



In the Missouri Court of Appeals Eastern District

DIVISION TWO

METRO FILL DEVELOPMENT, LLC,	)	No. ED108533
	)	
Appellant,	)	
	)	
v.	)	
	)	Appeal from the Circuit Court
ST. CHARLES COUNTY, MO.,	)	of Saint Charles County
	)	1811-CC01090
and	)	
	)	
JOE KRONIN,	)	
MIKE ELAM,	)	
DAVE HAMMOND,	)	
TERRY HOLLANDER,	)	Honorable Michael J. Fagras
MIKE KLINGHAMMER,	)	
JOHN WHITE, and	)	
JOE BRAZIL, in their official capacities,	)	
	)	
Respondents.	)	Filed: November 24, 2020

Introduction

Metro Fill Development, LLC, (“Metro Fill”) appeals from the trial court’s order and judgment dismissing its petition for review of the Saint Charles County Council’s (“County Council”) denial of its application for a conditional use permit (Count II) and for inverse condemnation based on this denial (Count I). Metro Fill asserts four points on appeal, arguing

the trial court erred in: (1) dismissing Count II of its petition as untimely under Section 536.110¹ of the Missouri Administrative Procedures Act, after finding the conditional use permit proceeding to be a contested case; (2) dismissing Count I of its petition after finding Metro Fill's exclusive remedy was under the Missouri Administrative Procedures Act, and therefore Metro Fill was precluded from maintaining a claim for inverse condemnation under Article I, Section 26 of the Missouri Constitution; (3) dismissing Count I of its petition after finding Metro Fill had failed to state a claim for inverse condemnation; and (4) denying Metro Fill leave to amend its petition after entering the order of dismissal. We agree with Metro Fill that the trial court erred in its analysis of the inverse condemnation claim (Count I) and in its denial of leave to amend the petition relating to this claim, but find no error in the dismissal of the claim for judicial review under the Missouri Administrative Procedures Act (Count II). We therefore affirm the trial court's dismissal of Count II but reverse and remand to the trial court for further proceedings on Metro Fill's claim for inverse condemnation.

Factual and Procedural Background

This appeal arises from Metro Fill's challenge to the County's Council's denial of its application for a conditional use permit ("CUP").

i. Metro Fill's application for conditional use permit ("CUP")

On June 21, 2017, Metro Fill filed an application for a CUP to establish a trash transfer site on property it already owned ("the Property"). The Property was zoned as a Solid Waste Disposal District under County Code Section 405.180, OSCCMo.,² which allows the

¹ All statutory references are to the Revised Statutes of Missouri (cum. supp. 2018), unless otherwise indicated.

² All ordinance references are to the Ordinances of Saint Charles County, Missouri, and will be identified with the citation "OSCCMo."

establishment of a trash transfer site after obtaining a CUP. In November 2017, staff for the County Planning and Zoning Commission (“the Commission”) issued a recommendation that Metro Fill’s CUP application be denied and, after a public hearing, the Commission recommended denial of the CUP application. Following the Commission’s recommendation, the County Council scheduled an administrative hearing on Metro Fill’s CUP application.

Prior to the November public hearing and the Commission’s recommendation, but after Metro Fill submitted its CUP application,³ Saint Charles County adopted Ordinance 17-072. Ordinance 17-072 enacted Section 405.511, OSCCMo., which outlined specific administrative review procedures for all CUP applications, and revised the section governing CUPs to provide that, as relevant to this appeal, all CUP applications are governed by the procedures outlined in Section 405.511, OSCCMo. The effective date of Ordinance 17-072 was August 4, 2017.

The administrative hearing on Metro Fill’s CUP application was held on February 28, 2018, and followed the procedures set forth in Section 405.511, OSCCMo. Following the hearing, the County Council adopted findings of fact and conclusions of law and unanimously denied Metro Fill’s CUP application. Metro Fill was informed of this denial by certified mail sent on May 22, 2018.

ii. Metro Fill’s petition in circuit court

On November 20, 2018, Metro Fill filed a petition for review of the County Council’s denial of its CUP application under the Missouri Administrative Procedures Act (“MAPA”)

³ We note that there is a credible argument, advanced by Respondents and approved of by the trial court, that Metro Fill’s CUP application was not “complete” until after the effective date of Ordinance 17-072. In finding the CUP determination to be a contested case, the trial court concluded that Metro Fill’s CUP application was not final until after the enactment of Ordinance 17-072 because a required traffic study was not completed until September 9, 2017, and the full application was not deemed submitted by the County Council until October 13, 2017. For the purposes of this opinion, we assume without deciding that Metro Fill’s CUP application was completed on June 21, 2017 and was therefore pending on the effective date of Ordinance 17-072.

(Count II), and for inverse condemnation under the Missouri Constitution⁴ based on the County Council's denial as a compensable taking (Count I).

Respondents filed a motion to dismiss Metro Fill's petition, arguing the following: Metro Fill's petition was untimely because it was filed outside the thirty-day window articulated by MAPA for contested-case review; Metro Fill could not bring a claim for inverse condemnation because MAPA provided the exclusive remedy from the County Council's decision; and, further, Metro Fill failed to state a claim for inverse condemnation. After a hearing, the trial court granted Respondents' motion to dismiss. The trial court determined Count II warranted dismissal because the CUP decision was a contested case under MAPA and therefore Metro Fill's petition was not timely filed, resulting in a lack of jurisdiction. The trial court determined Count I warranted dismissal because Metro Fill failed to state a claim for inverse condemnation and, further, that Metro Fill was precluded from advancing an inverse condemnation claim because it had failed to comply with the exclusive procedures for review under MAPA.

After the dismissal of its petition, Metro Fill filed a motion for leave to amend its petition, to vacate the trial court's judgment, or to order a new trial. The trial court held a hearing on this motion and both parties submitted supplemental briefing on the question of whether Metro Fill could maintain an inverse condemnation claim independent of seeking review under MAPA. After the hearing, the trial court denied Metro Fill's motion for leave to amend and/or motion to vacate the previous order.

This appeal follows.

Discussion

⁴ Metro Fill alleged a violation under Article I, Section 26 of the Missouri Constitution, and did not claim any violation under the United States Constitution.

Metro Fill asserts four points on appeal, arguing the trial court erred in: (1) dismissing Count II of its petition as untimely under Section 536.110 of MAPA, after finding the CUP determination to be a contested case; (2) dismissing Count I of its petition after finding Metro Fill was precluded from advancing a claim for inverse condemnation; (3) dismissing Count I of its petition after finding Metro Fill had failed to state a claim for inverse condemnation; and (4) denying Metro Fill leave to amend its petition. We agree that the trial court erred in dismissing Count I (inverse condemnation) of Metro Fill’s petition but find no error in the dismissal of Count II (judicial review under MAPA). We also agree that it was an abuse of discretion for the trial court to deny Metro Fill leave to amend its petition.

Standard of Review for Points I, II, and III

We review a trial court’s decision on a motion to dismiss de novo. *Smith v. City of St. Louis*, 573 S.W.3d 705, 713 (Mo. App. E.D. 2019). We can affirm a dismissal on any meritorious ground stated in the motion, but view the allegations stated in the petition in the light most favorable to the plaintiff. *Id.*

Point I

In its first point on appeal, Metro Fill argues the trial court erred in dismissing Count II of its petition (judicial review under MAPA) after finding the CUP determination to be a contested case under MAPA. We disagree and affirm the dismissal of Count II.

Initially, we note that although the trial court improperly characterized its dismissal of Count II of Metro Fill’s petition as due to a “lack of subject matter jurisdiction,” we nevertheless find its dismissal of Count II was proper. *See id.* at 712 n.5 (argument that failure to follow proper procedures “deprived the circuit court of subject matter jurisdiction is ‘outmoded’ in light of the Supreme Court’s holding in [*Webb*]”); *accord J.C.W. ex rel. Webb v. Wyciskalla*, 275

S.W.3d 249, 252–54 (Mo. banc 2009) (explaining distinction between jurisdiction and statutory authority). We analyze and decide this point on appeal on the grounds of statutory authority over a specific claim, not on those of jurisdiction. *See Winter Bros. Material Co. v. Cty. of St. Louis*, 518 S.W.3d 245, 252 (Mo. App. E.D. 2017) (question of circuit court review under MAPA is one of statutory authority). Such a question is properly presented on a motion to dismiss, either as a failure to state a claim upon which relief can be granted, as provided in Rule 55.27(a)(6), or as an affirmative defense that challenges a trial court’s statutory authority to hear a case, as provided in Rules 55.08 and 55.27(a). *See, e.g., id.* at 256 (reversing and remanding for dismissal for failure to state a claim upon which relief should be granted, where count asked for review under wrong MAPA provision); *Smith*, 573 S.W.3d at 712 (providing that challenge to court’s statutory authority is affirmative defense, but can be raised in motion to dismiss); *see also* Mo. R. Civ. P. 55.08, 55.27.

A county council acts as an administrative agency when deciding upon the issuance of a CUP, and therefore its decision is reviewable under MAPA. *Winter Bros.*, 518 S.W.3d at 251. MAPA outlines two distinct procedures for circuit court review of an administrative proceeding, each with different filing requirements and review processes: those for contested cases (Sections 536.100 to 536.140) and those for non-contested cases (Section 536.150). *Id.*; *Nowden v. Div. of Alcohol & Tobacco Control*, 552 S.W.3d 114, 116–17 (Mo. banc 2018).

Whether an administrative proceeding is a contested or a non-contested case is a matter of law. *Smith*, 573 S.W.3d at 713. A contested case is “a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.” Section 536.010(4); *see also Smith*, 573 S.W.3d at 713. The law requiring a hearing can include “any ordinance, statute, or constitutional provision that mandates a hearing.”

Nowden, 552 S.W.3d at 117 (citation omitted). Although not specifically defined in MAPA, a non-contested case is “a decision that is not required by law to be determined after a hearing.” *Id.* (citation omitted). Such a hearing is “a proceeding at which a measure of procedural formality is followed.” *Smith*, 573 S.W.3d at 713 (citation and internal quotations omitted). Such procedural formalities generally include: notice of the issues, oral evidence taken upon oath or affirmation, the cross-examination of witnesses, making a record, adherence to evidentiary rules, and written decisions including findings of fact and conclusions of law. *Winter Bros.*, 518 S.W.3d at 253; *see also* Sections 536.067, 536.070, and 536.090.

The operative inquiry in determining whether an administrative proceeding should be characterized as a contested or a non-contested case is “not of what transpired at the administrative proceeding, but what the law requires for that proceeding”—here, what the Saint Charles County Ordinances require. *Winter Bros.*, 518 S.W.3d at 255.

i. The procedures of Section 405.511, OSCCMo., properly applied to Metro Fill’s CUP application, and therefore the CUP determination was a contested case under MAPA

The parties agree that a CUP proceeding is a contested case under the current governing procedures outlined in Section 405.511, OSCCMo. The parties disagree, however, as to whether these procedures properly applied here. This disagreement highlights the operative inquiry, namely: “not whether the agency in fact held a contested case hearing, but whether it should have done so.” *Smith*, 573 S.W.3d at 713 (citation omitted). Metro Fill contends that the new hearing procedures of Section 405.511, OSCCMo., should not have applied to its CUP application because the application was filed prior to the effective date of the ordinance. Metro Fill advances two specific arguments for why Section 405.511 should not have applied to its pending application: (1) that zoning ordinances, as a matter of law, always apply prospectively; or (2) that, even if ordinances can be applied retroactively, the changes outlined in Section

405.511 are substantive in nature and therefore applying them to the CUP application would violate the Missouri Constitution’s prohibition on the retrospective operation of laws. *See* Mo. Const. art. I, sec. 33. We find the procedures outlined in Section 405.511, OSCCMo., were properly applied to Metro Fill’s CUP application.

First, we reject Metro Fill’s argument that Section 405.511, OSCCMo., could not apply to its CUP application as a matter of law because ordinances relating to zoning only apply prospectively. Metro Fill is correct that, “[a]s a general rule, a zoning ordinance is operative from its effective date and has no retroactive effect,” *Fleming v. Moore Bros. Realty Co.*, 251 S.W.2d 8, 16 (Mo. 1952), and that “[t]he applicable statute is typically the one in effect when the petition was filed,” *R.M.A. v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 425 n.3 (Mo. banc 2019). However, prior cases have concluded that zoning ordinances are applicable on their effective date to pending applications for various permits. *See, e.g., Lamar Co., LLC v. City of Kansas City*, 330 S.W.3d 767, 774 (Mo. App. W.D. 2010) (on its effective date new ordinance “became the applicable zoning ordinance with regard to [claimant’s] request for sign permits” that were filed before effective date); *State ex rel. Klawuhn v. Bd. of Zoning Adjustment of City of St. Joseph, Mo.*, 952 S.W.2d 725, 728 n. 3 (Mo. App. W.D. 1997) (revisions to zoning ordinance applied to hearing on claimant’s pending variance application); *State ex rel. Oliver Cadillac Co. v. Christopher*, 298 S.W. 720, 726 (Mo. 1927) (“[t]he fact that respondent filed its application for a permit before the ordinance went into effect is no reason why it should not be held applicable to respondent from and after it became operative”). These cases belie the contention that the procedures of Section 405.511, OSCCMo., could not as a matter of law apply to Metro Fill’s pending CUP application, and we therefore reject this argument.

We also disagree with Metro Fill’s argument that the changes outlined in Section 405.511, OSCCMo., are substantive in nature and that applying them to the CUP application violated the prohibition on retrospective operation of law in Article I, Section 33 of the Missouri Constitution. Ordinance 17-072, as enacted in Section 405.511, OSCCMo., was procedural in nature and could therefore properly be applied “retroactively” to pending permit applications, like Metro Fill’s.

The Missouri Constitution prohibits the enactment and operation of “retrospective” laws. Mo. Const. art. I, sec. 33; *Mo. Real Estate Comm’n v. Rayford*, 307 S.W.3d 686, 689–90 (Mo. App. W.D. 2010). The prohibition on retrospective operation of laws “does not mean that no statute relating to past transactions can be constitutionally passed, but rather, that none can be allowed to operate retrospectively so as to affect such past transactions to the substantial prejudice of parties interested.” *Id.* at 690 (internal quotations and citations omitted). Prohibited retrospective operation occurs if the law takes away or impairs vested or substantial rights acquired under existing laws, or if it imposes new obligations, duties, or disabilities with respect to past transactions. *Id.*

Conversely, “[a] statute which is procedural only, affecting no substantive rights, does not fall within the constitutional ban on retrospective laws.” *State Bd. of Registration for the Healing Arts v. Boston*, 72 S.W.3d 260, 266 (Mo. App. W.D. 2002). New procedural laws “govern and regulate the proceedings” from their enactment and effective date. *Land Clearance for Redevelopment Auth. of City of St. Louis v. Inserra*, 284 S.W.3d 641, 645 (Mo. App. E.D. 2009) (citation omitted). Such procedural or remedial laws apply to all actions falling within their terms, including to pending cases. *Brummett v. Burberry Ltd.*, 597 S.W.3d 295, 314 (Mo. App. W.D. 2020). “A law is procedural if it prescribes a method of enforcing rights or obtaining

redress for their invasion.” *Id.* (internal citations and quotations omitted). Put another way, “procedural law is the machinery used for carrying on the suit.” *Wilkes v. Mo. Highway and Transp. Comm’n*, 762 S.W.2d 27, 28 (Mo. banc 1988).

Here, the ordinance at issue sets forth the method and machinery by which a CUP application proceeds through review, thus making the ordinance procedural. All the mechanisms addressed in Section 405.511, OSCCMo.—which is entitled “Administrative Review Procedures”—are indeed procedural, including the process for how an application moves between the Commission and the County Council, which notice requirements apply, and the specific hearing procedures including evidence to be presented, witness testimony, and the roles of the parties. *See* Section 405.511, OSCCMo. Such an ordinance is procedural in nature. *See, e.g., State v. Jaco*, 156 S.W.3d 775, 780–81 (Mo. banc 2005) (statute governing mitigation and punishment phases of trial that addressed evidence, timing, argument, and role of parties, was “clearly a procedural law”); *Boston*, 72 S.W.3d at 262–63, 266 (statute at issue governed examination for physical therapist assistants, including examination type, content, timing, and eligibility requirements, was procedural and applied to applicant); *In re Marriage of Bloom*, 926 S.W.2d 512, 514 (Mo. App. S.D. 1996) (new statute was strictly procedural in that it “merely specif[ied] the judicial act of a family court judge by which the findings and recommendations of a commissioner become the family court’s decree,” and thus applied to orders entered prior to effective date).

Therefore, because Section 405.511, OSCCMo., was procedural in nature, the trial court did not err in concluding it properly applied to Metro Fill’s pending CUP application. *See Klawuhn*, 952 S.W.2d at 728 n. 3 (revisions to St. Joseph zoning ordinance regarding notice applied to hearing on claimant’s pending variance application, “[e]ven though it became

effective after both the application for the variance and notice was provided to [claimant],” because ordinance was procedural and was effective several days before application hearing).

Our conclusion that Section 405.511, OSCCMo., is procedural and not retrospective is further supported by the fact that it neither impairs vested or substantial rights nor imposes new obligations, duties, or disabilities with respect to past transactions. Metro Fill’s filing of its CUP application did not confer upon it a vested right to a particular zoning procedure scheme. Missouri courts have consistently held that an application for a property-related permit does not give the applicant a vested right in the application of a particular ordinance. *See, e.g., Lamar Co.*, 330 S.W.3d at 771 (“it is well-settled in Missouri law that submission of an application for permit under a prior zoning ordinance—indeed, even the *issuance* of a permit under a prior zoning ordinance—is not enough to establish a vested right to the continued application of the prior zoning ordinance”); *State ex rel. Claudia Lee & Assocs. v. Bd. of Zoning Adjustment of Kansas City*, 297 S.W.3d 107, 112 (Mo. App. W.D. 2009) (“new ordinance applied because the mere filing of the application gave the applicant no vested right under the old ordinance”); *Oliver Cadillac Co.*, 298 S.W. at 726 (“[t]he fact that respondent filed its application for a permit before the ordinance went into effect is no reason why it should not be held applicable to respondent from and after it became operative” because “filing of its application gave it no vested right”). As Metro Fill had no vested or substantial rights based on its application, Ordinance 17-072 and the application of Section 405.511, OSCCMo., could not interfere with any vested or substantial rights. Likewise, the enactment of Section 405.511, OSCCMo., imposed no new obligations, duties, or disabilities with respect solely to past transactions, as it is the future use of the Property at issue. *See State ex rel. Koster v. Olive*, 282 S.W.3d 842, 846–48 (Mo. banc 2009) (finding new law requiring dam owners to obtain registration permit did not impose new obligation, duty,

or disability because present use and ability—not past construction—was at issue, and holding law to apply to previously built dam). As such, we reject Metro Fill’s argument that Ordinance 17-072 violates the Missouri Constitution’s prohibition on retrospective laws.

The trial court did not err in concluding Metro Fill’s CUP application was governed by the procedures of Section 405.511, OSCCMo., which the parties agree meet the requirements for a contested case. The parties are correct, as Section 405.511, OSCCMo., delineates the hallmark characteristics of a contested case under MAPA, namely: requiring notice; providing for formal hearing with the opportunity to call, examine, and cross-examine witnesses under oath, following rules of evidence, and creating a record; and mandating written findings of fact and conclusions of law.⁵ Section 405.511(C)–(D), OSCCMo.; *see also Furlong Cos., Inc. v. City of Kansas City*, 189 S.W.3d 157, 165 (Mo. banc 2006) (“[c]ontested cases provide the parties with an opportunity for a formal hearing with the presentation of evidence, including sworn testimony of witnesses and cross-examination of witnesses, and require written findings of fact and conclusions of law”). Therefore, because we have concluded that these procedures in Section 405.511, OSCCMo., properly applied to Metro Fill’s CUP application and proceedings, the County Council’s decision was a contested case for purposes of review under MAPA.

ii. Metro Fill’s petition for judicial review (Count II) was properly dismissed because it sought review under the wrong MAPA provision

Having determined that the CUP decision was a contested case as defined in Section 536.010, *supra*, we turn to the question of whether the trial court erred in dismissing Metro Fill’s petition for judicial review of the County Council’s decision (Count II). We conclude the trial

⁵ Indeed, the stated intent of the County Council in passing Ordinance 17-072 and enacting Section 405.511, OSCCMo., was to ensure “that its decisions on Conditional Use Permits (CUP) be subject to contested-case judicial review” by providing for the formal hearing requirements necessary under MAPA.

court properly dismissed Count II of Metro Fill’s petition, which sought non-contested case review under Section 536.150. This dismissal was proper because the trial court had neither the ability to review this case nor to grant relief under that section, in that the trial court was empowered only to review and grant relief pursuant to Sections 536.100 to 536.140 because the CUP determination was a contested case.⁶ *See Nowden*, 552 S.W.3d at 118 (affirming dismissal where petition pleaded review under wrong MAPA provision); *Winter Bros.*, 518 S.W.3d at 256 (reversing and remanding for dismissal where petition pleaded review under wrong MAPA provision).

Point I is denied.

Point II

In its second point on appeal, Metro Fill argues the trial court erred in dismissing Count I of its petition (inverse condemnation) after finding judicial review under MAPA provided Metro Fill’s exclusive remedy from an administrative proceeding, including for constitutional claims. We find the trial court erred in determining Metro Fill could not proceed with its inverse condemnation claim independent of its claim for judicial review under MAPA.

Count I of Metro Fill’s petition alleged a claim for inverse condemnation, which contended the County Council’s denial of Metro Fill’s application for a CUP constituted a compensable taking. Respondents argued that the exclusive remedy for the denial of Metro

⁶ In other cases where a claim has been dismissed for failure to seek relief under the proper MAPA provision, trial courts have given leave to amend the petition to seek the proper review. *See, e.g., Winter Bros. Material Co. v. Cty. of St. Louis*, 518 S.W.3d 245, 248 (Mo. App. E.D. 2017). Here, it would waste judicial resources for the trial court to grant Metro Fill leave to amend its petition to state a claim for contested-case review because such claim would be untimely filed, as it would fall well outside the thirty-day limit established in Section 536.110.1. *See* Section 536.110.1 (“[p]roceedings for [judicial] review [in a contested case] may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency’s final decision”); *Tyler v. City of Marshall*, 603 S.W.3d 694, 697 (Mo. App. W.D. 2020) (reversing and remanding with directions to dismiss petition where “circuit court lacked authority to review the Petition, other than to exercise its power to dismiss,” where petition was filed outside thirty-day requirement of Section 536.110).

Fill’s CUP was available through contested-case review under MAPA and, given that Metro Fill failed to seek this review—as analyzed in Point I, *supra*—Metro Fill was unable to maintain an inverse condemnation claim. The trial court agreed and found that it “lack[ed] the jurisdiction to entertain Metro Fill’s claims as their failure to comply with the statutory provisions [of MAPA] forecloses them from collaterally attacking the County Council’s decision.”

Sections 536.100 to 536.140 of MAPA provide for judicial review to “[a]ny person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form”

Section 536.100. Section 536.140 provides that review of the administrative decision extends to whether the decision: violates constitutional provisions; is in excess of statutory authority or jurisdiction; is not supported by competent and substantial evidence; is unauthorized by law for any reason; is made upon unlawful procedure or without a fair trial; is arbitrary, capricious, or unreasonable; or involves an abuse of discretion. Section 536.140.2(1)–(7). Under this section, a circuit court is empowered to “render judgment affirming, reversing, or modifying the agency’s order.” Section 536.140.5.

Citing the general rule that, where “there is an adequate statutory remedy the procedure prescribed is exclusive,” *Normandy Sch. Dist. v. City of Pasadena Hills*, 70 S.W.3d 448, 492 (Mo. App. E.D. 2002), Respondents argue that MAPA provides the exclusive means for pursuing a claim related to an administrative decision in a contested case, like the CUP determination here. Respondents primarily rely on *James v. Jennings*, 735 S.W.2d 188 (Mo. App. E.D. 1987), in support of this argument. In *James*, the plaintiffs alleged multiple claims under the Missouri and federal constitutions based on the denial of an occupancy permit, including a due process claim for monetary damages asserting the arbitrary and capricious denial of a property right. *Id.*

at 189–91. The *James* court found this due process claim was barred because the plaintiffs were required—but failed—to pursue the judicial review procedures provided by MAPA to challenge the denial of the occupancy permit. *Id.* at 190. In so holding, the *James* court noted

It would be destructive indeed of the entire concept of administrative procedure if disgruntled applicants for licenses, zoning permits, variances, and the multitude of similar governmental approved authorizations could by-pass the judicial review procedures and launch a collateral attack on the administrative decision in a damage suit before a jury.

Id. We find *James* distinguishable and therefore not dispositive of the issue in this appeal.

A claim for inverse condemnation under Article I, Section 26 of the Missouri Constitution is not a collateral attack on an administrative decision and is a wholly separate cause of action requesting wholly separate relief from that of a claim for review under MAPA. Multiple cases decided after *James* have indicated that a takings claim may be maintained independent of a challenge to an administrative decision under the designated review procedures. *See, e.g., Harris v. Mo. Dep’t of Conservation*, 755 S.W.2d 726, 731 (Mo. App. W.D. 1988) (rejecting argument that claimant could not maintain Art. I, sec. 26 claim where claimant “did not directly challenge the designation, administratively or through a declaratory judgment action,” and reversing dismissal); *Duffner v. City of St. Peters*, 482 S.W.3d 811, 819 (Mo. App. E.D. 2016); *Winter Bros.*, 518 S.W.3d at 249–51. In *Winter Bros.*, for example, the claimant filed a two-count petition seeking contested-case review of the decision to deny a CUP and, if the first count failed, seeking just compensation for an inverse condemnation based on this denial. 518 S.W.3d at 249. On appeal, the *Winter Bros.* court determined that “a count seeking administrative review of a governmental decision under Chapter 536 constitutes a claim separate and apart from a claim seeking damages for the alleged constitutional violation resulting from that decision,” and intimated that the circuit court should proceed with both counts on remand. *Id.* at 250–51, 256.

We agree with these previous cases that claims for MAPA review and for inverse condemnation under Article I, Section 26 may be independently maintained. *Cf. Harris*, 755 S.W.2d at 731 (Article I, Section 26 “is self-enforcing and an action may be brought directly thereunder”); *QuikTrip Corp. v. City of St. Louis*, 801 S.W.2d 706, 710–12 (Mo. App. E.D. 1990) (finding takings-based damages claim to be separate claim from that asking for judicial review under MAPA); *Blackwell v. City of St. Louis*, 726 S.W.2d 760, 763–64 (Mo. App. E.D. 1987) (characterizing claim for review under MAPA and other claims for declaratory judgment, damages and injunctive relief as “entirely different” and “not dependent on the determination” of the other claims).

An inverse condemnation claim is not a collateral attack on an administrative decision because, by nature, it assumes the administrative decision will stand and does not challenge such decision as invalid, other than a failure to provide just compensation. An inverse condemnation claim does not ask the trial court to review whether the CUP should have been granted. Instead, a takings claim assumes that the denial of the CUP will remain in place, that Metro Fill will be unable to utilize the Property as a trash transfer site as it wished, and that Metro Fill should be justly compensated for this deprivation. In this way the nature of a takings claim is distinct from those of other constitutional challenges, which generally seek invalidation or alteration of the administrative agency’s decision. For example, due process or equal protection challenges often argue that a specific administrative decision was unreasonable, arbitrary, an abuse of discretion, or otherwise illegal, and therefore should not stand. *See, e.g., Duffner*, 482 S.W.3d at 819; *Wagner v. Jackson Cty. Bd. of Zoning Adjustment*, 857 S.W.2d 285, 290–91 (Mo. App. W.D. 1993). Such claims are encompassed in Section 536.140’s statement that review of an administrative decision under MAPA extends to whether the decision violates constitutional

provisions. *See* Section 536.140.2(1). Similarly, a claim alleging that a decision is arbitrary, capricious, or unreasonable is specifically contemplated by MAPA and must be brought exclusively thereunder. *See* Section 536.140.2(6). In fact, Metro Fill’s due process claim that the County Council’s denial was arbitrary and capricious was properly included in its claim for review under MAPA. Claims such as these would be impermissible collateral attacks on an administrative agency’s decision if independently maintained. *See James*, 735 S.W.2d at 189–91 (due process claim for monetary damages asserting the arbitrary and capricious denial of property right was impermissible collateral attack).

By contrast, Metro Fill’s inverse condemnation claim included no allegations specifically contemplated by Section 536.140 and was not dependent on such a finding. The success of Metro Fill’s inverse condemnation was not dependent on the success of its MAPA claim, in that a finding of compensable inverse condemnation is not dependent on a finding that the County Council’s CUP denial was not supported by competent and substantial evidence, was arbitrary, capricious, or unreasonable, or was an abuse of discretion. Takings claims by nature assume the administrative agency’s decision will stand, and simply seek just compensation for that imposition. As such, Metro Fill’s inverse condemnation claim for just compensation was not an impermissible collateral attack on an administrative decision as contemplated in *James*.⁷ *Cf. id.* at 191 (reasoning racial discrimination claim would not be collateral attack on denial of occupancy permit where “recovery is not dependent on showing that the administrative decision

⁷ Regarding the *James* court’s concerns about bypassing MAPA, we note that here Metro Fill attempted to seek review under MAPA, but happened to mistakenly seek review under the wrong provision and outside the timeline for which it could re-file a new petition under the correct provision. This was not done for the purposes of evading or bypassing MAPA review in that Metro Fill had a colorable claim—despite it ultimately failing—that its petition for non-contested case review was permissible. *Cf. Blackwell v. City of St. Louis*, 778 S.W.2d 711, 714 (Mo. App. E.D. 1989) (finding reliance on *James* was “misplaced” because, unlike in *James*, the *Blackwell* claimant “was pursuing his administrative and § 1983 remedies simultaneously” and “did not attempt to by-pass [MAPA]”).

was wrong”). Therefore, this inverse condemnation claim was not encompassed by MAPA’s review procedures. *Cf. Duffner*, 482 S.W.3d at 818 (for purposes of deciding if petition is encompassed by statutory scheme providing exclusive method of judicial review, question is whether it constituted collateral attack on decision).

The statutory procedures outlined in MAPA do not provide the exclusive means of review for an inverse condemnation claim under Article I, Section 26 of the Missouri Constitution, even where it arises from an administrative decision, and therefore the trial court erred in dismissing Count I on this basis.

Point II is granted.

Point III

In its third point on appeal, Metro Fill argues the trial court erred in dismissing Count I of its petition after finding Metro Fill had failed to state a claim for inverse condemnation. Given our conclusion in Point IV, *infra*, that the trial court abused its discretion in denying Metro Fill leave to amend its petition, and our subsequent remand allowing Metro Fill leave to amend, Metro Fill’s third point on appeal regarding the sufficiency of its first petition is moot. *See Brewer v. Cosgrove*, 498 S.W.3d 837, 842 (Mo. App. E.D. 2016).

Point III is denied as moot.

Point IV

In its fourth point on appeal, Metro Fill argues the trial court erred in denying Metro Fill leave to amend its petition. We agree.

We review the denial of leave to amend a petition for whether the trial court abused its discretion. *Miles ex rel. Miles v. Rich*, 347 S.W.3d 477, 486 (Mo. App. E.D. 2011). An abuse of discretion occurs when the trial court’s decision was so arbitrary and unreasonable as to indicate

a lack of careful consideration. *Hoover v. Brundage-Bone Concrete Pumping, Inc.*, 193 S.W.3d 867, 873 (Mo. App. S.D. 2006). Although a trial court is given broad discretion over whether to grant a party leave to amend, “it is an abuse of discretion to not grant such leave when justice so requires.” *Sloan-Odum v. Wilkerson*, 176 S.W.3d 723, 725 (Mo. App. E.D. 2005) (citation omitted); *see also* Mo. R. Civ. P. 55.33(a) (leave to amend pleading “shall be freely given when justice so requires”). Factors guiding whether justice requires leave to amend a petition include: hardship to the moving party if leave to amend is denied; reasons for any failure to include the new matter(s) in previous pleadings; timeliness of the application; whether an amendment could cure any defects in the pleading; and injustice to the party opposing the motion. *Miles*, 347 S.W.3d at 485–86.

The interests of justice require granting Metro Fill leave to amend its petition. The trial court’s denial of leave to amend caused Metro Fill severe hardship by precluding its inverse condemnation claim. *See Sloan-Odum*, 176 S.W.3d at 725 (noting severe hardship exists where denial of leave to amend results in preclusion of cause of action). Particularly in a case where a trial court has determined a petition has failed to state a claim, the interests of justice support allowing a claimant to amend her or his petition to cure the identified defect(s). *See Manzer v. Sanchez*, 985 S.W.2d 936, 939–41 (Mo. App. E.D. 1999); Mo. R. Civ. P. 67.06 (on granting a motion to dismiss, a trial court “shall freely grant leave to amend...”). This is especially true where, as here, minimal hardship would result to the opposing party because any amendment to Metro Fill’s pleading would not change the nature of its only remaining claim, for inverse condemnation.

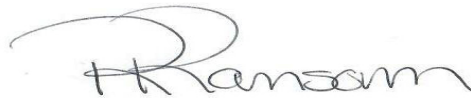
The trial court here did not make specific findings or conclusions related to Metro Fill’s motion for leave to amend its petition, other than simply denying it. It appears that the trial

court's ruling on Metro Fill's motion for leave to amend was directly tied to its determination that Metro Fill was barred from maintaining an independent inverse condemnation claim. As discussed in our analysis of Point II, *supra*, Metro Fill was not precluded from bringing both a claim for judicial review of an administrative decision under MAPA and a claim for just compensation based on inverse condemnation. Therefore, the trial court should have independently considered Metro Fill's motion for leave to amend. Its failure to do so and the resulting summary denial of leave to amend demonstrated a lack of careful consideration, evincing an abuse of discretion.

Point IV is granted.

Conclusion

The trial court's judgment is affirmed in part and remanded in part. We affirm the trial court's dismissal of Metro Fill's claim for judicial review under MAPA (Count II) and remand for entry of an order granting Metro Fill leave to amend its petition relating to the remaining claim for inverse condemnation (Count I).

A handwritten signature in black ink, appearing to read "Ransom", with a horizontal line underneath it.

Robin Ransom, Presiding Judge

Sherri B. Sullivan, J., and
Lisa P. Page, J., concur.