# Michigan Has a Deep-Rooted Public Policy of Strong Local Control… If We Can Keep It

By Gerald A. Fisher

For more than a century, the predominant public policy in Michigan has embodied the principle that local governments—those closest to the people—must have broad authority to shape matters of local concern. McQuillin's *Law of Municipal Corporations*, one of the most frequently cited national treatises on local government law, put it this way: "[L]ocal self-government has come to be regarded as the most important feature in our system. The American people have always acted upon the deep-seated conviction that local matters can be better regulated by the people of the locality than by the state or central authority…"[1]

The public policy of local control has been prescribed in the state constitution for more than 100 years. It was well-represented in the 1908 constitution, and the current 1963 state constitution expanded that policy, expressing great faith and optimism in local control. Yet challenges to Michigan's deep-rooted policy of local control have surfaced, with little public dialogue on why we would not benefit by retaining the longstanding principle that "local matters can be better regulated by the people of the locality than by the state or central authority."[2]

## The Michigan Constitution prescribes a policy of strong local control

The 1908 Michigan Constitution articulated that governance of local affairs be maintained close to the governed. It provided broad autonomy for local government as part of a home rule arrangement under which cities and villages are delegated substantial authority to govern their own affairs.

The adoption of the 1963 constitution formally planted the roots of local governance even deeper. Two new provisions in

## At a Glance

The public policy of local control has been prescribed in the state constitution for more than 100 years and has been recognized in decisions of the court, inspiring many Michigan municipalities to creatively define their local character. The legislature has recently removed to state control important matters of local concern, raising the question of whether we will be able to maintain the benefits of local control.

the 1963 constitution serve as exemplars of Michigan's policy. First, Article 7, § 22 recognizes wide authority for cities and villages in the adoption of local ordinances. The Constitutional Convention comment on this section reads: "This…revision… reflect[s] Michigan's successful experience with home rule. The new language is a more positive statement of municipal powers, giving home rule cities and villages full power over their own property and government, subject to this constitution and law."[3]

Second, the 1963 constitution added an entirely new § 34 to Article 7, providing in part that "[t]he provisions of this constitution and law concerning counties, townships, cities and villages shall be *liberally construed in their favor*." (Emphasis added.) Where ambiguity arises in the scope of a delegation, the law should be interpreted as placing its faith and confidence in local control.

### Court decisions have affirmed the state's policy of local control

Three years after the 1963 constitution was approved, the Michigan Supreme Court in *Brouwer v Bronkema* reflected on the state's long history of local control, observing that "in Michigan, attention would have to be focused…upon our own traditions and historical regard for local self-government so ably expressed by the Justices of the Cooley Court" in opinions written in the 1870s.[4]

The United States Supreme Court decided a 1974 zoning case in which Justice Thurgood Marshall, while dissenting with regard to the effect of a particular village zoning regulation, made the following affirmation of local control: "[Local zoning] is one of the primary means by which we protect that sometimes difficult to define concept of quality of life."[5]

As recently as 2016, the Michigan Supreme Court interpreted the state constitution as reflecting a strong policy of local control. In *Associated Builders & Contractors v City of Lansing*, the Court held that the 1963 constitution not only affirmed but, in fact, expanded the Michigan policy of local control. Without equivocation, the Court pointed out that the language added to the constitution in 1963 "expresses the people's will to give municipalities even greater latitude to conduct their business."[6]

### Local control in the balance

There is sincere concern on the part of local government interests that the policy of local control is not being implemented as intended in the 1963 constitution. Conversely, others argue that technology and other factors encourage greater centralized control.

The state legislature certainly has the raw power to determine the general bounds of local government authority. Nevertheless, on matters of local concern, the constitutional history outlined above reveals long adherence to the deep-rooted Michigan public policy in favor of local control for the state's nearly 2,000 municipalities.

Under the state's constitutional model of local control, each Michigan municipality has the opportunity to establish and promote its unique character. Michigan is blessed with natural beauty. Indeed, the state motto is: "If you seek a pleasant peninsula, look about you."[7] Local control has enabled and inspired many communities to creatively augment their natural assets and define their senses of "place," in part by applying distinct land planning and zoning. Many people have been drawn to live, work, and play in the destinations created in this process. Would centralization of planning and zoning leave communities with sufficient control to maintain the features that attracted their residents and continue to enrich our "pleasant peninsula?" Or would monolithic regulation ultimately dilute the ability of municipalities to establish their own distinctive brands?

The United States Supreme Court has remarked that "regulation of land use is perhaps the quintessential state activity."[8] There is little doubt that zoning is the predominant authority for land use regulation, and this authority has consistently been delegated to local government. In *Hess v West Bloomfield Township*, the Michigan Supreme Court recognized the interrelationship between important uses of land, and that weakening the right of a municipality to regulate a particular type of land use could erode the efficacy of zoning in the balance of the community.[9] More recently, the Court observed that "[a]ll property is held subject to the right of the government to regulate its use…so that it shall not be injurious to the rights of the community or so that it may promote its health, morals, safety and welfare,"[10] and that, accordingly, the local government "has a cognizable compelling interest to enforce its zoning laws."[11] The Court further recognized that "[r]eserving areas for commercial activity both protects residential areas from commercial intrusion and fosters economic stability and growth."[12] In other words, a single uncontrollable type of land use might have the effect of undermining a community's growth, development, and quality of life.

Local zoning regulation for one particular type of use was weakened in 2011 when the Michigan legislature narrowed local discretion in the review of proposals for new gravel mining operations.[13] This action can be examined as a case in point to illustrate the concern of local government interests in the chronicle of diminishing local control in Michigan.

The overarching structure for local zoning in Michigan is revealed in the state's zoning enabling act (MZEA). In particular, the provision that organizes and provides the objectives of zoning in the state authorizes local governments to divide the community into land use districts "to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships."[14] Implicit in this statutory authorization, even where a regulated land use has a business model that extends beyond local borders, such as industry and trade with broad markets, zoning for the physical use itself is recognized to be a matter of local concern. The MZEA further explains that "[a] zoning ordinance shall be made with reasonable consideration of the character of each district, [and] its peculiar suitability for particular uses."[15]

On a national basis, a challenge to the exercise zoning in the manner provided in the MZEA was resolved in a 1926 Ohio case. As part of its landmark decision, the United States Supreme Court held that local zoning authority could rightly be used to separate residential neighborhoods from heavy industrial uses.[16] Similarly, in 1939, the Michigan Supreme Court expressed that local ordinances could regulate "municipal development, the security of home life, the preservation of a favorable environment in which to rear children…[and] the stabilization of the use and value of property…"[17]

So, from the time of the first Michigan zoning enabling act in 1921[18] until 1982, determining the location of land uses, including gravel mining operations, has been a matter of local concern, delegated to local governments.

In 1982, however, the Michigan Supreme Court decided *Silva v Ada Township*, and judicially established gravel mining as a preferred use entitled to zoning approval absent "very serious consequences."[19] This new standard greatly reduced

local government discretion on where gravel mining would be permitted in the local communities.

*Silva* was later overruled in the 2010 decision *Kyser v Kasson Township*, in which the Supreme Court affirmed that zoning is "a reasonable exercise of the police power that not only protects the integrity of a community's current structure, but also plans and controls a community's future development" and that "[b]ecause local governments have been invested with a broad grant of power to zone, 'it should not be artificially limited.'"[20]

Only a few months after the *Kyser* decision, a bill was introduced in the legislature to reestablish the *Silva* "very serious consequences" rule. The bill passed into law within 16 days following its introduction, again putting local zoning control in a weakened position in the review and approval of new sites for gravel operations.[21] This new law made industrial gravel extraction possible in virtually any zoning district in a community, including residential, absent "very serious consequences" as defined by the statute.

The subject of local control over gravel mining has been placed in further and more serious jeopardy by a new legislative bill that seeks to nearly eliminate local control of zoning decisions on whether to allow gravel operations.[22] If this bill were enacted, it would test the point raised in the Court's *Hess* decision that weakening the right of a municipality to regulate a particular type of land use may erode the efficacy of zoning throughout the community.

## Final thought

United States Supreme Court Justice Neil Gorsuch recently wrote a book that offers a reminder of what Ben Franklin is said to have uttered as he surveyed the newly minted U.S. Constitution: we were embarking on "a republic, if you can keep it." As Michigan municipal law continues to unfold, we might consider that we have a century-old, deep-rooted public policy enshrined in the constitution that calls for *local control*, with matters of local concern being shaped by those closest to the people. To a significant degree, this is the formula prescribed in the Michigan Constitution…if we can keep it. ■

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## ENDNOTES

1. McQuillin, *The Law of Municipal Corporations (3d ed)*, § 1:40.
2. *Id.*
3. *Associated Builders and Contractors v City of Lansing*, 305 Mich App 395, 405; 853 NW 2d 433 (2014), citing the convention comment to Const 1963, art 7, § 22.
4. *Brouwer v Bronkema*, 377 Mich 616, 658; 141 NW2d 98 (1966).
5. *Village of Belle Terre v Boraas*, 416 US 1, 13; 94 S Ct 1536; 39 L Ed 2d 797 (1974).
6. *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 186–187; 880 NW2d 765 (2016).
7. *State Motto*, State of Michigan <https://www.michigan.gov/som/0,4669,7-192-29938_30245-2606--,00.html> (accessed May 30, 2020).
8. *Fed Energy Regulatory Comm v Mississippi*, 456 US 742, 767, n 30; 102 S Ct 2126; 7 L Ed 2d 532 (1982).
9. *Hess v West Bloomfield Twp*, 439 Mich 550, 565; 486 NW2d 628 (1992).
10. *Greater Bible Way v City of Jackson*, 478 Mich 373, 403; 733 NW2d 734 (2007), citing *Austin v Older*, 283 Mich 667, 677; 278 NW 727 (1938).
11. *Id.* at 404 (citations omitted).
12. *Id.*
13. 2011 PA 113.
14. MCL 125.3201(1).
15. MCL 125.3203(1).
16. *Village of Euclid v Ambler Realty*, 272 US 365, 388–389; 47 S Ct 114; 71 L Ed 303 (1926).
17. *Cady v City of Detroit*, 289 Mich 499, 514; 286 NW 805 (1939).
18. 1921 PA 207.
19. *Silva v Ada Twp*, 416 Mich 153, 164; 330 NW2d 663 (1982).
20. *Kyser v Kasson Twp*, 484 Mich 514, 520–522, 537; 786 NW2d 543 (2010).
21. MCL 125.3205(3)–(7).
22. 2019 SB 431.