

MEMORANDUM

TO: Michigan Economic Growth Authority

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SUBJECT: Inclusion of Easement in Renaissance Zone

Question Presented

May an easement (without the land to which it applies) be placed in a Renaissance Zone under the Michigan Renaissance Zone Act, M.C.L. § 125.2681 et seq. (the "Act")?

Answer

Yes. Easements are a property interest that have specific geographic boundaries and apply to a defined acreage, and therefore, may be placed into a Renaissance Zone.

Discussion

As a general matter, Renaissance Zones provide tax abatements related to a wide variety of property, including real and personal property. See, e.g., M.C.L. § 125.2689. The Act never discusses easements directly.

In order to analyze whether an easement can be included, therefore, it is necessary to examine the variety of terms the Act uses to describe the area that can be included in this type of Renaissance Zone, and Renaissance Zones in general, to determine if easements fall within those descriptions. Analysis of all the various terms and descriptions used in the Act indicate two basic requirements for a Renaissance Zone: (1) individual property interests must have a defined, describable acreage, and (2) the various property interests must be contiguous. Since an easement meets both these requirements, it can be included in a Renaissance Zone. Moreover, an examination of the common law regarding the terms used in the Act indicate the inclusion of an easement is appropriate.

1. **Definition of a “Distinct Geographic Area”**

The Act allows a local governmental unit (in this case Wayne County) to designate “distinct geographic areas” as Renaissance Zones.¹ This term is not defined by the Act. The Act does specify that such an area either has no minimum size, or a minimum size of 5 acres or more. M.C.L. § 125.2684(d). The only other potential definition of this term offered by the Act is offered in the negative: “contiguous parcels of property” that are added to an existing Renaissance Zone under specific subsections of the statute do not constitute such a “distinct geographic area.” E.g. M.C.L. § 125.2686(7), (8), and (12).

As the term “distinct geographic areas” is described only in a limited way, the analysis of whether an easement can be included in such an area is better informed by looking at the terms used in the Act as a whole to describe the broader designation of “Renaissance Zone.”

2. **Terms Used to Describe Renaissance Zones**

The Act defines a Renaissance Zone as a “geographic area designated under this Act.” M.C.L. § 125.2683(j); see also M.C.L. § 125.2687(3) (use of term “area”). It has a defined maximum acreage. M.C.L. §125.2684(c).

There are a number of references describing Zones as being a set of “contiguous acres” as well. E.g. M.C.L. § 125.2686(7); M.C.L. § 125.2688a(6)(b)(i)(B). Sections of the Act describing specific types of Renaissance Zones use a variety of somewhat similar terms. Section § 8a of the Act (M.C.L. § 125.2688a), describes some Renaissance Zones as “composed of 1 or more adjacent parcels totaling [x] more acres” or simply references the overall number of acres, without using the word “adjacent” or “contiguous.” E.g. M.C.L. § 125.2688a(6)(b)(viii)(B) and (6)(b)(vi)(C). A Renaissance Zone for agricultural processing facilities must be “1 contiguous distinct geographic area”, while a renewable energy facility or forest products processing facility Renaissance Zone must be “1 continuous geographic area.” M.C.L. §§ 125.2688c(2); 125.2688e(2) and 125.2688f(2).

These descriptions largely break down into two categories, as the below table shows: a requirement that the boundaries of the Renaissance Zone be defined around properties of a certain geographic character, and that the properties must be in close proximity to each other.

Geographic Character	Proximity
Area/Geographic Areas	Contiguous
Acres/Total Acres	Adjacent
Parcel/s of Property	Continuous

¹ DMC and Vanguard are seeking a zone created under this section from Wayne County’s allocation. M.C.L. § 125.2584(4).

3. Application of Geographic Character Terms to Easements

There are three terms commonly used in the Renaissance Zone Act that describe the geographic character of the property that defines the boundaries of such a Zone: “geographic area”; “acres” or “total acres” and “parcel/s of property.” Therefore, the question is whether any of these terms precludes an easement from being a property interest that helps determine the boundaries of the Zone. Each of these terms is discussed in turn below.

(a) *Area or Geographic Area*

The use of the term “geographic” indicates that there is a requirement that the Renaissance Zone be defined by real, not personal, property interests. Under Michigan law, an easement is an interest in real property. Ladd v Teichman, 359 Mich. 587; 103 NW2d 338 (1960); Peaslee v Saginaw County Drain Comm’r, 365 Mich. 338 (1962).

This term can also be interpreted to require that the real property interest apply to a specific, defined area of land. Easements “entitle the owner of such interest to a limited use or enjoyment of the land in which the interest exists.” Restatement of Property § 450. Because the easement is tied to a specific piece of real estate (and is in fact recorded as is a deed) it can and is legally described with specific geographic boundaries. Therefore, an easement would satisfy the underlying requirements of being a “geographic area” in that it is an interest in real property with specific geographic boundaries.

(b) *Acres or Total Acres*

Easements, like real property, have a defined acreage. Legal descriptions indicate such acreage, as they do for real property. Therefore, definition by acreage can include definition by easement.

(c) *Parcel of Property*

The Michigan Supreme Court has long held that “[p]arcel is a generic term capable of many definitions,” and can be interpreted to include easements. Ladd v. Teichman, 359 Mich. 587, 597 (1960). Citing a number of court cases in which the term parcel was held to apply to water rights, a railroad right of way, or a section of land, and dictionary definitions of the term that included “portion” or “part of an estate”, the Court held that the term ‘parcel’ included an easement. Id.

The Act was passed well after the time this decision was issued. The Legislature is presumed to be aware of judicial decisions. Ford Motor Co v Woodhaven, 475 Mich 425, 439 (2006). Therefore, the Legislature’s choice to use the generic term “parcel” with no additional qualifier,² along with a wide variety of other terms to describe the area that can fall within a

² Compare P.A. 198 of 1974 (which establishes the Industrial Facilities Tax abatement), which states that districts must consist of “1 or more parcels or tracts of land or a portion of a parcel or tract of land.” M.C.L. § 207.554(1). The inclusion of the qualifier “tracts of land” in other, earlier economic development legislation, compared to the term “parcel” used without such qualifier in the Act, also indicates the interpretation should be

Renaissance Zone, indicates an intention to use the word “parcel” in the generic sense of the term – one that encompasses a variety of real property interests. Therefore, the term “parcel” in the Act is correctly interpreted to include an easement as a real property interest that may be included in determining a Renaissance Zone’s boundaries.

generic, based on the well-established rule of statutory interpretation that language from one statute cannot be assumed to have been “omitted” in another and the law applied accordingly. See, e.g., Grimes v Dep’t of Transp., 475 Mich. 72, 85 n 43 (2006); Farrington v Total Petroleum, Inc., 442 Mich. 201, 210 (1993).