

WHAT HAS HAPPENED IN ILLINOIS COULD HAVE GREAT IMPACT UPON WISCONSIN RESIDENTS! READ THE ARTICLE AND THE COMMENTS FROM ATTORNEY TOM LISTER FROM LA CROSSE, WI



*.....keeping  
watch on the  
industry*

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**BREAKING NEWS!**  
**CHALLENGES IN FRAC SAND COUNTRY!**

**An article from the Ottawa Times ( March 14, 2017) appeared this past week regarding the Illinois Third Appellate Court Decision and a past**

**lawsuit.**

**"The Illinois Third District Appellate Court has breathed new life into a lawsuit that sought to block a sand quarry from operating in Utica.**

**A group of Utica-area residents filed suit against the Utica Village Board and the Aramoni mine company in 2014 in La Salle County Circuit Court. Residents alleged the board violated their rights to due process and equal protection by annexing the proposed quarry and then granting permits for the quarry to operate.**

**The residents further claimed the proposed mine would pose a nuisance. The board and Aramoni asked Associate Judge Cornelius Hollerich to dismiss the three-count suit, which Hollerich did in July 2015. Hollerich, who usually presides in Bureau County, was brought in to avoid potential conflict of interest.**

**Hollerich determined residents did not show how the board's actions were invalid or residents' rights were violated. Hollerich further found residents failed to sufficiently allege the mine would be a nuisance.**

**Residents pressed on and found favor at the appellate level.**

**Appellate Justices Thomas Lytton, William**

**Holdridge and Mary McDade concluded residents did advance a "substantive" argument and they were denied due process. However, only McDade found the residents were possibly denied equal protection, in that they may have been treated differently than other Utica residents.**

**As for the final count, all three justices were again of like mind — residents presented enough indications the mine could disrupt their lives, for this count to go forward.**

**In particular, Lytton noted the mine is "not in harmony with the community's comprehensive plan," which calls for the area in question to remain agricultural, although the plan designates a mine as industrial.**

**The appellate court ordered the case back to circuit court for further proceedings.**

**The commencement of operations at the mine have been on hold.**

**The residents have been represented by Northwestern University's Bluhm Legal Clinic of Chicago.**

**Peru lawyer Herb Klein has represented the board, with the Chicago office of the global firm Nixon Peabody, representing the village president. Peru lawyer James Andreoni is representing Aramoni."**

**In June of 2016, the News Tribune reported this information about the case:**

**<http://newstrib.com/main.asp?SectionID=2&SubSectionID=29&ArticleID=51636>**

**Attorney Tom Lister, retired, from La Crosse asked that I share his comments with readers about the recent Illinois case. He has been actively working on bringing a federal nuisance law to the attention of the WI courts and a Wisconsin judge who is to issue a decision soon:**

**"Hi everyone. A court of appeals in Ill. has ruled in a case I have been following for the past year. The decision is great for our cause as the court ruled unanimously that a cause of action for anticipatory private nuisance, such as the ones we are pursuing for the first time in Wis. is a viable cause of action.**

**I started contacting a Prof. at Northwestern last year about the case, as their environmental advocacy center was leading the charge for the private landowners who live next to or within a half-mile of the proposed frac sand mine.**

**The trial court ruled consistently against the plaintiffs and dismissed their complaints alleging private nuisance threats and due process violations. The Appeals court reversed on both grounds and has sent the case back to the trial court with directions to proceed. I will be bringing the case to the attention of our judge, the first of next week, and I expect to work together with the**

**folks in Illinois as we are further along with the development of evidence and experts than they.**

**The court ruled that there was a high probability that the plaintiffs would prevail in the action to enjoin the creation of the mine, and therefore the case should go forward. Keep the faith."**

**Thanks. Tom Lister**

**STAY TUNED FOR ADDITIONAL INFORMATION!**

**Pat Popple 715-723-6398 [sunnyday5@charter.net](mailto:sunnyday5@charter.net)**

*Welcome to the Frac Sand Sentinel, a newsletter highlighting resource links, news media accounts, blog posts, correspondence, observations and opinions gathered regarding local actions on, and impacts of, the developing frac sand mining and processing industries.*

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