



## The Fayette Alliance

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Dear Board of Adjustment Members,

### *Board Members*

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Thomas Gaines  
Greg Goodman  
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Stan Harvey  
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### *Executive Director*

Knox van Nagell

My name is Knox van Nagell, and I am here on behalf of The Fayette Alliance.

The Fayette Alliance is Lexington's only land-use advocacy organization dedicated solely to achieving a sustainable, livable Lexington that benefits all of us by preserving our renowned rural landscape and related agricultural industries in Fayette County, while strengthening our city through innovative development and adequate infrastructure.

If responsibly pursued, this growth approach will improve our city and protect our productive and beautiful farmland—creating a quality of life crucial to Lexington-Fayette County's economic and environmental success today and beyond.

In furtherance of this mission, **The Fayette Alliance respectfully requests that you DISAPPROVE CV-2010-110 VULCAN CONSTRUCTION MATERIALS, LP—** An appeal for a conditional use permit to conduct underground mining of limestone in the Agricultural-Rural (A-R) and Neighborhood Business (B-1) zones, on property located at 7200, 7210 and 7230 Turner Station Road.

The Vulcan quarry and proposed expansion area are generally located on the west side of Interstate 75, south of the Old Richmond Road Interstate overpass.

Vulcan's address is 7430 Elk Lick Falls Road—consisting of 130 acres immediately to the south of the proposed expansion area/Turner/Hidden Haven farm. The operation began its limestone mining and quarrying operations in 1958. At that time, quarrying was a principal permitted use in the A-R zone, so no conditional use permit was required. However, the LFUCG mining ordinance was adopted on December 12<sup>th</sup>, 1991—and thereafter, all mining and quarrying operations in Lexington-Fayette County were obligated to comply with its requirements to receive a valid operating permit.

The primary activities of the Vulcan quarry include the underground mining of limestone, rock crushing, storage, and distribution of "aggregate" by truck to asphalt and concrete batch plants throughout the region. It is bordered to the south by the Floracliff Nature Sanctuary, and to the west by Elk Lick Creek and Turner/Hidden Haven farm.

**Vulcan requests a conditional use permit to extend their underground mining of limestone into a 135-acre parcel of land on the adjoining property to the north (Turner/Hidden Haven farm) of its existing mine and quarry.**

The proposed expansion area is a portion of a 435-acre property—generally referred to as Turner/Hidden Haven farm. Vulcan has a tentative lease with Hidden Haven farm to conduct mining and quarrying activities thereon, subject to BOA approval of this conditional use permit. Throughout its history, Vulcan and its various corporate entities have changed the terms and conditions of its lease with the current and past owners of Turner/Hidden Haven farm.

Vulcan will access the proposed expansion area through its existing mine, that is currently operating at a “level 2” depth of roughly 300’. Standard room and pillar methods will be used, which results in large pillars of limestone being left in place to support of the mined area. Pillars are approximately 50’ by 50’ and extend from the floor of the mined area to the mine roof.

Daily operations will be from 7:00 a.m. to 5:30 p.m. during the week, with night and weekend mining limited to instances when a particular project needs materials at those times. Blasting is usually limited to once a day, at the end of the late afternoon shift. Each blast may consist of several explosions over a short period of time. Material produced from the proposed expansion area/Turner/Hidden Haven farm is intended to replace, not add to, current production levels at the quarry. No increase in truck traffic is anticipated.

Adjoining property owners have frequently complained of structure damage caused by vibrations from the quarry’s daily blasting, and poor air quality resulting from the operation’s general activities. Further, neighbors state that gravel trucks hauling rock from the quarry have caused traffic backlogs, and hazardous driving conditions on the rural roads of the area.

In addition, the Vulcan quarry and surrounding area has extensive karst topography characterized by complex groundwater systems and sinkholes. The lay of the land makes it difficult to quantify the environmental impacts of Vulcan’s activities on neighboring parcels of land. For example, engineering assessments done by Marshall Miller & Associates do not have sufficient information to opine on the effects of Vulcan’s mining activities on the proposed expansion area’s groundwater hydrology. Further, a “blue line stream” flows through the area, and the subject property is located in a Kentucky River Watershed.

Vulcan and the Turner/Hidden Haven farm is located in the Agricultural-Rural (A-R) zone, with a small portion in the Neighborhood Business (B-1) zone. Both zones permit a mine/quarry as a conditional use, subject to Board of Adjustment approval. The area is also located in “Natural” and “Environmentally Sensitive” land as defined by the Rural Land Management Plan; and it is in the vicinity of the Boone Creek National Historic District.

As proposed, this application violates the A-R and B-1 zones, the Rural Land Management Plan, and the recommendations of the 2007 Comprehensive Plan—jeopardizing the integrity of our local planning and zoning practices, community, and signature Bluegrass brand.

Therefore, in the interests of our public health, welfare, and safety, CV-2010-110 VULCAN CONSTRUCTION MATERIALS, LP should be denied for the following reasons:

- 1. The Vulcan quarry—operating at 7430 Elk Lick Falls Road—has violated the requirements of the LFUCG mining ordinance, and is therefore an illegal non-conforming use in the A-R & B-1 zones that cannot be lawfully expanded.**
  - a. Vulcan has violated the LFUCG mining ordinance, and therefore is an illegal non-conforming use.**

Mining and quarrying of limestone is a permitted conditional use in the A-R and B-1 zones, provided:

“[T]he proposal complies with the requirements of the Mining/Quarrying Ordinance and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:

- a. That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
- b. That a reasonable degree of reclamation and proper drainage control is feasible; and
- c. That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local laws, regulations, or conditions, including land reclamation, pertaining to the proposed use.

Source: Article 8-1(d)14; Article 8-16(d)8 of LFUCG Zoning Ordinance

In addition, the LFUCG mining ordinance requires that an existing mine/quarry [in the A-R and B-1 zones]:

**252-91, 8-3 (1):** Apply for a permit and/or renewal permit...if [it] proposes to commence or continue mining or quarrying.

**252-91, 8-3 (3):** Reapply for a permit... if the owner/operator proposes to alter the activities set forth in the conditional use permit by any of the following:

(f) **Change in ownership** of the owner/operator whether by sale of greater than 10% of its stock, assignment, **lease**, merger, or otherwise...

**252-91, 8-4 (1), (2):** ...**Submit a complete permit application within six (6) months of the effective date of this chapter, December 12<sup>th</sup>, 1991.** The application shall include a vicinity map...existing condition map...mining/quarrying plans...reclamation plan...operations description...reclamation description...transportation plan...prior permits... and signatures.

**252-91, 8-4 (5): Renew its permit annually.** Permits are valid for one (1) year, and “shall be renewed annually to be valid; an application for renewal shall be submitted prior to the expiration of the previous permit.”

Throughout its operational history, there is no evidence demonstrating Vulcan’s compliance with the LFUCG mining ordinance.

In December 2010 and January 2011, the Old Richmond Road neighborhood association submitted an open records request to LFUCG to obtain a copy of Vulcan’s original and renewed mining permits—and no such documentation was produced.

Consequently, there is no public file of Vulcan’s mining permit, nor any related reclamation, mapping, operations, or transportation documents. LFUCG has no legal or factual proof that Vulcan is mining and quarrying to code, in furtherance of our community’s public and environmental safety. In fact, an occupancy permit—issued by Code Enforcement—is the only certificate on record.

This scenario expressly violates sections 8-1(d) 14 (c); 8-16 (d) 8 (c); 252-91, 8-3(1); 252-91, 8-4 (1), (2); and 252-91, 8-4 (5) of the LFUCG zoning ordinance, and accordingly Vulcan is a non-conforming, illegal use in the A-R and B-1 zones.

Also, as stated by the ordinance references above, a quarry must reapply for a new mining permit, if the terms, assets, or owners/operators of its leased or owned property changes. LFUCG Zoning Ordinance, Article 252-91, 8-3 (3).

This condition ensures that LFUCG has the responsible parties on record, so it can enforce the various environmental, operational, and safety requirements of the mine. Without this local information, the responsible parties are unknown and our community's welfare is compromised.

In this particular case, Vulcan has changed the terms of its lease with the Turner/Hidden Haven farm, and the nature of its quarry ownership over the years without filing any "reapplication permits" in accordance with the mining and quarrying ordinance.

For example, in April of 1992, Vulcan amended its lease with the Turners—giving them over \$69,000 in return for potential use of the property, and an option to extend the lease 15 years. LFUCG Deed Book 1625, pg. 312-315.

In December 1998, Vulcan transferred enforcement of the Homer lease to "Vulcan Construction Materials" L.P.—a different corporate entity. That same month, Vulcan transferred ownership of individual properties—constituting its current mining operation—to "Vulcan Lands", a different corporate partner. LFUCG Deed Book 2086, pg. 745-772.

It is apparent that Vulcan failed to notify the proper authorities of its changes in the Turner/Hidden Haven property lease, and new ownership of its quarry parcels. Therefore, Vulcan violated Section 252-91, 8-3 (3) of the Zoning Ordinance, and accordingly it is a non-conforming, illegal use in the A-R and B-1 zones.

**b. The Board of Adjustment has no legal authority to expand the operations of an illegal, non-conforming use.**

A non-conforming use is:

"A use of land or structures that were lawful prior to the adoption...of this zoning ordinance, but would be prohibited, regulated or restricted under this zoning ordinance in the zone in which they are located." LFUCG Zoning ordinance, Article 4-1(a).

The Vulcan quarry was a principal permitted use in the A-R zone in 1958. However, in 1991, it became an illegal, non-conforming use in the A-R and B-1 zones when it failed to satisfy the permitting and reporting requirements of the recently adopted mining ordinance.

The mining ordinance and its conditions expressly applied to all old and new mines in Fayette County when enacted in 1991. "**Application for a permit and/or renewal permit shall occur** if an owner/operator **proposes to commence or continue mining/quarrying.**" Zoning Ordinance, Article 252-91, 8-3 (1).

As stated in the previous section, Vulcan did not satisfy the mining ordinance and it is therefore an illegal, non-conforming use. As such, the Board of Adjustment has no authority under state statute or the local zoning ordinance to award Vulcan's conditional use permit, for an expansion or enlargement of its mine.

"The Board of Adjustment **shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation** at the time the regulation which makes its use nonconforming was adopted..." KRS 100.253 (2).

“A non conforming use shall be permitted to continue as long as it remains otherwise lawful and shall be regulated as follows: **No non conforming use shall be enlarged or extended...**In addition, **it may not be altered in any way that would extend or enlarge either the scope or the area of its operation.**” Zoning Ordinance, Article 4-3 (a).

“The Board of adjustment shall have the authority to hear and decide appeals, as authorized in Article 4, concerning non-conforming uses and structures. **If it approves the appeal, the Board must find, in addition to all requirements of Article 4, that the non-conformity of the use...would not be increased in scope or area of its operation...**Zoning Ordinance, Article 7-6 (c)

The Board of Adjustment should deny Vulcan’s conditional use permit to expand its mining and quarrying operations, pursuant to state and local land use authorities.

Vulcan must satisfy all applicable permitting and reporting requirements of the Zoning Ordinance to emerge from its non-conformity, and expand its mining and quarrying operations.

Although mining and quarrying is a permitted conditional use in the A-R and B-1 zones, it is not an activity sanctioned by right. To allow otherwise, jeopardizes the very foundation of planning and zoning in Lexington-Fayette County and the safety of our community.

- 2. An expansion of Vulcan’s mining operation would constitute a public nuisance, and defy the essential principles of the Rural Land Management, 2007 Comprehensive plans, and Article 8 of the Zoning Ordinance—and therefore it should be denied.**

The Vulcan plant is located in a “Natural Area” of the Rural Services Area. Compared to other land in the rural area, natural areas

“Contain steeper slopes, forested areas, poorer/thinner soils and similar characteristics. Portions of the area are recognized as historic/scenic areas, and are known as habitat for rare and unusual flora and fauna. Approximately 90% of the land has a high degree of environmental sensitivity, including floodplain/riparian areas, steep slopes, and woodlands.

**The policy emphasis for this land should be for preservation and enhancement of the land in a natural state with a minimum of intrusions.** Principle uses in this area should be those associated with agriculture and rural housing in a natural setting with minimal disturbance to the land and vegetation. **Conditional uses should be kept to a minimum.** “ RLMP, III-8-9.

The 2007 Comprehensive Plan also has several key recommendations for the area in which Vulcan is located, including:

**Goal 3:** To promote land uses that are sensitive to the natural and built environment.

**Goal 5:** To protect and preserve Fayette County’s significant historic and cultural heritage.

**Goal 6:** To maintain and enhance the agricultural economy, horse farms, general agricultural farms, and rural character in the Rural Service Area.

**Goal 10:** To preserve, promote, and enhance those aspects of the natural, built, and cultural environment that encourage tourism.

**Goal 15:** To preserve, protect, and enhance the character and quality of existing neighborhoods.

**Goal 17:** To conserve, protect, and develop ground and surface water resources to meet the long-and short-term water supply needs.

Further, a mine/quarry is an allowed conditional use in the A-R and B-1 zones provided it creates no public nuisance:

“[T]he proposal complies with the requirements of the Mining/Quarrying Ordinance and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:

- a. That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;

Source: Article 8-1(d)14; Article 8-16(d)8 of LFUCG Zoning Ordinance

As stated by neighbors in the area, Vulcan’s operations are a nuisance and have resulted in structural damage to adjacent historic properties, compromised air quality, altered groundwater systems, and traffic congestion.

Yet, Vulcan is located in a special, environmentally sensitive area of Fayette County. In addition to being on a “Natural” property within the Rural Services Area, Vulcan is also within a two-mile radius of the Boone Creek National Historic District—one of the nation’s largest historic districts celebrated for its unique cultural and historic landscape. Moreover, it is located in a Kentucky River Watershed and has a blue-line stream running through the parcel.

Vulcan’s failure to comply with the mining ordinance, in addition to its disruptive activities demonstrates its nuisance in the area and disregard for land stewardship—as required by the Rural Land Management Plan and 2007 Comprehensive Plan, Article 8 of the LFUCG Zoning Ordinance; and the Boone Creek National Historic District. Therefore, in the interests of promoting the integrity of our renowned rural landscape and applicable land use authorities, Vulcan’s conditional use permit should be denied.

### **3. Conclusion**

In light of the aforementioned reasons, The Fayette Alliance respectfully requests that you DISAPPROVE C-2010-110: Vulcan Construction Materials, LP- and appeal for a conditional use permit to conduct underground mining of limestone in the Agricultural-Rural (A-R) and Neighborhood-Business (B-1) zones, on properties located at 7200, 7210 and 7230 Turner Station Road.

While the Alliance supports the various conditional uses of the A-R and B-1 zones, they must be properly licensed and operated. Without this requirement, the expansion of illegal, non-conforming uses will be the order of the day—fundamentally jeopardizing the enforceability and integrity of our Zoning Ordinance, and hanging the public’s welfare in the balance.

Strong planning and zoning practices are the hallmarks of our great community, and if upheld, will continue to protect our irreplaceable Bluegrass landscape and signature agricultural industries, while ushering in a new era of innovative and responsible growth. Clearly, much will be gained from this approach, and much will be lost from endangering it.

As such, please deny CV-2010-110.

Thank you for your consideration, and dedication to responsible land-use planning.

Sincerely,

Knox van Nagell, J.D.