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House Bill 4746 (Substitute H-3 as passed by the House)
Sponsor: Representative Matt Huuki
House Committee: Natural Resources, Tourism, and Outdoor Recreation
Senate Committee: Natural Resources, Environment and Great Lakes

Date Completed: 6-22-11

CONTENT

The bill would amend the Michigan Zoning Enabling Act to prohibit a zoning ordinance from preventing the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction. The bill refers to this prohibition as set forth in Silva v Ada Township, 416 Mich 153, 330, NW2d 663 (1982).

MCL 125.3205

Legislative Analyst: Julie Cassidy

BACKGROUND

In 1977, A. Clare and Karen J. Silva, property owners in Ada Township, applied for the rezoning of their land, which was zoned for agricultural use at the time, to allow the mining of gravel. After the township board denied the request twice, the Silvas filed a complaint in the Kent County Circuit Court alleging that the township's zoning ordinance was unconstitutional on the following grounds:

- No reasonable government interest was being advanced by the application denial.
- The plaintiffs were being arbitrarily and capriciously denied a legitimate use of the premises.
- The township's action amounted to a taking without just compensation, a denial of equal protection, and a violation of due process.

The court entered judgment in favor of Ada Township, and the Silvas appealed to the Michigan Court of Appeals.

According to the Court of Appeals, case law had established standards for evaluating the constitutionality of municipal zoning ordinances. In order to challenge an ordinance successfully, a plaintiff must provide that there is no reasonable governmental interest being advanced by the present zoning classification itself; and that an ordinance is unreasonable because of the purely arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question.

The plaintiffs argued that these standards did not apply to cases involving the extraction of natural resources, and that different standards should be used; however, the Court of Appeals disagreed. Using these standards, the Court found that "...significant health, safety and welfare interests were being protected by the ordinance and the township's refusal to allow the gravel extraction. Rather than being characterized as arbitrary and capricious,

defendant's action was based on a number of considerations which included the projected increase in noise, dust and traffic and other concerns such as water drainage, security and aesthetics."

The Court also determined that the record did not indicate any policy of discrimination against the excluded use; and that the township's action did not constitute a taking merely because the property's value for gravel use was higher than its value for residential use.

The Court of Appeals affirmed the decision of the Circuit Court on August 27, 1980. In December, 1982, however, the Michigan Supreme Court reversed the decision and remanded the case to the Court of Appeals for further consideration.

According to the Supreme Court, zoning regulations preventing the extraction of natural resources should be subject to a higher standard of reasonableness than regulations on other types of land use due to the important public interest associated with natural resources extraction. The Supreme Court stated, "Natural resources can only be extracted from the place where they are located and found. Preventing the mining of natural resources located at a particular site prevents all use of those natural resources." The Court also pointed out that the prevention of natural resource extraction can make that resource more expensive, harming the public in addition to the property owner.

The Court reasoned, "In most cases, where natural resources are found the land will be suited for some other use and can reasonably be devoted to that use. Unless a higher standard is required, natural resources could be extracted only with the consent of local authorities or in the rare case where the land cannot be reasonably used in some other manner." According to the Supreme Court, the lower courts should have applied a rule from a previous case stating that the right to secure certain natural resources from one's property should not be destroyed or withheld through zoning ordinances unless very serious consequences would result.

In a July 2010 opinion, however, the Michigan Supreme Court reconsidered the rule established in *Silva*. In *Kyser v Kasson Township* (486 Mich 514), the Court held that the "no very serious consequences" rule is not required by the Constitution's Due Process Clause and violates the Constitution's separation of powers. The Court found that, by the enactment of the exclusionary zoning provisions of the Zoning Enabling Act, the Legislature had superseded the rule. The Court stated, "The constitution only requires that a zoning ordinance be reasonable, regardless of whether the ordinance does or does not regulate the extraction of natural resources."

In September 2010, the Court denied a motion for a rehearing.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.