



## New Test To Gauge Validity of Zoning Ordinance or Decision Relating To Mineral Extraction - "No Very Serious Consequences" Test Is Eliminated In Place of "Reasonable" Test

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For decades, Michigan courts have held that a zoning ordinance that prevents extraction of natural resources is invalid unless "very serious consequences" would result from the proposed extraction. Premised on the public's interest in accessing natural resources, the "no very serious consequences" rule has long been an exception to the usual "reasonableness" standard that courts otherwise use to evaluate if a zoning ordinance or zoning decision is valid.

Recently, however, the Michigan Supreme Court eliminated the "no very serious consequences" rule in mineral extraction cases. *Kyser v Kasson Tp*, 486 Mich 514; 786 NW2d 543 (2010). In *Kyser*, Kasson Township established a gravel mining district in accordance with the Michigan Zoning Enabling Act. The plaintiff owned property with a large deposit of valuable outwash gravel, but the property was located outside of the gravel mining district. The plaintiff sought rezoning to allow gravel mining on her property, but the township denied her request. The plaintiff sued, claiming the township's ordinance was invalid. The trial court applied the "no very serious consequences" rule and found in favor of the property owner. The Court of Appeals affirmed.

The Supreme Court reversed. It held that the "no very serious consequences" rule is not constitutionally required and was an invalid rule itself. The Court found as follows:

- the "no very serious consequences" rule improperly elevated mineral extraction to a specially protected land use. Mineral extraction zoning decisions should be treated as other land uses – the "reasonableness" standard should apply.

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- the "no very serious consequences" rule violated the separation of powers principles in the Michigan Constitution. The rule effectively established a statewide policy that preferred mineral extraction over other public policies. The Court emphasized that it is the role of local governments – not courts – to regulate land use.
- the ZEA superseded the "no very serious consequences" rule since the ZEA prohibits exclusionary zoning. So long as a regulation does not constitute exclusionary zoning, a municipality may regulate land uses, including mineral extraction.

As a result of *Kyser*, zoning regulations and zoning decisions relating to mineral extraction are now subject to a "reasonableness" standard. This case gives municipalities broader authority to regulate mineral extraction, including gravel mining, which may better equip them to engage in long-term land use planning.