

Local government regulation of natural resource extraction

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Determining whether "very serious consequences" will result.

In recent years, court cases and legislation has gone back and forth on issues of local control vs. private property rights with respect to mining of natural resources. Today, the pendulum has swung in the direction of property rights, with the burden on the local government to show 'very serious consequences' would result.

On July 20, 2011, Gov. Rick Snyder signed House Bill 4746 into law, thereby amending the [Michigan Zoning Enabling Act](#) (PA 110 of 2006; being MCL 125.3101 *et seq.*) to limit zoning authority over extraction (mining) of natural resources (aggregates) from property unless "very serious consequences" would occur. The bill essentially reversed the Michigan Supreme Court ruling in *Kyser v. Kasson Township* (488 Mich. 860; 2010 [278 Mich. App. 743; 2008]; also see page 2 of [Selected Planning and Zoning Decisions: 2011](#)) by adding subsections (3) through (7) to section 205 of the Michigan Zoning Enabling Act, which include the "very serious consequences" standard or rule.

Under the new laws, local units of government can regulate but seldom prohibit the extraction of natural resources. Local governments can reasonably regulate (MCL 125.3205(6)) hours of operation, blasting hours, noise levels, dust-control measures and traffic. However, such regulations must be "reasonable" in accommodating customary mining operations. Also, local governments cannot regulate anything pre-empted by Part 632 – [Nonferrous Metallic Mining Regulations](#) of the Natural Resources and Environmental Protection Act (MCL 324.63201 *et seq.*).

Further, if the costs imposed on the public by proposed extraction activities are sufficient to outweigh the benefits of extraction the local government can deny the application for resource extraction on the grounds that "very serious consequences" would result. The standards that may be applied (as applicable) when determining whether "very serious consequences" would result from a particular extraction activity include (MCL 125.3205(5)):

- The relationship of extraction and associated activities with existing land uses
- The impact on existing land uses in the vicinity of the property
- The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence
- The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property
- The impact on other identifiable health, safety and welfare interests in the local unit of government
- The overall public interest in the extraction of the specific natural resources on the property

The above “very serious consequences test” (originating from *Silva v. Ada Township* [416 Mich. 153; 1982]) must be applied with a cost-benefit analysis using a sliding scale. The “benefit” is based on the demand for the specific resource and the “cost” is based on public (government) expenses resulting from the extraction (*American Aggregates Corp v. Highland Township* [151 Mich. App. 37; 1986]).

In other words, if public interest in the landowner's resource is relatively low, the landowner must make a very strong showing that no “very serious consequences” will result from the extraction of the resource. One cautionary note – many details related to the application of the no “very serious consequences” rule are unknown at this time and will likely be forthcoming through litigation and case law.

It is important for local governments to recognize that sand and gravel is used extensively in construction and Michigan courts have often recognized the value of this natural resource. What’s more, the courts have written that the proper focus in determining whether a natural resource is valuable is on whether the landowner (or mineral owner), by extracting the resource, can raise revenues and reasonably hope to operate at a personal profit.

Local government regulation of resource extraction can be a tricky proposition. Local governments are encouraged to work closely with their municipal attorneys when considering related amendments to their zoning ordinance or processing a mineral extraction application from a landowner.

Natural resource extraction is not the only aspect of local land use regulation for which the state has set boundaries or outright pre-empted local control. For a summary of state and federal preemptions of local land use regulations see the [Michigan State University Extension Land Use Series Restrictions on Zoning Authority](#).

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