

# Zoning Inquiry

Number \_\_\_\_\_  
Phone Call \_\_\_\_\_

Date: 5-23-13 Township: Congress

Name of Owner: Terry Ruhl

Current Mailing Address: 7388 CR 40, Mt. Gilead 43338

Best Phone #: 419-210-7302

Address of Subject Property: 7388 CR 40

Structures presently located on Property: ~~house~~ pole building

| New Construction                              | Accessory Building                             | Other:<br>Please explain what you would like to do with your property or complaint |
|-----------------------------------------------|------------------------------------------------|------------------------------------------------------------------------------------|
| Survey<br><small>(Engineer's Office)</small>  | Survey<br><small>(Engineer's Office)</small>   |                                                                                    |
| Auditor's page<br><small>From Website</small> | Auditor's page<br><small>From Website)</small> |                                                                                    |
| On-Site<br><small>(Health Dept.)</small>      | Drawings                                       |                                                                                    |
| Drawings                                      | Stake out 4 corners                            | Building addition<br>on pole building.                                             |
| Stake out 4 corners                           | Use of Bldg                                    |                                                                                    |
|                                               |                                                |                                                                                    |

Property Owner \_\_\_\_\_

Zoning Department \_\_\_\_\_ Recommendations \_\_\_\_\_

Director of Operations \_\_\_\_\_ Recommendations \_\_\_\_\_

Conditional Use  
  Variance  
  Re-Zone  
  Zoning Permit  
  Nuisance

MA-12-001

5-29-13 Weds. @ 11:00am

## Data For Parcel E13-001-00-403-01

### Base Data

**Parcel:** E13-001-00-403-01  
**Owner:** RUHL REVOCABLE LIVING TRUST  
**Address:** 7330 CO 40 RD



### Tax Mailing Address

**Tax Mailing Name:** RUHL REV LIVING TRUST  
**Address:** 7326 ST RT 19 UNIT #1511  
**City State Zip:** MOUNT GILEAD OH 43338

### Owner Address

**Owner Name:** RUHL REVOCABLE LIVING TRUST  
**Address:** 7330 CO 40 RD  
**City State Zip:** MOUNT GILEAD OH 43338

### Geographic

**City:** UNINCORPORATED  
**Township:** CONGRESS TOWNSHIP  
**School District:** NORTHMOR LSD

### Legal

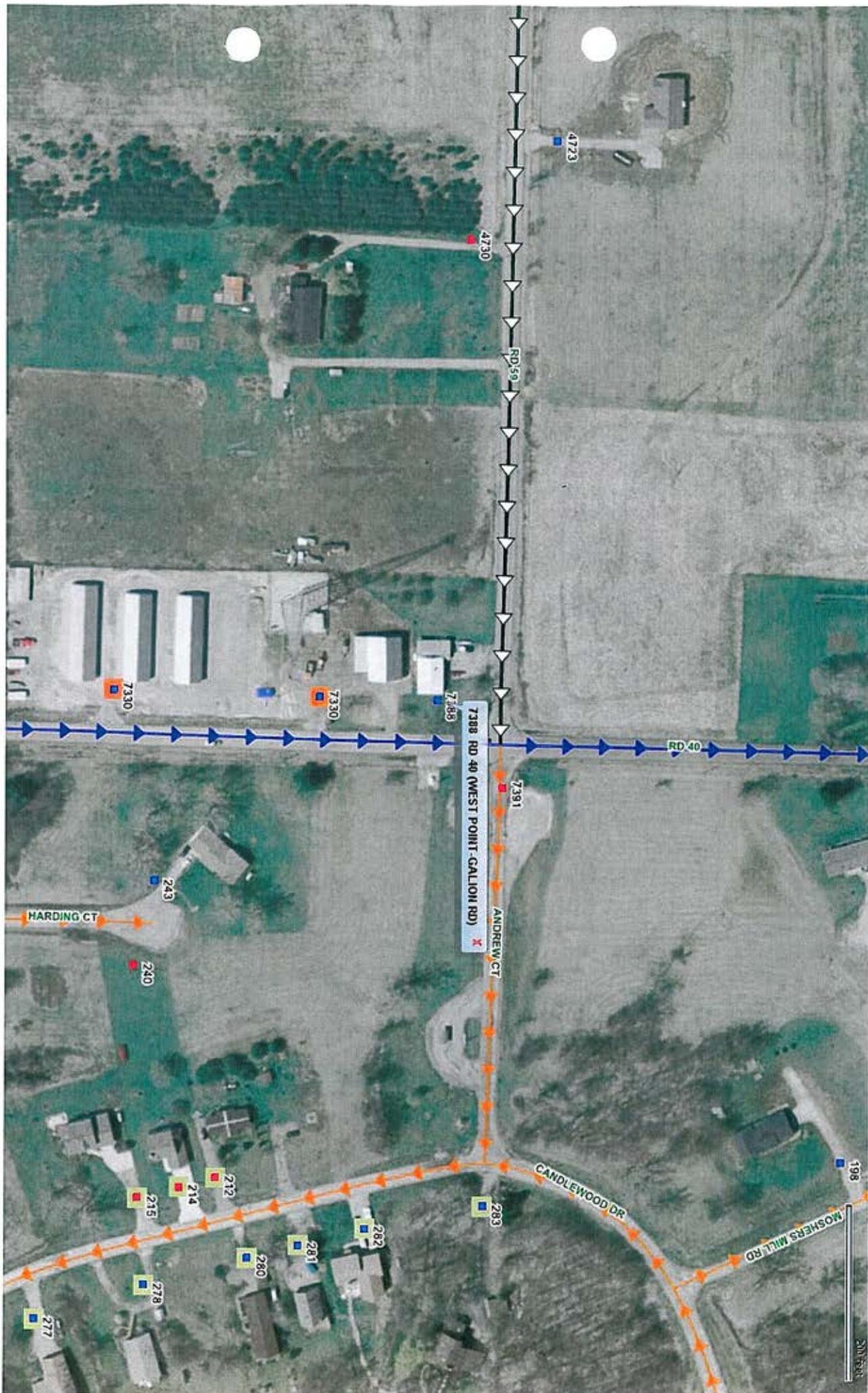
|                                                      |                                          |                             |        |
|------------------------------------------------------|------------------------------------------|-----------------------------|--------|
| <b>Legal Acres:</b>                                  | 2.54                                     | <b>Homestead Reduction:</b> | NO     |
| <b>Legal Description:</b>                            | NE1/4 BROTHERS STORE & LOCKET RTS:201807 | <b>2.5% Reduction:</b>      | NO     |
| <b>Land Use:</b>                                     | 499 - OTHER COMMERCIAL STRUCTURES        | <b>Foreclosure:</b>         | NO     |
| <b>Neighborhood:</b>                                 | 00500                                    | <b>Board of Revision:</b>   | NO     |
| <b>Number Of Cards:</b>                              | 4                                        | <b>New Construction:</b>    | NO     |
| <b>Annual Tax (Does not include delinquencies.):</b> | \$3,281.14                               | <b>Divided Property:</b>    | NO     |
| <b>Map Number:</b>                                   |                                          | <b>Routing Number:</b>      | 127 NW |

### Notes

**Notes:** DEED NUMBER: 791/85  
 ZONING: Agricultural

Report Discrepancy

CAMA database last updated 5/23/2013 12:03:42 AM.



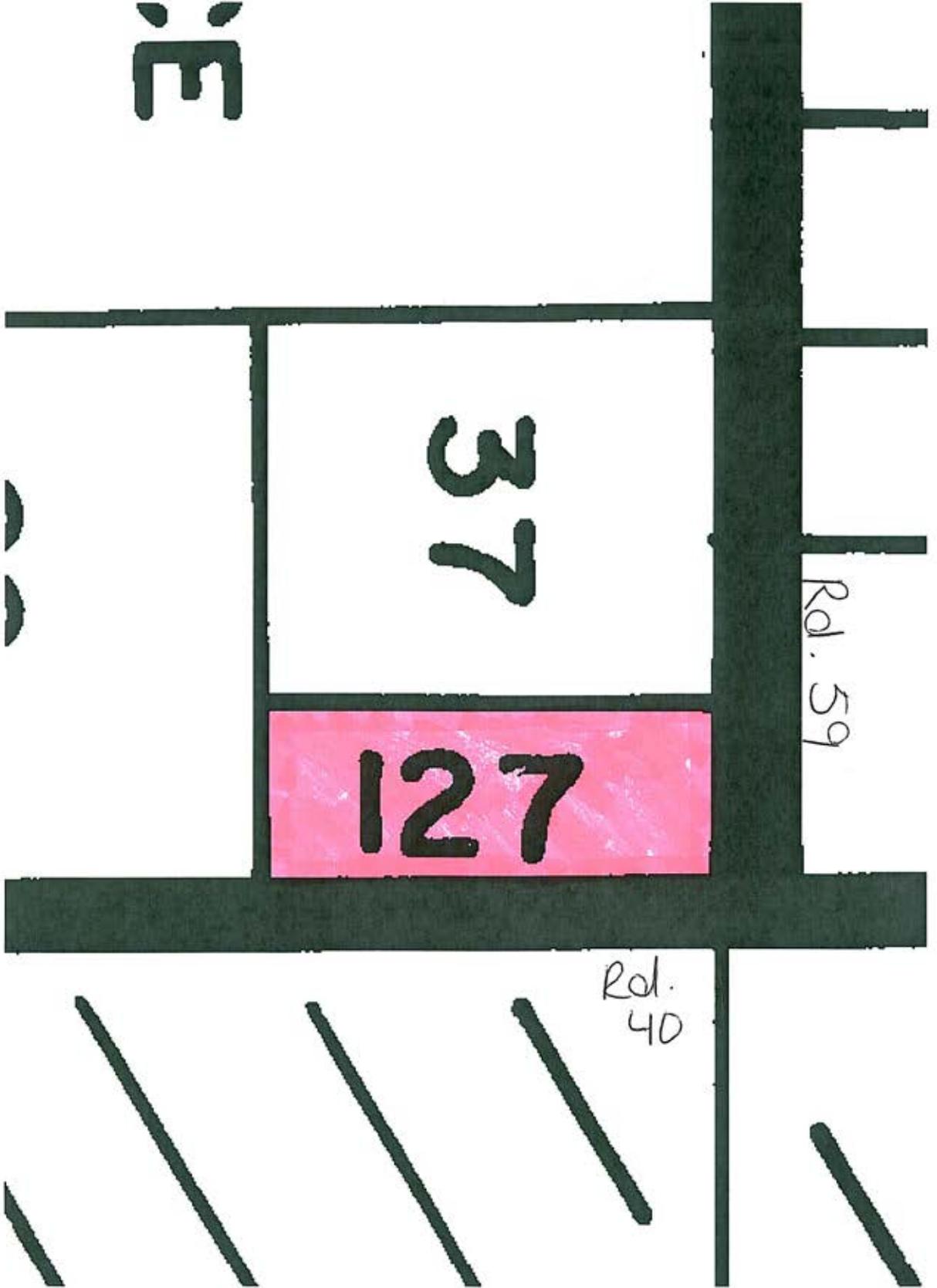
進

37

127

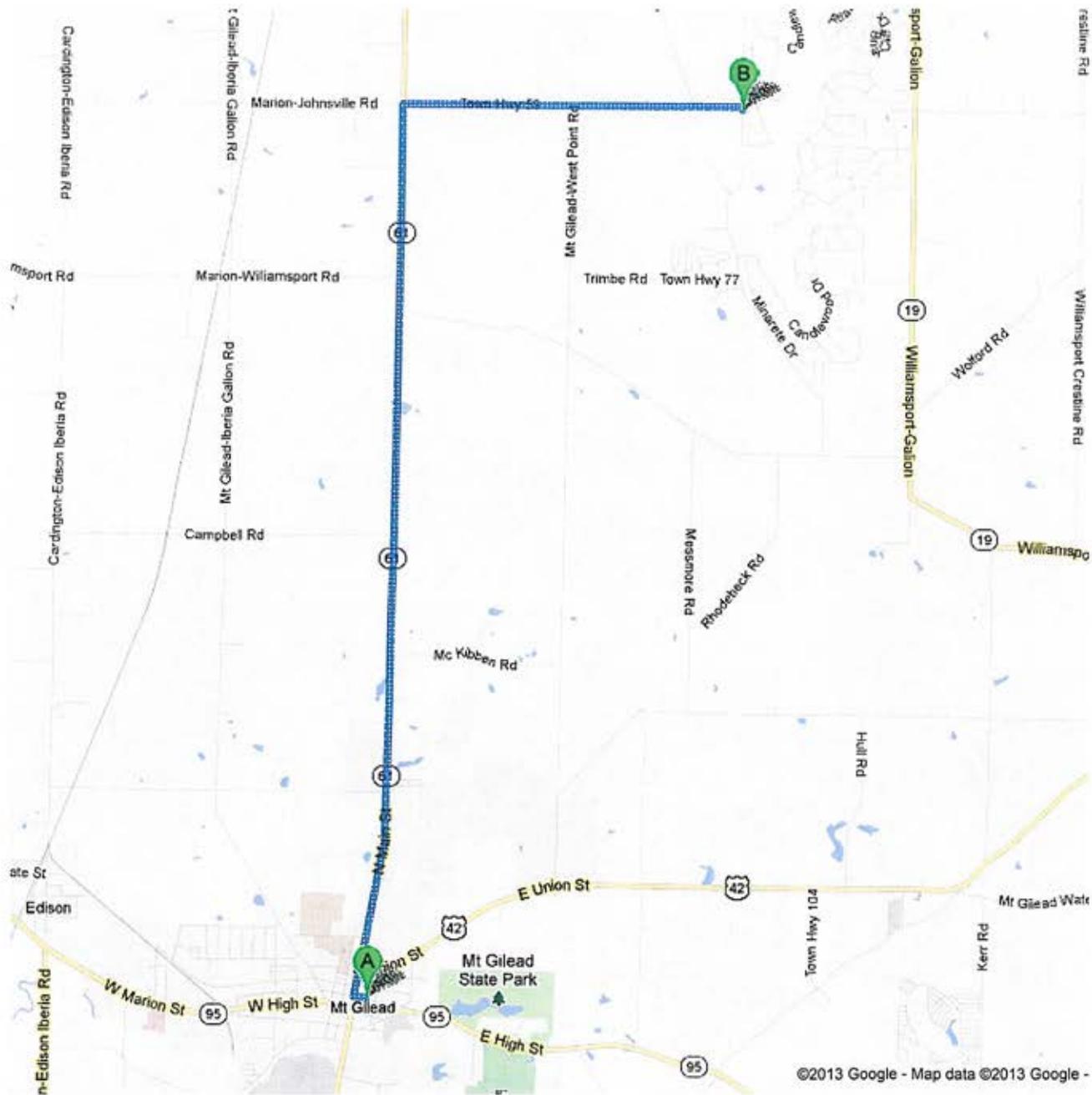
Rad. 59

Rad.  
40





Directions to 7388 County Road 40, Mt Gilead,  
OH 43338  
7.3 mi – about 13 mins



 80 N Walnut St, Mt Gilead, OH 43338

- 
1. Head **south** on **N Walnut St** toward **E North St** go 30 ft  
total 30 ft
  -  2. Take the 1st right onto **E North St** go 341 ft  
total 371 ft
  -  3. Take the 1st right onto **OH-61 N/N Main St** go 5.2 mi  
total 5.3 mi  
Continue to follow OH-61 N  
About 8 mins
  -  4. Turn right onto **Township Rd 59/Marion-Johnsville Rd** go 2.0 mi  
total 7.3 mi  
About 5 mins
  -  5. Turn right onto **Co Rd 40/W Point-Galion Rd** go 79 ft  
total 7.3 mi  
Destination will be on the right

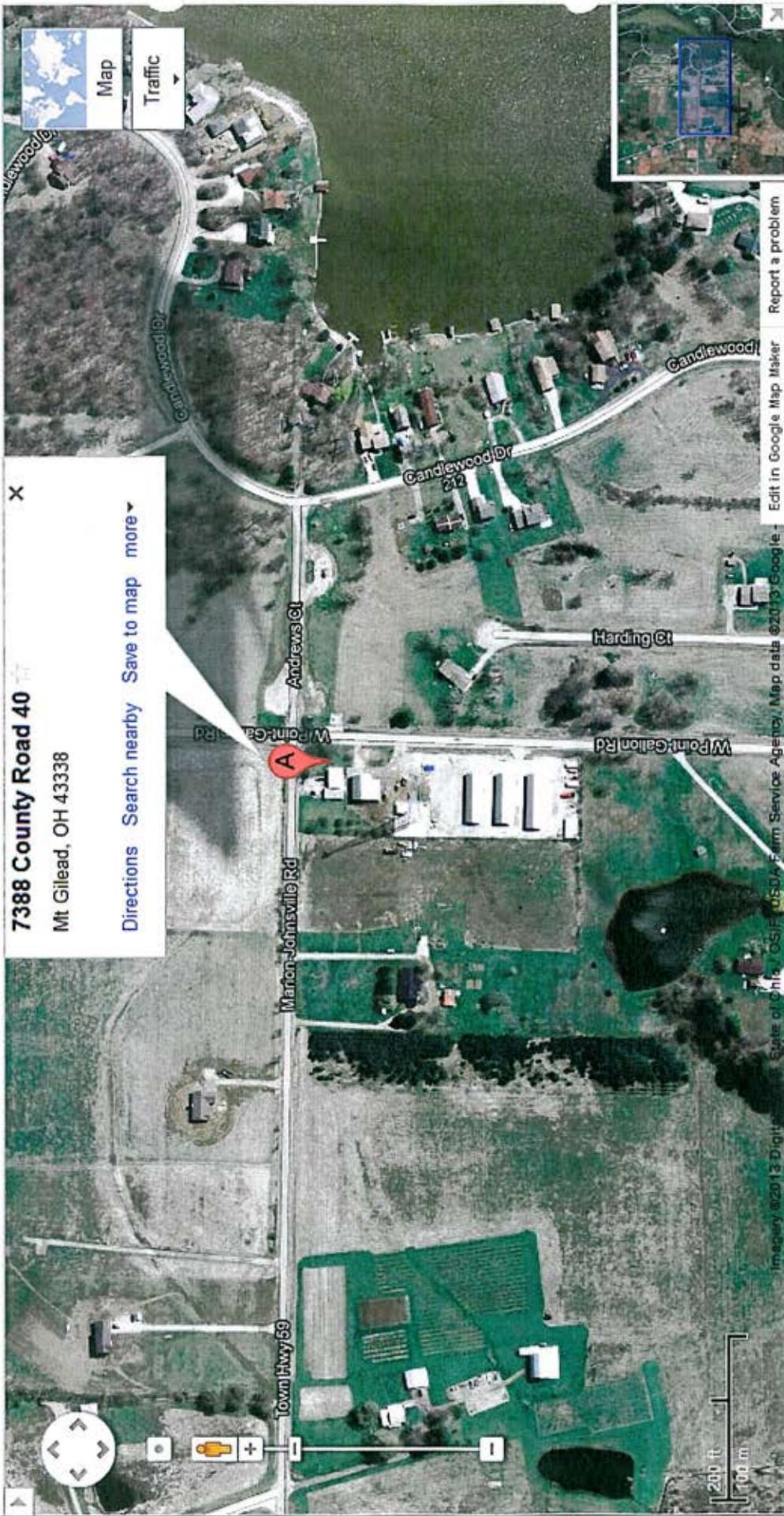
 7388 County Road 40, Mt Gilead, OH 43338

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These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2013 Google

Directions weren't right? Please find your route on [maps.google.com](http://maps.google.com) and click "Report a problem" at the bottom left.



**7388 County Road 40** X  
 Mt Gilead, OH 43338  
 Directions Search nearby Save to map more ▾

Map  
 Traffic ▾



Edit in Google Map Maker Report a problem

Imagery ©2013 DigitalGlobe, GeoEye, Earthstar (United States), IGN (France), Mapbox (Lightbox), Swire (Hong Kong), Swire (Singapore), TDS (Taiwan), USDA, Farm Services Agency, Map data ©2013 Google

250 ft  
 100 m

# Zoning Inquiry

Number \_\_\_\_\_  
Phone Call \_\_\_\_\_

Date: 6-11-2013 Township: Congress

Name of Owner: Terry Ruhl

Current Mailing Address: 7338 G. Rd 40. Mt Gilead, OH 43338

Best Phone #: 419-210-7302

Address of Subject Property: 7330 G Rd. 40 Mt Gilead, OH-43338

Structures presently located on Property: 7330 G Rd 40

| New Construction                              | Accessory Building                            | Other:<br>Please explain what you would like to do with your property or complaint |
|-----------------------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------|
| Survey<br><small>(Engineer's Office)</small>  | Survey<br><small>(Engineer's Office)</small>  |                                                                                    |
| Auditor's page<br><small>From Website</small> | Auditor's page<br><small>From Website</small> |                                                                                    |
| On-Site<br><small>(Health Dept.)</small>      | Drawings                                      |                                                                                    |
| Drawings                                      | Stake out 4 corners                           | 2 CORNER                                                                           |
| Stake out 4 corners                           | Use of Bldg                                   | Storage of STRAW & Seed. and more<br>Tractor Storage                               |
|                                               |                                               | Agr-                                                                               |

Terry Ruhl  
Property Owner

Zoning Department \_\_\_\_\_ Recommendations \_\_\_\_\_

Director of Operations \_\_\_\_\_ Recommendations \_\_\_\_\_

\_\_\_ Conditional Use \_\_\_ Variance \_\_\_ Re-Zone \_\_\_ Zoning Permit \_\_\_ Nuisance

60 East High Street  
Mt. Gilead OH 43338



(419) 947-5515  
FAX: (419) 947-5205  
E-Mail: mcprosecutor@rrohio.com

**MORROW COUNTY PROSECUTOR'S OFFICE  
CHARLES S. HOWLAND  
PROSECUTING ATTORNEY**

May 6, 2013

Daniel J. Lemke  
Morrow County Zoning Inspector  
80 N. Walnut St.  
Mt. Gilead, OH 43338

Re: Opinion request on pre-existing uses and zoning

Dear Dan:

You have asked several questions concerning pre-existing uses and the interplay of those uses with the county zoning resolution. You and I have a very short working relationship; therefore, you need to be aware of how I do things. When I draft opinions the mission is communication and clarity. Thus, I write opinions so that the average 8<sup>th</sup> grader will understand what I am saying. Now, if you want me to I can throw in some Latin and ratchet up the construction so that the letter is the epitome of arrogance and is as clear as fog. Then when you ask a question, I will just look surprised that you have failed to understand my verbose and ridiculously long opus. So, if that's what you want, let me know and I can work it up for you. Otherwise, you get it straightforward, clear and with minimal legal verbiage.

**ALL MATTERS ARE MOR EASILY UNDERSTOOD WHEN APPROACHED FROM A HISTORIC PERSPECTIVE.**

In the beginning there was the Constitution of the United States. In that Constitution is the 10<sup>th</sup> amendment, which says, in essence, "Those Powers not delegated to the United States are reserved to the States." Ever wonder why the State has the authority to set speed limits and levy taxes? Well, now you know.

There is a hook on all of this. The State of Ohio cannot pass any law that violates the U.S. Constitution or federal statute. So, the 10<sup>th</sup> Amendment grants authority to the

states but also acts as a check on the states. If you need a citation on that see Lee v. Grant, Appomattox Courthouse, Va. (1865).

Now, if you read the Ohio Constitution under Article X, you will find that the counties have, basically, the same relationship to the State Government as the States do to the federal government. The relationship of the municipalities and the state is a whole different ball of wax and would take way to long to explain. Just be mindful that there is a big difference.

Know this-county zoning is a specific grant of legislative authority from the state to the county. When county zoning is lawfully passed, it has the same impact as state law because it is state law. **However, the county can take no action that is contrary to State Law.**

### **THE APPLICATION OF O.R.C. 303.19 TO THE MORROW COUNTY ZONING CODE.**

In any conflict between the Morrow County Zoning Code and O.R.C. 303.19, the state code section will control. Since our current zoning code does not incorporate 303.19 we must use 303.19 as para materia (must be read with. I just had to throw in some Latin) with the zoning code.

Your first question to me is as follows:

....how do we look at uses that were existing, but became Conditional Uses as a result of the zoning resolution? Must they gain approval to expand their use? Must they apply for annual renewal of a conditional use permit they have yet to seek?

**In response to your first question they are not conditional uses, they are pre-existing uses and are not affected by the zoning code. In regard to your third question, they do not need to seek an annual renewal because they are pre-existing uses.**

**On your second question concerning expansion be advised that I cannot provide you with a good rule of thumb on this issue. Expansion issues are fact specific and will require individual legal research on each situation. Generally speaking, anyone who seeks to expand a pre-existing use is skating on thin ice. This is particularly true in situations where the current zoning code has abolished the use in that zoning area.**

When you are working on an expansion issue you must be a good historian. We need to know how long the pre-existing use has existed and we need to know the specific nature of the expansion of the pre-existing use.

In your letter you set up a fact scenario, which is as follows:

...a campground might want to use more land, which was part of their land to start with, but wasn't within the park area. If someone else wanted to begin a campground across the road, they would need a CU permit from the BZA, no matter the size. The existing site, however, might be in limbo. Some might say it is unable to expand, some may say it can extend the use to the entire parcel without restriction.

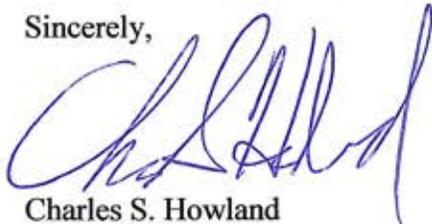
In the scenario, you created existing campground that will be able to expand. The controlling factors are the pre-existing use coupled with the fact that the facility owned the land prior to zoning. Also, the expansion is squarely within the pre-existing use. You are correct about someone else who wants to start a campground. They would have to seek a conditional use through the Board of Zoning Appeals.

You asked me about a house in another jurisdiction that needs to be rebuilt. Please contact the prosecutor in that jurisdiction for advice on that issue.

You should attach a copy of O.R.C. 303.19 to your copy of our zoning code. Always be mindful of the two-year abandonment clause. If the non-conforming use is dormant for two years, its dead and the land is now subject to the zoning code.

If you have additional questions, please do not hesitate to contact me. Please accept my apologies for the delay in production of this matter. At the present time, I am working without a juvenile prosecutor.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Charles S. Howland', written in a cursive style.

Charles S. Howland  
Morrow County Prosecutor

Cc: Pat Davies  
Morrow County Commissioners

## R.C. § 303.19

Baldwin's Ohio Revised Code Annotated Currentness

Title III. Counties

^ Chapter 303. County Rural Zoning; Renewal of Slums and Blighted Areas (Refs &amp; Annos)

^ Inapplicability of County Zoning; Violations

→ **303.19 Nonconforming use of buildings and land not affected by zoning**

The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment of a zoning resolution or amendment thereto, may be continued, although such use does not conform with the provisions of such resolution or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, any future use of land shall be in conformity with sections 303.01 to 303.25, inclusive, of the Revised Code. The board of county commissioners shall provide in any zoning resolution for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning resolution.

## CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 3180-18)

## HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 122 v H 22

## CROSS REFERENCES

**Penalty**, see 303.99

Limitations on authority to regulate amateur radio service communications, see 5502.031

Retroactive laws, power to pass withheld, see O Const Art II §28

## LIBRARY REFERENCES

Zoning and Planning ↔321 to 338.

Westlaw Topic No. 414.

C.J.S. Zoning and Land Planning §§ 154 to 174.

## RESEARCH REFERENCES

## Encyclopedias

OH Jur. 3d Buildings, Zoning, &amp; Land Controls § 144, Statutory Restrictions.

OH Jur. 3d Buildings, Zoning, &amp; Land Controls § 150, Change of Use.

OH Jur. 3d Buildings, Zoning, &amp; Land Controls § 151, Extension of Use.

OH Jur. 3d Buildings, Zoning, &amp; Land Controls § 152, Restoration of Nonconforming Building.

OH Jur. 3d Buildings, Zoning, &amp; Land Controls § 153, Abandonment of Use.



N.E.2d 301. Zoning And Planning 1302; Zoning And Planning 1305

### 3. Damaged structures

Municipal ordinance requiring that nonconforming advertising sign or structure damaged in excess of one half of its replacement value be reconstructed in accordance with existing municipal zoning ordinances did not violate constitutional rights of sign owner whose nonconforming structure had sustained at least 50 percent damage. *City of Kettering v. Lamar Outdoor Advertising, Inc.* (Montgomery 1987) 38 Ohio App.3d 16, 525 N.E.2d 836. Zoning And Planning 1102

Although a building is used for warehousing fireworks, which use is established as a nonconforming "use of a building," the building is not thereby a "nonconforming building" within the meaning of zoning provisions defining nonconforming uses and nonconforming buildings; when such a building is damaged by fire, it is not subject to the limitations of the zoning provision entitled "Restoration of Damaged Buildings," which provides: "A nonconforming building or structure, which is damaged by... fire... may be restored and the same use or occupancy continued, provided that [certain conditions are met]." *Cicerella, Inc. v. Jerusalem Tp. Bd. of Zoning Appeals* (Lucas 1978) 59 Ohio App.2d 31, 392 N.E.2d 574, 13 O.O.3d 99. Zoning And Planning 1316

### 4. Grantee's rights

A school board is a state agency and therefore exempt from local zoning laws. Where the board maintained a nonconforming use on property, a private purchaser of that property is not entitled to the exemption. *Petti v. Richmond Heights*, No. 44124 (8th Dist Ct App, Cuyahoga, 7-22-82), affirmed by 5 OS(3d) 129, 5 OBR 263, 449 NE(2d) 768 (1983).

### 5. Existing use

Lots which were below minimum lot size under new zoning resolution could be found to have nonconforming use even though they were vacant and unused, in light of their unique topographical features, geometrical form, and presence of streets and utilities tailored to individual properties. *Schreiner v. Russell Tp. Bd. of Trustees* (Geauga 1990) 60 Ohio App.3d 152, 573 N.E.2d 1230, motion overruled 52 Ohio St.3d 703, 556 N.E.2d 529. Zoning And Planning 1301

Where a substantial amount of work, including at least some actual construction is done in good faith and pursuant to lawful permits before a change in zoning, such work is sufficient to constitute a lawful "nonconforming" or "existing" use, and to constitute such "nonconforming" or "existing" use, it is not necessary that the use exist in full measure prior to such change, especially where all of the construction work both before and after the effective date of zoning was pursuant to lawful permits issued by public authority and never revoked, and defendants would have proceeded further with actual construction as of the effective date of zoning had they not been enjoined in an action later determined to be without merit, in which action plaintiffs did not assert the zoning change although such change became effective prior to the court's decision and although they could have amended their pleadings to so allege. *Meuser v. Smith* (Ohio Com.Pl. 1955) 143 N.E.2d 757, 75 Ohio Law Abs. 161, affirmed 141 N.E.2d 209, 74 Ohio Law Abs. 417.

Where a purchaser of unzoned land begins construction of a trailer park before enactment of a zoning resolution that precludes such a use of the land, the trailer park is the "existing use" of the land at the time the resolution is enacted. *Meuser v. Smith* (Franklin 1956) 141 N.E.2d 209, 74 Ohio Law Abs. 417.

### 6. Contemplated use

A mere contemplated use of land prior to the effective date of a zoning resolution is not sufficient to warrant a nonconforming use; to maintain a nonconforming use such use must have been actual prior to the adoption of the regulation. *Ohio State Students Trailer Park Co-op. v. Franklin County, Ohio* (Franklin 1953) 123 N.E.2d 542, 68 Ohio Law Abs. 569. Zoning And Planning 1303

### 7. Mobile homes

Where mobile home was removed from premises in November 1971, zoning ordinance barring mobile homes was passed in May 1972, and another mobile home was placed on premises in July 1972, nonconforming use existed. *Zumberge v. Odebrecht* (Ohio Com.Pl. 1973) 37 Ohio Misc. 71, 303 N.E.2d 919, 66 O.O.2d 48, 66 O.O.2d 174.

Substitution of single-family residence use, in house trailer, for similar use of same premises, in another house trailer, in district zoned for single-family residence use does not constitute violation of RC 303.23 where (1) continuous use of land antedates amendment to county zoning resolution prohibiting "placing a trailer" in residence district for "occupancy for human habitation"; and (2) resolution specifically permits lawful use of any land existing at time of enactment of amendment to continue, although such use does not conform with provisions of amendment. *State v. Mink* (Ohio 1971) 26 Ohio St.2d 142, 269 N.E.2d 921, 55 O.O.2d 274.

### 8. Procedure

Property owner failed to rebut presumptive reasonableness of determination by board of zoning appeals that neither adult video arcade nor retail clothing and gift boutique constituted primary permitted use within highway service district; zoning ordinance defined permitted uses as "any retail business, service establishment or office serving primarily the highway traveler," and property owner introduced no evidence that its proposed uses were directed to serve highway traveler or that zoning authorities inconsistently interpreted definition of permitted uses in highway service district. *Interstate Indep. Corp. v. Fayette Cty. Bd. of Zoning Appeals* (Ohio App. 12 Dist., 10-20-1997) 123 Ohio App.3d 511, 704 N.E.2d 611, dismissed, jurisdictional motion overruled 81 Ohio St.3d 1443, 690 N.E.2d 15, certiorari denied 119 S.Ct. 50, 525 U.S. 814, 142 L.Ed.2d 39. *Zoning And Planning* 1272; *Zoning And Planning* 1274

In construing applicability of nonconforming use statute, in which legality is a crucial element, trial court properly took judicial notice of a prior determination in which the use in question had been determined to be illegal. *Matthews v. Pernell* (Montgomery 1990) 64 Ohio App.3d 707, 582 N.E.2d 1075, motion overruled 52 Ohio St.3d 703, 556 N.E.2d 528. *Evidence* 43(3)

In a prosecution for violation of a county zoning resolution, the burden is on the prosecution to show that defendant does not come within any exception in the resolution. *State v. Breidenbach* (Franklin 1964) 5 Ohio App.2d 52, 213 N.E.2d 745, 34 O.O.2d 135. *Zoning And Planning* 1792

A petition in prohibition is good against demurrer which petition alleges that an appeal to a county board of zoning appeals predicated on a letter of a county building department stating that an owner of land has a valid nonconforming use therein, which letter is subsequent to the time during which such an appeal may be taken, is purely a "fictional appeal... filed for the purpose of gaining publicity for the" board of zoning appeals "and injuring the plaintiff," that "the hearing of said appeal by the board of zoning appeals would result in irreparable injury to the plaintiff's business," and that the statutory right of appeal from an order made by such board does not afford such plaintiff a complete and adequate remedy either in law or in equity. *Gochenour v. Herderick* (Franklin 1954) 99 Ohio App. 27, 131 N.E.2d 228, 58 O.O. 107.

### 9. Illegal use

Property owner's adult video arcade was not valid nonconforming use, and thus property owner was not entitled to conditional use permit, as the arcade did not exist as a lawful use at time village adopted its zoning ordinance; court had previously concluded that property owner operated its adult video arcade unlawfully. *Interstate Indep. Corp. v. Fayette Cty. Bd. of Zoning Appeals* (Ohio App. 12 Dist., 10-20-1997) 123 Ohio App.3d 511, 704 N.E.2d 611, dismissed, jurisdictional motion overruled 81 Ohio St.3d 1443, 690 N.E.2d 15, certiorari denied 119 S.Ct. 50, 525 U.S. 814, 142 L.Ed.2d 39. *Zoning And Planning* 1302; *Zoning And Planning* 1402

Massage parlor was not entitled to nonconforming use exemption from township zoning regulations,

in light of previous judicial determination that it was public nuisance and illegal because it conducted and permitted prostitution. *Matthews v. Pernell* (Montgomery 1990) 64 Ohio App.3d 707, 582 N.E.2d 1075, motion overruled 52 Ohio St.3d 703, 556 N.E.2d 528. Zoning And Planning 1305

#### 10. Primary use

In determining whether property owner's parking of commercial vehicles qualified as a valid, nonconforming use, trial court should not have considered whether the use was ancillary or primary, but, whether use of the property constituted a nonconforming use for the requisite time period; neither zoning regulations nor statute governing nonconforming uses in counties distinguished between primary and ancillary uses. *State ex rel. Eberts v. Inland Prods.* (Ohio App. 10 Dist., Franklin, 09-23-2010) No. 09AP-796, 2010-Ohio-4510, 2010 WL 3722766, Unreported, appeal not allowed 127 Ohio St.3d 1535, 940 N.E.2d 988, 2011-Ohio-376. Zoning and Planning 1302

R.C. § 303.19, OH ST § 303.19

Current through all 2012 laws and statewide issues of the 129th GA (2011-2012) and 2013 File 1 of the 130th GA (2013-2014).

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END OF DOCUMENT

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