



Ohio Revised Code

Section 303.141 Conditional zoning certificates for surface mining activities.

Effective: April 6, 2007

Legislation: House Bill 443 - 126th General Assembly

(A) If a county board of zoning appeals considers conditional zoning certificates for activities that are permitted and regulated under Chapter 1514. of the Revised Code or activities that are related to making finished aggregate products, the board shall not consider or base its determination on matters that are regulated by any federal, state, or local agency. However, the board may require as a condition of the approval of a conditional zoning certificate for such an activity compliance with any general standards contained in the zoning resolution that apply to all conditional uses that are provided for in the zoning resolution and, except as provided in division (C) of this section, may require any specified measure, including, but not limited to, one or more of the following:

(1) Inspections of nearby structures and water wells to determine structural integrity and water levels;

(2) Compliance with applicable federal, state, and local laws and regulations;

(3) Identification of specific roads in accordance with division (B) of this section to be used as the primary means of ingress to and egress from the proposed activity;

(4) Compliance with reasonable noise abatement measures;

(5) Compliance with reasonable dust abatement measures;

(6) Establishment of setbacks, berms, and buffers for the proposed activity;

(7) Establishment of a complaint procedure;

(8) Any other measure reasonably related to public health and safety.

(B)(1) For purposes of this section and section 519.141 of the Revised Code, and prior to the



submission of an application for a conditional zoning certificate, an applicant shall send written notice to the county engineer of the applicant's intent to apply for a conditional zoning certificate. Not later than fourteen days after receipt of the written notice, the county engineer shall establish the time, date, and location of a meeting with the applicant and send written notice of the time, date, and location of the meeting to the applicant and to the fiscal officer of each township in which the proposed activity is to be located or expanded. At the meeting, the applicant shall explain the proposed location of the activity or expansion of an existing activity, the anticipated amount of aggregate material to be shipped by truck from the activity, and the anticipated primary market areas for the finished aggregate products leaving the activity.

Not later than thirty days after the meeting with the applicant, the county engineer shall submit a written recommendation of specific roads to be used as the primary means of ingress to and egress from the proposed activity to the board of county commissioners. In making the recommendation, the county engineer shall consider all of the following:

- (a) The ability of each road to handle the anticipated recurring loads resulting from trucks entering and leaving the proposed activity;
 - (b) The present condition of each road;
 - (c) The amount of residential development that exists along each road;
 - (d) The most direct route from the proposed activity to a state highway unless another route is more capable of accommodating the anticipated recurring loads and will result in fewer conflicts with existing residential development.
- (2) At the next regularly scheduled meeting of the board of county commissioners after receipt of a written recommendation under division (B)(1) of this section, the board shall adopt the recommendation or adopt the recommendation with modifications. If the board adopts the recommendation with modifications, the board shall base the modifications only on the criteria established in divisions (B)(1)(a) to (d) of this section. The board may adopt the recommendation with modifications only by a unanimous vote. The board shall send written notice of the adoption of the recommendation or the recommendation with modifications to the county board of zoning



appeals.

(3) For purposes of this section and section 519.141 of the Revised Code, a decision of a board of county commissioners under division (B)(2) of this section is final ten days after the board adopts the recommendation or the recommendation with modifications unless the applicant or an affected board of township trustees submits written notice of appeal within ten days after the board's action. If the board of county commissioners receives a timely written notice of appeal, the board shall conduct an appeal hearing concerning its decision not later than fourteen days after receipt of the notice. If the board of county commissioners receives more than one timely written notice of appeal, the board may conduct one appeal hearing concerning all of the notices of appeal.

For purposes of an appeal hearing that is held under this division, the applicant or a board of township trustees that submitted written notice of appeal may present testimony for the board of county commissioners to consider concerning its decision under division (B)(2) of this section. At the hearing, the applicant or the board of township trustees may be represented by an attorney. A witness at the hearing shall testify under oath or affirmation, which any member of the board of county commissioners may administer. A witness at the hearing shall be subject to cross-examination.

Not later than fourteen days after the hearing, the board of county commissioners shall affirm its decision under division (B)(2) of this section or, based on the testimony at the hearing, modify its decision. The board shall send written notice of its decision to the applicant, any board of township trustees that submitted written notice of appeal, and the county board of zoning appeals.

A decision of a board of county commissioners under this division is final unless vacated or modified upon judicial review.

(4) An applicant or a board of township trustees that submitted written notice of appeal under division (B)(3) of this section may appeal a decision of a board of county commissioners under that division to the court of common pleas of the county in which the activity is proposed to be located or expanded pursuant to section 2506.01 of the Revised Code.

(C) When granting a conditional zoning certificate, a county board of zoning appeals shall not



require the identification of specific roads, as otherwise authorized in division (A)(3) of this section, and the identification of specific roads in accordance with division (B) of this section shall not apply, for any of the following:

- (1) The transfer of unfinished aggregate material between facilities that are under the control of the same owner or operator;
 - (2) The loading or unloading of finished aggregate product within a ten-mile radius of a surface mining operation;
 - (3) The expansion of an existing surface mining operation when the specific road that is used as the primary means of ingress to and egress from the operation will be the same road that is used for that purpose after the expansion of the facility.
- (D) The identification of specific roads in accordance with division (B) of this section to be used as the primary means of ingress to and egress from a proposed activity becomes effective only upon the granting of a conditional zoning certificate.
- (E) As used in this section, "surface mining operation" has the same meaning as in section 1514.01 of the Revised Code.