OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

STATE ex rel. DARIN GILLEY and KAREN DEAN,	)	No. ED108527
Appellants,	)	
vs.	)	Appeal from the Circuit Court of Franklin County
COUNTY COMMISSION OF FRANKLIN COUNTY,	)	19AB-CC00077
Respondent,	)	Honorable Michael S. Wright
and	)	
LANDVATTER ENTERPRISES, LLC,	)	
Intervenor/Respondent.	)	Filed: September 15, 2020

Darin Gilley and Karen Dean (collectively "Appellants") appeal the judgment of the Circuit Court of Franklin County affirming the decision of the County Commission of Franklin County ("the Commission") granting the rezoning of 12.68 acres of land owned by Landvatter Enterprises, LLC ("Landvatter") from a Community Development Zoning District ("CD") to a Commercial Activity 3 – Community Business – Zoning District ("CA3").

AFFIRMED.

Division One Holds:

(1) We are not convinced the rezoning of 12.68 acres of land owned by Landvatter ("the Property") from CD to CA3 was done for reasons other than the general welfare under the circumstances of this case. Therefore, the Commission's decision to rezone the Property was not improper spot zoning. *See Treme v. St. Louis County*, 609 S.W.2d 706, 713 (Mo. App. E.D. 1980).

(2) We find Appellants have not established Article 7, Section 138 of the Franklin County Planning and Zoning Unified Land-Use Regulations ("Article 7, Section 138") is completely irrational, and therefore, they have not overcome the presumption that the regulation has a rational basis. *See Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 332 (Mo. banc 2015). Therefore, Appellants have not demonstrated the rezoning violates the Equal Protection Clauses of the U.S. and Missouri Constitution.

(3) We are not convinced how a person of ordinary intelligence could fail to understand Article 7, Section 138. *See Bell v. Board of Educ. of City of St. Louis*, 711 S.W.2d 950, 953 (Mo. App. E.D. 1986). Additionally, we cannot say with certainty, under the circumstances of this case, that no substantial relationship to the public health, safety, morals, or general welfare exists. *See State ex rel. Helujon, Ltd. v. Jefferson County*, 964 S.W.2d 531, 536 (Mo. App. E.D. 1998). Therefore, Appellants have failed to demonstrate Article 7, Section 138 is facially unconstitutional under the Due Process Clauses of the U.S. and Missouri Constitution.

(4) Appellants have failed to cite any controlling authority which supports their argument that Franklin County cannot in its legislative discretion list manufacturing as permitted use in its CA3 Zoning District. Also, Appellants have failed to cite to authority which states manufacturing and industrial uses cannot be contained in different zones. Therefore, Appellants have failed to demonstrate Article 7, Section 138 is unconstitutional as applied under the Due Process Clauses of the U.S. and Missouri Constitution.

(5) Appellants have failed to convince this Court that the Commission abdicated its authority.

(6) Because we find the rezoning decision was at least fairly debatable, we may not substitute our opinion for that of the Commission. *JGJ Properties, LLC v. City of Ellisville*, 303 S.W.3d 642, 647 (Mo. App. E.D. 2010); *see also Lenette Realty & Inv. Co. v. City of Chesterfield*, 35 S.W.3d 399, 405-06 (Mo. App. E.D. 2000).

Opinion by: Robert M. Clayton III, P.J.
Robert G. Dowd, Jr., J., and Michael E. Gardner, J., concur.

Attorney for Appellant: Kathleen Green Henry

Attorney for Respondent: Mark C. Piontek, Joseph F. Devereux, Damian R. Struzzi

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.