

COA Opinion: Foreclosing governmental unit has no power to review a municipality's determination of public purpose under MCL 211.78m

6. April 2011 By Nicole Mazzocco

On April 5, 2011, the Michigan Court of Appeals published its opinion in *City of Bay City v. Bay County Treasurer, No. 294556*. The court clarified for the first time the roles of municipalities and foreclosing governmental units under Michigan's tax-foreclosure scheme, MCL 211.78m. MCL 211.78m allows cities, villages, and townships the right to purchase tax-foreclosed properties "for a public purpose." The statute then provides that the foreclosing governmental unit "shall convey" such properties to the purchasing city, village, or township. The court held that MCL 211.78m does not authorize the foreclosing governmental unit to question a municipality's determination of public purpose. The foreclosing governmental unit's only role is to convey the property upon request. The court also addressed the meaning of "public purpose" under MCL 211.78m, refusing to read into the statute a requirement that the municipality demonstrate its public purpose can be accomplished efficiently and expeditiously.

This case arose from Plaintiff-Appellant City of Bay City's attempt to purchase four tax-foreclosed properties under MCL 211.78m. Bay City informed its foreclosing governmental unit, Defendant-Appellee Bay County Treasurer Richard Brzezinski, of its desire to purchase the properties, and tendered the minimum bid required by MCL 211.78m. Brzezinski refused to transfer the properties, stating that he was not obligated to transfer the properties unless he was satisfied that Bay City's plans for the properties would achieve a public purpose efficiently and expeditiously. Bay City filed suit to compel transfer of the properties, seeking a declaratory judgment that Bay City was entitled to the properties and a writ of mandamus ordering Brzezinski to transfer them.

Following a bench trial, the trial court held that Bay City had stated an adequate public purpose as to only two of the four properties. Shortly after the trial, the parties agreed regarding how to dispose of all but one of the disputed properties. Bay City appealed the trial court's ruling regarding the remaining property, a vacant lot, commonly known as 606 Wilson Street (the "Wilson Property"). At trial, Bay City testified that it intended to convey the Wilson Property to Habitat for Humanity or a similar organization for new home construction. Following the trial, Brzezinski offered to settle the parties' dispute by transferring the Wilson Property.

On appeal, the court addressed three issues: (1) Did Brzezinski's offer to transfer the Wilson Property moot the case? (2) Did Bay City state an adequate public purpose under MCL 211.78m? (3) Did Brzezinski have the power to review Bay City's determination of public purpose?

First, the court rejected Brzezinski's assertion that his offer to settle rendered the case moot. There was an ongoing controversy between the parties. Bay City had not accepted Brzezinski's offer, and so a dispute remained. A party's strategic decision not to settle, even for the relief requested, does not make a case moot. The court then noted that, even if Bay City received the Wilson

Property, “this would only satisfy the mandamus claim.” If the Wilson Property was transferred, the parties’ dispute regarding the meaning of public purpose and the parties’ roles under the tax-foreclosure scheme would remain. This dispute was embodied in Bay City’s request for a declaratory judgment, which was before the court.

Second, the court considered the meaning of public purpose under MCL 211.78m. The court held that Bay City’s plan to sell the Wilson Property, a vacant lot, for new home construction qualified as a public purpose, noting that Brzezinski had conceded this point at trial. Brzezinski only disputed whether this plan would efficiently and expeditiously return the property to the tax rolls, maintaining that MCL 211.78m’s definition of public purpose incorporated these requirements. But the court refused to read these additional requirements into the statute.

Third, the court examined whether Brzezinski, as the foreclosing governmental unit, had the power to review Bay City’s determination of public purpose. The court held that MCL 211.78m provided Brzezinski with no such power. MCL 211.78m’s language did not direct Brzezinski to evaluate Bay City’s decision. The statute only required Brzezinski to transfer the property. Further, review of a legislative determination (like public purpose) is traditionally a judicial function; the courts are the proper branch of government to review a public-purpose determination under MCL 211.78m in the first instance. Accordingly, the court held that “the trial court erred to the extent it implicitly held that defendant [Brzezinski] had a right to review plaintiff’s determination of public purpose, and it abused its discretion by denying plaintiff mandamus relief.”

The court’s decision in *Bay City* is an important development in tax-foreclosure law. It will affect municipal practices across the state.

Disclaimer: WNJ represented the prevailing appellant in this case.