UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SINGAPORE DUNES, L.L.C, Plaintiff,	)	
	)	No. 1:10-cv-00210
-v-	)	
	)	HONORABLE PAUL L. MALONEY
SAUGATUCK TOWNSHIP, Defendant.	)	

OPINION AND ORDER
GRANTING RENEWED MOTION FOR ENTRY OF CONSENT JUDGMENT

Before the court is the parties' Renewed Motion for Entry of Consent Judgment and Final Order (ECF No. 160), along with numerous comments from third parties regarding whether the proposed consent decree is legal, fair, adequate, reasonable, and consistent with the public interest.

For the reasons discussed below, the court finds that the proposed consent decree is fair, adequate, reasonable, and consistent with the public interest, and that it is within this court's power to enter. The court will therefore grant the parties' Renewed Motion.

I. BACKGROUND

This suit arose from a dispute about Saugatuck Township's decision to re-zone land that Plaintiff Singapore Dunes now owns (known for purposes of this dispute as "the Denison Property"). Singapore Dunes alleges that Defendant Saugatuck Township improperly "ceded control of its governmental powers" to local advocacy groups, resulting in its substantively and procedurally improper decision to adopt and uphold a zoning ordinance that restricted the allowable uses on the Denison Property.

A. Factual Background and Plaintiff's Allegations

Between October 2004 and June 2006, Singapore Dunes purchased approximately 200 acres

of land in Saugatuck County, north of the Kalamazoo River and stretching east from the shore of Lake Michigan. These purchases were the source of at least one lawsuit and much consternation on the part of local environmental groups, who worried about the potential effects of development on the Saugatuck Dunes area. The Township too appeared to be concerned about development on the Denison Property. In May 2005, it adopted a new master plan recommending that "[t]he northwest corner of the Township," including the Denison Property, "should be preserved for public open space and the portion that remains in private ownership should be maintained for low intensity uses," and soon after, it proposed a new zoning ordinance, known as the "R-4 Lakeshore Open Space Zoned District." According to Singapore Dunes, this ordinance, which applied to almost all of the Denison Property, severely limited the allowable uses of the land and gave the Township largely uncabined discretion to reject construction proposals. Singapore Dunes further alleges that the ordinance is drafted so that these restrictions apply only to the Denison Property and not to any of the other owners of property in the Saugatuck Dunes area.

The Township's Planning Commission held public hearings on this proposed zoning ordinance, though Singapore Dunes alleges that the Township did not give all landowners proper notice as required by Michigan law. The Township Board ("the Board") adopted the new ordinance in May 2006, over the objection of Singapore Dunes representatives.

Singapore Dunes alleges that it attempted to obtain relief from this provision over the next several years, but the Board rejected its attempts, at least in part due to payments that the Board had been soliciting from local advocacy groups. These payments, according to Singapore Dunes, compromised the Board, rendering it impermissibly biased against Singapore Dunes.

B. Procedural History

On March 2, 2010, Singapore Dunes filed the present action, alleging violations of procedural due process, substantive due process, equal protection, and several state-law doctrines based on the Board's adoption of this ordinance and its failure to grant Singapore Dunes's subsequent requests for relief. (*See generally* Am. Compl., ECF No. 84.) Relevant to the present Motion, Singapore Dunes alleges four federal claims against Defendant.[1] Count I alleges a violation of procedural due process, based on the Township Board's alleged failure to properly notify property owners of the public hearing on its proposed zoning ordinance. (*Id.* at 38–40.) Count II claims that the Board has violated procedural due process by "unlawfully delegat[ing] its decision-making power to unelected and unaccountable advocates and [by] repudiat[ing] its obligation to function as a fair and unbiased decision-maker" when it adopted the zoning ordinance and during its "ongoing refusal to provide any fair procedure for obtaining relief." (*Id.* at 41.) Count III alleges that the zoning ordinance violates equal protection by "treat[ing] Singapore Dunes differently than similarly-situated landowners" with no rational basis. (*Id.* at 42–43.) Count IV alleges a violation of Plaintiff's substantive due process rights, arguing that "[t]he R-4 Amendment unfairly and arbitrarily deprives Singapore Dunes of its property interests" because (a) the Board's decision-making was "biased and unfair in light of the Township's ongoing alliance" with environmental groups; (b) the ordinance "contains arbitrary and irrational use standards"; and (c) the ordinance "is impermissibly vague and ambiguous on its face." (*Id.* at 44.)

Defendants initially contested these claims vigorously, filing a number of motions to dismiss

[1] The initial complaint also named as defendants the five members of the Township Board, though they have since been dismissed by stipulation. (*See* ECF No. 152.)

on various grounds. (*See* ECF No. 18 (Motion to Dismiss for Lack of Subject-Matter Jurisdiction); ECF No. 27 (Motion to Dismiss Counts III and IV); ECF No. 31 (Motion to Dismiss Counts I and II); ECF No. 34 (Motion to Dismiss Individual Defendants); ECF No. 36 (Motion to Dismiss State-Law Claims).) On March 18, 2011, this court partially denied and partially held in abeyance Defendants' Motion to Dismiss for Lack of Subject-Matter Jurisdiction. (ECF No. 107.) The court found that subject-matter jurisdiction existed for Plaintiff's federal counts I, III, and IV, and it reserved judgment regarding the fourth federal-law claim, count II. The court ordered expedited discovery regarding counts I, III, and VII and held the remaining counts in abeyance.

On July 15, 2011, the court denied without prejudice Defendants' motion to dismiss the state-law claims. (ECF No. 133.) Briefing on the motion to dismiss individual defendants is in progress (*id.*), and briefing has been suspended on Defendants' other motions while these matters are resolved.

On July 26, 2011, the parties filed a proposed consent decree purporting to resolve the parties' dispute and moved this court to enter the decree. (ECF No. 134.) Among other things, the proposed decree put in place a detailed set of use restrictions on the Denison Property and purported to prevent the Township from ever modifying that zoning. The proposed decree also would have prevented the Board from denying any site plan based on provisions of the Township Zoning Ordinance that required that the "elements of the site plan shall be harmoniously and efficiently organized," that the "site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property," that "[t]he landscape shall be preserved in its natural state and contour, insofar as practicable," and that "[n]atural resource features . . . shall be preserved to the maximum practicable extent by development in a manner which will not unnecessarily or

unreasonably detrimentally affect or destroy such features." Saugatuck Twp., Mich., Code of Ordinances ch. 40, art. IX, § 40-816(1)–(3).

In November 2011, this court rejected the proposed consent decree, finding that these provisions went beyond what was necessary to remedy any alleged violation of federal law. (ECF No. 149.) In the absence of such necessity, this court held, the proposed consent decree exceeded the court's authority to issue. (*Id.*)

On March 30, 2012, the parties filed a second proposed consent decree. (ECF No. 160.) This proposed decree is currently before the court, along with the parties' briefing in support and numerous submissions from members of the community commenting on the proposal.

II. LEGAL FRAMEWORK

"A consent decree is essentially a settlement agreement subject to continued judicial policing." *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983). It combines the attributes of both a contract and a judicial order. *See Local No. 93, Intern. Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 518–19 (1986); *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236 n.10 (1975). As with a contract, the parties negotiate and agree to the terms of the decree, each party making concessions to arrive at a mutually agreeable position. Both parties give up the possibility of winning their legal dispute on the merits in exchange for a mutually agreeable solution. *See Williams*, 720 F.2d at 920 (citing *Moore v. City of San Jose*, 615 F.2d 1265, 1271 (9th Cir. 1980); *Stotts v. Memphis Fire Dept.*, 679 F.2d 541, 557 (6th Cir. 1982); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975)).

But a court enters a consent decree as a judicial order. *Williams*, 720 F.2d at 920; *Stotts*, 679 F.2d at 557. "Consequently, [the] court has an affirmative duty to protect the integrity of its decree,"

by retaining jurisdiction over the decree and enforcing its terms. *Stotts*, 679 F.2d at 557, 562–63. A consent decree thus "places the power and prestige of the court behind the compromise struck by the parties." *Williams*, 720 F.2d at 920.

A proposed consent decree must meet certain requirements before a court will put its authority behind what is, at least in part, a private agreement. The decree must be based on a dispute actually in the case at hand and falling under the court's jurisdiction. *See Local No. 93*, 478 U.S. at 525 ("[A] consent decree must spring from and serve to resolve a dispute within the court's subject-matter jurisdiction" and fall "within the general scope of the case made by the pleadings" (quotation marks omitted)). Consent decrees cannot be "illegal [or] a product of collusion." *Williams*, 720 F.2d at 920 (citing *United States v. City of Miami*, 664 F.2d 435 (5th Cir. 1981)). And before entering a proposed consent decree, a court must ensure that the agreement is "fair, adequate, and reasonable, as well as consistent with the public interest." *United States v. Lexington-Fayette Urban Cnty. Gov't*, 591 F.3d 484, 489 (6th Cir. 2010) (quotation marks omitted).

Because consent decrees take their force both from the parties' agreement and from the court's authority, the scope of permissible relief is set at the outer boundary of the parties' ability to bind themselves and the court's power to order relief for legal harms. Where the parties are able to bind themselves, the law will not prevent them from doing so. Consent decrees are thus not limited to the scope of relief that the parties would receive after a decision on the merits. *Local No. 93*, 478 U.S. at 525 ("[A] federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial."); *Vanguards of Cleveland v. City of Cleveland*, 753 F.2d 479, 488 (6th Cir. 1985) (rejecting argument that "consent decrees must strictly conform to the scope of relief available to a court in a wholly

coercive action"). Where the parties lack the power to obligate themselves to some portion of a consent decree, the court may exercise its authority to enforce the term, but only so far as the court's power extends. A consent decree whose terms violate state law, for instance, or a decree that directs the operation of a third-party governmental entity, is not within the power of most plaintiffs and defendants to enact and so must be based on the court's authority to remedy a violation of federal law. *See Kasper v. Bd. of Election Comm'rs*, 814 F.2d 332, 342 (7th Cir. 1987) (requiring "probable violation" of federal law for court to enforce "[a]n alteration of the [state's] statutory scheme"); *Evans v. City of Chicago*, 10 F.3d 474, 480 (7th Cir. 1994) (holding that "entry and continued enforcement of a consent decree regulating the operation of a governmental body depend[s] on the existence of a substantial claim under federal law"). Where the obligation, already outside of the parties' sphere of influence, is not necessary to redress such a violation, it falls outside of the court's power as well and shall not be ordered. *See Perkins v. City of Chicago Heights*, 47 F.3d 212, 216 (7th Cir. 1995) ("Thus, upon properly supported findings that such a remedy is *necessary* to rectify a *violation of federal law*, the district court can approve a consent decree which overrides state law provisions. Without such findings, however, parties can only agree to that which they have the power to do outside of litigation." (emphasis in original)); *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 270–72 (8th Cir. 2011) (holding consent decree unenforceable where decree's terms, which violated state law, were "not a necessary remedy" for defendants' alleged violation of federal law); *League of Residential Neighborhood Advocates v. City of Los Angeles*, 498 F.3d 1052, 1053 (9th Cir. 2007) ("A settlement agreement cannot override state law absent a specific determination that federal law has been or will be violated.").

III. DISCUSSION

The second proposed consent decree is itself a relatively simple document. It begins by reciting some agreed factual background regarding Plaintiff's purchase of the Denison Property and the Township's adoption of the R-4 zoning. Among other things, the decree states that the Township did not give Singapore Dunes formal notice of any public hearing regarding the R-4 zoning and that the R-4 zoning exempted numerous parcels that are similar to the Denison Property. (ECF No. 160-1, at 2–5.) It also states and that the Township Board accepted funds from the Saugatuck Dunes Coastal Alliance, purportedly to defray the costs of defending against Singapore Dunes's legal claims, without discussing the payments in accordance with Michigan's Open Meetings Act and without a Township Board vote. (*Id.* at 5.) The proposed decree also describes Dugout Road, a public road providing one of two means of access to the Denison Property. According to the stipulated facts, Dugout Road has fallen into disrepair, and the Township lacks the resources to adequately restore it. (*Id.* at 5–6.) The factual stipulations close with a statement that the parties wish to settle this matter "[t]o avoid the burden, expense, and uncertainty of further litigation, and an explanation that their settlement is set out in two documents: the consent decree itself, and a separate Settlement and Release Agreement that is to be effective as of the date the consent decree is entered. (*Id.* at 6.)

After this statement of facts, the decree sets out several substantive terms. First, it provides that the R-4 zoning is not to be enforced against certain parcels of the Denison Property and that instead, the property "shall be subject to the regulations of the zoning districts in which they were placed before the adoption of" the R-4 zoning. (*Id.* at 7.) It prohibits the Township from "treating Plaintiff's Property differently than similarly-situated properties within the Township without a

rational basis for doing so," and it prohibits the Township from "accepting any gifts . . . that relate to Plaintiff or Plaintiff's Property, unless accepted after a determination is made at an open meeting . . . that the gift is for a proper public purpose." (*Id.*) The proposed decree also prohibits the Township from requiring "two means of access to Plaintiff's Property from an adjacent public street" under the Township Zoning Ordinance, so long as Plaintiff "implements alternative safety requirements, as reasonably imposed by the Township." (*Id.*) Finally, the decree states that it "shall not be construed as an admission of any factual allegation in the complaint [or as] an admission of liability." (*Id.*)

This consent decree appears to be a fair, adequate, and reasonable resolution of the parties' dispute. These terms, as opposed to those of the overly broad original proposal, appear to be directly related to the legal harms alleged in the complaint. The first provision is aimed squarely at the allegedly improperly enacted ordinance. It enjoins the R-4 zoning, but does not purport to limit the Township's ability to enact future zoning ordinances that affect the Denison Property. Second, the term prohibiting discrimination without a rational basis simply restates the minimal requirements of equal protection; it limits the Township no more than the law itself already does. Similarly, the "means of access" provision seems reasonably related to Plaintiff's equal-protection concerns, given the facts stipulated by the parties, and the conditions placed on gifts "that relate to Plaintiff or Plaintiff's Property" also directly address Singapore Dunes's claims that the Township Board's decision-making was unfairly influenced by undisclosed monetary payments by advocacy groups. Whereas the first proposed decree bore only a passing relation to the alleged harms, this proposed decree is limited in scope and seems directly focused on remedying the specific improprieties that Singapore Dunes alleges in its complaint. These terms are more balanced than those in the first

proposal, and they are well within the range of relief that Singapore Dunes could have been granted if it succeeded at trial. For the same reasons, the consent decree's terms appear to be well within the court's authority to enact.

Though the resolution here would favor Singapore Dunes, that fact alone does not make the proposed consent decree improper. Parties must be allowed broad freedom to negotiate mutually acceptable settlements, and the relief proposed here is less than what this court could have ordered had Singapore Dunes prevailed entirely on the merits. The stipulated facts tend to support Plaintiff's claims (though the proposed decree does not purport to assign liability on any point), further supporting the reasonableness of this proposed resolution. And in any case, simply avoiding the cost and uncertainty of trial is often a benefit to a settling party—and as the parties acknowledged, that was the case here. Though it appears that Saugatuck Township was suffering financially due to its need to defend against Singapore Dunes's legal claims, the record does not show that this proposed decree is the result of duress, or that the parties did not freely agree to the terms of this decree. Indeed, the decree's limited scope—particularly compared to the rejected first proposal—suggests that the parties took care to craft a fair resolution here. In sum, the court finds that these terms would constitute a fair, adequate, and reasonable resolution of the parties' dispute given the legal claims at issue here, the apparent strength of the parties' cases, the cost of continuing to litigate the matter, and the risks to both sides of taking the suit through to a final decision.

Similarly, the proposed decree appears consistent with the public interest, as it seeks to resolve a potentially costly dispute with relatively narrow terms that will have a minimal effect on third parties. To the extent the terms of this proposed decree are fair, adequate, and reasonable to the Township as a party, they will be the same towards the residents of the township as well. The

public has a strong interest in seeing its governmental bodies reasonably settle its disputes, and this proposed consent decree does not appear to create any significant external effects that would push costs off onto any non-parties to this suit.

A number of the comments submitted to this court argued otherwise, however. Some submissions expressed concern about the proposed development's potential impact on the Saugatuck area, either environmentally or economically. Similarly, several objectors argued that Singapore Dunes's planned development is necessarily inconsistent with the public interest because it conflicts with the Township's zoning plan, the best evidence of the community's policy preferences.

These concerns are largely outside of the scope of this court's purview, however. The ultimate impact of this proposed development is unpredictable. Indeed, a number of submissions dispute the extent of any impact to the Saugatuck area, and even whether that impact would be positive or negative. Further, the development and its contours, are somewhat speculative, as the consent decree does not itself approve any development plan. Though a court should consider more than the immediate effects of a consent decree when deciding whether to approve its entry, the ultimate form of any development on the Denison Property appears far from certain. The parties agree that the proposed development plan would not be acceptable under either the R-4 zoning or the prior zoning, and so any development along those lines would need special authorization by the local governmental bodies that represent the people of Saugatuck Township. This consent decree, unlike the previous proposal, gives these bodies broad discretion to shape the proposed development. These bodies are better positioned than this court to predict and regulate the effects of any proposed development, and they should be presumed to act in the public's interest.

Some objectors argue that the parties' settlement agreement, created separately from the

proposed consent decree, takes away the Township's discretion regarding the proposed development. Relatedly, a number of submissions object to various elements of the settlement agreement itself. Essentially, these objections claim that the parties structured their agreements to hide objectionable provisions from the court's review. They note that while the consent decree contains only minimally objectionable terms, the provisions in the settlement agreement (which the parties did not submit to the court) exceed the Township's authority in various ways. Among other things, these objectors argue that the settlement agreement impermissibly delegates legislative functions to the Zoning Board of Appeals ("ZBA") by providing that the ZBA will decide whether to allow Singapore Dunes's proposed development plan as variances to the zoning ordinance, that the agreement misstates the law by allowing such wide-ranging modifications to be called "variances" in the first place, and that the terms of the agreement would constitute an illegal spot-zoning. That is, the objectors are concerned that the settlement agreement uses this court to substantively modify the division of powers among the local governmental entities—the very concern that led this court to reject the parties' first proposed decree.

The settlement agreement can do no such thing, however. A settlement agreement is simply a private contract; the parties to it cannot use that contract to do anything that they could not otherwise do. It is only a consent decree that adds the court's power to that of the parties, allowing "[a]n alteration of the [state's] statutory scheme" in response to "a violation of federal law." *Kasper v. Bd. of Election Comm'rs*, 814 F.2d 332, 342 (7th Cir. 1987). The fact that the parties' agreement is split into one part which is to be entered and enforced by the court and another part which is subject only to the usual contract doctrines does not itself offend the law. Nor does the suggestion that the parties may have exceeded their authority in the private-contract portion of their agreement.

The federal district courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Outside of class actions, they do not typically review and approve parties' settlement agreements, and questions about the proper scope and meaning of an agreement's terms are reserved until a dispute arises under them. Despite this case's unique background, the issue here is no different. Though the two parts of the agreement are obviously linked in many ways, the legal effect of designating one agreement as a consent decree and the other as a settlement agreement provides a clear point of distinction. A decision approving the consent decree would not put the court's imprimatur on the settlement agreement as well, and legal disputes about the settlement agreement (or actions taken pursuant to it) will be addressed in the normal way—presumably in Michigan's own court system, absent a particular basis for federal jurisdiction. The objectors' concern is therefore unfounded; the settlement agreement is a separate document, and the court expresses no opinion on the agreement's terms by its decision today.

Further, for this court to review the propriety of these proposed zoning requests would violate the core principles underlying our federal system of government. As Justice Kennedy has memorably put it, "The Framers split the atom of sovereignty" by establishing a federal system made up of "two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). "It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other." *Id.* at 838. The allocation of power between the federal and state governments, and the sovereignty accorded to each in their respective spheres, is fundamental to our system. Here, the power to make zoning decisions belongs to the state of Michigan, which

has in turn delegated the power to local governments such as Saugatuck Township. *See* Mich. Comp. Laws § 125.3201. That power decidedly does not belong to the federal government; indeed, this court rejected the first proposed consent decree because it sought to use the power of the federal judiciary to withdraw the zoning power from the Township unnecessarily. Yet by asking this court to cast judgment on the provisions of the parties' settlement agreement, the objectors similarly seek to take away the Township's power over this undisputably local matter. "When the Federal Government asserts authority over a State's most fundamental political processes, it strikes at the heart of the political accountability so essential to our liberty and republican form of government." *Alden v. Maine*, 527 U.S. 706, 751 (1999). The parties' proposed consent decree properly limits the court's role here; the court will not reach out to aggrandize itself at the expense of the sovereign—and the people—rightly possessing that power.

V. CONCLUSION

As one objector correctly states, "Principles of federalism require the Court to intrude as little as possible on state procedures when approving consent decrees." By limiting its review to the terms of the consent decree itself, and by declining to put the court's power behind any private agreement of the parties, that is exactly what this court does today. The consent decree's narrow terms do not modify the powers ordinarily granted to the Township or any other local governmental body, other than what is reasonably necessary to remedy alleged violations of law. It does not change the balance of power among the various local governmental bodies charged with instituting and enforcing the zoning laws, and it says nothing about whether the zoning variances comprehended by the settlement agreement are or are not legally proper. Those issues are not before the court, and it does not decide them. Today's decision holds only that the terms of the proposed

consent decree are fair, adequate, reasonable, and consistent with the public interest, and that they are within the court's power to enter. The court will therefore grant the parties' motion, enter the proposed decree, dismiss all outstanding motions, and dismiss the action as a whole, with prejudice.

ORDER

Accordingly, **IT IS ORDERED** that:

1. The parties' Renewed Motion for Entry of Consent Judgment and Final Order (ECF No. 160) is **GRANTED**;
2. The Consent Judgment and Final Order (ECF No. 160-1) be **ENTERED** concurrently with this Order;
3. The outstanding motions at ECF Nos. 27, 31, and 34 are **DENIED** as moot; and
4. This action is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Date: June 11, 2012

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge