

Newtown stays on mine appeal

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By Lisa Wakeland

lwakeland@communitypress.com

The village of Newtown will remain part of the appeal challenging the Anderson Township Board of Zoning Appeals' decision to approve an underground limestone mine near the intersection of Round Bottom and Broadwell roads.

"For good cause shown, the court grants the motion of the village of Newtown to intervene as a party in this action," Magistrate Michael Bachman wrote in his Jan. 4 entry.



Keith Barklage/staff

Mine operator Martin Marietta Materials challenged Newtown's standing as an appellant and claimed the village failed to list the proper parties in its notice of appeal to the Hamilton County Court of Common Pleas. Because of this filing error, Newtown missed the 30-day window to properly file its appeal of the Board of Zoning Appeals' decision and should be dismissed from the case, Martin Marietta's attorney Dick Brahm argued in an Oct. 8 motion.

Newtown's attorney Doug Miller argued in his Nov. 5 motion that because Martin Marietta intervened as an appellee, the appeal had a proper party. He also argued that Newtown's appeal should not be denied on technical grounds.

Bachman, with agreement from attorneys for all parties, granted Newtown a temporary motion to intervene so counsel could participate in the Dec. 21 oral arguments. Newtown joins Indian Hill and Terrace Park as municipal appellants on this case but Bachman has yet to rule whether the villages will be allowed to continue with the appeal.

Martin Marietta has argued that none of the municipalities has standing to appeal the BZA decision because the villages are not directly affected by the proposed mining operation more than the public at large.

The villages and Citizens Against Blasting on Our Miami (CABOOM), have asked the court to compel the Board of Zoning Appeals to vacate its decision, claiming the board attempted to rule on various zoning amendments that were outside of its jurisdiction thus making the mine's approval illegal. Bachman has yet to decide on the motion.

CABOOM was dismissed from the appeal in late December, but Bachman wrote in his decision that the 63 individual members of the group, a mix of residents and business owners, would remain as appellants pending any further motions.

After nearly two years of testimony and hearings the Board of Zoning Appeals voted 3-2 to grant Martin Marietta a special zoning certificate to operate the underground limestone mine and variances to store explosive materials.