sterling Heights*, 165 Mich. App. 130, 418 N.W.2d 702 (1987), where the Michigan appellate court found that an ordinance that regulated parking and storage of recreational vehicles, boats, trailers, and other such items of personal property on public and private property in single-family residential areas was not a taking because "it permits reasonable alternative uses for plaintiffs' properties." *Id.* at 138.

E. Equal Protection

Although not alleged in their complaint, plaintiffs argue at page 17 of their brief that the equal protection cause is violated by Section 1002. [HN12] In a zoning case, where a plaintiff is not a member of a protected class or a discrete, insular minority (and plaintiffs do not claim that they are), equal protection claims merge with substantive [*17] due process claims, and are subject to the same review standard. *Pearson*, 961 F.2d at 1216. As already discussed, plaintiffs have not provided sufficient evidence that they are able to sustain an action for violation process. See also *Bigelow v. Michigan DNR*, 970 F.2d 154, (6th Cir. 1992).

To succeed in an equal protection claim, plaintiffs must prove that they were treated differently than other similarly situated individuals. See, e.g., *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985); *Silver v. Franklin Township*, 966 F.2d 1031, 1036-37 (6th Cir. 1992). Here plaintiffs do not even claim that they were treated any differently than anyone else in the City who lives in a residential district. Section 1002 applies to all persons who live in residential districts in the City who want to store boats, recreational vehicles, trailers, and trucks. Therefore, plaintiffs cannot sustain their equal protection claim.

ORDER

Therefore, it is hereby **ORDERED** that plaintiffs' motion for summary judgment is **DENIED**.

It is further **ORDERED** that defendant's motion for

summary judgment is **GRANTED.** [*18]

SO ORDERED.

Dated: 7/31/95

PAUL V. GADOLA

UNITED STATES DISTRICT JUDGE