

Mine attorney responds to objections

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Martin Marietta's attorneys have claimed three villages were rightfully dismissed in a case that challenges the approval of an underground limestone mine in Anderson Township.

Hamilton County Court of Common Pleas Magistrate Michael Bachman recently dismissed the villages of Terrace Park, Newtown and Indian Hill from an appeal questioning the Anderson Township Board of Zoning Appeals decision granting a special zoning certificate to operate the mine near the intersection of Round Bottom and Broadwell roads and variances to store explosive materials.



Martin Marietta's attorney Dick Brahm, right, discusses rebuttal testimony with Anderson Township Board of Zoning Appeals member Jean Peter, left, and the board's legal counsel Paul Schuch at a hearing in August 2009.

The villages collectively filed an objection to the magistrate's decision dismissing the municipalities from the appeal on Jan. 21, arguing that Bachman made obvious mistakes and applied incorrect standards to determine the standing of each village.

Attorneys for Martin Marietta, the mine's operator, argue that Bachman properly dismissed the municipalities from the appeal because they are not part of Anderson Township, do not own property in the township and are not subject to the township's zoning authority.

The attorneys also state in the response filed Jan. 31 that “the claimed basis of standing by the surrounding jurisdictions did not rise to the level of being adversely affected beyond that of the general public.”

The magistrate also denied the appellants’ motion to vacate judgment, which argues the Board of Zoning Appeals’ decision, approved in a 3-2 vote, should be void because the Board of Zoning Appeals exceeded its authority by attempting to rule on various zoning amendments outside its jurisdiction.

Because of that, the appellants argue, the mine’s approval was illegal and a review of the record is not required. Bachman stated in his decision that he could not rule on pre-trial motions.

Attorneys for the villages also filed an objection to that decision and have called it logically inconsistent because Bachman had previously ruled on several other motions in the appeals case.

Martin Marietta’s attorneys state in the response to the objection that the magistrate properly ruled on the motion to vacate judgment.

“There is no provision in the statute for filing a motion to vacate and shortchange the review,” Martin Marietta’s attorneys wrote. “A preliminary motion to compel an administrative board to vacate a decision without any court review of the merits of a case ... is highly unusual, if not unprecedented.”

Anderson Township also filed a response to the joint objection Jan. 31, but documents were not available on the Clerk of Courts website Feb. 8.

Mine opposition group Citizens Against Blasting on Our Miami (CABOOM) was dismissed from the case in an earlier decision. There are 60 residents and business owners that remain part of the appeal.

Judge Robert Ruehlman will decide whether to uphold or reverse Bachman’s decision. The case was transferred from Judge Steven Martin to Ruehlman on Feb. 1. There are no reports on the case scheduled at this time.