

Common Pleas Court of Franklin County  
Civil Division

Columbus Compact Corporation  
1000 E. Main Street  
Columbus, Ohio 43205,

and

James A. Johnson,  
1084 Berkeley Road  
Columbus, Ohio 43206,  
Appellants,

v.

City of Columbus, Board of Zoning Adjustment,  
757 Carolyn Avenue,  
Columbus, Ohio 43224,  
Appellee.

***Notice of Appeal***

Now come Appellants, COLUMBUS COMPACT CORPORATION, an Ohio Corporation (sometimes referred to herein as CCC) and JAMES A. JOHNSON, Member of Driving Park Civic Association, and appeal from the decision of the Board of Zoning Adjustment, City of Columbus, Ohio, dated November 17, 2009 but certified on December 1, 2009, Application Request No. 09311-00249, authorizing the operation of an indoor gun firing range at 1030 Alum Creek Drive 43209. A copy of said decision is attached hereto as Exhibit "A" and incorporated herein by reference and sometimes referred to herein as "Decision".

Appellants hereby appeal the Decision, request reversal of the Decision, and revocation of the Special Permit at issue, or in the alternative request that this Court order a new hearing on the special permit Application Number 09311-00249.

This Appeal to the Common Pleas Court of Franklin County, Ohio is pursuant to Sections 2505.01 to 2405.45, inclusive, of the Ohio Revised Code, is based on issues of law and fact, and in support of Appellants' appeal they assert:

1. The decision of the Board of Zoning Adjustment, City of Columbus, (sometimes herein referred to as "BZA") is unconstitutional, illegal, arbitrary, capricious, unreasonable, and/or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record because:

a. BZA erred to the prejudice of Appellants when it directly and/or indirectly relied upon the report and recommendations of The Livingston Avenue Area Commission, an agent of the Board of Zoning Appeal (sometimes herein referred to as "LAAC");

b. BZA erred to the prejudice of Appellants because LAAC voted to recommend approval of Special Permit 09311-00249 , but did so in violation of its Bylaws and without meaningful public comment;

c. BZA erred to the prejudice of Appellants because LAAC proceeded with consideration of the permit request at issue in this case without a duly constituted body after it improperly removed its committee chair;

d. BZA erred to the prejudice of Appellants because LAAC failed to conduct a Zoning and Development Review Committee meeting to consider Special Permit 09311-00249;

e. BZA erred to the prejudice of Appellants because in lieu of holding a Zone East meeting to consider approval of Special Permit 09311-00249

LAAC conducted a series of private meetings which excluded the general public;


f. BZA erred to the prejudice of Appellants because the Applicant for Special Permit number 09311-00249 concealed or failed to disclose material facts regarding Applicant's alleged criminal conduct, tax violations, prevailing wages violations, and similar conduct; and BZA failed and/or refused to allow consideration of the same, or circumvented full consideration of these matters by allowing unlawful circumvention of public comments;

g. BZA erred to the prejudice of Appellants because it knew, or should have known, that LAAC failed to hold a Zone hearing, and BZA failed to address the problem to assure public comments from individuals and community entities such as Driving Park Civic Association, Hanford Village Civic Association, and Driving Park Civic Council; and

h. The actions of BZA have denied Appellants' procedural and substantive due process of law under the constitution of the United States of America, and the constitution of the state of Ohio.

Appellants submits this Appeal on the record before the Board of Zoning Adjustment and requests that this matter be set for trial for the purpose of submitting additional evidence because the appeal is based on law and fact, some of which facts are not properly before BZA.

Respectfully submitted

  
Theodore Scott, Jr.  
Sup. Ct. No. 0022821  
1465 E. Broad Street  
Columbus, Ohio 43205  
(614) 261-1499

Common Pleas Court of Franklin County  
Civil Division

The Columbus Compact Corporation, et al.,  
Appellants ,

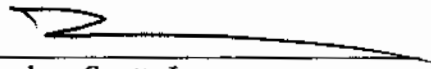
v.

City of Columbus, Board of Zoning Adjustment,  
Appellee.

**Motion of Appellants to Expand Record  
and Request for Admissions of Additional Evidence**

Now comes Appellants, Columbus Compact Corporation and James A. Johnson (herein sometimes referred to as Appellants), and respectfully move this honorable Court to permit the expansion of the Record and grant this Request for Admission of Additional Evidence. This Motion is made pursuant to Rule 7 of the Ohio Rules of Civil Procedure, Ohio Revised Code section 119.12 and for the reasons more fully set forth in the memorandum below.

Respectfully submitted,



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Theodore Scott, Jr.  
Sup. Ct. No. 0022821  
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Columbus, Ohio 43205  
(614) 261-1499  
Counsel For Appellants

## Memorandum In Support

Appellants moves to expand the record and for the admission of additional evidence because the record does not present to this Court accurate and complete factual issues upon which to make a disposition of this case. Section 119.12 of the Ohio Revised Code states:

...The Court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency.

For the reasons set forth below, the evidence sought to be admitted is obviously newly discovered in that the evidence was not permitted or provided for consideration before the Board, which was the result of lack of notice of its hearing and/or procedural defects in its hearing process.

BZA has no power to grant a special permit except as set forth in section 3307.06 (Special permits) of the City of Columbus Code which states in relevant parts that a special permit can be granted:

- A. ... where it is shown that the special use can be granted without substantial detriment to the public good, without substantial impairment of the general purpose and intent of the zoning district in which the use is proposed to be located, and without significant incompatibility with the general character of the neighborhood; (and)

...

- C. ... to carry out the intent and purpose of the Zoning Code and to otherwise safeguard the public safety and welfare.

Any process designed to ascertain, as is required by section 3307.06, what constitutes substantial detriment to the public good, compatibility with the general character of the neighborhood; and general welfare of the neighborhood, deserves public comment, as reflected by BZA own rules. BZA requires a recommendation from the LAAC, which is a public body and agency of the City of Columbus, and integral part of the BZA decision-making process. The recommendations of LAAC are based in part of the recommendations from the public, or at least LAAC is the primary means by which BZA obtains the broadest public comment.

*However, LAAC held private meetings, did not provide Public Notice of public meetings, did not conduct required Zoning and Development Regulation Committee meetings, did not transmit application information to Zone East neighborhoods, and did not receive a prior recommendation on the permit from the Driving Park Civic Association, as LAAC was required to do by its Bylaws as part of the BZA Special Permit public review process. As result of LAAC failures, Appellant, as well as numerous members of the public, was unable to provide public comment. Accordingly, Appellants' evidence should be considered newly discovered because it was discovered only after it was informed of the date on which LAAC should have conducted a hearing, but not in sufficient time to present it to BZA.*

Appellants was also denied the opportunity to effectively cross exam the witnesses, conduct depositions and to proffer evidence because LAAC failed to conduct a hearing, or give notice of a hearing. Furthermore, BZA had no standardized procedure for submitting evidence,

and consequently, Appellants' exercise of reasonable diligence could not have ascertained who would appear to testify, and when or how these witnesses could be cross examined.

Appellant merely seeks to expand the record to demonstrate the omissions in the decision process below. The expanded record will provide testimony and documents necessary to demonstrate that :


1. LAAC is an agency of the City of Columbus, and agent of BZA regarding the approval of Special Permit Application Number 09311-00249;
2. LAAC held private meetings regarding the approval and recommendation of Special Permit Application Number 09311-00249;
3. LAAC did not provide Public Notice of public meetings regarding the approval and recommendation of Special Permit Application Number 09311-00249;
4. LAAC did not conduct required Zoning and Development Regulation Committee meetings regarding the approval and recommendation of Special Permit Application Number 09311-00249;
5. LAAC did not transmit application information to Zone East neighborhoods regarding the approval and recommendation of Special Permit Application Number 09311-00249;
6. LAAC did not receive a prior recommendation on the permit from the Driving Park Civic Association , as are required by its Bylaws as part of the BZA's approval of Special Permit Application Number 09311-00249; and
7. LAAC and BAZ did not disclose or discover that the Applicant/ property owner plead guilty to a felony charge, bring in and harboring aliens, a plea which apparently occurred during the pendency of the BZA process.

A more detail summary of the nature and scope of evidence which Appellants seek to admit is attached hereto as Exhibit "A".

The board in granting the special permit did so based upon a procedure which was substantially flawed, facts that were incomplete and unreliable, and the absence of any meaningful opportunity for public comment. Therefore to properly address the issues presented on appeal, the record needs to be expanded.

For these reasons Appellants respectfully request that this Motion be sustained.

Respectfully submitted,



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Counsel For Appellants



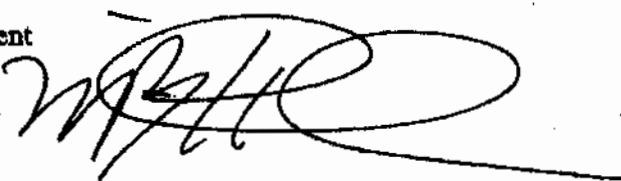
City Of Columbus  
Mayor Michael B. Coleman

## Office of the Mayor

City Hall / 90 West Broad Street  
Columbus, Ohio 43215-9014  
614/645-7671  
FAX 614/645-8965  
TDD 614/645-8200

### MEMORANDUM

TO: Boyce Safford III  
Director of Department

FROM: Michael B. Coleman  
Mayor 

DATE: December 15, 2009

RE: Livingston Avenue Area Developments

In recent weeks I have heard from several constituents who are concerned about developments in the Livingston Avenue Corridor that are counter to our efforts to lift up this neighborhood. Residents have expressed their distress about a new firearms store and shooting range in an area already is plagued by gun violence. The Livingston Avenue Area Commission recommended a permit for the shooting range at 1030 Alum Creek Drive before the Columbus Board of Zoning Adjustments, which approved it. I share the concerns of those residents who oppose the firearms facility and who are also distressed about a new adult bookstore next door to the shooting range and gun store and their effect on the character of that neighborhood.

These potentially harmful developments are within walking distance of Driving Park, where we have made significant public investments and plan to make more in the near future. Driving Park is the home of a recreation center where children play and families gather. While we are likely to invest in the recreation center in the future to attract more kids and families, these two uses will occur nearby and will serve as a community setback.

Please advise me as to our options.

# Mayor takes aim at gun-range plan

## Neighbors say they lacked input into proposal that zoning board OK'd

By Mark Ferencsik  
THE COLUMBUS DISPATCH

After hearing from residents and groups opposed to a planned South Side gun shop and indoor firing range near Livingston Avenue, Mayor Michael B. Coleman had asked his development director to look into what options, if any, the city has to deal with it.

"I share the concerns of those residents who oppose the firearms facility," Coleman wrote in a letter dated yesterday to director Boyce Safford III.

Coleman also is upset about a new adult bookstore next door to the shop.

He called both "potentially harmful developments" for a neighborhood plagued by gun violence.

Last month, the city's Board of Zoning Adjustment granted a special permit to Anchor Cos., the owner of the building at 1030 Alum Creek Dr., just south of Livingston Avenue near I-70, to allow the indoor firing range and gun shop.

The site did not have to be rezoned for the gun store. Anchor Cos. would run the

gun store or range. The company has said it is negotiating with an operator.

It's unclear what the city could do at this point.

"The city has made a decision because the (zoning board) has the authority to make the decision," said Assistant City Attorney Josh Cox.

The decision came after the Livingston Avenue Area Commission recommended approval. But residents and others have complained they didn't have enough of a say in the decision.

Michael Aaron, the area commissioner's leader, said if Coleman has a problem, he needs to work with the City Council to change the zoning

along Alum Creek Drive. "Safe, we would like to see other types of businesses there: grocery stores, movie theaters, restaurants," Aaron said.

But he said those types of businesses don't move into areas where cities aren't investing money. "I have not seen any major improvements along Livingston Avenue," Aaron said. Jonathan Beard, president and chief executive of the Columbus Compact Corp., plans to file an appeal in court.

"People are baffled as to why anybody approved this," he said.

The nonprofit development corporation already filed an appeal with the zoning board, although city officials have said the courts are the proper venue.

The appeal contains letters from groups opposed to the plan, including the Ohio State Youth Violence Preven-



THE COLUMBUS DISPATCH

tion Advisory Board, which writes that that area of Columbus "is already burdened with elevated rates of gun violence; government endorsement of the placement of an indoor firing range in this area sends the wrong message to children growing up in the community." [mferencsik@dispatch.com](mailto:mferencsik@dispatch.com)