

[Cite as *Bd. of Twp. Trustees of Deerfield Twp., Ohio v. Mason*,
2002-Ohio-374.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

BOARD OF TOWNSHIP TRUSTEES OF	:	
DEERFIELD TOWNSHIP, OHIO,	:	
	:	
Plaintiff-Appellant,	:	CASE NO. CA2001-07-069
	:	
and	:	<u>JUDGMENT ENTRY</u>
	:	(Accelerated Calendar)
	:	2/4/2002
	:	
RONALD D. WILLARD, et al.,	:	
	:	
Intervenors,	:	
	:	
- vs -	:	
	:	
CITY OF MASON,	:	
	:	
Defendant-Appellee.	:	

This cause is an accelerated appeal of a decision of the Warren County Court of Common Pleas, which denied the request of plaintiff-appellant, Deerfield Township, for a permanent injunction enjoining the defendant-appellee, city of Mason, from constructing a water tower in Deerfield Township.

The city of Mason purchased the parcel of property at 6981 Mason Road, in Deerfield Township, intending to build a water tower on the property. The property is zoned for residential, single family use. The construction of the water tower on the

property is a conditional use under Deerfield Township's zoning resolution. Deerfield Township, a home rule township, sought to enjoin Mason from constructing the water tower.

The trial court denied Deerfield Township's request for a permanent injunction. Deerfield Township appeals, arguing that the water tower is not a public utility pursuant to R.C. 519.211 and that, as a home rule township, its zoning regulations supersede the provisions of R.C. 519.211, a special law.

The assignment of error is overruled. The Mason water tower is part of the city's public water system. Even if providing a public service only to Mason residents, the water system, including the water tower, is a public utility. See, e.g., Hemphill v. Marysville (Mar. 21, 2000), Union App. No. 14-99-48, unreported. Any attempt by Deerfield Township to regulate a public utility through zoning is in conflict with R.C. 519.211. R.C. 519.211 is a general law which prohibits townships from regulating "the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility." R.C. 519.211; see, e.g., Clermont Env'tl. Reclamation Co. v. Wiederhold (1982), 2 Ohio St.3d 44; State ex rel. Taylor v. Whitehead (1982), 70 Ohio St.2d 37. Although home rule townships enjoy certain rights and powers under R.C. Chapter 504, they may not enact zoning regulations that conflict with general laws. Wiederhold at 49.

Judgment affirmed.

Pursuant to App.R. 11.1(E), this entry shall not be relied upon as authority and will not be published in any form. A certified copy of this judgment entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

Anthony Valen, Presiding Judge

James E. Walsh, Judge

Stephen W. Powell, Judge