

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

SAXONY LUTHERAN HIGH SCHOOL,) ED99038
INC.,)
Respondent,) Appeal from the Circuit Court
) of Cape Girardeau County
v.)
) Honorable William L. Syler
MISSOURI DEPARTMENT OF)
NATURAL RESOURCES AND) 11CG-CC00272
MISSOURI LAND RECLAMATION)
COMMISSION,) FILED: May 14, 2013
and,)
)
STRACK EXCAVATING, LLC,)
)
Appellants.)

Appellants Strack Excavating, LLC (Strack) and the Missouri Land Reclamation Commission (Commission) appeal the circuit court’s judgment reversing the Commission’s issuance of a permit to Strack for construction of a limestone mining operation. Strack and the Commission argue the Commission properly imposed a 1000-foot setback condition on Strack’s application that brought it into compliance with legislation passed while the permit application was pending. Saxony Lutheran High School (Saxony) argues that by imposing a condition on the permit, the Commission acted in excess of its power, and the circuit court properly vacated the permit.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Division Five Holds: The Commission had the authority to approve Strack’s permit subject to the condition that Strack relocate its mine plan boundary in compliance with the 1000-foot setback requirement passed during the permit process. The Commission further did not abuse its discretion in concluding Strack was not required to notify the public of the resulting change in acreage of the proposed mine, as the amended acreage was wholly contained within the original permit application’s mine plan.

Opinion by: Gary M. Gaertner, Jr., C.J.
Robert M. Clayton III, J., and Elizabeth Hogan, S. J.

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