

Bond Case Briefs

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ZONING & PLANNING - SOUTH DAKOTA

Dakota Constructors, Inc. v. Hanson County Board of Adjustment

Supreme Court of South Dakota - July 26, 2023 - N.W.2d - 2023 WL 4778243 - 2023 S.D. 38

Quarry owners filed petition for writ of certiorari, contesting conditions which county board of adjustment attached to conditional use permit and arguing that quarry was a prior nonconforming use in agricultural district.

The Circuit Court denied the writ, and quarry owner appealed.

The Supreme Court held that:

- As a matter of first impression, in passing on the meaning of a zoning ordinance, the courts will consider and give weight to the construction of the ordinance by those administering the ordinance, and
- Determination that previous operation of quarry had ceased for more than one year and was thus not a prior nonconforming use was not wrong or erroneous.

In passing on the meaning of a zoning ordinance, the courts will consider and give weight to the construction of the ordinance by those administering the ordinance; however, an administrative construction is not binding on the court, which is free to overrule the construction if it is deemed to be wrong or erroneous.

County board of adjustment determination that previous operation of quarry in agricultural district had ceased for more than one year and was thus not a prior nonconforming use under zoning ordinance that could continue without a conditional use permit was not wrong or erroneous, nor was it in willful disregard of the indisputable proof; extraction of sand, gravel, or minerals was not a permitted principal use within an agricultural district under the ordinance, board differentiated between the extraction of material from the ground and the removal of previously extracted and stockpiled material from the site, and there was no evidence contradicting reports filed by quarry owner's predecessor that zero tons of gravel were removed from their natural state on the site for 17 years, but rather predecessor removed stockpiled aggregate.