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FRANKLIN COUNTY PLANNING AND ZONING  
BOARD OF ZONING ADJUSTMENT  
FRANKLIN COUNTY GOVERNMENT CENTER  
SECOND FLOOR COMMISSION CHAMBERS  
400 EAST LOCUST STREET  
UNION, MISSOURI 63084

TRANSCRIPT OF PROCEEDINGS  
PUBLIC MEETING  
OCTOBER 3, 2016  
[Commencing at 7:00 p.m.]

Reported by:  
Patsy A. Hertweck, C. R.  
Midwest Litigation Services

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A P P E A R A N C E S

BOARD OF ADJUSTMENT MEMBERS:

- Gordon Upchurch, Chairman
- Carl Ridder, Member
- Justin Head, Member
- Tim Tobben, Member
- Steve Hoff, Member

PLANNING AND ZONING STAFF:

- Ms. Scottie Eagan, Planning Director
- Ms. Nichole Zielke, Administrative Assistant

LEGAL COUNSEL:

- Mark Vincent, Attorney

MIDWEST LITIGATION SERVICES:

- By: Patsy A. Hertweck, C. R.
- 711 North Eleventh Street
- St. Louis, Missouri 63101
- [314] 644-2191

1 P R O C E E D I N G S

2 [OCTOBER 3, 2016]

3 CHAIRMAN UPCHURCH: Good evening. I'm  
4 Gordon Upchurch, and I'll call to order this meeting of the  
5 Franklin County Board of Zoning Adjustment. I'm joined  
6 tonight by Carl Ridder, Justin Head, Tim Tobben, Steve Hoff.  
7 We are your Board, and we welcome all of you.

8 We have one new matter on the agenda. Although  
9 the printed matter showed two other matters, but I'm told  
10 that they've been formally postponed. So we won't address  
11 those or put those in the record tonight; is that right,  
12 Scottie?

13 MS. EAGAN: That's correct.

14 CHAIRMAN UPCHURCH: Okay. That was  
15 the right answer.

16 So we have one new matter on the agenda  
17 evening, but before we reach that matter, we have some minor  
18 procedural matters to attend to.

19 The first is, for those of you who have one of  
20 these -- this is an antique, but for those of you who have  
21 one of these, put it on vibrate. If you're expecting an  
22 important call that you think you need to receive, please  
23 take the phone and you outside and wait till you get that  
24 call.

25 Otherwise, if you're surprised by a call, be

1 kind enough to step outside beyond our hearing, and then you  
2 can take that call, because we have business to do here.  
3 We're going to respect one another in that regard. So put  
4 them on vibrate, turn them off, put them outside. Thank  
5 you.

6 In addition to that, Ms. Eagan, will you call  
7 roll.

8 MS. EAGAN: Gordon Upchurch?

9 CHAIRMAN UPCHURCH: Present.

10 MS. EAGAN: Carl Ridder?

11 COMMISSIONER RIDDER: Here.

12 MS. EAGAN: Justin Head?

13 COMMISSIONER HEAD: Here.

14 MS. EAGAN: Steve Hoff?

15 COMMISSIONER HOFF: Here.

16 MS. EAGAN: And, Tim Tobben?

17 COMMISSIONER TOBBEN: Here.

18 MS. EAGAN: Okay. We have a quorum.

19 CHAIRMAN UPCHURCH: Next I believe we  
20 need to approve our last prior minutes.

21 And I'll make the motion to approve those. Is  
22 there a second?

23 COMMISSIONER RIDDER: I'll second it.

24 CHAIRMAN UPCHURCH: Those in favor  
25 aye. Aye.

1 COMMISSIONER RIDDER: Aye.

2 COMMISSIONER HEAD: Aye.

3 COMMISSIONER TOBBEN: Aye.

4 COMMISSIONER HOFF: Aye.

5 CHAIRMAN UPCHURCH: Those opposed

6 same sign. [None]

7 I believe those minutes are approved.

8 Ms. Eagan, would you read into the record the  
9 hearing procedures. Let me back up. Apparently we need to  
10 have an election of officers.

11 MS. EAGAN: Yes.

12 CHAIRMAN UPCHURCH: And I'll let you  
13 sort of direct that.

14 MS. EAGAN: I've never heard that  
15 before. I think for BOZA we only have a chairman, and then  
16 we have a vice chairman.

17 So if we want to start with nominations for  
18 chairman.

19 COMMISSIONER RIDDER: I would nominate  
20 Mr. Upchurch.

21 COMMISSIONER HEAD: I'll second that.

22 MS. EAGAN: Okay. There is a  
23 nomination for Gordon Upchurch to be the chair and a second.

24 All those in favor say aye.

25 COMMISSIONER RIDDER: Aye.

1 COMMISSIONER HEAD: Aye.

2 COMMISSIONER TOBBEN: Aye.

3 COMMISSIONER HOFF: Aye.

4 MS. EAGAN: All those opposed.

5 [None].

6 Okay. Next we would do the vice chair. So I  
7 would open up the floor for a motion for vice chair.

8 Just for the alternates, the other regular  
9 members are Fred Thatcher and Derek Schrieber.

10 CHAIRMAN UPCHURCH: Scottie, can I  
11 ask you has anyone expressed an interest in that post?

12 MS. EAGAN: Not to me and not to  
13 Nichole. I think currently -- well, it was Josh Green.  
14 Before Josh Green it was Fred Thatcher.

15 COMMISSIONER RIDDER: I nominate Fred  
16 Thatcher.

17 CHAIRMAN UPCHURCH: That's rather  
18 unfair of you.

19 COMMISSIONER RIDDER: He's not here.

20 CHAIRMAN UPCHURCH: I'll second that  
21 nomination.

22 MS. EAGAN: There's a motion and a  
23 second for Fred Thatcher to be vice chair. All those in  
24 favor say aye.

25 CHAIRMAN UPCHURCH: Aye.

1 COMMISSIONER RIDDER: Aye.

2 COMMISSIONER HEAD: Aye.

3 COMMISSIONER TOBBEN: Aye.

4 COMMISSIONER HOFF: Aye.

5 MS. EAGAN: All those opposed?

6 [None] Okay. Fred Thatcher is our vice chair.

7 CHAIRMAN UPCHURCH: I believe the  
8 next matter for business this evening is, Ms. Eagan, will  
9 you read into the record the hearing procedures.

10 MS. EAGAN: Yes.

11 Tonight's Board of Zoning Adjustment hearing is  
12 governed by the Franklin County Unified Land Use  
13 Regulations.

14 At this time, I would like to place into the  
15 record these Regulations as Exhibit A, the official Zoning  
16 Map as Exhibit B, the official Master Plan as Exhibit C, and  
17 the case file for each case as Exhibit D for all the cases  
18 to be heard at this hearing.

19 [Thereupon, evidence was marked for  
20 identification and entered into the record  
21 as Exhibits A, B, C, and D.]

22 The Board of Zoning Adjustment will address  
23 each case as they are listed on the agenda. As each case is  
24 opened for a hearing, a staff report will first be read to  
25 the Board, followed by any questions for the staff.

1                   Then if anyone in the audience would like to  
2 speak or comment during this public hearing, they must first  
3 print their name on the sign-in sheet provided, and then be  
4 sworn in. When it is your turn to speak, you will come to  
5 the front of the room to address the Board and only the  
6 Board, not anyone in the audience, with any questions or  
7 comments.

8                   At the conclusion of all questions, comments,  
9 and discussion concerning each case, the public hearing for  
10 that case will conclude and the Board of Zoning Adjustment  
11 will proceed with a decision. Any decision by the Board may  
12 be appealed. If anyone desires to appeal a decision made by  
13 the Board of Zoning Adjustment, they need to submit it to  
14 Circuit Court.

15   CHAIRMAN UPCHURCH: And do we have a  
16 staff report?

17   MS. EAGAN: We do.

18                   File 160151. The Applicant is Robert Norman.  
19 The Applicant is appealing the decision of the Planning and  
20 Zoning Commission to issue a Conditional Use Permit to  
21 Meramec Aggregates, Inc.

22                   The property is located at 1200 Ely Road,  
23 approximately six-tenths of a mile north of River Bend Road,  
24 in Calvey Township.

25                   The Facts: Meramec Aggregates received a

1 Conditional Use Permit approval on March 15, 2016 with 12  
2 conditions listed.

3 The total area of the property that received  
4 the CUP is 195 acres in size. The applicant plans to only  
5 use 10 acres for the commercial activity.

6 The zoning of this property is Non-Urban and  
7 Agricultural. In this district, the extraction, quarrying  
8 or mining of sand, gravel, topsoil or other material  
9 requires a Conditional Use Permit in this zoning district.

10 The proposed operation would take material from  
11 the ten-acre area, and they will be creating a one-acre  
12 pond.

13 The area surrounding the property is primarily  
14 undeveloped land with a few low-density residential  
15 properties nearby.

16 This property has access to Ely Road. Ely Road  
17 is both a public and private road with a portion of it being  
18 platted at 30 feet.

19 Staff Comments: The purpose of the Non-Urban  
20 and Agricultural Zoning District is to allow agricultural,  
21 recreational, wildlife, forestry, open space, farming and  
22 related uses to mix with low-density residential  
23 development.

24 The Board of Zoning Adjustment has the ability  
25 to reverse, affirm, or modify the order, requirement,

1 decision of determination appealed from. In order to  
2 reverse or modify, the Board must have a four-fifths vote.

3 CHAIRMAN UPCHURCH: Is there anyone  
4 here to speak on behalf the application? Step forward and  
5 sign in, and then you'll be sworn.

6 [Thereupon, the witness was sworn.]

7 Your name and address.

8 ATTORNEY KATHLEEN HENRY: My name is  
9 Kathleen Henry. How's this sound? Can you hear me?

10 COMMISSIONER RIDDER: Yes.

11 ATTORNEY HENRY: Okay. I have what  
12 will become Norman Exhibit 10 here, eight copies that I will  
13 leave.

14 [Off-the-record comments.

15 Thereupon, evidence was marked for  
16 identification and entered into the record  
17 as Norman Exhibit No. 10.]

18 Exhibit 10 is the transcript of the hearing  
19 Wednesday. So you would have a copy.

20 Mr. Chairman, Members of the Board, my name is  
21 Kathleen Henry. I'm an attorney at Great Rivers  
22 Environmental Law Center, a non-profit environmental law  
23 firm in St. Louis. We represent Robert Norman and Nick  
24 Norman and the Citizens for the Preservation of the Meramec  
25 River, a citizens group. Nick Norman will be the

1 spokesperson for his father, Robert, tonight.

2           Tonight we are asking the Board of Zoning  
3 Adjustment to reverse the decision of Planning and Zoning  
4 Commission in granting a Conditional Use Permit to Meramec  
5 Aggregates allowing it to conduct gravel mining in an area  
6 that is unsuitable for mining because it is remote and it  
7 provides habitat for the endangered gray bat.

8           Testimony we will present will show this Board  
9 that the P and Z Commission erred in granting the permit  
10 because the gravel mine in that location will violate the  
11 Franklin County Planning and Zoning Unified Land Use  
12 Regulations, the Master Plan and Missouri state law in that  
13 a gravel mine built in that location will materially  
14 endanger the public health and safety, will substantially  
15 injure the value of adjoining and abutting properties, and  
16 will not be in harmony with the area in which it is to be  
17 located.

18           In addition, it will not be in general  
19 conformity with the Land Use Plan and the Master Plan.

20           The evidence will the gravel mine will not  
21 conserve the natural resources of the county, will not  
22 promote the health, safety, convenience, prosperity, and  
23 general welfare of the inhabitants.

24           Tonight we are adding two additional grounds to  
25 the -- the appeal that we filed earlier.

1 CHAIRMAN UPCHURCH: And I'm -- I  
2 don't mean to interrupt you, but I won't sit back either.  
3 We do have a procedural process here in which we have people  
4 apply, and it's my belief as I sit here you are trying to  
5 add claims or a basis for your appeal, and I believe from  
6 past experience with this Board we're ready to go forward on  
7 what you filed, not to hear new matters which you might want  
8 to take up tonight for which no one would have had notice.

9 So as a Board, we're ready to hear your appeal,  
10 not new matters that you would like to submit this evening.

11 ATTORNEY HENRY: Okay. One of the  
12 new matters is an interpretation of law. It -- it's an  
13 interpretation of law concerning the appeal process. Ms.  
14 Eagan just read that there are -- that there is an appeal  
15 allowed from this decision. And so the point I wanted to  
16 make, which I was calling a new ground, but really -- it's a  
17 new point, is that the developer should not be allowed to  
18 start mining until the last appeal is concluded in last  
19 court that either side takes the case to. So that is the  
20 first one.

21 And that's based on the Land Use Regulations  
22 and Missouri state statute and Missouri case laws. So I was  
23 going to request this Board to make it clear that the  
24 developer cannot start conducting the mining until the  
25 appeals have finished.

1 CHAIRMAN UPCHURCH: And our -- our  
2 charge here is very specific, and that is for us to affirm,  
3 modify or reverse the lower opinion. I don't believe we're  
4 authorized to function as a court or to declare law.

5 ATTORNEY HENRY: Okay.

6 And the second matter that I wish to bring up  
7 tonight we only learned of Wednesday. So there was no way  
8 to bring it up sooner. And that was at the hearing before  
9 the Administrative Hearing Commission on the appeal of the  
10 permit issued to Meramec Aggregates by the Department of  
11 Natural Resources.

12 CHAIRMAN UPCHURCH: Is that the  
13 record that you displayed for us here?

14 ATTORNEY HENRY: Yes. The transcript  
15 of that hearing.

16 CHAIRMAN UPCHURCH: I didn't see an  
17 order in that record.

18 ATTORNEY HENRY: There is no order  
19 yet. That commissioner is waiting for this Board to rule,  
20 but at that hearing on Wednesday, we learned that Franklin  
21 County has an existing contract with Meramec Aggregates or  
22 Havin Materials perhaps to purchase gravel from the Meramec  
23 River pits that are under -- that are under review. And so  
24 the -- this existing contract gives the appearance of  
25 impropriety to the proceedings that occurred before the

1 Planning and Zoning Commission. So I'm asking the Board --  
2 this Board to reverse the permit on that ground, that there  
3 is an existing contract.

4 CHAIRMAN UPCHURCH: And that isn't  
5 before us, and it's not a pleading. And if you want to file  
6 a pleading with notice to everybody, I guess that can be  
7 taken up. That's simply a guess of mine.

8 What we are prepared to do this evening is to  
9 hear the appeal that you have filed.

10 ATTORNEY HENRY: Okay. I'll just --  
11 I'll just have the record reflect that --

12 CHAIRMAN UPCHURCH: Absolutely.

13 ATTORNEY HENRY: -- we're granting  
14 that illegality of this proceeding.

15 Our first witness will be Nick Norman. He will  
16 cover most of the evidence and need a longer amount of time  
17 than most of the others. So I ask the Commission to allow  
18 him to take the time he needs. Thank you.

19 CHAIRMAN UPCHURCH: If you can give  
20 me a guess, and it's just a guess...

21 ATTORNEY HENRY: Thirty to forty  
22 minutes, and nobody else will take that long.

23 CHAIRMAN UPCHURCH: [Nodding.]  
24 [Thereupon, the witness was sworn.  
25 Thereupon, evidence was marked for

1 and entered into the record as Norman  
2 Exhibit Nos. 1 through 9.]

3 MS. EAGAN: Is this PowerPoint in  
4 this?

5 MR. NICK NORMAN: Yes, ma'am. It's  
6 in their left folder.

7 MS. EAGAN: Okay. So this first  
8 stuff here?

9 MR. N. NORMAN: Yes, ma'am.  
10 Okay. My name is Nick Norman, and I'm here  
11 tonight representing the Citizens for the Preservation of  
12 the Meramec River. We have about 24 members. And feel free  
13 to interrupt me anytime of questions.

14 Thank you again for seeing us tonight. We do  
15 appreciate it.

16 So I wanted to start off by brief history of  
17 mining at this location.

18 MS. EAGAN: You might want to take  
19 the mic out so people can hear you.

20 MR. N. NORMAN: Sure. There we go  
21 all right can everyone hear me now? Okay.

22 So I'm going to refrain from speaking about  
23 Mine Number 2, which I have labeled right here. I'm going  
24 to speak mostly about Mine Number 1 this tonight which is --  
25 you know what's on the agenda, but the two go hand-in-hand.

1 But again, I'll refrain from Mine Number 2.

2 So again, brief history of mining in the area.

3 In the 1800s to about 1919, lead was mined all throughout  
4 this area. You can see right here labeled, that's where the  
5 proposed Mine Number 1 is going the Jeffery Open Pit. Right  
6 here is Lost Hill Lead Mines. It was lead was mined  
7 everywhere throughout this property, and they were really  
8 inefficient back then. They would basically follow a vein  
9 of lead, take it out, and they'd have these crush sites.  
10 And the problem is that with these crush sites, we really  
11 don't know where they actually did the crushing.

12 So there could be the potential of lead  
13 contamination in the gravel that's then being sold as  
14 concrete to different places all across Franklin County.

15 And here's a list of known lead mines through  
16 the area. Each one of these are labeled, but again it's  
17 hard because these miners would take the lead, and they  
18 would crush it on these sites, and we really don't know  
19 where the crush sites are. We find lead chunks everywhere  
20 throughout our property and the potential lead  
21 contaminations is there.

22 The next concern that we have is there is a --  
23 on July 5th, we did a very large -- found a very large  
24 colony of gray bats on point two miles from the Jeffery open  
25 pit mine. I'm a zoologist, so I study bats frequently in --

1 in college, and I notice bats living out there my whole  
2 life. But in the past five years, I notice a huge increase  
3 in population. So I contacted DNR and Missouri Department  
4 of Conservation and different people. I said hey, there are  
5 these bats that I can see. I can see them going right to  
6 the Meramec and actually right to these mining sites. You  
7 know, I feel like a study should be done.

8           So I believe Havin Material contacted or  
9 Wunderlich Engineering or someone did contacted U. S. Fish  
10 and Wildlife, and they said well, there are no known species  
11 of endangered bats in that area. So you're basically fine  
12 to go.

13           But I said I can see them and there just hasn't  
14 been a study that's been done. Just because there are no  
15 known species doesn't mean that they're not there. So  
16 Shelley Palotsky [ph.] came out on July 5th with Sybil,  
17 their bat biologist from Missouri Department, U. S. Fish --  
18 U. S. Forestry Service. We did a miss net study, and we  
19 found a huge maternity colony of gray bats. They are  
20 federally protected, They are an endangered species, and  
21 they go right to these mining sites to feed. You can  
22 actually see it. Mr. Jeffery actually has cattle on his  
23 hundred or 200 acres, and when you have cows, you have poo.  
24 And when you have poo, you have insects, and the bats  
25 actually, I can see them going there. So this will

1 definitely disrupt their -- their feeding -- feeding sites.

2           And here's that letter from Jane from U. S.  
3 Fish and Wildlife. It was marked -- it was received on May  
4 9th. We did the study July 5th. So we just proved to them  
5 by saying that, hey, there are endangered species here  
6 before a study was even done. And I'm not allowed to  
7 disclose where the exact location of mine is, but I can say  
8 it's in this general area, and gray bats are special because  
9 they -- they go and they feed right on the Meramec River,  
10 and they actually go to the corresponding fields, and they  
11 go downstream. They never go upstream. Very, very rarely.  
12 So they actually feed right down in these proposed mining  
13 areas. And with that, energy is everything. When the --  
14 their feeding grounds are going to be disturbed, that means  
15 that they have to go further way to get that energy. When  
16 go further away to get that energy, that means you have less  
17 energy to make babies and to feed yourself and to take care  
18 of babies. So it's definitely going to disrupt them.

19           You know, over 60 acres with Mine Number 2, and  
20 over 10 with Mine Number 1 is over 70 acres, it's basically  
21 forcing them to -- in a funnel-up act, it's forcing these  
22 bats to actually go into these mines. And that's definitely  
23 a matter that was never presented during the first  
24 Conditional Use Permit meeting for this -- for this  
25 application.

1           Here's a short video too of the bats coming out  
2 of a cave. We caught 200 within 10 minutes. Eighty were --  
3 they had blood samples taken, and were measured and -- I'll  
4 show it again. And there are thousands in there. This is  
5 an endangered protected species point two miles from Mine  
6 Number 2 and about 600 feet from Mine Number 2 and about  
7 point two miles from Mine Number 1.

8           So it's -- I mean, it's standing in front of  
9 you this cave -- and this is just one mine, the lead mine,  
10 we have on the property, but we have several others that who  
11 knows what's in there. But it's like something out  
12 "Batman". It's really cool. There are just thousands  
13 beyond thousands. And there could be hi- -- this could be a  
14 hibernation cave as well. We just don't know. There hasn't  
15 been the proper studies to be done about this yet because of  
16 this mining application kind of being rushed. So there's a  
17 lot of unknowns.

18           So on July 7th, the DNR granted Meramec  
19 Aggregates their permit to mine. We filed an appeal on  
20 June 10th, but Meramec Aggregates, or Havin, started mining  
21 on July 18th. And I want to note that on Article 4, Section  
22 102(B)(7) of Franklin County statute, it says a stay must be  
23 put on the -- this permit. So I submitted a witness report  
24 form on July 28th, and all mining did stop on August 1st.  
25 We haven't seen a truck since.

1           But when we did -- when they were mining  
2 illegally there for a couple of weeks, we got a little taste  
3 of what it's going to be like, and our concerns basically  
4 came to light. We -- I don't know if any of have you been  
5 on River Bend Road, but it's just a tiny, little country  
6 road. There's no shoulder. You see dogs running around,  
7 people walking their dog, people jogging, people have  
8 gardens right on the side of the road. It's a very small  
9 community, and these dump trucks, you know, 84 a day is a  
10 huge impact on their lives. And road wasn't designed for  
11 it. In the witness report form, you are able to see the mud  
12 flaps were broken on their trues, they were unsafe. their  
13 tarps were ripped, weren't covering the loads. It was  
14 unfortunate that it had to come to that when, you know, we  
15 already had to deal with a dangerous situation with these  
16 trucks were already -- were again made dangerous again.

17           So there's lots of different issues with this  
18 tiny, small country back road that wasn't designed for this  
19 kind of traffic.

20           Also the particulates from 84 dump trucks a day  
21 is going to be huge. You know, here is actually a picture  
22 of Ely Road going towards River Bend. You can see this is  
23 Danielle following a truck, just a large plumb of dust. If  
24 anyone lives on a country gravel road, they know there is  
25 dust, which is normal. But when you do it times 84 times a

1 day with 20 tons, it's a big difference, and you know, even  
2 if the dust were to dissipate, we still have the issue of  
3 the diesel exhaust that comes out of these trucks. Again,  
4 on a little, one-lane back country gravel road that was not  
5 designed for anything like this.

6 And the International Agency of Research on  
7 Cancer stated that a diesel exhaust is a carcinogen. It is  
8 cancer causing, and again we're just going to be producing  
9 tons of CO2 diesel exhaust in that small little area.

10 And with that pollution threat is -- is  
11 Danielle is here. She'll be talking more about Gracie  
12 Griggs, who is at the residence off and on during the summer  
13 and -- or during the summer and off and on during the  
14 weeks. She has severe asthma. I have a doctor's note in  
15 there -- I think it's Exhibit 1 -- where the doctor  
16 specifically says that this mine will cause her life -- will  
17 cause imminent impairment on her life. And that's just  
18 Gracie. There's, you know, three other kids that live at  
19 that residence. There are other kids who live on this road  
20 It -- it's just unsafe.

21 The other concerns, you know, are pretty -- I'm  
22 sure you guys have heard it before -- the noise pollution.  
23 You know having these two mines directly across from one  
24 another causing flooding issues potentially, even that I  
25 actually have a letter in there from the postman who is very

1 upset with these trucks that were going by for three weeks.  
2 They couldn't deliver mail. The drivers were aggressive.  
3 They -- it was just an unsafe situation. And even the  
4 sanitation professional didn't want to deliver -- or pick up  
5 the trash anymore because these -- the problems with these  
6 trucks. It's all an issue it wasn't designed for this area  
7 at all.

8 And even the school bus driver as well has  
9 shown concern of these dump trucks that in this area. It's  
10 just -- it's just too unsafe.

11 I -- my family and I own a wedding venue called  
12 Lost Hill Lake. We host private outdoor weddings. We have  
13 ten employees. Actually we're right on the Meramec as you  
14 can see right there us right directly in the background is  
15 Mine Number 1 location. You know, we bring in over 4,000  
16 people to Franklin County a year. We have around 25  
17 weddings and about 150 per wedding, and even though these  
18 operations won't happen on Saturday or Sunday, usually the  
19 day of the event, we do have a lot of weddings on Fridays  
20 that will definitely cause some overlap, but that just kind  
21 of half of the issue. The other half is when we book  
22 brides, we book them seven days a week, 7:00 a.m. to  
23 7:00 p.m. You know, we try to work with bride schedules,  
24 and they are going to see that this mine is operating during  
25 their showing. And in our logo it actually says private

1 outdoor venue, and the mine takes that away. It really  
2 does.

3           You know, but we have brides who come in from  
4 different states. We have a huge amount of people going --  
5 and staying at the Budget Lodge, Budget Lodging, and  
6 St. Clair right there, and they just won't book with two  
7 mines point two miles away from the venue and within sight.

8           You know, there are small Cedar trees. There  
9 aren't enough to cover what this mine is entailing in our  
10 opinions, and just the noise alone is an issue. We talked  
11 briefly about noise in the public meeting with the DNR, and  
12 we talked about the excavator, how it's kind of just a low  
13 murr, and it's not really that loud. It's kind of like a  
14 conversation level of noise.

15           What we didn't talk about was the sharp noises  
16 that come from a mine. You know, with the excavator digging  
17 into the gravel is incredibly sharp. It's a very, very  
18 sharp noise. The tracks on the excavator moving are  
19 incredibly sharp. The dump trucks have to go up this steep,  
20 steep incline. If they have 20 tons of aggregate in the  
21 back of their truck, it's loud. They got to floor it. So  
22 all those noises, it's a lot and we're not really -- there's  
23 really no noise buffer between us. Basically it's just a  
24 straight shot. I believe it's 1200 feet from the mine to  
25 the pavilion. So there's really nothing to obstruct that

1 noise at all.

2           And if any of you have gotten married or if any  
3 of you have kids who have gotten married, you know weddings  
4 are expensive. And you know, we bring in roughly \$1.5  
5 million of revenue to Franklin County with all these people  
6 coming into this specific location to get married.

7           Jim's Country Catering is a country catering  
8 company we always recommend. They've had to hire an extra  
9 employee for our extra business we have brought them. The  
10 Budge Lodging, we supply them with \$150,000 in revenue, and  
11 they had to hire an extra person just to compensate for our  
12 business alone. I believe there's a letter from Jason, the  
13 president of Budget Lodging. It's one of these exhibits,  
14 Exhibit 9 I believe.

15           And you know we do T's Liquor Lane in Union.  
16 We -- actually it's in our contract that brides have to use  
17 her. It's great. You know, we love giving this business to  
18 these people, to all these vendors, but that's all in threat  
19 with these mines. Again, it's not going to be on the day,  
20 their day -- their wedding day is not going to be on a day  
21 of operation, but when we book them, they won't book with  
22 two industrial mines right there. It just won't happen.

23           Also property value lose, you know, is another  
24 obvious threat. This is an exhibit that was used in the  
25 Winter Brothers' case couple of years ago. A Dr. Height, I

1 believe, came up with it from the University of Alabama.  
2 She did a great study where Winter Brothers was proposing a  
3 simular mine but larger, sand and gravel mine. And it  
4 actually showed the percentage of loss in property value in  
5 this area. And this is, you know, kind of comparison of a  
6 three-mile radius. So it just goes into St. Clair.

7           You know, our neighbors are selling their home  
8 and they're worried about it. They wrote a letter -- it's  
9 in there -- about their not being able to sell their home  
10 because they have to disclose that these mines are going in.  
11 Some homeowners are worried about refinancing. All these  
12 are just again issues that are piling on, piling on, and  
13 piling on.

14           Also another issue is Debbie Fordyce who owns  
15 Ely Road. She has, I believe, a private cop- -- easement to  
16 only have Mr. Jeffery and Mr. and Mrs. Griggs use the road.  
17 And during the last CUP meeting in February, Mr. Lueken says  
18 basically that she was con- -- someone was contacted, a  
19 caretaker, was contacted, but no one was. Debbie was never  
20 contacted. I actually did a five-minute Google search and  
21 found her. Wrote her an e-mail, and she contacted me  
22 immediately, and she had no knowledge of this whatsoever.  
23 But it's interesting because back in 2009 or '06 I believe  
24 she created her 260 acres to do a conservation easement,  
25 which basically borders Ely Road, both side. And this is

1 all managed by Ozark Regional Land Trust. They are here  
2 tonight. I believe they are going to say something.

3           So this Ely Road is a conservation easement  
4 essentially, and it really only has access to this for  
5 Mr. Jeffery and Mr. and Mrs. Griggs, and Debbie Fordyce  
6 wrote a letter in here about saying how this is not designed  
7 for industrial use. It's meant for private use, and she had  
8 no knowledge of this whatsoever. Here's a better picture of  
9 that. Here's the proposed mine. This is the road that the  
10 mining company created to get to the spot, and then right  
11 here is the conservation easement. This is Ely Road, and  
12 she owns both sides. So they are really not allowed to  
13 widen this tiny little gravel road because of the  
14 conservation easement. It's protected. So you can't handle  
15 the potential 84 trucks a day, all this kind of traffic on  
16 this tiny little road. And we can see that here in these  
17 pictures. It's just -- it's just incredibly tiny. And they  
18 actually did alter it slightly, which they weren't really  
19 allowed to do.

20           In the other issue when the mining started, was  
21 that some of these truck drivers are very nice. Others were  
22 very aggressive and very dangerous, almost borderline. When  
23 they would meet with a car right here, they would rev the  
24 engine, they would hog and forcing the landowner -- this is  
25 Danielle's picture -- to either go into the conservation

1 easement, which she's not allowed to do because it's  
2 protected, or back up into her own driveway. And she  
3 claims, which I'm sure she's going to talk about, that Mr.  
4 Jeffery says that these dump trucks have a job to do and you  
5 need to get out of their way. And she's a landowner. She  
6 owns the land at the entrance to this mine, and she's not  
7 even allowed to -- these trucks aren't even giving her the  
8 right-of-way. And there is just too much an issue. You  
9 can't widen the road because of the conservation easement,  
10 and it's just a big issue.

11           The other conflicting interest is what we kind  
12 of found out a couple of days ago. Franklin County's  
13 Veteran Memorial Park is underway. Mark Vincent who is --  
14 who's basically head of the committee started this project.  
15 It was voted down twice by citizens for tax funding.  
16 People, I don't think, generally wanted to pay for it.  
17 That's why it was voted down twice, but they went ahead and  
18 approved the sale of \$5.8 million in bonds to pay for this  
19 park that no one really wanted to pay for. But what does  
20 this have to do with Meramec Aggregates, Incorporated or  
21 Havin?

22           Well, Havin actually has an order to fill with  
23 them. They -- and in during Lynn Havin's testimony on  
24 Wednesday, she actually specifically says that the Veterans  
25 Memorial site she has an order with them, and the County

1 specified Meramec aggregate. So no other gravel or rock can  
2 be used. And she even says, "I don't have this material;  
3 you know that?"

4 And they're like well, that's okay. So it's  
5 interesting to say the least. It makes me nervous about  
6 this timeline in this statement because on May 17th, Mark  
7 Vincent, the County counselor, wrote this to Scottie about  
8 how basically Franklin County doesn't have jurisdiction over  
9 a mine, a surface mine. So this is direct quote from the  
10 letter. They are basically given the okay for Meramec  
11 Aggregates basically to go out and just start a quarry  
12 operation. So Lynn Havin received this contract, she said,  
13 in early January, sometime at the beginning of the year.

14 She applied for to permit for the Jeffery open  
15 pit mine in January 1st -- 16th, and then it was on the  
16 agenda February 16th. Then March comes, you know. February  
17 comes, they talk about the permit; March comes, it's  
18 approved; April 16th comes; I come out and I speak against  
19 this mine, and a couple of the citizens do.

20 Then May 17th, you know, everything is taken  
21 off the agenda. We can't talk about it, and Franklin County  
22 has no jurisdiction over these mines that specify Meramec  
23 Aggregate. This timeline and these facts make me very  
24 nervous. It's an issue.

25 And then they also claim, you know, this

1 aggregate is special, it's rare to get. I called a  
2 distributors where you can get it for \$13 a ton or 17.75 a  
3 ton. I'm sure it's a resource that's dwindling. It'll be a  
4 fight, you know, down the road as it becomes more and more  
5 rare, but other distributors have it if -- if it came down  
6 to it. You might have to pay for it little bit more, but  
7 they have it.

8           So another interesting conflicting facts that  
9 we found were on February 16th, Wunderlich Engineering said  
10 that three new jobs would be created from the site, from the  
11 Jeffery open pit mine, but then when Havin testified that  
12 it's going to have seven to ten. So I'm just confused. I  
13 would like for them to specify how many people will be  
14 there. If it's three new employes drying the trucks and one  
15 operator, so that's four total, where do you get seven to  
16 ten from? I'm just -- I'm just honestly confused and would  
17 like some clarification on that as well.

18           So here's the huge long history of Meramec  
19 Aggregates. I'm not going to go through all these. The  
20 only one I want to point out is December 30, 2015. DNR  
21 closes the dredge. December 30, 2015 DNR closes the  
22 dredging operation.

23           So the river can heal itself if it's kept -- if  
24 activity is kept within the river. When you go out of the  
25 river, the river can't heal that. So I'm not necessarily

1 against the dredge at all. The -- essentially after every  
2 flood, the river can actually heal that portion of the  
3 gravel they took out, but when you go 200 feet away from the  
4 river, the damage is done. The river can't fix that. And  
5 actually here's one of the gravel bars on the Bruns  
6 property. This is post-mining, and this was after mining.  
7 They -- Havin did exactly what they were supposed to do.  
8 They had to make these little islands around this stupid  
9 brush that's around the gravel bars. It really doesn't  
10 serve a purpose in my opinion, but they had to do it anyway.

11 But they did exactly what they were supposed to  
12 do. They left those. They didn't touch them. This is what  
13 it looks like after mining. So it's pretty much under water  
14 right now, but as you all know, we had a huge flood in  
15 December of 2015, and that replenished it. It completely  
16 brought a metric tons beyond metric tons of sand and gravel  
17 to that site. Here again, that's what it looked like  
18 post -- right after mining, and that's what it looked like  
19 after the giant flood.

20 So the river can heal that. I'm also not  
21 really against mining on the sandbars because the river can  
22 heal that. But when you go outside of that area, it can't.  
23 It can't touch it. Here's a great nother picture of the  
24 little Meramec and the Meramec. Again, they did exactly  
25 what they were supposed to do. They followed the rules and

1 left these islands, you know, exactly what they were  
2 supposed to do. And after the December 15, 2015 flood, it --  
3 it just insane amount of sand and gravel were dumped there.  
4 It fixed itself. It can heal that scab, but when you go out  
5 of the river, it can't. It's done.

6           Again, here it is before or right after mining.  
7 Here it is after the flood. March 28, 2016 completely  
8 replenished. So when you go off the river banks, this is  
9 what happens. This is right across the river from the  
10 processing plant. All these are old abandoned -- old, old  
11 mines, surface mines, just like the one in question tonight.  
12 It's a swamp. If you have a boating friend, they might know  
13 about it, they might talk about how these are just  
14 disgusting stagnant water that breeds Asian carp, and the  
15 river can't fix it like it can with the dredge or like it  
16 can with the gravel bars. This is actually a huge amount of  
17 dead trees from the floods that have gotten trapped in there  
18 and they're just rotting. And essentially with Mine Number  
19 1 or Mine Number 2, that's what's going to -- that's what's  
20 basically going to happen. It's going to be stagnant water,  
21 a breeding ground for Asian carp and for a lot of issues  
22 that the river just can't fix.

23           Here all mining sites that Have has in the area  
24 or at one point had, I should say. This is a processing  
25 plant. This is Highway 30. These are just some little ones

1 that I picked off. These are the two in question or the one  
2 in question tonight. So you know, this area has been  
3 exacerbated of these mines over the past 10, 20 years. We  
4 got to figure out when's enough is enough. You know, we can  
5 only -- this area can only handles so much. The Meramec can  
6 only handle so much.

7 And with mining locations, you can see that  
8 most operations are right next to a major highway. They  
9 have their own private road leading into the quarry because  
10 these dump trucks pose such a threat to normal citizen  
11 drivers, and these two locations are miles away from any  
12 major highway. It's just an impractical location.

13 When you're threatening the tourism aspect, the  
14 gray bats, the alternation of the land, the citizens, the  
15 business that we have, everything, it just seems so  
16 impractical to have it at a place that has some a high  
17 potential to affect thousands of people. And I believe that  
18 in Franklin County, there are some veritable places on the  
19 Meramec where you can have way less of an impact compared to  
20 right at the spot where there's an endangered species of  
21 gray bats that has a maternity colony that is incredibly  
22 rare for the area.

23 And so a ton of threats at this impractical  
24 location.

25 And here's the letter I was talking about that

1 Mark Vincent wrote, the County counselor wrote. What we're  
2 really worried about here tonight is that this was in -- for  
3 Mine Number 2, the one that's directly across from the  
4 Jeffery site, this was stated, that Franklin County has no  
5 jurisdiction over an open pit or surface mine, which is  
6 precisely what the Jeffery open pit mine is.

7 So the County -- basically all these conditions  
8 that the County put it on it could go out the window.  
9 Tonight you guys could put conditions on it, but basically  
10 the County doesn't have any jurisdiction over it. So who is  
11 going to follow the -- or will Franklin County enforce these  
12 rules, these conditions on -- on this permit? It terrifies  
13 us. The local government is responsible for putting hours  
14 of operation, number of dump trucks, fuel storage, how many  
15 excavators will be there. The DNR can't handle that kind of  
16 specific stuff like that. That's what the local government  
17 is for. They just -- the DNR has way too many mines -- and  
18 I think that there's over 300 in Missouri -- to regulate  
19 with their small staff. So what we're worried about tonight  
20 what we're terrified is that hours of operation out of the  
21 window. Fuel storage out the window, and Franklin County  
22 can do nothing to enforce it. It terrifies us.

23 So a little timeline. The -- we had a meeting  
24 on September 28th for the Administrative Hearing Commission  
25 for a motion of a stay. We're still waiting on that

1 decision, and on October 20th, we have an appeal hearing  
2 with the Administrative Hearing Commission for this Jeffery  
3 open pit mine.

4           So Havin is allowed to mine. You know,  
5 Franklin County, you know, will end up costing, you know,  
6 millions over the next 40 years with potential loss in  
7 tourism. You know, these small local businesses that we  
8 help out, that we give a huge amount of business to, are  
9 going to take a substantial hit because of brides not  
10 booking at this location because it's not a private outdoor  
11 venue anymore or it's not a remote area. It's -- and you  
12 know, these events are mostly on Saturdays. But again, like  
13 I said, they could mine on Saturdays if they warned to  
14 because basically Franklin County doesn't have jurisdiction  
15 over these types of mines.

16           Also the landscape's going to be permanently  
17 altered. This is Highway 109 in Eureka. This is a very  
18 simular operation, an open pit surface mine, stagnant water.  
19 It's an ugly site, you know. There is going to be the  
20 people of River Bend Road are going to suffer. It's -- it's  
21 just there are too many threats with this mine compared to  
22 other locations in Franklin County.

23           Closing remarks. In the master copy, I included  
24 a petition that has over 700 signatures and over 300  
25 comments from Franklin County residents. And so you feel

1 free to take a look at that. I have countless letters from  
2 individuals at the end, Exhibit 9 I believe. And I just  
3 wanted to say I'm really not anti-mining . I understand that  
4 concrete is an invention thousands of years old, and we're  
5 not -- we're going to use it everyday. It's not going away  
6 any time soon. I am anti-unsafe mining, and this is unsafe.  
7 It really is. I wasn't against the dredge. I'm not even  
8 against this gravel -- the gravel bars operations. The  
9 river can fix that, but it can't when you go outside of the  
10 banks.

11 Thank you so much for your time. I appreciate  
12 you hearing me. I ask that everyone speaking out against  
13 this mine, please be respectful. I know it's a heated  
14 argument. Just please be respectful to everyone.

15 Thank you very much.

16 CHAIRMAN UPCHURCH: Give us a moment  
17 here. And as it is our practice, you've provided us a  
18 binder here which, just so the record is a little more clear  
19 than it might otherwise be, the lion's share of what appears  
20 in the binder was in your original packet, which was timely  
21 filed and we will consider so that everybody understands  
22 that.

23 In addition to that, I did thumb through the  
24 binder, and again as is our practice, we receive pretty much  
25 everything that people often. It is has been our practice

1 to receive letters as part of the packet. To state the  
2 obvious, the weight that we give to letters with people who  
3 haven't appeared and testified isn't much. But we do  
4 receive those. And we'll absolutely receive your exhibit.

5 And before you get away, are there any  
6 questions from the Board of this witness? [None]

7 Thank you.

8 MR. N. NORMAN: Thank you very much.

9 CHAIRMAN UPCHURCH: So we move along,  
10 who will be my next witness that wishes to be heard in  
11 support of the application?

12 Will you step forward and sign in.

13 [Thereupon, the witness was sworn.]

14 Your name for the record.

15 MS. DANIELLE GRIGGS: Danielle  
16 Griggs. Am I okay to start?

17 CHAIRMAN UPCHURCH: You would be,  
18 except I want to be clear, rather than have the reporter mad  
19 at me. I'd indicated that we were receiving this. Did we  
20 identify this in your record? And if so, as what?

21 MS. REPORTER: Yes, it was Exhibit 1  
22 through 9.

23 CHAIRMAN UPCHURCH: Okay. Thank you.

24 MS. GRIGGS: My name is Danielle  
25 Griggs, and I live at 1210 Ely Road in St. Clair.

1 [Thereupon, evidence was marked for  
2 identification and entered into the record  
3 as Norman Exhibit No. 11.]

4 Mr. Jeffery and I share the road that Havin is  
5 proposing to use to transport the gravel to their plant off  
6 of Highway 30. It travels in front of my home, and only  
7 about 30 feet from my front door, then down to Mr. Jeffery's  
8 home. Ely Road is not wide enough for two vehicles to pass  
9 one another. When Havin was actively mining over the  
10 summer, we did meet up with the trucks very frequently on  
11 Ely Road.

12 There were several occasions where I had to  
13 reverse all the way back down to my house, which is a pretty  
14 far distance, because there just wasn't any other option for  
15 me to go anywhere else. The trucks would come so randomly,  
16 that it was very hard to time it just right where I could  
17 get out of my driveway and down the Ely before another one  
18 would come and cause another conflict.

19 As you can imagine, there was very frustrating  
20 when I'm trying to get to work or kids to school on time and  
21 things like that. There were several occasions where it was  
22 like two or three attempts for me to get down the road. On  
23 a few occasions also, the trucks would keep coming at me  
24 head-on and not stop, forcing me to pull my vehicle off the  
25 road and onto the easement property, which I was then warned

1 that I could be sued for going off of the road because it  
2 violates our contract with using the road.

3 Also my sister-in-law was visiting one day in  
4 her brand new car, and one of the trucks forced her off the  
5 road and caused her vehicle to bottom out. That was another  
6 issue we had. So in just the three weeks that Meramec  
7 Aggregates was mining, the trucks have caused some  
8 significant wear to Ely Road. The big truck tires were  
9 causing the road to wear down on the sides and leaving the  
10 center of the road higher, causing the smaller lower cars to  
11 bottom out when driving over the road. My husband had that  
12 issue, and also a few family members.

13 Havin has still never come back to fix those  
14 areas and never communicated to any of us that they ever  
15 intend to. So I'm not really sure what's going to happen  
16 with that, but the mail service and the trash service have  
17 both made complaints to us that they were not able to safely  
18 enter Ely Road to service us and threatened to stop their  
19 service. They did continue the service after the mining had  
20 stopped August 1st, I think.

21 My next point is that my husband and I have  
22 four small children under the age of nine who are very  
23 active and love to play outside. AS of right now, when the  
24 mining is not going on, the only traffic on our road is from  
25 my husband and I and then Mr. Jeffery's. When Meramec

1 Aggregates was actively mining over the summer -- thank  
2 you -- when Meramec Aggregates was actively mining over the  
3 summer, we had to keep the kids inside most of the days.  
4 Even though I would outside with them, it just wasn't safe  
5 for them with the trucks going by quickly and much faster  
6 than the speed limit that was set.

7           We bought our home because we wanted our  
8 children to be able to enjoy the outdoors and not have to  
9 worry about heavy traffic and things like that. We also  
10 raise turkeys and free-ranging chickens. We have to keep  
11 them in their coop most of the days while the mining was  
12 going. It just wasn't safe for them.

13           My next point, probably my most important  
14 point, is our eight-year-old daughter, Gracie, earlier this  
15 year she was admitted to the hospital where she spent  
16 several days recovering from a severe asthma attack. It  
17 took them four days to get her oxygen level safe. Then the  
18 doctors told us that they suspected it was caused from a  
19 remodeling project that was going on at her mom's house, the  
20 dust and debris being stirred up and her inhaling it. I  
21 just feel like if something as simple as a little remodeling  
22 job can land her in the hospital with a life-threatening  
23 issue, I can't imagine what 45 trucks per day barreling up  
24 and down our gravel road and stirring up the dust is going  
25 to do to her.

1           We spoke to the doctor about the proposed  
2 mining, and she did send a letter. She's in Chicago, so she  
3 could just send a letter for us to present to you regarding  
4 that, and I've attached it with copies of my statement that  
5 I gave you tonight.

6           My next point. There is a group of children  
7 who wait for the school bus every morning at the top of Ely  
8 Road. I've clocked the bus a few times, and it does come  
9 in the mornings around 7:45 a.m., and drops off around 4:00  
10 in the afternoon. The top of Ely Road is an uphill curve  
11 and a really bad blind spot. Mr. Jeffery's and I have had  
12 some close calls before just passing each other because it's  
13 very narrow and you can't see the other vehicle coming until  
14 it's too late. But if Fred and I have issues passing one  
15 another, I can't imagine being able to pass a dump truck  
16 safely.

17           Fortunately, I've never had to pass one of  
18 their dump trucks over the summer, but I -- I always knew  
19 it was just a matter of time before I would. River Bend  
20 Road itself is very narrow and curvy with lots of blinds  
21 spots, no shoulder at all. It's horrifying to imagine a  
22 dump truck and a school bus passing one another on any of  
23 those sharp curves, not to -- not to mention the excessive  
24 wear and tear that the road will incur from the frequent  
25 trucks going in and out.

1           Lynn Havin stated at our state hearing last  
2           Wednesday in downtown St. Louis that the operation was not  
3           even going full force yet when it was active over the  
4           summer. We have already had so many significant problems  
5           and it wasn't even in full force. I can't imagine how it  
6           will be.

7           One other thing that I wanted to mention before  
8           I'm finished. At the state hearing last Wednesday, Lynn  
9           Havin and her attorney mentioned that Franklin County has  
10          serval contracts with Meramec Aggregate, Incorporated that  
11          are waiting to be fulfilled. Said that the contract  
12          specifically asks for the Meramec gravel.

13          This worries me greatly because I feel that the  
14          Commission will be much more willing to approve this knowing  
15          that the City has contracts waiting for this gravel. I also  
16          feel that it is the responsibility of the Commission to  
17          protect Franklin County families and wildlife from companies  
18          like this who threaten our safety and livelihood.

19          I guess that's all I have, but thank you for  
20          your time.

21                           CHAIRMAN UPCHURCH: Don't -- don't  
22          hang that up yet. Are there questions of this witness by  
23          the Board. [None].

24                           Thank you.

25                           MS. GRIGGS: Okay. Thank you.

1 CHAIRMAN UPCHURCH: And again, we'll  
2 receive what appears to be a summary of what you just gave  
3 us, and we'll receive that into the record, which I believe  
4 we've marked as Exhibit 11?

5 MS. REPORTER: Yes.

6 CHAIRMAN UPCHURCH: I also believe  
7 that the attached letter was also included in the earlier  
8 exhibit. That is attached as part of Exhibit 11.

9 The next witness for the application.

10 [Thereupon, the witness was sworn.]

11 MS. JUDITH PATTON: I do have copies  
12 for the Board members.

13 MS. REPORTER: This will be Exhibit  
14 12.

15 [Thereupon, evidence was marked for  
16 identification and entered into the record  
17 as Norman Exhibit No. 12.]

18 Yes, my name is Judi Patton.

19 MS. REPORTER: Just a moment.

20 MS. PATTON: Oh, thank you.

21 Yes, I am Judi Patton representing my husband  
22 and myself, Dave Patton. We have had Patton Auto Salvage,  
23 the first left off Highway 30 onto River Bend, since 1958.  
24 So 58 years.

25 There's many reasons why we are opposed to the

1 strip mining on Ely Road off River Bend and the proposed  
2 Mill Hill Mine. Personally the most drastic change to our  
3 daily life would be the greatly increased traffic of the  
4 dump trucks passing our home and business at the rate of  
5 every five to seven minutes or so, just from the River Bend  
6 side. That's if they don't use it, that route, to go to the  
7 Mill Hill site. We live in a blind curve, which there are  
8 several on River Bend, and we worry not only for our own  
9 safety but also of those of our customers exiting the  
10 driveway.

11           We have to walk -- when the trucks were  
12 running, we had to walk significantly farther up around the  
13 curve to the straight-away to make sure that the trucks had  
14 plenty of time to stop because it takes large trucks longer  
15 to slow down than -- than cars do. And it's a bit of a  
16 hassle, but I'm out for the safety of the people who are  
17 backing out of our drive. River Bend is very narrow, curvy  
18 and without shoulder, and it's not built to accommodate such  
19 traffic, and would quickly degrade. In fact, we see on some  
20 signs of degradation from the three weeks that they were  
21 running. Havin's, who stands to profit from the strip mine,  
22 would not be responsible for the road's upkeep, leaving that  
23 to fall to the taxpayers, us who are having to put up with  
24 the trucks.

25           The nerve-wracking increase in heavy traffic

1 noise starting at 7:30 every morning and continuing to  
2 3:30 p.m. is not something us nor our neighbors signed up  
3 for on this relatively peaceful road. The turn onto River  
4 Bend and from River Bend onto Highway 30, in particular,  
5 would prove particularly dangerous. It is a hairpin turn on  
6 a hill. The sheer size -- the sheer size of these trucks  
7 would be a problem. I'm sorry.

8           The trucks running full would be particularly  
9 slow in navigating that turn coming over the hill. The  
10 westbound traffic would meet a very slow -- it's a long  
11 stretch. The cars are going to the speed limit and then  
12 suddenly there is a very slow truck trying to gain speed on  
13 Highway 30, and it -- I just see a problem in trucks -- cars  
14 running into trucks. The sheer size of these trucks would be  
15 a problem passing each other on such a narrow road. I've  
16 heard the moanings of forboding from the school bus drivers,  
17 Meals on Wheels and the postal carriers about having to  
18 encounter them.

19           This dangerous traffic would also render the  
20 road completely unsafe for pedestrians jogging, visiting  
21 neighbors or just out for a walk. We only know of the  
22 traffic that the River Bend mine would cause, and that would  
23 mean trucks passing our home, business 84 times in eight  
24 hours. If the Mill Hill mine uses River Bend to Barton to  
25 Bethel Church to Mill Hill, it would simply add to that

1 traffic, and it would be nonstop. I just can't imagine it.

2 None of the residents here signed on or like  
3 ourselves, who have been here for decades, expected that  
4 they would end up living out what could be described as a  
5 driveway for the strip mine operations.

6 Another huge concern of ours is the  
7 conservation of the pristine flora and fauna continue in the  
8 area known as Wild Acres. There are three known species of  
9 endangered bats, and serious studies could prove that there  
10 are more that live in the approximately 500 lead mines in  
11 the area. We feel a thorough study should be done, not a  
12 quick, got to get something to show that there is something  
13 to look at here; that the trucks will drive through on Ely  
14 continuously through the week that was dedicated as a  
15 conservatory in perpetuity.

16 There are other endangered and threatened  
17 species in the area as well, and I don't think this can be  
18 ignored. We need nonpublic areas like this to preserve the  
19 wonderful and bountiful beauty in this county. The only  
20 profit we can see coming from these mines would be to  
21 Havin's and the three jobs created. Three. Now tonight I  
22 hear seven to ten, but that's all I heard was three, and  
23 even at seven to ten, I don't know if I like that tradeoff.  
24 It's not like a quiet, non-invasive industry, employing many  
25 who would drive in once and out once a day. It's coming the

1 area to boost the itself tax base and local business -- tax  
2 base and local businesses. I'd have to weigh the pros and  
3 cons if that were the case, but I can't see the profit for  
4 those of us giving up our peace and safety, and the possible  
5 destruction unrecoverable wildlife.

6 We can see it hurting Lost Hill Lake events,  
7 who with the events drawing out-of-towners, bringing  
8 businesses to local hotels, restaurants and eateries,  
9 bakers, florists, gas stations, and other local businesses.  
10 It would also be detrimental to Hootie's Rescue, the only  
11 no-kill shelter in the Franklin County chosen in great part  
12 for the peaceful environment it offers to rescue and  
13 rehabilitate animals already stressed to the maximum.

14 We can see the heartache of hundreds of  
15 residents, rapid road degradation, greatly increased safety  
16 concerns and loss of protected wildlife weighed against the  
17 profits of a few. I know that since trucks have ceased  
18 running past our residence, I have been grateful for every  
19 day of peace and quiet. Even though the trucks have  
20 relatively quiet exhausts, there is no way that you can  
21 simply ignore one passing by. Every time, every time one  
22 passes by, you can't help but recognize it. It gets to  
23 where you actually recognize if it's the red truck or the  
24 white truck or the other white truck. You can't help but  
25 think about it.

1 I feel so badly for the Griggs family with the  
2 operation practically in their front yard. They are also  
3 dealing with their children, in particular being asthmatic  
4 and the increased dust and exhaust fumes will surely affect  
5 them. They also have the problem of the road not being wide  
6 enough for two vehicles to pass each other and the  
7 Conservancy group is staunch about not pulling off the road  
8 onto their property. And rightly so.

9 How are they -- excuse me. How are they or  
10 other trucks going to handle meeting one another? What are  
11 either supposed to do? Two trucks can't pass each other and  
12 at that rate, there's no way. I don't understand. Where  
13 are they going to back up to to be able to legally get past  
14 each other?

15 They chose -- the Griggs have chose to purchase  
16 their home exactly because it was at the end of a country  
17 road, surrounded by conservancy land with little chance of  
18 any development anywhere near them. The building of another  
19 house or two would be one thing, but how could they ever  
20 imagine that a strip mine would start up basically in their  
21 front yard? Their children's outdoor have been restricted  
22 while the trucks were running for safety concerns as well as  
23 health concerns.

24 We beg that you take these things and other  
25 concerns raised at the Planning and Zoning Committee and DNR

1 meeting into consideration. Residents, both human and  
2 wildlife, lives would be instantly changed, and for us  
3 humans, the ability to sell one's house, property would be  
4 greatly damage.

5 Who's going to want to move to the country to  
6 live on a road plagued with nonstop truck traffic?

7 I thank you for hearing me, and I hope you give  
8 it due consideration. Thank you.

9 CHAIRMAN UPCHURCH: Before you get  
10 away, we have been handed Exhibit 12, which appears to be  
11 the script of your testimony, and we'll receive that so  
12 there's no confusion about that.

13 Are there any questions of this witness from  
14 the Board? [None]

15 Thank you.

16 MS. PATTON: Thank you.

17 CHAIRMAN UPCHURCH: Is there somebody  
18 else to be heard on behalf of the application? I need you  
19 to sign and be sworn as the others were.

20 [Thereupon, the witness was sworn.]

21 MS. REPORTER: This is Exhibit 13.

22 [Thereupon, evidence was marked for  
23 identification and entered into the record  
24 as Norman Exhibit No. 13.]

25 MS. ABIGAIL LAMBERT: My name is

1 Abigail Lambert. I represent Ozark Regional Land Trust.

2 So Ozark Regional Land Trust, founded in 1984,  
3 is a land conservation organization that assists people to  
4 protect the natural resources of the Ozarks.

5 Since 1984, ORLT has worked with landowners to  
6 protect over 28,000 acres of land, primarily through the use  
7 of conservation easements. A conservation easement is legal  
8 agreement between a landowner and a land trust that  
9 permanently limits the uses of the land in order to protect  
10 its conservation values. The landowner continues to own the  
11 land and may sell it or pass it on to heirs, but the  
12 conservation easement remains in place forever. The land  
13 trust is responsible for making sure that the terms of the  
14 easement are followed.

15 In 2010, Debbie Fordyce -- Deborah Fordyce,  
16 worked with Ozark Regional Land Trust to place a perpetual  
17 conservation easement on her property in order to protect  
18 its valuable wildlife habitat, scenic beauty and natural  
19 character, including a forested repairing corridor that  
20 helps protect the health of and scenic views along the  
21 Meramec River.

22 Ozark Regional Land Trust is responsible for  
23 monitoring and enforcing the terms of the conservation  
24 easement. The Jeffery property is served by a narrow access  
25 easement, approximately 14 feet wide in some places that

1 runs through the Fordyce property. This access easement was  
2 granted in 1978, and has never been used for commercial  
3 purposes. The conservation easement does not allow for the  
4 road to be widened or expanded beyond the dimensions  
5 specified in the access easement.

6 Bot Ozark Regional Land Trust and Deborah  
7 Fordyce are interested in protecting this property and the  
8 health of the Meramec River and oppose the use of this road  
9 for commercial purposes, which was not the intent of the  
10 granting access easement, and especially not for commercial  
11 use that has a high risk of causing damage and erosion to  
12 the Fordyce property.

13 In addition, we are concerned that the heavy  
14 equipment and high-volume use, especially in wet weather,  
15 will cause the road to be impassable and lead to unintended  
16 widening to avoid ruts and oncoming cars.

17 And finally, Ozark Regional Land Trust and  
18 Deborah Fordyce, we were never -- we were not contacted by  
19 Meramec Aggregates about the propose mine on the Jeffery  
20 property.

21 That's it. And I -- yeah, sure.

22 CHAIRMAN UPCHURCH: I've got to  
23 question.

24 MS. LAMBERT: Sure.

25 CHAIRMAN UPCHURCH: From the

1 pleadings, and what we will -- we'll focus on there is a  
2 reference that the Deborah Fordyce and Ozark Regional Land  
3 Trust, you indicate you were speaking for the trust, your  
4 association with the trust is?

5 MS. LAMBERT: Oh, I -- on my  
6 statement, it says I'm the river stewardship coordinator.

7 CHAIRMAN UPCHURCH: Okay . so you  
8 hold a title with them?

9 MS. LAMBERT: Yes.

10 CHAIRMAN UPCHURCH: Okay.

11 MS. LAMBERT: Yes. I am. I'm staff  
12 member for Ozark Regional Land Trust.

13 CHAIRMAN UPCHURCH: Okay.

14 MS. LAMBERT: Yeah.

15 CHAIRMAN UPCHURCH: You probably said  
16 it, and I wasn't listening.

17 MS. LAMBERT: Sure. I didn't say  
18 actually.

19 CHAIRMAN UPCHURCH: And with regard  
20 to that, I guess my concern perhaps is more technical.  
21 There are notices that are sent out by the County with  
22 regard to these meetings and these applications. I want to  
23 be clear on what's being said.

24 MS. LAMBERT: Sure.

25 CHAIRMAN UPCHURCH: I'm trying to

1 listen better. Did you not receive -- did the trust not  
2 receive notice from the County?

3 MS LAMBERT: No, we didn't, and the  
4 first we heard of it was when we were contacted by Nick  
5 Norman actually.

6 CHAIRMAN UPCHURCH: That's kind of  
7 not my question.

8 MS. LAMBERT: Oh.

9 CHAIRMAN UPCHURCH: My question is  
10 with regard to Norman's appeal.

11 MS. LAMBERT: Oh, his appeal?

12 CHAIRMAN UPCHURCH: Yeah, that we're  
13 here about tonight. You received notice of this?

14 MS. LAMBERT: Yes.

15 CHAIRMAN UPCHURCH: Okay.

16 MS. LAMBERT: Yes. Sorry, I -- I,  
17 yeah, okay.

18 CHAIRMAN UPCHURCH: That was my  
19 bigger concern.

20 MS. LAMBERT: Okay.

21 CHAIRMAN UPCHURCH: Okay.

22 MS. LAMBERT: Oh, no, right. The  
23 comment was about the original plan for the mining, not for  
24 the appeal.

25 CHAIRMAN UPCHURCH: Okay.

1 MS. LAMBERT: Sorry.

2 CHAIRMAN UPCHURCH: All right. I  
3 think that's my question, but are there other questions from  
4 the Board?

5 COMMISSIONER RIDDER: This easement  
6 is it specific as to who can use it or...

7 MS. LAMBERT: It -- the conservation  
8 easement is basically --

9 COMMISSIONER RIDDER: No, no, no. The  
10 easement on the roadway?

11 MS. LAMBERT: As far as I understand,  
12 for the access easement, it is for the purposes of the Mr.  
13 -- of the Jeffery family and the Griggs. It's an access  
14 easement for them to access their property through the  
15 Fordyce property. So yes, they are all the rights to use  
16 the property.

17 COMMISSIONER RIDDER: Thank you.

18 MS. LAMBERT: Sure.

19 CHAIRMAN UPCHURCH: Other questions  
20 from the other members of the Board?

21 COMMISSIONER HEAD: You said that  
22 Deborah Fordyce didn't receive notice of the original  
23 hearing?

24 MS. LAMBERT: No. I think, again,  
25 it's the intent -- the original intent of the mining. So if

1 there was subsequent, I don't know if she did. I just know  
2 that neither one of were notified of the original plans to  
3 do the mining -- to have the mining.

4 COMMISSIONER HEAD: Because she is  
5 listed that she had received a notice of the original  
6 Planning and Zoning hearing.

7 MS. LAMBERT: Oh, she is listed that  
8 she received the...okay.

9 COMMISSIONER HEAD: Well, it looks  
10 like it was sent in our record.

11 CHAIRMAN UPCHURCH: And I'll -- I'm  
12 going to ask Scottie who has not been sworn, but, Scottie,  
13 just so we don't create error here or doubt, it's my belief  
14 from the packet that notice was given to them of the appeal;  
15 is that correct?

16 MS. EAGAN: Yes, the notice was given  
17 to them of the appeal. It's the same list that we used for  
18 the Conditional Use Permit as well.

19 CHAIRMAN UPCHURCH: With regard to an  
20 earlier hearing or intent, which might mean to you because I  
21 don't do those, is there any record with the County that  
22 notice was sent --

23 MS. EAGAN: Yes.

24 CHAIRMAN UPCHURCH: -- to this  
25 Deborah Fordyce?

1 MS. EAGAN: Yes.

2 CHAIRMAN UPCHURCH: Okay, all right.

3 MS. LAMBERT: Can I ask a question?

4 I mean, as -- I'm not sure that we got notice of the appeal,  
5 official notice, from the County.

6 MS. EAGAN: The appeal is sent to the  
7 property owner.

8 MS. LAMBERT: Right, okay.

9 MS. EAGAN: So it went to Deborah  
10 Fordyce.

11 MS. LAMBERT: Right. Okay. Okay.  
12 It wouldn't have come to Ozark Regional Land Trust as the  
13 easement holder, right.

14 CHAIRMAN UPCHURCH: Okay. All right.

15 MS. LAMBERT: Okay, thank you.

16 CHAIRMAN UPCHURCH: I think -- hope  
17 we have cleared that up --

18 MS. LAMBERT: Yeah.

19 CHAIRMAN UPCHURCH: -- or at least  
20 identified the confusion.

21 Are there other questions of this witness?

22 [None]

23 Thank you.

24 MS. LAMBERT: Thank you.

25 CHAIRMAN UPCHURCH: Is there another

1 witness to be heard on behalf of the applicant? Step  
2 forward, sign in, be sworn.

3 [Thereupon, evidence was marked for  
4 identification and entered into the record  
5 as Norman Exhibit No. 14.]

6 MS.REPORTER: This is marked as  
7 Exhibit 14.

8 [Thereupon, the witness was sworn.]

9 MR. WILLIAM GRIGGS: Okay. We ready?

10 CHAIRMAN UPCHURCH: Mr. Griggs, I'm  
11 not going to cut off.

12 MR. GRIGGS: Yes. Okay.

13 CHAIRMAN UPCHURCH: But are you  
14 familiar with Danielle Griggs?

15 MR. GRIGGS: Yes, that's my wife.

16 CHAIRMAN UPCHURCH: Okay. You were  
17 here when she testified earlier?

18 MR. GRIGGS: Yes.

19 CHAIRMAN UPCHURCH: Okay. And -- and  
20 I'm not going to tell you that you can't testify and we'll  
21 receive Exhibit 14, which I'm going to guess is a script of  
22 your testimony, and we'll receive that. But we have other  
23 people here that do want to be heard. So let me, in the  
24 spirit of moving the matter along, we're going to receive  
25 Exhibit 1,4, which appearing again a script for your

1 testimony. At a glance, it appears to be substantially what  
2 your wife testified to.

3 MR. GRIGGS: Yes.

4 CHAIRMAN UPCHURCH: With that in  
5 mind, what -- and we'll receive that and make it part of the  
6 record.

7 MR. GRIGGS: Okay.

8 CHAIRMAN UPCHURCH: What more do you  
9 wish to offer?

10 MR. GRIGGS: I just want to say I'm  
11 against it. We bought the house for the peace and  
12 tranquility. Didn't expect 84 trucks to come by. That's --  
13 you know, our kids love to play outside, ride their bikes on  
14 that road, and it's just a big -- it'll be huge hassle.  
15 Just all the dust and everything, and like when I mow my  
16 grass, I don't want dust flying up all over the place, you  
17 know, like mowing dirt. So just a bunch of issues. Pretty  
18 much the same issues as Danielle had said.

19 CHAIRMAN UPCHURCH: I'm trying to  
20 give everybody an opportunity to be heard.

21 MR. GRIGGS: Right.

22 CHAIRMAN UPCHURCH: And just so there  
23 isn't confusion with regard to the record, those of us on  
24 the Board pride ourselves on reviewing the record, and  
25 there's been lots of references to I believe 84 trucks. But

1 I believe from the report in the packet that we've received,  
2 that's really a calculation of three or four trucks and the  
3 estimated trips that they would make in a day. And the fact  
4 that a trip would involve going by your house twice. So  
5 we're really talking about 42 trips and, really three or  
6 four trucks. Is that right?

7 MR. GRIGGS: Yeah.

8 CHAIRMAN UPCHURCH: Okay.

9 MR. GRIGGS: Three or four trucks,  
10 but the trips is 42 trips going by.

11 CHAIRMAN UPCHURCH: And one trip is  
12 twice that because they pass your house twice.

13 MR. GRIGGS: Right.

14 CHAIRMAN UPCHURCH: One coming in and  
15 one going out?

16 MR. GRIGGS: And our road -- our  
17 house is 20 foot from that -- 30 foot from that road --

18 CHAIRMAN UPCHURCH: Okay.

19 MR. GRIGGS: -- to our mailbox.

20 CHAIRMAN UPCHURCH: Anything more  
21 that you want to offer?

22 MR. GRIGGS: I think that's it.

23 CHAIRMAN UPCHURCH: Okay. Hold on.

24 Any other questions of this witness?

25 COMMISSIONER HEAD: Well, I -- I just

1 have one --

2 CHAIRMAN UPCHURCH: Not all at once  
3 here.

4 COMMISSIONER HEAD: In our packet  
5 that I reviewed -- just so I have this straight in my  
6 head -- there is a letter that you wrote back in February at  
7 the hearing that said you now have a supportive position of  
8 the permit.

9 MR. GRIGGS: Yeah, after I had  
10 thought this was said and done and I had no choice but to  
11 think that this was going on, Fred came to my house and  
12 pretty much manipulated that I sign this because it was said  
13 and done. And I'm to let it to be known I'm definitely  
14 opposed to it. So...

15 CHAIRMAN UPCHURCH: And, Mr. Hoff.

16 COMMISSIONER HOFF: I got two  
17 questions. Number one, when did you purchase your home?

18 MR. GRIGGS: January of 2015. Yeah,  
19 January of 2015.

20 COMMISSIONER HOFF: I'm hearing '15  
21 and I hear '16.

22 MR. GRIGGS: I don't know who's -- we  
23 have been there...

24 COMMISSIONER HOFF: '16?

25 MR. GRIGGS: It's '16, yeah. After

1 January -- sorry after January 1st.

2 COMMISSIONER HOFF: Did your Realtor  
3 or whoever sold you the home tell you about this?

4 MR. GRIGGS: No.

5 COMMISSIONER HOFF: Thank you.

6 CHAIRMAN UPCHURCH: Thank you.

7 MR. GRIGGS: Thank you.

8 CHAIRMAN UPCHURCH: Again, we will  
9 receive the summary. It will be part of the record.

10 Is there somebody else here in support of the  
11 application to be heard? Seeing no hands.

12 Need you to sign in and be sworn.

13 [Thereupon, evidence was marked for  
14 identification and entered into the record  
15 as Norman Exhibit No. 15.]

16 [Thereupon, the witness was sworn.]

17 CHAIRMAN UPCHURCH: Your name for the  
18 record.

19 MS. SAMANTHA NORMAN-WILLIFORD:  
20 Samantha Norman-Williford, and I live at 783 Lost Hill Lake  
21 Road, St. Clair, Missouri. And I'm here today to ask you to  
22 deny the Havin Material/Meramec Aggregates, Incorporated's  
23 Conditional Use Permit, Permit Number 160016.

24 My family and I live operate a small business  
25 less than 2,500 feet from the proposed dig site for the

1 surface mine. Our property home and business is closer to  
2 the proposed dig sites -dig site than the home of the man  
3 leasing his property for the dig site.

4 I'm very against the proposed mine for many  
5 reasons. My personal reasons for denying the proposed mine  
6 is health and public safety concerns, environmental  
7 concerns, and the effect of this industrial business that  
8 will have on my small family-operated business.

9 River Bend Road is a small rural road with no  
10 shoulders. These roads are not made for countless  
11 industrial sized dump trucks to drive on every day and many  
12 times per day. The people that live on -- live and drive on  
13 these roads every day will be at a greater risk for  
14 accidents. There will be an inevitable damage to River Bend  
15 Road. There will be pollution from the dump truck and from  
16 the mine itself.

17 My husband and I moved to the country to escape  
18 these types of businesses, industries and pollution, and now  
19 they are attempting to move into our back yard. We are  
20 expecting our first child in January, and the added  
21 pollution is a huge concern for us, a newborn and a growing  
22 family in the future. I am concerned that when we allow one  
23 mine to be operational, it will only be a matter of time  
24 until we see more industry coming into our back yards and  
25 affecting us even more.

1 I am also concerned for the safety and  
2 longevity of the precious wildlife that calls the river and  
3 surrounding woodland fields and caves their home. Gray  
4 bats, along with other species that are endangered are  
5 protected nest and feed right in the area. I think it is in  
6 the best interest of Franklin County to leave nature as it  
7 is intended and to be preserved -- and to preserve the  
8 beauty that this area offers and is so rare in the growing  
9 world around us.

10 I am concerned for the possibility of decreased  
11 property value in the area. We work very hard, along with  
12 many of our neighbors, to increase the property value in the  
13 area, not take away from it. Please put yourself in a  
14 perspective home buyer's shoes coming to view a home for  
15 sale on River Bend Road, and in the hour you are in your  
16 showing you see countless dump trucks drive by. The noise  
17 pollution and increased traffic would not be flattering no  
18 matter how lovely the home may be.

19 I am concerned about the proposed mine and how  
20 it will affect our wedding venue business and the many local  
21 businesses that work with our business. We host 25 to 35  
22 events per year in the months of May, June, August,  
23 September and October, and we do events on Friday and  
24 Saturdays and showings and meetings all through the week.

25 Having a surface mine directly in the line of

1 sight of our venue, and not to mention the noise and the  
2 dust the mine will produce, will gravely affect our  
3 business, which is mine, my family's and other employees'  
4 main source of income. I am confident that we will not be  
5 able to book as many weddings with the eyesore and the noise  
6 that comes with the proposed surface mine.

7 The contract between Havin Material/Meramec  
8 Aggregates and Franklin County for the Veteran's Memorial  
9 Park makes me very uncomfortable. I feel as though it would  
10 be a conflict of interest, and needs to be addressed and  
11 researched further.

12 If the permit was granted, I'm concerned that  
13 Havin Materials/Meramec Aggregates would not follow the  
14 conditions applied to the permit and Franklin County could  
15 not enforce the conditions put on the permit.

16 Something that I would like to point out is  
17 that Havin/Meramec Aggregates is here tonight for reasons  
18 only associated with money and profit. Mostly everyone here  
19 tonight that opposes the mine is here for no financial gain  
20 whatsoever. We are ordinary hard-working people. We are  
21 fighting for our homes, our future, our families, and the  
22 well-being of our small community. We have banded together  
23 to show you that we do not want this large industry moving  
24 into our back yard and affecting the citizens, wildlife also  
25 negatively all so Havin can have a bigger paycheck while

1 stepping on the backs of the citizens of the communities  
2 that will have to deal with the mine everyday in this  
3 operation.

4 I thank you for your time, and we ask you to  
5 deny Permit Number 160016.

6 Thank you.

7 CHAIRMAN UPCHURCH: Are there  
8 questions of this witness?

9 COMMISSIONER RIDDER: Not to pick on  
10 you because we've heard this before tonight, but this  
11 contract that you say that Havin Materials/Meramec Aggregate  
12 has with Franklin County, is that specific that it has to  
13 come from this site?

14 MS. NORMAN-WILLIFORD: It's, I think,  
15 specific that it has to be Meramec aggregate.

16 COMMISSIONER RIDDER: From this site?

17 MS. NORMAN-WILLIFORD: I -- I don't  
18 know.

19 COMMISSIONER RIDDER: Thank you.

20 MS. NORMAN-WILLIFORD: Thank you.

21 CHAIRMAN UPCHURCH: Other questions  
22 of this witness? [None]

23 Thank you.

24 MS. NORMAN-WILLIFORD: Thank you.

25 CHAIRMAN UPCHURCH: Is there anyone

1 else to be heard on behalf of the application?

2 [Thereupon, the witness was sworn.]

3 MR. ROBERT NORMAN: My name is Robert  
4 Norman. I'm at 783 Lost Hill Lake Road. Most of my  
5 testimony is the same. So I'm just going to read the last  
6 paragraph, make it short and sweet.

7 My family and 600 people have signed a  
8 petition, and we're very concerned about the public health,  
9 safety, and general welfare that this mine will bring to  
10 Franklin County. Please consider our petitions.

11 That's all I got to say.

12 CHAIRMAN UPCHURCH: And I'll finish  
13 your first sentence for you. If I gave you another 20  
14 minutes, and I appreciate you trying to be considerate to  
15 others, you would say many of the things that your family  
16 has said before you?

17 MR. R. NORMAN: That's correct.

18 CHAIRMAN UPCHURCH: And I understand  
19 that, and I appreciate that. And I'm going to ask other  
20 witnesses to --

21 MR. R. NORMAN: I just want to be on  
22 the record that I oppose this.

23 CHAIRMAN UPCHURCH: And we've got you  
24 in the record.

25 MR. R. NORMAN: Okay.

1 CHAIRMAN UPCHURCH: But Before you  
2 get away, are there any other questions of this witness?  
3 [None]

4 Thank you, sir.

5 Is there anyone else here wishing to be heard  
6 on behalf the application?

7 Step forward, sign in and be sworn.

8 [Thereupon, the witness was sworn.]

9 MS. TRACEY HERRELL: My name is  
10 Tracey Herrell. I live on --

11 CHAIRMAN UPCHURCH: Spell the last  
12 name.

13 MS. HERRELL: H-E-R-R-E-L-L.

14 I live at 516 River Bend Park Lane, which is  
15 right at the corner of River Bend Road and River Bend Lane,  
16 right on the corner. We're right behind. My garden is 64  
17 feet from River Bend Road. When -- when I'm home, which  
18 sometimes is during the day during the week, I grow these  
19 vegetables to promote our own health and share them with  
20 family and friends. Now I'm going to be crawling around in  
21 this, the fog of numerous trucks going by daily.

22 My other concern has been stated before. This  
23 is a very narrow road. Five hairpin turns I go on my way  
24 home tonight. What about emergency vehicles, fire trucks?  
25 Plus we have a hard time pulling our horse trailer with

1 normal size wheels on this road. If someone has a medical  
2 emergency, a house fire, how are they going to be --  
3 emergency vehicles going to get to them. We know that  
4 seconds count. These vehicles, like any other vehicles, are  
5 prone to break down. If there is one broke down impeding  
6 passage for an emergency vehicle, there is no alternate road  
7 beyond our road to get to our homes.

8           The other concern I have is that of the bat  
9 population. The zika virus, everybody here has probably  
10 heard of it, would be very simple for it to migrate the same  
11 way the West Nile virus. So we're going to have swampy  
12 conditions right for mosquitoes to thrive and breed and  
13 possibly to do harm to the bat population in that each  
14 individual bat eats tens of thousands of insects every  
15 night. So they provide a service not only to the bats.  
16 Those are my children, and I truly hope you consider that  
17 tonight.

18           Thank you.

19                           CHAIRMAN UPCHURCH: Are there any  
20 questions of this witness? [None]

21           Thank you, ma'am.

22           Is there anyone else to be heard on behavior of  
23 the application? Come forward, sign in and be sworn.

24                           [Thereupon, the witness was sworn.]

25                           MS. KIM LYNCH: She asked me to

1 state my name. It's Kim Lynch.

2 I am the president and head veterinarian for  
3 Hootie's Rescue Haven, which was alluded to earlier in  
4 previous testimony. It is a 40-acre all animal, no-kill,  
5 nonprofit 501(c)3 entity that is very close to these  
6 proposed mines. This was formed three years ago by a group  
7 of environmentally minded people who were concerned about  
8 the number of animals that were being left in dire  
9 conditions due to whatever circumstances, foreclosure of  
10 farms, people moving, people just being abusive.

11 We do handle abandoned and abused cases.  
12 That's our specialty. So this was formed three years ago.  
13 This 40 acres was bought for this express purpose. It was  
14 bought with the blessings of our board because it was an  
15 area that we felt that we would not bother anyone else with  
16 countless animals and that it would be a safe environment  
17 for those animals that had been terribly abused that we do  
18 take in, who sometimes need years to rehabilitate and  
19 sometimes never reach rehabilitative status and then so have  
20 to stay with us.

21 So my concern with this whole project is that  
22 we are going to have increased admissions from diesel. We  
23 are going to have increased noise, and anything that bothers  
24 these animals as they are trying to rehab has serious  
25 effects on what the body can do. So stress released cortisol

1 which slows healing, anything from healing your broken bones  
2 to healing their broken mind or healing your broken sole.  
3 It affects all of it.

4 We would not, as a group, have purchased this  
5 land had I known that this was going on or had I known that  
6 anybody would even think of mining over there. We've  
7 already had -- even though we're on Mill Hill Road -- the  
8 entrance to my farm is on Mill Hill -- we did have a day  
9 when one of the Havin trucks on a Saturday, we were having a  
10 meeting about this whole appeal process thing. They came by  
11 slowly on River Bend while we were all meeting, but then  
12 they also came barreling about a half hour later past my  
13 house on Mill Hill. So this is a Saturday when there's not  
14 supposed to be any trucks anyway, and I'm concerned that  
15 that was kind of a shot over the bow. I just don't like  
16 that kind of dealing.

17 I believe mines -- we need mines. We're going  
18 to be building on the property. We're going to be adding  
19 improvements. We're going to need concrete slabs. That  
20 concrete has to come from somewhere. I realize that, but I  
21 just don't think that this placement to harvest this  
22 material is correct for this community.

23 So please really look at it again and see, hey,  
24 you know, this is a big company. Yeah, they're going to  
25 bring money to the area. There's going to be extra money.

1 I understand that, but I just don't think it's right to  
2 punish the rest of the community for a few extra coins in  
3 someone's pocket.

4 Thank you.

5 CHAIRMAN UPCHURCH: Are there other  
6 questions of this witness?

7 COMMISSIONER RIDDER: You're preserve  
8 is on what road?

9 MS. LYNCH: It's on Mill Hill.

10 COMMISSIONER RIDDER: Across from --

11 MS. LYNCH: I'm sorry. It's on  
12 Highway TT -- TT. We're are Mill Hill -- well, we're  
13 bordered by three roads. Two roads. We're bordered by  
14 Mill Hill and TT, the 40 acres.

15 COMMISSIONER RIDDER: You're across  
16 the river from what we're talking about?

17 MS. LYNCH: Uh-huh, but not that far.

18 COMMISSIONER RIDDER: Yeah. Thank  
19 you.

20 MS. LYNCH: Thank you.

21 CHAIRMAN UPCHURCH: Other questions?

22 [None]

23 Thank you.

24 MS. LYNCH: Thank you.

25 CHAIRMAN UPCHURCH: Are there other

1 witnesses to be heard on behalf of the application?

2 [Thereupon, the witness was sworn.]

3 MR. PAUL PRINCE: My name is Paul  
4 Prince, and I live at 2457 Mill Hill Road. I will not talk  
5 about all the things that the others talked about. I'll try  
6 to be brief.

7 I have horses for a long time, and each year we  
8 have to give the horses West Nile vaccines. That becomes  
9 expensive, and I do believe that these bats that have been  
10 spoken about is nature's way of combating this mosquito  
11 epidemic. Mosquitoes have killed for many a years and many,  
12 many people.

13 The other thing the trucks. From my home, it's  
14 a pretty good grade. I've seen trucks were loaded that  
15 would have to back down the road and get another run at it.  
16 I have a pond right in front of the road and all this  
17 exhaust coming out. You know, I have a concern, but the  
18 river. Mile 16 I used to drive to Bruns' bridge and dive  
19 that thing. I've jumped off that bridge many, many times.  
20 It has changed so much, and it just looks terrible from when  
21 it used to. The whole river system is, in that area of  
22 Bruns' bridge is just -- just the site of it, you know, it's  
23 disturbing. My kids won't be able to enjoy that like I did  
24 or anybody else.

25 The other thing is I was a police officer for

1 33 years and I retired in '07. I worked a lot of truck  
2 accidents on the highways. If you have to a gravel truck  
3 going down the road 20 miles an hour and it hits a smaller  
4 car, I can almost guarantee you there will be an ambulance  
5 needed, and there will be some serious injury. Cars just  
6 don't drive through big trucks. It just don't happen.

7 I've seen trucks turn over on cars, hit cars  
8 and just a 20-mile-an-hour strike is enough to take their  
9 life. At the top of my property, there is a grade that goes  
10 up. You can't see what's on the other side, nor can the  
11 people coming in the westbound direction on Mill Hill cannot  
12 see what's on the other side of that. It peaks at the top.  
13 There's no shoulder, and for a school bus and a dump truck  
14 to pass each other, that I want to see. I think the river  
15 needs to be saved. I think the bats need to be saved. I  
16 think life needs to be saved. I think these areas that they  
17 are wanting to come to is just not the venue for it.

18 Thank you very much for hearing my testimony.

19 CHAIRMAN UPCHURCH: Any other  
20 questions of this witness?

21 COMMISSIONER RIDDER: And again,  
22 you're talking Mill Hill which is across the river from  
23 these --

24 MR. PRINCE: Right, right. Mill Hill  
25 Road. Yeah. The entryway proposed for the other site is

1 going to be coming off Mill Hill.

2 COMMISSIONER RIDDER: But we're  
3 talking about just one side?

4 MR. PRINCE: That's right.

5 CHAIRMAN UPCHURCH: Anyone else here  
6 to be heard on behalf of the application? [None].

7 Is there anyone here to be heard in opposition  
8 to the application?

9 MR. CAMERON LUEKEN: Gordon, would  
10 you like me to pages on my PowerPoint, could we take a  
11 five-minute break perhaps if you -- if you desire to allow  
12 that, or how would you want me to do?

13 CHAIRMAN UPCHURCH: I'm good with the  
14 five-minute break, and I think maybe some of the audience  
15 might wish to take a break. The rest rooms' here somewhere.

16 [Thereupon, a break was taken at  
17 8:46 p.m. until 8:56 p.m.; after which,  
18 the proceedings continued as follows:]

19 Back on the record.

20 [Thereupon, the witness was sworn.]

21 MS. REPORTER: And also we have  
22 Opponent's Exhibits 1 through 69 have been submitted.

23 [Thereupon, evidence was marked for  
24 identification and submitted for the  
25 record as Opponent's Exhibit Nos. 1

1 through 69.]

2 CHAIRMAN UPCHURCH: Your name for the  
3 record.

4 MR. CAMERON LUEKEN: My name's  
5 Cameron Lueken with Wunderlich Surveying and Engineering,  
6 representing Meramec Aggregates, Incorporated here tonight.  
7 Good evening.

8 Tonight we're going to talk about the  
9 Conditional Use Permit. We're going to talk about the need.  
10 We're going to talk about who. We're going to talk about  
11 how, and we're going to talk about where. We're going to  
12 talk about when. We're going to talk about the nearest  
13 residences. We're also going to talk about concerns of the  
14 public.

15 The first part of this presentation tonight  
16 will be very similar to what was presented to Planning and  
17 Zoning. The last part of the presentation has been modified  
18 to address concerns that have been brought forth by the  
19 public since the issuance of the Conditional Use Permit. So  
20 we're going to talk about the need.

21 Tonight you've heard some needs referred to.  
22 We're going to talk about those. In general, it's common  
23 practice across Missouri to have these sand and gravel  
24 operation. This map depicts where some of the active  
25 construction sand and gravel operations are across the

1 state. So it's a mineral resource that's needed throughout  
2 the state. In this area you'll see Franklin County circled.  
3 most of the mines that are mentioned there are on the  
4 Meramec and not on the Bourbeuse because the unique  
5 characteristics of this aggregate. It's lignite free. It's  
6 very hard.

7 So with this next statement basically  
8 identifies the uniquely qualified source. This was a study  
9 that was done by a geologist in 2014 when the Winter  
10 Brothers was proposing their mine on the lower Meramec on  
11 about a 900-acre site. Theirs was -- like I said, theirs  
12 again, was about a 900-acre site. Ours is ten.

13 Basically in this -- in this the geologist  
14 refers to problems or floodplains sand and gravel makes it  
15 construction aggregate where it's rounded. It's angular and  
16 cleanness. Nature makes sure it's a general size,  
17 especially the lack of lignite. That lack of lignite you'll  
18 see here in a minute.

19 Lignite is basically what that is, is that when  
20 you do flat work and you will do a concrete slab. After  
21 it's cured, you'll see black streaks across it. It's kind  
22 of like coal. Kind of like it's the mineral is lignite. So  
23 this Meramec rock is lignite free.

24 Basically this is some more stuff identifying  
25 how this resource is uniquely quali- -- or uniquely

1 characteristic of Meramec River basin.

2           This is a specification put out by MoDOT. This  
3 is embedded in their specifications that when they do flat  
4 work, when you build roads, interstates and whatnot, they  
5 only allow a certain amount of coal or lignite in the  
6 aggregate itself. So here's a MoDOT spec that basically  
7 says, hey, this stuff is bad. We only want so much in it.  
8 Percent by weight is what it's referred to.

9           So that's a site testing tool, C33 lignite  
10 limit. That's what's referred to. I'm sorry. That's a  
11 different code. ASTM is a different code. That is a 0.5  
12 percent max for flatwork concrete.

13           So what is unique about the hardness of this  
14 gravel versus limestone concrete? When you look at the  
15 hardness of limestone, it's somewhere between calcite and  
16 fluorite. When you look at the hardness of Meramec sand and  
17 gravel, most of it is quartz. This scale is a scale of 1 to  
18 10, and the limestone is between 3 and 4, and the cor- --  
19 the Meramec sand and gravel is about 7. Limestone is  
20 sorter. So it's not as good of aggregate. There -- there  
21 are four. You'll see it's specced out in like what was  
22 referred to tonight as that park. They have flatwork  
23 exposed aggregate. Obviously you can't use limestone for  
24 that. So that's the reason the engineer that did that spec  
25 out, Meramec sand and gravel, just like MoDOT specced out

1 the absolute lignite free. So they're looking for an  
2 aggregate embedded within that concrete to proved the  
3 lasting resilience of that finish, and this Meramec sand and  
4 gravel does that.

5           So how do you get this Meramec sand and gravel?  
6 One is from the river. That's been identified tonight, in  
7 the past that's occurred. However, what's also occurred is  
8 that through protection of different forms of species,  
9 whether it be muscles or whatever, the Department of Natural  
10 Resources has deemed that it is in the best interest of the  
11 public that it's not from the river, and they are wanting to  
12 go outside the river. That is the case by way of example,  
13 in Fenton the Simpson site down there, that's outside the  
14 river. Basically, I'm not going to go -- don't hold me to  
15 this, but I'm not aware of any local mining activity  
16 extracting Meramec sand and gravel that's contained within  
17 the river at this time. Or along side the river, and that's  
18 what we're proposing tonight, is we're going to trying to  
19 get outside the river as with other excavation that are  
20 occurring outside the river channel.

21           So this crushed stone limitations, that's  
22 basically the limestone, this low-density chert. This  
23 low-density chert means interbedded in the limestone. So if  
24 you can imagine, when you get -- when you extract limestone  
25 from a quarry, it's got these low-density chert veins, and

1 this can cause an alkali-silica reaction. Basically what  
2 happens is, is that this is a piece of flatwork here. This  
3 is sub-quartered. So what happened is that that low-density  
4 chert absorbs water, and then when it freezes, what happens  
5 is, is that water will expand inside an embedded chard vein  
6 and pop out. And so that's what caused them pop-outs.

7 You'll see right here is a prime example of this low-density  
8 limestone that absorbed water. It froze and popped it out.

9 So that's what the engineers, like at the  
10 Veterans Memorial Park is -- are trying to avoid. They  
11 don't want this limestone.

12 There again, this low-density chert has a rare  
13 propensity for absorption. The porosity of it's 0 to 50  
14 percent. It causes it to pop up, like I said. It's  
15 soluble. It's just that's -- that's, like I said, where  
16 you've got a high-value -- for example, that Veterans  
17 Memorial, we got a high-value item there that is going to be  
18 visited by people all over. The engineers don't want this.  
19 They want a durable finish, and the limestone does not  
20 provide that durable finish.

21 So therefore, we're going to talk about where  
22 can this Meramec sand and gravel be applied. It's in the  
23 concrete aggregate itself. It's higher quality that the  
24 vendors request. It's also got the sand needed. It also  
25 provides the sand that's needed in the limestone concrete.

1 So by way of example, foundations, the way I understand it  
2 works, is that Meramec River sand is absent the lignite and  
3 the characteristics allows the -- even the walls to be  
4 poured. There's just not the separation as you're pouring  
5 it. So basically what you'll -- what I'm getting at is, is  
6 that doesn't have a tendency to separate when you start to  
7 boards off as much. It's not a honeycomb effect.

8 Also exposed aggregate, as referred to the  
9 Veterans Memorial Park, that's an exposed aggregate there I  
10 believe, or obviously exposed aggregate. They had this pee  
11 gravel will be -- that's a resource that Havin Materials  
12 will extract.

13 Washed stone is also required in places like  
14 chip-and-seal roads, in draining fields, and in wastewater  
15 treatment facilities. Like recirculating sand, DNR has  
16 mandated that the wastewater be cleaner. And so what  
17 happens is, is that they have these recirculating sand  
18 filter beds that allows for lower DOD, lower TSS, and it  
19 provides a greater treatment in these streams. So there  
20 again, DNR is mandating this, and this is driving the need  
21 for this washed stone, this Meramec aggregate. I mentioned  
22 its hardness; meaning that what happens in landfills is, is  
23 that there's a leachate collection system that's at the  
24 bottom of these landfills. And you can imagine what gets  
25 dumped in these landfills. So these different chemicals and

1 whatever ones in the landfill, the limestone would break  
2 down and clog the leachate collection system.

3           However, with this harder rock, it's more  
4 resistant to these chemicals. It provides a greater life  
5 for that leachate collection system. So thereby, allowing  
6 that methane gas to be pulled off or whatever pulled off,  
7 that leachate to be recycled in an appropriate spot. So  
8 that's the example where it's used also.

9           Something that's interesting to me is that,  
10 when you look at a yard of concrete, what percent is --  
11 what's it comprised of. You see here 46 percent is course  
12 aggregate. In this case, it could be, you know, Meramec or  
13 limestone, 35 percent sand. So 81 percent of this material  
14 for a yard of concrete comes from a place like what we're  
15 proposing to do. That's 81 percent of that. That's as big  
16 majority. The cement is a very small portion of that. The  
17 water, some add mixtures like air treatment and those things  
18 are a finer mesh or make up the other 1 percent.

19           Who is going to do this? So the company  
20 background is Lynn Havin's company was started a long time  
21 ago by her father. It's the oldest concrete company in  
22 Franklin County. It's been in business for 76 years. They  
23 currently have over 48 full-time employees operating plants  
24 in Union, St. Clair, Sullivan, and Owensville.

25           The purpose of it is that they want to continue

1 to excavate and provide this Meramec sand and gravel in a  
2 non-urban agricultural zoning district. Obviously this is  
3 going to be used to obtain aggregate for commercial products  
4 as well as for residential homes, residential driveways.

5 History. Who's going to do it do this. Again  
6 currently operating the sand and gravel plant under Permit  
7 Number 0640. This is an extension of that permit to  
8 additional service excavation location. What does that  
9 mean? Basically when you excavate this material and you go  
10 bucket to truck, you take this material out of this  
11 excavation pit and put it in the back of a truck. That's  
12 the process. It's going to be hauled to her existing plant  
13 that's operated on Highway 30 under Permit 0640. This is an  
14 extension of that permit or basically identifying a new  
15 aggregate source for that plant.

16 So the how, the where, the when. This is a  
17 flowchart of kind of how, where, the when, how we got to be  
18 here. When you look at it briefly, there's U. S. Fish,  
19 Corpse of Engineers, City of Union, and the County. These  
20 are all the things that we completed. So as you look  
21 through this list, at one point when we were in the Planning  
22 and Zoning portion of this, we -- as an example, we were  
23 trying to obtain this CUP. So we basically said, hey, we  
24 got to get this permit, some things are done, somethings  
25 aren't. We created a flowchart for the Planning and Zoning

1 members and the audience to understand what had been  
2 obtained and what was going to be obtained. At this point,  
3 all the permits that we know of have been obtained.

4           Where is this place at? So this is an existing  
5 sand and gravel plant that's located on Highway 30. This is  
6 the proposed excavation limit in pink. This is the  
7 property. This is Mr. Jeffery's 200 acres. You can see the  
8 river back here. Here's his property.

9           There is River Bend Road coming off Highway 47  
10 going to the north to Ely Road. This is -- this is the  
11 easement that's been referred to across the Fordyce tract.  
12 So this is an easement basically where Ely Road stops into  
13 the Jeffery tract. This is the haul road that's going to be  
14 going down to the excavation area.

15           What are our operational details? We applied  
16 -- when I say we, I mean Meramec Aggregates, Incorporated,  
17 not Wunderlich. So here we refer to we, I'm referring to  
18 Meramec Aggregates, just so that's clear. We identified  
19 Havin's going to have or Meramec Aggregates is going to have  
20 three employees. There's a need for approximately three  
21 trucks haul from the site. There's no fuel storage on the  
22 site. There is no overburden. Meaning that you'll see in a  
23 minute here, for most aggregate resources, you'll see an  
24 overburden removal requirement. In this case, I'll identify  
25 there actually is no overburden or very little overburden.

1           So there's 10 to 12 foot amount of aggregate  
2   that exists in this area. We're going to have a 10 to 12  
3   foot depression to water level. There's going to be a  
4   one-acre pond once completed. We're going to have a  
5   200-foot buffer from the river to the pond.

6           Operational details. Estimated that there's,  
7   based on the amount we're going to extract -- meaning Havin  
8   is going to extract -- it's going to take about five years  
9   to complete. The CUP are -- is for 180 acres. Why is that?  
10   Is that because the way the regulations are, we have to  
11   identify a tract of ground, and we did not want to subdivide  
12   this 10 acres and go through that Planning and Zoning  
13   process. And furthermore, it's a lease. So basically it's  
14   one CUP for the acres; however, it's not going to be off the  
15   -- off the 10 acres that's proposed. That's mandated by DNR  
16   as well.

17           The disturbance, like I said, is away from the  
18   pond area. Basically less than 10 acres. So let's break  
19   this down a little bit tighter. On the south side, here's  
20   the easement road coming into the property to the south.  
21   The Griggses that you heard testimony from tonight, live  
22   right here on the right-hand side. Mr. Jeffery lives right  
23   here. The haul road goes down the hill, all the way back to  
24   the excavation area.

25           What's this excavation area look like? This is

1 a view on the east portion of the gravel area looking west.  
2 You can see that there is no overburden. It's completely  
3 exposed. So what happened there is that there is a large  
4 deposit of sand and gravel that exists in this location.  
5 It's about a 10 to 12-foot mound. So what's going to happen  
6 is, is that we're going to come in and excavate that mound.  
7 After that mound is excavated, we're going to excavate down  
8 below that surface to the water level. And that water level  
9 that we're referring to is at some point, we're going to  
10 encounter groundwater. Then below the groundwater that  
11 cattle pond. Mr. Jeffery has cattle. It'll be excavated  
12 deeper, and it'll leave a cattle pond in one corner of the  
13 excavation area.

14 So I've spoken here for probably 10 minutes or  
15 so, 13 minute. Does anybody have any questions about  
16 anything they have seen so far? And feel free to jump in at  
17 any time while I'm speaking to ask any questions. Hearing  
18 none, I'll move on.

19 So the stream buffer width. There is a  
20 non-coal mineral resources, which were non-coal in 2013,  
21 that compared streams buffer widths. Most states require  
22 100 feet or less. A 200-foot is a common maximum; meaning  
23 that they'll say a hundred to two hundred being kind of a  
24 maximum. So they'll say there's no reason to be over 200  
25 feet from the stream.

1           The Franklin County Land Use Regulations  
2 Article 11, Section 242(3)(a) identifies a hundred-foot  
3 buffer. Meaning that when you do a subdivision lot or some  
4 other form of use, they'll often refer to a this type of  
5 stream because of a hundred-foot buffer. As you remember,  
6 recall the previous slide, we have a 200-foot buffer. So we  
7 proposed not the minimum but the common maximum, so  
8 200 feet.

9           When you look at stream buffers like in Valley  
10 Park, you'll see this is at Simpson Materials there in  
11 Valley Park. To give you an idea, this is 141 Fenton right  
12 here. So as you go along 44, you'll see a rim shot. This  
13 is the Bobcat dealer. This is the large landfill. So off  
14 to the left, behind these trees, you hardly can't see it.  
15 Which is another kind of interesting point, is that the part  
16 of the reason why you can't see it, you've heard of the  
17 landfill. The landfill is generally above grade. This is  
18 generally below grade. So as you drive down 44, most of  
19 you -- most of you probably have noticed this, but most of  
20 you probably haven't noticed that. I'll speak to that later  
21 on.

22           So what I want to point out on the slide, is a  
23 hundred feet. They got a hundred feet between their  
24 excavation limit and the river. Another area is in Pacific.  
25 This was another area that was a hundred feet. This was

1 another area that was further downstream a hundred feet. So  
2 there again, you've got a river that I've shown you three  
3 examples where a hundred feet is working. What we're  
4 proposing 200 feet.

5 The nearest residences. When we speak about  
6 the nearest residences, I did not include Mr. Jeffery's  
7 residence is right here, but I did include Griggs' residence  
8 right here. It's basically 3280 feet. There was a Lady  
9 that testified earlier that was her residence was about 2500  
10 feet, I believe. And she identified it being closer to  
11 Mr. Jeffery's residence, which I don't believe to be  
12 accurate. I believe Mr. Jeffery's probably around that 2900  
13 feet. 900 feet mark. I don't know, between a 2900 to  
14 3000-foot mark. The other nearest residence, there are some  
15 clubhouses that are here across the river from the mine  
16 site, from the excavation site. And there's another  
17 residence 930 feet to the east across the river. The  
18 nearest residences are across the river.

19 Okay. We're going to get into the concerns of  
20 the public now. And just so you know, let me give you a  
21 little bit of background. What happens is in this permit  
22 application. We got a -- we were at Planning and Zoning and  
23 got a Conditional Use Permit. Based upon that, we had  
24 criteria we had to meet. Based upon one of the criteria we  
25 have to get a mine permit from DNR, and DNR -- we also --

1 the applicant being Lynn Havin and Meramec Aggregates was in  
2 charge of putting on a public hearing. That hearing was  
3 held, I think, on May 26th in Union. So some of the  
4 concerns maybe were not addressed at the Planning and Zoning  
5 hearing, and they may be a product of that. So we're behind  
6 two public hearings on this. So when I say behind, I mean  
7 we've been through a public hearing at Planning and Zoning,  
8 and we've been through a public hearing at DNR.

9           So one of the concerns was fast and dangerous  
10 trucks. The reality is, is these drivers -- these drivers  
11 are employees that are familiar with the road. In this  
12 example, in this situation, when you look at the situation,  
13 what we testified to in Planning and Zoning was a quarry  
14 like Dawson a river stone, anybody can go in there and get  
15 aggregate or product. So you have a lot of drivers that  
16 maybe aren't familiar with 47 that goes and gets rock or  
17 whatever. In this case, this is not open to the public.  
18 It's a private lease between Mr. Jeffrey and Meramec  
19 Aggregates. There is no one else that's allowed to get  
20 material out of this excavation area for a couple of  
21 reasons. One, it's not in the contract. Two, it's not in  
22 process yet. These vendors are after processed material.  
23 Remember it has to be hauled to the Highway 30 site to be  
24 processed. So there is no reason why anyone besides Meramec  
25 Aggregates would be going down this road. Why is that

1 important? That's important because these drivers are going  
2 to be coming from -- these are going to be most likely the  
3 same drivers day in and day out. These drivers are  
4 employees of Meramec Aggregates, and they're going to be  
5 familiar with the road. You all have been employed at one  
6 point in your time, and I'm sure you've driven that same  
7 road over and over. You begin to realize who goes to work  
8 when and the school bus and all that. You become very  
9 familiar with the habits of who's driving on that road.

10 So in this case because we're talking about two  
11 or three drivers, these drivers are going to become familiar  
12 with the cars, with the kids, with who's doing what when.  
13 That's a big difference between what normally occurs and  
14 what's going to occur.

15 So these drivers are vested and accountable  
16 with Meramec Aggregates. These guys are professional CDL  
17 holders. They are drug and alcohol tested.

18 There were some concerns about the roadway  
19 failer. The route is that River Bend Road is a  
20 County-maintained road. And in the Planning and Zoning,  
21 this -- in this forum -- not this forum, but the previous  
22 forum, Mr. Ron William was the County engineer at that time.  
23 He sat in those meetings, and he had no concerns with that.

24 Ely Road as they -- as they or we identified is  
25 an easement road. Mr. Jeffery maintains that in cooperation

1 with Meramec Aggregates, Incorporated.

2 So now I'm going to get into concerns of public  
3 under protected species. Let me take a drink.

4 The previous flowchart identified that we had  
5 to obtain permits from the U. S. Fish and Wildlife. We did  
6 that. We obtained a permit from Jane Ledwin with U. S. Fish  
7 identifying that there was no real concerns about these --  
8 about the bats. Her only criteria was and refreshing your  
9 memory back to that previous slide, if you remember what  
10 that slide looked like, that overburden is not conducive to  
11 grow a lot of trees, and you didn't see a lot of trees  
12 there.

13 So why did the U. S. Fish and Wildlife say only  
14 remove trees November 1 to March 31? The reason why that  
15 is, is because there's a potential for a tree to exhibit  
16 roosting potential. So what's that mean? Like shack bark  
17 Hickories or hollow trees or trees that have bark on them,  
18 in the winter months -- I'm sorry -- summer months. In the  
19 summer months, the bats sometimes rather than going back to  
20 the cave, they will shelter in these trees and come back at  
21 night and feed again. So there are a few trees on this  
22 property, but we said we weren't going to remove the trees  
23 and we'd very willing to remove the trees November 1 to  
24 March 31st. Why that important?

25 DNR, U. S. Fish, everyone's agreed that says,

1 hey, come November 1, these bats are hibernating or they are  
2 not in these trees, too cold. They're back in caves. So  
3 therefore, if one would take a tree out, you're not going to  
4 potentially threaten or take a species because the species  
5 is not living in that tree at that time.

6 The U. S. Army Corps of Engineers investigated  
7 and approved the site. We were looking for wetlands or  
8 hybrid soils. Like we said, there was no overburden,  
9 there's no wetlands there. So therefore, no impact to  
10 wetlands in the United States. Furthermore, they were happy  
11 we were maintaining a 200-foot buffer from the river. And  
12 again, a one-acre pond after construction. So we're  
13 actually at the end of this where there is not at water  
14 source, we're actually providing a water source.

15 So this is just a copy of the e-mail from Jane  
16 Ledwin. Basically based on information you already know,  
17 e-mail just addressing your concerns, will you please call  
18 me.

19 Based on this information in earlier e-mails,  
20 this addresses our concerns regarding federally listed bats.  
21 These conversation measures -- meaning that we're going to  
22 harvest trees, or if there is trees, we'll take them from  
23 November 1 to March 31st or whatever the date on here  
24 decided was.

25 "These conservation measures

1                   should avoid adverse effects in  
2                   locations far enough away from any  
3                   records of listed species in the  
4                   adjacent river that there should  
5                   be no adverse effects to them as well."

6                   So obviously when Jane wrote this letter, she  
7                   understood what we were going to do, and she addressed --  
8                   she knew we had addressed any concerns regarding federally  
9                   listed bats.

10                  This is the 404 from the Department of Corps of  
11                  Engineers. So we obtained that. Along with a 404, you to  
12                  get a 401. This is basically from Mike Irwin addressing  
13                  that we've achieved the 401.

14                  This is a National Wetlands inventory map.  
15                  This identifies the excavation limits in proximity to other  
16                  map of areas so you see that the excavation area is not  
17                  contained or near the National Wetlands inventory.

18                  Another concern was noise pollution. The  
19                  reality is, is as I said before, this is not a wash plant.  
20                  This is not a processing plant. This is a bucket-to-truck.  
21                  They scoop it out and put it a truck and haul it off. The  
22                  only the excavator and the dump trucks are running. So I  
23                  guess what I'm trying to say is that the reason why it says  
24                  only excavator running is that as these trucks come and go  
25                  to the site, the site will be void of any noise except the

1 excavator idling waiting on the trucks to return.

2           There again, we're maintaining a 200-foot  
3 buffer from the river. This here on the left is a decibel  
4 chart. So what it is, is it's 0 softest -- softest sound  
5 you can hear up to if you fire a 12-gauge shotgun. So I  
6 want to note a few things here is a typical speech and  
7 fireworks up here.

8           Part of Meramec Aggregates' insurance  
9 requirements or operating requirements are that they have to  
10 be assured that their employees are not exposed to a greater  
11 decibel level of sound than what's mandated by OSHA. So  
12 periodically, they are obligated to have their equipment  
13 tested. So this Rodman Safety Associates monitored their  
14 excavator and at the excavator it's 104.2 decibels. There  
15 is an equation that you can propagate sound. So that at 200  
16 feet away, we utilized that equation to see what that  
17 excavator might sound like to the ear at 200 feet. AT 200  
18 feet away, which is the river -- the river not the houses or  
19 not the Lost Hill Lake, it's the river -- it's going to be  
20 58.2 decibels. So it's about normal speech.

21           This is no interference from the hills or trees  
22 factored in. So my point to that is that if it was a  
23 straight line shot, if there was no interference from trees  
24 or hills, that's what it is, 58.2. Now, a jet boat or a  
25 boat is about a hundred decibels at 50 feet to give you an

1 idea.

2 Another concern was -- and kind of remember  
3 that slide because we'll probably come back to that.

4 Another concern was particulates in the air.  
5 In regard to the dust from this material, I'm sure all of  
6 you have been on a river bank canoeing, river walking,  
7 whatever. As you walk across this thing, as rake your foot  
8 across the groundwater, you'll see that when you do that,  
9 typically that material is moist. So as we perform as Lynn  
10 Havin -- as Meramec Aggregates' performance is  
11 bucket-to-truck, what's going to happen is since it's  
12 bucket-to-truck, it's going to be scooped out when it's more  
13 moist. It's going to be loaded in a truck and hauled off.  
14 So therefore, you're not going to see -- you're going to see  
15 very little dust at this site.

16 The trucks will be tarped. There is a large  
17 buffer from adjoining property lines. Something that was  
18 discussed in the P and Z meeting is that currently in front  
19 of the Griggses' residences, there is the road, the easement  
20 road that's been referred it. At its present time, I  
21 believe it has limestone rock on it. I haven't been out  
22 there in a while, but at the time that I visited the site  
23 back with the Corps of Engineers, that's what it had on it.  
24 We identified that we would put some of this Meramec rock on  
25 the easement road in front of this area to minimize this

1 dust.

2           You've probably seen people use this for their  
3 driveways to minimize the dust. Meaning that white rock  
4 will dust off easier than this Meramec aggregate because it  
5 breaks down. If you remember back to that hardness scale,  
6 this Meramec rock is very resilient and it will not break  
7 down under the pressure of these trucks. So therefore, we  
8 identified that we would place Meramec rock on the easement  
9 road. However, based on the later testimony, we were,  
10 basically for lack of a better word, told to stop, cease and  
11 desist. So therefore, Havin Material didn't have time to  
12 process the material and place it back on this road. It  
13 needs to be a certain gradation to be placed back on this  
14 road.

15           So what that means is, it's not going to be  
16 large rock. It's not going to be teeny-tiny rock. It's  
17 going to be the right gradation to be placed on this  
18 easement road so it provides the bed that we were trying to  
19 achieve. There just wasn't enough time to harvest enough  
20 material to process to place this rock back on this road.

21           As you saw, this site is surrounded by trees  
22 and hills. As you know, most of the time the prevailing  
23 winds are out of the west. So this dust, if there's any  
24 fugitive dust that leaves the site, then most of time the  
25 winds will be from the west and carry it to the east. And

1 if you remember from the previous slides, the property --  
2 Mr. Jeffery owns a large portion of property to the east.

3 Other concerns was the boaters, the fishermen  
4 and floaters on the Meramec. Why this is important? They  
5 brought up at one point in time that the boaters and the  
6 fishers and floaters were going to be affected by this  
7 excavation pit. I keep calling it a pit because that's what  
8 it is. Meaning that we're removing material; meaning that  
9 we're not stockpiling this material. The pit is at grade  
10 right now, and it only goes down. So why -- why is that  
11 important? I'll explain that in a minute.

12 Excavation activities will not occur during  
13 peak recreational time. So as you can imagine, most of you  
14 will float on a Saturday or Sunday. As you remember from  
15 our CUP, we are not working on Saturday or Sunday. So these  
16 peak activities are not going to be in conflict, but we'll  
17 talk about these peak activities later on. So that means  
18 that weekends, holidays and evenings most of time that's  
19 when people have the chance to utilize this for recreation.  
20 We're not going to be operating during at that time.

21 The elevation of the treeline will shelter the  
22 river. As I've mentioned, if you were down in the river  
23 looking at a bank, you cannot see over the bank to say  
24 what's on other side. So therefore, you're shielded from  
25 that pit. The summertime foliage will block this. Meaning

1 most of the people are out there during the summertime, not  
2 the wintertime. But the summertime foliage will help block  
3 this pit.

4           So this slide shows what I'm talking about.  
5 This here is the depression and the Meramec over here. And  
6 as we look at this red dot as it travels to the south, you  
7 can see the sightline as a boater or a canoeist or somebody  
8 when they travel by this, they're looking uphill at this  
9 pit. So as you look at this -- oops, sorry. Let me go back  
10 one slide.

11           So as you look at the profile here, if you're  
12 downriver or up on river, so as this dot moves to here,  
13 you're shoulder about here. You can't see it. If you're  
14 floating, you can't see through this bank. So you're going  
15 to float by those, if you're from Arnold or Steelville or  
16 wherever you're float from, you're going to float by this  
17 excavation on a Saturday and never be able to see them.

18           There was concerns about decrease in property  
19 values. The reality is that closest residence is 800 feet  
20 away in the southeast and northwest. It is a clubhouse.  
21 There was some concerns, you know, there again, about  
22 property values. I want to show you this example. This is  
23 the processing area on Highway 30. Here's 30 here. Just an  
24 example where, you know, there was implications that this  
25 mining activity is going to greatly inhibit economic

1 activity or property values or whatever. Here is a golf  
2 course that's -- the entrance is 580 feet away. There's a  
3 residence somewhere too. This is -- I can't think of the  
4 golf, but somewhere on 30. But this is a golf course that  
5 existed in proximity to this plant as they processed  
6 material over the years, and it has not suffered. If  
7 anything, it's probably grown in size. I don't know, but  
8 here's an example on a Saturday when cars are not even  
9 parked in parking spots. They're parking to get off the  
10 grass or whatever trying to get into this facility. So this  
11 is not hampering - this process of aggregates is not  
12 hampering the local economic impact such as the golf course.

13 So here's another example of potential impact  
14 of local business. This is the wedding venue. This is the  
15 Lost Hill Lake events that they were -- that the applicants  
16 referred to. This is right here. This is our excavation  
17 right here. The reality is this the closet business. It's  
18 over 1120 feet away. It's on the other side of the river.  
19 It's screened by trees. These trees you'll see later on.  
20 And there again, we're differing hours of operation. We'll  
21 go over that later on this slide. That different hours of  
22 operation is important to remember.

23 So the reality is different peak hours. The  
24 wedding venue, also they Lost Hill Event Center versus the  
25 Jeffrey open pit. The guests generally arrive around 3:00

1 p.m. at the center or at 4:00 p.m. The Jeffery open pit is  
2 Monday through Friday 7:30 to 3:30. The reason -- why do I  
3 know that? We'll see later on, we'll see a slide that  
4 refers to that, and also at the September 20th hearing, I  
5 believe it was testified -- and I believe this is in your  
6 transcript. So this is already in the record. In the  
7 transcript of the hearing around September 28th, in that,  
8 they testified, I believe, that they had two events in  
9 October 1, it was Friday at four o'clock and one was a  
10 Friday at 4:30. And so therefore, of the ceremonies was at  
11 4:00 p.m. So therefore, I'm kind of saying that guests will  
12 arrived around 3:00 p.m. perhaps.

13           So this is taken off their website. If you go  
14 to -- I'm going to give a plug for the Lost Hill Lake  
15 Events. If you go to their website, this was taken off of  
16 their website. The address is down here in the lower  
17 right-hand corner. We wrote on there taken Saturday, May 7,  
18 '16 at 4:24 p.m. So this is a typical May. Here's the  
19 bride and groom. Here's this post. I'm going draw picture  
20 of this post and this -- and this fence. As you can see is  
21 repeated in slides. Here's the river behind you. These  
22 trees right here, this tallest tree right here is a sycamore  
23 tree. This tall sycamore tree is behind this slough that's  
24 basically the bed of these trees. This sycamore tree is the  
25 western limit of the excavation pit that Meramec Aggregates

1 is proposing.

2 As you can see, you can't see the base of that  
3 tree. Let's zoom in a little bit tighter. So we'll zoom a  
4 little bit tighter on this area right here.

5 So where we're - where we're at is basically  
6 we're right here at the wedding venue that we're looking  
7 east to this area right here. So you can see that this  
8 excavation pit is going to be below this here. It's not  
9 above it. It's below this. So it's not going above. It's  
10 going below. It's a pit.

11 You can see this is May 7th. It's not visible.  
12 There was just a -- I believe it was Samantha Williford that  
13 just testified a few minutes ago that their events are  
14 primarily held May through October. And you can look back  
15 in the record to see that, but I believe that's what she  
16 said.

17 In May, as this picture shows, you can see the  
18 leaf canopy. Through October, pretty much the leaves are --  
19 they start to fall end of October. So she -- the applicant  
20 just testified that most of the time it's going to be in  
21 this condition. Leaf on.

22 Here's another shot. That was taken August  
23 15th of 2015. So I'll try to keep it true on time. That's  
24 August 15, 2015. Here's that post again, and it's --  
25 there's that sycamore tree there in the background. You can

1 see the tall sycamore tree. That is the western limit of  
2 our excavation pit.

3           We zoom in on that. You can see the excavation  
4 is not visible through the treeline. So you can see right  
5 here this -- that normally speaking, what happens is, in  
6 absence of mowing activities an area along the river will  
7 grow up. This is the other side shows. And so they're --  
8 they're maintaining this area, which is beautiful, by the  
9 way. But they're maintaining it right up to the riverbank.  
10 It's void of trees. So what's going to most likely happen  
11 with the absence of roots, the soil is going to become  
12 saturated. At some point, this is going to fall off into  
13 the river. Franklin County has actually tried to address in  
14 the Land Use Regulations. In Article 11, Section 242(3)(a)  
15 we saw it earlier, meaning that if we did something, the  
16 Planning Department makes us in a hundred-foot stream  
17 buffer. There are different classifications. The rivers  
18 aren't the buffer.

19           So why is that important? This was in the Code  
20 at the time the Lost Hill Lake Events' CUP was obtained in  
21 about 2013. However, it was not a CUP condition. It was  
22 not brought up. It was not a concern, and maybe it's not a  
23 concern. But I guess I would think it would be a concern;  
24 otherwise, Franklin County wouldn't have put it in their  
25 Code. But there again, it's not a CUP condition of Lost

1 Hill Event Center [sic].

2 But had it been, this vegetative shield could  
3 have remained. It would have served two purposes. One, it  
4 would have shielded any purported activity that they may  
5 see. Number two, it's going to maintain the integrity of  
6 Mr. Norman's property here. It won't fall off in the river.

7 So there again, my last is, is that the  
8 vegetation could have remained to prevent the bank from  
9 going into the river. Okay.

10 Let me take a break here and get a drink.

11 So there's -- there's been accusation of MAI,  
12 Meramec Aggregates, Incorporated, not operating with all the  
13 permits. Really what that stems from is Meramec Aggregates  
14 obtained their CUP. They obtained their mine permit as well  
15 as every other permit that we knew of so they could start  
16 excavating this material. However, as they stated tonight,  
17 Article 4 does identify that upon appeal, the CUP is not  
18 valid. Obviously Lynn nor the County was notified that --  
19 of that, made aware of that until the activities started.  
20 And most likely it all came about because of the lawsuits  
21 that an investigation upon the Normans' attorney probably  
22 found that. So why am I bringing this up?

23 Well, it's pretty hard to operate a business  
24 and get every permit. By way of example, so the regulation  
25 was somewhat -- the regulations can be misunderstanding --

1 or the regulations can be misunderstood, which leads to an  
2 unintended violation. By way of example, Lost Hill Lake  
3 Events -- Lost Hill Lake Events' fireworks displays.

4 So as I was looking on their website, which by  
5 the way, it's a great website. It's very well laid out,  
6 plus some nice pictures I noticed the fireworks over the  
7 top of the Meramec. I also know the Meramec is a navigable  
8 river, which means it's not owned by any other entity than  
9 the State. So I asked myself how did Lost Hill Lake Events  
10 Center get permission to have a fireworks display over the  
11 Meramec River when it's not owned by them?

12 So I know the river enough to know that  
13 generally the Missouri Highway -- Water Patrol is in charge,  
14 it seems to be in charge, of the enforcement of the Meramec.  
15 So the Missouri Water Patrol has apparent jurisdiction along  
16 with other entities, but they're the enforcement agency.

17 I contacted Missouri Highway -- Water Patrol  
18 and asked them, I said, hey, were there any permits issued  
19 for May, June or July of 2016 for fireworks? You'll see why  
20 in a minute here, why it's important. So basically this  
21 slide here identifies on June 11th, 2016 at 10:19 here's a  
22 fireworks display. See this post, this fence. The Normans,  
23 I believe, own a dock or a bull ramp that is in the  
24 northeast portion of their property that I believe that they  
25 were shooting fireworks off above the river.

1                   This is the same view shed when you look at  
2 when you look east. So you're looking east. And so I  
3 contacted Ms. Sidney Kendrick and asked, I said, hey, just  
4 out of curiosity, I said, was there any fireworks displays  
5 permitted on the Meramec River? And she identified that  
6 there was not.

7                   So she -- e-mailed me back and said, I do not  
8 believe they ever got a listing for fireworks displays on  
9 the Meramec River in the month of May, June or July.

10                   Hang on just a second.

11                   So this is the Application for Regatta that  
12 reimplemented and basically it's mandated by the Section  
13 306.130 Revised Missouri Statutes. I'll enter this into the  
14 record, and you can -- I'll just enter it to the record to  
15 see what I'm talking about.

16                                   [Thereupon, evidence was marked for  
17 identification and entered into the record  
18 as Opponent's Exhibit No. 70.]

19                   MR. LUEKEN: Gordon, do you want to  
20 give that to her? This will be Exhibit 70, I presume.

21                   MS. REPORTER: Identified as Exhibit  
22 70.

23                                   [By Mr. Lueken:} So you might be asking  
24 yourself. It says Application on for Regatta, Marine Event.  
25 That's boat races. So what happens is, is that very second

1 line you see a marine event. Tourn- -- in parenthesis,  
2 tournament, parade, race, exhibition, et cetera.

3 So basically, you know, it doesn't specifically  
4 say fireworks, but we might recall Ms. Sidney Kendrick  
5 identified -- I didn't say Lost Hill Lake Events, I just  
6 hey, if I want to set off fireworks on the river, I'm most  
7 likely going to impede some of person using the Meramec.  
8 What permit do I need?

9 She led me to this permit, this regatta permit.

10 And as I mentioned -- as I mentioned before,  
11 there was no permits issued for the Meramec in this -- not  
12 in that timeframe. So why is this important? Why does --  
13 why does it matter?

14 It goes back to my point, Lost Hill Lake's  
15 fireworks display. Everyone enjoyed it, but they didn't  
16 know they were breaking the law. Just like we didn't  
17 necessarily know we were breaking the law. When I say we,  
18 Meramec Aggregates was breaking the law of a Code. So it's  
19 difficult. It's difficult to operate a business and get  
20 every permit.

21 And that proves that we've both done something  
22 to -- both MIA -- MAI, I'm sorry -- MAI and Lost Hill Lake  
23 Events. It's -- it's tough to do.

24 Other concerns. There's been noted that  
25 there's a child with asthma along the easement road going

1 in. Her name's Gracie.

2 In your packet, you'll see that basically Mrs.  
3 Griggs gave testimony during that 9-28-2016 that Gracie, her  
4 mother testified, she's in the school at Chicago through the  
5 week. So she's basically shows up at St. Clair at her home  
6 from 9:00 p.m. on Friday she's there, and she leaves 2:00  
7 p.m. on Sunday. MAI is not operating during that time.  
8 That was her testimony. There is no excavating or hauling  
9 when Gracie is present.

10 Which brings us to another point, the  
11 disturbing of gray bats. The reality is that we have -- we  
12 contacted U. S. Fish and Wildlife, had an approved plan.  
13 Still an approved plan. The only concern was, is only  
14 remove trees from November 1 to March 31st. The gray bats  
15 are roosting in caves, or these trees, during MIA's [sic]  
16 hours of operation. The gray bats feed at night after MIA  
17 -- MAI, sorry I keep mess it up -- MAI hours of operation.

18 Just a second.

19 As Nick Norman testified earlier, he's not  
20 allowed to disclose the lead mine. You know, I'm not real  
21 sure why. Maybe it would be helpful for these proceedings,  
22 but any -- anyway. Based on previous testimony, based on  
23 what we can obtain, we believe the lead mine is in this  
24 location, about 700 feet from them, about 1500 feet from us  
25 from what -- from previous testimony and this is about where

1 I think it's at.

2 Why is this important? Here's a wedding venue  
3 pavilion down here, And these gray bats are living in this  
4 old lead mine. So let's talk about the wedding venue  
5 compared to the Jeffery open pit.

6 It's apparent to us, based on what we can  
7 obtain, that the wedding venue is closer to the mine than  
8 us. We are -- we're 1500 feet away. They're on the same  
9 side of the river as the -- we are not. We're on the  
10 opposite side of the river.

11 They have day and night activities. We are  
12 operating, we, MAI is operating from 7:30 to 3:30. They  
13 have crowds, lights and sound occurring at nighttime when  
14 bats are feeding.

15 The only implied or the only recognized effect  
16 that we could figure out is that at 1500 feet, the bats, if  
17 there's no trees, no hills, no nothing, as they exit the  
18 cave and they hear the excavator. Well, the excavator won't  
19 be running. So I guess if it's during the day, they're in  
20 the cave, our equation doesn't equate that. So if a bat was  
21 sitting outside the cave during the daytime, they're going  
22 to hear 41 decibels. So I don't think that decibel rating  
23 is going to be affect -- adversely affecting the bats, that  
24 noise from our operation.

25 They have vehicle traffic when the bats are

1 out. We have no traffic at night. So basically you can see  
2 that on the left-hand side of the wedding venue, they have a  
3 greater potential to affect than we do on the right-hand  
4 side, meaning MAI.

5 So here's a typical time on Friday. You have  
6 7:30, 9:00, 12:00, 3:30, 7:00, 10:00, up here. A difference  
7 in the timeline. So why is this timeline important?

8 In the morning, I mean, I've been -- I've been  
9 a Franklin County resident all my life. I typically do not  
10 see bats outside in the daytime. I assume they're roosting  
11 in caves or trees or whatever. At dusk, the bats will come  
12 out and feed near the river.

13 So here's the bats when they're out feeding.  
14 Okay. You see that while Meramec Aggregate is operating  
15 from 7:30 to 3:00, that there's no effect to interfere with  
16 the bats' feeding time.

17 The Lost Hill Lake Events Tying the Knot  
18 package, say for example, it basically says, hey, we're  
19 going to -- crowds arrive at 3:30, as they testified.  
20 There'll be the ceremony, there'll be a cocktail hour.  
21 There'll be a dinner, music and dancing, fireworks, vehicles  
22 exit. So this is typically what will happen at one of their  
23 events.

24 Now, you can see at this time when the bats  
25 come out, there's some potential to conflict with the dinner

1 and the dance, the fireworks, vehicles and exit. So  
2 therefore, on a Friday when we're operating, when MAI is  
3 operating, there is very -- there's no conflict with the  
4 bats, and there's very little conflict with Lost Hill Lakes.

5 Here's the only timeframe between say 3:00 and  
6 3:30. So there's little if no effect.

7 Saturday. This is the Saturday timeline. There  
8 again, the bats are roosting in caves. Bats feeding near  
9 the river after dark. MAI is not operating on Saturday.  
10 Therefore, when you look at the conflict, the potential  
11 still exists for them to conflict with the bats, but not  
12 MAI.

13 And we have no conflict with them. So we are  
14 not affecting their events. However, they are in conflict  
15 with the bats unlike us.

16 And Saturday's traditionally the most popular  
17 day. So traditionally the most popular day, we are not  
18 operating. Okay.

19 So I'm going to back up here a minute. This is  
20 going to go back to -- this -- you're going to have to pay  
21 attention to this timeline because it's important. Let me  
22 take a drink.

23 Where did we get this photo? This photo came  
24 often their web- -- oops. This photo came off their  
25 website. This was May 23, 2015 at 8:41. It was pretty easy

1 to extract the date and times because they have professional  
2 photographers that take these pictures. The professional  
3 photographers upload to their website. So it's pretty to  
4 get the date and time stamp off of these picture. So  
5 therefore, dinner, dancing. It's a great venue you can see.

6 So that was the 15th. I'm trying to establish  
7 that these bands and crowds and events that have been going  
8 on since 2015, May 23rd, over a year ago. Jump ahead almost  
9 a year. Franklin County issued a CUP to Meramec Aggregates  
10 on 8-9-10. Satisfied all the conditions.

11 Two days later at their wedding venue, they've  
12 got -- oops. They've got the fireworks, big crowd lights,  
13 all that stuff. This is 5-21. This is May 21st of this  
14 year. On 5-26 -- this is 5-21. So DNR mandated that we  
15 give notice to everyone, invite everybody to this public  
16 event on May 26th. So on May 21st, they're lighting off  
17 fireworks. On May 26th, we had this in a public meeting.  
18 At that meeting, they identified there was public concern of  
19 disturbing gray bats.

20 Five days earlier here's an example they're  
21 lighting off fireworks. Five days earlier. They come to  
22 the meeting five later and identify we are worried about  
23 these gray bats. They identified their concern about these  
24 gray bats at this meeting. They testified to DNR that we  
25 got to worry about these gray bats. On 6-10 of 2016, Robert

1 Norman filed a CUP -- that CUP appeal. That's why we are  
2 here tonight. Embedded in that -- embedded in that CUP  
3 appeal Item 1.D.1.A they quoted Shelley Palotsky [ph.]with  
4 MDC. She's a bat cave biologist or BATS/Biologist.  
5 Explained that the bats feed right off the -- off of the  
6 Meramec River where in insects are most abundant.

7 So on 6-10-2016, they filed an appeal against  
8 MIA [sic] siting one of their concerns is that, hey, we're  
9 worried about these bats. On 6-10. The very next night on  
10 Saturday, 6-11, here's the post. Here's the fence. Here is  
11 the fireworks going off.

12 So you might say, well, is the time right? Is  
13 the date stamp right? This is right on their website. You  
14 can go there and look at it. This is posted by Lost Hill  
15 Lake Events on July 27th. The wedding's on June 11th,  
16 Justin and Stacey turn Lost Hill Lake Events Center into the  
17 big whatever it says.

18 So basically they concluded the night by  
19 shooting off fireworks over the river, which they did not  
20 get a permit for. Mistakenly I'm sure, innocent mistake.  
21 But something is not so innocent that appears to me is that  
22 Nick Norman identified that he's a zoologist. Somebody  
23 contacted Shelley Palotsky [ph.] at MDC. Someone filed an  
24 application that says, hey, we've got bats feeding right  
25 over the Meramec River. That's what it says in your

1 application, "right off of the Meramec River."

2           Someone should have probably told Normans that  
3 we can deduce that fireworks may affect or cause a take or  
4 affect the feeding habits of a bat that's out at night. I  
5 don't know if anyone did. Maybe you can ask them. But it's  
6 kind of ironic that on 6-10 they file the application. On  
7 6-11 they're shooting off fireworks. So as you can imagine,  
8 as identified the fireworks over the river during the bat  
9 feeding time.

10           So go -- going back to 6-10, 6-11, July 5th.  
11 That's when the bat study was done. So Nick Norman I  
12 guess -- I don't know. I wasn't there, but I presume that  
13 Nick Norman led MDC to the bat cave, and they did the study,  
14 and basically I think these are quotes that Nick Norman  
15 quoted. We got this quote off the internet from somewhere,  
16 but you might question about what he said or not asking but  
17 basically he quoted, we see three to five bats a second.  
18 ten years ago they were rarely ever found. We put the net  
19 at 8:30 p.m. He said. We caught our first gray bat at  
20 8:35. In 15 minutes we had to take down the net because it  
21 had become overloaded with bats. This was July 5th.

22           July 7th, the Missouri Department of Natural  
23 Resources issued a permit to extract -- excavate sand and  
24 gravel to Meramec Aggregates. They recognized inside that  
25 report they knew that on 7-5-16 a bat population study was

1 done. They recognized in that they call it attachment.  
2 They recognized that that study was done. So they knew  
3 about it. DNR knew that the bat populations study was done.  
4 They went ahead and issued the permit two days later.

5 On 8-3 MAI received notice of violations and  
6 intent to file suit under Endangered Species Act concerning  
7 endangered gray bats in Franklin County by Great Rivers  
8 Environmental Law Center. I believe their attorney, Ms.  
9 Henry, is here tonight.

10 They filed a suit under the Endangered Species  
11 Act, on 8-3 and noticed, I believe it was U. S. Fish, DNR,  
12 MAI, and some -- a few other people that they are concerned  
13 about on 8-3. Embedded in their report or suit is that they  
14 stated U. S. Fish and Wildlife regulations define harass as  
15 an intentional or negligent act or omission which creates  
16 the likelihood of injury to wildlife by annoying it to such  
17 an extent as to significantly disrupt normal behavior  
18 patterns, which include but not limited to breeding, feeding  
19 or sheltering.

20 That's in their report addressed to the  
21 entities I mentioned before by their attorney. Their  
22 attorney filed this suit saying, hey, if you're going to do  
23 anything to disrupt normal behavior patterns such as  
24 breeding, feeding or sheltering, you probably should do it  
25 because you may get sued, because you might be in violation

1 of the Endangered Species Act.

2 I remember previous slides earlier, I believe,  
3 we all can deduce that fireworks, if you remember, would  
4 most likely harass bats. If you remember how it was on that  
5 decibel scale, I believe it was 145 decibels. So these --  
6 these fireworks over the Meramec River, these bats are  
7 flying in to get their food, and the Normans are shooting  
8 off fireworks.

9 That seems to me like you would disrupt the  
10 feeding pattern.

11 This 8-20. This is after the lawsuit was  
12 filed. August 3rd they filed the lawsuit. Notice of  
13 basically intent to file suit. I shouldn't say suit. It's  
14 intent to file suit. This is 8-20, and this -- all these  
15 pictures were taken off their website. If you want to view  
16 them, go to their website.

17 So this is Michelle-Jores [ph.], I guess. Here  
18 again, it's a four o'clock ceremony. Further identifying  
19 that we're not in conflict for the most part. Plus it's on  
20 Saturday, so we're not even operating. So there again, you  
21 got the 5:30 to 6:30 cocktail hour, dinner, dancing,  
22 sparklers, fireworks, vehicles exit.

23 So the vehicles exit, I want to point that out.  
24 If we go back to the map, if you remember that, the events  
25 center is on the south side of the river, the mine's on the

1 north side of the road. When these bats fly back from  
2 feeding, they're going to encounter vehicles. As I've  
3 stated before, I've lived in Franklin County all my life.  
4 There's been several times when I look at my vehicle in the  
5 morning, and I will see a bat stuck to it. That's when I  
6 was out driving at night. Not during the day. Driving at  
7 night.

8           So these vehicles pose another potential. We  
9 are not -- MAI -- MAI is not operating vehicles during the  
10 bat feeding time. So here after they've threatened to sue  
11 us, they're still -- this says sparkler right here and the  
12 vehicles are going to be exiting. So they're still  
13 identifying that there are uses that are going to have  
14 potential take, harass or however you want to define it,  
15 it's going to conflict with the bat feeding.

16           I'm getting there, Gordon. I'll wrap it up.

17           Okay. How do these compare. Lost Hill Lake  
18 against MAI's position. There's bats on their property.  
19 We're over 1500 feet away.

20           They're shooting fireworks on the river. We're  
21 on the other side of the river.

22           Day and night activity. We are 7:30 to 3:30.  
23 They have crowds, lights and sound. We don't have anything  
24 on our side or their -- that side of the river except maybe  
25 some noise at 1500 feet.

1           They have vehicular traffic. We have no  
2 traffic at night when the bats are out.

3           We're doing a simple excavation,  
4 bucket-to-truck 200 feet from the river. It produces a pond  
5 at the end of it.

6           Nick Norman identified we see three to five  
7 bats a second, and ten years ago they were rarely ever  
8 found.

9           Excuse me.

10           Think back to that slide, May 23, 2015. They  
11 -- this -- that's what this slide is, from 2013 -- from  
12 2015. They did the study this year, after a year later. So  
13 these bats are continuing to thrive even in the wake of  
14 these fireworks. So I guess what I'm saying is, is that one  
15 can deduce that even if they are being harassed, they're  
16 still -- it's still a healthy colony.

17           So the conclusion is we've identified a need.  
18 MAI is proposing a need for quality hybrid resource.

19           The who is the oldest concrete company in  
20 Franklin County. Been in business for 76 years.

21           The how? It's an addition to a permitted  
22 facility. Mr. Jeffery requested the material be removed.  
23 It's properly permitted by DNR, U. S. Fish, Army Corps of  
24 Engineers. It's a simple excavation of sand and gravel  
25 bucket-to-truck. Similar to the former code.

1           So when it's finally completed, we've got a  
2 great buffer width. MAI has two times the required  
3 minimum. Lost Hill Lake Events has no buffer.

4           The hours of operation limit the disturbance to  
5 wildlife and the surroundings.

6           Gracie is not present during working hours.

7           Not likely to affect -- not likely to affect  
8 bat behavioral patterns within the permitted excavation  
9 activities.

10           Gordon, I am done, unless you have any  
11 questions.

12                           CHAIRMAN UPCHURCH: You know us  
13 better than that. But before I get to my question for  
14 you...

15           Scottie, I looked through the earlier order  
16 here which we can either reverse, modify or affirm, and I  
17 don't see anything with regard to an easement or roadway or  
18 the size of a roadway.

19                           MS. EAGAN: Correct.

20                           CHAIRMAN UPCHURCH: So help me out  
21 here.

22                           MS. EAGAN: Because it's a private  
23 road, Franklin County does not get involved with that.

24                           CHAIRMAN UPCHURCH: So I'm mystified  
25 that I'm three plus hours into this heated dispute, and

1 everybody is entitled to their own opinions, but I'm  
2 probably most cleanly interested in how big this roadway,  
3 which people want to tiff about, is and I still haven't  
4 heard how big it is.

5 So can you tell me how wide this road is?

6 MR. LUEKEN: So bear with me just a  
7 second. Ms. Havin's attorney, Steve Kuenzel, is present  
8 tonight. I want to see if I'm going to address that or if  
9 he wants to address that or both. Just give me a minute.  
10 So...

11 CHAIRMAN UPCHURCH: You're going to  
12 lateral that to another witnesses?

13 MR. LUEKEN: Correct.

14 CHAIRMAN UPCHURCH: I'm good -- I'm  
15 good with that.

16 Also, do you have any idea, is there any  
17 maintenance agreement on that roadway, or is that roadway  
18 simply the roadway of the lessor, because the suggestion in  
19 the testimony is that that roadway is used by several  
20 people?

21 The evidence would suggest that several people  
22 use this roadway, and what seem to be a private roadway.  
23 I'm starting to hear.

24 ATTORNEY STEVE KUENZEL: Two  
25 families, Mr. Jeffery's and --

1 MS. REPORTER: Could you come up  
2 here, please so I can hear you?

3 CHAIRMAN UPCHURCH: And I'm -- I'm  
4 going to --

5 ATTORNEY KUENZEL: Can can answer  
6 that.

7 MR. LUEKEN: Yeah, just basically  
8 it's two families, Mr. Jeffery's has an easement and Griggs.  
9 I'm not sure if that's the name it's deeded in, but the two  
10 people that testified earlier. That's the two families.

11 CHAIRMAN UPCHURCH: Okay. Inasmuch  
12 as I haven't seen a document out of the all the documents  
13 that we have, am I going to see a document that actually  
14 describes that easement?

15 MR. LUEKEN: We'll let Steve answer  
16 that.

17 ATTORNEY KUENZEL: If you'd like to.

18 CHAIRMAN UPCHURCH: I'd like to.

19 Okay. And then I think that's my questions, but there are  
20 probably others.

21 COMMISSIONER RIDDER: Somebody  
22 indicated a while ago it was 14 plus feet, and there was no  
23 specific easement. That was testified a while ago.

24 CHAIRMAN UPCHURCH: That's why I'm  
25 asking.

1 COMMISSIONER RIDDER: Okay. Yeah,  
2 I'm with you.

3 CHAIRMAN UPCHURCH: Any other  
4 questions?

5 AUDIENCE MEMBER: Are you talking  
6 about the access easement?

7 MR. LUEKEN: Mr. Kendall will answer  
8 your question when he gets sworn in.

9 CHAIRMAN UPCHURCH: He'll also have  
10 an opportunity, and then we'll have him sworn in. Okay?

11 MR. LUEKEN: Okay.

12 CHAIRMAN UPCHURCH: Thank you.

13 MR. LUEKEN: Thank you.

14 CHAIRMAN UPCHURCH: Are there other  
15 witnesses to be heard in response to the application? Step  
16 forward, sign in and be sworn.

17 MR. FRED JEFFERY: Fred Jeffery as  
18 owner and --

19 CHAIRMAN UPCHURCH: Sign in.

20 MR. JEFFERY: Sorry about that.

21 [Thereupon, the witness was sworn.]

22 I'm Fred Jeffery. I and my wife own the  
23 property at 1200 Ely Road, and we have been there for  
24 over -- or approaching 30 years, farming operation with  
25 heavy trucks and heavy equipment moving in and out all the

1 time.

2           The main reason we knew the gravel was there  
3 when we bought it, it was part of the price, purchase price  
4 of the gravel. I viewed it as a savings account. Due to  
5 circumstances beyond our control, my wife has got -- been  
6 sick for about five years. Almost lost her, and our  
7 resources have been severely tapped, and that is why we have  
8 asked -- I approached Havin to see if they wanted to  
9 excavate a pond and remove the gravel from -- from that bar  
10 down there.

11           And one other little thing in the trucker time  
12 that we were moving gravel, I was able to stand and hold a  
13 normal conversation next to the excavator at full power.  
14 Also the trucks going by the house did not exhibit any real  
15 noise. The drivers were very professional and drive the  
16 trucks properly, and at low speed, obeying the speed limits  
17 every time that I saw.

18           And the pollution, I didn't see any smoke from  
19 either the excavator or the trucks operating, which implies  
20 that they are properly maintained and meeting the  
21 requirements of Department of Missouri emissions standards.

22           With that, that's all I have to say. Any  
23 questions?

24                           CHAIRMAN UPCHURCH: Is there any kind  
25 of maintenance agreement on that road?

1 MR. JEFFERY: No, I have maintained  
2 it throughout the life and have rebuilt it once. It needed  
3 to be rebuilt again. That's part of the reason for wanting  
4 to excavate the gravel was so that I could rebuild the road  
5 and get it back to the proper profile and to remove the soft  
6 spots that have developed over the years in it.

7 In addition, that also goes for the road, haul  
8 road, which has always been there, but had gotten in bad  
9 shape because of use. So bad I couldn't even haul hay down  
10 to the cattle in the wintertime. I had to change where I  
11 fed them. So those are some of the things that we're doing  
12 to reestablish what was there when we moved in.

13 CHAIRMAN UPCHURCH: Are there other  
14 questions of this witness? [None]

15 Thank you.

16 MS. REPORTER: If you want to give it  
17 to me, I'll mark it. This is Exhibit Number 71.

18 [Thereupon, evidence was marked for  
19 identification and entered into the record  
20 as Opponent's Exhibit No. 71.

21 Thereupon, the witness was sworn.]

22 ATTORNEY STEVE KUENZEL: My name is  
23 Steve Kuenzel. I'm the attorney for Meramec Aggregates. To  
24 address your question, Gordon, what I have is Exhibit 71,  
25 which is a Consent Judgment that was entered in a case back

1 in January of 1978. The Plaintiff in the case is Scott  
2 Callier, C-A-L-L-I-E-R, a group of defendants that were  
3 trustees under the will of Joseph Desloge, D-E-S-L-O-G-E,  
4 Sr. The Consent Judgment outlines the roadway and gives a  
5 non-exclusive right of ingress and egress, which would  
6 answer your question, Mr. Ridder.

7 COMMISSIONER RIDDER: Thank you.

8 ATTORNEY KUENZEL: This road at one  
9 point is 14 feet wide, and goes all over the place upwards  
10 to 22 feet wide. And the calls are at various point in the  
11 road. It a would appear that the 14-foot wide call only  
12 appears once in the entire roadway, and there's probably 15  
13 different widths called in here. I didn't count them, but  
14 at least that many.

15 The concrete trucks are about seven and a half  
16 feet wide. The -- there is no provision with respect to  
17 maintenance, and obviously we will be assuming that  
18 responsibility because we're going to be the overwhelming  
19 bulk of the use of the road.

20 The families affected are basically the Griggs  
21 family and the Jeffery's family. Those are the only two  
22 people on the road. So when --

23 CHAIRMAN UPCHURCH: I'm going to  
24 bring you back to that, just --

25 ATTORNEY KUENZEL: All right. Go

1 ahead.

2 CHAIRMAN UPCHURCH: -- sort of jump  
3 and forth. As it stands right now, those are really the  
4 only two entities that are using the road?

5 ATTORNEY KUENZEL: Correct.

6 CHAIRMAN UPCHURCH: And it's not a  
7 through road with other users or potential users?

8 ATTORNEY KUENZEL: I think as Cameron  
9 showed you, and he could probably fine it, I mean, it goes  
10 down to the gravel pit.

11 CHAIRMAN UPCHURCH: That was my  
12 memory, but I could be wrong.

13 ATTORNEY KUENZEL: No, just there is  
14 no -- the gravel pit's right by the river. That's the end  
15 of the road literally --

16 CHAIRMAN UPCHURCH: That was my  
17 belief from the evidence.

18 ATTORNEY KUENZEL: -- the end of the  
19 road. So anyway, when most of arguments you've heard  
20 tonight are basically not-in-my-back-yard arguments. And  
21 when you're talking about the impact, you know, the greatest  
22 impact here is that my client has no other source of  
23 product. When they talk about these other entities, they  
24 are maxed out on contracts. And when you want the kind of  
25 quantity that she needs to operate, there is no other place.

1           As they told you, the dredge being operation,  
2   that permit expired in January. So she bought from a few  
3   other smaller suppliers, but basically they're out and they  
4   can't supply her needs. So at present, you cannot get  
5   Meramec aggregate in your concrete here in Franklin County  
6   without going some great distances away. That literally  
7   makes in far more costly for literally thousands of people  
8   in Franklin County that would like to have high quality  
9   concrete. Otherwise, you have to use limestone in concrete,  
10  and it has inherent problems with it.

11           So when you talk about the impact, it's the  
12  impact of two people with traffic going by their houses  
13  versus the impact, I would argue, on thousands of people  
14  here in Franklin County.

15           Just to clear up the Veterans Memorial that  
16  Mark Vincent has worked so very hard to do, and much to his  
17  credit, is a City of Union contract and a City of Union  
18  project in which the general contractor is K. J. Unnerstall  
19  Construction. My client would be a sub to that. That is  
20  not a Franklin County contract. That is a City of Union  
21  contract. Which -- well, it's the City of Union contract.

22           In terms of the wedding venues, obviously if  
23  the wedding venue moved the Friday start time to 4:30, which  
24  they do on occasion, and the setup time is 3:30, there would  
25  never be any overlap in noise whatsoever. And as you've

1 heard, Saturday is no problem.

2 So not going belabor this any longer. I will  
3 answer any other questions.

4 CHAIRMAN UPCHURCH: Only because it's  
5 been represented and I just want something in the record so  
6 I don't have to guess. The number of trucks -- that there's  
7 been some general commitment as to the number of trucks that  
8 would be involved.

9 Do you know that number.

10 ATTORNEY KUENZEL: I honestly don't,  
11 but Cameron probably does.

12 MR. LUEKEN: Three.

13 MS. LYNN HAVIN: Three to four.

14 ATTORNEY KUENZEL: Three to four  
15 trucks.

16 CHAIRMAN UPCHURCH: Because I didn't  
17 see that in the earlier. It's been referred to. In the  
18 earlier records, it was part of the earlier math, but I just  
19 hadn't heard that tonight.

20 I think that's all the question I have for you,  
21 but are there other questions from the Board? [None]

22 Thank you.

23 ATTORNEY KUENZEL: Thank you. I  
24 believe that's everybody on...

25 CHAIRMAN UPCHURCH: Did we receive

1 your exhibit? If not we will.

2 ATTORNEY KUENZEL: I gave it --

3 MS. EAGAN: I got it.

4 ATTORNEY KUENZEL: And it was marked  
5 -- Gordon, it may not be in the record -- as Exhibit 71.

6 CHAIRMAN UPCHURCH: Okay. And are  
7 there other witnesses to be heard in opposition to the  
8 application?

9 Seeing none, and it's 11:20 folks, and rebuttal  
10 isn't repeat, and I was generous earlier to everybody.  
11 Rebuttal is not repeat, and that goes for both sides. I'm  
12 going to give both sides a brief opportunity, which we're  
13 going to squeeze into not more than about 15 minutes.  
14 Because then we have some work to do here.

15 With regard to those who spoke originally for  
16 the application, is there rebuttal? And again, rebuttal  
17 isn't repeat.

18 Step forward. You've already been sworn, and  
19 you are?

20 MR. GRIGGS: William Griggs. I just  
21 want to rebuttal on him saying that Gracie Griggs would not  
22 be there during the operation. Every summer she is there  
23 through the whole summer from -- all day. All day and all  
24 night. So I just wanted to put that on the record that she  
25 is there.

1 CHAIRMAN UPCHURCH: That's rebuttal.

2 MR. GRIGGS: Thank you.

3 CHAIRMAN UPCHURCH: Okay, thank you.

4 And your name, sir?

5 MR. N. NORMAN: Nick Norman.

6 CHAIRMAN UPCHURCH: You're still  
7 under oath.

8 MR. N. NORMAN: Yes, sir. When it  
9 comes into terms of Lost Lake Events' buffer, we've made an  
10 effort to plant as many trees as possible on the river side  
11 to prevent erosion. The way the Meramec turns there, it  
12 slams our corner fairly hard, and we plant trees down as  
13 much as we can to prevent erosion.

14 So then the second thing is with the fireworks  
15 display. We've had two this year. Those are the only two  
16 that we've had. We may have had one last year, maybe. We  
17 do not host those. Those are our clients. We -- we don't  
18 touch them. We don't shoot them. We -- sometimes they're  
19 spur of the moment, and they're like, oh, we brought  
20 fireworks. Can we shoot them off? And --

21 CHAIRMAN UPCHURCH: This is rebuttal.

22 MR. N. NORMAN: Yes.

23 CHAIRMAN UPCHURCH: Not narrative.

24 MR. N. NORMAN: Got you.

25 CHAIRMAN UPCHURCH: Okay.

1 MR. N. NORMAN: And in terms when the  
2 gray bats exit the cave, they shot out of a small creek  
3 next to the Meramec River, they are gone after eight  
4 o'clock, 8:10. They're not in the area. They go directly  
5 downstream. They never do upstream. They go downstream.  
6 So when --

7 CHAIRMAN UPCHURCH: You testified to  
8 that earlier.

9 MR. N. NORMAN: Yes. So --

10 CHAIRMAN UPCHURCH: This is rebuttal.

11 MR. N. NORMAN: Got you. So we do  
12 not host fireworks.

13 CHAIRMAN UPCHURCH: Heard you the  
14 first time. This is rebuttal.

15 MR. N. NORMAN: We will -- we will  
16 not host them again. Thank you.

17 CHAIRMAN UPCHURCH: Okay.

18 ATTORNEY HENRY: A few points. I did  
19 --

20 CHAIRMAN UPCHURCH: Your name again.

21 ATTORNEY HENRY: This is Kathleen  
22 Henry.

23 CHAIRMAN UPCHURCH: And you're still  
24 under oath.

25 ATTORNEY HENRY: I did notify Lynn

1 Havin and Steve Kuenzel and Mark Vincent by certified letter  
2 that they were not allowed to start operations right after  
3 the CUP was issued, and they are still not allowed to  
4 pending the -- all the appeals. I will resend the letters  
5 tomorrow because they go up through the court review when we  
6 filed a petition for the writ. And the court's reviewing  
7 it. They're still not allowed to start operation.

8 And the Normans were very unfairly maligned  
9 tonight. It was enough to make any citizen wonder why  
10 should we seek --

11 CHAIRMAN UPCHURCH: This is rebuttal.  
12 It's not closing arguments.

13 ATTORNEY HENRY: Yes. And their  
14 fireworks last for less than five minutes twice. Now,  
15 that's not going to have a long-term impact.

16 The point about the trucks on the gravel is  
17 that they -- and the mining, they have ruined the habitat  
18 permanently by the weight of the trucks.

19 Five minutes of fireworks over 55 weddings is  
20 nothing, but it sure became a big deal tonights.

21 Also we -- Great Rivers did not file a suit on  
22 the Endangered Species Act. We filed a notice of intent.  
23 That's different from a lawsuit. And I would like this  
24 Board to leave this open to get a copy of that contract that  
25 we're talking about with the Meramec with the Veterans

1 Memorial, and not rule on this until we have -- this Board  
2 has had time to review that, because I still think it was  
3 inappropriate for the attorney to be negotiating that  
4 contract while this permit was being applied for.

5 Let's see if I covered --

6 CHAIRMAN UPCHURCH: That will be  
7 noted as part of the your record.

8 ATTORNEY HENRY: I still intend to  
9 file it now that I know where to send the proper Sunshine  
10 Law request.

11 That's all. Thank you.

12 CHAIRMAN UPCHURCH: Thank you.

13 Any other rebuttal for the application? [None]

14 Rebuttal for the opposition to the applicant?

15 See a hand in the back.

16 MR. CARL ZERNA: I'm Carl Zerna.

17 MS. REPORTER: Do you -- this is  
18 rebuttal. Are you allowing him to testify though?

19 CHAIRMAN UPCHURCH: He needs to be  
20 sworn.

21 MS. REPORTER: Okay.

22 MR. ZERNA: Let me just be honest  
23 with you straight --

24 CHAIRMAN UPCHURCH: You need to be  
25 sworn, sir, if you're going to address this Board.

1 [Thereupon, the witness was sworn.]

2 MR. ZERNA: Okay. I have the farm  
3 across the river from Jeffery's. My home address also is  
4 2270 Brookview. I even wrote that down.

5 CHAIRMAN UPCHURCH: Sir, this is  
6 rebuttal.

7 MR. ZERNA: Okay. I just want to --  
8 whatever rebuttal means, but --

9 CHAIRMAN UPCHURCH: Well, rebuttal is  
10 to respond to something that somebody on the other side said  
11 that you disagree with.

12 MR. ZERNA: It's not really either.

13 CHAIRMAN UPCHURCH: Well, then I'm  
14 going to --

15 MR. ZERNA: Okay. I --

16 CHAIRMAN UPCHURCH: I'm not going to  
17 make you happy. This is rebuttal, and if you wanted to be  
18 heard, that time passed earlier. If you have rebuttal, I'm  
19 ready to hear you.

20 MR. ZERNA: Well, I have no  
21 objections to either one of them. That's all.

22 CHAIRMAN UPCHURCH: That's not  
23 rebuttal, but thank you just the same.

24 MR. ZERNA: Yeah, I was going -- I'm  
25 right across the street.

1 CHAIRMAN UPCHURCH: Sir --

2 MR. ZERNA: Okay.

3 CHAIRMAN UPCHURCH: It's not  
4 rebuttal.

5 MR. ZERNA: Okay.

6 CHAIRMAN UPCHURCH: Okay.

7 MR. ZERNA: All right. Thank you.

8 CHAIRMAN UPCHURCH: Mr. Kuenzel, and  
9 you're not asking to be heard again, but I want to ask you  
10 to come back up only because I want to know and I don't want  
11 to do so in a vacuum. The suggestion has been made by  
12 counsel in the record for the applicant in opposition to  
13 your client that there is some mandated stay pending  
14 appeals, and rather than us -- I don't have an opinion on  
15 that opinion. And I'm giving you the opportunity by way of  
16 rebuttal of that statement to offer me an opinion if you  
17 have one.

18 ATTORNEY KUENZEL: Well, my opinion  
19 is that, as I believe you stated at the beginning of this,  
20 this Board has three choices, and you gave those three  
21 choices.

22 CHAIRMAN UPCHURCH: We are limited in  
23 our charge.

24 ATTORNEY KUENZEL: When they file an  
25 application, if they do, if the ruling is in my they

1 client's favor and they decide to apply for a writ of  
2 certiorari if a court issues that writ of certiorari, they  
3 may well be entitled to their stay. There may be an issue  
4 as to whether they have to post a bond or not, but I don't  
5 think this Board gets to tell Circuit Court what they do.

6 If they do apply to the Circuit Court, then  
7 that's a totally different story, and it's up to the court  
8 to issue any stay. It's not up to you to do anything to a  
9 higher court.

10 CHAIRMAN UPCHURCH: Okay, thank you.

11 Is there other rebuttal from the -- I'll call  
12 it the Havin Camp just because everything else doesn't seem  
13 to work as well. [None]

14 I'm going to close the evidence then there  
15 being hands. I've given everybody the opportunity that  
16 wanted to be heard to be heard. After that, we permitted  
17 some rebuttal.

18 At this point in the proceeding, there has been  
19 a request to -- to continue the matter. We have never made  
20 a practice of doing that. That's why we set these down.

21 We can certainly have entertain that if the  
22 Board wants to entertain that as part of the discussion. As  
23 a matter of course, we normally discuss these openly and in  
24 front of those of you who are here as opposed to continue  
25 the matter or table the matter, which we, as a practical

1 matter, have never or almost never done.

2 I have a few musings to open up the discussion  
3 among the Board. That is the original order that was  
4 included in the packet flagged as Item Number 4 outlines the  
5 earlier order, which included many conditions to the  
6 conditional use that was permitted.

7 I also noted from the petition that, with  
8 regard to the application, there were many complaints with  
9 regard to the conditional use and then the master plan.  
10 It's my belief that complaints about the master plan or the  
11 to have a conditional use may comply with that are really  
12 not before this Board, nor would it be this Board's  
13 authority to make what judgment.

14 But instead, looking at the actual order and  
15 the condition -- conditions that were listed, it appears  
16 that it didn't include the four trucks that were part of the  
17 commitment that was made.

18 In addition to that, a concern of mine -- and  
19 the Board may have other opinions and I certainly invite  
20 those -- is with regard to the size of the road. But it  
21 appears from what we've been advised tonight on the record  
22 from the representative from the County that that private  
23 portion of the road doesn't have a requirement within the  
24 county. I don't know, just because the County may not  
25 require a certain size of a road, that couldn't be made a

1 condition. But that can be a problematic for the applicant.

2 So I think that's something we have to be  
3 mindful of as we move forward here.

4 The thing, inasmuch as we have some of the  
5 Board members that are new to the Board, I'll sort of replot  
6 ground here that I wouldn't normally do. And that is to  
7 state the fact that -- well, a couple of things.

8 With all of these applications, we always have  
9 good people with good and valid arguments with regard to a  
10 proper use or the proper need not to have that use. We try  
11 as a Board to respect all of those, but again, our charge  
12 under the zoning order and in particular with a conditional  
13 use, which this one is, the only reason that we are having  
14 the dialogue that we're having this evening is because under  
15 the master plan and under the zoning that was placed upon  
16 this -- this property in this area of property by the  
17 County, this kind of operation is not a prohibited use. But  
18 instead is a permitted use with conditions.

19 So the complaints -- and we get those on a  
20 regular basis -- that that shouldn't happen or should never  
21 happen here is not a valid complaint where the zoning order  
22 provides for a Conditional Use Permit to be issued.

23 Our charge then is to review as a board if that  
24 permitted conditional use has been properly identified and  
25 has proper conditions attached to it.

1           Focused on that charge, we will try our best as  
2 a board to, if you will, determine or flush out what other  
3 conditions, if any, should be applied. Or we can affirm the  
4 order as written, or we can could reverse that order to find  
5 that it was unsupported.

6           With these precepts in mind, is there  
7 discussion among the Board with regard to the Conditional  
8 Use Permit that is before us, and it is the issue that is  
9 placed before us?

10                           COMMISSIONER RIDDER: I -- I'm ready  
11 to vote now.

12                           CHAIRMAN UPCHURCH: Is there any  
13 discussion?

14                           COMMISSIONER TOBEN: No.

15                           CHAIRMAN UPCHURCH: If there is no  
16 discussion, I would open it up for the submission of a  
17 motion.

18                           COMMISSIONER RIDDER: So what happens  
19 if a particular motion does not get a four/fifths majority?

20                           CHAIRMAN UPCHURCH: And that's a good  
21 question because there has been a glitch in the ordinance in  
22 the past. And so again we don't create confusion, because  
23 we did that once before.

24                           Scottie, tell us how the math of this works.

25                           MS. EAGAN: The part of the code

1 where it says you have to vote a certain way if it doesn't  
2 get the votes, then you have to vote a certain way, that has  
3 been removed.

4           So if your motion and vote fail to get the  
5 four/fifths, you can either redo your motion in another way,  
6 or you can vote the opposite. So if you vote to -- for  
7 instance, if you vote to reverse the CUP and it doesn't get  
8 the four/fifths vote, you can either change your motion then  
9 to do something with the conditions or change your motion to  
10 then affirm the CUP, and then you would only need two of the  
11 five to vote.

12                           COMMISSIONER RIDDER: Okay.

13                           CHAIRMAN UPCHURCH: Thank you for  
14 that.

15                           Carl, do you have a motion?

16                           COMMISSIONER RIDDER: It's on.

17                           This business of obtaining aggregates and  
18 gravel has gotten to be quite a process. Used to, why,  
19 people if they needed a load of gravel or whatever, they  
20 hauled it out of the creek or the river, and that was good.  
21 And then somebody decided that wasn't a good idea, and so  
22 now we go through an altogether different process.

23                           And the appellant tonight raises some concerns  
24 they have about the question of safety issues, health  
25 issues, natural resources issues, noise issues, appearance

1 issues, watershed issues, and it seems that those concerns  
2 have been addressed in the applicant's approval. And  
3 there's a whole list of conditions on that approval in here.

4 The applicant must operate the proposed mine  
5 within certain county, state, DNR, federal and Corps  
6 regulations requirements. Other requirements are listed in  
7 the approval.

8 As for the wedding venue concern, I think we  
9 all enjoy scenery and views that someone else, quite  
10 frankly, pays the taxings on.

11 So, Mr. Chairman, I would move the appeal be  
12 denied.

13 CHAIRMAN UPCHURCH: And as I  
14 understand that motion, that motion technically is a motion  
15 to affirm the order.

16 COMMISSIONER RIDDER: Correct.

17 CHAIRMAN UPCHURCH: Okay. Just  
18 wanted to be clear on that because when we talk about  
19 affirming and denying, I believe I've stated it in the --  
20 maybe not properly, but in the fashion that the master plan  
21 asks us to. We're not affirming an application. We're  
22 affirming or denying or modifying an order; is that correct,  
23 Scottie?

24 MS. EAGAN: It says you may reverse,  
25 affirm --

1 CHAIRMAN UPCHURCH: Reverse or --

2 MS. EAGAN: Reverse, affirm or  
3 modify order requirement or --

4 COMMISSIONER RIDDER: I'll restate  
5 that to move that we affirm the order.

6 CHAIRMAN UPCHURCH: Okay. And that  
7 would be the order that appears in our packet, and it was  
8 dated March 15, 2016.

9 Is there discussion or a second on that motion?

10 COMMISSIONER HEAD: I'll second that  
11 motion.

12 CHAIRMAN UPCHURCH: Okay. That  
13 motion has been made and seconded. Is there further  
14 discussion on that motion among the Board? [None]

15 Hearing none, Scottie, will you call that for a  
16 vote.

17 MS. EAGAN: Gordon Upchurch?

18 CHAIRMAN UPCHURCH: I vote in favor  
19 of the motion.

20 MS. EAGAN: Carl Ridder?

21 COMMISSIONER RIDDER: In favor.

22 MS. EAGAN: Justin Head?

23 COMMISSIONER HEAD: Yea.

24 MS. EAGAN: Steve Hoff?

25 COMMISSIONER HOFF: Yea.

1 MS. EAGAN: And, Tim Tobben?

2 COMMISSIONER TOBBEN: Yea.

3 MS. EAGAN: Okay. With five in fair  
4 of the motion to affirm, the Conditional Use Permit then  
5 stands.

6 CHAIRMAN UPCHURCH: Then that  
7 concludes our hearing this evening.

8 I want to thank everybody who has been patient  
9 and gave of their time and came. Obviously we never make  
10 everybody happy, and it's part of the process. The process  
11 probably isn't open, but that's up to other boards and other  
12 finders of facts. We thank you.

13 I'm going to ask that everybody continue the  
14 courtesy that you've shown to one another during the course  
15 of the evening as we exit the building. I want to thank you  
16 for your time this evening. This will conclude our record.

17 [Thereupon, the proceedings concluded  
18 at 10:42 p.m.]

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CERTIFICATE OF REPORTER

I, PATSY A. HERTWECK, Professional Court Reporter  
and Notary Public within and for the State of Missouri,  
before whom the foregoing proceeding was taken, do hereby  
swear that the aforementioned was held at the time and in  
the place previously described.

IN WITNESS WHEREOF, I have hereunto set my hand.

\_\_\_\_\_  
Patsy A. Hertweck, Court Reporter  
Notary Public, State of Missouri

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