

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

SAXONY LUTHERAN HIGH SCHOOL, INC., and SAVE OUR CHILDREN'S HEALTH, INC.,

Respondents,

v.

MISSOURI LAND RECLAMATION COMMISSION and HEARTLAND MATERIALS, LLC,
Appellants.

DOCKET NUMBER WD74994
(Consolidated with WD75017)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: January 15, 2013

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

JUDGES

Division Four: Welsh, C.J., Pfeiffer, J., and Shafer, Sp.J.

CONCURRING.

ATTORNEYS

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**SAXONY LUTHERAN HIGH SCHOOL,)
INC., and SAVE OUR CHILDREN’S)
HEALTH, INC.,)**

Respondents,)

v.)

**OPINION FILED:
January 15, 2013**

**MISSOURI LAND RECLAMATION)
COMMISSION and HEARTLAND)
MATERIALS, LLC,)**

Appellants.)

WD74994 (Consolidated with WD75017)

Cole County

Before Division Four Judges: James Edward Welsh, Chief Judge, Mark D. Pfeiffer, Judge,
and Abe Shafer, Special Judge

Heartland Materials, LLC (“Heartland”) and the Missouri Land Reclamation Commission (“the Commission”) appeal the judgment of the Circuit Court of Cole County (“trial court”) declaring that Saxony Lutheran High School, Inc. (“Saxony”) and Save Our Children’s Health, Inc. (“SOCH”) had established standing to be granted a formal public hearing in which to present their evidence in opposition to a limestone mining permit that the Commission had granted to Heartland and remanding the matter to the Commission directing it to hold such a hearing. On appeal, Heartland and the Commission maintain their position that Saxony and SOCH failed to establish standing and claim that, even if standing had been established, the Commission had unfettered discretion to grant or refuse the hearing, making the trial court’s judgment inappropriate.

AFFIRMED.

Division Four holds:

When parties objecting to the issuance of a mining permit request a public meeting to express their concerns, the permit applicant does not agree to the public meeting, and the

Commission's director refers the matter to the Commission for a formal public hearing, section 444.773 and the accompanying regulations dictate that such a hearing be held, provided that the parties seeking the hearing have established standing. The Commission does not at that point have discretion to refuse the formal public hearing. The statutory provision on which the Commission and Heartland rely applies only when a public meeting has been held but has failed to resolve the problem.

To establish standing, the parties objecting to the permit must provide good faith evidence of how their health, safety or livelihood would be unduly impaired by the issuance of the permit. In this case, Saxony presented evidence that it was a school whose property was adjacent to the proposed mining site and whose students would be at risk of incurring adverse health effects due to dust resulting from the proposed mine. Saxony also presented evidence that it would incur increased cleaning costs to deal with mine dust and that it had suffered a drop in enrollment since the mine had been proposed. SOCH produced evidence that its members lived near the proposed mine site and that many of them suffered from respiratory ailments that would be exacerbated by mine dust. Both Saxony and SOCH also presented some expert testimony supporting their claims. The evidence they presented constitutes good faith evidence sufficient to establish standing, and therefore, the Commission was required to hold the formal public hearing.

Opinion by: Mark D. Pfeiffer, Judge

January 15, 2013

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