

AGENDA
BUTLER COUNTY BOARD OF ZONING APPEALS
BUTLER COUNTY ADMINISTRATION CENTER
130 HIGH STREET
HAMILTON, OHIO 45011
November 20, 2007

I. Opening

- A. Roll Call Mr. Gary Salmon
 Mr. Thomas Bevington
 Mr. Alan Daniel
 Mr. Henry W. Philpot
 Ms. Lee Steenken

II. Approval of Minutes

- A. September 18, 2007

III. New Business

- A. BZA07-21V Otis L. Mullins, Sr.
 5771 Hamilton Trenton Road
 Trenton, Ohio 45067
- B. BZA07-22V Michael & Lynne McCann
 7940 Dickey Road
 Middletown, Ohio 45042
- C. BZA07-23V Kelly L. Mays
 5803 Hamilton Trenton Road
 Trenton, Ohio 45067
- D. BZA07-24C American Aggregates Corporation
 3514 Hamilton Cleves Road
 Ross, Ohio 45014

IV. Adjournment

BUTLER COUNTY BOARD OF ZONING APPEALS
Butler County Administration Center
Hamilton, OH

REGULAR MEETING: Tuesday, November 20, 2007; 7:00p.m.
Butler County Government Services Building
Conference Room 1
315 High Street, 1st Floor
Hamilton, OH 45011

CALL TO ORDER: Mr. Bevington called the meeting to order

ROLL CALL: Mr. Gary Salmon
Mr. Thomas Bevington
Mr. Alan Daniel
Ms. Lee Steenken

MEMBERS ABSENT: Mr. Henry W. Philpot

STAFF MEMBERS: James Fox, Zoning & Floodplain Manager

APPROVAL OF MINUTES:

Mr. Salmon motioned to approve the minutes of the September 18, 2007 meeting. Ms. Steenken seconded. Motion carried.

AYES: Salmon, Bevington

NAYES: None

ABSTAINED: Steenken, Daniel

Mr. Fox advised the applicants that because there are only four Board members present, they have the right to have their case tabled until next month until all five Board members are present. If an applicant decides to proceed tonight, the case will need three of the four members to vote in favor for their application to be approved, if there is a tie vote (2-2) it will be an automatic denial vote.

NEW BUSINESS:

BZA 07-21V

Otis L. Mullins, Sr. and Beverly Mullins
5771 Hamilton Trenton Road
Madison Township, Ohio 45067

Mr. Mullins said he works for the Ohio Department of Transportation and has been there for ten years and has worked at (inaudible) Rest Home for about six months now, and bought this old house up there at 5771 Hamilton Trenton Road as a foreclosure and purchased it for \$124,500.00 three years ago and has invested a lot of money in the place (\$60,000 to \$70,000) and has totally renovated the property, built a new barn, fenced in an acre, have water and electric to the barn and made a nice home.

Mr. Mullins said he has two horses on the property and have been there for three years with no complaints. The Board of Health came out and it passed with flying colors and we take good care of our horses and our property. He added that many neighborhood kids come by and pat the horses and had a petition at the school and approximately 45 – 50 children signed it.

Mr. Bevington asked Mr. Mullins how long have his horses been there.

Mr. Mullins replied almost three years.

Mr. Bevington asked Mr. Mullins how many acres he has there.

Mr. Mullins said he has 2.2 acres and has two horses and has never had more than two horses. He said he believes Madison Township allows for one horse per acre. He added that he knows they had Black Angus across the street (until he passed away), and down the street they have horses, people up the street have horses there and everyone around takes nice care of their property and you could not ask for better neighbors.

Mr. Bevington asked Mr. Mullins if his property goes all the way back to the road there at railroad.

Mr. Mullins replied, yes.

Mr. Bevington asked Mr. Mullins if his fence is all along the way back that has a big red gate.

Mr. Mullins said he is 50 feet from the railroad track and he does not have a fence all the way back there yet.

Mr. Bevington asked if Mr. Mullins had said the Health Department had been there and looked at it.

Mr. Mullins replied yes sir, they came and it passed with flying colors.

Mr. Daniel asked Mr. Mullins, when he said the Health Department came in and passed, exactly what did they pass.

Mr. Mullins said they looked inside the barn, the conditions of the property, condition of the horses and went into the barn and he had the watering set up with a water trough and they looked at the hay and all of the conditions inside the barn.

Mr. Fox said to Mr. Daniel that the Health Department (report) says, “visited the property on October 16, did not observe any conditions which would be considered a nuisance to public health on that date and there are several other residents within less than 500 feet from the barn and pasture is probably possible to keep horses and maintain in the condition that would never adversely affect the neighbor in close proximity but it would take a series of sustained commitment by the owner to ensure that odor and pest nuisance are never allowed to development, and that is by Mr. Krinoff (Department of Health). He added that the Board members should have a copy of the report in their packet.

Mr. Bevington asked Mr. Mullins when he purchased this property.

Mr. Mullins replied three years ago November 5th.

Mr. Salmon asked Mr. Mullins what he does with the manure presently.

Mr. Mullins replied that he has a compost pile and after it builds up so far he has a separate area that is concreted in/around and is tarped over and a friend of his has a big farm in Madison Township, and he takes it out there and gives some of it to the neighbors and we also use it around the flowers.

Mr. Mullins said he uses (a product called) Raybon – it goes in the horse feed and actually stops the flies from regenerating in the manure and said he takes extra steps to make sure nothing happens as far as fly infestation and stuff like that.

Mr. Bevington asked Mr. Mullins if he said he was in health care.

Mr. Mullins said yes sir.

Mr. Bevington asked Mr. Mullins when you are in health care what does that mean to your residents.

Mr. Mullins replied that he does the most care for them and he takes good care of those people, just like it was his mom and dad there.

Mr. Bevington said to Mr. Mullins that he knows what it means to keep down insects, vermin, and flies, whatever.

Mr. Mullins said he knows all about safety and all of the chemicals and all hazards to deal with in retirement buildings.

Mr. Bevington said to Mr. Mullins that if he does that as his livelihood, a person like that would know exactly what they needed to do keep their home and environment the same way.

Mr. Mullins agreed and said that is how he treats everything – we go out of our way to make sure that our property is maintained very well.

Mr. Bevington asked Mr. Mullins if there were any other family members that are in the health care field.

Mr. Mullins replied yes, his wife is.

Mr. Bevington stated that means there are two people who know exactly what they need to do keep a clean environment.

IN FAVOR: James Martin, 3974 Cotton Run Road, Hamilton, OH

Mr. Martin said his father owned the property across the street of these people and as a child growing up in this home, his father had Shetland ponies for years, we had Black Angus, sheep – we've had it all.

Mr. Martin said he has had cattle at his father's home but there have not been any for the last year and a half. He added that he does not have a problem.

Mr. Martin said the Mullins have beautiful animals. We brought the two horses over to his home while the Mullins were fencing their property and they took very good care of everything – feed tanks, watering, everything.

Mr. Martin said he does not see a problem here and asked where the children will go to see stuff like this.

Mr. Bevington asked Mr. Martin if the Mullins' horses are an enhancement or hindrance to the neighborhood.

Mr. Martin replied they are an enhancement.

Mr. Bevington stated that the Zoning Commission received a letter that was in their packet that says grades from EMS. We know this is not a notarized document but there are 42 children that have signed a petition and wants it on the record that 42 neighborhood children like these horses, other than that we can not take it as they are not really property owners but did want to make that note.

IN OPPOSITION: Ross Blaine, 5810 Riverside Drive, Madison Township, OH, Darrell Keplinger, 5766 Hamilton Trenton Road, Madison Township, OH

Mr. Blaine said it all started when Mr. Mullins' fence went up this year and he put the horses back there. Mr. Blaine said his property is between both of the (inaudible) where they put horses on both sides and the horse manure is so bad back there and throughout the fields behind and right next to his house and next to his bedroom. He added that it was so bad he could not even open the windows and as far as putting a chemical in, it still did not stop the flies. The flies are so bad back there that he can not even sit on his own front porch or work out in his barn.

Mr. Blaine said for him to have any kind of resale value of his house would have to take someone who loves horses and flies. He added that the resale of his property has dropped and said he could guarantee it and you would have to be a horse lover to want this place.

Mr. Blaine said he has 11 years of work until he retires and he plans on selling his property at that time but as it is right now, the resale value of the house.... and the other guy and his wife up the road (inaudible) last week about this hearing and they do not want to cause any problems with the neighbors and they are in the same boat – he is getting the odor from Mr. Mullins' place and said he spoke with him this morning and he does not want to cause any problems.

Mr. Blaine said the smell out back there is unbearable.

Mr. Blaine said he (Mr. Mullins) put a fence on his (Mr. Blaine's) property and says he is going to move it and he still has never moved it. He added that the survey stakes are there and he knows that he put the fence on his property.

Mr. Blaine said a person would have to be a horse lover to want to buy this place. Mr. Blaine said he asked Mr. Mullins to quit dumping it as his well is right there by the fence kind of and can imagine what that is doing to his well.

Mr. Blaine said Mr. Mullin's is getting like the property across the street – the grass is completely gone back in there where he built that barn and where the horses are running. He added that next to his property on the other side where they put the horses – they had horses for two weeks and while they were there, there was a pile of horse crap that was 3 foot by 10 foot wide and even asked the guy back there right next to him – they went back there because when he filed the complaint about this, they have been out there policing it and have been doing a hell of a job cleaning it up and keeping it and does not know what they are doing with it but the smell is unbearable.

Mr. Blaine said he is dead set against this because it is hurting the resale of his house which is dead in the middle of both of them.

Mr. Bevington said the Health Department got the complaint on October 11 and they were there on October 16 and did not see a lot of problems out there.

Mr. Blaine said two and a half weeks after the Mullins put their horses in, on the other side he means – the horse (expletive) was so bad there, you can ask them and they will tell you they have three horses in there.

Mr. Bevington asked Mr. Blaine if Mr. Mullins had three horses there.

Mr. Blaine said no, (the property) on the other side.

Mr. Bevington told Mr. Blaine not to talk about someone else's case.

Mr. Blaine asked if anyone would want to buy a house that has horses on both sides – it would take a horse lover and not mind dumping the horse crap back there along the fence line right next to the house. He added that he has seen him (Mr. Mullins) do it a hundred times and asked him to quit it but he never quit it and now he has supposedly quit it but he has not been there for a while.

Mr. Bevington said he is curious why the Sanitarian went out and he did not see it and asked Mr. Daniel if he recalls ever hearing of the Health Department coming out to check their violation.

Mr. Daniel said he never knew the Health Department came out and checked barns and was not aware of that and had never heard of that before.

Mr. Blaine said he called Mr. Daniel to find out what the actual zoning law was about and said he believes they had a phone conversation.

Mr. Daniel said Mr. Blaine asked what the rules were and he told Mr. Blaine what the rules were and to call that gentlemen right there.

Mr. Blaine said that is what he did and that is why he is here and even had to take time off of work because of this.

Ms. Steenken asked Mr. Blaine if he could show her which property is his. Mr. Blaine showed her the location of his property, where Mr. Mullins' barn is, and where the other property is for the next case.

Mr. Blaine said he even asked him this morning because the smell was coming up into the house this morning and said he does not want to cause no problem with his neighbors.

Mr. Fox asked Mr. Blaine what his address is.

Mr. Blaine replied 5810 Riverside Drive.

Mr. Bevington asked Mr. Blaine if his property is on the back side.

Mr. Blaine said he lives right in the middle of all of this and said the next case is the same scenario.

Ms. Steenken asked Mr. Blaine if his home is the new home there.

Mr. Blaine replied no, that is Mr. Keplinger's place.

Mr. Blaine said he has been there for 19 years and never had a problem like this and should not have to be subjected to putting up with someone else's wants and there were never horses there. He added that if you look across the street on Hamilton Trenton Road where Mr. Martin mentioned the Black Angus, it is a mud pit all over there and they did store their horses over there for a little while.

Mr. Keplinger said it is not so much Mr. Mullins but some other people had three horses in a field right next to us and there was horse poop this high - you couldn't sit out on the porch this summer – they would knock you down.

Mr. Keplinger said the flies and horse stuff all along the fence was one mess, the horses ate all of the grass and there was nothing but mud and then they took them back to where they live now, but the field was a mess and nothing but mud, horse poop and flies every where and he should not have to live next to something like that.

NEUTRAL TESTIMONY: None

STAFF COMMENTS

Mr. Fox said the applicant's request is to have horses without proper road frontage. Staff comments as follows:

1. The property is zoned R-2 Residential.
2. This area is residential in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the Board, proof by a preponderance of the evidence that unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning regulation is not to allow this type of activity from a residential area; therefore staff will recommend denial.

Mr. Daniel asked Mr. Mullins if he feeds hay all year round when he does not have enough grass.

Mr. Mullins said there is plenty of grass there but we had an awful summer and heck of a drought – but his horses got plenty of grass still. It is worn down a little bit around the barn where the horses walk around but his field still has plenty of grass.

Mr. Salmon asked Mr. Mullins if he has a fence in.

Mr. Mullins replied that he has about 1 – 1½ acres fenced in right now and had the land surveyed and was clearing it off to fence the rest of it in and that is when Ross (Mr. Blaine) came out and he paid almost \$400.00 to find out he was in the wrong and the fence he was talking about – there is an old fence out there – and hanged it around each post, pulled it out and dug it in and before he stretched a stick of pins he asked all of the neighbors if they were happy with it and even Mr. Blaine said that's fine. He added that he is about 18 inches on Mr. Blaine's' property and told him he will move the fence as soon as the weather breaks because the ground was rock hard and we had a bad summer.

Mr. Mullins said it is a really nice, 5 foot, non-climbing horse fence and has probably invested \$4,000.00 just in the fence not including the gate.

Mr. Mullins said he has no problem what so ever to move the fence. As far as dumping manure out there – he does not dump manure back there and the Health Department was there and saw exactly. He said he tarps it and has bungee cords in a concreted area which is totally isolated and he hauls it off when he gets enough on his trailer.

Mr. Daniel asked Mr. Mullins if he lets his horses run loose in the field all of the time.

Mr. Mullins replied no sir, they are stalled up every night – every evening they go in the barn and he feeds them inside the barn then lets them out in the day for maybe 6 -7 hours and we pick up the field at least once a week. Once a week with two wheel barrels and we (Mr. Mullins, his wife and three children) pick it up and bring it to the manure pile and tarp it.

Mr. Mullins said he has never seen any flies in the barn.

Mr. Daniel said he has dealt with horses for 21 years and told Mr. Mullins he is not a rookie and guarantees that there are flies in his barn. He added that he and his father traded and sold horses and had flies in their barn and would cover the horses eyes and put a mask on – but there were flies and for Mr. Mullins to tell him that there are no flies around, Mr. Mullins is the only man Mr. Daniels said he knows that has not got flies.

Mr. Mullins said that stuff (Raybon) in the feed really keeps them down and he does not have a big fly problem at all and has been doing it for almost 5 years himself.

Ms. Steenken said she is very attuned to livestock herself but the quarters here are so close and she can understand Mr. Mullins having a dream but agrees with Staff recommendations that this is not an appropriate use.

Mr. Bevington said he has mixed emotions - you've got a fence on somebody else's property and that probably started the whole thing, and believes when the Sanitarian went out he did not see anything and if he did, he would have sited it. Mr. Bevington said Mr.

Mullins does not have all of his property fenced in and if the whole 2.2 acres were fenced in, one horse per acre and he would have been in.

Ms. Steenken made a motion to deny Case BZA07-21V. Mr. Salmon seconded the motion. Motion carried.

AYES: Steenken, Salmon, Bevington, Daniel

NAYES: None

Mr. Fox told Mr. Mullins if he would like to appeal the decision of the Board of Zoning Appeals he has thirty days to file in the Court of Common Pleas to try to have this decision overturned and if not the horses are to be removed within thirty days.

BZA 07-22V

Michael & Lynne McCann
7440 Dickey Road
Madison, Ohio 45042

Mr. McCann said we are here for a variance for our property where we have lived for twenty years and would like to build a new home on the property and continue living in our old house until the new home is completed and then tear down the old one once it is done. He added that they do not want to move twice and store all of their stuff and it would be much easier to move just once.

Mr. McCann said staying there would let them keep an eye on the place, the new construction and keep up with his three dogs there.

Mr. Bevington asked Mr. McCann what he will do with the yellow building that is in the back of his driveway.

Mr. McCann said he plans to move that shed back by the old barn.

Mr. Salmon asked Mr. McCann if the new house will be constructed similar to the new garage.

Mr. McCann said yes, it will be a brick house.

Mr. Daniel asked the Mr. and Mrs. McCann if they have talked with any of their neighbors about the situation that he is applying for.

Ms. McCann said yes.

Mr. Daniel asked any of them objected.

Ms. McCann replied no.

Mr. Salmon asked Mr. McCann how soon they will start on the new house.

Mr. McCann said as soon as they could.

Mr. Salmon asked Mr. McCann how long after the new house is completely constructed will it take for them to move all of the belongings into the new house.

Mr. McCann replied hopefully not very long and said he could not give an answer of how long, but it took him a week to clean out the garage when he got the new garage.

Mr. Salmon asked Mr. McCann if he plans to tear that old house down.

Mr. McCann replied he plans to demolish it.

IN FAVOR: None

IN OPPOSITION: None

NEUTRAL COMMENTS: None

Staff Comments:

Mr. Fox said the applicant is requesting to live in existing house while their new home is being constructed.

1. The property is zoned Agricultural.
2. This area is rural in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the Board, proof by a preponderance of the evidence that unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning regulation is not to allow this type of activity from a residential area; but since this will not change the character of the area the staff will recommend approval with the following conditions:

Mr. Fox said Staff recommends approval with the following conditions:

- A Building Permit will be required for the new structure.
- The old house must be removed totally from the property within 30 days after occupancy of the new home.

Mr. Bevington said to Mr. McCann that Staff comments stated it must be totally removed within thirty days of occupancy and asked Mr. McCann if he would be able to accomplish that in thirty days.

Mr. McCann asked if that meant after they get all of the twenty years worth of stuff in the new home.

Mr. Bevington replied when they are totally in the new house.

Mr. McCann said he does not see any problem with that.

Mr. Daniel asked Mr. McCann if he had contracted to have someone do the demolition.

Mr. McCann said he has spoke with (name inaudible) about demolishing the house and he has talked with Madison Township about having the house used for training.

Mr. Fox said the Board can give Mr. McCann sixty days if they wish.

Mr. Bevington said that is why he asked and Mr. Daniel agreed.

Mr. Daniel said that sixty would give the McCann's a few more days.

Mr. Bevington said even if you burn it down it may be too windy.

Mr. McCann said the Township would burn it so long as it wasn't too cold out.

Mr. Salmon asked Mr. Fox if everything was done right when the new garage was built.

Mr. Fox replied yes, everything was done in a timely manner and did not have a problem with that.

Mr. Daniel said he would like to extend it to sixty days.

Ms. Steenken motioned to approve BZA07-22V with following conditions: A building permit will be required for the new structure; the old house must be removed totally from the property within sixty days after occupancy of the new home. Mr. Daniel seconded the motion. Motion carried.

AYES: Steenken, Daniel, Salmon, Bevington

NAYES: None

BZA07-23V

Kelly L. Mays
5803 Hamilton Trenton Road
Trenton, Ohio 45067

Mr. Mays said he is here for a variance to keep two horses on his property without proper road frontage.

Mr. Mays said he purchased the property back in August with the intention of putting horses on it and talked to all of his neighbors ahead of time.

Mr. Mays said he had the fence up for a few weeks and herniated three disks in his neck so he went ahead and had his wife move the horses over there so she could take care of them because he had neck surgery. He said there was a manure problem for about 2 – 2 ½ weeks before he could get back up there and do something about it.

Mr. Mays said since he has been able to pick it up, clean the fields every night and haul the manure off the property once a week and has 1 ¾ acre fenced in and usually one to two days week the horses are taken off the property for practices and parades on the weekends.

Mr. Mays said as far as flies go, there is no smell and has not noticed anything since they have been keeping the horses in the barn approximately 14 hours a day. They are inside and let them out and feed them in the evenings and go and clean up the field and we usually bring them in at 10:00pm at night until 4:00pm the next day.

Mr. Mays said there is no manure problem at this time but there was one while he was in the hospital and there has not been since.

Mr. Mays said he does not have an issue with mud and does have grass and said he thinks his neighbor was more upset about his fence than he was about the horses.

Ms. Steenken asked if the fence was quite new.

Mr. Mays replied yes – he put it up after he bought the house and there is about \$3,000.00 worth of fence.

Mr. Bevington asked Mr. Mays if he was not able to keep horses there would he take the fence down, or leave it up.

Mr. Mays replied he would leave it up.

Mr. Salmon said in Mr. Mays' letter he stated that he did check with the zoning criteria and asked him who he checked with for zoning requirements.

Mr. Mays said he read it himself online and it was one animal per acre. He added that according to the definition of “frontage” (inaudible) but he did not read “Lot frontage” so

he thought Riverside Drive behind him would count as road frontage which would put him over 200 feet.

Mr. Bevington asked if Riverside was not a dedicated street.

Mr. Fox replied no, it is a paver street basically – the right of way is there but the road has never been built.

Mr. Fox said an unimproved street does not count as road frontage.

Mr. Salmon asked if it was a County road.

Mr. Blaine said A.K. Steel owns it.

Mr. Daniel said it is not dedicated, it is not taken care of by the County or by the Township, and is almost like a private drive.

IN FAVOR: Daron Bare, 5814 Riverside Drive, Madison Township, OH, Holly Bare, 1010 Knoll Lane, Middletown, OH, Jim Martin, 3974 Cotton Run Road, Madison Township

Mr. Bevington asked Mr. Bare what he would like to the Board about why he thinks this should be approved.

Mr. Bare said he feels it has increased the value to his own property and has it fenced, beautiful horses and his kids love them.

Mr. Bare said he has not had a problem with the horse poop or flies and the fence comes 10 – 15 feet away from his garage. He added that it is kept up nice and there is no mud and the horses eat grass but they get fed every day and he sees that personally.

Mr. Bevington asked Mr. Bare if he thinks they are an enhancement or hindrance to the neighborhood.

Mr. Bare replied he thinks they are an enhancement.

Ms. Steenken asked Mr. Bare to identify the location of his property on a map.

Mr. Bare indicated where his house is located and where the Mays' barn is located.

Ms. Bare said the reason why she is here is because she was the previous owner before the Mays' bought the property. She said the Mays had talked about putting horses on here and when it was mentioned to Mr. Blaine he had a problem with (inaudible).

Ms. Bare said his barn is close to the property line and we did not have a fence up so any time he needed to access backing in, it was in our yard and we did not have a problem with it.

Ms. Bare said as far as the flies go, even before they got theirs, we put the barn up and were always in the back and used to have a ton of wood back there. We would see Mr. Blaine out in the flies and the stink in the summer and it did not seem to be a problem then and she does not why all of a sudden it is a problem now. We never smelled it when there were horses there and the fact that we actually seen him out, and yet he says he could not open his windows or work in the barn, we saw him out there quite a bit.

Mr. Martin said the address he is talking about is 5794 and is right across the street from both of these people. He said when Mr. Mays was down with his neck they had their horses at his (Mr. Martin's) father's property and understood that they could not get over there as Ms. Mays was running back and forth to the hospital.

Mr. Martin said he has heard "the fence is on my property" and "the fence is not on my property" and one thing to the next. These people take care of their animals and he also knows Mr. Mullins does too. The Mays have their area all fenced in a whole lot larger than the Mullins. He added that he is at his parents' house just about every day and the horses have been in and from what he has seen the animals have been taken care of very well.

Ms. Bare said her mother-in-law lives right next door to them and she is for the Mays and does not smell anything, but she was just admitted to the hospital at 5:00pm and could not be here.

Mr. Bevington told Ms. Bare they can not accept the testimony as the mother-in-law is not here but thanked her.

IN OPPOSITION: Darrell Keplinger, 5766 Hamilton Trenton Road, Madison Township, OH, Ross Blaine, 5810 Riverside Drive, Madison Township

Mr. Keplinger said these are the horses that he was talking about, not so much about Mr. Mullins' horses because he lives across the street from him and has horses out the back.

Mr. Keplinger said these people had them in the field next to his house for about two months it was and it was terrible. There were piles of poop everywhere and the pee – and they were eating everything along the fence.

Mr. Keplinger said about after two months they went and got them and brought them back to where they live and it was a mess in the field over there. He added that he does not think there should be animals in a residential area and if you want a farm – move out some where else.

Mr. Bevington asked Mr. Keplinger if they did not live there when they had the horses there.

Mr. Keplinger said he thought they lived across the street – but they are not over there now.

Mr. Blaine said when Ms. Bare and her husband lived there, (the fence she is talking about) he told Mr. Mays to make sure that he has his fence on his property because he would probably have to take this to court.

Mr. Blaine said he had a landscaping business for 9 – 10 years and has a 60” mower and has plenty of room to run the mower in between his barn and their fence so it’s not like it is on the property line.

Mr. Blaine said he built the barn in 1997 and there is plenty of room for him to drive all the way around but it was just convenient and her husband and Mr. Blaine had talked about the fence.

Mr. Blaine said when they (Mays) talked to me about their intentions of putting horses out there that was fine and did not realize the horse (expletive) was going to be four feet tall and probably 10 foot wide (said he is guessing at the 10 feet). He added that the flies were so bad it was unreal.

Mr. Blaine said when he left his house at 6:30pm the horses were still out – and he said he is sure the Mays’ take good care of the horses, but, after 19 years of living there, he should not have to be subjected to somebody else’s wants in a residential area.

Mr. Blaine said the flies are terrible and he does a lot of work out in his barn working on his vehicles and can not stand the flies out there.

Mr. Blaine said he doesn’t give a crap about this fence deal, it’s fine and can stay where it is so long as it is on his own property and he made it clear to Mr. Mays but the horse (expletive) all the way back up to the easement....

Mr. Bevington asked Mr. Blaine to use the word “manure.”

Mr. Blaine said it is so bad because it runs all the way from his front porch to the easement and same way on the other side Mr. Mullins’ property. He said he is smack in the middle of it and does not see how it could enhance his property at all.

Mr. Blaine said if you look across the street you can see it is a mud pit over there and said he believes it is fenced all the way back to Mr. Jim Withrow’s – and he can’t stand the site of these horses either and Mr. Blaine said Mr. Withrow called him this morning and said they don’t want to cause any problems with the neighbors.

Mr. Blaine said it is unbearable and not an improvement to his property whatsoever and someone would have to be a horse lover to buy a place surrounded by horses and it is not a very good situation.

NEUTRAL TESTIMONY: None

Staff Comments:

Mr. Fox said the property is;

1. Zoned R-2 Residential.
2. This area is residential in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the Board, proof by a preponderance of the evidence that unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning regulation is not to allow this type of activity from a residential area; therefore staff will recommend denial.

Mr. Salmon motioned to deny the request for a variance for BZA07-23V because unnecessary hardship was not expressed and it is zoned R-2 and there is not proper road frontage. Ms. Steenken seconded the motion. Motion carried.

Mr. Bevington said due to the testimony that one person says how bad it is, and another testify that the other one is out in his yard all the time, and another person said he used to drive through the yard all the time until they put up the fence.... we did not hear that on the first case and votes no against the denial.

AYES: Salmon, Steenken, Daniel

NAYES: Bevington

Mr. Fox told Mr. Mays he has thirty days to apply for an appeal with the Court of Common Pleas and if he decides not to do that he must have the horses removed within thirty days.

Mr. Bevington asked for a motion for a 10-minute recess.

Ms. Steenken made the motion, and Mr. Daniel seconded the motion. Motion carried.

AYES: Steenken, Daniel, Bevington, Salmon

NAYES: None

BZA07-24C

American Aggregates Corporation
3514 Hamilton Cleves Road
Ross, Ohio 45014

Mr. Dick Braun, 145 East Bridge Street, Columbus, OH said he is an attorney and is here on behalf of the applicant, American Aggregates Corporation. Mr. Braun said there are several people from American Aggregates here with him and may testify. They were all sworn in together (included in the group: James Sharn, 4770 Duke Drive, Suite 200, Mason, OH 45040, Robert Rysinski, 4770 Duke Drive, Suite 200 Mason, OH; 45040, Tim McLelland, 5140 River Road, Fairfield, OH 45014, and Bruce Whitteberry, Greater Cincinnati Water Works, 5650 Kellogg Avenue, Cincinnati, 45228).

Mr. Braun said he would give a brief overview of the application and had an unusual circumstance for a conditional use.

Mr. Braun said the property is currently in operation and fully permitted since the early 1950s and is zoned Agricultural and F-1 Flood Plain and is a peninsula of 500 acres in Ross Township and is bordered by the Great Miami River and by Indian Creek and a sand and gravel operation owned by Watson Sand and Gravel.

Mr. Braun said this is an unusual application because the company is essentially coming forward to propose conditions on itself to improve water quality predictions and to make sure that there are no problems for downstream water users.

Mr. Braun said the City of Cincinnati has a well field just south of the current operation and all of the requirements of the Zoning code has been met and there is a reclamation plan already filed on this with Ohio Department of Natural Resources and is already in fact permitted and bonded and in compliance with all of the Ohio State laws.

Mr. Braun said it is in nonconformance because it has been in existence and in operation prior to the enacted zoning code on this particular property.

Mr. Braun said the Water Consortium (Hamilton to New Baltimore Water Consortium) is made up of a series of public and private water well users and supplies water from the Great Miami River to various users and in 2005 or 2006 they approached American Aggregates (hereon referred to as AA) about voluntarily extending certain setbacks to ensure that there would be a water quality and compliance with some of the ideals of the Water Consortium as they want to predict if there was a problem.

Mr. Braun said, after many discussions with the Consortium, the County, Planning and the Prosecutor's office, AA came to an agreement that was satisfactory to all of the water users of the public water supplies.

Mr. Braun said none of these are rules and regulations, these are self-imposed regulations and that some of them are not in the zoning code but are self-imposed.

Mr. Braun said sand and gravel mining is a conditional use in both the agricultural and flood plain zone and we are not asking for something that isn't there.

Mr. Braun said in order to make these publicly enforceable and in order to put the agreement as a matter of record the applicant would like to ask the Board to make this conditional use run with the land so that it is not terminated.

Mr. Braun said they are trying to respond to the concerns of more people for the possibility of future concerns and issues and do not want to be a part of the problem and have agreed to work with them within that limitation.

Mr. Braun went over the agreement in detail, including details on setbacks, monitoring wells, well nests, pit testing, above ground containment, restrictions of chemicals (pesticides, etc.) and berms.

Mr. Braun said AA has made a commitment, and assuming the conditional use is approved, and will go in and put a deed restriction on to make sure that future users of this property will be limited to parks and outdoor recreation and similar type uses and not be part of an industrial use and will remain substantially in a natural condition once reclamation has occurred. He added that it will depend on what ever the Ohio Department of Natural Resources tells them what they have to do.

Mr. Braun said they will put a restrictive covenant on that no gasoline-powered boats be allowed on any of the lakes in the end so there will be little chance of contamination and there will never be a pollution-type of industry or use on the property.

Mr. Braun said they spent a year and a half getting the approvals from the various governmental entities and are here to put them on public record.

In closing, Mr. Braun said the Water Consortium people are here if anyone has any questions.

Mr. Bevington asked if that is the old railroad bridge.

Mr. Braun replied yes – and the rail system is no longer in play.

Mr. Bevington requested to see where the Cincinnati Well Works are on the map.

Mr. Whitteberry pointed out the locations of the wells, well fields and access roads on a map.

Mr. Daniel asked Mr. Whitteberry if there was any trouble working with AA.

Mr. Whitteberry said no, we have been working with them for the past 1 ½ years and we are satisfied with the conditional use permit application and with this agreement as a condition.

Mr. McLelland said Greater Cincinnati Water Works happens to be one of the members of the consortium and we have been working together to get an understanding about the concerns that we have and are here to support their conditional use application.

Mr. Bevington said to Mr. McLelland that they were thinking, what could be some of the problems that they could run into if they did not follow what they say they are going.

Mr. McLelland said they are just trying to reduce any risk of potential pollution.

Mr. Daniel asked if there will be monitoring well units.

Mr. McLelland said yes, at the bottom and the top for testing water quality and protecting ground water.

Mr. Bevington asked Mr. McLelland if they will ever do any river testing.

Mr. McLelland said yes, in three locations on a quarterly basis.

Mr. Salmon said the fact that there will be farming and with restrictions of pesticides and herbicides, the agriculture changes and reseeding does not necessarily need all that and would they ever change that. He added that rather than having weeds it could be used for hay crops or something.

Mr. Whitteberry said that can be discussed and we are primarily looking out for water quality but would be open to organic farming or crops that did not require those types of applications.

Mr. McLelland said there is also a stipulation with the agreement that we can make modifications in writing that the City of Cincinnati and the Water Consortium could agree to as well.

Mr. Salmon asked if this agreement is a model for future gravel or mining operations.

Mr. McLelland said this agreement is primarily for this particular site.

Mr. Salmon noted that the copy of the agreement he is looking at has not been signed.

Mr. Braun said the original has been signed and could provide a copy of it.

IN FAVOR: None

IN OPPOSITION: None

NEURTAL COMMENTS: None

STAFF COMMENTS:

Mr. Fox said AA is requesting to expand the existing Ross Sand and Gravel operation.

Mr. Fox said for the record he is not going to read each of the Staff comments, as Mr. Braun has reviewed them already, but will just read the first three and then stated the conditions that Staff would like to see put on (including 3, sections B, C, D, F, G, 7, 8, 9, 10, sections J and K). He added that item 8 relates to the agreement with the Consortium and wanted to point that out.

The following are the *complete* Staff Comments and Conditions:

1. The property is zoned A-1 Agricultural & F-1 Floodplain.
2. Commercial mining is a conditional use in an A-1 & F-1 zoning jurisdiction, requiring Board of Zoning Appeals approval.
3. Mining of sand and gravel has occurred and is continuing on adjacent parcels of land. Section 26.52214, "Commercial Mines, Quarries, Gravel Pits" defines the requirement for a commercial mine operation. The following is a response to these items:
 - a) American Aggregate Corporations parcel of land is 500 acres. The requirement is not less than 10 acres.
 - b) No power driven or power producing machinery used in the operation of this facility will be conducted within 400' of any R-District, any recorded residential subdivision or any dwelling in an A-1 District.
 - c) No operation is now nor shall be carried on or stockpile placed within (50) feet of the external property line except property lines which border the existing mining operation owned by the applicants or other mineral extraction operations.
 - d) Mining or quarrying of material will maintain a minimum of 25' from any right-of-way.
 - e) Fencing shall be erected & maintained where in the opinion of the Board such fencing is necessary for the protection of the public safety or for a visual or sound barrier. The fencing shall be a type and height specified by the Board. The staff feels no fencing should be required for this site.
 - f) All equipment and machinery will be operated and maintained in such a manner to minimize dust, noise and vibration. All roads will be maintained in dust free conditions. The use of petroleum-based products is prohibited for the use of dust control.
 - g) The crushing, washing and refining of the gravel will occur on the existing processing facility on the adjacent properties.

- h) In accepting such plan for review, the board must be satisfied that the proponents are financially able to carry out the proposed operation in accordance with the plans and specifications submitted. The applicant has been operation the existing sand and gravel mine for more than 50 years. The applicant can submit a financial statement if required by the Board.
- i) An application for such operations shall set forth the following information:
 - 1) Names of the landowners: American Aggregates Corporation, a wholly-owned subsidiary of Martin Marietta Materials Inc., and Martin Marietta Materials Inc., 4770 Duke Drive, Suite 200, Mason, Ohio 45040.
 - 2) Name of Applicant: American Aggregates Corporation, a wholly-owned subsidiary of Martin Marietta Materials Inc., and Martin Marietta Materials Inc., Attn: Steve Raffensperger, Vice President/General Manager Ohio District, 4770 Duke Drive, Suite 200, Mason, Ohio 45040.
 - 3) American Aggregates Corp. plans to conduct the removal activities on the property.
- 4) The applicants own property in Ross Township in Butler County, Ohio west of the Great Miami River and east of Indian Creek. The real estate includes what is known as the “Breese” property, the “Anderson property, the “Nugent” property, the “Bevis” property and “Colgate” property in Ross Township. The area contains approximately 500 acres (shown on “Exhibit 3”) and is currently permitted for mineral extraction through the Ohio Department of Natural Resources, Division of Mineral Resource Management. Mineral extraction operations have and will be conducted in accordance with rules and regulations of the Ohio Department of Natural Resources (ORC 1514) and the previous and ongoing established practices and procedures, modified or refined, through an agreement with the Consortium and Cincinnati, dated April 27, 2007. The agreement is contingent on receipt of an acceptable conditional use permit from this Board.
- 5) The main processing plant will continue to be located east of the Great Miami River. Processing is also currently and will continue to operate west of the Great Miami River and east of Indian Creek. Processing equipment may include crushers, screens, mobile equipment, dredge, clamshell and water wheels to aid in the crushing, separation, processing and refining of the products.
- 6) The resources to be removed from the property include topsoil, overburden, and naturally occurring sand and gravel.
- 7) Blasting and the use of explosives will not be used in the proposed sand and gravel operation. The resources will be removed in the following manner:

The above referenced minerals have been and will continue to be excavated in the following manner: Overburden which averages about 6

to 12 feet in depth will be removed by backhoes and dump trucks, scrapers, or similar equipment. The material will be removed from the area to be mined, hauled to either the property boundary to be shaped into berms, used for reclamation, or sold for various fill and topsoil products. Berms that are created will be seeded. Seeded berms allow for erosion control of the overburden material as well as provide a visual and noise buffer for the operation. The material in the berm may eventually be used to re-establish proper grading for reclamation.

After overburden is removed, a clamshell dredge or similar equipment will be used to extract approx. 5-15 ft. of "dry bank" sand and gravel and 150-180 ft. of underwater sand and gravel. Removal of sand and gravel underwater will result in little or no dust being created. The applicants have and will continue to use best management practices. The vegetative berm will minimize the transmission of any dust and noise to neighboring properties.

- 8) Reclamation will be done in accordance with the Ohio Department of Natural Resources and Cincinnati and Consortium agreement, dated April 27, 2007. Once mining is completed, the material that has been stored along property boundaries in earthen berms may be pushed back into the mine lakes to establish proper grade for reclamation purposes, except for berms to prevent unauthorized dumping or drainage from entering the mining pit or lakes. The slope will then be seeded with a mixture of grasses and legumes with input from the Ohio Department of Natural Resources, Division of Mineral Resource Management, as to the type and density of the vegetation.
- 9) The current operation has and will continue to maintain the capability to run 24 hours a day, 7 days a week.
- 10) Permits Required: An Ohio Dept. of Natural Resources Division of Mine and Reclamation Surface Mining Permit or Amendment to Permit IM-200 will be sought upon approval of the Conditional Use Permit. The Company will also obtain any necessary air, water, NPDES permit or clearance required from Ohio EPA or other governmental agency.
 - j. To guarantee the restoration, rehabilitation and reclamation of areas, every applicant granted a permit as herein provided shall furnish the Board with a copy of the reclamation bond required by ODNR.
 - 1) Where the Board finds it appropriate, all excavation shall be made either to a water producing depth to be not less than five (5) feet below the low water mark, or shall be graded or back-filled with non-noxious, inflammable and noncombustible solids, to ensure (a) that the excavated area shall not collect and permit to remain therein stagnant water or (b) that the surface of such area which is not permanently submerged is graded or back-filled as necessary so as to reduce the peaks and depressions thereof as to produce a gently rolling surface that will minimize

- erosion due to rainfall and which will be insubstantial conformity to the adjoining land area.
- 2) Where the site is reclaimed by creating a body of water, the current and subsequent property owners shall be responsible for protecting the groundwater table from contamination as much as possible.
 - 3) Vegetation shall be restored by appropriate seeds of grassed or planting of shrubs or trees in all parts of said area where such area is not to be submerged under water as herein above provided.
 - 4) The banks of all excavations not back-filled shall be sloped to the water line at a slope which shall not be less than three (3) feet horizontal to one (1) foot vertical, and said bank shall be seeded.
 - 5) In addition to the foregoing, the Board may impose such other condition, requirements or limitations concerning the nature, extent of the use and operation of such mineral extractions as the Board may deem necessary for the protection of adjacent properties and the public interest.
 - 6) Where the Board finds it appropriate, it may establish a maximum depth for mineral extraction based on sound hydrological practices and principles. A neutral hydrologist of the Board's choosing may be hired to evaluate the application and assist the Board in reviewing the application.
- k. If a 404 permit must be obtained from the U.S. Army Corp of Engineers and/or a 401 permit must be obtained from EPA;
- 1) The terms and conditions of any 404 or 401 permit shall also be considered to be part of any conditional use permit granted by the Board of Zoning Appeals. Thus, in the event of a violation of a state or federal permit, it shall also be a violation of these regulations and the Butler County Zoning Resolution.
 - 2) Failure to secure a needed state or federal permit is also a violation of the Butler County Zoning Resolution.
 - 3) Mineral extractions, which cannot be shown to be done pursuant to the required state or federal permits or in compliance with the permit, shall be rebuttably presumed to be in violation of the Butler County Zoning Resolution and therefore prohibited.

Ms. Steenken motioned to grant approval for Conditional Use BZA07-24C subject to the Staff Conditions 3, Section B, C, D, F, G, 7, 8, 9, 10, Section J and Section K. Mr. Daniel seconded the motion. Motion carried.

AYES: Steenken, Daniel, Bevington, Salmon

NAYES: None

ADJOURNMENT

A motion was made by Ms. Steenken, seconded by Mr. Salmon to adjourn. All in favor, motion carried.

These Minutes represent a summary of the proceedings and do not purport to be the entire record. A complete transcription of these proceedings was taken from an audio tape by James M. Fox under supervision of the Secretary and may be obtained upon written request. Any charges associated with preparing such transcript shall be borne by the person requesting such same and must be prepaid.

Hamilton, Ohio

November 20, 2007

Tom Bevington, Chair

James M. Fox, Secretary

Lee Margraf