

COA Opinion: A zoning ordinance allowing any “commercial or industrial activit[y]” to qualify as a special use lacks the specificity required by the Michigan Zoning Enabling Act

12. June 2010 By Aaron Lindstrom

Municipalities have no inherent power to regulate land through zoning, but the state legislature has, in the Michigan Zoning Enabling Act, delegated some zoning authority to local governments. This delegation, however, is limited, including with respect to special-use permits. In particular, MCL § 125.3502(1) provides that a zoning ordinance “shall specify . . . [t]he special land uses and activities eligible for approval.” In *Whitman v. Galien Township*, No. 287991, the Court of Appeals vacated a special-use permit because the ordinance at issue lacked the requisite specificity.

The Court of Appeals, in an opinion by Judge O’Connell, considered a Galien Township special-use ordinance that provided that “[e]stablishments for the conducting of commercial or industrial activities” are eligible for special use permits within the agricultural zoning district, subject to Board approval. Under this ordinance, the township granted a special use permit that allowed some permit applicants to operate ATV and dirt bike drag races on dirt racetracks and to conduct snowmobile races on a pond in the summer (an activity known as watercross, as shown in a video available [here](#)). The Court of Appeals held that because the ordinance generally allowed all “commercial or industrial activities,” it did not “specify” the special land uses and activities as required by MCL § 125.3502(1), and therefore the ordinance did not comply with MZEA. Accordingly, the Court reversed the circuit court’s order, which had affirmed the grant of the permit, and vacated the permit.