



# Municipal Roles in Economic Development

By Eric D. Williams

## At a Glance

Michigan municipalities should not lose sight of their power as engines of economic development in their own right.

Municipal officials can invest in the repaving of streets, repaired and widened sidewalks, bike lanes, graded or paved alleys, upgraded street lighting, recreational or transit services, increased water and sewer capacity, and the extension of these services to underdeveloped areas rather than acquiring private properties and acting as a developer.

**M**unicipalities have roles in economic development but should be cautious in pursuing them. “Economic development” is not specifically defined in any Michigan statute as a general public purpose for which municipalities are authorized to expend funds. Within the Economic Development Corporations Act,<sup>1</sup> the legislature declared that “the powers granted in this act constitute the performance of essential public purposes and functions for this state and its municipalities.”<sup>2</sup> “In order to accomplish the public purposes... the *corporation* [not the municipality; emphasis added] may [c]onstruct, acquire by gift or purchase, reconstruct... projects and acquire necessary land...for the site of a project.”<sup>3</sup> The project must be approved by the governing body of the municipality with a finding that the project plan “constitutes a public purpose” before being implemented.<sup>4</sup> Otherwise, economic development can devolve into special appropriations for the benefit of particular individuals or businesses in the local governmental unit.

Many Michigan statutes specify municipal roles in economic development: the Recodified Tax Increment Financing Act,<sup>5</sup> Plant Rehabilitation Industrial Development Districts Act,<sup>6</sup> Principal Shopping Districts and Business Improvement Districts Act,<sup>7</sup> Downtown Development Authorities,<sup>8</sup> Revenue Bond Act,<sup>9</sup> Housing Cooperation Law,<sup>10</sup> Housing Facilities Act,<sup>11</sup> Neighborhood Area Improvements Act,<sup>12</sup> Housing Law of Michigan Act,<sup>13</sup> Blighted Area Rehabilitation Act,<sup>14</sup> and Building Authorities Act.<sup>15</sup>

Eminent domain powers are limited for Michigan municipalities, which cannot acquire private property for the purpose of transferring it to a private entity, as succinctly explained by Justice Young in *County of Wayne v Hathcock*:

We are presented again with a clash of two bedrock principles of our legal tradition: the sacrosanct right of individuals to dominion over their private property, on the one hand and, on the other, the state’s authority to condemn private property for the commonwealth. In this case, Wayne County would use the power of eminent domain to condemn defendants’ real properties for the construction of a 1,300-acre business and technology park. This proposed commercial center is intended to reinvigorate the struggling economy of southeastern Michigan by attracting businesses, particularly those involved in developing new technologies, to the area.

Defendants argue that this exercise of the power of eminent domain is neither authorized by statute nor permitted under article 10 of the 1963 Michigan Constitution, which requires that any condemnation of private property advance a “public use.” Both the Wayne Circuit Court and the Court of Appeals rejected these arguments—compelled, in no small measure, by this Court’s opinion in *Poletown Neighborhood Council v. Detroit* (citations omitted). We granted leave in this case to

consider the legality of the proposed condemnations under MCL 213.23 and art. 10, § 2 of our 1963 Constitution.

**We conclude that, although these condemnations are authorized by MCL 213.23, they do not pass constitutional muster under art. 10, § 2 of our 1963 constitution. Section 2 permits the exercise of the power of eminent domain only for a “public use.” In this case, Wayne County intends to transfer the condemned properties to private parties in a manner wholly inconsistent with the common understanding of “public use” at the time our Constitution was ratified.**<sup>16</sup> (Emphasis added.)

In *Kelo v City of New London*, the United States Supreme Court held that states (like Michigan) could restrict the exercise of eminent domain to prevent the acquisition of property for the purpose of transferring it to private entities for economic development.<sup>17</sup> This limitation on the exercise of eminent domain is reflected in the statute<sup>18</sup> and the Michigan Constitution.<sup>19</sup>

There are some tools that expressly allow Michigan municipalities to participate in local economic development through tax incentives, tax capture development districts, and eminent domain when exercised for a public purpose. Effective economic development at the local level requires municipal officials to focus primarily on what Michigan municipalities do best: provide public safety such as police and fire protection and emergency medical services, streets and sidewalks, parks, snow removal, street lights, bike lanes, public transit, parking lots, libraries, museums, water and sewer utilities, community centers, and recreational facilities. Local governmental officials are challenged to upgrade, modernize, and improve the wide range of infrastructure and services provided in each municipality and also emphasize the unique attributes of each municipality—described as placemaking—and support projects that match the locale. In other words, a municipality should not build a harbor where there is no lake or river.

Although the acquisition and sale of real property by municipalities can be used for economic development, simply flipping properties is not a viable or identifiable public purpose. However, purchasing and removing a nonconforming use or structure is a public purpose under MCL 125.3208, which can be part of an economic development project. Increasing and improving the housing stock in a municipality can also be an economic development project under MCL 125.652, which states that “[a]ny city, village, township or county of the state of Michigan may purchase, acquire, construct, maintain, operate, improve, extend or repair housing facilities and eliminate housing conditions which are detrimental to the public peace, health, safety, morals or welfare.”

If the municipality wants to participate in economic development by marketing its assets, MCL 123.881 authorizes a

local millage to be used for advertising the industrial, commercial, educational, or recreational advantages of the city or village:

The common council of any city, or the corporate authorities of any village, in this state, shall have the power to levy a special tax not to exceed in any 1 year 4 mills on the dollar of the assessed valuation of all taxable property within the said city or village, to be used for advertising, exploiting and making known the industrial, commercial, educational or recreational advantages of the said city or village, and to establish recreational and educational projects for the purpose of encouraging immigration to, and increasing the trade, business and industries of the said city or village: Provided, however, That such tax levy shall not exceed 50,000 dollars in any 1 year.

This statute dates back to 1925 and does not expressly use the term “economic development,” but advertising “industrial, commercial, educational, or recreational advantages” of the community certainly is economic development. Even more significant is the authorization “to establish recreational and educational projects for the purpose of encouraging immigration to, and increasing the trade, business and industries of said city or village.” Promoting attractive “recreational and educational projects” in the municipality can lead to increased business and residents. Additionally, advertising excellent schools at all levels can promote economic development in a municipality. Prospective business owners, managers, and workers research the attributes of the community where they will work, reside, and educate their children before committing to a move. Investing in marketing through websites, social media, streaming broadcasts, and electronic kiosks can serve a municipal public purpose.

Outside of the specific Michigan statutory provisions, funding for large economic development projects is primarily driven by state and federal programs that distribute grants and loans to or through municipalities. The Community Development Block Grant program is a well-known example of grant funding for municipal economic development projects administered by the Michigan Economic Development Corporation (MEDC) on behalf of the Michigan Strategic Fund.<sup>20</sup> The United States Department of Agriculture also is a major funding source for public infrastructure improvements in rural municipalities.<sup>21</sup> There is explicit statutory authorization for Michigan municipalities to “receive and use a federal, state, or local grant or a loan from a federal agency as part of an intermediary relending program...to make a secured or unsecured loan or to make a grant to a private person.”<sup>22</sup> This authorization is “[t]o provide a means and method to encourage and assist businesses in locating and expanding in this

## “ECONOMIC DEVELOPMENT” IS NOT SPECIFICALLY DEFINED IN ANY MICHIGAN STATUTE AS A GENERAL PUBLIC PURPOSE FOR WHICH MUNICIPALITIES ARE AUTHORIZED TO EXPEND FUNDS.

state.”<sup>23</sup> MCL 123.872(1) may be used “for local public improvements or to encourage and assist businesses in locating or expanding in this state, to preserve jobs in this state, to encourage investment in the communities in this state, or for other public purposes.”

The MEDC “markets the entire State of Michigan as the place to do business, assists businesses in their growth strategies and fosters the growth of vibrant communities across the State.”<sup>24</sup> It administers a Redevelopment Ready program with Michigan municipalities that showcases available properties across the state. Municipalities are listed on the MEDC website with descriptive and demographic data, which assists individual municipalities by providing a centralized database of available commercial and industrial properties.

Local governmental officials try to be proactive in pursuing and encouraging economic development in almost every Michigan city, village, and township. This political energy is manifested in local festivals and events to attract visitors, the acquisition and improvement of sites to attract heavy “smoke-stack” industries, and the development of business parks to attract modern commercial enterprises of all types. Municipal officials strive to invite, recruit, obtain, and retain business growth in their communities.

While economic conditions change more quickly than government policies, plans, and laws, prospective business owners continue to look for available land in an area supported by infrastructure (streets and utilities) with an adequate supply of qualified workers. Municipalities encourage economic development by planning and zoning for industrial and commercial growth without actually constructing industrial or technological parks in the absence of actual demand.

There are older and newer industrial parks sitting vacant and traditional commercial corridors along highways that await the return of heavy traffic after bypassing expressways were constructed. Local officials grapple with how to promote and achieve local economic development when there is no actual demand for industrial or business property in the municipality. There is no point in a municipality building or redeveloping these sites because the carrying costs will drain scarce municipal resources in the interim. Although tax incentives and tax capture financing are available under several statutes, the efficacy of these programs has been questioned. Most incentive programs are tax breaks to property owners that

reduce taxes in accordance with the statutory standards administered by municipalities.

Economic redevelopment can be accomplished through the Michigan Department of Labor and Economic Opportunity State Land Bank Authority, which “has the authority to strategically acquire, assemble and dispose of property for less than fair market value” which “helps revitalize communities across Michigan by strategically selling vacant, abandoned, foreclosed, blighted or otherwise unproductive property.”<sup>25</sup> Some municipalities attempt redevelopment outside the framework of the State Land Bank by acquiring abandoned factories, dams, warehouses, big-box stores, foundries, mines, and mills. The supply of these properties seems to exceed demand. Redeveloping abandoned industrial and commercial properties on a site-by-site basis is fraught with risk for both the public and private sectors. The private sector is better financed and more sensitive to market trends than the public sector. More importantly, there must be a clear public purpose for municipal redevelopment of private property. The municipality’s development and subsequent resale of the property at a financial loss is extremely risky, especially without a clear economic objective such as bringing into the municipality a significant number of high-paying jobs or desired new technology or industry. Municipal officials should be wary of acting like the State Land Bank Authority without statutory authorization and direction.

Before acquiring and redeveloping distressed properties, local officials should ask the following questions:

- What is the redevelopment project plan, how much will it cost, and how will it be funded?
- What is the existing or future public use or public purpose in acquiring and redeveloping the particular property?
- What is the anticipated impact on local economic development after the property is redeveloped?
- What is the expected public benefit and how will it be measured?
- What is the alternative plan if the redeveloped property does not sell as expected?

If no public use is intended for the property, the removal of the existing dangerous buildings or conditions of blight can be the public purpose. After the municipality completes remediation or cleanup, the property usually will be offered for sale at public auction. In all likelihood, the sale proceeds will be less than the acquisition, clean up, and carrying costs incurred by the municipality.

Michigan municipalities should not lose sight of their power as engines of economic development in their own right. Excellent public services, improved infrastructure, and amenities

that attract and retain residents and businesses serve as economic development tools. Municipal officials can invest in repaved streets, repaired and widened sidewalks, bike lanes, graded or paved alleys, upgraded street lighting, recreational or transit services, increased water and sewer capacity, and the extension of these services to underdeveloped areas rather than acquiring private properties and acting as a developer. ■



*Eric D. Williams is the city attorney for Big Rapids and general counsel for several villages and townships. He is a past president of the Michigan Association of Municipal Attorneys and former chair of the SBM Government Law Section. He is a frequent presenter at seminars, workshops, and training sessions on ordinance prosecution, municipal boundary changes, authorized and unauthorized expenditures by municipalities, and cooperative municipal agreements.*

## ENDNOTES

1. MCL 125.1601 *et seq.*
2. MCL 125.1602.
3. MCL 125.1607.
4. MCL 125.1610(2).
5. MCL 125.4101 *et seq.*
6. MCL 207.551 *et seq.*
7. MCL 125.981 *et seq.*
8. MCL 125.4201 *et seq.*
9. MCL 141.101 *et seq.*
10. MCL 125.601 *et seq.*
11. MCL 125.651 *et seq.*
12. MCL 125.941 *et seq.*
13. MCL 125.401 *et seq.*
14. MCL 125.71 *et seq.*
15. MCL 123.951 *et seq.*
16. *County of Wayne v Hathcock*, 471 Mich 445, 451; 684 NW2d 765 (2004).
17. *Kelo v City of New London, Connecticut*, 545 US 469, 477; 125 S Ct 2655 (2005).
18. MCL 213.23(3): “As used in subsection (1), ‘public use’ does not include the taking of private property for the purpose of transfer to a private entity for either general economic development or the enhancement of tax revenue.”
19. Const 1963, art 10, § 2: “Public use’ does not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenues. Private property otherwise may be taken for reasons of public use as that term is understood on the effective date of the amendment to this constitution that added this paragraph.”
20. *Michigan Community Development Block Grant Community Development Initiatives*, MEDC (2016), available at <<https://www.michiganbusiness.org/49c87b/globalassets/documents/reports/fact-sheets/cdbg.pdf>> [<https://perma.cc/9AD5-YCRW>]. All websites cited in this article were accessed May 28, 2020.
21. *Programs & Services*, Rural Development, US Dept of Agriculture <[www.rd.usda.gov/programs-services](http://www.rd.usda.gov/programs-services)> [<https://perma.cc/UF3F-8JBB>].
22. MCL 123.872(1).
23. *Id.*
24. *Core Industries*, MEDC <[www.michiganbusiness.org](http://www.michiganbusiness.org)> [<https://perma.cc/77SA-VVTK>].
25. *State Land Bank Authority*, MDLEO <[https://www.michigan.gov/leo/0,5863,7-336-78421\\_96636--,00.html](https://www.michigan.gov/leo/0,5863,7-336-78421_96636--,00.html)> [<https://perma.cc/J47M-LYVUJ>].