

community watch

MONITORING LEGAL ISSUES THAT AFFECT MICHIGAN MUNICIPALITIES

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Zoning Ordinance Withstands Constitutional and Statutory Challenges

By Kristin Bricker Kolb

In *Houdek v Centerville Township*, the Plaintiffs challenged a Centerville Township Zoning Ordinance, claiming it was exclusionary and also violated their constitutional rights.

Plaintiffs provide septic pumping services. Plaintiffs purchased agriculturally-zoned property in Defendant Township for land application of septage and for construction of a septage holding tank. In 2001, the Township amended its Zoning Ordinance in a manner that prohibited Plaintiffs' proposed use if an existing public wastewater or septage treatment facility in a neighboring county had the capacity to and would accept septage waste. The Township subsequently adopted a resolution that allowed septage waste from within the Township to be transferred to a nearby wastewater treatment plant.

In 2002, Plaintiffs received the necessary MDEQ permits for their Property, but because of the Township's ordinance and resolution, Plaintiffs could not use their Property for this purpose. They were also denied permits by the Township to install a septage storage tank, as such use was not permitted in the agricultural zoning district.

The Plaintiffs filed suit against the Township alleging five counts: exclusionary zoning of land application sites, exclusionary zoning of septage storage tanks, and substantive due process, due process, and equal protection violations. The trial court granted summary disposition in favor of the Township on all counts and dismissed the complaint.

The Michigan Court of Appeals upheld the dismissal of the complaint. As to Plaintiffs' claim of exclusionary zoning of land application of septage, the Court found that there were at least two sites in the Township approved for land application of septage, including one owned by Plaintiffs. On this basis, the Court concluded that the ordinance did not result in a total prohibition and, therefore was not exclusionary.

SECRET WARDLE NOTES:

The Court of Appeals left undisturbed the traditional tests for exclusionary zoning, and reiterated that private pecuniary interests are not sufficient to establish a "demonstrated public need" for a particular use of property particularly in this situation, where there were existing uses of a similar nature in the community and existing zoning districts where the use was specifically permitted.

Additionally, the Court found that Plaintiffs failed to establish that the ordinance and decisions of the Township lacked a reasonable basis or were arbitrary.

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With respect to Plaintiffs' claim of exclusionary zoning as to the siting of septage storage structures, the Court found that the ordinance did not result in a total prohibition in the Township because septage storage structures were permitted in the **business** zoning district. Furthermore, the Township had an available alternative for treating wastewater, which met the needs of the Township. Therefore, there was no demonstrated public need for the use in the Township. Plaintiffs argued in response that the distance to the wastewater treatment plant and the increased costs of pumping met the test for a demonstrated public need. The Court of Appeals declared that such "self-serving needs" as higher costs and increased travel do not demonstrate a public need.

Plaintiffs also claimed a substantive due process violation, alleging that the ordinance is "unreasonable...given the clear demonstrated need for the land disposal sites within and surrounding the Township; [and] the inherent difficulties in hauling all of the waste to an entirely different county..." The Court upheld the dismissal of this claim as well, concluding that Plaintiffs were unable to show that the ordinance was based "solely on reasons totally unrelated to the pursuit of the State's goals."

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