



Mullaney Law Offices

598 Main Street • P.O. Box 24 • Red Hill, Pennsylvania 18076-0024
www.mullaneylawoffices.com

(215) 679-7931
(610) 489-4121
FAX (215) 679-3345

GERALD J. MULLANEY, SR.
CHRISTOPHER P. MULLANEY

May 6, 2009

New Hanover Board of Supervisors
2943 North Charlotte Street
Gilbertsville, PA 19525

RE: Gibraltar Rock Proposed Settlement Stipulation

Dear Supervisors:

As you know, Tom Keenan and I represent the citizens group, Paradise Watchdogs - Ban the Quarry. In previous township meetings I raised several issues with respect to the substance and procedure of the proposed stipulation. In fact, I believe there are so many problems with the proposed stipulation, I am hesitant to try to address all of the issues in letter form. Nonetheless, this letter is being sent in response to the Board's request that I reduce to writing the concerns of my client.

The proposed solution by the Paradise Watchdogs - Ban the Quarry organization is for the Board to "vote no" on the proposed Settlement Stipulation and allow the matter to go back before the Zoning Hearing Board (hereinafter "ZHB") and court, if necessary. Despite the public outrage and constructive criticism of the proposed settlement stipulation, Gibraltar Rock has refused to meaningfully address the concerns of the citizens and instead, has asked you, the Board, to choose between a bad agreement and no agreement at all. As I stated before, I think any result obtained by proper due process of the ZHB, and perhaps the courts, would be better than what is proposed by this agreement.

I will list my clients' concerns generally with reference to page number of the proposed settlement stipulation. The following concerns may be long in content herein as stated, but by no means are they inclusive of every concern of my client or the residents at large.

Page 1: The agreement purports to grant a right to quarry to Sahara Sand, Inc. who owns two (2) parcels of affected land, however, they are not a party to the agreement.

It is stated the ZHB allegedly is in agreement with the Settlement Stipulation, however, the ZHB was not formally consulted and at least one (1) member of the ZHB was surprised to learn they were going to sign off on this agreement.

Page 2: Gibraltar Rock will mine parcels owned by Sahara Sand, Inc. pursuant to an operating agreement, however, the operating agreement is not attached to this stipulation. Once again, if the Township agrees to give Sahara Sand, Inc. the right to quarry, Sahara Sand should be made a party to the agreement.

Eighty-one percent (81%) of the land currently zoned in the Gibraltar III Application is for residential/agricultural use. Quarries are not permitted in a residential area. Perhaps this is why only one (1) ZHB meeting has been held. Meanwhile, Gibraltar has been acquiring more land and may now pursue a GR4.

Page 3: Contrary to what is stated in the Stipulation, the ZHB did not deny Gibraltar Rock's challenge to the validity of the Park and Recreation fee provisions, but instead stated jurisdiction of said fees was vested with the Township and not the ZHB. (See Page 41 of the ZHB Decision.)

Page 4: The group objects to paragraph 4 which allows Gibraltar Rock to quarry in the area pursuant to Exhibit "A-1", "Extent of Mining", which contains largely residential property not before mentioned in any application to the ZHB nor made public before at any Township meeting. At the very least, the Silvi Group mislead the general public and Board when it displayed a mining map at the Township meetings which was much smaller in scope than Exhibit "A-1". Notwithstanding the identification of the parcels contained on Pages 2 and 3 of this proposed stipulation, the agreement really provides zoning relief to all of the parcels shaded in Exhibit "A-1". Therefore, the size and scope of the proposed quarry is much different than that which was ever contemplated in the ZHB hearings and disclosed by the Silvi Group to the general public. It is apparent that the Silvi Group has acted in bad faith when they knowingly displayed an inaccurate posterboard size diagram of the quarry at two (2) township meetings. The Stipulation allows Gibraltar to operate a quarry the size of Exhibit "A-1". Furthermore, there is no restriction prohibiting the quarry from expanding beyond Exhibit "A-1".

Paragraph 5 is a red herring and provides no relief to the Township residents except for the business operated by Louis Farrell. The processing area is apparently depicted on a plan shown by Exhibit "A", however, Exhibit "A" is not attached to the Stipulation nor has it been made public.

Paragraph 6 allows the driveway to be placed on Route 663. The traffic studies were geared towards a Route 73 driveway for a quarry half of the proposed size and are no longer valid. New traffic impact studies must be done as well as the consideration of improving the intersection at Hoffmansville Road and Route 663 as well as the consideration of acceleration and deceleration lanes, all at Gibraltar's expense. However, since the Township agrees to not object to any permit applications as stated on Page 12, the Township nor the citizens would have any say in the matter with respect to the Highway Occupancy Permit and any increase in truck traffic.

Page 5: Paragraph 7 forces the Township to issue a permit for driveway(s) to access the lands to the north of Hoffmansville Road. There is no limitation to the number nor location of said driveway(s) and the only alleged limitation is a prohibition on hauling materials from the site. However, since the DEP Permit (Part B, Page 2) requires the construction of a “haul road and access the mine site from Hoffmansville Road” there may be a conflict with the language between the Stipulation and the DEP Permit, and therefore, the DEP Permit controls (Paragraph 10 of the Stipulation). Once again, the impact to the local traffic and residences is completely unknown.

Paragraph 8 forces the Township to allow a tunnel to be built under Hoffmansville Road “which will connect the primary crusher on the north side of Hoffmansville Road to the processing equipment on the south side of Hoffmansville Road”. First, how can one build a tunnel under a road without closing Hoffmansville Road for a period of time? Moreover, once the Township agrees to the stipulation, you cannot even object to the closing of Hoffmansville Road pursuant to Page 17 of the agreement. Since Church Road will be immediately vacated, there will be limited access through that part of the Township and the citizens will have no recourse. As to the primary crusher being located on the north side of Hoffmansville Road, this was not contemplated and is in contravention to the crude diagrams supplied by Silvi showing all processing equipment in a centralized location on the south side of Hoffmansville Road. It can be argued that the equipment listed on Page 17 of the DEP Air Quality Permit as being utilized and necessary for the operation of the primary crusher is at least equivalent to that contained in the “processing area” on the south side of Hoffmansville Road. The surrounding schools and residents will obviously have a greater chance of being affected by fugitive dust due to the separation of crushers. The fact is, there are really two (2) processing areas each emitting noise and dust.

Paragraph 9 allows for perhaps the single largest land development project in Township history to be approved without filing and seeking approval on a land development plan. Graciously, the Stipulation allows for the township engineer is permitted to make limited suggestions.

Paragraph 10 allows the mining permit to be incorporated by reference, but it will need to be amended to include the changes allowed by the settlement stipulation. Unfortunately, the Township is prohibited from challenging any modification of the DEP Permit. Accordingly, Gibraltar Rock may quarry by size and scope as it may please because the Township will have no voice in the matter. To make matters worse, when there is a “conflict” between DEP permits and the Stipulation, the DEP regulations “SHALL CONTROL”. This is the exception that swallows the rule. The Township must agree to any DEP modifications. If the modifications are in conflict with the Stipulation, the DEP modifications will control and round and round we go - an uncontrolled, unregulated quarry. The Stipulation has no teeth and the Township and residents are powerless to control it.

Page 6 largely repeats language contained in Part B of the DEP Mining Permit and that which is required by DEP and therefore, adds nothing to the Stipulation.

Page 7 repeats more DEP language. Under the proposed Stipulation, blasting is now permitted between 10:00 a.m. and 4:00 p.m., even though the ZHB decided blasting should be prohibited from 2:00 p.m. through 4:00 p.m. due to school bus traffic. Moreover, the quarry can blast in an "emergency" when required for "safety" reasons. This exception allows them to blast whenever they want. Blasting is also not limited to how many blasts may be made per day.

Page 8 repeats more DEP required language.

Paragraph (g): While the Stipulation limits the primary crusher to 6:00 a.m. to 7:00 p.m. Monday through Saturday, the ZHB limited ALL quarrying and crushing to Monday through Friday 7:00 a.m. to 5:00 p.m. and Saturday from 7:00 a.m. to 12:00 p.m. The ZHB made a rational and reasonable restriction based on the health, safety and welfare of the community to limit all quarrying and crushing to "reasonable hours of operation". Not only does the Stipulation allow for the primary crusher to run six (6) days at seventy-eight (78) hours per week, but more importantly, there are no limitations on the secondary crusher or tertiary crushing systems. These may run twenty-four (24) hours per day up to the DEP annual processing limit of 500,000 tons. You should know the secondary and tertiary crushers operate at a higher speed and actually produce more noise than the primary crusher. There are also no limits at all on the hot mix bituminous plant. Since there are no limits to the hours of operation, nor what materials can be brought to the plant for processing, by signing the Stipulation you are permitting Gibraltar Rock to operate a twenty-four (24) hours per day, seven (7) days per week asphalt plant with trucks coming and going at all hours of the day and night. I find it hard to believe any court would allow such non-regulation of a quarry in a residential area. This one paragraph alone should be enough to cast a "no vote".

Paragraph (h): This language is contained on Page 31 of the air quality plan and adds nothing to this agreement.

Page 9, Paragraph (i): Although Silvi and the Township made a big deal of promising to replace affected water supplies and wells within the 1,500 foot "no fault" area, this duty is already required by the "special conditions" section of the DEP Mining Permit. Although the DEP Permit mandates any well is covered, the Stipulation attempts to only cover residential wells and water for "human consumption" leaving out water for horses, farm animals and commercial use. Based on this language, you would be unable to water your lawn, garden or fill a kiddie pool. Although the Silvi Group is calling the 1,500 foot zone the "no fault area" on Page 9, the very end of the subsection dealing with wells on Page 12, contains an exception where Gibraltar has no obligation to fix any water problems due to the owner's pumps, electrical and/or piping problems. Also, at the bottom of Page 9, Gibraltar offers to replace an affected water supply with an alternative source of water "adequate in quality and quantity for the purpose

Page Five
May 6, 2009

served by the supply". What constitutes "adequate supply" is at their discretion or up for debate as it is not defined. Gibraltar Rock should be made to restore or replace the affected water supply to its previous condition as it existed prior to mining.

Page 10, Paragraph 11(i)(ii): The proposed no-fault area map is incorrect and should be modified and based upon the extent of mining map at Exhibit "A-1".

Paragraph 11(i)(iv): Not only should Gibraltar advise the Township of any permanent action to be taken to restore the loss of water, but they should also notify the affected landowner.

Page 11, Paragraph 11(v): Gibraltar is only promising to maintain one temporary portable water supply system for rapid deployment. What if more than one well is affected? There is no provision to address this issue. Moreover, although they will have a temporary water supply, it will only be deployed at their discretion as the Stipulation states "Gibraltar Rock will determine whether to deploy the system on a case-by-case basis with input from DEP". The Township nor its residents will have any say in the matter. There is also no mandate that the portable system will be filled at all times. The affected resident is only guaranteed against losing drinking water. Under this Stipulation, you cannot water your lawn, wash your car, water your house plants or even give water to your dog or cat (See Page 9). The DEP Permit provides greater protection than this.

Page 12, Paragraph 11(j): Although the ZHB decision mandates berms and screening to be in place prior to the commencement of quarrying operations, the Stipulation causes the Township to permit construction of berms only as overburden becomes available. There is also no order of priority for location of placement of the berms. Moreover, since Gibraltar is required by the DEP Permit (Part B, Page 2) to store prime farmland soil until final reclamation, there may be little to no material available for berming for several years.

Page 13, Paragraph (k): The inadequacy of a four foot (4') box wire fence has been discussed. Also missing is the requirement to maintain the fence at all times. The remainder of Page 13 repeats DEP language and adds nothing to the Stipulation.

Page 13 is also the only place where a setback is mentioned. It was strongly emphasized at the Township meetings that this is a good agreement in that it provides for a 100 foot setback as opposed to the 25 foot minimum setback established by DEP. Unfortunately, this is simply not true as nowhere in the Stipulation, nor in the DEP Permit is there a requirement that Gibraltar maintain a 100 foot setback. Therefore, the 25 foot setback applies except for areas adjacent to the wetland jurisdictional boundary area, public highways, occupied dwellings or schools. (See 25 Pa. Code 77.504) Although Gibraltar may not mine in these areas, they may conduct surface support activities. Not included in the Stipulation is DEP authorization granting Gibraltar's requested variance to invade the aforesaid set backs for surface support activities. (See DEP Permit, Page B, Page 6).

Page 14, Paragraph 12: Although the Stipulation “incorporates the conditions imposed by the ZHB”, it excepts the majority of the Order, leaving only that the quarry will operate within requirements of national ambient air quality standards (required by Permit), will provide advanced notice of blasting, will replace resident well within 1,500 foot (required by DEP Permit), will monitor ground water (required by DEP Permit), conduct preblast surveys and maintain seismographs (required by DEP Permit), operate within requirements of Township Blasting Ordinance and merge all property into one deed. Essentially, all of the conditions set forth by the ZHB designed to promote the health, safety and welfare of the residents, including that the quarry shall comply with the Township noise ordinance, were removed from the proposed Stipulation. The judgment, wisdom and authority of the ZHB has been usurped.

Page 15: Paragraph 14 provides up to 1,000 tons of crushed stone per year to the Township. It has a value of approximately \$10,000.00 and can make approximately 1,500 feet of road bed. This is hardly a significant value to the Township. The real value to the Township would be with the asphalt, which is not part of the agreement

Paragraph 15: Township residents have correctly pointed out that 3.5 million dollars over 20 years is hardly worth sacrificing the health, safety and welfare of the Township residents.

Page 16, Paragraph 17: The Agreement for the Township to promptly vacate Church Road without any official traffic studies is unprecedented. The thought that the Township would agree to this provision without any consideration of the impact of such a closure is troublesome.

Paragraph 18, 19: This language adds nothing to the Stipulation.

Paragraph 20: This paragraph containing four (4) lines and buried deep in the Stipulation forces the Township to “team up” with Gibraltar Rock and join in any application or revision for application for permits, notwithstanding any objection the Township or its residents may have in the present or distant future. Not only does the Township, for its citizens, waive any objections to any quarry applications/revisions, but the Township must also support such unknown applications/revisions. This one paragraph alone is enough to cast a “no vote” on the agreement.

Paragraph 21: This paragraph buttresses the mandated language in Paragraph 20. Paragraphs 20 and 21 equate to an unregulated quarry, the very thing the Township promised it's citizens it would avoid.

Page 17, Paragraph 22 and 23: These paragraphs add insult to injury. The remaining paragraphs contain standard legal agreement language.

Page 18: This page contains standard legal agreement language and the agreement is binding on the parties unless they mutually agree to modify or amend the agreement.

Page Seven
May 6, 2009

Page 19, Paragraph 35: The Township has waived its right to a jury trial.

Page 20, 21: No comment needed.

Finally, there have been several recent Township meetings where the Board has received comment upon the proposed Stipulation and advice for the proper cause of action. I submit to you, the concerned citizens from all walks of life, scattered throughout the Township, have loudly and candidly stated they oppose the agreement in its current form. Many of those also want the Township to abandon it altogether and join in the fight to oppose the quarry. I have provided just a few reasons to vote NO on this agreement. My clients invite you to also join them in their fight to Ban the Quarry.

Thank you for your time.

Sincerely,



CHRISTOPHER P. MULLANEY

CPM/rb

cc: Paradise Watchdogs - Ban the Quarry
Thomas M. Keenan, Esquire
Paul A. Bauer III, Esquire
Robert L. Brant, Jr., Esquire