

RECORD OF PROCEEDINGS

**MINUTES OF THE
XENIA TOWNSHIP TRUSTEES:**

**PUBLIC HEARING
NOVEMBER 12, 2014 6:30 PM**

Note: These minutes are a summary of the discussion and are not a word for word account of the discussions. The proceedings were electronically recorded. The meeting place was the Xenia Township Office, 8 Brush Row Road, Xenia, Ohio.

PRESENT: Scott Miller, Chairman; Susan Spradlin, Trustee; Alan Stock, Administrator.

Chairman Miller called the Public Hearing to order at 6:31 p.m. All participated in the Pledge of Allegiance. This Public Hearing was advertised in the Xenia Gazette and on the Xenia Township website within 24 hours of scheduling this meeting. The Public Hearing was to consider a rezone of three (3) Cemex parcels. The Xenia Township Board of Trustees initially requested the Zoning Commission to revisit the zoning of three (3) parcels owned by Cemex (originally four (4) parcels but one was dropped by the Zoning Commission), M36000100010100, M36000100010200 and M38000100010600. They are currently zoned A-Agricultural and the request was to change that to M-3 Mining. The Zoning Commission met over a period of time and the conveyance letter was read to the audience (a copy is attached to these minutes). The Zoning Commission recommended denial of the zoning change.

Mr. Miller said typically they are a Board of three but they have a vacancy at this time so two Trustees will be making the decision, Susan Spradlin and Scott Miller. Several issues have emerged in looking at this: 1) Safety in regard to the natural gas pipeline that runs through these parcels; 2) Fly rock issues; 3) Economic impact for the change from A to M-3. He would like Vectren to come to talk about the pipeline. He would like ODNR to talk about the issue of fly rock, blasting and effects of blasting, such as seismic activity, and dust. He would like to know the economic impact concerning residents adjacent to the parcels and how it affects the local economy—Greater Miami Valley and Springfield markets—such as jobs, property values, materials supplied to our immediate areas that they produce. He would like to know the short term 10-20 years and long term 20+ years' impacts for Xenia Township. He requested to temporarily suspend the Public Hearing for thirty (30) days.

Mrs. Spradlin said this has been a subject for a number of years, the zoning board has looked at this and recommended denial. She does not see a reason to postpone this any longer. She made a records request that ended up to be at least 8" high along with maps to help the people who are concerned with this issue. She said a lot of time has been spent, these people have come to a lot of unnecessary meetings in order to state their opinions, money has been spent, and she thinks they need to make a decision tonight. Mr. Miller did not think they need to rush the decision in one evening and would still like to have the other Trustee seated first. Mrs. Spradlin said she trusted the zoning board's opinion and they need to either accept it or reject it. She thought they should continue their plan and hear the people. She said they have been at two or three meetings on this, plus attending Fairborn meetings to keep up with what this issue.

Mr. Miller made a motion to continue the Public Hearing to a future date in approximately thirty (30) days after having an opportunity to get further information. This motion died for lack of a second.

Mr. Miller went over the process of the Public Hearing.

Mary Beth Smolinski, 3418 West Enon Road, asked how long the Trustees have to deliberate on this. Mr. Miller answered six (6) months. Mrs. Smolinski also asked if the third Trustee would be allowed to vote on this. Mr. Miller answered that is correct. She also asked if two people do not agree on it, it does not pass. Mr. Miller answered yes.

Jim Reed, 1080 Stone Road, said he understands there is a clause in the annexation agreement that says the zoning travels with them so if the zoning is changed by Xenia Township, Cemex would not have to rezone with Fairborn. He said they would have fewer regulations and would not want to come back to Xenia Township. He asked if

that was a correct interpretation. Mr. Miller said without legal counsel for all the ins and outs he would not say.

Mr. Stock said he had not received any letters for or against the zoning change.

Mr. Miller asked for comments **in favor** of the zoning change from A to M-3:

Alan King, 1075 Jasper Road, spoke in favor of the zoning change. He thinks there are two factors that are very important: 1) Being a property owner, Cemex has a right to use their property in a way they see fit; and 2) Since we have a rare geologic formation in this Township that cannot be duplicated anywhere else which makes cement production profitable and cheap for our building industries, we should be exploring this resource while we have it. He has heard from Vectren engineers that the gas pipeline is very well protected and monitored constantly and Cemex would not be permitted to blast within a large distance from the pipeline. He said he does not want fly rock at people's houses but he feels if the zoning change is rejected, the land will be annexed into Fairborn and we will have no say.

Mr. Miller asked for comments **against** the zoning change from A to M-3:

Robin Malone, 650 W. Hyde Rd., lives across the road from one property being considered for rezone. She said they have been to meeting after meeting and wonder how many times this will be considered. Her family has lived there for five generations and she would like her children to be able to live there when she is gone. She does not want their health to be in jeopardy. She does not want to worry about flying rock or dust in the lungs. She is tired of it.

Mary Beth Smolinski, 3418 West Enon Road, responded to Alan King's comment about people doing what they want on their property. She agreed as long as it doesn't infringe on a neighbor. She can hear the beeping of trucks backing up on property across SR 235 and cannot sleep with the windows open at night. She said it would be even louder if they were mining right across the road.

April Roark, 2945 W. Enon Road, spoke about living in that area all her life. She said her nephew that lives on W. Enon Road has lung problems and he had a chance to get a job at Cemex but his doctor told him not to take the job because of it. She feels the mining is a health issue for them. She said there are issues with the slab under their house and others along the road. She does not want the country taken from them.

Jim Reed, 1080 Stone Road, wanted to clarify that Cemex had not asked for this rezone. He said Mr. Miller initiated the request.

Mike Roark, 2945 W. Enon Road, asked if they would want all the dust coming toward their houses and the foundation of their houses rocked. He said he worked in the pit and knows how it all works. He questioned why the mining had to be so close to them when Cemex has so much land in other areas. He asked why they could not have their freedom. He said the gas line splits the fields and wondered how it could be protected.

Brian Malone, 634 W. Hyde Road, said his dad was an employee of Southwestern for 44 years. The company has been sold many times through the years. Cemex is now the largest cement company in the world. He has lived on Hyde Road all his life. He has cancer but does not say it was caused by Cemex. He has noticed the screens on his house are eaten up. When looking at areas Cemex says are reclaimed, it doesn't look like anything has been done. Cemex gave Fairborn a park for \$1.00 but Fairborn didn't want to clean it up which makes it very dangerous to walk through. It is like that all the way through Fairborn. They buried all of Xenia after the tornado in the quarry at the corner of Trebein and SR 235. Cemex has been known to use "bio-soil" that is supposed to put the top soil back on the land after they have stripped it, but he can

show you places that can possibly be used as pastures—you can never build houses on the land. He said on October 27, 2014 there was one of the loudest blasts he had ever heard. Recently one of their trucks turned over on SR 235 and it shut down the road for about four hours. When his father left Cemex 12 years ago he said they had seventy five years' worth of supplies left to go and presently Cemex is telling them they don't have enough. He would really like the Trustees to think hard about the rezoning and he votes no.

John Hines, 891 W. Dayton-Yellow Springs Road, has invited Cemex and the Xenia Township Trustees to see the damage that has been done to his house by the blasting in the past. No one has shown up and his offer still stands. Recently when blasting occurred, he had to shut off the mower and go inside the house because of all the dust. He said as far as fly rock is concerned they need to talk to former employees of Sherman Tool and Die.

Robin Malone, 650 W. Hyde Rd, said where Cemex is currently blasting (about a mile away) you can feel the vibration. She has not personally seen fly rock. She mentioned the vibration, noise and constant beeping of trucks at a distance and cannot imagine it being across the road. Mr. Miller asked over the course of a week how many blasts did she notice. She answered three to four times a week and said the blasts have been getting louder.

Brian Malone, 634 W. Hyde Road, said Fairborn posted in the newspaper that they were doing the annexation for the future of Fairborn. He asked how many people would want to live near a big hole in the ground.

Brian Hawks, 526 W. Hyde Road, said he has no problem with a company wanting to make money to preserve jobs and be a part of the community but this comes down to their quality of life. He is worried about his children and the other children in the family. He feels no company should make a profit at someone else's expense.

John Hines, 891 W. Dayton-Yellow Springs Road, referenced Mr. Miller's comment about Cemex being a national and international business and said farming is by far a much bigger national and international business than that cement company.

April Roark, 2945 W. Enon Road, spoke about Cemex approving to quarry on Routzong. That is right around the corner from all of them. Trucks are going in and out of there all night and all day on Saturdays. Her parents' on SR 235 get dust, vibration and the windows shake. They have seen the hole in the ground where mining has been done and wondered if Cemex gets approved to mine, what is their goal after they are done.

Jan Smolinski, 3418 W. Enon Road, talked about the zoning laws meant for the safety, health and quality of life. He said primarily they are a tool to restrict incompatible uses of land from being next to one another. Residential and Mining are two of the least compatible uses of land. When he bought his property he checked with Cemex (who did not yet own the land) and they told him they were going to purchase that land as a buffer and were not going to zone it for mining. It was bought with the intent to be used as a buffer between Cemex and the residential properties. That company had the option to buy his land and most pieces of land on W. Enon Road to establish a buffer if they intended to mine that property. They let everyone buy their property and build their homes adjoining agricultural property with every expectation it would remain agricultural property. Then Cemex came along and said they always intended to mine it. He does not think they have a property right claim to that land. If they want to mine, they need to keep all the noise, dust and danger on their own property—they cannot do that. He said Fairborn has entered into a legally binding agreement with Cemex to annex that property—the only thing that breaks that agreement is if that land does not

get rezoned for mining. By rezoning this would guarantee annexation to Fairborn. He does not understand why the Trustees would even consider the rezone. It gives Fairborn exactly what they need so they don't have to go through the zoning process.

Mike Roark, 2945 W. Enon Road, read from paperwork about the bond where Cemex is supposed to take care of any damage to houses. Mrs. Spradlin said the statement was a recommendation from the Zoning Commission if the Trustees choose to accept it. Mr. Roark asked if they have to take out a separate insurance policy on their house.

Linda Gamble, 620 W. Hyde Road, said it breaks her heart to see the beautiful land become a hole in the ground. They all have to endure the dust, the blasting and the wells being messed up.

Patricia Kemp, 961 Dayton-Yellow Springs Road, said she feels the dust contributed to the premature death of her husband. A lot of the seals on the windows in her house have been broken and the window company will no longer take care of the problem because it is from the blasting. When they did blasting across road, the impact was strong enough to knock pictures off the walls. Cemex claims they will fix your house however, they do not even want to reimburse you for a picture frame. They brought a seismic machine over and they said it was within normal range. Her husband discussed with one of the managers at the plant who said they had enough limestone to last for thirty years—that was about ten years ago.

Sandra Hines, 891 Dayton-Yellow Springs Road, Bath Township, said they are proposing a bond to take care of damage to their house; however Cemex has better attorneys than any of them do. She thinks you would have a hard time trying to recover anything for damages, including the wells. She doesn't think the bond would be worth anything.

Harold Snyder, 1353 Foust Road, said he is very familiar with the area. He lived at Andy's Dairy on SR 235 (it is no longer there as Southwest Portland tore it down). He milked dairy cows there and the blasting was deafening. After they tore that down he moved across from the Greene County Career Center. He is totally against the blasting. He said Cemex bought the land as agricultural land and it needs to stay that way whether it goes to Fairborn or not. He mentioned new houses going in at the corner of Trebein and Dayton-Yellow Springs Road where the people don't know what is in their backyards. The Zoning Commission denied approval and he said another thirty (30) days to decide is not necessary.

Jan Smolinski, 3418 W. Enon Road, said Cemex brought in all kinds of experts to the first hearings and this time it appears that no one is in favor of this. He sees no reason for the decision to be delayed. It would be a moot point after Fairborn annexes it anyway. Fairborn was going to vote on it at the last meeting but they couldn't until Phase 1 is actually effective, which happens on November 21. Phase 2 will then be initiated which will be the annexation of these properties. He sees serious flaws in the annexation application. He thinks the Township has an opportunity to fight it. If it is annexed the citizens will have an opportunity to do exactly this at the Fairborn hearings. The mining industry has a pretty fair safety record but most mining operations are located far away from residential districts.

Mr. Miller made a motion to close the public comment part of the hearing, seconded by Mrs. Spradlin. Roll call vote: Mr. Miller-Aye; Mrs. Spradlin-Aye.

Mr. Miller stated there was a lot of sentiment tonight with all those who have lived around the area. He repeated the points he had made in the opening remarks. The part he does not like to see happen is Xenia Township has 54 square miles of land they deal with and it has deteriorated by annexation by the City of Xenia over the years.

Some annexations were proper and others have been land grabs. In this case they are going to see a large chunk of Xenia Township go to another municipality. He understands how it affects property owners around Cemex, but the long term of how it will affect Xenia Township and future annexations beyond this one causes him major concern. For those who live in other parts of the Township how it will affect our tax base when we start losing additional land. He foresees the land will end up in Fairborn with the zoning they need, and mining will happen within the next ten years. He thinks a lot was put into place for safety by the Xenia Township Zoning Commission several years ago. Several in the audience had input in that and were part of that process. He does not see it as a positive for Xenia Township. A municipality lives and dies on income tax. He thinks Fairborn is going after jobs and they will get income tax off that. He sees them going after the school in the future and the income tax they can get there.

Mrs. Spradlin said she does not think Mr. Miller is getting the whole picture. She said these residents can also annex into Fairborn. She said by annexing into Fairborn they will have more protection with Fairborn's regulations. There will go more property taxes. Mr. Smolinski said the reason the residents would leave the Township is if they felt they were not being represented by their Trustees.

Mrs. Spradlin made a motion to approve the recommendation presented by the Zoning Commission to **not rezone** the three parcels for mining that were placed in front of them—parcel numbers M36000100010100, M36000100010200 and M38000100010600, Mr. Miller seconded. Roll Call vote: Mrs. Spradlin-Aye; Mr. Miller-Abstain. MOTION PASSED by roll call of 2-0.

RESOLUTION 2014-286

Mr. Miller made a motion to adjourn the public hearing, seconded by Mrs. Spradlin.
Meeting adjourned at 7:56 p.m.

_____	XENIA TOWNSHIP BOARD OF TRUSTEES
Resolution #	
_____	_____
Date Approved	Scott Miller, Chair
ATTEST:	_____
_____	Susan Spradlin
Barbara Miller, Fiscal Officer	_____

slb