STATE OF MICHIGAN
IN THE COURT OF APPEALS

CITY OF SOUTHFIELD,

Plaintiff-Appellant,

v.

JORDAN DEVELOPMENT COMPANY, LLC., a limited liability company, and **WORD OF FAITH CHRISTIAN CENTER CHURCH**, a non-profit corporation,

Defendants/Appellees.

COURT OF APPEALS NO. 333970

Oakland Co. Circuit Case No. 16-151947-AA

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BRIEF *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT

On Behalf of State Bar Public Corporation Section and Michigan Municipal League

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STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT AND GROUNDS FOR APPEAL

Amicus accepts the statements presented by Plaintiff-Appellant in its Brief.

STATEMENTS OF AMICUS CURIAE STATE BAR PUBLIC CORPORATION LAW SECTION

The State Bar of Michigan Public Corporation Law Section is a standing section of the State Bar of Michigan consisting primarily of attorneys that represent clients that are public corporations, including those who have a direct interest in the significant matters at issue in this case. There are several sections and committees of the State Bar, and statements made in this Brief on behalf of the Public Corporation Law Section are not represented as necessarily reflecting the views of other sections and committees or of the State Bar of Michigan as a whole.

The Public Corporation Law Section Council, the decision-making body of the Section, is currently comprised of 21 members. The filing of this Amicus Curiae Brief was authorized at an August 11, 2016 special meeting of the Council held in accordance with Section 6.2.3 and Section 6.2.5 of the Council's Bylaws. A quorum of the Council was present at the meeting (19 members), and the motion passed unanimously, 14-0 (Voting in favor were: L. Bluhm, M. Fales, G. Fisher, A. Forbush, C. McKone, C. Mish, S. Schultz, J. Sluggett, K. So, G. Stremers, J. Tamm, D. Walling, E. Williams and K. Zeits). No one voted against the motion. The following members abstained from consideration of and voting on the motion: S. Joppich, M. McGee, M. Nettleton, C. Rosati and M. Watza.

STATEMENT OF QUESTION PRESENTED

WHETHER THE LOWER COURT REVERSIBLY ERRER BY HOLDING THAT THE NARROWLY SCOPED OIL AND GAS REGULATION IN PART 615 OF NREPA PREEMPTS COMPREHENSIVE CITY ZONING, FLYING DIRECTLY INTO THE FACE OF MICHIGAN SUPREME COURT HOLDINGS THAT: (1) THE PERVASIVE BENEFITS OF ZONING, INTERPRETED TOGETHER WITH NARROWLY-SCOPED PART 615, ARE LEGISLATIVELY INTENDED TO BENEFIT CITIES, (2) MICHIGAN HOME RULE CITIES ARE CONSTITUTIONALLY INTENDED TO HAVE AUTHORITY TO ADDRESS LOCAL CONCERNS AND PROPERTY MATTERS; AND (3) STATUTORY SCHEMES HAVING COMMON PURPOSES MUST BE READ TOGETHER HARMONEOUSLY TO ASCERTAIN LEGISLATIVE INTENT.

Appellant says "Yes."
Appellees say "No."
The Circuit Court said "No."
Amici says "Yes."
This Court should say "Yes."

STATEMENT OF FACTS

Amicus adopts the Statement of Facts presented by Appellant, City of Southfield, as provided in its brief.

The Opinion and Order of the Circuit Court [Granting] Defendant's Motion for Summary Disposition is dated July 11, 2016.

STANDARD OF REVIEW

The Court reviews de novo both questions of constitutional law and a trial court's decision on a motion for summary disposition. *Associated Builders & Contractors v City of Lansing*, 499 Mich. 177 (2016). The Court review questions of law involving statutory interpretation de novo. *Taylor v Smithkline Beecham Corp*, 468 Mich 1 (2003).

ARGUMENT

THE LOWER COURT REVERSIBLY ERRER BY HOLDING THAT THE NARROWLY SCOPED OIL AND GAS REGULATION IN PART 615 OF NREPA PREEMPTS COMPREHENSIVE CITY ZONING, FLYING DIRECTLY INTO THE FACE OF MICHIGAN SUPREME COURT HOLDINGS THAT: (1) THE PERVASIVE BENEFITS OF ZONING, INTERPRETED TOGETHER WITH NARROWLY-SCOPED PART 615, ARE LEGISLATIVELY INTENDED TO BENEFIT CITIES, (2) MICHIGAN HOME RULE CITIES ARE CONSTITUTIONALLY INTENDED TO HAVE AUTHORITY TO ADDRESS LOCAL CONCERNS AND PROPERTY MATTERS; AND (3) STATUTORY SCHEMES HAVING COMMON PURPOSES MUST BE READ TOGETHER HARMONEOUSLY TO ASCERTAIN LEGISLATIVE INTENT.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

A. Summary of Compelling Reasons for Reversal

There are three powerful reasons why the decision of the Lower Court must be reversed. Each one of these reasons would independently be a sufficient basis for reversal. Appropriately considering the three reasons together overwhelmingly mandates reversal.

First, the scope and purpose of the Michigan Zoning Enabling Act (MZEA)[1] is much broader than the scope of Part 615 of the Natural Resources and Environmental Protection Act (Part 615)[2], meaning the zoning authorized under MZEA cannot be preempted by Part 615 without creating a substantial gap in quality of life protection for the public. Second, the 1963 Constitution instructs that statutes granting cities authority – such as the broad authority delegated to cities by the Michigan Home Rule Cities Act[3] – are to be "liberally construed," especially regarding power to address municipal concerns and property, and especially within urban cities.[4] Third, MZEA and Part 615 are statutes *in pari materia*, sharing significant common purpose, and must be read together to produce a full picture of legislative intent.

A comprehensive briefing of each of the grounds for reversal is provided below. They are summarized as follows:

1. ***The Michigan Supreme Court has Held that Zoning Is Not Intended to Be Preempted by Oil and Gas Regulation, Recognizing the Pervasive Regulatory Scope in Michigan Zoning Enabling Law to Protect People and Property from Harm, and Promote Quality of Life in Ways Entirely Outside the Scope of Part 615.***

It is extremely relevant to contrast the scope of legislative intent expressed in MZEA and Part 615. Both of these schemes touch on land use – leading to their interaction in the present case. But Part 615 delegates its authority entirely within the narrow context of conservation and safety, thereby reaching only a fraction of the public concerns that land use law exists to address. MZEA, in contrast, takes on land use directly, granting broad local authority to address the full breadth of the public interest in land use regulation.

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[1] MCL 125.3101, *et seq.*
[2] MCL 324.61501, *et seq.*
[3] MCL 117.1, *et seq.*
[4] See Mich. Const. 1963, Art. VII, § 34

Statements of purpose found within each statute confirm this dramatic contrast of scope, as discussed in greater detail below:

- **MZEA** aims "to promote the public health, safety, and general welfare, to encourage the use of lands in accordance with their character and adaptability, to limit the improper use of land, to conserve natural resources and energy, to meet the needs of the state's residents for food, fiber, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that uses of the land shall be situated in appropriate locations and relationships, to avoid the overcrowding of population, to provide adequate light and air, to lessen congestion on the public roads and streets, to reduce hazards to life and property, to facilitate adequate provision for a system of transportation including, subject to subsection (5), public transportation, sewage disposal, safe and adequate water supply, education, recreation, and other public requirements, and to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources, and properties. A zoning ordinance shall be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development." [5]
- **Part 615** aims only to prevent oil and gas "waste," which it defines, in context of land use regulation, as (1) Preventing the inefficient locating of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recoverable from any pool; and

[5] MCL 125.3203. Also see MCL 125.3201.

(2) Preventing harm to property or people or destruction of specified environmental values.[6]

Local legislative action by a city in establishing and amending zoning use districts—to a great degree directed to the protection of the jealously guarded single-family residential neighborhood—is at the very heart of a city's general policy-making efforts to protect the quality of life for its residents. In *Village of Belle Terre v Boraas*,[7] Justice Marshall, even while dissenting with regard to the effect of a particular single-family zoning regulation in a village ordinance, made the following oft-cited characterization of the zoning power:

> "It may indeed be **the most essential function** performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of **quality of life**."

The protection of residential neighborhoods by dividing the city into zoning use districts, and planning the respective districts on the zoning map in a fashion to insulate neighborhoods from the harms resulting from inconsistent use impacts of, say industrial uses, has been recognized since its inception to be an important innovation with major potential for public benefit.[8] By brushing aside these broad protections created by zoning and instead viewing public concerns only through a NREPA-centric lens, the Lower Court in the present case ignored zoning's status as an essential component of modern land use control and protection. Likewise, consistent with the words of Justice Marshall in the language quoted above, the expansive scope and purpose in MZEA to promote quality of life is simply absent from Part 615. Sweeping aside local zoning authority to make exclusive way for Part 615, though attempted with the good

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[6] See MCL 324.61501(q) and MCL 324.61502.
[7] 416 US 1, 13; 94 S Ct 1536; 39 L Ed 2d 797 (1974). (Emphasis supplied).
[8] *Village of Euclid v Amber Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 54 A.L.R. 1016, 71 L.Ed. 303 (1926).

intention of optimizing state stewardship of the oil and gas industry, would nevertheless eradicate the enormous public benefits achieved by zoning. These losses to the public are in no respect intended by the legislature, and the failure to recognize this fundamental point serves as an independent basis for reversing the decision of the Lower Court.

Of momentous significance when ascertaining the precise relationship of local zoning to state regulation of oil and gas production – the precise subject matter of this case – is the legislative intent expressed in MZEA itself, as interpreted by the Michigan Supreme Court. As part of MZEA, in MCL 125.3205(2), there is an express denial of authority for counties and townships to regulate oil and gas activities. But this denial is absent as it relates to cities. City authority remains fully intact:

> A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.[9]

The Michigan Supreme Court has dispositively recognized the significance of this MZEA provision as it relates to the lack of preemption in this case. In *Addison Township v Gout* [10] the Court reached a number of apposite conclusions for this case: state oil and gas law generally fails to preempt local zoning; both statutory schemes make essential contributions to the public good, and local zoning may coexist with state oil and gas law; A lack of preemption is intended by the legislature by the inclusion of express language of preemption for counties and townships, but not for cities, thus meaning that the general authority for natural resource and energy regulation

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[9] MCL 125.3205(2).
[10] *Addison Township v Gout*, 435 Mich 809 (1990).

stated in the zoning act means that cities are fully empowered to regulate in the area of oil and gas, precluding preemption.

2. *Michigan Home Rule Cities Are Constitutionally Intended to Have Authority to Address Local Concerns and Property Matters*

The history of home rule in Michigan, language of the Michigan Constitution, Constitutional Convention Comments, and a recent interpretation of the Michigan Supreme Court[11] all provide a clear picture: home rule cities in Michigan are intended to be afforded broad powers to address their local concerns and property, and courts should liberally interpret statutes, including the Home Rule Cities Act, MZEA, and Part 615 in favor of cities.

Contrary to this most fundamental intent of the people, legislature, and courts of the state, the Lower Court simply brushed aside the celebrated broad power of a Michigan City to manage its local concerns and property. This represents an independent basis for reversal of the Lower Court determination.

3. Statutory Schemes Having Common Purposes Must Be Read Together Harmoneously to Ascertain Legislative Intent.

Both MZEA and Part 615 are statutory schemes in which the Michigan legislature intended to carry out art 4, §52 of the Michigan Constitution of 1963, which provides that "The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction."[12]

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[11] *Associated Builders & Contractors v City of Lansing*, 499 Mich. 177 (2016).
[12] Mich Const, art. 4, § 52.

It is obvious that Part 615 is intended to carry out the mandate of the people in art 4, §52. The Michigan Supreme Court has held that MZEA is also intended to carry out this mandate.[13] The legislature made it quite clear in the language of MZEA itself that its purpose includes the protection and conservation of natural resources and energy.[14]

Additionally, both statutory schemes, as is clear from their language, are intended to protect persons and property from harm in connection with permitted uses of land.

Given these common purposes in MZEA and Part 615, the rules of statutory construction dictate that courts are to read the two statutes together in order to ascertain the full intent of the legislature – rather than read one to the exclusion of the purposes sought to be achieved in the other. "If by any reasonable construction two statutes can be reconciled and a purpose found to be served by each, both must stand . . . The duty of the courts is to reconcile statutes if possible and to enforce them . . ."[15]

It will be demonstrated in this brief that there are important reasons to read MZEA and Part 615 together, and that a failure to do so results in a totally unacceptable loss to, and suffering by the public. Rather than attempting to read the two statutes together, the Lower Court found that MZEA, and all of the significant ways the legislature intended this powerful Act to protect and promote the public interest, should be ignored and discarded. This amounts to reversible error.

B. <u>The Narrow Scope of Part 615</u>

As background for understanding the magnitude of the three reasons for reversal outlined above, it is necessary to correct the course followed by the Lower Court in attributing almost

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[13] *Hess v Charter Township of West Bloomfield,* 439 Mich. 550, 565 (1992).
[14] MCL 125.3201 and 125.3203.
[15] *Valentine v. McDonald,* 371 Mich 138, 143-145 (1963).

mythically great proportion to the scope of Part 615. In reality, Part 615 is a narrow statute focused on achieving a very limited set of objectives. It will be clarified in this brief that the narrow scope of Part 615 is of great importance to the analysis of its relationship to local zoning regulation, which in contrast is broad and encompassing.

The Michigan Supreme Court has held that preemption can be found when oil and gas regulation is pitted against other, similarly narrowly-scoped regulation. For example, in *Brighton v. Hamburg*,[16] the court found that Part 31 of NREPA,[17] a narrow state statute aimed at regulating water pollution, preempted a local water pollution ordinance – one similarly aimed narrowly at regulating water pollution. However, when the narrow-scoped Part 615 is examined alongside the broad zoning authority granted by MZEA, the comparison is no longer like to like, and **the scope of analysis must expand** to consider the purposes of **both** statutory schemes. The verdict under an expanded-scope analysis transforms from the result witnessed in *Hamburg*,[18] to that seen in *Addison Township*.[19] Courts must, wherever possible, preserve the full scope of objectives aimed at by both statutes.

In its own words, Part 615's scope is limited to waste prevention.[20] Though it defines "waste" very broadly, the context is never a broader one than careful stewardship of the oil and

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[16] 260 Mich.App 345 (2004).
[17] MCL 324.3101, *et seq.*
[18] *supra*
[19] *supra*
[20] After reciting the state's irretrievable losses resulting from overly aggressive, unregulated timber removal, MCL 324.61502 states that:

- It is accordingly the declared policy of the state to protect the interests of its citizens and landowners from **unwarranted waste of gas and oil** and to foster the development of the industry along the most favorable conditions and with a view to the **ultimate recovery of the maximum production** of these natural products.
- To that end, this part is to be construed liberally to give effect to sound policies of conservation and the **prevention of waste** and exploitation.

gas extraction industry.[21] Its objectives distill down to two simple purposes: (1) maximize the quantity of oil or gas ultimately extracted, and (2) during extraction, avoid danger to people and damage to property and the environment.

The supervisor of wells, Part 615's administrative body, is granted powers aimed exclusively at these same narrow objectives.[22] The supervisor's enumerated duties make no reference to investigating local economic conditions or cultural features, or impacts on a community's ability to attract new residents or retain existing residents. Instead, they are duties directly matched to the actual expertise of a supervisor of wells: oil and gas production. The supervisor is to prevent fires and explosions, prevent blow-outs and seepage, place safety signs and fences around unsafe operations, prevent nuisance noises and odors, and immediately halt drilling upon discovering danger to public health or safety.[23] Part 615 does not in any

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[21] Under the definition provided in MCL 324.61501(q), waste includes:
- Its "ordinary meaning"
- "Underground waste", as those words are generally understood in the oil business, and in addition:
  - (A) The inefficient **locating of a well** or wells in a manner to reduce or tend to reduce the total **quantity of oil or gas** ultimately recoverable from any pool.
- "Surface waste", as those words are generally understood in the oil business, and including all of the following:
  - (B) The unnecessary **damage to or destruction of** the surface; soils; animal, fish, or aquatic life; **property; or other environmental values** from or by oil and gas operations.
  - (C) The **unnecessary endangerment** of public health, safety, or welfare from or by oil and gas operations.

[22] "The supervisor has jurisdiction and authority over the administration and enforcement of this part and all matters relating to the **prevention of waste** and to the **conservation of oil and gas** in this state. The supervisor also has jurisdiction and control of and over all persons and things necessary or proper to enforce effectively this part and all **matters relating to the prevention of waste and the conservation of oil and gas**." MCL 324.61505.

[23] See MCL 324.61506(f),(g),(q),(s),(t). Even this list of supervisor powers and duties is prefaced with a reminder that they exist for the narrow purpose of waste-prevention: "The supervisor shall prevent the waste prohibited by this part. To that end, acting directly or through his or her authorized representatives, the supervisor is specifically empowered...."

substantive or meaningful way contemplate zoning and land use, other than locating oil and gas wells. It does not contemplate safety, other than dangers arising directly out of an oil and gas extraction operation. And it in no way contemplates planning for or promoting quality of life.

It bears repeating that the "surface waste" prevention objectives of avoiding danger to people and damage to property and the environment are the **only** component of "waste" – and correspondingly the **only** enumerated duties of the supervisor – that stray outside the simple mathematical objective of maximizing the total recoverable quantity of oil and gas. By the statute's own description, **the supervisor's only interest in the community surrounding a proposed well is preventing the well from causing danger or damage**.

Contrast this with the direct, broad grant by MZEA of authority to cities expressly, through zoning regulation of land use, to **prevent harm of all kinds** and **promote quality of life** in light of the city's unique needs and abilities. Local zoning carefully attends to these broad, long-term goals and complex local circumstances. **Part 615 has no framework whatsoever to fill in for local zoning if it is granted power to sweep zoning aside.** Instead, it inevitably leaves a gaping hole in statutory protections for these very real and very important public interests.

C. <u>The Analysis of Preemption in Relation to the Precise Issues in this Case Has Been Undertaken and Decided by the Michigan Supreme Court</u>.

The Michigan Supreme Court has already encountered and spoken on the extent of preemption between Michigan's uniform regulation of oil and gas matters at the state level and Michigan's empowerment of local governments to impose zoning restrictions. In *Addison Township v Gout*,[24] the issue of preemption arose based on a regulatory dispute between the

[24] 435 Mich 809 (1990).

governance under the 1990 predecessor to Part 615, and a predecessor zoning statute to MZEA.[25] Discussing *Llewellyn*,[26] the Court found that zoning was not preempted, concluding that (1) statutory language did not expressly preempt local zoning restrictions, (2) the two statutory schemes of oil and gas regulation and local zoning empowerment did not conflict with one another, and (3) uniformity was not necessary to accomplish the distinct goals of the two statutes. All three points are equally applicable to the present case. Moreover, the two predecessor statutes at issue in *Addison Township* were nearly identical to the statutes at issue in the present case. The two statutes have been codified as parts of larger enactments, but their substance remains the same.

Moreover, the Court in *Addison Township* expressly recognized that "t**he purposes of the separate regulatory acts do not conflict, nor do they suggest that uniformity is necessary to effectuate these distinct legislative goals**."[27] As to the burden on industry in the event that regulatory priorities call for alternative plans for oil and gas production, the Court found no evidence in the statutes that the legislature intended that zoning give way.[28]

> We find defendant's assertion that merely because it was required to obtain **permits that have a limited purpose** it should be allowed to bypass municipal regulation

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[25] In 1990, Michigan's primary oil and gas statute was the Oil, Gas and Minerals Act (OGMA), which at the time was MCL 319.1 et seq. When Michigan consolidated its environmental laws, the OGMA was incorporated into NREPA, almost word-for-word, as Part 615. Likewise, the Township Rural Zoning Act (TRZA) at issue in Addison was merged into what became the MZEA.

[26] *People v. Llewellyn*, 401 Mich. 314 (1977).

[27] *Id.* fn5.

[28] "We appreciate the burdens the industry may face should a township prohibit land use for a processing facility. However, we cannot invade an exercise of legislative discretion. Further, the Legislature has adopted protective measures which limit a township's authority to totally prohibit land use upon a showing of demonstrated need. See, e.g., M.C.L. § 125.227a; M.S.A. § 5.2961(27a)." *Id.* fn6.

lacking in authority and merit. **Only in very rare instances will a permit issued for one purpose obviate local zoning laws.**[29]

The thrust of the Court's ruling in *Addison Township* as it relates to the present case is that, absent express language in the zoning statute of deference to the oil and gas statute, the Court's analysis concluded that local zoning was in no way preempted by the oil and gas statute.

The ruling in *Addison Township* thus completes the spectrum of preemptive scenarios, highlighting the importance of **context** to a *Llewellyn* analysis. Recall that in *Hamburg*,[30] the context was very narrow: both the environmental statute and the local ordinance aimed only at regulating water pollution. Within that narrow context, NREPA's regulatory scheme appears all-encompassing, and the benefit to that scheme of enforcing a uniform central program seems overwhelming. In such a focused context, the appeals court in *Hamburg* found preemption appropriate.

But in *Addison Township*, as in the present case, the land use dispute involved two vastly different statutes – one focusing narrowly on oil and gas regulation, the other focusing broadly on local planning and zoning for quality of life. Within this broader, muli-subject context, the uniformity of state oil and gas regulation becomes just one object in a larger portrait. The legislature created both statutory schemes with the intent that both remain fully functional. So any judicial interpretation must aim to preserve that full functionality.

We cannot look only at what would be helpful to one scheme while disregarding the other. We cannot **break** zoning merely to be **helpful** to the oil and gas scheme. This seemed so self-evident that the Supreme Court in *Addison Township* spent only a few short sentences reaching its finding of no preemption. It noted that the schemes of local zoning and central oil

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[29] Id. at 816. [emphasis supplied]
[30] *Supra*.

and gas regulation can coexist without substantial conflict. There is no need for uniformity of oil and gas regulation so overwhelming as to warrant setting aside the entire co-equal – and far more pervasive – statutory scheme of zoning.

D. In Summary

When the three independent errors in the Lower Court's determination are considered together, the degree of inconsistency with the intent of the legislature becomes immense. Under the framework discussed in *People v Llewellyn,*[31] a finding of preemption is entirely inappropriate.

Reversal of the Lower Court decision is overwhelmingly mandated.

II. THE PERVASIVE BENEFITS OF ZONING, INTERPRETED TOGETHER WITH NARROWLY-SCOPED PART 615, ARE LEGISLATIVELY INTENDED TO BENEFIT CITIES.

As part of the delegation given to cities for the establishment of their local charters, the Home Rule Cities Act expressly authorizes cities to provide in charters for the establishment of "districts or zones within which the use of land and structures [that] may be regulated by ordinance."[32] This authority, along with MZEA, represents one of the most important powers possessed by a local government to achieve the protection from harm, and of equal importance pursue quality of life interests. In other words, it is critical to recognize that the authority exercised under Part 615 is for the accomplishment of purposes within a narrow scope, and that the authority is exercised under MZEA for the broad protection against harm and promotion of quality of life not likely to be provided in any other manner. This recognition leads to the

[31] 401 Mich 314 (1977).
[32] MCL 117.4(i)(c).

manifest conclusion that the legislature did not intend city zoning to be brushed aside by preemption under Part 615.

Local legislative action by a city in establishing and amending zoning use districts—to a great degree directed to the protection of the jealously guarded single-family neighborhood—is at the very heart of a city's general policy-making efforts to protect the quality of life for its residents. As noted above, in one of only a small number of zoning cases to reach the Supreme Court of the United States, while dissenting with regard to the effect of a particular single-family zoning regulation in a village ordinance in *Village of Belle Terre v Boraas*,[33] Justice Marshall observed the following, with regard to the zoning power:

> "It may indeed be **the most essential function** performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of **quality of life**."

There is considerable evidence to be discussed in this brief with regard to the importance of zoning for the achievement of **quality of life** interests. Likewise, the directly related, and fundamentally important, interest of protecting residential neighborhoods from **harm**, including **environmental preservation**, is also accomplished by exercising the zoning authority. Indeed, the landmark case decided by the Supreme Court of the United States in 1926,[34] when the exercise of the zoning power *per se* was challenged as a violation of Due Process, very decisively concluded that zoning is a valid exercise of power, **not only** to **protect the community (particularly residential neighborhoods) from nuisance conditions**, **but also to make the community a better place to live**; i.e., zoning is a valid and needed exercise of power to **both protect the community from harm and promote quality of life**. The *Euclid* case was

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[33] 416 US 1, 13; 94 S Ct 1536; 39 L Ed 2d 797 (1974). (Emphasis supplied).

[34] *Village of Euclid v Amber Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 54 A.L.R. 1016, 71 L.Ed. 303 (1926).

followed in Michigan when the Court decided *Cady v City of Detroit*, in which the Court held that zoning ordinances have:

> for their purpose regulated municipal development, the security of home life, the preservation of a favorable environment in which to rear children, the protection of morals and health, the safeguarding of the economic structure upon which the public good depends, the stabilization of the use and value of property, the attraction of a desirable citizenship and fostering its permanency, are within the proper ambit of the police power.[35]

In *Schwartz v. City of Flint*, the Court recognized that:

> Zoning, by its nature, is most uniquely suited to the exercise of the police power because of the value judgments that must be made regarding aesthetics, economics, transportation, health, safety, and a community's aspirations and values in general.[36]

The broad zoning authority for protecting neighborhoods from harm and promoting quality of life can be contrasted quite sharply with Part 615. Rather than being a broad power that cuts across many purposes and interests, the focus of Part 615 is confined to addressing issues arising out of gas and oil production. As mentioned previously, Part 615 is confined to: **(1)** preventing the inefficient locating of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recoverable from any pool; and **(2)** preventing harm to property or people or destruction of specified environmental values.

The intent of the legislature for the exercise of the power of zoning is spelled out quite clearly. Specifically, MZEA directs the planning and dividing of cities into uniform districts with regulations, all intended to: (1) Promote land uses for appropriate locations and relationships, education and recreation, natural and other resources, proper expenditure of public funds for public improvements and services, property values, population development, and health, safety, and

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[35] 289 Mich. 499, 514 (1939).
[36] 426 Mich. 295, 313; 395 N.W.2d 678 (1986).

welfare; (2) Encourage land use in accordance with their character (including aesthetics), adaptability, and suitability of uses in districts; (3) Protect against overcrowding and congestion, improper use of land, hazards; (4) Protect and conserve natural resources and energy, and health in connection with sewage disposal and water.[37]

A careful reading of these objectives reveals **two major components of intent**: (1) **the unique and indispensable city function of promoting quality of life, and (2) the protection of persons and property from harm of all kinds.**

A. LAND USE REGULATION TO ACHIEVE 'QUALITY OF LIFE'

In 1926, the Supreme Court of the United States was called upon to address the fundamental authority of a city to exercise the zoning power. In *Village of Euclid v Ambler Realty Co*,[38] the Court put zoning to the test of Due Process, and very clearly recognized what seemed to the Court as obvious: that zoning was a tool that could be utilized for the protection against harm and nuisance, including the segregation of industrial land uses from residential

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[37] MCL 125.3201 and 125.3203. "…regulate the use of land and structures to meet the needs for 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, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare." MCL 125.3201(1). "…encourage the use of lands in accordance with their character and adaptability, to limit the improper use of land, to conserve natural resources and energy, to reduce hazards to life and property to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources, and properties. A zoning ordinance shall be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development." MCL 125.3203(1).

[38] 272 U.S. 365, 47 S.Ct. 114, 54 A.L.R. 1016, 71 L.Ed. 303, 4 Ohio Law Abs. 816 (1926).

neighborhoods. The Court responded to such segregation by the Village of Euclid zoning ordinance as follows:

> [The city's] governing authorities, presumably representing a majority of its inhabitants and voicing their will, have determined, not that industrial development shall cease at its boundaries, but that the course of such development shall proceed within definitely fixed lines. If it be a proper exercise of the police power to relegate industrial establishments to localities separated from residential sections, it is not easy to find a sufficient reason for denying the power because the effect of its exercise is to divert an industrial flow from the course which it would follow, to the injury of the residential public, if left alone, to another course where such injury will be obviated.[39]

The Court went on from there, however, to address the more difficult issue of whether the zoning authority could be utilized to go beyond the nuisance/harm prevention, to pursue objectives more closely associated with the enhancement of the quality of life. The Court resolved this issue by permitting the use of zoning authority to preclude uses of a business nature – not just industrial – from invading residential neighborhoods. It was found that such intrusions tend to cause harm within the residential neighborhoods. But, in addition, the Court accepted the reports of experts that such use of zoning would "preserve a more favorable environment in which to rear children,"[40] i.e., would promote quality of life.

A half century later, the Supreme Court of the United States was pressed again on this "quality of life" component of the zoning power. In *Village of Belle Terre v Boraas,*[41] in a challenge of the use of zoning to prohibit multi-family residential use within a single-family residential neighborhood, the Court quoted from the often-cited opinion in *Berman v Parker*[42] to

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[39] Id. at 389-390.
[40] Id. at 394.
[41] 416 U.S. 1, 94 S.Ct. 1536, 6 ERC 1417, 39 L.Ed.2d 797, 4 Envtl. L. Rep. 20,302 (1974).
[42] 348 U.S. 26, 32-33, 75 S.Ct. 98, 99 L.Ed. 27 (1954).

demonstrate the breadth of the police power on which zoning is based. The Court focused most specifically on the power authorized to promote the public welfare:

> The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.

Expanding on this power pronouncement, the Court in *Belle Terre* stated the following in upholding the exercise of zoning challenged in that case:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within Berman v. Parker, supra. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.[43]

Over the many years in which the police power authority has been exercised in Michigan by cities for land use regulation, our Courts have taken the lead from *Euclid*, *Berman*, and *Belle Terre*. In *Cady v City of Detroit*, the Court explained the breadth of this **quality of life** component of the police power:

> Ordinances having for their purpose regulated municipal development, the security of home life, the preservation of a favorable environment in which to rear children, the protection of morals and health, the safeguarding of the economic structure upon which the public good depends, the stabilization of the use and value of property, the attraction of a desirable citizenship and fostering its permanency, are within the proper ambit of the police power.[44]

Consistent with these pronouncements, many other cases have had a central focus on the authority of a local community to promote desired character and aesthetics in land use development, and in this manner enhance the **quality of life** of its citizens.

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[43] 416 U.S. at 9.
[44] 289 Mich. 499, 514 (1939).

In *Penn Central Transportation Company v New York City*, the Supreme Court of the United States specifically approved that "cities may enact land-use restrictions or controls to enhance the **quality of life by preserving the character and desirable aesthetic features of a city**."[45]

The Court in *Gackler v Yankee Springs Township*, held that **improving the aesthetics of an area** amounts to the advancement of a reasonable government interest.[46]

It has been observed in one of the authoritative national treatises on zoning and planning that,

> The history of police power regulation of land development and use in this country is one of ever-expanding scope and intensity. Courts have ruled that the lawful scope of the police power includes landmark and historic district restrictions, architectural controls and a variety of other forms of aesthetic restrictions, regulation of development in wetlands and coastal areas, growth management controls, zoning to affirmatively provide for the special housing needs of low-and moderate-income groups and the elderly, subdivision exactions, and a variety of other land use and environmental restrictions . . .[47]

The important point is that cities are judged to a greater extent today based not simply on whether they are safe and healthy, but also considering whether they serve as favorable places to live, work, and play. Sustaining a city's **quality of life** is a critical objective in today's world. To simply brush aside this component of land use regulation in favor of allowing gas and oil production in a residential neighborhood is to fuel the fire of urban deterioration, and place a roadblock in front of urban renaissance.

B. PROTECTING PERSONS AND PROPERTY FROM HARM

[45] 438 US 104, 129 (1978). (Emphasis supplied).
[46] 427 Mich 562, 572 (1986).
[47] Rathkopf, Rathkopf's The Law of Zoning and Planning § 1:8 (4th ed.).

The Court in *Euclid v Ambler Realty Co.*, as discussed above, made clear the obvious health and safety objectives intended to be addressed through the exercise of the zoning power. The foundational idea of planning the city in use districts, and separating industrial traffic, machines, odors, and other impacts from children in residential districts, is intended to achieve a protection from harm as understood in terms of health and safety objectives. In the context of the present case, however, **a second focus on protection against harm related to extraction of natural resources and energy is most worthwhile**.

There is no doubt that Part 615 calls for the protection of persons and property from harm in the context of conserving gas and oil production. Yet it is also inescapable that **MZEA calls for protecting persons and property, including protecting and conserving natural resources and energy**.[48] This express delegation of authority, to be exercised and coordinated with the planning and development of a city, cannot be lightly swept aside and given absolutely no regard. It is in this regulatory arena that MZEA and Part 615 have a most fundamental common bond within cities, founded on the direction provided in art 4, §52 of the Michigan Constitution:

> The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.[49]

Clearly, Part 615 is intended to carry out the directive of Art 4, § 52, addressing natural resources conservation and development within the context of gas and oil production. Indeed, it

[48] MCL 125.3201 and 125.3203.
[49] Mich. Const. 1963, Art. IV, § 52.

includes the police-power objective of avoiding "The unnecessary endangerment of public health, safety, or welfare from or by oil and gas operations."[50]

However, it is equally clear that Part 615 is not the only statute to address these objectives. MZEA aims directly at police-power concerns, with the objectives, for example, of meeting the needs of the state's 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, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.[51]

And just as Part 615 reaches out to include police-power concerns, so too does MZEA's broad implementation reach out to include the constitutional mandate to steward our natural resources. The Michigan Supreme Court has recognized that in delegating the zoning authority to local governments in MZEA, "the Legislature was complying with this constitutional mandate [Art 4, § 52] to protect the environment . . . from impairment or destruction."[52] The MZEA expressly announces its intent with regard to "natural resources," both in terms of protection and conservation.[53]

No statute operates in a vacuum, no matter how assertive its language. MZEA and Part 615 coexist, with related but far from identical objectives. They have the common constitutional

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[50] MCL 324.61501(q)(C).
[51] MCL 125.3201(1).
[52] *Hess vs. Charter Township of West Bloomfield*, 439 Mich. 550 (1992).
[53] MCL 125.3201 and 125.3203.

foundation of Const 1963, art 4, §52, and they must be consulted in conjunction to avoid impairment of the full breadth of legislative intent and public interest. That is, as discussed in greater detail below, they must be interpreted *in pari materia*. When MZEA addresses matters of natural resource stewardship, Part 615 must also be consulted. When Part 615 addresses matters of land use, particularly in light of Const 1963, art 7, §22 and 34 as recently interpreted and confirmed very recently by the Michigan Supreme Court in *Associated Builders*, MZEA must also be consulted. They are parallel instruments with strong elements of common guidance, yet each with unique purposes that are equal in the eyes of the law.

C. **The Opinion in *Addison Township v Gout* Clarifies that MCL 125.3205(2), Ignored by the Lower Court, Is Central to Concluding that Part 615 Does Not Preempt the Application of Zoning Ordinances Enacted under MZEA**

The meaning and effect of MCL 125.3205(2) in the present dispute was analyzed and decided in *Addison Township v Gout.*[54] The analysis in *Addison Township* was discussed at length above, and will not be repeated here. The language of this subsection of MZEA states:

> A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.

While the Lower Court afforded little weight to this section of MZEA, *Addison Township* clarifies that it is nearly dispositive in terms of legislative intent. The explanation for this prominence is straightforward. In the purpose sections of MZEA,[55] it is very clear that the purposes of MZEA include the **authority to regulate for the protection and promotion of natural resources and energy**. This conferral of authority is generally applicable, and not conditioned on being consistent with other statutes. Local governments are fully empowered to

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[54] 435 Mich 809 (1990).
[55] MCL 125.3203. Also see MCL 125.3201.

regulate for these purposes. *Addison Township* pointed out that, while [what is now MCL 125.3205(2)] has the effect of precluding the exercise of zoning authority for the regulation of certain oil and gas matters, this **preclusion is not applicable to cities.** *Addison Township* goes on to explain that **this lack of preclusion to cities means that cities are provided with the full authority to regulate oil and gas production issues.**[56]

The sum and substance of *Addison Township* is in good part based on the language of MCL 125.3205(2), dispositive on the point that there is no legislative intent for Part 615 to preempt the delegation to cities in MZEA.

III. THE TRADITIONALLY BROAD HOME RULE AUTHORITY GRANTED TO MICHIGAN CITIES WAS EXPANDED IN THE 1963 STATE CONSTITUTION, AND THIS INTENT FOR BROAD AUTHORITY TO ADDRESS LOCAL CONCERNS AND PROPERTY MATTERS IS RECOGNIZED IN MZEA WITHIN THE CONTEXT OF OIL AND GAS REGULATION

A. Broad Home Rule Authority Granted to Michigan Cities

The MZEA continues Michigan's long and strong tradition of delegating broad authority to local city government. Article 8, §20-21 of Michigan's 1908 Constitution vested cities with enhanced power of home rule. The Convention Comment explaining this increased delegation stated that "[t]he most prominent reasons offered for this change are that each municipality is the best judge of its local needs and the best able to provide for its local necessities."[57] In art. 7, § 22 of Michigan's 1963 Constitution, the home rule delegation of authority to cities expanded even

[56] *Addison, supra,* at 814, with the opinion referring to MZEA by its reference to the "other municipal zoning enabling act."
[57] Official Record, Const. Convention 1907-1908, pp. 42-43.

further, first with a clarification that local governments are not limited to merely those powers that are expressly enumerated:

> Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. **No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section**.[58] (Emphasis supplied).

The Convention Comment accompanying the quoted section further clarifies this new expression of city authority: "This is a revision of Sec. 21, Article VIII, of the present [1908] constitution and reflects 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**."[59] Moreover, an entirely new art 7, §34 of the 1963 Constitution was added, containing a directive for "courts to give a **liberal or broad construction to statutes and constitutional provisions concerning all local governments**."[60] This broadened authority found in art 7, §§22 and 34 was confirmed as recently as 2016 by the Michigan Supreme Court.[61]

After reviewing the expanded powers granted in the 1963 Constitution, the Michigan Supreme Court, in *Associated Builders & Contractors v City of Lansing* made the following declaration in May, 2016 that directly and dispositively applies to this appeal:

> If it was ever the case, we conclude that, given the newly added language that expresses the **people's will to give municipalities even greater latitude to conduct their business**, there is simply no way to read our current constitutional provisions and reach the conclusion that "there is ... grave doubt whether ... **there has been any enlargement or extension of the subjects of municipal legislation and control or of the powers of cities except as those subjects and powers are**

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[58] Mich. Const. 1963, Art. VII, § 22.
[59] Convention Comment, art. 7, § 22. (Emphasis supplied).
[60] Convention Comment, art. 7, § 34. (Emphasis supplied).
[61] See *Associated Builders & Contractors v City of Lansing*, 499 Mich. 177 (2016).

> **specifically enumerated and designated in the Constitution itself and in the home rule act**. Under our current Constitution, there is **simply no room for doubt about the expanded scope of authority of Michigan's cities** and villages: "No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section." Moreover, these powers over "municipal concerns, property and government" are to be "liberally construed."[62]

In the Home Rule Cities Act,[63] the legislature's grant to home rule cities mirrors the Michigan Constitution, conferring broad home rule authority for city charters. Given limited space, an examination will be made of four relevant Home Rule authorizations. It is appropriate to focus first on MCL 117.5(1), in which the legislature spells out **restrictions on the powers of cities**, with this provision specifying that a "**city does not have power to do any of the following**: . . ." Keeping in mind that the Home Rule Cities Act, per *Associated Builders*, might restrict the authority of cities, MCL 117.5(21) is critically important in that it contains no restriction whatsoever on the authority of cities to regulate in specific areas such as oil and gas production.

B. Unique and Important Need of Cities for Authority to Address Local Concerns and Property Matters

The Home Rule Cities Act reveals the important reality that implicitly permeates the intent of the legislature as expressed in the Home Rule Cities Act: cities are unique among the municipalities of the state with regard to the concentration of population, the focus of economic development, the focus of down towns and urban commercial and industrial development, and the focus of **higher density residential development**. In the several Michigan cities characterized as being "urban," such as Southfield, the existence of these conditions heightens the need for the cities themselves to be in a position of authority to plan and coordinate land uses and activities that

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[62] 499 Mich. 177, 186-187 (2016).
[63] MCL 117.1, *et seq.*

all interrelate with one another. In some cities, such as Southfield, it is not an overstatement to say that having or lacking this authority can be the difference between surviving or not surviving as a vibrant community in the face of challenges and competition from other cities, both in and outside of Michigan.

Cities, in particular, are those places in the state with the most unique and complex local character and issues – owing to their high concentrations of population, residential neighborhoods, commercial uses, and industrial uses. This is especially the case in the most urban cities of the state, including the City of Southfield. In urban cities, protecting against harm and promoting quality of life is at the heart of maintaining sustainable communities that remain viable in the face of competing municipalities where there are new and attractive residential, commercial, and industrial developments threatening to draw away city citizens and businesses – often with tax abatements and other lures. The importance of city authority to **protect against harm to local interests** simply cannot be overstated.[64]

C. Recognition in MZEA of Need for Broad Home Rule Authority

Home rule authority must be given recognition in order to look forward to a positive future. Even with this authority, cities face immense challenges. As noted above, city authority was expanded by the people in the 1963 Constitution. It should not now be unnecessarily eroded simply because it coexists with the comparably legitimate interests of oil and gas production.

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[64] A prominent example of this need for City authority to engage in the fight to sustain itself can be found in a development that was known as Northland Center. This mall was constructed in Southfield as the largest shopping center in the world in the early 1950s. It is now being torn down given competition from newer malls in other cities and other related circumstances. Coping with circumstances such as this is a challenge that requires broad power, and certainly not a reduction in authority that leads to the unbridled introduction of oil and gas drilling in the residential neighborhoods, which would further reduce the attractiveness of the City. *See*, https://en.wikipedia.org/wiki/Northland_Center.

Indeed, this was a recognition made by the legislature in MCL 125.3205(2) when it denied authority for counties and townships to regulate oil and gas activities **but left city authority intact**:

> A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.[65]

This prohibition of authority makes good sense in counties in townships, which are typically not urban in character – but it would be entirely incongruous with the home rule authority of cities, in which broad and inclusive local control is essential.

IV. STATUTORY SCHEMES HAVING COMMON PURPOSES MUST BE READ TOGETHER HARMONEOUSLY TO ASCERTAIN LEGISLATIVE INTENT.

MZEA grants broad local authority to address a wide scope of the public interest in land use regulation. By contrast, Part 615 delegates its authority entirely within the narrow context of conservation and safety, thereby reaching only a fraction of the public concerns that land use law is intended to address. There is an overlap in certain protections such as the protection and conservation of natural resources and energy. However, any thought that it might be appropriate to brush aside the broad scope of protection contained in MZEA is unsupportable and contrary to legislative intent. Perception of a broad scope of authority in Part 615 amounts to a set of "emperor's clothes."

In the public interest, MZEA and Part 615 must be read together in order to ascertain legislative intent with regard to the common subject matter of the two legislative schemes. "It is elementary that statutes *in pari materia* are to be taken together in ascertaining the intention of

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[65] MCL 125.3205(2).

the legislature, and that courts will regard all statutes upon the same general subject-matter as part of one system."[66] In a case involving the rejection of an oil and gas drilling permit, the denial was affirmed by the Michigan Supreme Court.[67] As part of the opinions filed in the case, it was clarified that the achievement of legislative intent requires the MEPA [Michigan Environmental Protection Act, part of the codification in NREPA] must be read *in pari materia* with other legislation relating to natural resources.

MZEA and Part 615 are joined at the hip, having common objectives that follow the command of the people in art 4, § 52 of the 1963 Constitution for the legislature to provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction. That zoning is directly intended by the legislature as a response to the call in art 4, § 52 was announced by the Supreme Court in *Hess v Charter Township of West Bloomfield*.[68]

The common objectives of the two schemes can be summarized as follows: MZEA directs the planning and dividing of the city into uniform districts with regulations, all intended to: **promote natural resources**, and **protect, conserve natural resources and energy,** and generally to **protect people and property from harm** and **promote quality of life**.[69] Part 615 regulates oil and gas production, seeking to (1) prevent the inefficient locating of a well or wells in a manner to **reduce or tend to reduce the total quantity of oil or gas ultimately recoverable** from any pool, and (2) **prevent harm to property or people or destruction of specified environmental values** within that confined context.[70]

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[66] *Dearborn Township Clerk v Jones,* 335 Mich. 658, 662 (1953), cited more recently in *Robinson v City of Lansing,* 486 Mich. 1, FN4 (2010).
[67] Michigan Oil Co v. Natural Resources Comm., 406 Mich. 1, 33 (1979).
[68] 439 Mich. 550, 565 (1992).
[69] MCL 125.3201 and 125.3203, and see analysis in this Brief, above.
[70] See analysis in this Brief, above.

In reading the two statutory schemes together, the primary objective is not to decide which applies and which is swept aside. Rather, if feasible, the two schemes must be read together harmoniously.

> The Court must, first and foremost, interpret the language of a statute in a manner that is consistent with the **intent of the Legislature**. "'As far as possible, effect should be given to every phrase, clause, and word in the statute. . . . A statute must be read **in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained.**[71]

Stated in other terms, it has been held that two statutes that relate to the same subject or **share a common purpose** are *in pari materia* and must be read together. The goal of the *in pari materia* rule is to give effect to legislative purpose distributed across multiple **harmonious statutes**. When two statutes lend themselves to a construction that avoids conflict, **that harmonious construction should control**.[72]

Indeed, the Court has characterized the need to at least attempt a reading of common-purpose statutes together in insistent terms: "If by any reasonable construction two statutes can be reconciled and a purpose found to be served by each, **both must stand** . . . The **duty** of the courts is to reconcile statutes if possible and to enforce them . . ."[73]

MZEA and Part 615 share the important common purposes of protecting and conserving natural resources and energy, and protecting environmental values in preventing harm to persons and property in connection with the use of land. These two significant statutory schemes must be read *in para material.*

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[71] *Bush v Behrooz-Bruce Shabahang, et al,* 484 Mich. 156, 166-167 (2009). (Emphasis supplied and footnote references omitted).

[72] *People v Rahilly,* 247 Mich.App. 108, 112-113 (2001).

[73] *Valentine v McDonald,* 371 Mich 138, 143-145 (1963). (Emphasis supplied).

There can be little doubt that MZEA and Part 615 can be read together. They seek to achieve common objectives. To the extent that the broader purposes of zoning may result in the need to modify a drilling application, there is high probability that such modification would not result in an undermining of the objectives in Part 615. For example, if the application in the present case is found to be inconsistent with the residential zoning district in which the property is situated, this does not mean that the drilling must be prohibited. With the benefit of modern technology that allows directional and horizontal drilling for substantial distances, and the fact that non-residential zoning districts are established throughout the City of Southfield, the proposed drilling could certainly be accomplished without sacrificing the benefits provided by zoning. There is little need for concern that there could be an outright exclusion of oil and gas drilling in a city considering the express provision in MZEA intended to prohibit exclusionary zoning.[74]

MZEA and Part 615 must be read together to achieve the important benefits intended by the legislature to be achieved by each. Based on such a reading, and confirmed by the holding in *Addison Township v Gout* [75] a finding of preemption under *Llewellyn* is entirely unsupported.

V. CONSIDERING PART 615 AND MZEA IN LIGHT OF *LLEWELLYN*

Both MZEA and Part 615 have important purposes. They have a significant common base, and consequently should be harmoniously read together to maximize the public interest. MZEA is broad and comprehensive, while Part 615 is narrowly focused. Consequently, there is a

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[74] A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful. MCL 125.3207.

[75] *Addison Township v Gout* is discussed in detail in this brief.

considerable part of MZEA that is entirely outside the scope of Part 615. The Lower Court found the Part 615 preempts the City's zoning, meaning that broad protections intended by the legislature to be provided under MZEA would be entirely unregulated. That is, it is unquestionable that there is a **total void of the quality of life consideration** under Part 615, and preemption would mean that all the objectives in the zoning ordinance designed to promote quality of life would be entirely disregarded, thus providing no benefit to the City and its citizens. Likewise, there are many **protections against harm in MZEA** which are outside the scope of Part 615. Like the zoning provisions intended to benefit quality of life, preemption would void intended regulations to protect against harm, endangering the City and its citizens. With this fundamental reality in mind, and considering the need to read the statutes together harmoniously *in para materia,* the preemption standards provided in *People v Llewellyn*[76] will be examined. This examination supplements the conclusion that Part 615 does not preempt zoning reached in *Addison Township,* discussed in detail above.

A. <u>Grant of Exclusive Jurisdiction</u>

Part 615 does **not expressly provide** that the state's authority to regulate this subject matter is exclusive. In Part 615, the supervisor has jurisdiction and authority over the administration and enforcement of this part and all matters relating to the prevention of waste and to the conservation of oil and gas in this state.[77] It has been advanced in this case that this delegation of authority must be exclusive of all other regulation. Such a position is unfounded.

The clear analogy that demonstrates the reservation of concurrent jurisdiction under zoning is found in the regulation of the sale of alcohol, as interpreted in *Maple BPA, Inc. v*

[76] 401 Mich 314 (1977).
[77] MCL 324.61505.

Bloomfield Charter Township.[78] The Michigan Constitution authorizes the creation of a liquor control commission that is to "exercise **complete control**" over alcohol beverage traffic. In addition, the legislature in fact created the commission and granted it "the **sole right and power**" over this subject matter. Nonetheless, these constitutional and statutory provisions were **held not to establish exclusive jurisdiction in the state that would preclude the exercise of zoning** regulation over the same subject matter – even where it precluded the proposed alcohol sale use.

The language in Part 615 granting jurisdiction over **all matters** relating to the prevention of waste and to the conservation of oil and gas in this state has the important limiting conditions to which "all matters" is to be applied. Namely, it refers to "all matters" relating to "the prevention of waste" and "conservation of oil and gas." As distilled in section I of this brief, the entire scope of Part 615 is limited to preventing damage and danger in connection with oil and gas production, and avoiding the reduction of the total quantity of oil or gas ultimately recoverable from any pool.[79] The supervisor acting under Part 615, and a city acting under MZEA, have overlapping objectives. However, a zoning ordinance is adopted as provided in MZEA for the purpose of providing broad and comprehensive regulations that call for the creation of a plan for the entire city, and seek to accomplish numerous objectives to prevent harm, promote quality of life, and protect natural resources – including, but well beyond merely oil and gas production.

The permit issued by the supervisor wells in this matter admits on its face that an approval under Part 615 is not exclusive. General Condition No. 3 on page 1 of the permit

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[78] 302 Mich App 505, 511-515 (2013).

[79] This narrow authority of the supervisor is confirmed in *Addison Township, supra,* fn5.

expressly states that, "This permit does not preclude the necessity of obtaining other local, state, or federal permits which may apply to the drilling or operation of this well."[80]

Finally, but certainly not of least consequence, considering these points requires application of the mandate that Part 615 "must be read in conjunction with other relevant statutes [MZEA] to ensure that the legislative intent is correctly ascertained."[81] In light of the comprehensive nature of the zoning authority, the express authorization in MZEA for regulation to protect and conserve natural resources and energy, and the most important omission in MCL 125.3205(2) of an intent to preclude cities from the regulation of oil and gas production,[82] it cannot be concluded that there is a grant of exclusive jurisdiction over this subject matter to the supervisor of wells.

B. <u>Field Preemption and Legislative History</u>

In the absence of legislative history that would support a conclusion of an intent by the legislature to occupy the field of regulation on oil and gas production, it is necessary to determine whether there is other evidence of an intent to occupy the field.

Already discussed, above, the scope of the supervisor's jurisdiction is extremely limited, namely, preventing damage and danger in connection with oil and gas production, and avoiding the reduction of the total quantity of oil or gas ultimately recoverable from any pool. The "field" of interest intended by the legislature in MZEA is immensely broader, particularly when considered in light of the interests sought to be promoted and protected by exercise of the zoning authority.

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[80] See Exhibit 12 of City's Brief.
[81] See *Bush v Behrooz-Bruce Shabahang, et al., supra.*
[82] See *Addison Township v Gout, supra.*

In light of this vast difference in scope in the two legislative schemes at issue, it is appropriate to examine Defendants' false reliance on *City of Brighton v Hamburg*.[83] The circumstances in *Hamburg* are glaringly distinct from the present case. There, the City of Brighton sought to expand the capacity of a wastewater treatment plant that would discharge into the neighboring Township of Hamburg. The City accordingly obtained a DEQ permit for the increased discharge, granted under authority of Part 31 of NREPA.[84] The Township meanwhile amended a local ordinance to impose **stricter water pollution standards than those required by DEQ – standards the City did not meet**. The City sued the Township under the theory that Hamburg's new ordinance was preempted by Part 31.

The *Hamburg* court found that because **the local ordinance addressed the same narrow subject as the core focus of Part 31**, a finding of preemption was appropriate. Working through the *Llewellyn* factors, the Court found preemption based on the narrow nature of the challenged Hamburg ordinance. Because the Hamburg ordinance dealt **exclusively with water pollution**, Part 31 was found to be a pervasive regulatory scheme **on that subject**. Moreover, the Court recognized that water pollution is a **narrow subject** readily replaced by a uniform, central regulatory scheme.

The essential distinction between *Hamburg* and the present case is clear: Hamburg's ordinance, like the statute the court found preempted it, was a narrowly targeted one – it addressed only water pollution. In contrast, the subject of zoning is broad and comprehensive – not limited to any single, narrow public concern, and not limited to any single type of land use, such as oil & gas exploration. Zoning addresses land use and community development

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[83] 260 Mich App 345 (2004).
[84] MCL 324.3101, *et seq.*

generally, whereas Part 615's regulatory scheme is anything but pervasive. At issue in zoning is not merely the location of a single oil and gas operation, but in fact the integrity of a city's entire zoning framework, as discussed in depth in this brief. The zoning component does not cease to exist merely because oil and gas becomes involved. In addition, the exercise of zoning does not require or benefit from uniform, centralized regulation. To the contrary, zoning has always been considered to be a function that could only be performed at the local level. At issue is the preemption – the sweeping aside and disregarding – of the entire local zoning framework.

The *Hamburg* Court's analysis on this issue was consistent with the analysis of the Court in *Alcona County v. Wolverine*,[85] namely, there must be examination of the **purposes** of both statutes. It's not enough to say that Part 615 would be easier to enforce if it preempted the MZEA – things must also be considered from the perspective of the MZEA's purpose. With that in mind, it is very clear that zoning is accomplished by the creation of a land use plan uniquely suited to the particular city, and then establishing land use districts and regulations to carry out that plan. Uniformity of regulation throughout the state is entirely contrary to the intent of the legislature as expressed in MZEA.

Accordingly, the *Llewellyn* considerations discussed in *Hamburg* are entirely distinguishable from the present case.

Nor is there a basis for suggesting that the regulatory scheme in Part 615 extends to promoting and protecting **quality of life.** As discussed above, in terms of the field of regulating oil and gas production in an urban city, both in terms of the legislative purposes in MZEA, as well as the scope of authority granted to home rule cities to address local concerns and property matters, a city's authority to promote and protect quality of life is paramount. Whether to place a

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[85] 233 Mich App 238 (1998).

well in **one or more particular neighborhoods** may represent a decision that cuts to the essence of success for an urban city. Oil and gas drilling must be considered to be an industrial use with many implications in terms of a resident's view of whether to remain or move to another city – even if the supervisor of wells does a perfect job under the limited standards applicable to granting an approval for a particular drilling. A person deciding where to live or do business, or to remain in a neighborhood, makes decisions on attractiveness, compatibility, and valuation. A buyer moves into a residentially zoned neighborhood based on the **implied promise that all other uses in the neighborhood will be restricted to residential use**.[86] If that promise is undermined, the property owner has the choice to leave for a more attractive location.

Likewise, it cannot be said that Part 615 covers the field of regulating harms to persons and property. The protections of zoning are accomplished based on the creation of a community-wide land use plan, and the establishment of uniform zoning districts and regulations to carry out that plan. The purposes sought to be achieved in the exercise of zoning jurisdiction establish

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[86] See the explanation of "reciprocity of advantage" discussed in *Penn Central, supra,* 438 US 104, 139-140 (Rehnquist dissenting): Typical zoning restrictions may, it is true, so limit the prospective uses of a piece of property as to diminish the value of that property in the abstract because it may not be used for the forbidden purposes. But any such abstract decrease in value will more than likely be at least partially offset by an increase in value which flows from similar restrictions as to use on neighboring properties. All property owners in a designated area are placed under the same restrictions, not only for the benefit of the municipality as a whole but also for the common benefit of one another. In the words of Mr. Justice Holmes, speaking for the Court in Pennsylvania Coal . . . there is 'an average reciprocity of advantage.' . . .
Even where the government prohibits a noninjurious use, the Court has ruled that a taking does not take place if the prohibition applies over a broad cross section of land and thereby "secure[s] an average reciprocity of advantage." It is for this reason that zoning does not constitute a "taking." While zoning at times reduces individual property values, the burden is shared relatively evenly and it is reasonable to conclude that on the whole an individual who is harmed by one aspect of the zoning will be benefited by another.

much broader boundaries of the "field" of authority evident in Part 615. For this reason, requiring a harmonious reading of Part 615 together with MZEA is the established rule.

Regarding the relationship of Part 615 with other laws, there is no statement of intent to preempt the Michigan Home Rule Cities Act, or the Michigan Zoning Enabling Act. Indeed, as discussed in this brief, in MCL 125.3205(2),[87] by the express mention of a limitation on counties and townships in their regulatory authority for oil and gas production, there is effectively a statement of intent **not to preempt cities** in such regulation.[88]

Moreover, MCL 324.61526 makes it clear that Part 615 is "cumulative of all existing laws **on the subject matter,** but, in case of conflict, this part shall control and **shall repeal the conflicting provisions** . . ." To suggest that by this language, the legislature intended to "**repeal**" the Michigan Home Rule Cities Act or the Michigan Zoning Enabling Act would be absurd. In referring to other laws "**on the subject matter**," Part 615 is merely incorporating boilerplate language affirming NREPA's status as a comprehensive consolidation of the state's formerly scattered environmental statutes. It has no intent to affect a city's home rule and zoning authorization, and no explicit or implicit intent to preempt can be found.

It must also be conceded that there is an absence in Part 615 of an intent to empower the supervisor to sweep aside other parallel sources of authority – such as other statutes addressing related concerns that might arise in the same case or controversy as an oil or gas extraction. For example, Part 615 clearly has no intent or authority to sweep aside Part 365,[89] Michigan's

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[87] A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.

[88] See *Addison Township, supra*.

[89] MCL 324.36501, *et seq.*

endangered species act, even if the animal might only be harmed as part of an extraction operation. Part 615 clearly has no intent or authority to sweep aside Part 327,[90] Michigan's great lakes preservation act, even if a water diversion might only occur as part of an extraction operation.

Likewise, Part 615 clearly has no intent or authority to sweep aside Michigan's Zoning Enabling Act merely because the land use being regulated is an extraction operation. Just as the various parts of NREPA must be interpreted as acting in coordination with one another, so too must all laws with common purposes be interpreted where feasible as compatible and simultaneously effective, as a matter of reading the statutes *in pari materia*.

C. Pervasiveness and Uniformity Needs for State's Regulatory Scheme

The Part 615 regulatory scheme is narrow and confined, being limited to preventing damage and danger in connection with oil and gas production, and avoiding the reduction of the total quantity of oil or gas ultimately recoverable from any pool.

The characterization of local zoning regulations that seek to achieve more pervasive zoning objectives which are beyond the scope of Part 615 is explained in *Llewellyn*:

> [W]here the nature of the regulated subject matter calls for regulation adapted to local conditions, and the local regulation does not interfere with the state regulatory scheme, **supplementary** local regulation has generally been upheld.[91]

In determining whether supplementary local regulation "interferes with the state regulatory scheme," it is noteworthy that merely because local review has an outcome that may limit what the state would otherwise permit is not the test. The fact that a city has enacted regulations that **exact additional requirements or enlarges upon statutory requirements** is

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[90] MCL 324.32701, *et seq.*
[91] *Llewellyn*, *supra*. (Emphasis supplied).

not dispositive, so long as no conflict is created. If the two schemes can coexist they are not inconsistent due to a mere lack of uniformity in detail.[92] To the same effect, see *Rental Property Owners v City of Grand Rapids*,[93] (the state's nuisance abatement law did not create a pervasiveness and uniformity that prohibited a stricter local description of circumstances in which abatement proceedings could be pursued), and *Muskegon Area Rental Association v City of Muskegon,*[94] (city-imposed requirements greater than the General Property Tax law involving the payment of delinquent property taxes were held not to be preempted).

It must be recognized that neither MZEA nor the City zoning ordinance specifically "targets" oil and gas drilling. Rather, based on the mandate of MZEA, a zoning plan of the entire City has been prepared to achieve **local zoning objectives**, e.g., to promote the use of land for appropriate locations and relationships and in accordance with their character, adaptability, and suitability of uses in districts. The City has divided the community into zoning use districts. The City has not created a unique zoning district targeting regulations for oil and gas production. In other words, oil and gas operations are regulated as part of a **neutral and generally applicable** scheme of planning and zoning. Gas and oil activities represent only one of a myriad of uses that are regulated. This does not create a direct conflict.[95]

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92 Miller v. Fabius Township Board, 366 Mich 250, 256-257 (1962).
93 455 Mich. 246, 260-263 (1997).
94 244 Mich App 45 (2000).
95 Zoning in this regard certainly should not receive a higher scrutiny than neutral and generally applicable regulations that have the effect of restricting the fundamental, enumerated constitutional right guaranteeing the free exercise of religion. If a government restriction specifically targets this right, it will be strictly scrutinized. However, where a restriction on this guarded First Amendment right occurs as part of a neutral, generally applicable scheme, it will be upheld if it satisfies the lower standard of rational basis. *Employment Division v Smith*, 494 US 872; 110 S Ct 1595; 108 L Ed 2d 876 (1990).

The simple point is that home rule cities, as very clearly acknowledged in the Michigan Constitution, need and have been given considerable latitude in the Home Rule Cities Act and the MZEA to regulate for the achievement of local concerns and property matters. Certain restrictions might warrant especially close scrutiny, such as the restrictions on First Amendment protected free speech inconsistent with state law that were the subject of *Llewellyn*. But a variation in the requirements for undertaking business uses in the cities of this state are universally different from city-to-city. Minimum lot sizes, set-backs, height limitations, multi-family density authorizations, sign restrictions, special land use requirements, planned unit development requirements, wetland regulations (also an environmental regulation administered by the state),[96] etc., can be dramatically different from one community to another. There is no reasonable need for uniformity within the scheme of regulation on the part of those undertaking an oil and gas business in the state.

The mandate of the law is that Part 615 "must be read **in conjunction with other relevant statutes [MZEA] to ensure that the legislative intent is correctly ascertained."**[97] Because Part 615 and MZEA may be read harmoniously together in a manner not fatal to the purposes of either, such a reading is required by law.

VI. CONCLUSION AND RELIEF SOUGHT

The traditionally broad home rule authority granted to Michigan cities was expanded in the 1963 State Constitution, and this intent for broad authority to address local concerns and property matters is recognized in MZEA. As applied to the present case, the pervasive authority

[96] See MCL 324.30301, et seq.
[97] *Bush v Behrooz-Bruce Shabahang, et al, supra*. (Emphasis supplied).

granted to cities in MZEA includes the power to regulate in the field of natural resources and energy.

A city's general and unrestricted purposes stated in Michigan zoning enabling legislation to regulate natural resources and energy was recognized by the Michigan Supreme Court in *Addison Township v Gout.*[98] The decision in *Addison Township,* along with the extensive evidence of legislative intent provided in the statutes and other cases analyzed in this brief, make it clear that MZEA and city zoning ordinances are not intended by the legislature to be preempted by Part 615.

There are three broad reasons why the Lower Court reversibly erred in its opinion that narrowly scoped regulation in Part 615 preempts comprehensive city zoning:

- The Michigan Supreme Court has held that zoning is not intended to be preempted by oil and gas regulation, recognizing the pervasive regulatory scope in Michigan zoning enabling law to protect people and property from harm, and promote quality of life in ways entirely outside the narrow scope of Part 615.
- Michigan home rule cities are constitutionally intended to have authority to address local concerns and property matters.
- Statutory schemes having common purposes must be read together harmoniously to ascertain legislative intent.

The single clearest case on the subject of preemption in the same context as the present case is *Addison Township*.[99] Examining the relevant statutes and cases cited in this brief in light of the holdings in that case provide valuable insight.

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[98] 435 Mich. 808, 814-816 (1990).
[99] *Addison Township v. Gout*, 435 Mich. 809 (1990).

First, in the early sections of MZEA that provide statements of the Act's purpose, the power of cities to regulate in the field of natural resources and energy is not stated in conditional terms that might reflect a legislative intent to limit a city's power with regard to oil and gas.[100]

Second, the authority of cities under MZEA is broad and pervasive, as evidenced in *Kyser v Kasson Township,* which reveals the requirement of local planners and legislative body members:

> To assess the myriad factors that are relevant to land-use planning in hundreds of communities across this state . . . entails the solicitation of a broad range of disparate views and interests within a community, premised upon widely different visions of that community's future and widely varying attitudes toward "quality of life" considerations, and then a balancing of these views and interests . . . [This] balancing of factors, line-drawing, policy judgments, and exercise of discretion . . . belong to legislative bodies exercising the constitution's "legislative power." See Brae Burn, 350 Mich. at 431, 86 N.W.2d 166. . . .[101]

This pervasive regulation must be compared with the limited scope of Part 615, in which the legislature drew the lines of delegation on narrow, rather that broad terms, essentially preventing unwarranted waste and harm within the context of oil and gas production. This narrow purpose assigned to the supervisor in Part 615 does not conflict with the pervasive authority delegated to cities in MZEA; i.e., "the purposes of the separate regulatory acts do not conflict, nor do they suggest that uniformity is necessary to effectuate these distinct legislative goals."[102]

Third, and perhaps most importantly, *Addison Township,* ignored by the Lower Court, very clearly explains that the unconditioned statements of purpose in MZEA delegating the authority to regulate natural resources and energy was not precluded to cities in [what is now

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[100] MCL 125.3203. Also see MCL 125.3201.

[101] 486 Mich. 514, 535-542 (2010).

[102] *Addison Township v Gout*, at 815, including fn5. This footnote refers to the purpose of the two statutes which are the predecessors of the law governing the present case: TRZA (Township Rural Zoning Act) merged into MZEA to apply along with cities, villages and counties, and OGMA (Oil, Gas and Minerals Act) merged into NREPA as Part 615.

MCL 125.3205(2)], as it is precluded to counties and townships.[103] *Addison Township* goes on to explain that the lack of preclusion to cities in MCL 125.3205(2) means that the unconditioned delegation to regulate natural resources and energy provides cities with full authority to regulate oil and gas production issues.[104]

The sum and substance of *Addison Township* is dispositive on the point that Part 615 is not intended to preempt the delegation of oil and gas regulation to cities in MZEA. *Addison Township* also confronted and clarified that the burdens on the oil and gas industry must be appreciated, but also must be recognized as having been found to be necessary based on the intent of the legislature expressed in the statutes.[105]

These overarching conclusions reached in *Addison Township* are consistent with the broadly-encompassing purpose and intent of MZEA, as expressed in *Kyser v Kasson Township*:

> . . . Zoning, by its nature, is most uniquely suited to the exercise of the police power because of the value judgments that must be made regarding aesthetics, economics, transportation, health, safety, and a community's aspirations and values in general.
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> * * *
>
> These provisions reveal the comprehensive nature of the ZEA. It defines the fundamental structure of a zoning ordinance by requiring a zoning plan to take into account the interests of the entire community and to ensure that a broad range of land uses is permitted within that community. These provisions empower localities to plan for, and regulate, a broad array of land uses, taking into consideration the full range of planning concerns that affect the public health, safety, and welfare of

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[103] "A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells." MCL 125.3205(2).

[104] *Id*. at 814, with the opinion referring to MZEA by its reference to the "other municipal zoning enabling act."

[105] Specifically, the Court stated that, "We appreciate the burdens the industry may face should a township prohibit land use for a processing facility. However, we cannot invade an exercise of legislative discretion. Further, the Legislature has adopted protective measures which limit a township's authority to totally prohibit land use upon a showing of demonstrated need. See, e.g., M.C.L. § 125.227a; M.S.A. § 5.2961(27a) [now MCL 125.3507, discussed above].

> the community. Burt Twp. v. Dep't of Natural Resources, 459 Mich. 659, 665–666, 593 N.W.2d 534 (1999). . . . these provisions enable localities to regulate land use to meet the state's needs for natural resources.[106]

Recognizing that the oil and gas subject matter is regulated to promote and protect environmental interests, the breadth of regulatory authority granted in MZEA must be read in light of the conclusion reached in *Hess v Charter Township of West Bloomfield,*[107] to the effect that MZEA is intended to serve as a basis for carrying out the mandate of Const 1963, art 4,§52, directing the legislature to enact legislation to "provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction."

Likewise, the point that Part 615 is not intended to preempt the delegation to cities in MZEA is completely consistent with the Michigan Supreme Court's recent decision in *Associated Builders and Contractors v. City of Lansing*,[108] in which the Court emphasized the broad power of cities to regulate for local concerns and property interests, particularly considering the breadth of power of city governments reflected – and expanded from 1908 – in the Michigan Constitution of 1963.

Part 615 does not preempt MZEA or the City's zoning ordinance. The decision in the Lower Court should be reversed and remanded with the direction to read MZEA and Part 615 together as one harmonious regulation on the subject matter, and give effect to the regulatory purposes of each act as intended.

Respectfully submitted,

By: _____

[106] 486 Mich. 514, 535-542 (2010).
[107] 439 Mich. 550, 565 (1992).
[108] 499 Mich. 177, 187 (2016).

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