CRITERIA FOR SITING A SURFACE MINE

1. Correct geology that meets ODOT spec
2. Sufficient quantity to economically mine
3. Economic depth to rock
4. In correct market area
5. Location can be zoned and permitted
CRITERIA FOR SITING A SURFACE MINE

- I do not get involved with criteria 1 through 4.
- I am charged with delivering on criteria #5—getting the site zoned and permitted so operations can finally begin.
TO SAY GETTING THESE SITES
PERMITTED AND ZONED IS GETTING
MORE DIFFICULT IS A GROSS
UNDERSTATEMENT...
WELCOME TO THE JUNGLE

WE’VE GOT FUN AND GAMES
PERMITTING PROCESS: CHALLENGES

- It used to be that we had to deal with NIMBY — Not In My Backyard
- Now, we have to deal with BANANA — Build Absolutely Nothing Anywhere Near Anything.
- The wide-spread use of social media is driving this aggressive opposition to any use deemed “Not A Starbucks.”
The Ohio EPA will hold a PUBLIC HEARING on Feb 1 and support for the efforts of CAM (Citizens Against Mining) Against Mining Madison Township and the proposed quarry.
ZONED AND PERMITTED

✧ The great majority of sites that meet the first 4 criteria (especially #4) are going to have local zoning.

✧ Typically, mining operations are located in a township as opposed to a municipality. Accordingly, with respect to zoning, this presentation will focus on township (and county) zoning.

✧ Most surface mining is zoned through the conditional use process.

✧ This involves a quasi-judicial hearing before the township or county BZA.

✧ The BZA is supposed to sit as an objective neutral to determine whether the proposed use meets the criteria for a conditional use.
Ohio law (ORC 519.141 and ORC 303.141) prohibits these BZAs from considering or basing their decisions on any matter that is regulated by a state, federal or local agency. As discussed below, numerous agencies permit nearly all of the activities associated with a mining operation.

If the BZA grants the CUP, any neighboring property owner that opposed the CUP may appeal the BZA decision to the local court of common pleas. The CCP reviews the decision may affirm, modify or over-turns it.

If the BZA denies the CUP, the applicant has a right of appeal, also to the local CCP.
The CUP process from the preparation of the CUP application through a BZA decision takes approximately 6 months.

The review by the CCP takes approximately 12 months.

The decision of the CCP may be appealed to the district court of appeals.

The review by the CA takes approximately 12 months.
INDUSTRY REGULATIONS

- Nearly every facet of the aggregates industry is regulated by a federal, state or local agency.
- Set out next are the major regulatory programs and the significant regulations for each regulatory agency.
INDUSTRY REGULATIONS:
OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR),
DIVISION OF MINERAL RESOURCES MANAGEMENT

- In Ohio, aggregate mining is primarily conducted in above-ground surface mining operations – namely, limestone quarries and sand and gravel facilities.
- It is unlawful to conduct such surface mining without a permit from the ODNR, which is the primary regulator of the aggregates industry.
The ODNR defines aggregates as an “Industrial Mineral” (“IM”) and the governing statute is R.C. Chapter 1514, with further regulations found in the Ohio Administrative Code at 1501:14.

Unlike the regulatory program for coal mining, the surface mining regulatory program is unique to Ohio and involves no federal oversight.

Other states, such as Indiana and Michigan, have neither a federal nor state-wide regulatory program for IM mining.

The ODNR regulates every step of the IM mining process, including placement of overburden, blasting, dewatering, prevention of off-site impacts, and ultimately, the reclamation of the property.
INDUSTRY REGULATIONS:
OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR),
DIVISION OF MINERAL RESOURCES MANAGEMENT

- **Overburden:** The ODNR requires a certain amount of overburden (i.e., top soils and sub-soils overlaying mineral reserves) to be maintained on the site of any IM mining operation.

- During the mining operation, the overburden is typically used to construct berms around the perimeter of the mine site.

- These berms are used to create buffers around the site. Once mining is complete, the overburden will be utilized in the reclamation process.
INDUSTRY REGULATIONS:
OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR),
DIVISION OF MINERAL RESOURCES MANAGEMENT

❖ **Blasting:** Sand and gravel operations typically do not utilize explosives. But explosives are utilized to break rock into a size sufficient to be put through a primary crusher.

❖ The use of explosives is heavily regulated by ODNR to prevent damage to persons and property. Only state certified blasters are authorized to use explosives at mine sites and there are strict limits imposed on blast designs to minimize damage to adjoining property.

❖ The ODNR has a dedicated staff to regulate blasting and to investigate complaints resulting from blasting activities. In Ohio, blasting is a strict liability activity meaning that the mine operator is responsible for any damages resulting from blasting activities.
**INDUSTRY REGULATIONS:**
Ohio Department of Natural Resources (ODNR), Division of Mineral Resources Management

- **Dewatering:** Limestone quarries, and some sand and gravel operations, dewater in order to create a dry mining environment.

- Dewatering may lower the ground water table around the mining pit in an area known as a “cone of depression”. Before a dewatering may take place, ODNR requires a hydrologic analysis and model be developed in order to determine the cone of depression.

- Once the cone of depression has been established, the mine operator is then presumed to be responsible for any diminution in quantity and quality of the water supply.
INDUSTRY REGULATIONS:
OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR),
DIVISION OF MINERAL RESOURCES MANAGEMENT

◊ If such reduction occurs, ODNR requires the mine operator to remediate the damage. For example, the mine operator may be required to deepen the ground water well or install water filtration systems to correct the diminution caused by the mining operation.

◊ The regulatory presumption and remediation requirement has been in place since 2002 and have eliminated nearly all conflicts between mine operators and neighboring water wells.
Prevention of off-site impacts: IM permits require the mine operator to plan to both prevent and/or correct off-site impacts such as erosion or flooding should they occur.
INDUSTRY REGULATIONS:
OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR),
DIVISION OF MINERAL RESOURCES MANAGEMENT

- **Reclamation:** Before mining may begin, the operator must prepare a reclamation plan and post a reclamation bond with the ODNR for every acre of land that is be affected by mining. ODNR will hold this bond until reclamation is completed.

- The purpose of reclamation is to return the land to a useable form, but this does not mean returning the land to its original condition. Rather, upland areas are graded and planted with vegetation while water impoundments must be made safe.

- The mine operator and ODNR work together to develop reclamation plans. If a mine operator fails to adhere to the reclamation plan, then their bond may be forfeited and the mine operator could lose the ability to continue mining in Ohio.
Enforcement: The ODNR enforces R.C. Chapter 1514 through Chief’s orders. The Chief can shut down the mine operation, or a certain portion of the operation/activity such as blasting or dewatering, until compliance by the mine operator is achieved.
INDUSTRY REGULATIONS:
OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR),
DIVISION OF MINERAL RESOURCES MANAGEMENT

- It takes approximately 6-9 months for a wet mining sand and gravel plant application to be processed by ODNR. That includes all of the various public notices.
- For a dry mining operation (limestone quarry) the ODNR process will generally take 12 months.
- A separate administrative adjudicatory body, the Reclamation Commission, can hear appeals from persons aggrieved by an action of the Chief of Division of Mineral Resources Management. For example, appeals may be taken by members of the public who may be adversely affected by an order of the Chief.
- The Reclamation Commission appeal process takes approximately 6-9 months.
- Decision of the Reclamation Commission may be appealed to the local CCP. This review takes approximately 12 months.
- The CCP decision may be appealed to the district court of appeal. This review takes approximately 12 months.
BUT WAIT, THERE’S MORE!
INDUSTRY REGULATIONS:
OHIO ENVIRONMENTAL PROTECTION AGENCY (OEPA)

- The Ohio EPA regulates the IM industry through the issuance of permits for certain types of activity that may impact the environment. Of relevance to the IM industry are air and water quality permitting.
INDUSTRY REGULATIONS:
OHIO ENVIRONMENTAL PROTECTION AGENCY (OEPA)

◊ The Division of Air Pollution and Control ("DAPC") is the regulatory division that implements federal Clean Air Act requirements (42 U.S.C. §7401 et seq. & 40 C.F.R., Chapter I) and other state air quality programs. The governing regulations are found at OAC Chapters 3745-14 to 3745-26, 3745-31, 3745-71 to 3745-80, 3745-100, 3745-103 to 3745-105, and 3745-109 to 3745-114.

◊ The DAPC requires a permit to install ("PTI") or permit to install and operate ("PTIO") for over 50 types of air pollution sources.

◊ Depending on the type of air pollution involved, an operator may apply to operate under a general permit (pre-established emissions standards for certain types of pollution sources) or an individual permit.

◊ There are general permits for a number of relevant mining activities, including mineral extraction, aggregate processing, paved and unpaved roadways, storage piles, and other mechanical sources (such as generators or heavy machinery).
INDUSTRY REGULATIONS:
OHIO ENVIRONMENTAL PROTECTION AGENCY (OEPA)

- The Division of Surface Water ("DSW") maintains a permitting program for all entities that wish to discharge water into the waters of the State. This permit is called a National Pollutant Discharge Elimination System ("NPDES") and was created in the Clean Water Act (33 U.S.C. §1251 et seq. and R.C. Chapter 6111).

- It helps to ensure compliance with state and federal water quality standards. Further implementing regulations can be found at OAC Chapters 3745-1 to 3745-5, 3745-11, 3745-32 to 3745-33, 3745-36, 3745-38 to 3745-40, and 3745-42.

- The NPDES permit regulates point sources which are discrete and identifiable sources of pollutants, typically discharge pipes.

- However, NPDES permits are also required for storm water discharges generated by runoff from land and impervious areas such as paved streets, parking lots, and building rooftops during rainfall and snow events.
INDUSTRY REGULATIONS:

OHIO ENVIRONMENTAL PROTECTION AGENCY (OEPA)

- DAPC and DSW can enforce these air and water quality standards through a number of avenues, including administrative fines, civil penalties, injunctive relief and criminal sanctions.

- A separate administrative adjudicatory body, the Environmental Review Appeals Commission (“ERAC”), can hear appeals from any persons aggrieved by an action of the Director of the Ohio EPA. For example, appeals can be taken by members of the public who may be adversely affected by a decision of the Director.
The Ohio EPA also plays a part in regulating wetland quality, for an overview of this area see the U.S. Army Corps of Engineers section below.

Decisions of the Director of Ohio EPA to issue any one of these needed permits may be appealed to the Environmental Review Appeals Commission.

A person who has been or may be harmed by the Director’s decision may appeal—this means most any neighbor or opposition group.

The ERAC appeal process is very lengthy with appeals can take 18 to 36 months.
INDUSTRY REGULATIONS:
OHIO ENVIRONMENTAL PROTECTION AGENCY (OEPA)

- I had one appeal before ERAC that went for 7 years (!!!)
- ERAC decision are then appealed to the 10th District Court of Appeals (Franklin County).
- The CA review takes about 12 months.
AND LAST, BUT CERTAINLY NOT LEAST...
The USACE, in conjunction with the Ohio EPA, has a responsibility to delineate wetlands on both private and public land before any proposed activity such as the placing of fill material (including rock, soil or overburden), clearing or building may occur in a wetland.

Per the USEPA and USACE, wetlands are those areas “that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.”
USACE and Ohio EPA have overlapping but not identical jurisdiction when it comes to wetland permitting.

USACE governs the discharge of fill material into the waters of the United States; this includes discharges into wetlands that hydrologically connect to waters of the United States, through 404 permits.

404 permits are issued under the Clean Water Act (33 U.S.C. §1251 et seq. & 40 CFR Part 401-471). In conjunction with a 404 permit, an operator must also receive a 401 Water Quality Certificate ("WQC") from the Ohio EPA to certify that the discharge of fill will comply with state established water quality standards.

If the discharge of fill material does not occur into a water of the United States, the Ohio EPA — rather than the USACE — has authority to permit. In particular, the Ohio EPA issues State Isolated Wetlands Permits for discharge of fill material into an isolated wetland. Approximately 45% of Ohio wetlands are isolated.
INDUSTRY REGULATIONS:
U.S. ARMY CORPS OF ENGINEERS (USACE)

◊ To the extent that the USEPA denies a permit, there is an administrative appeals process or the denial requires an outright challenge in court. In any event, working through wetlands issues takes months/years.

◊ In summary, the IM industry needs numerous regulatory permits in addition to proper zoning. Each and every one of these permits may be appealed by those opposed to mining.