

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 6, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 02-2959

Cir. Ct. No. 02-CV-116

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**ROBERT E. WILLOW, INDIVIDUALLY AND IN HIS
CAPACITY OF PRINCIPAL SHAREHOLDER OF BOB WILLOW
MOTORS, INC., A WISCONSIN CORPORATION,**

PLAINTIFF-APPELLANT,

v.

**CITY OF MENOMONIE, A MUNICIPAL CORPORATION,
JOSEPH L. HANSMAN, JR. AND MENOMONIE CHRYSLER
CENTER, INC., A WISCONSIN CORPORATION,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Robert Willow appeals a summary judgment dismissing his claim against the City of Menomonie, Joseph Hansman, Jr., and

Menomonie Chrysler Center, Inc. Willow sought declaratory and injunctive relief to prevent Hansman from developing for retail purposes land he purchased in the City's industrial park. Willow argues that WIS. STAT. § 66.1101(3)¹ prohibits the development, for other than industrial purposes, of six acres Hansman purchased located in the industrial park. Because WIS. STAT. § 66.1101(3) does not apply, we affirm the judgment.

BACKGROUND

¶2 In 1992, the city council ratified the purchase of seventy-three acres for \$366,000 with no statement of its intended purchase. The funds were derived from the Industrial and Residential Land Fund Account. No industrial revenue bond financing was used for the land's purchase or development. No tax incremental financing was utilized. The property was zoned "Restricted Industrial," which permits retail uses.

¶3 The city council adopted an industrial land sales policy in 2000 that contemplated sales to business and industry. The determination whether the land was to be used for industrial purposes or commercial purposes was dependent upon the zoning district imposed under City ordinances. The sale price was set at \$17,500 per acre.

¶4 Bob Willow Motors, Inc., is the landlord for Menomonie Chrysler, whose lease expires December 31, 2003. In April 2002, Hansman, a Menomonie Chrysler shareholder, purchased six acres for \$35,000 per acre with the intent to

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

construct an automobile dealership. In May, Willow brought this action to prohibit Hansman from using the six acres as an automobile dealership or for any other retail purpose.

¶5 Both parties moved for summary judgment, agreeing no facts were in dispute. Willow characterized the sole issue as “whether defendants may proceed to develop the subject parcel” for an automobile dealership or other retail purpose “given the mandates of what plaintiff contends is the applicable statutory authority.” The trial court determined that WIS. STAT. § 66.1101 did not apply and that the zoning classification permits commercial retail use of the property. The court also determined that the public purpose doctrine did not afford Willow relief. The court entered summary judgment dismissing Willow’s claim.

STANDARD OF REVIEW

¶6 We review an order for summary judgment applying the same methodology as the trial court, *M&I First Nat’l Bank v. Episcopal Homes Mgmt.*, 195 Wis. 2d 485, 496-97, 536 N.W.2d 175 (Ct. App. 1995), and owing no deference to the trial court’s determination. *Waters v. USF&G*, 124 Wis. 2d 275, 278, 369 N.W.2d 755 (Ct. App. 1985). We will reverse a summary judgment if the trial court incorrectly decided a legal issue or if material facts were in dispute. *Coopman v. State Farm Fire & Cas. Co.*, 179 Wis. 2d 548, 555, 508 N.W.2d 610 (Ct. App. 1993).

DISCUSSION

¶7 Willow argues that WIS. STAT. § 66.1101 prohibits the development of land within the industrial park for other than industrial purposes. We are unpersuaded. The issue in question is resolved by resort to statutory language, a

question of law we review independently. *State v. Setagord*, 211 Wis. 2d 397, 405-06, 565 N.W.2d 506 (1997). The purpose of statutory interpretation is to ascertain and give effect to the legislature's intent. *Id.* at 406. We first look to the language of the statute itself. *Id.* If the meaning of the statute is clear on its face, we apply it as written. *Id.* The court's primary purpose in reviewing a statute is to achieve a reasonable construction that will effectuate the statutory purpose. *Barnett v. LIRC*, 131 Wis. 2d 416, 420, 388 N.W.2d 652 (Ct. App. 1986).

¶8 The entire statutory section and related sections are to be considered in its construction or interpretation; we do not read statutes out of context. *State v. Barnes*, 127 Wis. 2d 34, 37, 377 N.W.2d 624 (Ct. App. 1985). Statutes relating to the same subject matter are to be construed together and harmonized. *State v. Burkman*, 96 Wis. 2d 630, 642, 292 N.W.2d 641 (1980).

¶9 In *Sigma Tau Gamma Frat. House v. City of Menomonie*, 93 Wis. 2d 392, 403-04, 288 N.W.2d 85 (1980), our supreme court reviewed WIS. STAT. § 66.43 (1979-80), an earlier version of a related statute.² The court declared its purpose to be a “mechanism ... to finance projects” and concluded that this section was intended to complement a municipality's existing authority. Similarly, by its plain language, § 66.1101(3) applies to “sites purchased for industrial development under this section”³ Here, the City purchased and

² See WIS. STAT. § 66.1333, effective Jan. 1, 2001.

³ WISCONSIN STAT. § 66.1101, entitled “Promotion of industry; industrial sites” reads:

(continued)

developed the land without benefit of the financing mechanisms under § 66.1101. The land was not a site purchased for “industrial development” under § 66.1101. As a result, the limiting provisions of subsection (3) do not apply.

¶10 To accept Willow’s argument would require us to neglect the legislature’s broad grant of power elsewhere in the statutes to a city to sell property. The city council “shall have the management and control of the city property” except as “specifically provided” elsewhere in the statutes. WIS. STAT. § 62.11(5). The legislature specifically granted the City the power to purchase and

(1) It is declared to be the policy of the state to encourage and promote the development of industry to provide greater employment opportunities and to broaden the state's tax base to relieve the tax burden of residents and home owners. It is recognized that the availability of suitable sites is a prime factor in influencing the location of industry but that existing available sites may be encroached upon by the development of other uses unless protected from encroachment by purchase and reservation. It is further recognized that cities, villages and towns have broad power to act for the commercial benefit and the health, safety and public welfare of the public. However, to implement that power, legislation authorizing borrowing is necessary. It is, therefore, the policy of the state to authorize cities, villages and towns to borrow for the reservation and development of industrial sites, and the expenditure of funds for that purpose is determined to be a public purpose.

(2) For financing purposes, the purchase, reservation and development of industrial sites undertaken by a city, village or town is a public utility within the meaning of s. 66.0621. In financing under that section, rentals and fees are considered to be revenue. Any indebtedness created under this section shall not be included in arriving at the constitutional debt limitation.

(3) Sites purchased for industrial development under this section or under any other authority may be developed by the city, village or town by the installation of utilities and roadways but not by the construction of buildings or structures. The sites may be sold or leased for industrial purposes but only for a fair consideration to be determined by the governing body.

sell real estate under WIS. STAT. § 62.22(1), where it states: “The governing body of any city may by ... purchase ... acquire property, real or personal, within or outside the city ... for any ... public purpose ... and may sell and convey such property.” Courts have interpreted this language as providing cities broad powers. *Bishop v. City of Burlington*, 2001 WI App 154, ¶13, 246 Wis. 2d 879, 631 N.W.2d 656.

¶11 The City’s Land Sales policy further demonstrates the fallacy of Willow’s underlying contention that the property in question was purchased for industrial development as opposed to commercial development. It discusses purchasing land for “business/industry” and includes criteria for selling land to a “commercial entity that directly competes in the commercial market place” WISCONSIN STAT. § 66.1101 states that its purpose is to deal with real estate purchased with borrowed money. There is no dispute to the fact that no borrowing occurred for the City to obtain the property Hansman purchased in the industrial park. Consequently, the property is not purchased under § 66.1101, and this section does not prohibit Hansman’s commercial retail development and use of the property.

¶12 Willow further implies the City is barred from selling land in the industrial park for commercial development that brings a price of less than the market value of the land that he owns. He contends that doing so will in effect drive down the market value of his property. This argument fails to cite legal authority for the implicit proposition that a decrease in fair market value of privately owned property due to a sale of municipally owned land supports a cause of action against the municipality. Consequently, it fails to provide grounds for reversal. See *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

¶13 Next, Willow argues that Hansman’s proposed use of the property contravenes the public purpose doctrine.⁴ The public purpose doctrine “commands that public funds can be used only for public purposes.” *Libertarian Party v. State*, 199 Wis. 2d 790, 809, 546 N.W.2d 424 (1996). In *Bishop*, 246 Wis. 2d 879, ¶10, we summarized this doctrine:

The essence of the doctrine, that public funds may be expended only for public purposes, rests on the theory that governmental power should be used for the benefit of the entire community. To maintain a public purpose, the benefit to the public must be direct and not remote. The fact that a private entity receives direct benefit from an expenditure of public funds does not render the expenditure unconstitutional. If the principal parts of the expenditure are designed to promote a public purpose, private benefits which are necessary and reasonable to the main purpose are permissible. (Citations omitted.)

¶14 Here, Willow does not object to the expenditure of public funds, but rather the sale of city-owned real estate in the industrial park for commercial development. Therefore, we are unpersuaded the public purpose doctrine would apply. The legislature has determined that the only limitation on the *sale* of real estate is that it be sold for a fair consideration, not that a public purpose be served. WIS. STAT. § 66.1101(3). Willow fails to demonstrate a factual basis for a claim based on inadequate consideration.⁵

¶15 In any event, “If any public purpose can be conceived which might rationally justify the expenditure, the constitutional test is satisfied.” *Bishop*, 246

⁴ Although the record reflects that Willow did not raise this issue before the trial court, because the trial court addressed this issue, we do so here.

⁵ Willow’s own conclusory affidavit to this effect does not establish proof of fair market value. *See* WIS. STAT. § 802.08(3). Affidavits “shall set forth such evidentiary facts as would be admissible in evidence.” *Id.*

Wis. 2d 879, ¶11. “[N]o public purpose exists only if it is clear and palpable that there can be no benefit to the public.” *Id.* “[T]he judicial trend [is] to extend the scope of activities considered to be valid public purposes.” *Id.*, ¶12. Generating increased tax revenue for the City is a permissible purpose for the sale of City-owned property. *Id.*, ¶ 22.

¶16 In *Town of Beloit v. County of Rock*, 2001 WI App 256, ¶27, 249 Wis. 2d 88, 637 N.W.2d 71, we explained:

For instance, ... a city's expenditure of funds to increase the tax base and generally enhance the economic climate of the community was for a public purpose. [A] city acted with a public purpose when it transferred a parking lot to a private developer to promote the rehabilitation of a downtown area, even though the parking lot could be used solely for a single private entity after three years. The supreme court has also determined that attempts to preserve and enhance the tax base of counties, cities, and other local governmental jurisdictions, as well as attempts to bring in capital to the community, are public purposes for the expenditure of public funds. The fact that private individuals, by purchasing the subdivision plats, will ultimately benefit from the Town's development does not vitiate the public benefits derived from the development itself. (Citations omitted.)

¶17 Here, the land sales policy adopted by the City in February 2000 stated that the City purchases land to “expand[] its economic base” and attract business and industry to the area. The City could have rationally concluded that selling these six acres for more than half of what the total seventy-three acres cost the City, and the construction of a new automobile dealership on the site, would benefit the City and attract other business and industry to the site. Because increasing the tax base and improving the economic climate are public purposes consistent with the sale of the land to Hansman for retail development, the sale would not have violated the public purpose doctrine.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5.

