

STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiffs-Appellants,

v

COUNTY OF BERRIEN, a Michigan Company

Defendant-Appellee.

SUPREME COURT NO. 134097

Court of Appeals Docket No. 273021

Circuit Court Case No. 05-3247-CZ-M

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**BRIEF AMICUS CURIAE ON BEHALF OF
THE MICHIGAN TOWNSHIPS ASSOCIATION
AND MICHIGAN MUNICIPAL LEAGUE
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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STATEMENT OF QUESTIONS INVOLVED

1. Can a County Board of Commissioners determine the location of a 14 acre site for extensive outdoor firearms shooting ranges for use of its police and then construct such ranges contrary to the prohibition and/or required special use procedures of the local, duly-adopted and county approved municipal zoning ordinance?

Plaintiffs-Appellants answer “no”.

Defendant-Appellee answers “yes”.

Berrien County Circuit Court answered “yes”.

Michigan Court of Appeals, by 2-1, answered “yes”.

Amicus Curiae Michigan Townships Association
and Michigan Municipal League answer “no”.

2. Can the aforesaid extensive county outdoor firearms shooting ranges (if their use can legally be located contrary to local municipal zoning ordinances) be prohibited because of their failure to comply with the local municipality’s “anti-noise” police ordinances?

Plaintiffs-Appellants answer “no”.

Defendant-Appellee answers “yes”.

Berrien County Circuit Court answered “yes”.

Michigan Court of Appeals, by 2-1, answered “yes”.

Amicus Curiae Michigan Townships Association
and Michigan Municipal League answer “no”.

STATEMENT OF FACTS

Amicus Curiae MTA and MML hereby incorporates by reference paragraph II, "Facts and Material Proceedings", of Plaintiffs-Appellants' Brief on Appeal as amicus curiae's Statement of Facts.

The within amicus curiae brief is filed on behalf of both Michigan Townships Association (which was granted leave to file the same on February 21, 2008) and the Michigan Municipal League which subsequently requested the undersigned to include it as an additional amicus curiae in support of the Plaintiffs-Appellants.

LEGAL ARGUMENT I

A COUNTY BOARD OF COMMISSIONERS CANNOT LEGALLY DETERMINE THE LOCATION OF A 14 ACRE SITE FOR EXTENSIVE OUTDOOR FIREARMS SHOOTING RANGES FOR ITS POLICE AND CANNOT CONSTRUCT SUCH RANGES CONTRARY TO THE PROHIBITIONS AND/OR REQUIRED SPECIAL USE PROCEDURES OF THE LOCAL DULY ADOPTED AND COUNTY APPROVED MUNICIPAL ZONING ORDINANCES

A. The alleged basis of the Defendant-County’s claim of its authority to determine such a firing range site location is a statute pertaining to county boards of commissioner’s authority and the case of *Pittsfield Charter Township v Washtenaw County* concerning the location of a homeless shelter.

1. The statute relied upon is MCL 46.11 which provides in pertinent part as follows:

Sec. 11.

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

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

“(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. (Emphasis added.)

* * * * *

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

2. *Pittsfield Charter Township v Washtenaw County*, 468 Mich 702 (2003) involved Washtenaw County Board of Commissioners location of a homeless shelter on county owned land located in Pittsfield Charter Township contrary to the Township’s Zoning Ordinance which placed the site in an industrial zone that did not permit a homeless shelter. As is often said, difficult facts can sometimes encourage surprising decisions. With respect to the *Pittsfield* decision, we would also at this point make the following

distinctions from the case at bar. *Pittsfield* was strictly concerned with the location of a county building and not with outdoor activities involved in the case at bar and not identified at MCL 46.11 hereinbefore quoted.

In *Pittsfield*, the court emphasized at page 713, “The Doctrine of Last Enactment” under which the court gave priority to the county statute as being the last amended of the two. Effective July 1, 2006, the state legislature rewrote the county, city, township and village zoning law by adopting Public Act 110 of 2006 which should now be granted priority under “The Doctrine of Last Enactment”. In this connection, note should be made of Section 203 of the new zoning law (MCL 125.3203) which authorizes the Zoning Ordinance “to promote the public health, safety and general welfare, to encourage the use of lands in accordance with their character and adaptability...to ensure the uses of the land shall be situated in appropriate locations and relationships, ... to reduce hazards to life and property...with reasonable consideration to...the general and appropriate trend and character of land, building, and population development.”

The new zoning law further provides at Section 102(w) (MCL 125.3102),

“‘Zoning Jurisdiction’ refers to the area encompassed by the legal boundaries of a city or village or to the area encompassed by the legal boundaries of a county or township outside the limits of incorporated cities and villages. The zoning jurisdiction of a county does not include the area subject to township zoning by a township that has adopted a zoning ordinance under this act.” (Emphasis added.)

The foregoing provisions of 2006 PA 110 were paraphrased from the predecessor statutes at MCL 125.271 and 125.280 for townships and at MCL 125.581 for cities. Also, regarding cities, the predecessor County Zoning Act only authorized, in its enabling provision, county zoning outside of incorporated cities and villages. (MCL 125.201.)

As previously argued by Plaintiffs-Appellants in the within cause, the existing Zoning Enabling Act and its predecessor statutes pertinent to city and township authority are extremely broad and all encompassing with no exclusions therefrom of county lands or county outdoor activities such as firing ranges. A township or city zoning ordinance, as previously shown, is expressly given priority and control over any county zoning ordinance.

B. It is uncontested that the intent of the legislature is the standard to be employed in construing statutes and in the case at bar, in construing the authority of a county board of commissioners as compared with the authority of a township board or city council to “determine the site of...a county building” and an outdoor firing range.

The principles of statutory construction were described in *Koontz v Ameritech Services, Inc.*, 466 Mich 304 (2002) at pages 309 and 312 as follows:

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“Issues of statutory interpretation are questions of law that we review de novo.” (Citations omitted.)

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“When interpreting statutory language, our obligation is to ascertain the legislative intent that may reasonable be inferred from the words expressed in the statute. *Wickens v Oakwood Health Care System*, 465 Mich 53, 60; 631 NW2d 686 (2001). When the legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself, and judicial construction is not permitted. *Huggett v Department of Natural Resources*, 464 Mich 711, 717; 629 NW2d 915 (2001); *Donajkowski, supra*, at 248; 596 NW2d 574 [460 Mich 243]. Because the proper role of the judiciary is to interpret and not write the law, courts simply lack authority to venture beyond the unambiguous text of a statute.”

Similarly, the Court of Appeals in *Houghton Lake Area Tourism and Convention Bureau v Wood*, 255 Mich App 127 (2003), outlined the rules of statutory interpretation at pages 134 and 135 as follows:

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“When interpreting a statute, the Court’s goal must be to give effect to the Legislature’s intent...This Court may not impose its own policy choices when interpreting a statute....If the statute defines a term, that definition must control....This Court should give undefined words their plain and ordinary meaning....If the statute is unambiguous, this Court must not engage in judicial construction....This Court must presume the Legislature intended the meaning it expressed.”

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“This Court must not determine whether there is a ‘more proper way’ the Legislature should have chosen, but rather must determine what the Legislature actually intended....This Court must not consider the wisdom of the Legislature’s decisions regarding statutory provisions....Further, this Court should generally not speculate about the Legislature’s intent beyond the words actually used in the statute....Specifically, this Court should assume that an omission was intentional....However, judicial construction is appropriate when reasonable persons could interpret a statute differently....This Court must determine the reasonable construction that best effects the Legislature’s intent...” (Court of Appeals and Supreme Court supporting citations omitted.)

Applying the foregoing statutory interpretation principles to the authority of a county board of commissioners, under MCL 46.11 to “purchase or lease...the site of a courthouse, jail, clerk’s office, or other county building in that county; “determine the site of...a county building...subject to any requirement of law that the building be located at the county seat”; and “erect the necessary buildings...and prescribe the time and manner of erecting them”; these provisions in no manner express authority to determine the location of outdoor firing ranges contrary to local township or city zoning ordinances. But for the *Pittsfield* decision, cited *supra*, one would seriously question any legislative intent by the foregoing quoted language of MCL 46.11 to mean the county board could locate any outdoor activities anywhere in a city or township regardless of any contrary reasonable ordinances adopted by such city or township for the protection of the health, safety and general welfare of abutting residents and property owners. Certainly, the legislative intent could not be

construed to extend the building location authority to obnoxious, disturbing and even dangerous outdoor nuisance activities.

The foregoing is particularly obvious when consideration is given to the plenary nature of the Zoning Enabling Act and its predecessors applicable to cities and townships granting them the protection of their inhabitants and property owners against incompatible uses and activities; “to promote public health, safety and welfare”; and “which apply to land areas and activities”. (MCL 125.271, 125.281 and MCL 125.3201.)

It must also be recognized that the legislature, under the foregoing reasonable interpretation of MCL 46.11, has provided other relief for county board of commissioners by requiring townships to submit their zoning ordinance provisions to the county zoning commission, county planning commission or county coordinating zoning committee for their review and coordination prior to township adoption under MCL 125.3307 of the Zoning Enabling statute and under MCL 125.280 of the predecessor statute. In the case at bar, there is no evidence of any objections from any of such county authorities to the agricultural-residential zoning and the special use proceedings applicable to the subject 14 acre shooting range location or site. Cities, of course, are independent of the county and need not submit their zoning ordinances to the county for its review.

C. In construing legislative intent under MCL 46.11, consideration should also be given to legislative history which has provided counties with very limited authority compared to the authority the legislature has provided for townships and cities.

1. MCL 46.11(j) provides in pertinent part that a county board of commissioners may:

“By a majority vote of the members of the county board of commissioners elected and serving, pass ordinances that relate to county affairs and do not contravene the general laws of this state or interfere with the local affairs of a

township, city or village within the limits of the county, and pursuant to Section 10(b) provide suitable sanctions for the violation of those ordinances.” (Emphasis added.)

This subsection (j) further provides for a referendum by the electors of any ordinance adopted by the county. Township police ordinances are not subject to such a referendum and Home Rule City ordinances are only so subject if their elected charter so provides.

Under MCL 41.181, township police ordinances are authorized to regulate “public health, safety and general welfare of persons and property” which is generic authority not attributable to counties. Similarly, Home Rule cities, under MCL 117.3 must provide in their charters for protecting the “public peace and health and the safety of persons and property.” The Zoning Enabling Act and its predecessor statutes previously cited, are further evidence of the legislature’s intent to provide broad, all-encompassing authority in townships and cities to control development within their jurisdictions and which the legislature provides in MCL 125.280, MCL 125.3102, and MCL 125.201 (cited supra) are expressly superior to a county’s authority.

MCL 46.11(j) supports this inferior county authority where it prohibits county board action which “interferes with the local affairs of a township, city or village” or “contravene the general laws of this state”; e.g., the city-township “Zoning Enabling Act”.

2. The foregoing inferior status of a county as compared to a township or Home Rule City, is further supported by the following:

Attorney General Opinion No. 4741 of April 3, 1972, in interpreting MCL 46.11(j), held that a county had no authority to pass a countywide ordinance prohibiting the discharge of firearms and supported such decision with the following:

“It is established law that the governing body of a county has no inherent powers but may exercise only those powers expressly conferred by statute or inferentially derived therefrom. We can find no expressed or implied power in the county which

would support the adoption of an ordinance prohibiting the discharge of any firearms anywhere within the county.

“Townships may not do by indirection that which cannot be done directly, so as to defeat the state statute. The same holds true for counties.”

Applying the foregoing to the case at bar, a county board, in exercising its authority to purchase or lease a site for a county building and determining such site, should not be permitted to expand that authority and thereby defeat the statute which gives plenary zoning authority to townships and cities to determine the proper location of outdoor firing ranges for the protection of the health, safety and general welfare of their communities.

Attorney General Opinion No. 5617 of December 28, 1979, which, again in considering MCL 46.11(j), held a county could not adopt the Uniform Traffic Code under 1956 PA 62 since the legislature had specifically authorized cities, villages and townships to so proceed but had not included counties. The Attorney General supported his opinion by the following quote from the case of *Eikhoff v Detroit Charter Commission*, 176 Mich 535 (1913):

“It is a well-established rule of statutory construction that where powers are specifically conferred, they cannot be extended by inference, but that the inference is that it was intended that no other or greater power was given than that specified.”

Applying the foregoing to the case at bar, regulation of outdoor activities was specifically delegated by the legislature to townships and cities and cannot be inferred from the foregoing quoted authority granted to county boards in MCL 46.11.

Attorney General Opinion No. 7096 of December 26, 2001, held that a county board of commissioners had no authority to adopt a countywide noise control ordinance under MCL 46.11(j). The Attorney General supported its opinion based on previous attorney general opinions holding a county board could not adopt an air pollution control ordinance where cities, villages and townships already had that authority and such county ordinance

would be interfering with the authority of cities, villages and townships. Even if it might adopt such an ordinance pertaining to property owned by the county, it still would be “interfering with cities, villages and townships” in that connection.

Attorney General Opinion No. 7117 of September 11, 2002, held a county board lacked authority to adopt a countywide ordinance limiting the amount of well water that may be withdrawn from an underground aquifer. The Attorney General based its decision upon the following:

“Const. 1963, Art 7, 1, provides that: ‘Each organized county shall be a body corporate with powers and immunities provided by law.’ Const. 1963, Art 7, 8, provides that: ‘Boards of supervisors shall have legislative, administrative and such other powers and duties as provided by law.’ A county, however, has only those powers that have been granted to it by the constitution or by the legislature. *Alan v Wayne County*, 388 Mich 210, 245; 200 NW2d 628 (1972). A county possesses only those powers delegated to it. *Wright v Bartz*, 339 Mich 55, 60; 62 NW2d 458 (1954). A county board of commissioners has no inherent powers. *Mason County Civil Research Council v Mason County*, 343 Mich 313, 324; 72 NW2d 292 (1955).”

Applying the foregoing to the case at bar, neither the legislature nor the constitution has delegated authority to a county board to develop four outdoor firing ranges on 14 acres not locally zoned for such purpose and which would “interfere with the local affairs of a township, city or village within the limits of the county.”

Attorney General Opinion No. 7175 of June 13, 2005 held that neither county boards of commissioners nor county road commissions had authority to require “haul route permits be obtained before trucks carrying construction materials may be operated on county roads so long as the trucks are otherwise in compliance with the Michigan Vehicle Code.”

In rendering this decision, the Attorney General recognized MCL 224.21(2) which provides as follows:

“A county shall keep in reasonable repair, so that they are reasonably safe and convenient for public travel, all county roads, bridges, and culverts that are within

the county's jurisdiction, are under its care and control, and are open to public travel.”

Notwithstanding the foregoing provision, the Attorney General still denied the county authority to require haul route permits because “a review of the county road law reveals no expressed grant of authority for county road commissions to require truckers to obtain a haul route permit”.

With respect to the authority of county boards of commissioners, the Attorney General again referred to MCL 46.11(j) prohibiting the county board from taking any action that would “contravene the general laws of this state” and held MCL 46.11(j) and (m) “negate any legislative intent to confer on county boards of commissioners the power to require truckers who are in compliance with the code's requirements to obtain a haul route permit to operate on county roads”. The “code” refers to the Michigan Vehicle Code which does contain authority over size and weights of vehicles, among other regulations, but does not contain any authority to require haul route permits which are, accordingly, unauthorized.

The Court of Appeals in the case of *Craine v Gibson*, 73 Mich App 192 (1977), at p 200, emphasized the limited powers of the county board of commissioners as follows:

“Their (county) limited powers rather, are only those expressly conferred upon them by the constitution of the State of Michigan, by acts of the legislature, or necessarily implied therefrom.” *Alan v Wayne County*, 388 Mich 210, 200 NW2d 628 (1972). (Emphasis added.)

The point to be raised by the forgoing, is that the county and its board of commissioners are not the eight hundred pound gorilla with overriding power over cities and townships as might be imagined. It has minimal power in comparison with townships and cities with respect to regulations of health, safety and general welfare and cannot act in contravention of the general laws of the state or interfere with the local affairs of a township, city or village. The specific authority to determine the site of a county building,

to purchase or lease land for that purpose and to erect a building on that site does not include expressly or by implication the right to construct and operate an outdoor 14 acre complex shooting range in contravention of local township or city prohibitive zoning ordinances. Such extension of the county's limited authority is neither expressed, warranted or implied from the statutory language. Furthermore, the limitation to "site determination" in MCL 46.11(b) that such site determination "is subject to any requirement of law that the building be located at the county seat" is merely an avoidance of any conflict with Article 7, Section 5 of the 1963 Michigan Constitution which provides:

"The sheriff, county clerk, county treasurer and register of deeds shall hold their principal offices at the county seat."

The foregoing limiting language of the "siting statute" at MCL 46.11(b) is merely an effort of the legislature to coordinate the siting authority with this Michigan constitutional provision. This explanation of this limiting language is logical and reasonable and, we submit, contrary to the following reasoning of *Pittsfield Charter Township v Washtenaw County*, 468 Mich 702, 711 (2003), relied upon by Defendant County under the doctrine of *expressio unius est exclusio alterius* where it is stated by the Court:

"We believe this shows that the legislature, by expressly turning its attention to limits on the county siting power and deciding on only one limitation, must have considered the issue of limits and intended no other limitation."

Coordination and not exclusive limitation, we submit, was the legislature's goal in adding this "county seat" language.

D. The case of *Capital Region Airport Authority v Charter Township of Dewitt*, 236 Mich App 576 (1999), further supports a more strict and limited construction of statutory authority claimed to be superior to local zoning authority.

The issue in the case was whether or not the *Airport Authority* was immune from complying with the township's zoning ordinance which prohibited certain non-aeronautical uses in the area encompassed by the airport property. The *Airport Authority* in its claim of immunity from such zoning relied upon its authority specified in Section 7 of MCL 259.801 which provides:

“The authority shall be a public body corporate with powers to sue or be sued in any court of this state and have the power and duty of planning, promoting, extending, owning, maintaining, acquiring, purchasing, constructing, improving, enlarging and operating all publicly-owned airports and airport facilities herein established to be operated within the territorial jurisdiction of the authority.” (Page 589 of the citation).

The Court of Appeals held this was insufficient authority to indicate immunity from local zoning stating at pages 589 and 590,

“On the basis of this provision, we find no indication that the Legislature intended for the CRAA to exercise exclusive jurisdiction over the airport. This provision is comparable to the NREPA: Just as the NREPA's grant of authority to the DNR with respect to boating facilities did not relieve the DNR of its obligation to comply with local, land use regulations, Section 7's Grant of Authority to the CRAA with respect to airport facilities does not so relieve the CRAA.”

The NREPA and DNR, hereinbefore referred to, relates to the Supreme Court decision in *Burt Township v Dep't of Natural Resources*, 459 Mich 659, which affirmed the Court of Appeals' decision at 227 Mich App 252 requiring the DNR to comply with *Burt Township's* local zoning ordinance with respect to its proposed marina.

As applied to the case at bar, certainly the foregoing quoted statutory authority language applicable to the *Airport Authority* is broader and more encompassing than the authority to “determine the site of...a county building”, “purchase or lease...real estate

necessary for the site of...other county building”, and “erect the necessary buildings” applicable to Berrien County Authority.

The Court of Appeals further stated in the *Airport* case at 592 and 593:

“Although Section 105 authorizes the CRAA to lease airport property for non-aeronautical purposes, we find no statutory language evincing a legislative intent for the CRAA to have exclusive jurisdiction over these leases and developments. Section 105 merely authorizes the CRAA to engage in this activity, which is not sufficient to immunize the CRAA from local regulation. *Burt Twp., supra*, 459 Mich at 670, 593 NW2d 534. In *Burt Twp.*, the Supreme Court was ‘not persuaded that the legislature, in directing that the DNR engage in certain governmental functions, intended that the DNR be authorized to do so in any manner it chooses’, i.d. at 669-670, 593 NW2d 534. Analogously, we are not persuaded that the legislature intended for the CRAA to have authority to lease airport land in contravention of local zoning.”

The lesson of the foregoing *Airport* and *Burt Twp.* decisions, initiated by the Supreme Court, is that the legislature’s grant of power and jurisdiction to a governmental entity is insufficient to preempt the broad and all-encompassing zoning authority of a local municipality. Such preemption must be more specifically and clearly expressed to eliminate compliance with reasonable zoning regulations. As stated by the Supreme Court in *Burt Twp., supra*, at 669-670:

“The DNR places great emphasis on the mandatory nature of the duties expressed in the NREPA, as evidenced by the legislature’s repeated use of the term ‘shall’, as well as the fact that the DNR has given the ‘power and jurisdiction’ to manage and control lands under the public domain. However, we are not persuaded that the legislature, in directing that the DNR engage in certain governmental functions, intended that the DNR be authorized to do so in any manner it chooses. Accordingly, the DNR ‘power and jurisdiction’ to manage land within its control is not the same as granting it exclusive jurisdiction. Thus, the fact that the DNR is mandated to create recreational facilities on public land it manages and controls does not indicate a legislative intent that the DNR may do so in contravention of local zoning ordinances.”

LEGAL ARGUMENT II

THE OUTDOOR FIREARMS SHOOTING RANGE COMPLEX OF BERRIEN COUNTY (IF IT CAN BE LEGALLY LOCATED CONTRARY TO LOCAL MUNICIPAL ZONING ORDINANCES) IS STILL PROHIBITED FOR FAILURE TO COMPLY WITH THE LOCAL MUNICIPALITY'S "ANTI-NOISE" POLICE ORDINANCE.

- A. **Contrary to the limited authority of counties previously discussed, townships and cities have been granted, by the legislature, broad police ordinance authority for the protection of the health, safety and general welfare of their inhabitants and property owners.**

MCL 41.181 authorizes Township Boards to,

(1) ...adopt ordinances regulating the public health, safety, and general welfare of persons and property...and provide sanctions for the violation of the ordinances. The township shall enforce the ordinances and may employ and establish a police department with full power to enforce township ordinances and state laws...."

"(3) A township may adopt a provision of any state statute for which a maximum period of imprisonment is 93 days or the Michigan Vehicle Code..."

The Supreme Court in the case of *Square Lake Hills Condominium Ass'n v Bloomfield Township*, 437 Mich 310 (1991) eloquently described the effect and magnitude of this ordinance authority which would also be applicable to Home Rule Cities as follows under the designated pages.

Page 317.

" Under the separation of powers doctrine, township regulations enacted under the township ordinance act are not subject to judicial intervention absent abuse of discretion, excessive use of power or error of law....When asked to review a township ordinance, we will not substitute our judgment for that of a township official. Rather we heed the advice of Justice Talbot Smith in *Brae Burn, Inc. v Bloomfield Hills*, 350 Mich 425, 431; 86 NW2d 166 (1957):

'The people of the community, through their appropriate legislative body, and not the courts, govern its growth and life. Let us state the proposition as clearly as may be: It is not our function to approve the ordinance before us as to wisdom or desirability. For alleged abuses involving such factors the remedy is the ballot box, not the courts. We do not substitute our judgment for that of the legislative body charged with the duty and the responsibility in the premises.'

“As the majority in *Brae Burn* held, our function is to determine whether a township ordinance is within the range of conferred discretionary powers and then determine if it is reasonable.... The reasonableness of an ordinance, while a question of law, depends upon the particular facts of each case. *Id.* The test for determining whether an ordinance is reasonable requires us to assess the existence of a rational relationship between the exercise of police power and the public health, safety, morals or general welfare in a particular manner in a given case....” (Supporting citations omitted.)

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“Fn 13. We have held that the term police power, by its very nature, is incapable of precise definition in as much as it varies with the independent circumstances of each diverse community within the state....It does, however, lend itself to description.

‘The term ‘police power’ is said to be a power or organization of a system of regulations tending to the health, order, convenience and comfort of the people and to the prevention and punishment of injuries and offences to the public. It is the expression of an instinct of self-preservation and characteristic of every living creature, an inherent faculty and function of life, attributed to all self-governing bodies as indispensable to their healthy existence and to the public welfare. It embraces all rules and regulations for the protection of life and the security of property. 28 Cyc, p 692; 31 Cyc, p 902. It has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about ‘the greatest good of the greatest number.’ Courts have consistently and wisely declined to set any fixed limitations upon subjects calling for the exercise of this power. It is elastic and is exercised from time to time as varying social conditions demand correction....” (Supporting citations omitted.)

“Fn14. We caution reviewing courts to carefully exercise this power. When an ordinance purports to be, and is obviously enacted, in the interest of the public health, safety, and welfare, it is presumed valid.... It may be declared invalid only when it plainly appears that it does not tend, in any applicable degree, to promote those ends and the power to legislate has been exercised arbitrarily.” (Supporting citations omitted.)

Home Rule City ordinance authority stems from MCL 117.4(j) which authorizes city charters

to provide:

“(3) Municipal Powers. For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interest of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass

all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.”

Such power also stems from Article 7, § 22 of the 1963 Michigan Constitution which provides as follows:

“Under general laws, the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.” (Emphasis added.)

The Michigan Supreme Court in the case of *People v Sell*, 310 Mich 305 (1945) analyzed this Home Rule City authority and authorized police power as follows:

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“The purpose of these and other provisions which follow undoubtedly was to secure to cities and villages a greater degree of home rule than they formerly possessed. The provision for a general law for their incorporation was intended to confer upon them almost exclusive rights in the conduct of their affairs, not in conflict with the constitution or general laws applicable thereto.”

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“Except as limited by the Constitution or by statute, the police power of Detroit as a home rule city is of the same general scope and nature as that of the State. Therefore, authorities relating to the police power of the State are equally applicable in relation to the police power of the city. In *People v. Brazee*, 183 Mich. 259, page 262, 149 N.W. 1053, 1054, L.R.A. 1916E, 1146, we defined police power as follows:

‘The ‘police power’ is said to be a power or organization of a system of regulations tending to the health, order, convenience, and comfort of the people and to the prevention and punishment of injuries and offenses to the public. It is the expression of an instinct of self-preservation and characteristic of every living creature, an inherent faculty and function of life, attributed to all self-governing bodies as indispensable to their healthy existence and to the public welfare. It embraces all rules and regulations for the protection of life and the security of property. 28 Cyc. 692; 31 Cyc, p 902. It has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about ‘the greatest good of the greatest number.’ Courts have consistently and wisely declined to set any fixed limitations upon subject

calling for the exercise of this power. It is elastic and is exercised from time to time as varying social conditions demand correction.'

"In 3 McQuillin, The Law of Municipal Corporations (2d Ed., 1943 Rev.), § 942, it is stated in part (pp. 86, 88):

'Safeguarding the general or public welfare in its most comprehensive sense, then, it may be said, is at present judicially sanctioned as a basis justifying impositions of restriction or prohibition on individual action and the use of property, in the interest of the community.... It is now no longer questioned that the State may interfere directly or indirectly by any of its agencies, including, of course, the municipal corporation, 'whenever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.' Accordingly, the police power is sufficiently comprehensive to embrace new subjects as exigencies arise and changing conditions require.'

'The public welfare in its broadest sense has been adopted as the basis of construction.'"

In the case at bar, Coloma Township (which incidentally opposes the outdoor firing range complex) adopted an anti-noise ordinance prohibiting decibel noise levels exceeding 65 dbs between the hours of 7 a.m. and 10 p.m. and exceeding 55 dbs at all other times. (Paragraph 35 of Plaintiff's amended complaint and Exhibit C attached thereto.)

The DLZ's feasibility study, attached as Exhibit A to the Plaintiff's Complaint, disclosed the noise from the firing ranges to exceed these limited decibel readings and impacted 20 parcels, 10 houses and 16 owners. The foregoing decibel readings were apparently not disputed by the Defendant County which also agreed that approximately 221,800 rounds of ammunition would be fired annually as a minimum and that some 25% of the training would be conducted after dark.

Again, the authority to determine the site of a county building and construct that building cannot, under the previous cited case law, be expanded to include the operation of an outdoor firing range complex in violation and disregard of a reasonable anti-noise police ordinance designed and adopted to protect the peace, quiet and repose of the

affected residential community. The noise ordinance serves a legitimate governmental purpose and is neither arbitrary nor unreasonable. It is well within municipal ordinance authority and is in no manner preempted by any statutory provisions or authority allegedly delegated to counties.

CONCLUSION

On the basis of the foregoing amicus curiae Michigan Townships Association and Michigan Municipal League submit the Berrien County circuit court and the split majority decision of the Michigan Court of Appeals erroneously construed the authorizing language of MCL 46.11 to “determine the site of...a county building” constituted exclusive and preemptive authority over reasonable township, city and village plenary zoning authority prohibiting the establishment and operation of a 14 acre outdoor firing range complex, which firing range accordingly must be declared a zoning violation and enjoined.

Amicus Curiae further submit the anti-noise police power granted to a local municipality and exercised by a reasonable ordinance to protect the health, safety and general welfare of surrounding inhabitants, admittedly violated by the firing range, supersedes any limited county authority and, accordingly, such firing range must be declared a police ordinance violation and accordingly enjoined.

Respectfully submitted.

Dated: February 7, 2008

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