STATE OF MICHIGAN

COURT OF APPEALS

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

EDWARD HATHCOCK,

Defendant-Appellant.

UNPUBLISHED
April 24, 2003

No. 239438
Wayne Circuit Court
LC No. 01-113583-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

AARON T. SPECK and DONALD E. SPECK,

Defendants-Appellants.

No. 239563
Wayne Circuit Court
LC No. 01-114120-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

AUBINS SERVICE, INC., and DAVID R. YORK, Trustee of the DAVID R. YORK REVOCABLE LIVING TRUST,

Defendants-Appellants.

No. 240184
Wayne Circuit Court
LC No. 01-113584-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

JEFFREY J. KOMISAR,

Defendant-Appellant.

No. 240187
Wayne Circuit Court
LC No. 01-113587-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

ROBERT WARD and LELA WARD,

Defendants-Appellants,

and

HENRY Y. COOLEY,

Defendant.

No. 240189
Wayne Circuit Court
LC No. 01-114113-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

MRS. JAMES GRIZZLE and
MICHELLE A. BALDWIN,

Defendants-Appellants,

No. 240190
Wayne Circuit Court
LC No. 01-114115-CC

and

RAMI FAKHOURY,

Defendant.

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

STEPHANIE A. KOMISAR,

Defendant-Appellant.

No. 240193
Wayne Circuit Court
LC No. 01-114122-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

THOMAS L. GOFF, NORMA GOFF, MARK A. BARKER, JR., and KATHLEEN A. BARKER,

Defendants-Appellants.

No. 240194
Wayne Circuit Court
LC No. 01-114123-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

VINCENT FINAZZO,

Defendant-Appellant,

and

AUBREY L. GREGORY and DULCINA GREGORY,

Defendants.

No. 240195
Wayne Circuit Court
LC No. 01-114124-CC

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendants appeal by leave granted from the circuit court's order denying defendants' motion for summary disposition in this condemnation action. This matter involves plaintiff's proposed acquisition of real property adjacent to Detroit Metropolitan Airport. We affirm.

I. FACTS AND PROCEEDINGS

The real property at issue lies directly south of the airport's newest midfield terminal, and encompasses approximately 1,300 acres of largely empty and unused real property. Plaintiff's proposed development for the property is called "the Pinnacle Project" or "the Pinnacle Aeropark Project." Huron Township extends over about two-thirds of the project's land area, and the rest lies within the city of Romulus. Only two percent of the project area involves the defendant owners in the present action. Plaintiff already holds title to the rest of the project area, or soon will.

In December 1992, the Federal Aviation Administration (FAA) began a program to help adjacent landowners either adjust to the presence of a new air terminal at the airport or sell their land. The FAA gave plaintiff $21 million in federal funds to purchase 500 acres of the adjacent property from those who would sell, conditioned on the requirement that plaintiff make the property economically viable.[1] In 1998, plaintiff formed the idea to construct a combination technology and industry park, business center, hotel and conference center, and recreational facility. Plaintiff billed the project as a "world-class development" that would be particularly attractive because it is next to one of the "largest airports in the world." According to plaintiff, the benefits of the project included generating thousands of jobs; increasing the tax base by tens of millions of dollars; expanding the tax base from largely industrial to mixed industrial, service, and technological; and improving the county's image, which would in turn draw more companies to the area and help fund plaintiff's delivery of services to its residents. A consulting company plaintiff hired found that 30,000 jobs and $350 million would be generated by the Pinnacle Project over time.

Plaintiff secured approval of the project and a promise for funding from the state of Michigan. In June 2000, the Legislature passed "smart park legislation" encouraging the technology industry to partner with Michigan universities and form technology zones in Michigan. In April 2001, the Michigan Economic Development Corporation (MEDC) selected plaintiff's project proposal for designation as one of the few "smart parks" in Michigan.

According to plaintiff, when defendants refused two good faith offers for purchase of their property, plaintiff adopted a "Resolution of Necessity and Declaration of Taking" that authorized it to condemn defendants' land and acquire it by eminent domain. In April 2001, plaintiff filed the present individual complaints for condemnation, and defendants filed motions

[1] Defendants argue that the FAA was specifically concerned about noise abatement, not redevelopment of the property.

challenging the complaints on the ground of necessity. The trial court treated the multiple actions as consolidated and discovery began. Defendants argued that because plaintiff had not decided on specific uses for the property yet and because the property had yet to be rezoned, plaintiff's condemnation action must fail. Plaintiff replied that only defendants' refusal to relinquish their property stood in the way of plaintiff's completion of the project, despite the fact that the future buyers of the property were not yet determined.[2]

Following an evidentiary hearing, defendants filed a motion for summary disposition. The trial court denied the motion, holding that plaintiff could proceed with the condemnation and taking. Defendants' motion for reconsideration was also denied. This Court consolidated these appeals for review.

II. ANALYSIS

Generally, we review de novo issues arising from statutory interpretation, constitutional questions, and summary disposition determinations. *Silver Creek Drain Dist v Extrusions Div, Inc*, 245 Mich App 556, 562; 630 NW2d 347 (2001); *City of Novi v Robert Adell Children's Funded Trust*, 253 Mich App 330, 333; ____ NW2d ____ (2002); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim and is reviewed to determine whether the affidavits, pleadings, depositions, or any other documentary evidence establish a genuine issue of material fact to warrant a trial. *Spiek, supra* at 337, citing *Singerman v Municipal Bureau, Inc*, 455 Mich 135, 138; 565 NW2d 383 (1997). However, with regard to condemnation actions, a trial court's findings and conclusions will not be reversed unless they are clearly erroneous. *City of Troy v Barnard*, 183 Mich App 565, 569; 455 NW2d 378 (1990); see also MCR 2.613(C).

A state may not deprive any person of life, liberty, or property without due process, including taking private property for purportedly public use without just compensation. US Const, Am V, XIV; Const 1963, art 10, § 2; *Adams Outdoor Advertising v East Lansing*, 463 Mich 17, 23; 614 NW2d 634 (2000). "The state's power to take private property is called its power of eminent domain or condemnation." *Tolksdorf v Griffith*, 464 Mich 1, 7; 626 NW2d 163 (2001).

To be constitutional, a condemnation must be authorized, necessary, and for a public purpose. MCL 213.25; MCL 213.56(1), (2); *Lansing v Edward Rose Realty, Inc*, 442 Mich 626, 631-633; 502 NW2d 638 (1993). Defendants raise each of these issues on appeal. However, analysis of these issues is intertwined and recycles to a determination of whether the condemnation fits a public purpose. See MCL 213.23; *Edward Rose Realty, supra* at 631-635. Thus, the majority of our discussion will focus on the public purpose issue.

A. GENERAL AUTHORITY FOR CONDEMNATION

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[2] According to the trial court's opinion, utility installation and road improvements for the Pinnacle Project were set for spring and summer 2002. There is no information in the record regarding whether these plans materialized.

We first note that MCL 213.21 *et seq*. confers the power of eminent domain on plaintiff to authorize the taking of the private property in this case. MCL 213.23 states in pertinent part:

> Any public corporation or state agency is authorized to take private property [1] for a public improvement or [2] for the purposes of its incorporation or [3] for public purposes within the scope of its powers for the use or benefit of the public and to institute and prosecute proceedings for that purpose.[3]

First, the statute clearly states that "[a]ny public corporation or state agency *is authorized* to take private property." *Id*.[4] Plaintiff is a "public corporation." See MCL 213.21; see also, e.g., MCL 141.103(a) (provision of the revenue bond act defining "public corporation" to include a "county").[5] Thus, the power of eminent domain is granted to plaintiff by the opening phrase of the statute. See also MCL 46.184 (referencing MCL 213.21 *et seq*. as granting authority to condemn property). Therefore, assuming plaintiff satisfies the remaining two prongs of the eminent domain analysis – necessity and public purpose – the condemnation at issue is valid. See *Silver Creek Drain Dist*, *supra* at 563 (plain language of a statute controls interpretation).

Furthermore, as plaintiff and the trial court noted, there have been cases in which MCL 213.21 *et seq*. was upheld as the sole lawful authority for a taking. See, e.g., *Charter Twp of Delta v Eyde*, 389 Mich 549; 208 NW2d 168 (1973) (condemnation action brought solely under MCL 213.21 *et seq*.); *Union School Dist of Jackson v Starr Commonwealth for Boys*, 322 Mich 165, 168-169, 170; 33 NW2d 807 (1948) ("Act No. 149 [MCL 213.21 *et seq*.] . . . empowers public corporations to exercise the right of eminent domain"). As a result, the fact that there may have been more specific statutes available for plaintiff other than MCL 213.21 *et seq*. is of no consequence. See, e.g., *In re Opening of Gallagher Ave*, 300 Mich 309; 1 NW2d 553 (1942) (more specific condemnation statute enacted after MCL 213.21 *et seq*. did not implicitly repeal it); *In re Warren Consolidated Schools, Macomb and Oakland Cos*, 27 Mich App 452, 453-454;

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[3] The parties only address the first and third condemnation bases listed in the statute.

[4] The rules of statutory construction are well established:

> The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. We may not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute. When reasonable minds may differ with respect to the meaning of a statute, the courts must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the purpose of the statute. [*Silver Creek Drain Dist*, *supra* at 562-563 (citations omitted).]

[5] See *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998) (statutes discussing the same topic, like the revenue bond act and MCL 213.21 *et seq*., are read together *in pari marteria* – as one law).

183 NW2d 587 (1970) (condemnation brought solely under alternative MCL 213.21 *et seq*. was permissible despite existence of another authorizing statute).[6]

B. NECESSITY

The second issue defendants raise on appeal is whether the circuit court erred in concluding that it is necessary for plaintiff to condemn the property in question. We hold that the court did not err on this ground.

There are two types of necessity. One is whether the proposed use, purpose, or improvement itself (the Pinnacle Project) is necessary. See *Grand Rapids Bd of Ed v Baczewski*, 340 Mich 265, 270-271; 65 NW2d 810 (1954), quoting *In re Jefferies Homes Housing Project*, 306 Mich 638, 647; 11 NW2d 272 (1943). The second type of necessity is whether *the taking of the individuals' real property* is necessary for that use, purpose, or improvement (i.e., whether defendants' property is necessary for the Pinnacle Project). *Barnard*, *supra* at 572, citing *Nelson Drainage Dist v Filippis*, 174 Mich App 400, 406; 436 NW2d 682 (1989). As will be discussed further in our public purpose analysis, *infra*, we hold that the Pinnacle Project is necessary for the people of Wayne County, and that defendants' property is necessary for the Pinnacle Project.[7]

Defendants' only argument concerning this issue is that the Pinnacle Project is merely a speculative project, and, therefore, the "necessary" requirement for eminent domain is defeated. Stated another way, defendants' only contention concerning the "necessary" element is that the exact plans for the Pinnacle Project have not been finalized. Because they have not been finalized, it is unknown whether the taking of the individual defendants' property is necessary to complete the Pinnacle Project. We find this argument to be specious because by the very nature of an action for condemnation for a proposed development, the development is unfinished. While the eventual tenants of the Pinnacle Project are unknown, the technology park and its boundaries are known. At any rate, plaintiff's agents testified that the wetland analysis, utility groundwork and plan, and storm water concerns have either been completed or resolved. The

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[6] See also MCL 259.108 *et seq*. (the Public Airport Authority Act, authorizing condemnation for aeronautical purposes); *Silver Creek Drain Dist*, *supra* at 562 ("Michigan has adopted the . . . UCPA [the Uniform Condemnation Procedures Act, MCL 213.51 *et seq*.] . . . which provides procedures for the condemnation, acquisition, or exercise of eminent domain of real property by public agencies.").

[7] In our view, taking defendants' property, which is next to the airport, is "necessary" to the Pinnacle Project simply because the project area encompasses defendants' property. It would appear to be strategically difficult to build this complex commercial development literally *around* defendants' largely vacant properties. Cf. *Robert Adell Children's Funded Trust*, *supra* at 351, quoting *Poletown Neighborhood Council v Detroit*, 410 Mich 616, 675-676; 304 NW2d 455 (1981) (Ryan, J., dissenting) ("A railway cannot run around unreasonable landowners."). Put another way, the developers likely will not go through with the project if plaintiff does not acquire defendants' property, and the entire project might be lost. Thus, "the project needs the property involved." *Barnard*, *supra* at 569; see also *Nelson Drainage*, *supra*.

project is sufficiently far along that this Court believes it will come to fruition, and the specific area that the park will occupy is known. Thus, defendants' necessity argument fails.

C. PUBLIC PURPOSE

The third and controlling issue is whether the circuit court erred in concluding that the condemnation of defendants' property serves a public purpose.[8] We hold that the Pinnacle Project serves a public purpose that predominates over any incidental private benefit.

> Because the city passed ordinance 753 [authorizing the condemnation at issue] without an express delegation of authority by the state, we may review the city's asserted public purpose. Judicial deference granted state legislative determinations of public use is not similarly employed when reviewing determinations of public purpose made by a municipality pursuant to broad, general enabling statutes. [*Edward Rose Realty*, *supra* at 637; see also *City of Center Line v Chmelko*, 164 Mich App 251, 260; 416 NW2d 401 (1987) ("the 'public use' question is ultimately a judicial one"); *Cleveland v Detroit*, 322 Mich 172, 179; 33 NW2d 747 (1948) (public purpose is an issue for a reviewing court).]

While the specific private interests that may benefit from the Pinnacle Project are unknown at this time, for purposes of this discussion, we will assume that eventually at least one private interest will benefit from the project. Therefore, we will apply the heightened scrutiny test. "Where, as here, the condemnation power is exercised in a way that benefits specific and identifiable private interests, a court inspects with *heightened scrutiny* the claim that the public interest is the predominant interest being advanced." *Poletown Neighborhood Council v Detroit*, 410 Mich 616, 634-635; 304 NW2d 455 (1981) (emphasis added), cited in *Chmelko*, *supra* at 257.

The terms "public use" and "public purpose" (employed by MCL 213.23) are synonymous. *Poletown*, *supra* at 629-630. In *Tolksdorf*, *supra* at 8-9, our Supreme Court held:

> The next question is whether the taking authorized . . . is constitutionally permissible. Private property may not be taken for a private purpose. *Shizas v Detroit*, 333 Mich 44, 50; 52 NW2d 589 (1952). . . .
>
> In *Poletown*, this Court set forth the analysis used when a taking benefits both private entities and the public:
>
> ["]The power of eminent domain is restricted to furthering public uses and purposes and is not to be exercised without substantial proof that the public is

[8] See MCL 213.23 ("Any public corporation or state agency is authorized to take private property [1] for a public improvement or . . . [3] for *public purposes* within the scope of its powers for the *use or benefit of the public*[.]"); *Barnard*, *supra* at 569-570 ("public necessity" required for valid condemnation).

> primarily to be benefited. . . . Such public benefit cannot be speculative or marginal but must be clear and significant if it is to be within the legitimate purpose as stated by the Legislature.["] [*Id*. at 634-635.]
>
> Hence, the question becomes whether the public interest advanced here, access to landlocked property, is the predominant interest advanced. [*Tolksdorf, supra*; see also *Edward Rose Realty, supra* at 631-633.]

Furthermore, the *Poletown* Court opined:

> There is no dispute about the law. All agree that condemnation for a public use or purpose is permitted. All agree that condemnation for a private use or purpose is forbidden. Similarly, condemnation for a private use cannot be authorized whatever its incidental public benefit and condemnation for a public purpose cannot be forbidden whatever the incidental private gain. The heart of this dispute is whether the proposed condemnation is for the primary benefit of the public or the private user. [*Poletown*, *supra* at 632.]

However, the fact that a government entity eventually transfers condemned property to a private entity is not dispositive either. See *In re Slum Clearance in Detroit*, 331 Mich 714, 721-722; 50 NW2d 340 (1951); *Cleveland*, *supra*.

We conclude that plaintiff does not have the primary intention "to confer a private use or benefit" with the taking at issue. *Chmelko, supra* at 259. Rather, plaintiff seeks to advance the interests of the people of Wayne County with the Pinnacle Project.

Plaintiff stated its public purposes for the Pinnacle Project as follows: generating thousands of jobs; increasing the tax base by tens of millions of dollars; expanding the tax base from largely industrial to mixed industrial, service, and technological; and improving the county's image, which would in turn draw more companies to the area and help fund plaintiff's delivery of services to its residents. Plaintiff argued that the area needed these improvements because businesses were steadily leaving the area, making its economy progressively worse.

These reasons qualify as "public improvements" and "public purposes within the scope of [plaintiff's] powers." MCL 213.23; cf. MCL 141.103(b) (revenue bond act provision defining "public improvements" to include including housing facilities, transportation systems, sewage and industrial disposal systems, utility systems, telephone systems, automobile parking facilities, convention halls, recreational facilities, and aeronautical facilities); see also MCL 117.4e(1), (2) (home rule city may provide for power of condemnation to supply various services "for any public use or purpose within the scope of its powers, whether herein specifically mentioned or not").

Our review of our Supreme Court's decision in *Poletown* reveals that it is similar to and different from the present case in important ways. First, *Poletown* supports plaintiff's proposed taking because of the factual similarities to the present case that make economic revitalization a

valid public purpose. *Id*. at 633-634. In *Poletown*, our Supreme Court held that under the supervision of the MEDC, the government's stated public purpose of establishing industrial and commercial zones in condemning property for transfer to other private parties was permissible. *Id*. at 630-631, 634-635. Furthermore, the public purpose of revitalizing a downtrodden area was also permissible, similar to the present case. *Id*. at 634-635. Indeed, Pinnacle Project tenants will largely benefit the public, with a multitude of jobs and services, as well as increased tax revenue.

> In the instant case the benefit to be received by the municipality invoking the power of eminent domain is a clear and significant one and is sufficient to satisfy this Court that such a project was an intended and a legitimate object of the Legislature when it allowed municipalities to exercise condemnation powers even though a private party will also, ultimately, receive a benefit as an incident thereto.
>
> The power of eminent domain is to be used in this instance primarily to accomplish the essential public purposes of alleviating unemployment and revitalizing the economic base of the community. The benefit to a private interest is merely incidental. [*Id*. at 634, see also 636-637, and 645, n 15 (Fitzgerald, J., dissenting) (listing economic statistics regarding Hamtramck's blight that are similar to those in the present case).]

See also, e.g., MCL 125.2162a (the MEDC may designate and facilitate construction of "technology parks" to provide a variety of community services).

Second, however, our review of *Poletown* also reveals a significant difference between that case and the present case. In *Poletown*, a major corporation sought condemnation of real property by way of the city of Hamtramck. See *id*. at 636 (Ryan, J., dissenting), and 644 (Fitzgerald, J., dissenting) (noting that a single known private entity petitioned the city for help in finding a factory site); see also *Edward Rose Realty*, *supra* at 637 ("Thus, we scrutinize the city's actions bearing in mind that . . . ordinance 753 is directed toward and would benefit a single private entity . . . "). In the present case, the county – and no identified or individual private company – is instigating and developing the taking of defendants' property. Nor was the present "taking . . . merely . . . an attempt by a private entity to use the state's powers 'to acquire what it could not get through arm's length negotiations with defendants.'" *Tolksdorf*, *supra* at 10; see also *Edward Rose Realty*, *supra* at 631; *Chmelko*, *supra* at 262-263 ("pretense" of public purpose advanced by city failed). Thus, in one sense, the present taking is even more supportable than the one in *Poletown*.

A survey of other relevant cases is also helpful. Specifically, *Chmelko*, *Barnard*,[9] *Edward Rose*, and *Tolksdorf*, *supra*, are factually distinguishable from the present case. *Chmelko* involved a very narrow benefit primarily to a private party, a car dealership that wanted more parking space. *Id*. at 258, 262-263. That factual scenario is dissimilar to the present case.

[9] Because *Chmelko* and *Barnard* were decided before November 1, 1990, we are not bound to follow the rules of law established in those cases. See MCR 7.215(I)(1).

In *Barnard, supra* at 572-573, the city wished to acquire more land than necessary for a sidewalk, with no future plan for the excess land. That is not the case with the Pinnacle Project either. *Edward Rose* concerned a condemnation for cable service easements on private property. *Id*. at 628-629. Thus, that case can be contrasted also. Finally, *Tolksdorf* related to the private roads act that forced access across private property to landlocked parcels. *Id*. at 4, 7-8. Consequently, *Poletown* is the most factually on point to the present case, and, thus, precedentially binding. After all, the condemnation in *Poletown* was for an "industrial park." *Id*. at 637 (Fitzgerald, J., dissenting).

III. CONCLUSION

> Our determination that this project falls within the public purpose, as stated by the Legislature, does not mean that every condemnation proposed by an economic development corporation will meet with similar acceptance simply because it may provide some jobs or add to the industrial or commercial base. If the public benefit was not so clear and significant, we would hesitate to sanction approval of such a project. . . . We hold this project is warranted on the basis that its significance for the people of Detroit and the state has been demonstrated. [*Id*. at 634-635.]

Under the heightened scrutiny test of *Poletown*, plaintiff's stated public purposes survive because plaintiff has provided "substantial proof that the public is primarily to be benefited." See *Tolksdorf*, *supra* at 8-9. Therefore, the trial court did not clearly err in finding a public purpose in this matter, and plaintiff's proposed taking is constitutional. *Barnard, supra* at 569; *Robert Adell Trust*, *supra* at 333-334.

Affirmed. No taxable costs pursuant to MCR 7.219, a question of public policy being involved.

/s/ Peter D. O'Connell