

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR LAND COMPANY, L.L.C.,

Plaintiff-Appellant,

V

TOWNSHIP OF LIVINGSTON,

Defendant-Appellee.

UNPUBLISHED

September 21, 2001

No. 223942

Otsego Circuit Court

LC No. 98-007652-CH

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition in favor of defendant township in this action for declaratory and injunctive relief. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case involves a proposed transfer of property from defendant township to the City of Gaylord pursuant to 1984 PA 425, MCL 124.21 *et seq.*, referred to as Act 425. That act authorizes the conditional transfer of property between two or more cities, townships, and villages for an economic development project. MCL 124.22(1). “Economic development project” is defined in relevant part as “land and existing or planned improvements suitable for use by an industrial or commercial enterprise.” MCL 124.21(1).

Plaintiff proposed the construction of a gas station and “food shop” on a parcel of land it owned in defendant township and filed a petition with the township board requesting a conditional transfer of the property from the township to the City of Gaylord under Act 425. The township board issued a written decision and order denying the request. The board concluded that because the property was zoned residential and surrounded primarily by residences, it was “not suitable for use by this commercial enterprise,” and therefore did not constitute an “economic development project” as defined in Act 425. The decision and order then engaged in an alternative analysis that assumed plaintiff’s proposed enterprise qualified as an economic development project. The analysis discussed and weighed each of the factors to be considered before entering into a contract with another local unit under MCL 124.23, and it concluded that overall the factors weighed against a transfer.

In their cross-motions for summary disposition, the parties each emphasized different aspects of the definition of “economic development project,” with plaintiff focusing on the commercial nature of the proposed activity and defendant focusing on the land use. The trial

court declined to decide whether the plaintiff's proposed venture was an economic development project. On appeal, plaintiff first argues that the trial court should have determined that the planned gas station constituted such a project.

Issues of statutory construction present questions of law and receive de novo review. *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). "The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). We conclude that the focus of the definition of an economic development project set forth in MCL 124.21(1) is on the activity undertaken on the affected land, not on the suitability of the land for that activity. In 1991 OAG 6689, p 884, the attorney general noted Act 425's use of the term "commercial enterprise" and stated that "[i]n its broad sense, as used today, commercial activity includes any type of business or activity which is carried on for profit." This opinion reasoned that because a mobile home park can be maintained as a business or activity that is carried on for profit, is a commercial enterprise and hence is within the definition of "economic development project." We agree with this analysis. Thus, the trial court should have determined that plaintiff's proposed venture constituted an economic development project. Reversal on this basis is not warranted, however, because the court's ruling was predicated on an alternative line of reasoning.

Plaintiff next argues that the trial court erred in finding that an economic development project is not a prerequisite to a conditional transfer under Act 425. We do not read the trial court's ruling as so holding, however. Rather, it is apparent that the court found that it need not decide whether the proposed venture was an economic development project in this particular case because even if plaintiff's planned gas station was an "economic development project," the township did not abuse its discretion or act arbitrarily and capriciously in deciding not to enter into an Act 425 contract with the city. This alternative reasoning was proper; consequently, reversal is not warranted.

We affirm.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Jessica R. Cooper