

# 2020 News

## Paradise Watchdogs Ban the Quarry

P.O. Box 115, Frederick, PA 19435

[www.banthequarry.org](http://www.banthequarry.org)

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Zoning Board Appeal	Mining Permit Renewal	Land Development	Hoff VC site remediation
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**Background:** Paradise Watchdogs is a not-for-profit, environmental preservation community group, established in 1987.

Following a 12-year battle, the Watchdogs succeeded in preventing a landfill on the current Gibraltar Rock property.

In 2000, the Gibraltar Rock quarry was proposed and Ban-the-Quarry formed in opposition to a hard-rock quarry, concrete plant, and asphalt plant. A few years later, the Paradise Watchdogs joined with Ban-the-Quarry . . . and has continued for almost 20 years, to keep you informed and to help maintain a healthy environment.

**In 2011:** The Penna. Dept. of Environmental Protection notified residents that the former Good Oil Company had become a toxic waste site. Almost seven years ago, Gibraltar Rock purchased 18 acres of the hazardous site.

**In 2014,** the company filed an application with the township Zoning Hearing Board, asking for approval to blast on 82 acres adjacent to Good Oil. The Paradise Watchdogs and New Hanover Township have both opposed this application. (update below)

### 1) Gibraltar Rock 4<sup>th</sup> Application to Quarry in New Hanover

The company filed an application with the New Hanover Zoning Hearing Board in 2014. Twenty hearings were held with the ZHB from April 2015-August 2017. In September 2017, the Zoning Hearing Board granted a "special exception" to Gibraltar Rock. The zoning board included 16 conditions to be met by Gibraltar Rock. This ZHB decision was appealed to the Court of Common Pleas by: *New Hanover Township, Paradise Watchdogs, and Gibraltar Rock*.

In late 2017, the Paradise Watchdogs filed a petition in Montgomery County court to allow us to join the appeal of the ZHB decision noted above. In January 2019, we appeared in court to explain the potential effects to area families, their water, and livestock, due to the quarry's close proximity to the Hoff VC HSCA site (Good Oil hazardous site), and both the Swamp Creek and Scioto Creek. The judge granted our request to join in the appeal.

**Next step:** On July 9, 2019, the appeal trial was held in the Court of Common Pleas in Norristown. We were encouraged to learn that the judge is concerned about the welfare of the people here. Our position, and that of the township, is that the quarry should not be started until the Hoff VC site is cleaned-up by the **Dept. of Environment Protection (DEP)**.

Our township solicitor, on behalf of the Board of Supervisors, argued two points. 1) quarry operations can only be conducted in the heavy industrial zones, and 2) of major importance is the health and welfare of the residents. The solicitor stated that for 20 years now, Gibraltar Rock has never addressed the safety, health, and welfare of the community.

Our attorney was convincing in his arguments. 1) the zoning hearing board found our expert witness' testimony to be credible, and 2) the expert's scientific findings should not be ignored, i.e. blasting with dynamite should not be permitted prior to the total clean-up of the hazardous waste site because the chemicals trapped underground will be released.

Next - - - Judge's decision

### Court Decision of GR-4 Appeal

We received the decision of Judge Jeffrey Saltz on August 16, 2019. The Judge upheld the ZHB's granting of the special exception (*the state law*). The ZHB had included "16 conditions" to the special exception. Judge Saltz modified five (5) of the conditions. Some modifications benefit us, and some benefit Gibraltar Rock. The remaining (11) conditions ordered by the ZHB must be met by Gibraltar Rock.

**Judge Saltz wrote:** "The role of this Court in reviewing the decision of a zoning hearing board is limited. When a trial court receives no additional testimony or evidence, its review will be limited to a determination whether the Zoning Hearing Board abused its discretion or committed an error of law and whether its necessary findings are supported by substantial evidence." Because the Court did not take additional evidence in this appeal, the Judge said the law states that the ruling of the zoning hearing board should not be disturbed.

### **Judge Saltz on our position – health, safety, and welfare:**

The Judge says that according to the Non-Coal Surface Mining Act, groundwater contamination concerns are preempted by the Non-Coal Act. And, according to the Non-Coal Act (*Penna. law*), the quarry must first obtain a mining permit, issued by the Dept. of Environmental Protection (DEP).

What does this mean? On the issue of health, safety and welfare - the Judge is saying that the township's protection is limited; the Court can't protect us -- because the state mining law says that it's the responsibility of the DEP to protect us. This is the "preemption principle".

Judge Saltz also stated, "The Court does not pass on the merits of the environmental issues argued by the Township and individual Intervenors (Ban the Quarry). Those issues are of significant concern. But the Township appeal, & the Ban the Quarry appeal, must fail because it is based on matters that are preempted. The Non-Coal Act commits their concerns to the scientific engineering and legal expertise of the DEP."

## **2) Gibraltar Rock mining permit**

In 2014, the PA-Environmental Hearing Board ordered Gibraltar Rock to apply for a mining permit renewal. In 2018, the PA-DEP granted a permit renewal to Gibraltar Rock. The mining permit covers approx. 241 acres. Both New Hanover Township and Paradise Watchdogs-Ban the Quarry appealed this permit renewal.

Starting in early 2019, our attorney and the township attorney had been filing many documents with the PA-EHB. The EHB hears appeals from the actions of the PA-DEP and issues adjudications, opinions, and orders. In early Sept 2019, our attorney filed a 35-page pre-hearing memorandum that included a "Statement of Legal Issues in Dispute". The township attorney submitted 91 exhibits to support our appeal.

### **Trial before the EHB:**

The trial was held at the DEP-SE Regional Office in Norristown, PA, from Oct 21-25, 2019. Robert Brant had been the "special counsel" for the township in all Gibraltar Rock issues since 2001. Bob stepped down and was replaced by Andy Bellwoar, New Hanover Twp solicitor. Our attorney told us when the EHB trial ended that Andy and his assistant did a terrific job getting up to speed so quickly on such a complex set of facts and issues, spanning 19 years. The township Board of Supervisors voted to hire two experts that were very beneficial to us for the trial. One is a professional engineer whose study was excellent, and the other was Dr. McLane, from McLane Environmental, Princeton, NJ.

The township also helped us by splitting the cost of the exhibit books that were required "at the last minute" in this case. To quote our attorney, "The fight has been there all along but now has accelerated due to hazardous chemicals naturally migrating toward GR-1 and GR-2, without any pumping (yet) and the pollution is currently occurring within the permit site."

Our attorney and the township attorney submitted their final briefs for this case in early January 2020. Final briefs are expected from Gibraltar Rock and the DEP in February. Then in March, our attorney and the township attorney will have another chance to respond to the February briefs. We don't expect an EHB decision until later in March or April.

## **3) Land Development**

A few years ago, Gibraltar Rock submitted to the township their "final land development plan". The township refuses to consider the plan until / unless the company has an unappealed mining permit.

## **4) Hoff VC HSCA site remediation**

At the current time, the Penna. DEP has no plans to remediate this site. Remember - Judge Saltz (above) wrote that it's the responsibility of the DEP to protect our health, safety, and welfare.

## **5) New Hanover Town Center**

The developer, Wynstone, submitted another plan in late-2019. One meeting was held before the Planning Commission (with the Board of Supervisors present) in January 2020. No progress was made with this plan.

### **How can you help?**

- Make a donation to help pay for legal and consultant fees. All operating expenses are paid by our committee. (*envelope enclosed*) Any amount would be greatly appreciated.
- Support our monthly bake sales at Freed's Supermarket, Gilbertsville. (3<sup>rd</sup> Saturday, March through November, weather permitting). We also sell: small trees, shrubs, perennials, annuals, fresh flowers, and flea market items. All very reasonably priced. Stop by to take a look!

*Please make checks payable to: Paradise Watchdogs **OR** Ban the Quarry*

*Mail to: PWD – BTQ P.O. Box 115 Frederick PA 19435*

**Visit our updated website at: banthequarry.org**

**THANK YOU**