# STATE OF MICHIGAN

# COURT OF APPEALS

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| AEA DEVELOPMENT, L.L.C.,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>April 30, 2009 |
| v | No. 278471<br>Oakland Circuit Court |
| VILLAGE OF FRANKLIN and FRANKLIN VILLAGE COUNCIL,<br><br>Defendants-Appellees. | LC No. 2007-080198-AW |

Before: Wilder, P.J., and Markey and Talbot, JJ.

PER CURIAM.

In this zoning dispute case, plaintiff appeals as of right from the trial court's order denying its petition for a writ of mandamus and declaring a prior 1962 consent judgment invalid. We affirm the denial of plaintiff's complaint for mandamus, but vacate the portion of the trial court's decision addressing the validity of the 1962 consent judgment and declaring the judgment invalid.

## I. Background

Plaintiff owns adjacent Lots 20, 36, and 37. Lots 20 and 36 are located in the village of Franklin (the "Village"). Lot 37 is located in the city of Southfield. In November 2006, plaintiff proposed to commercially develop Lot 36 by building a bank on the property. It submitted a site plan application on which it stated that the zoning district was a "consent judgment." In its accompanying letter, plaintiff stated that the proposed use was consistent with a consent judgment entered in 1962 (the "1962 consent decree"). The Village declined to accept the site plan application because the proposed use did not conform with the single-family residential zoning of the property. The Village acknowledged the existence of the 1962 consent decree, but argued that "subsequent zoning changes and developments supersede that decree."

The 1962 consent decree resulted from litigation between the predecessor owner of Lots 20, 36, and 37 and the Village. In that lawsuit, the plaintiff Sparr sought relief from the Village's residential zoning of Lot 36 because the area was commercial and Lot 36 was used for commercial purposes. Former Oakland Circuit Court Judge Stanton Dondero concluded that the residential zoning was unconstitutional. In response to the court's order, the parties agreed to the 1962 consent decree, which provided that Lot 36 was

> placed in Zone "C", the Commercial Zone in accordance with the Zoning Ordinance of the Village of Franklin, and any use may be made of said lot as long as it is in compliance with the Zoning Ordinance requirements for usage within said Commercial Zone, provided, however, that such use shall be made of said Lot 36 if, when and on the condition that a protective vegetative screen at least twelve feet in width is placed along the northerly and easterly boundaries of said Lot 36. . . . The cost of the installation and maintenance of such screen shall be the obligation of the owner of Lot 36 and shall run with the ownership of said Lot 36.

Sparr also agreed to place a vegetative screen on Lot 37 to shield the adjacent residential lots, such as Lot 20, from the commercial activity. The court expressly retained jurisdiction over the case "for the purpose of enforcing this Decree or making any modifications necessitated in the future by a substantial change in circumstances." There is no dispute that the land was never developed and the commercial uses of 1962 had long ceased to exist. It is also undisputed that the 1962 consent decree was never modified.

In January 2007, the instant plaintiff filed a complaint for writ of mandamus to compel defendants to forward its site plan application to the Village's planning commission. Plaintiff alleged that the Village council was required to accept and process its site plan application pursuant to § 1268.30 of the Village zoning ordinance, which provides, in pertinent part:

> (b) The Village Council shall refer any application for a planned project to the Village Planning Commission, which shall make its report and recommendations back to the Counsel. In doing so, the Planning Commission shall consider the following standards:
>
> (1) The proposed building or buildings shall be of such location, size and character as to be in harmony with the specific regulations and standards, and the appropriate and orderly development, of the zoning district in which situated and shall not be detrimental to the orderly development of adjacent zoning districts.

The trial court issued an order for defendants to show cause why mandamus should not be entered.

Following a hearing, the trial court noted that plaintiff had asked the court to take judicial notice of the 1962 consent decree and other documents from that case file. Relying on *Schwartz v City of Flint*, 426 Mich 295; 395 NW2d 678 (1986), the court found that the 1962 consent decree was unlawful because it impermissibly rezoned Lot 36, in violation of the separation of powers doctrine. Therefore, it held that defendants had no clear legal duty to act and it denied plaintiff's complaint for mandamus.

On appeal, plaintiff challenges the necessity and authority of the trial court to address the validity of the 1962 consent decree, and declare that decree invalid.

## II. Standards of Review

We review a trial court's decision regarding a writ of mandamus for an abuse of discretion. However, questions of statutory interpretation are reviewed de novo. *Casco Twp v Secretary of State*, 472 Mich 566, 571; 701 NW2d 102 (2005). An abuse of discretion occurs when the outcome chosen by the trial court is not within the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). We review de novo the legal question whether a trial court has jurisdiction to decide an issue. *Sierra Club Mackinac Chapter v Dep't of Environmental Quality*, 277 Mich App 531, 544; 747 NW2d 321 (2008).

## III. Analysis

### A. Validity of the 1962 Consent Decree

Plaintiff argues that the trial court erred in addressing the validity of the 1962 consent decree because the only matter before it was whether a writ of mandamus should be issued to compel defendants to carry out their duty under § 1268.30(b) of the Village zoning ordinance. We agree. The parties do not dispute that Judge Dondero retained jurisdiction in the *Sparr* case "for the purpose of enforcing this Decree or making any modifications necessitated in the future by a substantial change in circumstances." Because the parties' agreement in *Sparr* was incorporated and merged into the court's order, it became a ruling of the court. *Grace v Grace*, 253 Mich App 357, 364; 655 NW2d 595 (2002). Thus, any challenge to the validity of the 1962 consent decree could not be made collaterally. *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005); *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987).

The trial court failed to recognize this limitation on its jurisdiction in this case. "Courts are bound to take notice of the limits of their authority and a court should, on its own motion, although the question is not raised by either party, recognize its lack of jurisdiction or any pertinent boundaries on its proper exercise." *People v Erwin*, 212 Mich App 55, 64-65; 536 NW2d 818 (1995), citing *Fox v Bd of Regents of the Univ of Michigan*, 375 Mich 238, 242; 134 NW2d 146 (1965). Thus, the trial court was bound to give effect to the 1962 consent decree, under which commercial use of Lot 36 as a bank was permissible.[1] Instead, it determined that the decree was no longer valid based on a change in the law. If defendants believed that the 1962 consent decree was no longer enforceable due to a change in the law or facts, they should have sought relief from Judge Dondero's successor, in whom jurisdiction was expressly retained for the purpose of "making any modifications necessitated in the future by a substantial change in circumstances." This determination was not within the province of the trial court in this case.

[1] Banks are permissible uses of property in the Village's commercially zoned districts.

Further, contrary to what defendants argue, plaintiff was not required to file this action before Judge Dondero's successor, because plaintiff was not seeking to challenge or modify the 1962 decree.

Moreover, defendants did not need to attack the consent decree's validity in order to defend against plaintiff's mandamus action. Thus, the trial court did not need to decide the issue. Plaintiff never asked the trial court to determine whether the Village's reasoning for rejecting its application was valid. It only asked the court to take judicial notice of the *Sparr* case and court documents. It was plaintiff's position that the Village had no discretion under § 1268.30(b) of its zoning ordinance to refuse to forward its site plan application to the planning commission and it only requested that the trial court order the Village to do so. Defendants responded that the Village had a duty to accept plaintiff's application under the ordinance only if the site plan application satisfied the ordinance's threshold requirements, such as completeness and a proposed conforming use. By addressing the validity of the 1962 consent decree, the trial court accepted defendants' argument that conformity of the proposed use with the zoning classification was a threshold requirement. But there is nothing in the zoning ordinance to suggest that this requirement had to be met before a site plan application could be sent to the planning commission.

The rules of statutory construction apply to ordinances. *Goldstone v Bloomfield Twp Pub Library*, 479 Mich 554, 568 n 15; 737 NW2d 476 (2007). The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). The first criterion in determining intent is the specific language of the statute. *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004). Nothing will be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself. *United States Fidelity Ins & Guaranty Co v Michigan Catastrophic Claims Ass'n*, 274 Mich App 184, 193; 731 NW2d 481 (2007).

According to the zoning ordinances submitted to the trial court, only § 1268.30(a) states requirements for submitting a site plan application. Among them, § 1268.30(a)(2) and (5)(A) provide that the plan application must include the current zoning classification and the uses of the proposed structures. Additionally, § 1268.30(b)(1) – (5) provides criteria for the planning commission to consider in determining whether to recommend approval. One such criterion in § 1268.30(b)(1) is the proposed building's location, size, and character in relation to the regulations and standards, and appropriate development, of the zoning district in which the building is located. Although defendants contend that a use conformity requirement is understood when the zoning ordinance is read in context, defendants have not presented the basis for this alleged context.[2]

[2] Defendants did submit the purpose and goals of the Village's master plan. However, these ordinances do not speak to the requirements for site plan application reviews, variance requests, or rezoning requests.

For these reasons, the trial court erred in addressing the validity of the 1962 decree and declaring it invalid. In light of our decision, it is unnecessary to address plaintiff's remaining arguments related to the consent decree.

## B. Writ of Mandamus

The question remaining is whether the trial court abused its discretion in denying plaintiff's writ of mandamus. A writ of mandamus may be issued if the plaintiff proves that (1) he has a clear legal right to the performance of the duty sought to be compelled; (2) the defendant has a clear legal duty to perform; (3) the act is ministerial in nature; and (4) the plaintiff has no other adequate legal or equitable remedy. *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004).

Section 1268.30(b) of the Village's ordinance states that the Village council "shall refer any application for a planned project to the Village Planning Commission." The ordinance is mandatory and does not discriminate applications. *Tomecek v Bavas*, 276 Mich App 252, 262; 740 NW2d 323 (2007) ("shall" designates a mandatory provision); *People v Hesch*, 278 Mich App 188, 195; 749 NW2d 267 (2008) ("any" casts a wide net and can mean every or all). However, provisions must be read in the context of the entire statute so as to produce a harmonious whole. *Macomb Co Prosecuting Attorney v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001). Subsection (a) of the ordinance provides a list of the application's contents. Although subsection (b) refers to "any" application, when considered in conjunction with the previous subsection, it is apparent that it refers to any application that satisfies the requirements of subsection (a).

Defendants argue that plaintiff had no right and the Village had no duty under § 1268.30(b) because plaintiff's site plan application was incomplete. Specifically, they claim that plaintiff's application lacked "any information about lighting, signs, landscaping, grading, storm water retention, façade elevations, building materials, building height, utilities, and tree preservation." Their claim is supported by the affidavit of Christopher Doozan, the planning consultant to the Village, thus indicating that plaintiff's application did not contain information required under § 1268.30(a)(5)(E), (F), (H), and (I). Because plaintiff failed to demonstrate that its application included this information, plaintiff was not entitled to a writ of mandamus. Accordingly, we affirm the trial court's discretion denying plaintiff a writ of mandamus, albeit for a different reason. *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005) (this Court may affirm a trial court's decision even if for a different reason). However, plaintiff should be allowed to resubmit a complete plan application. *McDonald's Corp v Canton Twp*, 177 Mich App 153, 155, 159-160; 441 NW2d 37 (1989).

## IV. Conclusion

In sum, we hold that the trial court lacked jurisdiction to determine the validity of the 1962 consent decree. The trial court also erred in determining the scope of the consent decree because resolution of plaintiff's complaint did not require such a determination. Therefore, we vacate the trial court's rulings addressing the validity of the 1962 consent decree and declaring it invalid. We affirm the trial court's decision denying plaintiff's mandamus complaint. However,

this ruling does not preclude plaintiff from resubmitting a site plan application that includes all the necessary information required under the Village's zoning ordinance.

Affirmed in part and vacated in part. No costs are taxable pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Kurtis T. Wilder
/s/ Jane E. Markey
/s/ Michael J. Talbot