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Villages dismissed from mine appeal

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By Lisa Wakeland

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Three area villages have been dismissed from an appeal in the Hamilton County Court of Common Pleas that challenges a zoning board decision to allow an underground limestone mine in Anderson Township.

Indian Hill, Terrace Park and Newtown appealed the June 2 Anderson Township Board of Zoning Appeals' decision granting Martin Marietta Materials' a special zoning certificate to operate the mine and variances to store explosive materials on its property, located near Broadwell and Round Bottom Roads.



Burger

Magistrate Michael Bachman dismissed mine opposition group Citizens Against Blasting On Our Miami (CABOOM) from the appeal in an earlier decision.

“At this point, we’re really disappointed with the magistrate’s decision, but we will continue our appeal because of the threat to the safety and environment the proposed mine has on our community,” said Anderson Township resident and CABOOM leader Cathy Burger. “It’s too important to allow without a fight.”

Attorneys for the villages claimed in an earlier motion that they are more aggrieved by this decision than the general public because of the duty to maintain roads and provide safety services to residents.

They also argued there would be a disproportionate impact on property values and that they own property in the immediate vicinity of the proposed mine.

Bachman stated in his Jan. 10 decision dismissing the villages that three of the “arguments raise generalized claims regarding the villages’ duty to provide for the safety and welfare of the citizens.”

Bachman further stated neither Indian Hill's greenspace nor Terrace Park's property across the Little Miami River is sufficiently near the subject property to grant standing in the appeal.



Malloy

Terrace Park Solicitor Bob Malloy said he disagrees with the magistrate's reasoning. "My sense is that the communities involved, all of them, have much more interest (in this) and to arbitrarily draw a political subdivision line suggests that people who live several miles away in Anderson Township have more standing to appeal," he said.

Malloy also questioned the magistrate's decision to deny the motion to vacate the Board of Zoning Appeals' decision in which attorneys for the villages and CABOOM argued that Board attempted to rule on various zoning amendments outside its jurisdiction thus making the mine's approval illegal.

Bachman cited a previous case that found pre-trial motions are not authorized under the state statute and wrote that the appellants did not cite, and the court has not discovered, any authority that supports the "request for an adjudication of the matter prior to trial."

Malloy said Bachman's reasoning seems to contradict itself because Bachman stated there could not be any pre-trial motions yet acted on this motion.

"There is no trial in an administrative appeal," he said. "There may be arguments but no new evidence is presented."



Mara

Tim Mara, an attorney representing CABOOM and other individual property owners, said the magistrate, without addressing the motion's merits, was saying that the law does not allow a shortcut without a review of the record.

“I respectfully disagree (with Bachman’s decision), but we still have 60 people as appellants,” Mara said. “I don’t see anything there that discourages us from the ultimate quest to overturn the decision.”

Objections to the magistrate’s decision must be filed by Jan. 24. Attorneys for the appellants said they are unsure if they will appeal the decision and are discussing how to proceed.

Indian Hill City Administrator Mike Burns said the village has yet to study the decision so he’s currently unsure of Indian Hill’s next step in the process. “We’ll review that for our next Law Committee meeting and make a decision then,” he said.

Martin Marietta’s attorney Dick Brahm could not be reached for comment.

Reporter Rob Dowdy contributed.