

STATE OF MICHIGAN
COURT OF APPEALS

JOE HERMAN, SUE HERMAN, JAY JOLLAY,
SARAH JOLLAY, JERRY JOLLAY, NEAL
KREITNER, TONY PETERSON, LIZ
PETERSON, RANDY BJORGE, ANNETTE
BJORGE, and TINA BUCK,

Plaintiffs-Appellants,

v

COUNTY OF BERRIEN,

Defendant-Appellee.

FOR PUBLICATION
April 26, 2007
9:00 a.m.

No. 273021
Berrien Circuit Court
LC No. 2005-003247-CZ

Official Reported Version

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

MURRAY, J.

I. Introduction

The Berrien County Board of Commissioners chose a site to locate a new law enforcement training facility. The facility includes an administrative building, and, located behind the building, there will be four shooting ranges. Plaintiffs, all neighboring residents, challenged the county's ability to operate the shooting ranges that presumably are in violation of several township ordinances. The trial court held that the building and the shooting ranges were exempt from township ordinances. Plaintiffs now challenge these rulings. We affirm.

II. Facts and Procedural History

The facts in this case are neither detailed nor in dispute. Defendant Berrien County owned a parcel of real estate within Coloma Charter Township, which itself is located within the county. This parcel was chosen by the county for development of a law enforcement training facility, which would include facilities for both indoor and outdoor firearms training and activities, along with associated buildings, structures, and parking.

As noted, plaintiffs alleged that certain parts of this facility violated township zoning and antinoise ordinances. In particular, plaintiffs argued that the outdoor shooting ranges—and really anything other than the one building located on the site—had to comply with the township

ordinances. The county, on the other hand, contended that it did not have to comply with the ordinances because of its power to choose the site under MCL 46.11(b) and (d). On cross-motions for summary disposition, the trial court granted defendant's motion and dismissed plaintiffs' case.¹

III. Analysis

In *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 710-711; 664 NW2d 193 (2003), the Supreme Court held that a county was exempt from township zoning ordinances when it came to siting county buildings. The Supreme Court's decision was based on the more recent and direct language found within MCL 46.11(b) and (d), in comparison with the more outdated and general language within now-repealed MCL 125.271(1). Both parties agree that the siting and erecting of county buildings are exempt from township zoning and antinoise ordinances. In other words, the parties agree that the county can properly site the building at issue without regard to the approved uses for the site contained within the township zoning ordinances. The question that they disagree over is whether other physical improvements located on the property where the county building is sited are also immune from the requirements of the township zoning and antinoise ordinances. The statutory law relied on by the county, and that was at issue in *Pittsfield Twp*, is MCL 46.11, which provides:

A county board of commissioners, at a lawfully held meeting, may do 1 or more of the following:

(a) Purchase or lease for a term not to exceed 20 years, real estate necessary for the site of a courthouse, jail, clerk's office, or other county building in that county.

(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.

As the *Pittsfield Twp* Court recognized, MCL 46.11(b) and (d) are a policy determination by the Legislature that when it comes to "siting" county buildings, counties do not have to comply with any township ordinances. Rather, the county has sole discretion on where to locate its buildings, without regard to local use regulation. Therefore, when a county sites a county building or

¹ The final dismissal actually occurred after the second set of cross-motions for summary disposition, but the trial court's ultimate ruling and rationale remained the same.

buildings on a particular parcel, the *uses* of the site where the building will be erected can be in total contravention to what is required by any township ordinance. *Pittsfield Twp, supra* at 711.

As generally noted above, MCL 46.11(b) and (d) grant a county board of commissioners the power to "[d]etermine the site of . . . or designate a new site for a county building," as well as to "[e]rect the necessary buildings for jails, clerks' offices, and other county buildings, and prescribe the time and manner of erecting them." In *Pittsfield Twp*, the Court concluded that the power to site county buildings is, except for one inapplicable exception, unlimited. *Pittsfield Twp, supra* at 711. In part because it is an essentially unlimited grant of power, the *Pittsfield Twp* Court held that MCL 46.11(b) and (d) give counties the ability to site county buildings without regard to compliance with township zoning ordinances. In doing so, the Court also recognized that if the statute were not so interpreted, MCL 46.11(b) and (d) would have granted counties nothing—because they would still have to comply with the zoning ordinances. *Pittsfield Twp, supra* at 714.

Of course, the question in this case is not whether a county building must comply with the township's zoning ordinances; no one disputes that the township's ordinances do not apply to this county building. There is also no dispute that the firearms training facility is within the power of a county to operate. The question is whether the county must comply with the township's ordinances when placing ancillary improvements on the site chosen for the county building.

Here, the specific power exercised by the county commission was to "designate a new site for a county building." MCL 46.11(b). "Site" is not defined in the statute, so resorting to a dictionary is necessary to determine the ordinary meaning of the word. *Northville Charter Twp v Northville Pub Schools*, 469 Mich 285, 292; 666 NW2d 213 (2003) (opinion by TAYLOR, J.). In *Northville Twp* the Supreme Court looked to the dictionary to define "site" when determining the meaning of "site plan" under the Revised School Code:²

This leaves to be determined the definition of "site plan." The dictionary defines "site" as "The place where something was, is, or is to be located," *The American Heritage Dictionary of the English Language* (1982), or similarly, "[T]he area or exact plot of ground on which anything is, has been, or is to be located" *Random House Webster's College Dictionary* (1997). [*Id.*]

Using these same definitions, it is clear that when designating a new "site" for county buildings, the "site" includes the entire area of ground on which the building is to be located. In other words, it is the "site" or, in real terms, the entire parcel where the buildings will be located, that is not subject to local regulation. Hence, the uses on the site of the building are not subject to the township's ordinances. *Pittsfield Twp, supra* at 711.

²The *Northville Twp* case also involved a township zoning immunity issue, i.e., whether statutory language giving "site plan" approval to the state Superintendent of Public Instruction exempted the school district's site plans from township zoning requirements. *Northville Twp, supra* at 288.

There is more to the siting and erection of a building than simply putting the building on the property. As can be seen in this case, at a minimum parking lots, sidewalks, lighting, and landscaping would be developed within the area adjacent to the county building placed on this new site. Often there may also be physical improvements to the property that are outside the physical structure of the building but are related to the building's purpose. All such improvements are on the site chosen by the county for the building and, consequently, are immune from the township ordinances. MCL 46.11(b) and (d). Hence, the shooting ranges located on the site are not subject to the township's zoning ordinances because they are located on the property chosen as the site for a county building.³ Because the statute contains no restrictions or limitations in this regard, *Pittsfield Twp, supra* at 711, we hold that the township's ordinances (including antinoise ordinances) do not apply to the county's siting of the entire training facility.

Finally, there is nothing within the township zoning statute, former MCL 125.271(1), that applies more specifically to the physical improvements on the property than does MCL 46.11(b) and (d). *Pittsfield Twp, supra* at 714-715. Thus, contrary to plaintiffs' position, the statutes cannot be read to provide a legislative policy choice for townships to *have* the power to regulate any physical structures located on a site of a county building but to have *no* power to regulate the uses of the county building itself. And the parties have not cited any law regarding a local government's ability to regulate this type of shooting range.

The dissent agrees that the grant of power under MCL 46.11(b) and (d) extends to the siting and erection of buildings, but it proposes to restrict physical improvements or additional uses of the property to those that are "necessary or incidental to the normal and reasonable use of" a county building:

³ Although the dissent uses colorful language to warn property owners about the potential dangers that could result from the county's decision to place the training facility at this location, we believe the dissent's concern in this regard confuses politics with the law. It is not our role to decide whether the decision of the county board of commissioners in placing the facility at this location was a wise one; rather, we must decide the narrow legal issue of whether the physical improvements are subject to township ordinances. See *Tull v WTF, Inc*, 268 Mich App 24, 36 n 5; 706 NW2d 439 (2005), and *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 45; ___ NW2d ___ (2007). County commissioners are elected to decide county policy issues within the sphere of county power. MCL 45.555; MCL 45.556(a). If plaintiffs and a sufficient number of area residents are unhappy with the policy choices supporting the decision to place the facility at this location, the political process should provide an adequate remedy. See *Northville Twp, supra* at 297 n 5 (opinion by TAYLOR, J.). Again, what we decide today is only whether the building, or the entire site chosen for the building, is immune from township ordinances. Reasonable minds can certainly disagree with that difficult legal issue, but we will not join the dissent in discussing the potential implications—good or bad—from the *county's* decision to locate the building and facility at this particular location. See *MGM Grand Detroit, LLC v Community Coalition for Empowerment, Inc*, 465 Mich 303, 309; 633 NW2d 357 (2001).

Therefore, the grant of authority to the counties in MCL 46.11 permits counties to erect buildings within a township without regard for the township's zoning ordinances *and* to carry on whatever additional use or development of the property would be necessary or incidental to the normal and reasonable use of that building, again without regard for those ordinances. However, any use or development of the property beyond what is necessary or incidental to the normal and reasonable use *of the building itself* must comply with the township's zoning ordinances. [*Post* at ____ (emphasis in original).]

In our view, the proposed test set forth by the dissent—which, on its face, appears reasonable and practical—establishes limitations that are not contained in the statute. Nor is any such test needed. Instead, as we have concluded, language in the statute grants the county the authority to choose the site for county buildings, and the site entails the entire parcel, not just the area of land on which the building actually sits.

Affirmed.

O'CONNELL, P.J., concurred.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell