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

TRANSCRIPT OF PROCEEDINGS
PUBLIC MEETING
APRIL 28, 2015
(Commencing at 7:00 p.m.)

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

PUBLIC MEETING 4/28/2015

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1 A P P E A R A N C E S

2 BOARD OF ADJUSTMENT MEMBERS:

3 Gordon Upchurch, Chairman

4 Carl Ridder, Member

5 Kat Shaw, Member

6 William Walker, Member

7 Josh Green, Member

8

9 PLANNING AND ZONING STAFF:

10 Ms. Scottie Eagan, Planning Director

11 Ms. Nichole Zielke, Administrative Assistant

12

13 LEGAL COUNSEL:

14 Mark Vincent, Attorney

15

16 MIDWEST LITIGATION SERVICES:

17 By: Patsy A. Hertweck, C. R.

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

2 (April 28, 2015)

3 CHAIRMAN UPCHURCH: I'll call this -- to
4 order this meeting of the Franklin County Board of Zoning
5 Adjustment.

6 I'm joined tonight by Kat Shaw, Carl Ridder, Josh
7 Green, Bill Walker, and myself. We welcome all of you.

8 I believe we only have one matter on the agenda this
9 evening, but before we reach that matter, we have some minor
10 procedural matters to address.

11 First, we're going to respect one another this
12 evening. Everyone who has anything to offer of a factual nature
13 is going to be given an opportunity to be heard. We will not be
14 making cheap comments from the back of the room. I'll warn
15 anyone once. After that, I'll ask security to remove you. I
16 will not change my mind.

17 Second, you own one of these. Let's be kind. Put
18 it on vibrate. If you're expecting a call that when it vibrates,
19 you're going to pick it up and start talking, please go outside
20 and take that call. And when you get done, come and join the
21 rest of us. The rest of us are going to be kind and respectful
22 of one another, as I have done, and put mine on vibrate. Please
23 do the same.

24 With regard to the meeting, first, Scottie, will you
25 call roll.

1 MS. EAGAN: Gordon Upchurch?
2 CHAIRMAN UPCHURCH: Present.
3 MS. EAGAN: Carl Ridder?
4 MEMBER RIDDER: Here.
5 MS. EAGAN: Bill Walker?
6 MEMBER WALKER: Here.
7 MS. EAGAN: Josh Green?
8 MEMBER GREEN: Present.
9 MS. EAGAN: And, Kat Shaw?
10 MEMBER SHAW: Present.
11 MS. EAGAN: Okay. We have a quorum.
12 CHAIRMAN UPCHURCH: I believe next we need
13 to approve the last prior minutes. I'd entertain a motion to do
14 so.
15 MEMBER GREEN: So moved.
16 MEMBER WALKER: Second.
17 CHAIRMAN UPCHURCH: Is there a second?
18 And there is. Those in favor aye.
19 MEMBER SHAW: Aye.
20 MEMBER RIDDER: Aye.
21 CHAIRMAN UPCHURCH: Aye.
22 MEMBER GREEN: Aye.
23 MEMBER WALKER: Aye.
24 CHAIRMAN UPCHURCH: Those Opposed same
25 sign. (None.)

1 The minutes are approved.

2 And, Scottie, will you read into the record the
3 hearing procedures.

4 MS. EAGAN: Tonight's Board of Zoning
5 Adjustment hearing is governed by the Franklin County Unified
6 Land Use Regulations of 2001.

7 At this time, I would like to place into the record
8 these Regulations as Exhibit A, the official Map as Exhibit B,
9 the official Master Plan as Exhibit C, and the case file for each
10 case Exhibit D for all the cases to be heard at this hearing.

11 (Thereupon, evidence was marked for
12 identification and presented for the record
13 as Exhibits A, B, C, and D.)

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

18 Then if anyone in the audience would like to speak
19 or comment during the public hearing, they must first print their
20 name on the sign-in sheet provided, and then be sworn in. When
21 it is your turn to speak, you will come to the front of the room
22 to address the Board and only the Board, not anyone in the
23 audience, with any questions or comments.

24 At the conclusion of all questions, comments, and
25 discussion concerning each case, the public hearing for that case

1 will conclude, and the Board of Zoning Adjustment will proceed
2 with a decision. Any decision by the Board may be appealed. If
3 anyone desires to appeal a decision made by the Board of Zoning
4 Adjustment, they need to submit it to Circuit Court.

5 CHAIRMAN UPCHURCH: And, Scottie, with
6 regard to -- I don't think we have any Old Business, and so we --
7 we only have one matter of New Business, and that's the
8 application of -- is it Meramec Aggregates?

9 MS. EAGAN: The actual Appellant is Scott
10 Monk, which he owns Meramec Aggregate.

11 CHAIRMAN UPCHURCH: Scott Monk.

12 MS. EAGAN: Yes.

13 CHAIRMAN UPCHURCH: Is there a staff
14 report?

15 MS. EAGAN: This is File 150053. The
16 Applicant is Scott Monk.

17 The Applicant is appealing the decision of the
18 Planning and Zoning Commission to issue a Conditional Use Permit
19 to Meramec Aggregates.

20 The property in question is located at 911 Davis
21 Street, approximately 550 feet north of North Virginia Mines Road
22 in Central Township.

23 The Facts: The total area of the property that
24 received the CUP is 123 acres in size.

25 The zoning of this CUP property is Non-Urban and

1 Agricultural.

2 The extraction, quarrying or mining of sand, gravel,
3 topsoil, or other materials requires a Conditional Use Permit in
4 this zoning district.

5 This operation would take materials from the area
6 where they will begin creating a lake.

7 The area surrounding the property is primarily
8 low-density residential or undeveloped land.

9 Just east of the property are two high-density
10 residential subdivisions with approximately five structures
11 built.

12 The Applicant states they will be pumping the raw
13 materials through a pipeline that lies under the river which is
14 permitted by the Corps of Engineers and also the DNR.

15 Planning and Zoning voted to approve this
16 Conditional Use Permit with ten conditions on December 16, 2014
17 with 9 in favor and 0 opposed.

18 Staff Comments: The Board of Zoning Adjustment has
19 the ability to reverse, affirm or modify the order, requirement,
20 decision, or determination appealed from.

21 In order to reverse or modify, the Board must have a
22 four-fifths vote.

23 CHAIRMAN UPCHURCH: And, Scottie, if I can
24 ask you just for a point of clarification inasmuch as we have --
25 we've stumbled through a couple of these which we don't see that

1 many of, in the event the Board takes action or -- or wants to
2 affirm the decision below, that would require a vote of?

3 MS. EAGAN: If you're affirming what
4 Planning and Zoning did, it would take more than one-fifth of the
5 Board.

6 CHAIRMAN UPCHURCH: So two votes would
7 affirm the action?

8 MS. EAGAN: Yes.

9 CHAIRMAN UPCHURCH: And as I believe that
10 that was modified in the not too distant past, that motion to
11 affirm is no longer compelled by the Rules of the Board, the
12 Board would be permitted if we started to modify and failed to
13 pass that, could, if we choose to do so, then take up a motion to
14 affirm. Is that correct?

15 MS. EAGAN: Actually the Regulations have
16 not been changed to get wording in there. It still says that if
17 a motion to reverse or modify is not made or failed to receive
18 the four-fifths vote, the motion to uphold a decision appealed
19 from shall be an order.

20 So we're still -- we're still working on the wording
21 on that to get it changed.

22 CHAIRMAN UPCHURCH: Silly we think that
23 that would pass in the next two or three or four months since we
24 dealt with that last.

25 Well, thank you.

1 Well, without further, is here somebody here to be
2 heard on behalf of the Applicant?

3 MR. Yeah.

4 CHAIRMAN UPCHURCH: Would you step forward
5 and sign in, and then you'll be sworn.

6 (Thereupon, the witness was sworn.)

7 MS. REPORTER: State your name for the
8 record, please.

9 MR. S. MONK: Scott Monk.

10 MS. REPORTER: Thank you.

11 MR. S. MONK: Since I only got six, I'll
12 give you my copy for your records when we're done.

13 MS. EAGAN: Has this changed since the
14 last time?

15 MR. S. MONK: That top copy hadn't, but
16 I've got some other stuff under there, some photos and stuff.
17 They probably have the top copy.

18 Basically this -- this sheet, the top sheet she's
19 giving you is what I submitted for the appeal, but I just kind of
20 want to go through some of the reasons why we wanted to file this
21 appeal.

22 As you all know, this recent CUP request was
23 approved by a vote of 8 to nothing in December. What you may not
24 know was in April of 2014, the same CUP request or a similar CUP
25 request --

1 CHAIRMAN UPCHURCH: Why don't we wait,
2 give her just a second.

3 MR. S. MONK: All right. Sorry about
4 that.

5 (Off-the-record comments.)

6 Okay. But there was -- there was an earlier CUP
7 request that was denied 9 to nothing.

8 CHAIRMAN UPCHURCH: By a CUP report, are
9 you talking about a Conditional Use Permit?

10 MR. S. MONK: Yeah. Yes, sir.

11 CHAIRMAN UPCHURCH: I'd like to stay away
12 from monikers and --

13 MR. S. MONK: All right. Yeah. There
14 was --

15 CHAIRMAN UPCHURCH: It is a lot easier of
16 what -- what we're talking about.

17 MR. S. MONK: Yeah, there was a
18 Conditional Use Permit, Number 140026, that was denied in April
19 of '14 by a 9 to nothing vote. And on the -- the top copy you've
20 got in front of you, I listed the five reasons that the
21 Commissioners gave at that point in time for denying the -- you
22 know, the permit. And you know, some of them said they were
23 uncomfortable with Meramec Aggregates stating they had received
24 the DNR permits already, and later in the -- you know, in the --
25 in the Conditional Use Permit meeting, it was found out that they

1 did not have the permits. They had only applied for them.

2 You know, there were a lot of concerns over the pipe
3 crossing the river because there were not a lot of good details
4 at that point in time. There was concerns over how they were
5 going to store all of the overburden on the property for 35 or 40
6 years that they were looking at.

7 And then there were a lot of discrepancies between a
8 DNR permit that were pointed out in the Conditional Use Permit at
9 that time. You know, one -- one Commissioner even said he was
10 concerned that --

11 CHAIRMAN UPCHURCH: Sir, I'm not going to
12 cut you off. I'll permit you to make all the record you want to.

13 MR. S. MONK: Yeah.

14 CHAIRMAN UPCHURCH: But f you're referring
15 to an earlier hearing --

16 MR. S. MONK: Right.

17 CHAIRMAN UPCHURCH: -- before the hearing
18 that brings us here, that's going to have a little impact on this
19 Board's decision.

20 MR. S. MONK: No, I -- I understand that.
21 Where I'm going --

22 CHAIRMAN UPCHURCH: Let me finish.

23 MR. S. MONK: Okay.

24 CHAIRMAN UPCHURCH: What we're empowered
25 to do is to review the matter that was decided below, and that

1 would be the most recent hearing.

2 MR. S. MONK: Okay.

3 CHAIRMAN UPCHURCH: Okay?

4 MR. S. MONK: I'm good from my historical
5 perspective, but I didn't want to mislead you either.

6 MR. S. MONK: No, I understand that.

7 CHAIRMAN UPCHURCH: -- or others in the
8 room that -- that we're making some global decision here.

9 MR. S. MONK: Yeah.

10 CHAIRMAN UPCHURCH: This Board has a
11 pretty finite focus, if you will.

12 MR. S. MONK: I understand that.

13 CHAIRMAN UPCHURCH: Okay.

14 MR. S. MONK: I was told the same thing
15 during the most recent Conditional Use Permit. You know, he
16 stopped me from making comparisons from this permit to the prior
17 permit. All right.

18 CHAIRMAN UPCHURCH: I'm not going to stop
19 you. I just want us to be clear. This historical information
20 may give us some perspective, but we'll be deciding this matter.

21 MR. S. MONK: On this permit? On this
22 conditional use.

23 CHAIRMAN UPCHURCH: On this application
24 you handed would take us.

25 MR. MONK: Well, where I'm going with this

1 is it was denied back in April of '14. You know, it was our
2 understanding that Conditional Use Permits after they were
3 denied, had to wait a period of 12 months. Don't know if that's
4 true or false. I've had one commissioner tell me that that was a
5 true statement. Have not been able to validate that, find that
6 in writing anywhere.

7 Where-- -- whereas, this new Conditional Use Permit,
8 they applied for it six months after they were denied. All
9 right.

10 CHAIRMAN UPCHURCH: In that's referenced
11 in the packet?

12 MR. S. MONK: Right, yeah.

13 CHAIRMAN UPCHURCH: Which we received.

14 MR. S. MONK: Right.

15 CHAIRMAN UPCHURCH: And just so we're all
16 clear, as a matter of course in these matters, we receive the
17 packet that's submitted.

18 MR. S. MONK: Okay.

19 CHAIRMAN UPCHURCH: Okay.

20 MR. S. MONK: All right.

21 CHAIRMAN UPCHURCH: And -- and we have,
22 and I'll formally now to remove any doubt, we've received that as
23 part of the record in this case.

24 MR. S. MONK: All right. Well, let's --
25 let's move on then.

1 You know, so they were -- somebody drew comparisons
2 from one to the other. That's where I was going with that, you
3 know.

4 CHAIRMAN UPCHURCH: Okay. I'm okay with
5 that.

6 MR. S. MONK: Okay.

7 CHAIRMAN UPCHURCH: I just don't want to
8 create confusion --

9 MR. S. MONK: All right.

10 CHAIRMAN UPCHURCH: -- as opposed to we're
11 doing a little historical work here.

12 MR. S. MONK: All right. No, that's fine.

13 And then one other thing that came up with is when
14 you look at -- at the commissioners, one of the commissioners on
15 the -- on the Board actually signed a petition in favor of
16 Haven's, you know, Material in regards to their con- -- concrete.
17 And that was Commissioner Reinhold.

18 Now, he did abstain from voting, but in my opinion,
19 he should not have even been sitting on the Board if he signed a
20 petition in favor of that. And if you go back and look at the
21 transcripts, you'll see that it's in there.

22 The other thing I wanted to bring up, when they
23 approved this Conditional Use Permit, they did not give it an
24 expiration date. I think typically you let them expire in 12
25 months if the DNR and the Army Corps of Engineers' permits don't

1 come in. I don't -- and this one is left open-ended.

2 You know, at this point, they've been working with
3 DNR since February of last year. So this has been an ongoing
4 process.

5 When we -- when we look at the changes from the plan
6 to the other, there's not a lot of changes. We didn't feel real
7 comfortable with -- with what they were going to do with the
8 pipe. They were telling us they were going to put it five feet
9 underneath the river in solid rock, and they kept saying I guess,
10 I think so. There was no -- there was no facts given.

11 Solid rock most likely is not going to be five feet
12 under the river in front of our summer homes down there. Haven's
13 has been dredging for about the last ten years. They've actually
14 dropped the river level at least five or six foot up there. So I
15 know there's no bedrock only five foot under the river because,
16 you know, they've already taken five foot of gravel out.

17 And the spillway, you guys already know about that
18 in the -- in the packet.

19 Another thing that I thought was -- was strange,
20 that they're still using the floodplain permit that they applied
21 for back in 2014 in February. I don't know that I put that in
22 the packet, but you know, I would have thought that they would
23 have had to reapply for that.

24 And if you would, look at page 3 on -- on the
25 approval that they got from the Conditional Use Permit where it

1 basically talks about, you know, this is going to be in harmony
2 with the area, this is not going to injure the value of adjoining
3 or abutting properties.

4 I don't know -- you know, I don't know that I can
5 agree with that. If you take a look at -- further back in the
6 packet, look at pages 4 and 5, two photos that I'm letting you
7 look at. Both of those are of this site. I don't know if
8 anybody has been there or not. You know, that was one of my
9 points that I don't think any of the commissioners have actually
10 went out and visited the -- the work site to see how the river
11 did flow in that area, and you know, what potentially could
12 happen.

13 Picture 4 is -- is just kind of an upstream view.
14 To the left, you can see the -- the summer homes there. They're
15 kind of the white dots in there about three-quarters of a way to
16 the left. Then when you look to the right there on picture 4,
17 you'll see an open field starting to appear, you know, in the
18 treeline.

19 That's actually the property that -- that is in
20 question, and also everything in picture 5. You'll see the
21 fields in much better clarity on -- on that.

22 This actual viewpoint that these photographs are
23 taken from -- naw, not that one. On this one, this big one here.

24 This viewpoint that this was taken from -- I don't
25 know if any of you guys golf or not, but it's from Meramec Shores

1 up -- and I think it's the fourth hole. I don't remember which
2 hole it is. But that's the scenic view that they look out over,
3 which is not going to be scenic anymore. It's going to be a
4 gravel pit.

5 Here's what I think's going to happen. If you look
6 at picture 6, this is upstream around the bend from us. The
7 river kind of makes a 90-degree turn right where we're at, and
8 our homes are right in the -- you know, in the angle there. Now,
9 on the riverbank is about, you know, where our homes are at is
10 about six to eight feet higher than the low-lying area behind us.

11 And if you look at this picture 6, you'll see the
12 entry point where the river is going to come in behind us. It's
13 physically going to come in and cut us off. It does it every
14 year when the flood gets up. It creates an island that we're
15 sitting on out there every year when -- when the river comes up.

16 All right. What we're concerned about is when they
17 put a big sand pit, you know, a hundred foot from our property,
18 what's going to happen with this river running through there like
19 it runs.

20 It -- it runs in extremely high volume, and you'll
21 see that. And you -- I think this is the picture that you had in
22 the packet. That kind of shows what it runs like, if you guys
23 can see that. That's actually -- this is where they're going to
24 rough -- put the pit, and up here's where they want to store the
25 overburden, in this area here.

1 Well, this is where the water goes. So --

2 CHAIRMAN UPCHURCH: I just want to make
3 sure everyone can hear you as opposed to we.

4 MR. S. MONK: Oh, yeah. All right.

5 CHAIRMAN UPCHURCH: And the people seems
6 like they're missing out.

7 MR. S. MONK: No, I'm sorry about that.

8 CHAIRMAN UPCHURCH: And that's not fair to
9 them.

10 MR. S. MONK: Yeah, all right.

11 And then the last picture I got -- or not last, I
12 guess, number 7. This one, and I don't know if you guys can see
13 what I'm trying to show you. I took these photographs over the
14 weekend, but this is the bank along the three-eighths of a mile
15 stretch that borders the river. And what I'm concerned about, if
16 you can look at this, you'll see that the bank is basically
17 stair-stepped. You'll see -- you can see the light vegetation or
18 the grass that's about half-way up that photograph.

19 What has happened here on that entire length of that
20 bank, it has collapsed. And it is collapsed because of Meramec
21 Aggregates. If you take a look at picture 8, which is actually
22 from 2006, it's an aerial view from Google Earth that shows
23 gravel bar coming down in front of our three cabins that are
24 recognizable by the white dots there.

25 That gravel bar used to extend the length of the

1 river. There is no gravel bar on that boundary there now. So
2 there is not buffer for flooding and erosion and boats. So what
3 I'm concerned about is when the river gets up and runs through
4 there at this high velocity, even with that spillway, it's not
5 going to solve anything. We're going to have a major problem
6 with potentially breaching that whole area open and into the
7 river to become one big open pit.

8 And I've got another document that you probably
9 don't have because it was probably in the first Conditional Use
10 Permit, but it was talking about flooding. Seven of the ten
11 largest floods on the Meramec River have occurred since 1982, and
12 that dates back a hundred years. This report that I got goes
13 back to 1915. So seven of ten have occurred since 1982.

14 It's not going to take long before we get another
15 major flood, and we're going to have problems not only with us
16 worried about flooding and erosion problems, but potentially
17 breaching the whole wall that they're planning on leaving.

18 A hundred foot is not very wide. We've seen
19 sections go up 40 foot in one flood. So a hundred foot -- I
20 mean, it's already -- it's already weakened. So, you know, and
21 with the Conditional Use Permit, the -- the part that didn't make
22 me feel real good, one of the comments that kept being stated
23 over and over again was, you know, they're going to be
24 responsible for their own erosion control. They're going to log
25 it themselves. You know, I don't -- I don't understand how

1 that's going to help us if -- if we see flood waters like what
2 I'm showing you. By then it's too late, you know.

3 The other comments that were always made was well,
4 it's a complaint-driven system. All you guys got to do is, if
5 you have a problem, complain. Well, if we complain that our
6 cabin or our home is gone, it's too late by then, guys. I mean,
7 it's gone.

8 I already know for a fact that we've lost one
9 home. Not due to these guys, but years ago in the '70s, Virginia
10 Mine Sand and Gravel was allowed to put pits directly above us,
11 and those pits are no longer there. That's now river bottom.
12 It's just -- it's just widened the river out. That ground is
13 gone, and a gentleman from Pacific name King actually lost the
14 clubhouse probably ten years ago, I believe, as a direct result
15 of that because it just ate away over an acre of land, and
16 eventually took his home down the river.

17 So, you know, it's -- it's an environmental concern.
18 I mean, it's -- if -- if our homes go, I mean, they're all over
19 the floodplain. So I guess that's really where I want to leave
20 it. I just -- you know, I hope you guys take into consideration
21 what we're looking at. You know, bottom line is I don't think
22 the property is big enough for what they want to do. You know,
23 they're -- they're trying to put, you know, a 60-acre, you know,
24 quarry on 60 acres with a hundred foot from us and a hundred foot
25 from a working farm directly below them.

1 It would be different if it was four or five hundred
2 acres, and they were picking, you know, 250 right in the center
3 of it. It may not be a problem, but you know, based on the size
4 of the property and what they've done to the environment on the
5 river side of this, I don't think it's a good idea that -- that
6 we allow them in there.

7 That's all I got. Any questions?

8 CHAIRMAN UPCHURCH: We may have, but
9 before we get to that, --

10 MR. S. MONK: Okay.

11 CHAIRMAN UPCHURCH: -- Scottie, with
12 regard to one issue that was raised with regard to the delay, and
13 I don't mean to put you on the spot, but I am. Is there any
14 requirement or regulations that -- that this second action was
15 premature?

16 MS. EAGAN: To reapply?

17 CHAIRMAN UPCHURCH: Yes.

18 MS. EAGAN: No.

19 CHAIRMAN UPCHURCH: Okay. Are there
20 questions of the Board of this witness before he leaves the --
21 the podium?

22 MEMBER RIDDER: Seven of the ten worst
23 floods have been since '82?

24 MR. S. MONK: Yes.

25 MEMBER RIDDER: What's the source of that

1 information?

2 MR. S. MONK: Here, I'll -- I'll give you
3 a copy of it.

4 MEMBER RIDDER: Not just -- just tell me
5 who.

6 MR. S. MONK: It's a hydraulic source out
7 of the State of Missouri. I just go in. It's water, weather,
8 government app crest and the source that we've got to choose is
9 Sullivan. There's nothing in St. Clair. So we, as property
10 owners down there, that's the -- the location that we always
11 follow so that we know that, hey, a flood is coming. We've got
12 about 24 hours behind what Sullivan gets. So I mean, it's -- and
13 I can give you this. It's -- it's -- it's -- it's there.

14 Any other questions?

15 CHAIRMAN UPCHURCH: Are there other
16 questions? (None.) Thank you.

17 MR. S. MONK: All right. Thanks for your
18 time, guys.

19 CHAIRMAN UPCHURCH: Are there others to be
20 heard on behalf of the Applicants? Again, you'll need to sign
21 in --

22 MR. G. MONK: Yeah.

23 CHAIRMAN UPCHURCH: -- and be sworn.
24 (Thereupon, the witness was sworn.)

25 MS. REPORTER: Please state your name for

1 the record.

2 MR. G. MONK: I'm Gordon Monk.

3 CHAIRMAN UPCHURCH: I didn't get that
4 first name.

5 MR. G. MONK: Gordon.

6 CHAIRMAN UPCHURCH: Gordon?

7 MR. G. MONK: Yeah, G-O-R-D-O-N.

8 CHAIRMAN UPCHURCH: Odd name. I've heard
9 of one.

10 MR. G. MONK: Okay.

11 CHAIRMAN UPCHURCH: Go ahead, you've got
12 the floor.

13 MR. G. MONK: Well, I -- now that I got a
14 little closer, I recognize you.

15 All right.

16 CHAIRMAN UPCHURCH: There's a frightening
17 thought.

18 MR. G. MONK: My mother and father bought
19 this clubhouse about 54 years ago, and one of the main reasons we
20 bought this site was because it was on a dead-end road. There
21 was a big farm in front of us and one beside us, and there was no
22 place for nobody to guess it's too much for the solitude and
23 peace that was there. We pretty much raised our kids, or I did
24 pretty much was raised there. My kids was raised there. My
25 grandkids has been raised there.

1 And occasionally the river would flood from the
2 front -- from the front and come up and get in our clubhouse, but
3 if you're going to live on the river, that's going to happen. So
4 -- but then I was thinking it was about 1990 when that other CUP
5 was granted. So mainly it was just what Scott was saying.

6 When the river gets about 13 foot tall, the river
7 changes the whole river level. It don't come down as much on the
8 river. It comes behind. It cuts off where they cut that ground
9 in. It comes behind us and makes us an island, and it's run
10 right into the property where they want to build a big hole.

11 They put a big hole in there, that river just is
12 going to run that much more in there, and if they put a spillway
13 in there, that's just going to be like pulling the plug on a
14 bathtub. All that water is really going to go out, and we're
15 going to lose river frontage, and Ms. Keller is going to lose her
16 farm.

17 Let me see what else I got here because about half
18 of it I was going to say he's done covered.

19 CHAIRMAN UPCHURCH: Take your time.

20 MR. G. MONK: When the Planning and Zoning
21 come up with the -- on this last thing here, there was things
22 they said. They said that our property value wouldn't go down.
23 Well, that must be a joke. I've talked to three Realtors, and
24 they just kind of laugh at that, that our property value ain't --
25 one of them even said it'd go down about half if they put that

1 gravel pit right beside us.

2 And then the Commission said it would be in harmony,
3 but to be located. We strongly disagree with that determination
4 too. There's five clubhouses there approximately 300 yards away,
5 a working farm on the west side, Meramec Golf Shores are right
6 across the thing going to have to be looking down there at it.

7 And we don't think it's going to be a very good
8 environmental thing at all. And then the Commission says that
9 they -- I forgot what they said here. Oh, there's something that
10 it would be in compliance with the state and federal guidelines
11 or something, and we didn't even understand what that meant.

12 That was in that letter that you give me. I didn't
13 -- we didn't even know what that meant. So I don't know how it
14 could be a thing. And Haven's over the years kind of raped the
15 river in front of us. I thought it was 15 years. And they has
16 been taking citizens' free gravel for all this time, and breaking
17 a lot of rules and regulations that we didn't know was even
18 existed until we got all this brought up and started talking to
19 DNR.

20 And the only thing that appears to me at the past
21 Commission is just trying to pass the buck on to DNR, and I don't
22 think they're doing their job. I don't think they read half the
23 literature that we give them because they didn't answer hardly
24 any of our questions.

25 That's about all I got to say.

1 CHAIRMAN UPCHURCH: Okay. Hang on.

2 MR. G. MONK: Okay.

3 CHAIRMAN UPCHURCH: Are there questions of
4 this witness from the Board? (None.)

5 Thank you, Mr. Monk.

6 MR. G. MONK: Thank you.

7 CHAIRMAN UPCHURCH: Is there anyone else
8 on behalf of the application to be heard? Step forward, sign in,
9 and be sworn.

10 (Thereupon, the witness was sworn.)

11 MS. REPORTER: Please state your name for
12 the record.

13 MR. ANDREWS: My name is Russ Andrews.

14 I've lived on River Haven Bluff Drive, which is --
15 I'm not even sure if that's shown there. It's adjacent to the
16 proposed area. But I've lived there for 33 years and overlooked
17 the operation of the material -- the sand and gravel operation
18 for that period of time.

19 During that period of time, I've witnessed trees
20 being removed by physically cutting them down and also by
21 undercutting the riverbank and use -- with use of the dredging.

22 I'm also concerned that this is going to change the
23 course of the river. It might actually give me riverfront
24 property, but that's not something I'm really desirous of.

25 I'm looking to see -- it's Russ and Phyllis Andrews.

1 It's River Haven Bluff Drive. Okay. But I have a good view of
2 the -- the area that this is going to be operated in, and my
3 concerns are obvious. I believe that the noise from a dredge
4 operating all day long is going to create a real situation for
5 noise for our home and also the adjacent homes around us.

6 I also believe that the river is an asset that
7 should be protected, and I think what we're doing here by
8 granting this CUP or this Conditional Use Permit is not the best
9 plan for the river.

10 I -- I really feel that the river is an asset that
11 should be protected, and I've spent many -- many, many hours and
12 time with my family and my children and floating and enjoying the
13 river. And I'm sure many of you have also. But I just -- I
14 question whether or not we have all the information that we need
15 to make an accurate decision on this Conditional Use Permit.

16 There's so many questions that I still have
17 unanswered with regard to the pipe that's going under the river,
18 how that's going to actually be done. With the overburden, how
19 is that going to be stored so that it will not wash back into the
20 river in a major rain such as what we just had over the past
21 week.

22 If we take 40 acres of overburden and store it in
23 the treeline up above there, it will still wash at some point and
24 go back into the river. That probably will cause some pollution
25 in the river that we really don't need.

1 I -- I sincerely urge you to repeal this Conditional
2 Use Permit. That's it.

3 CHAIRMAN UPCHURCH: Thank you, and hold
4 on.

5 Questions of this witness? (None.)

6 Thank you. Are there others to be heard on behalf
7 of the Applicant? Going once. Step forward. Please sign in,
8 and then be sworn.

9 (Thereupon, the witness was sworn.)

10 MS. REPORTER: Please state your name.

11 MS. KELLER: Joan Keller. I don't know
12 quite where to start because I don't know exactly how long I'll
13 have to speak.

14 My father bought this farm approximately 65 years
15 ago. His intent was to retire on the farm. His health was
16 reduced. He never was able to retire there, but his enjoyment of
17 the farm was severely hampered by what was then Haven Gravel
18 Company.

19 I can't tell you the number of times I called the
20 Corps of Engineers. The Corps would come out, agree that the
21 dredge was too close to our riverbank, causing the riverbank to
22 fall into the river, and they were tied to our trees. He would
23 go and speak to them. Oh, yes, they would be glad to correct
24 anything that was wrong.

25 Two weeks later the dredge would be as close to the

1 bank as it had been in the beginning. You could have stood on
2 the bank, jumped off and landed on the dredge. That was how
3 close it was. You could hear the chunks of riverbank fall into
4 the river from the house, which is completely across the river
5 bottom. And I think that the gentleman who spoke previously said
6 that he could even hear the bank dropping into the river from his
7 house, which is still farther.

8 This is a beautiful river. It should be kept, and
9 all of the nice sand bars are all gone. Now they want to put a
10 pit in the river bottom, which is productive river bottom. My
11 farm right now is in the best condition it has been in since we
12 have owned it in the '50s.

13 We have a young farmer who is very efficient, very
14 effective, and it's good topsoil. The government is paying to
15 protect topsoil. Now they want or our neighbors want to build
16 this within 50 feet of our property line. That's bigger than
17 some city lots in St. Louis are.

18 Now, how are they going to manage around their pit
19 and dredge between 50 feet with heavy equipment and everything
20 else to tend this product, whatever you want to call it? I don't
21 understand whether they intend eventually to move their entire
22 operation onto this property. But if you will look at what I
23 think is the cover sheet of their application, you will see in
24 very small print "Future Meramec Aggregates, Incorporated."

25 Do they intend eventually to move their whole

1 operation to this side of the river? There is a road from this
2 property that joins North Virginia Mines' road, which in turn
3 goes into Highway K. It would be very convenient for them to
4 dredge, and instead of going across the river, they just put it
5 back a little farther on the lot where they are working. The
6 trucks could go in and out, and I don't know if many of you
7 remember. It has not been too long ago that we were having a lot
8 of accidents with big trucks on K Highway.

9 We really don't need anything like this to happen.
10 There is on one of the -- I'm trying to see which one quickly.
11 This does not have a label on it, but the top of it says
12 Conditional Use Permit, and on the bottom it says Operations
13 Plan.

14 It shows the floodway. That floodway lies between
15 where the intend to build the pit and the side away from the
16 river. That floodway goes directly onto my property, and if they
17 are also going to build a road along this area.

18 Now, if they build a road and that causes the area
19 where the flood water is going to travel, that water is going to
20 be faster and it's going to wash my farm away quicker.

21 This is not a piece of unused property. It's very
22 productive. It is making the beginning of a farm income for a
23 young man in this community, and it's a shame to end that and end
24 up with a pit of water which is stagnant. It has no permanent
25 creek to feed it. It has no outlet. They have said in their

1 earlier promotion that it is to be filled by flood water. Flood
2 water is not good water.

3 In St. Louis, we have had some major floods, which
4 you all know. They tell us not even to use the sandbags that
5 were left on-site because they contain pesti- -- pesticides and
6 everything else, that you cannot put on to your farm and into
7 your system.

8 What good is the lake going to be filled with
9 contaminated water? The program calls for absolutely no
10 inspections, no control. They are going to have no oversight.
11 What is going to protect our interest because we have no voice?
12 It's a situation -- why do they have to, in this long strip of
13 land, build this pit 50 feet from my property?

14 Why do they have -- why can't they go up a hundred
15 feet and then leave the floodway alone? And what is the use of
16 them putting on this document that it's going to be the future
17 home of the company?

18 I know that it's very useful to have sand and
19 gravel. I realize it's income for people. I realize it's
20 convenient, but it can't be the only sand and gravel in 57 miles
21 of the river.

22 The operation is frightening to me. You can already
23 see on some of the film that has been given you before that they
24 have changed the course of the river, and the man is right. The
25 flood water goes a different place than it used to.

1 I have a high bank on my river, and the flood water
2 does not come into my property from the river. It came -- it
3 always came in upriver through the Miller property and then on to
4 us. By the time it came to us, it was not a rushing stream of
5 water. It was just slowly coming up as the river rose, and it
6 usually did not get deep enough to cause any erosion or do any
7 damage.

8 But if they tamper with this floodway, how do we
9 know what it's going to do? We can't put the river back after
10 it's ruined. The -- the whole thing -- they are going to pump
11 clean water out of the river, and then they're going to use that
12 to dredge the sand and gravel.

13 They're going to move it across the river where
14 they're going to put it in a pit. Now, they've been doing this
15 for years, and they bring in dump trucks. Granted it's on the
16 other side of the river from me, but you can hear them dumping
17 gravel from a lift into these metal trucks all over the
18 neighborhood. And in the summer, there is so much dust from the
19 trucks going back and forth in dry weather that it's
20 unbelievable.

21 And what is that water going to be like when they
22 put it back in the river? When we first owned this farm, you
23 caught beautiful fish. We had so many fish we didn't know what
24 to do with it. We kept it a live box in our creek.

25 We had fish so long -- most of you are too young to

1 remember what a drain tub is when you had a washing machine and
2 it was a ringer washer. We had fish so long that they could not
3 stretch out in these drain tubs. They had to curve their tail
4 around, they were that big.

5 Now I don't think -- Dad gave up fishing. They kept
6 a trout line in the river all the time, he and an elderly
7 gentleman. This old man we had a gravel driveway at times, and
8 we could hear him walking up and down the driveway waiting for
9 Dad to get up to come to the farm. They're both dead now. But
10 now you couldn't enjoy fishing like we did then anyway.

11 The place we used to tie up a boat is gone, and nice
12 gravel bars are gone. Are they going to put them back? That
13 can't be the only sand and gravel. It would be different if you
14 could turn around tomorrow and get rid of it. They're asking for
15 40 years, and in pencil on one of the permits they had written in
16 that they would not start doing any repairs until the end of the
17 permit.

18 They are putting -- I got a -- I don't know if I can
19 find it quickly. They are going to put, on a 4-acre tract,
20 overburden which is over 7 feet deep in about 35 acres square.
21 How are you going to put that on a 4-acre tract? Are you going
22 to stack it up 200 feet high?

23 I mean, the sentence in this permit don't make
24 sense. And I think the time has come when you work hard, save
25 your money, buy what you want, and then have someone come along

1 who has more power and more money and proceeds to take it away
2 from you.

3 Now, it may not happen tomorrow -- happen tomorrow,
4 but if this goes through, the first big flood we have is going to
5 do damage to my farm and perhaps to his farm also. It is
6 directly below mine. If you will look at the pictures and the
7 diagrams, you will see that the direct course from this floodway
8 goes right through the center of this 13-acre field, goes on into
9 a 15-acre field, goes on down below that into a -- another small
10 field, and in essence, it's going to totally ruin two river
11 bottom places.

12 And the way they are planning to do this doesn't
13 make sense, and why are they calling it the future home of the
14 company? Are they going to bring the sorter machinery over and
15 plant it on this farm?

16 CHAIRMAN UPCHURCH: Ma'am, we're not and
17 the record doesn't permit us to speculate on what future permits
18 may be requested. We're here about the permit that's before us.

19 MS. KELLER: If you go ahead and issue
20 this permit, which I strongly oppose, very strongly, --

21 CHAIRMAN UPCHURCH: That is noted.

22 MS. KELLER: -- I would appreciate it if
23 you would put some teeth in it. Give it some way to protect
24 ourselves. Don't let them have control because they will misuse
25 it like they did in the past. I don't know who manages the

1 company now, but I know that it drove my father wild.

2 There are other things, but I'm sure you have heard
3 enough. I'm sorry that I lost control.

4 Have you any questions of me?

5 CHAIRMAN UPCHURCH: We want to hear any
6 facts relevant that you want to offer.

7 MS. KELLER: Oh facts. In other words, I
8 may not be telling the truth?

9 CHAIRMAN UPCHURCH: No. Opinions and
10 pleas don't drive us. In fact, we are not permitted to permit or
11 not permit something because people whom we know or don't know
12 may be offended by it. It's for us to review the record and the
13 facts and circumstances, and in that regard, if you'll permit me,
14 a conditional use permit is by definition, and a lot of people
15 struggle with this, is a use that is permitted. So when they did
16 the original zoning map in Franklin County and this area was
17 zoned as it is, this was one of the operations that is permitted
18 as a conditional use permit in that area.

19 So that -- if you will, that political step --
20 because we do get this kind of issue that comes up with some
21 regularity -- that decision was made by the commissioner,
22 whomever makes that decision, when they created or modified the
23 zoning map. It was at that time when they made the zoning map
24 and -- and defined what were permitted and conditionally
25 permitted uses. It was at that time that this kind of operation

1 was declared to be permitted in this area but under a conditional
2 use permit.

3 But we're -- I want you to offer any other facts,
4 but pleas or old stories don't -- don't help me a whole lot with
5 regard to these facts and circumstances. But they may with
6 others, and -- and my point was, I don't wish to cut you off. If
7 you have more to offer, please do.

8 MS. KELLER: Have any of you seen the
9 river lately?

10 CHAIRMAN UPCHURCH: Ma'am, we're not here
11 for you to interrogate us. We're here for you to offer
12 testimony.

13 MS. KELLER: I -- I'm sorry. Is there
14 someone who would be in a position to have someone not -- okay.
15 Now, you've hurt my feelings, but -- and I may have hurt yours
16 back.

17 CHAIRMAN UPCHURCH: It's not intended to
18 be so. In fact, my purpose was to make sure that you --

19 MS. KELLER: Well --

20 CHAIRMAN UPCHURCH: -- completed because
21 you indicated you were going to quit rather than to complete.

22 My point was and remains, if you have facts which
23 you haven't gotten to, we want those to be included in the
24 record.

25 MS. KELLER: Is there anyone who can

1 inspect what has become of the river in the last 30 years?

2 CHAIRMAN UPCHURCH: Ma'am, we're not here
3 to be inspectors or have requests made of us. That's -- that's
4 not our purpose.

5 MS. KELLER: Can you refer me to someone?

6 CHAIRMAN UPCHURCH: No, ma'am, we cannot.
7 We're here to receive testimony and exhibits with regard to the
8 appeal. That's the only -- that's the only authority we have.

9 MS. KELLER: Is it permissible to
10 contaminate the water?

11 CHAIRMAN UPCHURCH: Ma'am, we're not here
12 to answer questions.

13 MS. KELLER: Oh, you can't answer a
14 question.

15 CHAIRMAN UPCHURCH: We're here to receive
16 testimony. So for the third time, I'm giving you that
17 opportunity.

18 MS. KELLER: Okay. Forget it.

19 CHAIRMAN UPCHURCH: Is there someone else
20 here that wishes to be heard on behalf of the Applicant? Would
21 you please step forward and sign in and be sworn.

22 (Off-the-record comments.

23 Thereupon, the witness was sworn.)

24 MS. REPORTER: Please state your name for
25 the record.

1 MR. KOEBEL: Cliff Koebel.

2 CHAIRMAN UPCHURCH: I missed that first
3 name.

4 MR. KOEBEL: Cliff.

5 CHAIRMAN UPCHURCH: Cliff.

6 MR. KOEBEL: I have property, a home, at
7 236 River Haven Bluff Drive. It was just between Mrs. Keller's
8 that you see and Russ that was up here earlier. I'm the second
9 property downriver from the proposed mining site.

10 I do have a question to clarification. It's my
11 understanding does the Committee vote tonight whether to overturn
12 the -- this or not?

13 CHAIRMAN UPCHURCH: Again, we're really
14 not here to answer your questions, but we usually discuss and
15 enter a decision the night of the matter.

16 MR. KOEBEL: You do, okay.

17 CHAIRMAN UPCHURCH: Procedure.

18 MR. KOEBEL: Also do you -- and you also
19 will vote to modify as well, correct?

20 CHAIRMAN UPCHURCH: We have that power.

21 MR. KOEBEL: Okay. Do you have the
22 November '14, the original CPU -- the C -- Conditional Use Permit
23 meeting of November '14? Do you have all that information?

24 CHAIRMAN UPCHURCH: We have a packet that
25 was submitted to us.

1 MR. KOEBEL: Okay.

2 CHAIRMAN UPCHURCH: And again, I'm not the
3 applicant. So we have what was submitted to us.

4 MR. KOEBEL: My question was whether I
5 needed to submit it again is the reason I'm asking or if you've
6 already reviewed it.

7 MS. EAGAN: Everything from the Planning
8 and Zoning meeting was submitted to the Board of Zoning
9 Adjustments.

10 MR. KOEBEL: Okay. So you -- you have
11 that information. A lot of that -- the reason I'm bringing it
12 up, a lot of that was regarding flooding issues. You heard a lot
13 of that tonight already. I'm not going to rehash that. That is
14 also a very big concern of mine, the land downriver from that.

15 CHAIRMAN UPCHURCH: You can -- I mean, you
16 have the floor. So --

17 MR. KOEBEL: I'd rather have them give you
18 copies. There's five of them here.

19 CHAIRMAN UPCHURCH: If that's from the
20 exhibit, we already have it.

21 MR. KOEBEL: It is what you already have.
22 So --

23 CHAIRMAN UPCHURCH: Okay. We have the
24 packet right here. We bring it with us.

25 MR. KOEBEL: All right.

1 CHAIRMAN UPCHURCH: It's included in the
2 record.

3 MR. KOEBEL: Anyway, so I'm not going to
4 rehash that issue. I also have the very concern -- same concerns
5 the others did here. I do want to clear up the point of noise.

6 Now, in the statement from Haven's own engineer that
7 they brought to say for the original Conditional Use Permit
8 meeting, they stated that their machine, they had statements in
9 the public hearing written notice that, from the testimony from
10 the previous meeting.

11 Safety Associates' Certified Safety Consultant
12 tested and measured the decibel noise of the machine at the
13 machine. It was 112 decibel rating.

14 Apparently they did some calculation and said a
15 hundred feet away, it's 73 decibel rating, which is supposed to
16 be roughly the property boundary from anywhere they'd be working.
17 Okay.

18 I do want to submit -- these are decibel loudness
19 comparison charts, the different levels and how they affect
20 hearing and so forth. One -- one of the things that I was --

21 CHAIRMAN UPCHURCH: If that -- if that
22 wasn't included in the record --

23 MR. KOEBEL: It was not.

24 CHAIRMAN UPCHURCH: Then I'm going to
25 suggest that we are going to take a break and not talk for a

1 moment, and we're going to let the reporter mark that as an
2 exhibit.

3 MR. KOEBEL: Okay.

4 (Thereupon, evidence was marked for
5 identification and submitted for the
6 record as Koebel Exhibit A.)

7 CHAIRMAN UPCHURCH: We'll receive that and
8 it appears to be generated by a Galen Carroll Audio. I don't
9 know who they are. It has been marked as Exhibit A, and it bears
10 your name Koebel. K-O-E-B-E-L?

11 MR. KOEBEL: Correct.

12 CHAIRMAN UPCHURCH: Okay. We'll put that
13 -- include that in the record.

14 MR. KOEBEL: It -- it's -- obviously I
15 prefer they didn't approve the Conditional Use Permit, but they
16 have. And don't know if you're going to vote it down tonight or
17 not. If they do, I -- you know, I was definitely very
18 disappointed in the fact there was very limited restrictions put
19 on this whole development. This is a major long-term operation.
20 It's not going to be for a year or less.

21 You know, if that was the case, it probably wouldn't
22 be such a big issue, but when you're going to have something of
23 this magnitude and noise level going on in your backyard,
24 practically, for the next -- they say it's 10 years, but it's
25 going to take them 20 to 30 at least to do this site. Then it's

1 going to be back in 10 years extending it. The original proposal
2 was to be for 20 to 25 years.

3 And the rate of taking out the material doesn't add
4 up to the 10 years either, but in any case, if you look at this
5 chart, 112, 115 decibels is a loud rock concert, roughly in the
6 neighborhood of all of us who have homes in the area.

7 And if you -- and anybody that's familiar with river
8 bottom and bluffs around you, that sound transmits worse than it
9 does in just any typical situation. It reverberates down there.
10 I can hear people across the way talking on the golf course.

11 So -- and if you look at 112 decibels, that's
12 above, you know, a hearing loss -- it's a consistent hearing loss
13 issue. This is going to be a six- to eight-hour machine running
14 on a five-day-a-week basis.

15 They say it goes down to 73 once it gets a hundred
16 foot away. If you are going to approve this, I would recommend,
17 strongly recommend, that you put a sound limit of say 80 decibels
18 at the property boundary based on their own calculations. That
19 shouldn't be an issue.

20 That way if they exceed or get too much noise level
21 for the community, we have something to come back and say look,
22 you guys are running this machine. It's causing too much issues
23 for all the neighbors. Right now we have nothing. I mean, so
24 that would be my, you know, documentation. I think even OSHA, if
25 you look at the OSHA standards, 90 was the limit for long-term

1 noise. And if you go to St. Louis County or other communities,
2 they have in their ordinances noise limits that are among the --
3 that level for long -- for things that are long periods of time,
4 two hours, four hours, six hours, eight hours on a daily basis.

5 So I strongly think it's a fair -- fair thing to
6 ask, if this thing is approved, that by their own standards just
7 ask them to put -- you state it and say that's a restriction for
8 those of us in the community.

9 And one other restriction that I thought was -- that
10 I don't believe was applied or much of -- like I said, I don't
11 think there was really on it was the trucking of materials from
12 the Miller's site.

13 That was a big issue in previous mills they've done,
14 and I know that they run trucks up and down that road, K -- K
15 Highway. They say they're not going to do it, but I haven't seen
16 any restrictions that say that they can't do it. They say
17 they're going to put a pipe across, but what's to say if that
18 pipe clogs up, they decide a year from now they're not going to
19 do it and they just start hauling trucks up and down Virginia
20 Mine Roads and Highway K for the next 10 years, and I don't think
21 the County would not want that to happen as well.

22 So that would be another item that I think should be
23 looked at as a modification.

24 And I think that's all I have.

25 CHAIRMAN UPCHURCH: Other questions of

1 this witness? (None.)

2 Thank you. And just so we're clear, we've received
3 your Exhibit A. It'll be part of the record.

4 MR. KOEBEL: Thank you.

5 CHAIRMAN UPCHURCH: Is there anyone else
6 here to be heard on behalf of the Applicant? Step forward, sign
7 in, and be sworn.

8 (Thereupon, the witness was sworn.)

9 MS. REPORTER: And state your name for the
10 record, please.

11 MR. TUCKER: William Tucker. I found that
12 interesting. Just a real quick thing.

13 In the previous meeting -- this is going totally
14 different than the last one, in my opinion. But at the last
15 meeting, they -- I think that Haven's or Meramec Aggregate
16 misrepresented some things to the Board.

17 One of them being that they had a wastewater permit.
18 Okay. It's public record. It wasn't applied for until the
19 following day after this meeting.

20 A lot of the other permits have not been granted as
21 well that were in there. I'm not prepared -- I didn't give you a
22 thing for that, but I'm not here for that either.

23 I did submit this in my original. It's in there,
24 and I'd like for somebody to take a look at that for the fact
25 that this is the -- a previous lake that they have done on the

1 river. It's called the Little Piney. All right.

2 In there it shows -- now, these pictures are from
3 Google Earth, and you -- Google Earth is a neat thing because it
4 can take you back over time and show you what the effects are of
5 putting -- yes, sir.

6 It'll be marked 1, 2, 3 and 4.

7 MEMBER GREEN: I have one about a quarter
8 of the way through the packet.

9 MR. TUCKER: All right. And in there
10 there's a thin red line. Okay. That red line does not change in
11 length. You can mark it out like that on Google Earth, and you
12 can take it through the years. All right.

13 If you go through the years on that, it takes it all
14 the way -- I forget what the buffer -- original buffer was. It
15 was like a hundred feet or 175 feet is what it was from the river
16 originally.

17 As of the last photo by Google Earth, it's down to
18 less than 50 feet. All right. And just what Scottie had alluded
19 to in the previous thing. When you put something like this this
20 close to the river, the river's going to migrate towards it
21 because it's a weaker spot. Okay.

22 Some things that have not been taken into
23 consideration is that Meramec Aggregate has weakened the
24 ecosystem of the river by dredging it on the opposite side. Now
25 you're going to put a dredge a hundred feet away on the other

1 side. It's not rocket science. It'll -- it'll migrate that way.

2 And I own -- I own one of the club -- one of the
3 river houses out there up in the corner, and my -- my biggest
4 concern is that our property is going to become unusable. When
5 he river cuts in behind, it migrates that way.

6 Just -- that's what everybody's concern is here. If
7 it -- if we didn't have those concerns, we wouldn't be here. We
8 wouldn't have this discussion.

9 The other thing is is property value. I believe I
10 submitted this. Picture of --

11 CHAIRMAN UPCHURCH: You did.

12 MR. TUCKER: Picture of the dredge.

13 CHAIRMAN UPCHURCH: You did.

14 MR. TUCKER: Okay.

15 CHAIRMAN UPCHURCH: I recognize it.

16 MR. TUCKER: Okay. This is not something
17 that you want next to your house. If it was, it would depreciate
18 your value of your home, correct? I'm just -- I'm just -- it's a
19 statement. I'm sorry.

20 And this is a -- these are pictures of -- I don't
21 know if I submitted these the last time. I know I've submitted
22 them in the past. This has been going on for so long that -- but
23 these are of -- of the pit, open pit, up at Eureka. Okay.

24 These -- these are things that are not going to
25 enhance our property value. That -- you know, that is being

1 said, the CUP has already been approved. Okay. We're -- we're
2 here -- I guess we're here to discuss if it can be reverted or if
3 there needs to be modifications. I would hope that this Board
4 will do some modifications because as of what I've seen so far,
5 there is -- there is no -- there's nothing in there on screening
6 to our properties. There's nothing in there about the tree
7 boundaries.

8 The -- you know, like the gentleman before me said,
9 there's nothing in there that states that they have to pipe it
10 under the river, that there will be -- there's nothing in the
11 permit that -- and the CUP that's granted by this Board that
12 states they have -- they can't haul it. There -- I mean, there's
13 a -- there's a lot of -- lot of stuff unsaid in this CUP. I
14 mean, I -- Conditional Use Permit, okay.

15 It's a Conditional Use Permit. I see no conditions.
16 They have an open gate. Okay. As far as our road into our
17 facility, we all get together and maintain it the best we can
18 right now. Okay. What -- where are we going to get compensated
19 for their use of the road? There's nothing in the CUP about
20 that.

21 I would like to -- I mean, my -- my suggestion would
22 be that they don't remove any of the trees because that helps
23 with erosion.

24 CHAIRMAN UPCHURCH: You've sort of asked
25 some questions, and I -- I'm going to --

1 MR. TUCKER: Excuse me?

2 CHAIRMAN UPCHURCH: I'm going to kind of
3 violate my -- my earlier statement a little bit but just to
4 remove some -- some smoke of doubt in the room.

5 MR. TUCKER: Okay.

6 CHAIRMAN UPCHURCH: One, we don't answer
7 questions here.

8 MR. TUCKER: I understand. I -- I kept
9 going.

10 CHAIRMAN UPCHURCH: But what -- what a lot
11 of people who -- who come before this Board don't realize is,
12 again, our focus is -- is pretty finite with regard to what we --
13 we can do. With regard to roads and road maintenance, and that
14 comes up pretty often in stuff that comes before us, we are not
15 empowered to -- to change, obligate or relieve obligations with
16 regard to roads and road maintenance. And that's a regular issue
17 that comes before us.

18 MR. TUCKER: Okay.

19 CHAIRMAN UPCHURCH: We don't -- we -- we
20 don't have the power to do that. Conversely, it's my belief with
21 or without a permit, if there is a road problem, that's for the
22 lawyers and the other people to figure out.

23 What we do here doesn't create or permit easements,
24 et cetera. And again, that's a pretty common issue that comes
25 before us. So in terms of road maintenance and costs and the

1 like, that's -- that's nothing that we have control over.

2 MR. TUCKER: Okay. H'm. Then -- I've
3 lost my train of thought a little bit, but --

4 CHAIRMAN UPCHURCH: That's okay. Take
5 your time.

6 MR. TUCKER: And so there -- there's going
7 to be no -- I mean, there's nothing put on this -- this
8 Conditional Use Permit. There's -- it's called a Conditional Use
9 Permit. I would think there would be conditions on it.

10 CHAIRMAN UPCHURCH: And -- and that is --
11 that is true, and that's something this Board can consider.

12 MR. TUCKER: Yeah. I mean, there isn't
13 even -- I don't see a performance bond either. I mean, I would
14 like to see a performance bond for that they're going to restore
15 it back to what they say they're going to do.

16 With these pictures here, these are pictures of a
17 lake that they did. But what -- and that's one of my concerns is
18 it's okay. It doesn't happen this year, it don't happen next
19 year, but 10 years from now when it's my daughter's place, okay,
20 and this erosion happens. I've already talked to the Department
21 of Natural Resources about it.

22 Once they are done with their final inspection, they
23 are done. Whatever damage is caused by that facility, too bad.

24 So where we got to stop it at now is we got to put
25 conditions on it here in order to prevent that from happening

1 down the road.

2 And I would hope the Board would take a look at that
3 and please. That's all I got. Thanks, guys.

4 CHAIRMAN UPCHURCH: Hang on.

5 MR. TUCKER: I'm sorry.

6 CHAIRMAN UPCHURCH: Are there any
7 questions of this witness? (None.)

8 Thank you.

9 MR. TUCKER: Thank you.

10 CHAIRMAN UPCHURCH: Are there other
11 persons to be heard in support of the Applicant? Don't see
12 anybody else moving. We do permit rebuttal. Rebuttal isn't
13 repeat. So at this time, we'll close the Applicant's
14 presentation.

15 And is there anyone to be heard in response to the
16 Applicant's position? Step forward, sign in, and be sworn.

17 (Thereupon, the witness was sworn.)

18 MS. REPORTER: State your name for the
19 record, please.

20 MR. LUEKEN: My name is Cameron Lueken
21 with Wonderlick Survey Engineering.

22 Okay. So the -- okay. So the history of this
23 application goes back to an initial P&Z meeting. At that P&Z
24 meeting, at that original P&Z meeting, we made about an hour and
25 a half presentation, PowerPoint presentation, to the Board at

1 that time. And gave testimony for the operations and sequence,
2 mining plan for all that, and I understand that that's in your
3 packet tonight. Is that -- I guess you guys have all received
4 that, correct?

5 CHAIRMAN UPCHURCH: Yeah.

6 MR. LUEKEN: So I guess to save us an hour
7 and a half, I'm not going to present that again because I'm sure
8 you guys have all reviewed that.

9 CHAIRMAN UPCHURCH: I've look at it, but
10 please just for the benefit of those who haven't, if you want to
11 just kind of summarize and hit the high points so we all know
12 what we're talking about.

13 MR. LUEKEN: Okay. At the initial Review
14 Committee -- or I'm sorry. At the initial P&Z meeting, the
15 permitting process for a gravel facility, gravel extraction
16 facility such as this is regulated by the federal, the state and
17 local agencies. And there was much confusion about that. And so
18 we made a flow chart, which is in your packet. That gave all of
19 the entities that are involved in this process.

20 We also included all the numbers there for anyone to
21 call any of the permitting agencies so they could understand the
22 process. We presented that at the Planning and Zoning Commission
23 meeting, and basically identified the need for this process,
24 who's going to be doing it, how we're going to be doing it, and
25 we hashed that over that in that period.

1 I guess, let me step ahead, and I'll step back if I
2 need to, Gordon. But from that initial presentation that, then
3 went to a Review Committee process. We've met with the Review
4 Committee to further answer questions about this process and
5 speak about the conditions that the -- the tank conditions that
6 were placed on the permit itself.

7 It then went back to the Planning and Zoning
8 Commission. It was further discussed, and you know, I've -- at
9 that Planning and Zoning meeting, I -- from my recollection, they
10 modified and strengthened a few of the points the Review
11 Committee had. And then at that second meeting, they voted
12 unanimously to approve that. Nine of the members voted
13 unanimously to approve it.

14 And you know, basically there's been testimony that
15 said well, what's the -- you know, some of the questions about
16 it, and it's -- it could be confusing to someone that's not
17 familiar with it. But as of number 7 on the CU- -- as in number
18 7, the decision of record, you know, it says mining operation
19 shall be done in accordance -- the mining operation shall be done
20 according to the operation plan and operation sequence slides
21 presented at the public hearing. On and on and on it talks about
22 that.

23 So I guess my point is, is that this facility was
24 looked at at great length by Franklin County Planning and Zoning
25 Commission. Then the conditions were placed on it such and it's

1 further going to be looked at because we have to obtain all the
2 state and local and federal permits to get this -- before we can
3 turn any dirt.

4 So I guess with that being said, some of the things
5 that are discussed as far as technical issues, as far as the
6 technical aspects of the plan, you know, are probably beyond the
7 scope of what this application is for, you might say.

8 So I guess in a nutshell in summary, I don't want to
9 take any more of your time than you feel I need to.

10 CHAIRMAN UPCHURCH: Well, Cam, I'll agree
11 with you in part, but I'm only one vote of five.

12 MR. LUEKEN: I understand.

13 CHAIRMAN UPCHURCH: I'll call you Cam
14 because you come before us a lot.

15 MR. LUEKEN: I understand.

16 CHAIRMAN UPCHURCH: No special treatment.

17 MR. LUEKEN: I understand.

18 CHAIRMAN UPCHURCH: In fact, I've probably
19 hurt your feelings a few times, probably will again.

20 MR. LUEKEN: I understand.

21 CHAIRMAN UPCHURCH: All right. But in
22 fairness, I understand there's a permit process here. So I
23 recognize, and I think everybody on the Board recognizes, that
24 there's -- there are a lot of steps and a lot of protections
25 written into the law with regard to federal and state laws that

1 are going to be complied with, and those are already, although
2 not spelled out, are already conditions.

3 MR. LUEKEN: Correct.

4 CHAIRMAN UPCHURCH: That having been said,
5 what my ears have heard this evening or a couple of things that I
6 don't see in those conditions which don't seem unreasonable. So
7 I'm going to ask you, the surveyor engineer, inasmuch as the plan
8 as I understand it from these materials is the -- is the product
9 would be piped from the facility. It wouldn't be trucked from
10 the facility.

11 MR. LUEKEN: That's correct, and -- and to
12 further expound on that, that's why I highlighted item 7, because
13 it has to be done within the operation sequence plan. The
14 operations sequence plan designates the pipeline has to be put
15 across the river.

16 CHAIRMAN UPCHURCH: So frankly if -- if
17 this Board were to add that as an express condition, that
18 wouldn't shock or offend you; in fact, in your part of the record
19 is that that's already a condition as you understand it. So this
20 -- if this Board were to approve this with that added condition,
21 to overstate my position, your feelings wouldn't be hurt?

22 MR. LUEKEN: Correct.

23 CHAIRMAN UPCHURCH: In addition to that
24 then, a special condition that -- that the product or aggregate
25 wouldn't be removed from the facility by truck, by road or

1 otherwise, as an added condition, that wouldn't offend you either
2 because it's not part of the -- the permit and the plan that's
3 already been submitted?

4 MR. LUEKEN: Correct.

5 CHAIRMAN UPCHURCH: Okay. With regard to,
6 if you will, the -- the buffer area, I see documentation on a
7 buff. Although there are people who testified that there wasn't
8 a buffer. So why don't you enlighten me while we're making this
9 record on what that buffer, which it appears in condition number
10 6, consists of which you acknowledge is already a condition on
11 what the original order was. I read a minimum of a hundred --
12 hundred-foot buffer.

13 MR. LUEKEN: Correct.

14 CHAIRMAN UPCHURCH: What do you
15 contemplate that buffer would be or would look like?

16 MR. LUEKEN: So that buffer is comprised
17 of -- if you can imagine a cross section, imagine my right hand
18 being the river, my left hand being the lake, the lake side you
19 might say. So that buffer would be from the mean water mark, the
20 water's edge, you might say, comprised of the existing bank and
21 existing vegetation, back up to the top of the slope of the
22 mining limits, you might say, back down to the water's edge.

23 So from basically mean water mark to mean water
24 mark, that will be comprised of the 200-foot buffer.

25 CHAIRMAN UPCHURCH: Actually it's a

1 hundred foot in the documents that we received.

2 MR. LUEKEN: Well, I guess what I'm saying
3 is -- is that -- okay. I'll correct that statement.

4 The mining operations will have a minimum hundred
5 buffer at all times during the operation. Okay. So that means
6 when they're extracting the product, that's the minimum buffer.

7 However, in the closing of that, once the operation
8 ceases in that section, then that's when the back slope is put
9 on, and it's going to widened to 200 feet totality.

10 So there will be a 200-foot buffer in totality.

11 CHAIRMAN UPCHURCH: What does a 200-foot
12 buffer look like when we've dug a hole in the water? And I'm
13 just trying to get my head around what these people have asked me
14 are a concern of theirs.

15 MR. LUEKEN: Sure.

16 CHAIRMAN UPCHURCH: And I'm not -- I'm not
17 seeing it right now. So help me see it.

18 MR. LUEKEN: Okay. Give me a minute. Let
19 me think about this.

20 CHAIRMAN UPCHURCH: Okay. I've put you on
21 the spot --

22 MR. LUEKEN: Let me try to figure out how
23 to explain this.

24 CHAIRMAN UPCHURCH: Okay. And -- and I --
25 I'll tell you while you think as I've told everybody and the

1 first one is a little offended, but I asked everybody sort of the
2 hard questions that I kind of want everybody because we're all
3 here to -- to know or understand. And I'd like for some of these
4 things to be included in the record so when we enter an order and
5 we rely on a record, that we have facts and circumstances in this
6 record which we're preserving here.

7 So that's the only reason I ask these questions, is
8 to avoid confusion.

9 MR. LUEKEN: I understand. So I told you
10 I needed a minute. So I came up with it. So I think the best
11 probably example of this buffer would be just east of McDonald's
12 north of 50. So when I know that most of you are old enough to
13 remember that on the northeast intersection of 47 north and 50
14 east and west, that was a field at one point in time.

15 And we worked with that property in order to raise
16 that field so we extracted the material out of the floodplain,
17 raised that area about 15, 20 feet, something like that to above
18 the flood elevation.

19 And if you remember, on the east side of that
20 facility, that's where they obtained the material to raise that
21 area. So it -- if you remember when it was being extracted, you
22 know, they maintained a buffer between there and the river on the
23 downstream side of that bridge.

24 Now if you can imagine that downstream of the
25 bridge, there's usually hydraulic junk in the water -- waterline.

1 So it'd be high and it would be low. So the water is coming out
2 of the bridge is going pretty fast, relatively speaking to other
3 parts of the river.

4 So I guess what I'm trying to parallel in your mind
5 is, is that that strip as it's even north of Highway 50 bridge,
6 that buffer will be similar to what will be put on this.

7 Does that -- does that make sense?

8 CHAIRMAN UPCHURCH: It helps some.

9 MR. LUEKEN: Okay.

10 CHAIRMAN UPCHURCH: But in terms of the
11 height of the buffer, et cetera, there's rally nothing that's
12 been specified.

13 MR. LUEKEN: Correct. It's just a natural
14 vege- -- just as it -- just as we've completed there, they
15 maintained the trees that were there, and now it's grown back up.
16 It's vegetated again. But that would be similar, except the
17 difference would be on this and this application, there'd be a
18 lake on the west bank.

19 CHAIRMAN UPCHURCH: And -- and already
20 included in the order with this Board doing nothing, is the fact
21 that there could be no forestation or vegetation or move within
22 that buffer?

23 MR. LUEKEN: Correct.

24 CHAIRMAN UPCHURCH: And to do so would be
25 a violation, which could be reported to the County?

1 MR. LUEKEN: Correct.

2 CHAIRMAN UPCHURCH: Okay. The other
3 question that I have is with regard to the -- the concerns for
4 the spillway from this area that's been described in the
5 testimony, but we've heard no technical expert. So I guess
6 you're -- you're the technical expert.

7 From my casual knowledge of this area of law, I
8 believe once you confine water, you have newer strict liability
9 for its conduct. So what liabilities do you think this operation
10 has for the spillway and any owners below you when you confined
11 and redirected that water?

12 MR. LUEKEN: So the spillway serves two
13 functions. Basically the first function it serves, is there's
14 about 240 acres -- don't hold me to that. I've forgot the actual
15 number -- that runs into this. So it would be -- it's basically
16 the -- from the ridge top down, that would control the elevation
17 on the lake. That's what -- that's one function of the spill
18 way.

19 The second function of the spillway is to let water
20 in before it reaches a greater hydraulic height to lessen the
21 erosive forces of the backwater coming.

22 Now, to answer you questions about the technical
23 aspects of that spillway, that has to be, it shall be, negotiated
24 with the Corps of Engineers. We cannot touch that bank and not
25 be in compliance with 404 permit and ultimately a 401 permit. So

1 that's what we had been working with the Corps of Engineers as a
2 condition of number 2 of this CUP.

3 CHAIRMAN UPCHURCH: So that would be part
4 of the -- the DNR permit process?

5 MR. LUEKEN: Correct.

6 CHAIRMAN UPCHURCH: And they're the ones
7 that would ultimately regulate that decision in terms of height
8 and location?

9 MR. LUEKEN: Correct.

10 CHAIRMAN UPCHURCH: Okay.

11 MEMBER RIDDER: DNR or the Corps?

12 MR. LUEKEN: Yeah, how it works, Carl, is
13 that the EPA charged the Corps of Engineers with the 404 -- the
14 -- that section of the Clean Water Act that -- the 404. So
15 basically the Corps of Engineers regulates that. So the
16 federals.

17 And then ultimately, DNR has to agree with the
18 Corps' determination that -- that -- that the 404 has been
19 satisfied, the conditions thereof, and then they issue a 401. So
20 it's both agencies, both the DNR and the Corps of Engineers has
21 to agree that that spillway would not adversely affect, you know,
22 species or tree bank or whatever.

23 CHAIRMAN UPCHURCH: I think that was the
24 extent of my questions, and I know I interrupted you early on.
25 So I apologize for that, which I seem to routinely do with you.

1 So I'll apologize one more time for doing it.

2 MR. LUEKEN: I'm -- I'm used to it.

3 CHAIRMAN UPCHURCH: Okay. We were both
4 getting used to this. Having said that, is there more that you
5 wanted to present to us before I sort of derailed you?

6 MR. LUEKEN: No, sir.

7 CHAIRMAN UPCHURCH: Okay. Hang on. Are
8 there other questions from the Board of this witness?

9 MEMBER WALKER: Yeah, I've got one, but I
10 don't know how to phrase it. I've been on the Meramec, but I've
11 been on the Bourbeuse more. But the Bourbeuse is becoming a
12 very, very shallow river because of sediment that has filled in
13 the deep holes. So during a flood, it seems to take out more
14 riverbank. Does a deep hole help prevent erosion of the banks,
15 or does it cause more problems with erosion of the banks?

16 MR. LUEKEN: Yeah, that's a -- that's a
17 dandy -- that's a dandy question, Bill. It's a hydraulics
18 question is what you're asking?

19 MEMBER WALKER: Yeah, it --

20 MR. LUEKEN: Yeah.

21 MEMBER WALKER: -- it really is.

22 MR. LUEKEN: Right.

23 MEMBER WALKER: And I know you're not a
24 hydraulic engineer.

25 MR. LUEKEN: Right.

1 MEMBER WALKER: But --

2 MR. LUEKEN: I will answer this. Okay.

3 If you can imagine just -- just imagine this. The closer an
4 object is to a moving object, the more friction it induces. So
5 -- so what's going to happen is, is that -- that hesitancy to
6 slow the water. So if you've got a -- if you've got a deep hole,
7 you got a deep hole, that whole water body is going to typically
8 move, right?

9 MEMBER WALKER: Uh-huh.

10 MR. LUEKEN: Whereas, if you've got a
11 shallow hole, the friction is higher in elevation. So that's
12 going to raise the elevation up, which then spreads the water out
13 theoretically. So I guess what I'm saying is, is that one could
14 deduce from that that height -- that removing sediment from the
15 river actually makes the -- how should I say this?

16 You know, in this case, the application is to get
17 out of the riv- -- in this case, we're coming out of the river
18 into a non-river area. So we're going to leave the sediment --
19 sediment there, you might say.

20 And so there's -- I don't want to -- there's a
21 hydraulic program called River -- it's called HRAS
22 (phonetically). Basically it's a river analysis system, and
23 you've got to look at -- when you look at the river velocities,
24 you got to look at this thing in totality. You know, a mile or
25 two upstream and a mile or two downstream is the point. So

1 probably for me to identify what would happen in this -- in this
2 area is -- is pre- -- is not right without analyzing it.

3 Now, I will say that this -- this area of the river
4 has already been analyzed using that computer program. There's
5 base flood elevations already determined. That means velocities
6 were already determined and were regulated by the -- were
7 regulated by the Floodplain Development permit that we cannot
8 fill in any part of the floodway, which is -- which is noted on
9 our operations sequence plan that we're not raising any area in
10 the floodway.

11 Which thereby, would not impact any velocity more
12 than what's permitted or been planned for in that study that's
13 already been done. So to -- to imply we're outside the box, I
14 know that Tori was here earlier, the floodplain administrator,
15 but Scottie can -- may or may not be able to, but basically if we
16 follow the regulations on the floodplain development permit,
17 which we have to get, you know, we don't need to do another study
18 to determine what's being -- what's happening to that water.

19 I don't know if I answered your question or not,
20 Bill, but I can't say -- I guess in summary, I think your
21 question was what happens with the gravel there or not there in
22 the river.

23 And I really can't say with -- without doing a
24 study, you know. I think it depends on the -- the width of --
25 well, I know it depends on the width of the river at the area

1 where -- where it's curving. You know, it depends on all those
2 things.

3 MEMBER WALKER: But the more they -- the
4 more the river fills in, the wider the river gets.

5 MR. LUEKEN: Let me help you. That would
6 be correct because the cross section area is raising.

7 MEMBER WALKER: Right. You got to move
8 the same amount of water through the same spot whether it's deep
9 or shallow.

10 MR. LUEKEN: Correct.

11 MEMBER WALKER: So -- okay.

12 CHAIRMAN UPCHURCH: Cam, a couple more
13 questions if you'll permit me.

14 There was some discussion about noise decibel
15 concerns. I do believe 80 -- 80 or 90 decibels is from what I've
16 heard over time is sort of an unhealthy level above that.

17 Is there anything currently in the plans with regard
18 to restricting decibels beyond the property line that you know
19 of?

20 MR. LUEKEN: No. No.

21 CHAIRMAN UPCHURCH: Okay. Would a
22 restriction of -- I think 90 decibels was thrown out, and I
23 realize I'm catching you cold on that, but it's -- it's been
24 brought up tonight. Would that r restriction at their property
25 line -- is that problematic? And again, I'm putting you on the

1 spot and if you can't give me the -- an answer on that, I'll
2 respect you for that. But is that problematic?

3 MR. LUEKEN: Eighty -- eighty decibels at
4 the property line I don't see as problematic.

5 CHAIRMAN UPCHURCH: Okay.

6 MS. EAGAN: Gordon, can I chime in real
7 quick?

8 CHAIRMAN UPCHURCH: Yes.

9 MS. EAGAN: That would be an issue for us.
10 We have no way to measure that.

11 CHAIRMAN UPCHURCH: Okay.

12 MS. EAGAN: So that's -- we don't have any
13 noise regulations in our regulations. We don't have any
14 equipment to measure that type of stuff.

15 CHAIRMAN UPCHURCH: Okay. So
16 unfortunately, it requires some effort.

17 MR. LUEKEN: Okay.

18 CHAIRMAN UPCHURCH: Also, Cam, just so
19 I -- I understand this, I presume -- then I'll ask rather than
20 presume that the DNR and the federal permitting no longer permit
21 gravel removal out of the, if you will, the main -- the main
22 river channel. I presume that's prohibited or -- or ultra
23 restrictive and that's why we're now doing extraction in the
24 bottom but not in the river channel?

25 MR. LUEKEN: It's -- it's accurate to say

1 that it is currently permitted, but it's also accurately (sic) to
2 say that it's being harder. They're -- it's more restrictive you
3 might say, you know, than it was 40 years ago.

4 CHAIRMAN UPCHURCH: Okay. So by design,
5 this operation wouldn't be in the channel barring flood waters?

6 MR. LUEKEN: Correct. This operation
7 would not be in direct contact with the water that's flowing
8 through there in a natural -- in a non-flood stage event.

9 CHAIRMAN UPCHURCH: I presumed that, but
10 didn't want to presume.

11 MR. LUEKEN: Okay.

12 CHAIRMAN UPCHURCH: Are there other
13 questions of this witness? And again, Cam, I interrupted you a
14 number of times. I apologize for that.

15 MR. LUEKEN: You're fine.

16 MS. KELLER: Sir?

17 CHAIRMAN UPCHURCH: Ma'am, you had your
18 opportunity.

19 MS. KELLER: I want --

20 CHAIRMAN UPCHURCH: Ma'am. Ma'am.

21 Is there anything more that you want to offer to us?

22 MR. LUEKEN: No, no.

23 CHAIRMAN UPCHURCH: Okay. Thank you.

24 Is there anyone else to be heard in opposition to
25 the application? And seeing no heads or hands, as I indicated

1 earlier, we do permit rebuttal, and rebuttal isn't repeat. So if
2 there's something to be offered in rebuttal to what was offered
3 by the opponent or the applicant, now is your opportunity.

4 MS. KELLER: May I ask --

5 CHAIRMAN UPCHURCH: Ma'am, you need to
6 step forward if you want to be heard.

7 MS. KELLER: All right.

8 CHAIRMAN UPCHURCH: You're still under
9 oath, and your name for the record.

10 MS. KELLER: Yes. Oh, you want it again?

11 CHAIRMAN UPCHURCH: Yes, ma'am. We're
12 trying to make a record here.

13 MS. KELLER: Okay.

14 CHAIRMAN UPCHURCH: No, no, just your name
15 for the record. You already signed in.

16 MS. KELLER: Joan Keller.

17 CHAIRMAN UPCHURCH: Thank you, ma'am.

18 MS. KELLER: I would just ask for a
19 clarification that was not brought up. Would someone, preferably
20 this gentleman, tell me where the collection point is of the
21 piped gravel.

22 CHAIRMAN UPCHURCH: Anything more than
23 that?

24 MS. KELLER: I just -- no.

25 CHAIRMAN UPCHURCH: Okay. Thank you.

1 And, Cam, I'm -- I'm going to ask you to come back
2 up and respond to that because that seems pretty reasonable, and
3 we don't usually do surrebuttal, but I thought that was a pretty
4 fair question.

5 MR. LUEKEN: Sure. So currently as was
6 stated before, there's not -- there is a dredging operation in
7 there now. And they current pump into a pump pit that's --

8 CHAIRMAN UPCHURCH: I didn't hear you.

9 MR. LUEKEN: Yeah. So there's a dredging
10 operation there now, and they current -- that dredge currently
11 pumps into a pump pit near -- it's on the north bank, the
12 opposite of this operation.

13 So if -- I don't have a laser pointer on me, but if
14 you turn around there. Nichole's got the aerial up. If you look
15 -- you see that yellow line that runs across there, the red --
16 the red line running north and south is a little -- well, that's
17 not even -- that's not even true actually. It's further to the
18 east, further to the southeast.

19 Can you -- can you pan to the southeast, Nichole,
20 for me, please. Keep going southeast, please. Just a little
21 further to give us a little bit of perspective. Yeah.

22 So right in here is -- this is the application.
23 Right here is the cabins, and this is the area of the dredging.
24 And this -- this series of roads is Meramec Aggregates, and the
25 bucket is right there. Is that -- is that correct, Lynn?

1 MR. LUEKEN: (Conferring.) Sorry I
2 misspoke. So this -- so if you can imagine as the dredge moves
3 down the river, they lengthen the -- it's a floating pipe,
4 floating plastic pipe. So as they come up, the plastic pipe it
5 just gets longer and they pump all the way back to here. So that
6 pit that is right here. Yeah. Now they see this.

7 So the pipeline that's supposed to be -- that's
8 going to take this gravel is going to run underneath the river
9 and discharge right there. So it's going to be the exact same --
10 exactly the same discharge point that it is today.

11 I forgot who asked that question.

12 MEMBER RIDDER: Where's the inlet for that
13 pipe, for the new operation?

14 MR. LUEKEN: Yeah, so the inlet, Carl --
15 so that -- the dredge is going to be operating here. That dredge
16 pumps it into the pipeline. That's the inlet. It's connected to
17 it, and it -- the dredge basically pumps it over to here.

18 CHAIRMAN UPCHURCH: Thank you. I -- I
19 will permit this with one of you. I -- I asked earlier, you --
20 we're not going to ping pong all night.

21 MR. G. MONK: Okay, but I just wanted to
22 ask how can they put a spillway in there if they can't move any
23 vegetation or forestry?

24 CHAIRMAN UPCHURCH: That's --

25 MR. G. MONK: It says so in about every

1 document I've got from over there. So they can't do either one
2 of them.

3 CHAIRMAN UPCHURCH: It'll -- it'll be
4 noted. And that's --

5 MR. G. MONK: It can be done?

6 CHAIRMAN UPCHURCH: Well, it's not -- it's
7 -- it's not rebuttal to what's gone on. Okay. We're not going
8 to spend all night for everybody to rethink. So that -- it's
9 noted.

10 MR. G. MONK: Okay.

11 CHAIRMAN UPCHURCH: With that, we're going
12 to close the receipt of evidence from both sides, and we will
13 open this up to discussion among the Board. I will start that
14 discussion.

15 With regard to what we have and received, we
16 received a voluminous packet, which I know and I believe all of
17 us have reviewed in part. We've also received a prior order that
18 contains numerous conditions and terms of numerous permits and
19 permitting that will be required. And although not spelled out
20 in that record from the prior activities of this Board, we know
21 that those permits from many actions that have been taken before
22 are very specific. And it's an arduous task for people to
23 comply, and it's expressly required under what has already been
24 done in compliance with those bodies and those permits be
25 provided.

1 I speak as only one member of the Board but with
2 regard to the concerns that were stated, that I believe may or
3 may not be addressed in that it would seem that a -- perhaps an
4 added condition that the operation having limited 80 decibels or
5 less at the border. We know that the County would have some
6 difficulty enforcing that. So it may require that some persons
7 or some agencies that do have decibel equipment be involved. So
8 there's -- there's a reason to and not to.

9 As I heard the testimony, the operation could comply
10 with that, but I also heard from the County that that may be
11 difficult in enforcement. I also heard from the people who are
12 here tonight that that is a concern of all of theirs, is the
13 amount of the noise. So I -- I'm just throwing out ideas at this
14 point in time to start the discussion among the Board.

15 In addition to that, it seems that a central concern
16 is the possibility of trucking aggregate from the site. And
17 inasmuch as it's been expressly represented here that the
18 aggregate would not be trucked now or at any time under the plan,
19 it seems that that may be an added condition which should sate
20 some of the concerns and it would -- it appears would not offend
21 or shock the original applicant.

22 In addition to that, there was the suggestion which
23 may or may not be included that the aggregate would be
24 transferred by piping and not by trucking. Again, the trucking
25 issue but from another issue, but it's seen to be a real dispute

1 in that.

2 So those were just three or four musings of mine.

3 Having said that, is there other discussion from other members
4 with regards to their thoughts, impressions, or concerns?

5 MEMBER WALKER: Well, I like -- yeah, I'm
6 glad you brought -- you brought up the same thing. I like that
7 80 db, and I know that the County is going to have trouble doing
8 it, but if it becomes ridiculous as far as sound, they can of
9 course always get somebody from outside the County to do it.

10 Now, the trucking. The one thing that I noticed on
11 the Conditional Use Permit was the hours of operation. It says
12 occasional Saturday hours. I'd like to see occasional Saturday
13 hours taken out of there. Make it a Monday through Friday
14 operation only.

15 MEMBER RIDDER: Number 3?

16 MEMBER WALKER: Yes, that's on number 3.

17 MEMBER SHAW: Yes.

18 CHAIRMAN UPCHURCH: Part 3.

19 MEMBER SHAW: Yeah, what is occasional
20 Saturdays?

21 MEMBER WALKER: Well, see that's just it.
22 You could go -- you could go March through October and then
23 November, December, January, and February could be occasional
24 Saturdays that you don't work. So, you know, there's too many
25 ways to interpret that. So just not have it operate on

1 Saturdays.

2 CHAIRMAN UPCHURCH: Other thoughts or
3 impressions?

4 MS. EAGAN: I realized when I wrote this
5 condition number 6 wasn't as clear as what I thought it was.
6 When it says the mining operation shall have a minimum of a
7 hundred foot buffer at all times during the operation, I meant
8 from the river to the mining operation. That doesn't clearly
9 state in that condition.

10 So I'd recommend that we make that more clear in
11 condition 6 if you guys are choosing to modify this permit.

12 And I still have reservations about making a
13 condition with decibels. I don't know who we'd get to measure
14 it. I don't know who would pay for that cost. It's something I
15 don't budget for, and if I don't budget for it, I can't pay for
16 it.

17 (Off-the-record comment.)

18 MEMBER RIDDER: Hundred-foot buffer from
19 the river? What about the neighbors up and down?

20 MS. EAGAN: Per the plan, if you go to
21 Article -- or condition 7, it says it has to be done with the
22 operations plan and operation sequence. And on that plan, it was
23 a 50-foot buffer on the west, I believe, and a 75-foot buffer on
24 the east per that slide.

25 So that's what that plan shows. If you guys want to

1 modify that, we can add it to 6 or make it another condition.

2 MEMBER RIDDER: Why more on the east side
3 than the --

4 MS. EAGAN: That's just what they were
5 saying.

6 MEMBER RIDDER: -- than on the downstream
7 side?

8 MS. EAGAN: That's just what the plan
9 showed when they -- when they presented it.

10 MEMBER RIDDER: It seems to me it'd be
11 more reasonable to have a wider buffer on the downstream side.

12 MS. EAGAN: And I am mistaken. It was a
13 hundred foot on the east and fifty feet on the west.

14 CHAIRMAN UPCHURCH: Scottie, humor me and
15 tell me east and west doesn't tell me, but upstream and
16 downstream tells me something. So --

17 MS. EAGAN: I -- I believe the 50 feet is
18 -- I don't know. To me it seems like it should be upstream, but
19 I think it's downstream because it's north. So downstream is 50
20 feet. Upstream is a hundred feet.

21 CHAIRMAN UPCHURCH: Okay.

22 MEMBER GREEN: Personally I wouldn't see a
23 hundred feet on all -- all sides.

24 MEMBER SHAW: All sides?

25 MEMBER RIDDER: Well, I don't know about

1 all sides, but at least the downstream side.

2 MEMBER WALKER: I don't know. Make a
3 motion.

4 CHAIRMAN UPCHURCH: Cam, step up to the
5 mic for a minute, and -- and this is out of -- out of order, but
6 we -- we try to do these things somewhat informally and give
7 everybody an opportunity to be heard. So I'm just going to --
8 I'm bringing you back up here. You're still under oath.

9 And I'm just going to ask you pointblank.

10 If this Board were to modify that plan and create a
11 hundred-foot border from river or adjoining owners, and I'm
12 catching you cold, but I'm giving you -- I'm giving you this
13 opportunity rather than have this Board just, you know -- permit
14 us the courtesy as we try to permit everybody who comes before
15 us.

16 I realize that isn't ideal. Tell me, if we were to
17 do that, what is -- why that would be completely unacceptable.

18 MR. LUEKEN: Sure. So let's start first
19 with how decided the buffer. If you can imagine that -- well,
20 there was testimony given by the Applicant tonight that they were
21 concerned about their upstream eastern slope being eroded by the
22 river as it came through from upstream to downstream, from east
23 to west.

24 CHAIRMAN UPCHURCH: There was testimony to
25 that fact.

1 MR. LUEKEN: So thereby, when the -- when
2 the river -- when the -- when the river water would flood this
3 lake at some point, it's going to be traveling theoretically down
4 a slope. You know, we had the spillway to mitigate that
5 hydraulic difference. So as you're here, the spillway brings it
6 to here, but still the water would migrate over the upstream
7 slope. So the hundred-foot buffer was chosen to help sustain the
8 vegetation and maintain that wider upstream slope.

9 The reason why it wasn't chosen downstream is
10 because, once it enters this large lake, you know, it's not
11 running as fast nor spread open. It's basically what it is
12 today, and theoretically, the water has to run back up an
13 elevation. So thereby, it's going to be decreased.

14 The scour is going to occur on the upstream or the
15 downstream -- I'm sorry. Let me back up. The scour is going to
16 occur on the upstream bank rather than the downstream bank in
17 this case. That's where the larger hydraulic difference is going
18 to be. So thereby, we chose the larger buffer upstream.

19 It also obviously the need for this is that the
20 extraction of sand and gravel benefits the citizens of Franklin
21 County. So it's an economy to scale thing. Meaning that, yeah,
22 fifty to a hundred feet doesn't sound like much of a problem, but
23 you just by saying that costs the original applicant, you know,
24 the extractability of that. You know, we're talking thousands of
25 tons of gravel. So the impact there is significant.

1 So we -- what we tried to do is, in the original
2 application, we tried to balance the needs of the owners
3 adjoining the property with the economy of scale providing a
4 needed aggregate to the citizens.

5 CHAIRMAN UPCHURCH: Okay.

6 MR. LUEKEN: Does that answer your
7 question?

8 CHAIRMAN UPCHURCH: It -- it does. But
9 just so I'm clear, we're talking about a hundred feet on that 30
10 yards, football field.

11 MR. LUEKEN: Thirty-three yards, correct.

12 CHAIRMAN UPCHURCH: Yeah. And we're
13 actually a tract here under the permit process of a 123 acres?

14 MR. LUEKEN: The tract is 123 acres, but
15 only 60 acres, if my memory is right, is subject to this mining
16 operations plan.

17 MS. EAGAN: Yes. Correct.

18 CHAIRMAN UPCHURCH: Okay. Thank you.

19 Is there further discussion among the Board?

20 MEMBER SHAW: I was able -- I was able to
21 go out and walk the site from one end to the other. And it just
22 appeared to me that with the dredging and what I've seen it do in
23 other parts of the Meramec River or Valley Park. I'm very
24 familiar with that area.

25 It's almost as if those five cottages -- I think

1 there are five. It's as if with a flood, they literally become
2 an island. I mean, you can just exactly see where it's going to
3 go. And I -- that really -- I know you live on the river. These
4 things happen, but I -- I just was very uncomfortable with that
5 and with the roadway situation and the trucking.

6 You know, that's -- it's kind of a dead-end lane
7 kind of thing there, and just to be clear, this 60 acres that
8 they want to use they do not own. They have permission to use
9 that, the Miller property? Is that correct? No?

10 CHAIRMAN UPCHURCH: Don't know or that's
11 not part of the --

12 MEMBER RIDDER: It's not referred to as
13 the Miller property.

14 CHAIRMAN UPCHURCH: Yeah.

15 MEMBER SHAW: So they paid a dollar for
16 this property or this 60 acres?

17 CHAIRMAN UPCHURCH: Deeds will always say
18 a dollar and other consideration because it's no one's business
19 on the public record what they paid for the property.

20 MEMBER SHAW: Okay. Thank you. Thanks,
21 Carl.

22 CHAIRMAN UPCHURCH: Other discussion? I'm
23 going to throw out a suggestion, and it's intended to just be
24 that to sort of continue to move this forward.

25 I'm going to suggest that -- and I'll make this in

1 the form of a motion intended again just to move us forward --
2 that we approve the underlying order or permit but with added
3 conditions to include the removal from number 3 of the occasional
4 Saturdays in terms of hours of operation; that a buffer from
5 river and all adjacent properties of a hundred feet be
6 incorporated into item 6; that problematic as it may be for the
7 County and for enforcement which can explore it at a later time
8 and perhaps may require some expense to those complaining to
9 defray the cost of an expert, and I'm not weighing in on that,
10 but that a 80 decibel noise restriction at the property line be
11 added as another added condition of the operation; that the
12 operation -- the Conditional Use Permit be expressly conditioned
13 upon the added condition that no aggregate will be trucked from
14 the site; stated differently but stated just the same that the
15 aggregate generated from the site will be transported via piping
16 per the plans that were submitted.

17 And I think that's the extent of my suggested
18 conditions, which I make in the term -- in the form of a motion.

19 Is there discussion or a second on that motion or
20 amendments to the motion?

21 MEMBER GREEN: I just have a little motion
22 discussion. Scottie, is there anything, and I know we're kind of
23 constricted, yet we do have some minor latitude here, a condition
24 to require payment of some audio expert on those -- those holding
25 the Conditional Use Permit?

1 MS. EAGAN: My only concern with that, and
2 Nichole brought it up to me, was that if we got a witness report
3 every week from the neighbors, every week they're going to be
4 paying for this expert to go out and -- and measure that.

5 So that's why I have such an issue with putting that
6 as a condition, because we literally have no way to check it, and
7 I don't know how much I can stress that to you guys. I have no
8 way to check it. I would put the burden on the person
9 complaining. If they turned in a witness report that says
10 they're above the 80 decibels, I would put that burden on -- on
11 the person complaining to pay for that expert to go out, because
12 I don't think it's fair to put it on -- in this situation, I
13 don't think it's fair to put it on Meramec Aggregates because
14 that just gives the citizens the oomph to file a witness report
15 every day or every week.

16 MEMBER WALKER: I think Gordon put that in
17 the motion.

18 CHAIRMAN UPCHURCH: Well, I -- I danced
19 around that, and the reason that I danced around it, Scottie, you
20 were kind of enough as you are in these to indicate the County
21 does not have that resource available.

22 MEMBER WALKER: All right.

23 CHAIRMAN UPCHURCH: I know they are
24 available and I know that it bears some expense, and at a
25 minimum, my motion would indicate that that may, I guess to the

1 extent the County has that resource, I would expect the County to
2 -- to bear that cost. But if they don't, my motion implied and I
3 would ask that it be included when this is typed up that if that
4 resource is not available to the County, then that might be the
5 obligation of -- of the complainant of the violation.

6 Likewise, I don't want to state that as a condition
7 of the complainant, but just to the extent that the County, for
8 whatever reason, would -- would obtain those services, then
9 logically I would expect that to be borne by the County.

10 Other discussion or suggestions or amendments to the
11 motion?

12 MEMBER WALKER: I think Josh seconded it.

13 MEMBER GREEN: No, I didn't.

14 MEMBER WALKER: Didn't you?

15 MEMBER SHAW: Let's be careful about that
16 because --

17 MEMBER GREEN: Once we do it, we're stuck.

18 CHAIRMAN UPCHURCH: Well, yes -- yes and
19 no. We -- as we're mumbling back and forth up here, just to --
20 there's a quark in the laws which we've stumbled through which,
21 for reasons that -- that mystify us with regard to these
22 applications, if we make and do not ultimately pass amendments,
23 as currently written and is still written, we're then obligated
24 to make a motion as currently written, a motion to approve the --
25 the original application with no amendment. Which doesn't make a

1 whole lot of sense, but that's what's on the books, and we
2 thought -- we being I, thought that had been addressed. But it
3 hasn't yet. So bear with us here. We're just trying not to have
4 something happen that would surprise even us, which has happened
5 in the past.

6 Is there present discussion on the proposed --
7 discussion or amendments?

8 MEMBER GREEN: I have one more for you,
9 Scottie.

10 Condition 9 of the Conditional Use Permit has it
11 expire after one year as per the section such that the reasoning
12 behind an operation the time required to obtain approval from
13 applicable county, state and federal agencies. That's pretty
14 much implying that they also do not begin mining for --

15 MS. EAGAN: They -- they can't begin
16 mining until they meet all these conditions.

17 MEMBER GREEN: Just wanted to make sure.

18 CHAIRMAN UPCHURCH: So to remove any
19 doubt, --

20 MEMBER GREEN: Right.

21 CHAIRMAN UPCHURCH: -- are you offering an
22 amendment to the --

23 MEMBER GREEN: No.

24 CHAIRMAN UPCHURCH: -- proposed motion?

25 Then I'll do so. I'll add to my motion. Again, we try to do

1 these a little informally as opposed to getting too caught up in
2 formality. That based upon these concerns we just talked about
3 that operations expressly can't be initiated until compliance
4 with all the permits referenced in the earlier order are
5 obtained, not applied for but obtained.

6 So I amend my motion to include that additional
7 condition.

8 Is there further discussion, thoughts, amendments?

9 MEMBER RIDDER: I can live with that.

10 CHAIRMAN UPCHURCH: If nobody's speaking
11 up, I'm looking for a second.

12 MEMBER RIDDER: I'll do that.

13 CHAIRMAN UPCHURCH: Okay. Board Member
14 Ridder seconds my motion. If there's no further discussion,
15 Scottie, would you call that for a vote.

16 MS. EAGAN: Carl Ridder?

17 MEMBER RIDDER: Yes.

18 MS. EAGAN: Bill Walker?

19 MEMBER WALKER: Yes.

20 MS. EAGAN: Josh Green?

21 MEMBER GREEN: Yes.

22 MS. EAGAN: Kat Shaw?

23 MEMBER SHAW: No.

24 MS. EAGAN: And, Gordon Upchurch?

25 CHAIRMAN UPCHURCH: Yes.

1 MS. EAGAN: Okay. With four in favor and
2 one opposed, the permit is approved with the modifications as
3 stated tonight.

4 Do you want me to read them, or are you okay?

5 CHAIRMAN UPCHURCH: I'm okay with that.

6 MS. EAGAN: Okay.

7 CHAIRMAN UPCHURCH: To permit us to clean
8 up the -- the verbiage on it.

9 MS. EAGAN: Okay.

10 CHAIRMAN UPCHURCH: That will conclude the
11 testimony this evening. I want to thank you all for coming and
12 being patient with us. Again, we try to handle these informally,
13 we try to give everybody an opportunity to be heard. And we want
14 to thank you for your time this evening.

15 This is one step in the process, and everyone has
16 rights beyond this, and we want to thank you for coming.

17 Scottie, do we have any other collateral matters to
18 be taken up tonight?

19 MS. EAGAN: No.

20 CHAIRMAN UPCHURCH: Okay. Then I would
21 entertain a motion that we adjourn.

22 MEMBER WALKER: I'll make a motion we
23 adjourn.

24 CHAIRMAN UPCHURCH: Is there a second?

25 MEMBER GREEN: Second.

1 CHAIRMAN UPCHURCH: Those in favor aye,
2 MEMBER RIDDER: Aye.
3 MEMBER WALKER: Aye.
4 CHAIRMAN UPCHURCH: Aye.
5 MEMBER GREEN: Aye.
6 MEMBER SHAW: Aye.
7 CHAIRMAN UPCHURCH: We're adjourned.

8 Thank you.

9 (Thereupon, the proceedings were
10 concluded at 9:04 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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