

STATE OF MICHIGAN
COURT OF APPEALS

GOLFPOINTE DEVELOPMENT, L.L.C.,

Plaintiff-Appellant,

v

CITY OF ST. CLAIR SHORES, CITY OF ST.
CLAIR SHORES CITY COUNCIL, CURTIS L.
DUMAS, ROBERT A. HISON, FRANK P.
BENSON, WILLIAM E. LINCE, WILLIAM J.
NEARON, PATRICIA M. REAVER and
ROBERT G. SOULLIERE,

Defendants-Appellees.

UNPUBLISHED

January 30, 2001

No. 215881

Macomb Circuit Court

LC No. 97-001698-CZ

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Plaintiff appeals as of right the order denying its complaint for mandamus and request for declaratory and injunctive relief. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff submitted a site plan to defendant city seeking approval to construct an assisted living facility on a two-acre parcel. To meet the minimum lot size requirement under the zoning ordinance, the project would have to be considered a convalescent home. Housing for the elderly was a permitted use under the zoning classification, but that use required a minimum lot size of three acres. The planning commission and the city council both found that the project constituted housing for the elderly, and the plan was rejected.

Plaintiff brought this action for mandamus and declaratory relief, seeking to compel site plan approval of its project as a convalescent home. The circuit court found that there was competent, material, and substantial evidence to support the city council's decision, and it denied relief.

A trial court's decision on a request for mandamus is reviewed for abuse of discretion. *McKeighan v Grass Lake Twp Supervisor*, 234 Mich App 194, 211; 593 NW2d 605 (1999). Issuance of a writ of mandamus is proper where (1) the plaintiff has a clear legal right to performance of the specific duty to be compelled, (2) the defendant has the clear legal duty to

perform such act, and (3) the act is ministerial, involving no exercise of discretion or judgment. *Id.*, 211-212.

There is no showing that defendants had the clear legal duty to approve plaintiff's site plan. The ordinance defines housing for the elderly as an "installation other than a hospital, hotel, or nursing home, which provides room and board for non-transient persons primarily sixty-two (62) years of age or older." The ordinance does not define convalescent homes, and the circuit court referred to a dictionary definition of convalescent, as "recovering health and strength after illness." *Webster's New Universal Unabridged Dictionary*, Deluxe Second Edition (1979), p 399. Resort to dictionary definitions is appropriate to construe a statutory term in accord with common usage. *Trumble's Rent-L-Center, Inc v Employment Security Comm*, 197 Mich App 229, 234; 495 NW2d 180 (1992). Plaintiff relies on a proposed amendment to the zoning ordinance which would include assisted living facilities with convalescent homes. However, that amendment was not adopted.

The evidence established that minimal medical care would be provided by the proposed facility. The residents would be responsible for seeking their own medical attention, and the staff would be providing relatively minor assistance. Plaintiff distinguished the facility from a hospital or nursing home, and any resident needing more than minor medical care would be sent to another facility. The court properly found that this level of care did not meet the definition of a convalescent home.

Where there was competent, material, and substantial evidence to support the decision of the city council, the circuit court did not abuse its discretion in denying relief.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White