



Public Policy Brief

State & Local Government Area of Expertise Team

Michigan Supreme Court Exempts Siting of County Buildings from Township Zoning

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In a recent ruling with implications beyond county and township land use relations, the Michigan Supreme Court determined that county boards of commissioners are not subject to the Township Zoning Act (TZA) when determining the site of, or prescribing the time and manner of erecting county buildings.¹

Washtenaw County owns property in Pittsfield Charter Township that the township's zoning ordinance has designated as I-1 (limited industrial). Through a financial partnership with the City of Ann Arbor, the county proposed construction of a new county-owned homeless shelter on the county parcel. A homeless shelter is a use neither permitted as-of-right nor through special use permit in Pittsfield's I-1 District. The township brought suit claiming that the proposal violated the township's ordinance and that county must comply with township zoning when siting county buildings. Washtenaw County filed for summary disposition asserting that, as a matter of law, MCL 46.11² gives the county board exclusive authority over the location of county buildings, thereby exempting county buildings from township zoning ordinances. The Michigan Court of Appeals ruled in favor of Pittsfield Township and Washtenaw County appealed.

In arguing that county buildings should be subject township zoning, Pittsfield Township relied, in part, on the Supreme Court's 1999 opinion in *Burt Township v. Michigan DNR*. In *Burt*, the Court determined that since two specific exemptions to township zoning are set forth in the TZA (oil and gas wells and licensed residential facilities) the absence of such an exemption for DNR activities "provides

additional assurance that there was no legislative intent to exempt the DNR...." The Court of Appeals read *Burt* to mean that an explicit statement of exclusion must be found in statute to exempt an entity or particular land use from zoning. Pittsfield Township contended that since no such explicit statements are found in the TZA, the Court of Appeal's reasoning was correct.

In reversing the Court of Appeals, the Supreme Court emphasized that there are no "talismanic words" that convey the Legislature's intent to create immunity from local zoning. "Rather, the Legislature need only use terms that convey its clear intention that the grant of jurisdiction given is, in fact, exclusive." In refuting the township's argument, the Court concluded that MCL 46.11 also contains an expression of the intent of the Legislature by granting the county board power to "determine the site...of county buildings." Rather than view MCL 46.11 and the TZA directly contradictory, the Court concluded that the lack of focus on (or mention of) county buildings in the TZA, and the specific mention of them in MCL 46.11, was an expression of legislative intent that priority should be given to the county in siting its buildings. The Court further claimed that because MCL 46.11 was amended in 1998, subsequent to any amendments to the relevant provisions of the TZA, that it represents the last clear expression of legislative intent.

While this case represents a victory for Washtenaw County and other counties in similar situations, it does keep the zoning primacy issue in a gray area. Rather

than look for “explicit statements of exclusion” as suggested by the Court of Appeals, counties, cities, townships, state agencies and other governmental units³ will continue to search “legislative intent” for clues on zoning preemption questions; which statute is more specific, which is more recent, which expresses specific exemption, which evidences “clear intent” are all relevant to the question. The only guidance for county commissioners and county counsel is to read your statutes carefully and brush up on your rules of statutory construction. For the 26 or so counties that exercise county zoning questions of zoning primacy with cities, villages, townships, state agencies and other governmental units will continue to arise.

¹ *Pittsfield Charter Township v. Washtenaw County*, No. 19590 (MI Supreme Court, July 9, 2003).

² MCL 46.11 provides in part that a county board of commissioners shall:

(b) Determine the site of, remove, or designate a new site for a county building. The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat....

(d) Erect the necessary buildings for jails, clerks’ offices, and other county buildings, and prescribe the time and manner of erecting them....

³ In *Schulz v. Northville Public Schools* the Court of Appeals ruled that the Revised School Code gives the Superintendent of Public Instruction exclusive jurisdiction over the siting and site planning for public school buildings, creating another exception to township zoning. At the time this article is being written *Schulz* is still pending before the Supreme Court. The language in the Revised School Code is sufficiently different from MCL 46.11 that the *Pittsfield* case probably gives us no insight into the likely outcome of *Schulz*.

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