



Michigan Legislature Reinstates "Very Serious Consequences" Rule for Mining Operations

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As Foster Swift reported in its January 2011 *Municipal Law News*, the Michigan Supreme Court recently eliminated the "very serious consequences" rule for mineral extraction cases in *Kyser v Kasson Township*, 486 Mich 514; 786 NW2d 543 (2010). Under the "very serious consequences rule," zoning ordinances or decisions that prevented extraction of natural resources were invalid if no very serious consequences would result from the proposed extraction. *Kyser* held that the "very serious consequences" rule was unconstitutional and replaced it with a "reasonableness" standard – which is the standard that courts apply to gauge all other challenges to zoning ordinances and decisions.

Now, the Michigan Legislature has legislatively overruled *Kyser* and reinstated the "very serious consequences" rule. Governor Snyder signed the new law (Public Act 113 of 2011) on July 20, 2011. The new law highlights the following:

- An ordinance may not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources.
- The burden is on the property owner to show the municipality erred. Specifically, a person who challenges a zoning ordinance or decision as violating the above rule must show three things: (1) that there are valuable natural resources on the property, (2) that there is a need for the natural resources by the person or in the market served by the person, and (3) that no very serious consequences would result from the extraction, by mining, of the natural resources.

The new law does attempt to give some guidance as to when "very serious consequences" would result from the extraction. The new law says that these specific six factors are relevant:

1. The relationship of extraction and associated activities with existing land uses.

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2. The impact on existing land uses in the vicinity of the property.
3. The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.
4. The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.
5. The impact on other identifiable health, safety, and welfare interests in the local unit of government.
6. The overall public interest in the extraction of the specific natural resources on the property.

Municipalities should keep these factors in mind when enacting zoning regulations or making zoning decisions on extractions.

On the positive side, the new law confirms a municipality's right to regulate hours of operation, blasting hours, noise levels, dust control measures, and traffic in connection with mining operations – as long as the municipality's regulations are not preempted by other laws and as long as the regulations are "reasonable in accommodating customary mining operations."

This new law effectively takes municipalities back to the days before *Kyser*, which limits municipalities' regulatory authority. If you have questions about how Act 113 affects your municipality and its zoning decisions, please feel free to contact Foster Swift's municipal attorneys.