

**TABLE OF CONTENTS**

**BERNARDS TOWNSHIP- TOWNSHIP COMMITTEE  
MINUTES**

**JULY 2, 2008 - SPECIAL SESSION**

*(click on the page number to go directly to that page)*

**CALL TO ORDER..... 3**

**ROLL CALL..... 3**

**EXECUTIVE SESSION – RESOLUTION #080311..... 3**

**AMEND AGENDA ..... 3**

**CORRESPONDENCE..... 3**

**REPORTS..... 3**

**MINUTES..... 4**

    06/24/2008 –COMBINED AGENDA/REGULAR MEETING – OPEN SESSION ..... 4

    06/24/2008 – COMBINED AGENDA/REGULAR MEETING – EXECUTIVE SESSION ..... 4

**FIRE & RESCUE APPOINTMENTS..... 4**

**TOWNSHIP COMMITTEE/STAFF COMMENTS ..... 4**

**UNFINISHED BUSINESS..... 4**

    RESOLUTION #080308 - ACCEPTING THE PLANNING BOARD’S REPORT AND  
    RECOMMENDATIONS, AND DISAPPROVING THE PROPOSED 2008 QUARRY REHABILITATION PLAN  
    WHICH WAS JOINTLY SUBMITTED FOR THE QUARRY PROPERTY AT BLOCK 6001, LOT 6 (F/K/A  
    LOT 4.01 IN BLOCK 164) BY MILLINGTON QUARRY, INC., OWNER OF THE QUARRY PROPERTY,  
    AND BY TILCON NEW JERSEY, A DIVISION OF TILCON NEW YORK, INC., OPERATOR OF  
    QUARRYING ACTIVITIES AT THE QUARRY PROPERTY – DISCUSSION AND POSSIBLE VOTE..... 4

    PUBLIC COMMENT ON RESOLUTION #080308 ..... 4

**NEW BUSINESS..... 22**

    ORDINANCE #2024 - REPEALING ORDINANCE #2008 WHICH ADDED NEW SUBSECTION  
    ORDINANCE § 4-9.5 B.20 ENTITLED “TEMPORARY MORATORIUM”, IN ORDER TO ENACT A  
    MORATORIUM ON IMPORTATION OF FILL TO THE QUARRY PROPERTY PENDING PLANNING  
    BOARD REVIEW OF THE PROPOSED 2008 REHABILITATION PLAN – POSSIBLE INTRODUCTION  
    AND DISCUSSION..... 22

    ORDINANCE #2025 - AN ORDINANCE AMENDING CHAPTER IV ENTITLED “GENERAL  
    LICENSING”, SECTION 4-9 ENTITLED “QUARRYING” OF THE REVISED GENERAL ORDINANCES OF  
    THE TOWNSHIP OF BERNARDS, TO ADD NEW SECTION 4-9.14 ENTITLED “IMPORTATION OF FILL  
    MATERIAL ONTO QUARRY PROPERTY IS PROHIBITED” – POSSIBLE INTRODUCTION AND  
    DISCUSSION ..... 23

CONSENT AGENDA..... 25  
     *Resolution #080309 - Resolution Amending Employee Handbook of Personnel Polices & Procedures Section – Retirement Plan and Group Life Insurance* ..... 27  
     *Resolution #080310 - Approval of Interlocal Agreement with the Township of Clinton for Litigation Expense and Representation in Connection with a Legal Challenge to the Validity of the Regulations Adopted by the Council on Affordable Housing (COAH).....* 29  
     *Resolution #080313 - Ratification and Approval of INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMAN AND HELPERS OF AMERICA, LOCAL 469 Union Contract, January 1, 2008 through December 31, 2010....* 26  
     *Resolution #080322 - Approval of the Bill List Dated 07/02/2008* ..... 26  
**PUBLIC COMMENT** ..... 27  
**ADJOURNMENT** ..... 30

**CALL TO ORDER**

The mayor called the special meeting to order at 7:05 PM. Those assembled saluted the flag and the mayor read the open public meeting statement.

**ROLL CALL**

Present: Kelly, Spitzer, Carpenter  
Absent: Malay, Pavlini  
Also Present: CFO/Administrator McArthur, Engineer/Planner Messina, Attorney Belardo, Clerk/Assit. Adm. Szabo

**EXECUTIVE SESSION – [RESOLUTION #080311](#)**

Motion by Kelly, second by Spitzer, and unanimously agreed to adopt Resolution #080311, and the meeting temporarily adjourned to executive session at 7:06 PM.

**WHEREAS**, Section 8 of the Open Public Meetings Act, Chapter 231 P.L. 1975, permits the exclusion of the public from a meeting in certain circumstances; and

**WHEREAS**, this public body is of the opinion that such circumstances presently exist.

**NOW THEREFORE BE IT RESOLVED**, by the Township Committee of the Township of Bernards, County of Somerset, State of New Jersey, as follows:

1. The public shall be excluded from discussion of an action upon the specified subject matter.
2. The general nature of the subject matter to be discussed is as follows:
  - Land Acquisition Pyne, Block 9601, Lots 8, 9, 11, 12, 13 & 14  
English Wood Lot, English, Block 11201, Lot 1
3. It is anticipated that the minutes on the subject matters of the closed session will be made public upon conclusion, dismissal or settlement of litigation; or final resolution of agreements on personnel matters; and in any event, when appropriate pursuant to N.J.S.A. 10:4-7 and 4-13.
4. The committee will come back into open session and may take further action.
5. This resolution shall take effect immediately.

The meeting resumed in open session at 8:01 PM.

**AMEND AGENDA**

By unanimous consent, the committee agreed to amend the agenda to include Resolution #080322.

**CORRESPONDENCE**

None.

**REPORTS**

None.

## **MINUTES**

06/24/2008 – Combined Agenda/Regular Meeting – Open Session

By unanimous consent, these minutes were approved for content and release.

06/24/2008 – Combined Agenda/Regular Meeting – Executive Session

By unanimous consent, these minutes were approved for content only.

## **FIRE & RESCUE APPOINTMENTS**

None.

## **TOWNSHIP COMMITTEE/STAFF COMMENTS**

Committee and staff members reported on their recent activities.

## **UNFINISHED BUSINESS**

Resolution #080308 - Accepting the Planning Board's Report and Recommendations, and Disapproving the Proposed 2008 Quarry Rehabilitation Plan which was Jointly Submitted for the Quarry Property at Block 6001, Lot 6 (f/k/a Lot 4.01 in Block 164) by Millington Quarry, Inc., Owner of the Quarry Property, and by Tilcon New Jersey, a Division of Tilcon New York, Inc., Operator of Quarrying Activities at the Quarry Property – Discussion and Possible Vote

Geoff Goll of Princeton Hydro was present for and participated in the discussion. The committee reviewed the most recent draft of the resolution and agreed to a few minor modifications

They accepted public comment prior to voting on the resolution.

### Public Comment on Resolution #080308

Ella Phillipone, Passaic River Coalition (submitted a letter for the record)

Mr. Marmora, Esq., representing MQI

Bill Kimzey, 101 Linden Drive (submitted a letter for the record)

Rich Bianchi, 55 Springhouse Lane

Van Vogel, 11 Summit Drive

John Moretta, Esq. representing Tilcon

Carol Bianchi, Citizens for Clean and Safe Millington Quarry

Elisa Narsu, 37 Sentinel Drive

John Gannon, Woodstone Road

Motion by Kelly, second by Spitzer, to approve the following version of Resolution #080380.

Roll Call:

Aye: Kelly, Spitzer, Carpenter

Nay:

Abstain:

Motion carried.

**WHEREAS**, Millington Quarry, Inc. (“MQI”) is the owner, and Tilcon New York, Inc. (“Tilcon”), is the operator, of property designated as Block 6001, Lot 6 (f/k/a Lot 4.01 in Block 164) on the tax map of Bernards Township, commonly known as 135 Stonehouse Road, in Somerset County, New Jersey (the “Quarry Property”);

**WHEREAS**, pursuant to Bernards Ordinance § 4-9.5.a.1, rehabilitation of the Quarry Property:

“may begin while quarrying is conducted in accordance with the most recently approved and still valid rehabilitation plan, and it shall be completed after quarry operations cease. The purpose of rehabilitation is to return the quarry property to conditions that are permitted by the Township Zoning Ordinance, that do not endanger the health and safety of the public, and that do not endanger natural resources such as groundwater and soil erosion.”

**WHEREAS**, pursuant to Bernards Ordinance § 4-9.5.a.4, the most recently approved and valid rehabilitation plan for the Quarry Property expires on the third anniversary of its approval - on **July 25, 2008**. A revised rehabilitation plan is required to be submitted by the applicant six months in advance of the expiration of the current approved plan, and the revised proposed plan is to be “reviewed by the Planning Board and approved by the Township Committee in the same manner as an initial rehabilitation plan”;

**WHEREAS**, MQI and Tilcon submitted a revised rehabilitation plan for the Quarry Property, consisting of six sheets prepared by Kevin E. Page, NJPE & PP, of Page Engineering Consultants, P.C., dated January 24, 2008; together with a plan entitled “Reclamation Plan”, consisting of one sheet, prepared by Page Engineering Consultants, P.C., and a plan entitled “Existing Contours as of 10/31/07”, consisting of one sheet, prepared by Page Engineering Consultants, P.C., all of which are dated January 24, 2008, (the “Proposed Rehabilitation Plan”); and

**WHEREAS**, pursuant to Bernards Ordinance § 4-9.5.a.2, the Planning Board is required to:

“review the [Proposed Rehabilitation Plan] to ensure consistency with each and every provision of Subsections 4-9.4 and 4-9.5, including environmental, health, safety, and other factors affecting the public welfare.”

The Planning Board considered the Proposed Rehabilitation Plan at public hearings held on April 22, 2008, April 30, 2008, May 12, 2008, May 15, 2008, May 20, 2008, May 29, 2008, June 3, 2008, June 9, 2008, and June 11, 2008, and adopted a Resolution with its Findings, Conclusions, Recommendations and Report. The Resolution serves as the Planning Board’s report to the Township Committee on the Proposed Rehabilitation Plan, and set forth 43 recommendations; and

**WHEREAS**, pursuant to Bernards Ordinance § 4-9.5.a.5, after the Planning Board adopted its Resolution with Report, the Township Committee is to:

“review the report from the Planning Board. It may then approve the rehabilitation plan, it may approve it with changes with the agreement of the applicant, or it may reject the plan and state its reasons. If it approves the plan, it will at the same time establish the security that will be required and the form it will take.”

Accordingly, the Township Committee has reviewed the Planning Board’s Recommendations at public hearings held on June 24, 2008, and July 2, 2008;

**NOW THEREFORE, BE IT RESOLVED** by the Township Committee of Bernards Township, in Somerset County, New Jersey, that the recommendations of the Planning Board regarding the Proposed Rehabilitation Plan be and are hereby accepted.

**The Proposed Rehabilitation Plan submitted by MQI and Tilcon is rejected and disapproved for the reasons stated at length in the Planning Board Resolution and incorporated herein, specifically including and incorporating herein the within referenced testimony, recommendations and reports of Township professionals and experts retained to review the Proposed Rehabilitation Plan. MQI and Tilcon are required to submit a new proposed rehabilitation plan which satisfies the following requirements to the Planning Board by October 3, 2008, for review and approval.** (For reference purposes, Planning Board recommendations are shown in *italics*, Township Committee requirements in **bold**.)

1. *The rehabilitation plan presented by the applicant in this matter, dated January 24, 2008, should be rejected, and the applicant should be required to submit a rehabilitation plan for approval by the Township Committee which satisfies the following recommendations.*

**The Proposed Rehabilitation Plan is REJECTED. MQI and Tilcon are required to submit a revised rehabilitation plan which satisfies the requirements indicated herein to the Planning Board by October 3, 2008.**

**The Revised Rehabilitation Plan must include a corporate officer certification and acknowledgement by an officer of MQI and an officer of Tilcon. The certification must be signed by either the President or Chief Executive Officer of the corporation, and shall at a minimum contain the following language:**

**“I, [name], hereby certify as follows:**

**1. I am currently the [title] of [corporation name], and have held that position since [date]. As such, I am familiar with the operations and actions of the corporation.**

**2. I certify that the proposed quarry rehabilitation plan dated [date] submitted by [corporation name] is accurate. I acknowledge that [corporation name] is responsible to implement the rehabilitation plan in accordance with the terms and conditions imposed by the Bernards Township Committee in**

any resolution approving the rehabilitation plan, and that any failure to abide by, or violation of those terms and conditions will result in penalties and adverse actions, including but not limited to revocation of any quarry license pursuant to Bernards Ordinance § 4-9.11, as may be amended from time to time.

3. I certify that I have personally reviewed all dollar amounts in the quarry rehabilitation plan, specifically including but not limited to those figures in the cost estimate submitted with the plan, and I personally certify those numbers to be accurate.

4. I certify that [corporation name] [is or is not] a subsidiary of a parent corporate entity, [full parent corporate entity name, if applicable].

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

If either MQI or Tilcon is a subsidiary or affiliate of a parent company, the Revised Rehabilitation Plan must include an indemnification and commitment from their ultimate parent company or corporation – not merely from an intermediate corporate entity, confirming the parent corporation’s written agreement to be responsible and liable for the subsidiary’s various contractual and financial commitments contained in and pursuant to the Revised Rehabilitation Plan should such subsidiary become insolvent, or be placed in bankruptcy, or otherwise voluntarily or involuntarily abandon any of its duties, responsibilities and commitments under an Township-approved quarry rehabilitation plan.

All documentation submitted by MQI and Tilcon as required herein must be submitted to the Township contemporaneously in both electronic and paper format.

The Revised Rehabilitation Plan required to be submitted by MQI and Tilcon by October 3, 2008, shall be reviewed by the Planning Board in the same manner as an initial rehabilitation plan in accordance with the procedure outlined in Ordinance § 4-9.5.a.2, and the Planning Board after its review shall issue a resolution with findings, conclusions, recommendations and report, which shall then be reviewed by the Township Committee in accordance with the procedure outline in Ordinance § 4-9.5.a.4 and 5.

2. *No further fill shall be brought to the quarry, except as may be specifically approved by the Township Committee for purposes of augmenting or supplementing the need for a 2 foot depth of soil to support a vegetative cover.*

No further fill is permitted to be brought or imported into the Quarry Property, except as may be specifically first reviewed and approved by the Planning Board and subsequently reviewed and approved by the Township Committee exclusively for purposes of augmenting or supplementing the need for a 2-foot depth of soil to support a vegetative cover. Should the Planning Board and Township Committee approve such limited

importation of fill material into the Quarry Property, the importation of fill material must be in conformance with: (1) source testing requirements (see Condition # 7), NJDEP/Township approved testing protocol (see Condition # 7), and such observation, sampling and testing standards required by Township Committee resolution or ordinance, as may be amended from time to time.

3. *A rehabilitation plan shall be prepared using the existing quantities of soil on site by a date certain.*

**A Revised Rehabilitation Plan using the existing quantities of soil already on site at the Quarry Property shall be prepared by the applicant and filed with the Planning Board by October 3, 2008. The Planning Board shall complete its review of the revised rehabilitation plan by December 19, 2008, and forward a resolution with its report to the Township Committee for review as soon as practicable thereafter.**

4. *Grades inside the quarry, and on the quarry floor, shall be established with a design intention that would permit ready conversion to a permitted use without the necessity of substantial regrading.*

**Grades inside the Quarry Property, and on the quarry floor, shall be established with a design intention that would permit ready conversion to a permitted use in the R-3 Zone without the necessity of substantial regrading.**

5. *To the extent available, existing material to be used for rehabilitation located in the quarry shall be used to “pad” the sheer cliff faces to the extent possible at a slope of no greater than 2 foot horizontal for each 1 foot vertical (2:1). To the extent practicable, sheer cliffs should be limited to the areas above the lake.*

**To the extent available, existing material in the Quarry Property to be used for rehabilitation shall be used to “pad” the sheer cliff faces to the extent possible at a slope of no greater than 2 foot horizontal for each 1 foot vertical (2:1). To the extent practicable, sheer cliffs must be limited to the areas above the lake.**

6. *All soils on the entire site shall be tested for environmental contaminants in a manner approved by an environmental consultant. In this regard, it is recommended that the soils be tested in a grid pattern, both vertically and horizontally. If contaminated soils above permitted standards are found, such soils should be removed or remediated pursuant to a plan approved by the Township.*

**MQI and Tilcon by September 4, 2008, must submit a proposed On-Site Soil Sampling Plan to test all on-site imported soils within the Quarry Property for compliance with the more restrictive standards of:**

- A. The NJDEP RESIDENTIAL DIRECT CONTACT SOIL CLEANUP CRITERIA (indicated by NJDEP in its Soil Cleanup Criteria as of 6/2/08, in accordance with N.J.A.C. 7:26D, and published in the *New Jersey Register*, June 2, 2008,**

40 N.J.R. 3274-3309, as corrected based upon errors identified by the Department during or subsequent to the comment period as well as new toxicological or other information obtained since the rule proposal) ["RDCSCC"]; or

- B. The IMPACT TO GROUNDWATER STANDARD (site-by-site basis, pursuant to the NJDEP's authority under N.J.S.A. 58:10B-12a) ["IGS"].

The proposed On-Site Soil Sampling Plan submitted by MQI and Tilcon must be prepared by a licensed engineer in accordance with N.J.A.C. 7:26E, the Technical Requirement for Site Remediation. The Township's environmental consultant, Geoffrey M. Goll, P.E., of Princeton Hydro, LLC, shall review the proposed On-Site Soil Sampling Plan submitted by MQI and Tilcon for compliance, and issue written comments within fourteen (14) days of submission of the plan. The Township Committee may have other or additional environmental consultants review the proposed plan. Once written comments on behalf of the Township have been issued, MQI and Tilcon must submit a modified proposed On-Site Soil Sampling Plan incorporating those comments within 14 days. The Township Committee shall then review the modified proposed On-Site Soil Testing Plan submitted by MQI and Tilcon, and adopt a resolution as soon as practicable thereafter to formalize an approved on-site soil testing protocol.

Once an on-site soil testing protocol is approved by the Township Committee, all imported soils on the Quarry Property shall be tested by a qualified environmental consultant retained by MQI and Tilcon for environmental contaminants in accordance with the approved soil testing protocol. The Township's environmental consultant shall accompany MQI and Tilcon's environmental consultant during the entire field investigation, and shall collect split samples for quality assurance/quality control. If contaminants above the NJDEP RDCSCC or IGS standards are found, MQI and Tilcon shall notify the NJDEP and the Township in writing of the test results immediately, but in no event later than three days thereafter. If MQI and Tilcon do not make a written report to NJDEP advising of test results showing contaminants above NJDEP's most stringent criteria within seven (7) days of receipt of the test results, the Township Committee shall make such written notification to NJDEP.

Any contaminated soils within the Quarry Property must be promptly and properly remediated or removed in accordance with a remediation plan approved by NJDEP. MQI and Tilcon shall execute a Memorandum of Agreement with NJDEP and comply with the requirements therein to remediate the Quarry Property to meet the most stringent NJDEP clean-up criteria for soils.

MQI and Tilcon must obtain, and maintain until all quarrying and rehabilitation operations cease, an environmental contamination insurance policy for the Quarry Property, which policy shall be issued by a recognized AAA rated insurer, with a ten million (\$10,000,00.00) dollar policy coverage amount, and shall include standard environmental contamination insurance provisions. The insurance policy must include a provision that it may not be canceled without 30 days prior written notice to the Township, and must include a minimum five year "tail" covering discovery of contamination after the

end of operations. MQI and Tilcon must submit a copy of the insurance policy to the Township Engineer by September 4, 2008, together with a certificate of insurance naming the Township as an additional insured “as its interests may appear.” The Township Attorney shall review the insurance policy and certificate of insurance provided by MQI and Tilcon, and issue written comments within 14 days of receipt. MQI and Tilcon must then supply within 14 days a revised insurance policy and certificate of insurance incorporating the written comments made on behalf of the Township.

7. *Any further fill to be brought to the site, as may be approved by the Township Committee, shall be tested as to quality before it is imported. The Governing Body should encourage the applicant to participate in the NJDEP Beneficial Reuse Certification Program. The test data should be supplied to the municipality to review before the soil is imported.*

**The applicant shall participate in the N.J.A.C. 7:26 NJDEP Beneficial Reuse Certification Program.**

**MQI and Tilcon, by September 4, 2008, must submit a written proposal to NJDEP for its approval, with a copy to the Township’s environmental consultant, for the purpose of creating a sampling protocol for source materials to be imported to the Quarry Property. The Township’s environmental consultant, Geoffrey Goll, NJPE, of Princeton Hydro, LLC, shall review the proposed Imported Fill Testing Protocol submitted by MQI and Tilcon, and issue written comments within fourteen (14) days of submission of the proposed protocol. The Township Committee may have other or additional environmental consultants review the proposed protocol. Once written comments on behalf of the Township have been issued, MQI and Tilcon must submit a modified proposed Imported Fill Testing Protocol incorporating those comments within 14 days. MQI and Tilcon must also incorporate any comments by NJDEP. The Township Committee shall then review the modified proposed Imported Fill Testing Protocol submitted by MQI and Tilcon, and adopt a resolution as soon as practicable thereafter to formalize an approved testing protocol for all fill material to be imported into the Quarry Property.**

**At a minimum, the testing protocol shall include a provision that all fill material to be imported onto the Quarry Property must be sampled and tested in accordance with the NJDEP/Township approved testing protocol prior to importation. The test data and results must be supplied to the Township for review and approval a minimum of one week prior to the fill being imported into the Quarry Property. If contaminants above permitted standards are found, no fill from that source shall be permitted to be imported into the Quarry Property.**

**In addition to compliance with NJDEP/Township approved testing protocol prior to importation, all importation of fill material into the Quarry Property must be in compliance with such observation, sampling and testing standards as are required by Township Committee resolution or ordinance governing the same, as such requirements may be amended from time to time.**

8. *A protocol for testing of the water in the existing water collection area should be devised.*

**MQI and Tilcon, by September 4, 2008, shall submit a written proposal for a Water Quality Testing Plan to the Township's expert environmental consultants, Geoffrey Goll, NJPE, and Stephen J. Souza, PhD., of Princeton Hydro, LLC. The proposed plan shall provide for samples be taken and analyzed from the existing stormwater collection pond in the Quarry Property, as well as from on and off-site water migration. The proposed plan shall include standards for the water samples to be analyzed for nutrients (total nitrogen and total phosphorus), total suspended solids and priority pollutants +40 (PP +40). Mr. Souza and Mr. Goll shall review the proposed Water Quality Testing Plan submitted by MQI and Tilcon and issue written comments within fourteen (14) days. The Township Committee may have other or additional environmental consultants review the proposed plan. Once written comments on behalf of the Township have been issued, MQI and Tilcon must submit a modified proposed Water Quality Testing Plan incorporating those comments within 14 days. The Township Committee shall then review the modified proposed Water Quality Testing Plan submitted by MQI and Tilcon, and adopt a resolution as soon as practicable thereafter to formalize an approved water testing protocol.**

**Once a water testing protocol is approved by the Township Committee, the water in the existing stormwater collection pond on the site must be tested within 30 days, in accordance with the approved testing protocol. Results of the analysis must be submitted to the Township within 21 days of the submission of samples to the analytical laboratory for testing. If the test results from the water sampling show contaminants above NJDEP's most stringent criteria, MQI and Tilcon shall notify NJDEP in writing of the test results immediately, but in no event later than three days thereafter. If MQI and Tilcon do not make a written report to NJDEP advising of test results showing contaminants above permitted standards within seven (7) days of receipt of the test results, the Township shall make such written notification to NJDEP.**

**Any water body having contaminants above NJDEP's most stringent criteria must be promptly and properly remediated in accordance with a remediation plan approved by NJDEP, and MQI and Tilcon shall execute a Memorandum of Agreement with NJDEP to provide for adequate remediation of the contaminated water body to meet the most stringent NJDEP criteria for water.**

9. *Any lake in the rehabilitation plan should be subject to a water testing protocol as the water body is filling, and after completion of fill.*

**Any lake proposed in the Revised Rehabilitation Plan is subject to and must comply with the Township approved water testing protocol (see Condition # 8). Sampling and testing of the water by the applicant must be done as the lake is filling with water, and must be performed on a quarterly basis during the course of the filling period. Once the lake has filled to capacity, sampling and testing of the lake must again be performed in accordance with the approved water testing protocol.**

Test results from each water sampling must be submitted to the Township within 21 days of the submission of samples to the analytical laboratory for testing. If the test results from any water sampling show contaminants above NJDEP's most stringent criteria, MQI and Tilcon shall notify NJDEP in writing of the test results immediately, but in no event later than three days thereafter. If MQI and Tilcon do not make a written report to NJDEP advising of test results showing contaminants above permitted standards within seven (7) days of receipt of the test results, the Township shall make such written notification to NJDEP.

Any water body having contaminants above NJDEP's most stringent criteria must be promptly and properly remediated in accordance with a remediation plan approved by NJDEP, and MQI and Tilcon shall execute a Memorandum of Agreement with NJDEP to provide for adequate remediation of the contaminated water body to meet the most stringent NJDEP criteria for water.

10. *Any exposed vertical cliffs shall be tested for stability, and if structural support is necessary, such structural support shall be specifically engineered.*

Any exposed vertical cliff area must be analyzed for stability. The Revised Rehabilitation Plan to be submitted by October 3, 2008 must include a Stability Analysis prepared by a qualified NJ Licensed Professional Engineer specializing in geotechnical engineering. MQI and Tilcon shall have their engineer perform this analysis of the existing rock wall face to determine the potential for rock falls, potential trajectories of falling rock, and remedial measures to be implemented to reduce the hazard of rock falls. For example, the applicant's engineer should examine the existing and proposed rock face for the potential for the "ski jump" effect, where ledges or other protruding features impart a high horizontal velocity to the falling rock. The Rockfall Hazard Rating System (RHRS) as developed by the Oregon State Highway Division shall be used to ascertain priority areas for potential structural stabilization methods. The Stability Analysis must include methods and results, and indicate whether structural support is necessary.

**If structural support is needed, such structural support shall be specifically engineered and shown on the engineering plan.**

11. *A secondary safety fence and dense vegetation should be added along the rim of the quarry, to supplement the existing fence along sections of vertical cliffs.*

**A secondary safety fence and dense vegetation must be added along the rim of the quarry, to supplement the existing fence along sections of vertical cliffs. The secondary safety fence shall consist of a ten-foot high non-climbable fence, and the dense vegetation shall consist of continuous dense, thorny vegetation on both sides of the secondary safety fence.**

12. *Require the monitoring wells on site to be sampled for parameters as determined by an appropriate consultant on a quarterly basis. Additional monitoring wells should be added if recommended by the Township's environmental consultant.*

**MQI and Tilcon, by September 4, 2008, must submit a proposed On-Site Well Testing Plan for existing on-site monitoring wells to the Township's environmental consultants, Geoffrey Goll, NJPE, and Stephen J. Souza, PhD., of Princeton Hydro, LLC. The proposed plan must include a provision requiring sampling and analysis for all NJDEP constituents of concern. Mr. Souza and Mr. Goll shall review the proposed On-Site Well**

Testing Plan submitted by MQI and Tilcon and issue written comments within fourteen (14) days. The Township Committee may have other or additional environmental consultants review the proposed plan. Once written comments on behalf of the Township have been issued, MQI and Tilcon must submit a modified proposed On-Site Well Testing Plan incorporating those comments within 14 days. The Township Committee shall then review the modified proposed On-Site Well Testing Plan submitted by MQI and Tilcon, and adopt a resolution as soon as practicable thereafter to formalize an approved monitoring well testing protocol.

Once a monitoring well testing protocol is approved by the Township Committee, the On-Site Testing Plan shall immediately be implemented in accordance with the approved testing protocol. The Township's environmental consultant shall accompany Tilcon and MQI's environmental consultant whenever samples are taken. Sampling shall be performed on a quarterly basis, indefinitely. Additional monitoring wells must be added at the Quarry Property if recommended by the Township's environmental consultant. Test results from each water sampling must be submitted to the Township within 21 days of the submission of samples to the analytical laboratory for testing.

If at any time the test results from any water sampling show contaminants above NJDEP's most stringent criteria, MQI and Tilcon shall notify NJDEP in writing of the test results immediately, but in no event later than three days thereafter. If MQI and Tilcon do not make a written report to NJDEP advising of test results showing contaminants above NJDEP permitted standards within seven (7) days of receipt of the test results, the Township shall make such written notification to NJDEP. MQI and Tilcon shall execute a Memorandum of Agreement with NJDEP to clean-up all groundwater contamination determined to be emanating from the Quarry Property, and shall immediately commence any and all remediation activities required therein.

13. *Require that the rehabilitation grading plan approved by the Township be adhered to and not used by the quarry as a general guide.*

The rehabilitation plan must show the grading and slopes to be implemented on the Quarry Property. Pursuant to Ordinance § 4-9.5.a.1, rehabilitation may only be conducted in accordance with an approved rehabilitation plan. Accordingly, any grading undertaken pursuant to an approved rehabilitation plan may only be completed in accordance with the grading plan included in the approved quarry rehabilitation plan, and with reasonable prior written notice to the Township Engineer. Pursuant to Ordinance § 4-9.5.a.2, the quarry owner and quarry operator shall be jointly responsible for the implementation of the approved plan.

14. *Require that progress surveys be submitted by the quarry to the Township every six months.*

On a quarterly basis (every three months, running from the date the Township Committee adopts a resolution approving a quarry rehabilitation plan), the quarry owner and the quarry operator must jointly file progress surveys together with a written

summary of activities conducted pursuant to the approved rehabilitation plan. The progress surveys and rehabilitation activity summary must be submitted to the Township Engineer, who shall review the documents submitted and provide a written report to the Township Committee within 14 days of receipt.

15. *Require soil density testing of all fill in areas of future development, and provide stability analysis for all slopes.*

Immediately upon adoption of this resolution, to assure that all fill is being compacted to allow the support of structures and infrastructure allowed to be built within the Quarry site, all imported fills should also be tested for grain size (including hydrometer), imported moisture content, Modified Proctor (compaction), Atterberg Limits, organic content and pH. The geotechnical testing must be completed for every 1,000 cubic yards of imported materials, and wherever there is a change in the material's geotechnical characteristics. Using the required data from fill suppliers, MQI and Tilcon shall employ a full-time geotechnical engineer to monitor fills and test all fills for compaction rates. The tests shall be conducted for every 10,000 square feet of fill within each one foot of fill. All fills shall be compacted to 95% of the maximum dry density as determined by Modified Proctor (ASTM D1557).

MQI and Tilcon shall submit all laboratory test results from suppliers to the Township Engineer a minimum of 14 days prior to the importation of fill, and shall submit the results of field testing to the Township Engineer on a bi-weekly basis. The field test results submitted shall include the test result sheets and locations of tests on a grid system prepared for the Quarry Property. The Township will reject any areas of fill identified not compacted to the standard.

16. *The plan should provide for possible basement elevations which are 20 feet higher than the proposed lake surface elevation.*

The proposed rehabilitation plan must provide for possible basement elevations which are 20 feet higher than the proposed lake surface elevation.

17. *A 75-foot vegetated buffer extending from the water's edge shall be provided around the proposed lake, except where prohibited by any cliff face.*

A 75-foot vegetated buffer extending from the water's edge must be provided around the proposed lake, except where prohibited by any cliff face. The actual plant selection used to create this buffer will be dictated by final grading and the desired aesthetic and ecological goals of the lake. Plants closest to the lake must be tolerant of inundated conditions and/or saturated soil conditions. Plants further from the lake must be drought tolerant but be able to withstand periods of temporary inundation or saturated soil conditions. All plant material must be native and non-invasive.

18. *Require a new cost estimate be prepared in accordance with the revised plan.*

**MQI and Tilcon, by October 3, 2008, must submit a new Cost Estimate prepared by a NJ-licensed Professional Engineer in accordance with the Revised Rehabilitation Plan. The new Cost Estimate must delineate the assumptions underlying the cost estimate.**

19. *Revise the environmental impact statement to fully address potential environmental impacts, and provide suggested solutions.*

**The previously submitted environmental impact statement is insufficient and must be revised. A revised Environmental Impact Statement must be submitted by MQI and Tilcon to the Township by October 3, 2008. The Environmental Impact Statement must fully address potential environmental impacts, and provide suggested solutions to avoid and mitigate any adverse impacts.**

20. *Stormwater management proposals shall be fully engineered to the satisfaction of municipal consultants.*

**The Stormwater Management Proposal must be fully engineered to the satisfaction of Township professionals and consultants and meet the Township's Stormwater Management ordinance and NJDEP's Stormwater Rules (N.J.A.C. 7:8).**

21. *All machinery shall be removed from the quarry when the quarry operation is complete, including buildings located in the quarry pit. The future use of the remaining building at the main entrance on Stonehouse Road should be determined at the time of a future development application, taking into consideration the general nature of the residential area, the Zoning Ordinance and the Master Plan.*

**All machinery and equipment shall be removed from the Quarry Property, including from buildings located in the quarry pit, once the quarry operation is complete. The future use of the remaining building at the main entrance on Stonehouse Road should be determined at the time of a future development application, taking into consideration the general nature of the residential area, the Zoning Ordinance and the Master Plan. MQI shall retain, to the maximum extent possible, the present trees, landscaping and vista on Stonehouse Road, as such elements are deemed critical in the Township Master Plan.**

22. *Any conceptual development plan included in the rehabilitation plan shall be recognized to be conceptual only, providing no substantial reliance or vested rights.*

**Any conceptual development plan included in the rehabilitation plan is recognized to be conceptual only; approval by the Township Committee of a quarry rehabilitation plan provides no substantial reliance or vested rights. Any future developments must undergo the usual and customary development approval process required by ordinance and state law.**

23. *The applicant shall provide a lake management plan, not just a cost estimate. The formal lake management plan should include a narrative and timeline.*

A Lake Management Plan prepared by an experienced lake management professional must be provided with the Revised Rehabilitation Plan required to be submitted by MQI and Tilcon by October 3, 2008, (see Condition # 1). A cost estimate is insufficient to meet this requirement. The formal Lake Management Plan must include a narrative and timeline, together with the following components, which are to be presented with an appropriate level of detail:

- A. **Seasonal Water Quality Monitoring Program, consisting of monthly sampling of the lake between May and September for nutrients (total phosphorus, nitrate-n and total nitrogen) and total suspended solids. Samples are to be collected at three depths (surface, mid- and bottom) from a centrally located lake sampling station. Additionally, at the surface station samples shall be collected for fecal coliform, alkalinity, hardness and Chlorophyll *a* analysis. Dissolved oxygen, temperature, pH and conductivity shall be collected using an *in-situ* monitoring device at one-meter intervals from the surface to the bottom of the lake. Finally, the lake's phytoplankton and zooplankton communities shall be monitored during each sampling event using the appropriate sample collection devices.**
- B. **Algae Control Program, detailing the measures that will be implemented to control excessive densities of nuisance algae growth. The basic program shall focus on the treatment of the lake with a NJDEP-approved algicide, following a low-dose frequent application schedule (five to seven applications between May and September). All algicide applications are to be conducted by a NJDEP Category V certified applicator.**
- C. **Invasive Aquatic Macrophyte (Plant) Control Program, detailing the measures that will be taken to control the densities of invasive aquatic plants that may develop in the lake. The "weed" control program shall be based on either the annual application of an NJDEP approved systemic herbicide, or the twice-annual application of an NJDEP-approved contact herbicide. All herbicide applications are to be conducted by a NJDEP Category V certified applicator.**
- D. **Invasive Species Control Program, detailing how invasive emergent plants that may develop along the lake's shoreline or within the aquascaped littoral zone of the 75' lake buffer area will be controlled. The minimum program should consist of the annual application of an appropriate, NJDEP-approved contact or systemic herbicide. All herbicide applications are to be conducted by a NJDEP Category V certified applicator.**

24. *The owner shall have the responsibility to maintain the lake.*

**The owner of the Quarry Property shall have the responsibility to maintain the lake. As to future responsibility, this may include a homeowners association to be formed in conjunction with future development.**

25. *A safety zone shall be established at the bottom of any sheer cliff face, at a distance recommended by Township consultants. In addition, fencing shall be established at the*

*outer limit of the safety zone, and earthworks or ditches shall be established and designed to contain any rock fall a significant distance away from areas to be used or habited in connection with any future development plan.*

**A safety zone shall be established at the bottom of any sheer cliff face, at a distance recommended by and in accordance with the stability analysis submitted by MQI and Tilcon, and prepared by a NJ-Licensed Professional Engineer specializing in geotechnical engineer (see Condition # 10). In addition, fencing shall be established at the outer limit of the safety zone, and earthworks or ditches shall be established and designed to contain any rock fall a significant distance away from areas to be used or habited in connection with any future development plan. This safety zone shall be included in the Rehabilitation Plan to be submitted by October 3, 2008.**

26. *The applicant shall devise an acceptable plan to stabilize the overburden at the top of any rock face.*

**A formal engineering plan to stabilize the overburden at the top of any rock face must be included in the Revised Rehabilitation Plan and in the rock cut stability analysis to be performed and submitted (see Condition # 10). The engineering plan must include, at a minimum, engineering calculations and any stability support required. The overburden stabilization engineering plan and stability analysis required shall be included in the Revised Rehabilitation Plan to be submitted by October 3, 2008.**

27. *After the quarry completes operation, the quarry shall direct stormwater from the surrounding Pine Woods and Stonehouse Road developments into the quarry pit. Engineering issues must be resolved to provide for such diversion of water in a safe and environmentally sound manner, and in accordance with NJDEP stormwater management regulations and the stormwater management ordinances of the Township.*

**After the quarry completes operation, the quarry shall direct stormwater from the surrounding Pine Woods and Stonehouse Road developments into the quarry pit. Engineering issues must be resolved to provide for such diversion of water in a safe and environmentally sound manner, and in accordance with NJDEP stormwater management regulations and the stormwater management ordinances of the Township. All stormwater shall be conveyed down the cliff faces via piping. No water shall be allowed to run directly over rock faces, as such water could destabilize rock within the cliff wall face. All such stormwater conveyance shall be fully engineered, shown on an engineering plan, and submitted with the Revised Rehabilitation Plan required to be submitted by October 3, 2008.**

28. *During the time the quarry pit is filling up with water, the owner shall install silt fencing and other measures along the uphill side to prevent siltation and nutrient loading of the lake, and avoid the creation of cloudy water.*

**During the time the quarry pit is filling up with water, silt fencing and other measures must be installed and maintained along the uphill side to prevent siltation and**

**nutrient loading of the lake, and to avoid the creation of cloudy water. The silt fencing shall be inspected following rain storm events and at least once a month. Any areas of sediment build up beyond the silt fence manufacturer's recommendations shall be removed. Any areas of silt fence damaged must be repaired immediately. The silt fence must be placed 30 horizontal feet uphill of the lake's current surface, and moved when the lake reaches within 5 horizontal feet of the fencing.**

29. *Temporary fencing shall be installed around the water's edge for goose control. The fencing shall be relocated from time to time to match the water's edge and the contours of the lake's shoreline.*

**Temporary fencing must be installed around the water's edge for geese control. The fencing shall be relocated from time to time to match the water's edge and the contours of the lake's shoreline. The fencing shall be inspected twice annually (spring and fall) and moved in accordance with the existing water's edge. During each inspection, any damaged geese fencing must be repaired or replaced.**

30. *The extent of the placement of soil in the areas of the future lake shall be further analyzed. A depth of soil material under the water of between 6 – 12 inches should be required. The soil must be suitable to support vegetation when above the water level.*

**Soil placed within the area of the expected final lake elevation must be placed at a thickness of between 6 - 12 inches. The soil must be suitable to support vegetation when above the water level. All soils must be tested for fertility by a testing laboratory. Any soils used shall be amended to allow the sustenance of vegetation to stabilize all soils above the water level. MQI and Tilcon shall provide a soils analysis regarding fertility, cation exchange capacity, organic content matter, soluble salts, and phosphorous/nitrogen concentrations for these soils. The testing laboratory shall provide recommendations to improve the soils for the growth of vegetation, which recommendations must be implemented by MQI and Tilcon.**

31. *A detailed planting plan for aquascaping and stabilizing the shoreline shall be developed.*

**A detailed Planting Plan for aquascaping and stabilizing the shoreline must be developed and submitted by MQI and Tilcon. The aquascaping plan shall create an ecological diverse and functional littoral zone, establishing habitat which transitions from aquatic to wetemergent wetland as one progresses from the open water area of the lake toward the 75' planted buffer zone. The aquascaped edge should be populated by native, non-invasive aquatic and wetland plant species. The fully designed, detailed Planting Plan for aquascaping and shore stabilization must be submitted with the Revised Rehabilitation Plan by October 3, 2008.**

32. *All required Township and NJDEP stormwater management practices (BMP's) shall be incorporated to preserve, protect and enhance water quality.*

**All required Township and NJDEP stormwater best management practices (BMP's) shall be fully incorporated in the Rehabilitation Plan to preserve, protect and enhance water quality.**

33. *A stormwater collection and treatment system shall be designed and constructed as the lake is filling in order to minimize long term related water quality issues.*

**A stormwater collection and treatment system shall be designed and constructed as the lake is filling in order to minimize long-term water related quality issues. The system shall be designed in accordance with the Township's stormwater management ordinance and in accordance with N.J.A.C. 7:8 (Stormwater Management Rule).**

34. *The applicant shall supply the Township with any records pertaining to the future volume or frequency at which water is presently pumped from the quarry's existing impoundments to the Passaic River. The data could be used to better assess the role of ground water in both the filling of the lake and, once full, its annual flushing. It is recommended that these records, if available, be provided to the Township and be made part of the record.*

**MQI and Tilcon shall supply the Township with records pertaining to the volume and frequency at which water is presently pumped from the quarry's existing impoundments to the Passaic River. Any planned or proposed changes to the volume or frequency of pumping water into the Passaic River must be included with the submission. These records must be provided to the Township by September 4, 2008, and, together with a copy of the NJDEP permit allowing such pumping, the documentation provided shall be made part of the record. If the pumping records are not available, a corporate officer from MQI and from Tilcon shall each provide a formal certification that the records do not exist, or shall indicate the person or entity in control of such records, if not in the possession or under the control of either MQI or Tilcon. The data shall be used during review of the revised Rehabilitation Plan (see Condition # 1) to determine the rate of the filling of the lake with water, and, once full, its annual flushing.**

35. *The quarry lake shall be managed so that no greater than the first 50 feet, and no less than the first 30 feet, of water below the surface remains mixed and suitably oxygenated year round. Aeration measures will need to be undertaken to ensure proper water quality of the lake. A multi-layer type aerator or a destratification aerator should be desinged and operational prior to the lake attaining its final volumetric and area capacities.*

**The quarry lake shall be managed so that no greater than the first 50 feet, and no less than the first 30 feet, of water below the surface remains mixed and suitably oxygenated year round. Aeration measures will need to be undertaken to ensure proper water quality of the lake. A multi-layer type aerator or a destratification aerator should be designed, constructed and operational prior to the lake attaining its final volumetric and area capacities. These measures shall be incorporated in the Lake Management Plan required to be submitted as part of the Revised Rehabilitation Plan (see Condition # 23).**

36. *An algae control program shall be prepared and included in the maintenance plan for the lake.*

**An Algae Control Program shall be prepared and included in the Lake Management Plan required to be submitted by MQI and Tilcon by October 3, 2008, as part of the Revised Rehabilitation Plan (see Condition # 23).**

37. *The owner shall include in the maintenance plan a note indicating that a suitable fish stocking program will be prepared and submitted prior to the next rehabilitation plan, or development application, whichever first occurs. The program should focus on stocking the lake with fish such as large mouth bass, fat head minnow, blue gill, perch, walleye and other aquatic organisms.*

**The Lake Management Plan required to be submitted as part of the Revised Rehabilitation Plan (see Condition # 23), shall include a note indicating that a suitable fish stocking program must be prepared and submitted prior to the next quarry rehabilitation plan, or development application, whichever first occurs. The fish stocking program should focus on stocking the lake with fish such as large mouth bass, fat head minnow, blue gill, channel catfish, and other aquatic organisms. The recommended basic stocking densities for the above fish shall be in keeping with the following:**

- A. Adult large mouth bass (fish 8"-10"), at 10/acre**
- B. Juvenile large mouth bass (fish 4" – 6"), at 100/acre**
- C. Fat head minnow, at 1,000/acre**
- D. Bluegill sunfish fingerlings, at 150/acre**
- E. Channel catfish (fish 4"-6"), at 25/acre**

38. *The quarry should incorporate alternative bottom types in certain reaches of the lake to provide additional aquatic habitat. The quarry owner should include in the next rehabilitation plan or prior to any development application, whichever first occurs, the design for the creation of in-lake fish habitat. In open water pelagic zones of the lake, the creation of such habitat would involve the placement of rubble, rock and other substrates to create cover, feeding and refuge areas for fish. Similarly, in the shallower portions of the lake, laustrine type habitat should be created in select shallow areas to promote fish spawning and propagation.*

**The Lake Management Plan must incorporate alternative bottom types in certain reaches of the lake to provide additional aquatic habitat. MQI and Tilcon must include in the next quarry rehabilitation plan or prior to any development application, whichever first occurs, the design for the creation of in-lake fish habitat. In open water pelagic zones of the lake, the creation of such habitat would involve the placement of rubble, rock and other substrates to create cover, feeding and refuge areas for fish. Similarly, in the shallower portions of the lake, laustrine type habitat should be created in select shallow areas to promote fish spawning and propagation.**

39. *With reference to soil to be used within the areas requiring the 2 foot of cover, the applicant shall provide a soils analysis regarding fertility, cation exchange capacity, organic content matter, soluble salts, and phosphorous/nitrogen concentrations.*

**With reference to soil to be used within the areas requiring the 2 foot of cover, MQI and Tilcon shall provide a soils analysis regarding fertility, cation exchange capacity, organic content matter, soluble salts, and phosphorous/nitrogen concentrations. All soils must be tested for fertility by a testing laboratory. Any soils used shall be amended to allow the sustenance of vegetation to stabilize all soils above the water level. (See also Condition # 2 and Condition # 7).**

40. *It should be left to a future developer to address the issues of importation of topsoil, compaction of fill areas, and future utility connections required in connection with any development application.*

**Any developer of any portion of the Quarry Property must address the issues of importation of topsoil, compaction of fill areas, and future utility connections whenever any future development application or plan is submitted. This provision does not in any way alleviate MQI's and Tilcon's responsibility to compact all imported and on-site fills as required herein (see Condition # 15).**

41. *Once the lake reaches the rock face, the owner shall install and maintain caution markers (buoys) in the lake approximately 20 feet from the sheer rock face.*

**As the lake is filling with water, as well as once it reaches its final elevation, MQI and Tilcon must ascertain an adequate exclusion zone within the lake. The distance for the exclusion zone shall be proposed, together with an analysis, by MQI's and Tilcon's NJ-Licensed Professional Engineer, specializing in geotechnical engineering. This analysis for an adequate exclusion zone shall be included in the Stability Analysis required to be submitted by MQI and Tilcon by October 3, 2008, with the Revised Rehabilitation Plan (see Condition # 10). The Township Engineer shall review the proposal for the exclusion zone within 14 days of receipt, and provide written comments. The Township Committee may have other or additional consultants or experts review the proposed zone and analysis.**

**Once the water from the lake reaches the rock face, the owner must install and maintain appropriately marked caution buoys at the perimeter of the approved exclusion zone within the lake.**

42. *The plans shall be revised in order to satisfy the conditions before approval is given. Where the conditions provide for future submission and compliance, appropriate notes should be added to the plan.*

**MQI and Tilcon must file by October 3, 2008, a rehabilitation plan revised to satisfy the within conditions (see also Condition # 1). Whenever a condition provides for future submission and compliance, rather than inclusion in the revised rehabilitation plan,**

appropriate notes indicating the future requirement must be added to the Revised Rehabilitation Plan.

No approval of the proposed quarry rehabilitation plan will be given by the Township Committee until (a) the Revised Rehabilitation Plan is filed by MQI and Tilcon with the Planning Board, (b) the Revised Rehabilitation Plan is reviewed by the Planning Board and a resolution with its report is memorialized, (c) the Township Committee has held public hearing(s) to review the Planning Board resolution and report on the Revised Rehabilitation Plan; and (d) the Township Committee has adopted a formal resolution memorializing its approval.

43. *The applicant should be required to pay all escrow fees and applicable charges for the review.*

The applicant must pay all escrow fees and applicable charges for Township professional and consultant review of the proposed and Revised Rehabilitation Plan. The applicant must maintain funds in the escrow account at all times.

The committee took a short recess.

## **NEW BUSINESS**

[Ordinance #2024](#) - Repealing Ordinance #2008 which added New Subsection Ordinance § 4-9.5 b.20 entitled "Temporary Moratorium", in order to Enact a Moratorium on Importation of Fill to the Quarry Property Pending Planning Board Review of the Proposed 2008 Rehabilitation Plan – Possible Introduction and Discussion

The clerk read the ordinance by title. Motion by Spitzer, second by Kelly, and unanimously agreed to introduce Ordinance #2024 on first reading, advertise it as required by law, and schedule it for public hearing on 7/15/08.

Roll Call:

Aye: Kelly, Spitzer, Carpenter

Nay:

Abstain:

Motion carried.

**WHEREAS**, on January 24, 2008, Tilcon New York, Inc. ("Tilcon"), quarry operator, and Millington Quarry, Inc., ("MQI"), quarry owner, submitted a proposed 2008 Reclamation (Rehabilitation Plan); and

**WHEREAS**, Ordinance #2008 was introduced on March 11, 2008, and adopted on March 25, 2008. Ordinance #2008 amended Ordinance § 4-9.5 b. to add new subsection 20 entitled "Temporary Moratorium", for purposes of enacting a moratorium on importation of fill into the Quarry Property to properly permit the Planning Board a reasonable period of time to review the proposed 2008 Quarry Rehabilitation Plan and make a recommendation to the Township Committee; and

**WHEREAS**, the proposed 2008 Quarry Rehabilitation Plan was reviewed by the Bernards Township Planning Board, and the Planning Board on June 11, 2008, adopted a Resolution with its Findings, Conclusions, Recommendations and Report;

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Bernards, in Somerset County, New Jersey, that:

**Section 1.** Ordinance #2008, and ordinance § 4-9.5 b.20 enacted therein, be and is hereby repealed.

**Section 2.** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**Section 3.** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Bernards, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the *Revised General Ordinances of the Township of Bernards* are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**Section 4.** This ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

[Ordinance #2025](#) - *An Ordinance Amending Chapter IV Entitled “General Licensing”, Section 4-9 Entitled “Quarrying” of the Revised General Ordinances of the Township of Bernards, to Add New Section 4-9.14 Entitled “Importation of Fill Material onto Quarry Property Is Prohibited” – Possible Introduction and Discussion*

The clerk read the ordinance by title. Motion by Spitzer, second by Kelly, and unanimously agreed to introduce Ordinance #2025 on first reading, advertise it as required by law, and schedule it for public hearing on 7/15/08.

Roll Call:

Aye: Kelly, Spitzer, Carpenter

Nay:

Abstain:

Motion carried.

**WHEREAS**, Bernards Township (the “Township”) regulates quarries for the protection of persons and properties at Ordinance §4-9, “Quarrying” of its general licensing ordinances, and the Township has the general authority to regulate quarries pursuant to the State’s grant of police power pursuant to N.J.S.A. 40:48-1 and -2 for the health, safety and welfare of the community as set forth by the New Jersey Supreme Court in *Bernardsville Quarry, Inc. v. Borough of Bernardsville*, 129 N.J. 221, 228-230 (1992); and

**WHEREAS**, as indicated by the New Jersey Supreme Court in *Bernardsville Quarry* “the prevention of damage to the environment constitutes a particularly strong justification for

prohibiting inimical uses” *id.* at 237, and the importation of environmentally contaminated fill material “can cause severe impacts on surrounding property and the environment, and significantly effect the public interest,” *id.* at 241; and

**WHEREAS**, the Township’s environmental consultant, Geoffrey Goll, NJPE, of Princeton Hydro, LLC, has indicated to the Township that results from testing on certain random samples taken from trucks seeking to import fill material to the quarry property located at Lot 6 in Block 6001 (f/k/a Block 164, Lot 4.01), 135 Stonehouse Road in Bernards Township, (the “Quarry Property”), has identified concentrations in excess of the NJDEP Residential Direct Contract Soil Cleanup. Specifically, test results from samples of imported fill material taken for testing on November 15, 2007, March 18, 2008, March 31, 2008, April 15, 2008 and May 7, 2008, from random trucks seeking to deposit fill at the Quarry Property identified concentrations in excess of the NJDEP most stringent standard for the constituents of concern; and

**WHEREAS**, pursuant to Section 4-9.5 of the *Revised General Ordinances of Bernards Township* regarding rehabilitation of quarry property, Kevin Page, P.E., P.P., President of Page Engineering Consultants, P.C., submitted on January 24, 2008, on behalf of Tilcon New York, Inc. (“Tilcon”) and Millington Quarry, Inc., (“MQI”) to the Bernards Township Engineering Department its proposed 2008 Reclamation (Rehabilitation Plan) for the Quarry Property; and

**WHEREAS**, pursuant to Bernards Ordinance § 4-9.5.a.2, the Planning Board reviewed and considered the Proposed Rehabilitation Plan at public hearings held on April 22, 2008, April 30, 2008, May 12, 2008, May 15, 2008, May 20, 2008, May 29, 2008, June 3, 2008, June 9, 2008, and June 11, 2008, and adopted on June 11, 2008, a Resolution with its Findings, Conclusions, Recommendations and Report. The Planning Board’s Resolution and Report recommended:

“2. No further fill shall be brought to the quarry, except as may be specifically approved by the Township Committee for purposes of augmenting or supplementing the need for a 2 foot depth of soil to support a vegetative cover.”

**WHEREAS**, pursuant to Bernards Ordinance § 4-9.5.a.5, after the Planning Board adopted its Resolution with Report, the Township Committee reviewed the report from the Planning Board at public hearings on June 24, 2008, and July 2, 2008; and

**WHEREAS**, the Township Committee desires to accept and implement Recommendation #2 of the Planning Board indicated above.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Bernards, as follows:

**Section 1.** Chapter IV Entitled “General Licensing”, Section 4-9 Entitled “Quarrying”, of the *Revised General Ordinances of the Township of Bernards*, is hereby supplemented and amended to add new Section 4-9.14 entitled “Importation of Fill Material Onto Quarry Property Is Prohibited”, as follows:

**§ 4-9.14 Importation of Fill Material onto Quarry Property Is Prohibited**

Notwithstanding any other requirements of Section 4-9, as of July 21, 2008, at 12:00 A.M., the importation of fill material onto quarry property within the Township is expressly prohibited. Neither a quarry owner, nor a quarry operator, nor any other person or entity, shall permit the importation of fill material onto quarry property within the Township. The Township Committee reserves the right to rescind or modify the prohibition against importation of fill for reasons within its general police powers, including the right to adopt a resolution temporarily lifting the prohibition in order to permit limited fill importation in conjunction with quarry rehabilitation activities specifically approved by the Planning Board and Township Committee.

**Section 2.** The Township Committee authorizes Police Chief Dennis Mott and the Bernards Township Police Department to take all necessary steps to prevent any violations of the ordinance amendment contained herein.

**Section 3.** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**Section 4.** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Bernards, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the *Revised General Ordinances of the Township of Bernards* are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**Section 5.** This ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

***Consent Agenda***

The items listed within the consent agenda portion of the meeting have been referred to the Township Committee for reading and study, a copy placed on the bulletin board of the meeting room and are considered routine and will be enacted by one motion of the Township Committee with no separate discussion. If separate discussion is required, the item may be removed from the agenda by township committee action and placed on the regular agenda under new business.

Motion by Kelly, second by Spitzer, to remove Resolution #080309 and #080310 from the consent agenda, and to approve the remaining item.

Roll Call:

Aye: Kelly, Spitzer, Carpenter

Nay:

Abstain:

Motion carried.

**\*\*Begin Consent Agenda\*\***

[Resolution #080313](#) - Ratification and Approval of INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMAN AND HELPERS OF AMERICA, LOCAL 469 Union Contract, January 1, 2008 through December 31, 2010  
**WHEREAS**, the Township of Bernards and the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMAN AND HELPERS OF AMERICA, LOCAL 469 have negotiated in good faith to resolve all issues in dispute regarding a three year contract, from January 1, 2008 through December 31, 2010; and

**WHEREAS**, all issues have been resolved to the satisfaction of all parties; and

**WHEREAS**, the Township Committee of the Township of Bernards has reviewed the terms of settlement and are in agreement,

**NOW, THEREFORE BE IT RESOLVED**, by the Township Committee of the Township of Bernards that the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMAN AND HELPERS OF AMERICA, LOCAL 469 Union Contract dated January 1, 2008 through December 31, 2010, be and is hereby approved.

**\*\*End Consent Agenda Items\*\***

[Resolution #080322](#) - Approval of the Bill List Dated 07/02/2008  
Motion by Kelly, second by Spitzer, that Resolution #080322 be approved.

Roll Call:  
Aye: Kelly, Spitzer, Carpenter  
Nay:  
Abstain:  
Motion carried.

**BE IT RESOLVED**, that the bill list dated 07/02/2008 be audited, and if found correct, be paid.

07/02/08  
Page No: 1  
13:58:17

TOWNSHIP OF BERNARDS

Check Register By Check Id  
Range of Checking Accts: CASH - CHECKING to CASH - CHECKING Range of Check Ids: 67928 to 67928  
Report Type: All Checks Report Format: Super Condensed Check Type: Computer: Y  
Manual: Y Dir Deposit: Y

Check #	Check Date	Vendor	Amount Paid	Reconciled/Void	Ref Number
67928	07/02/08	T0313 TOWNSHIP OF CLINTON	8,000.00		907
Report Totals			Paid	Void	Amount Paid
			-----	-----	-----
		Checks:	1	0	8,000.00
		Total:	1	0	8,000.00
Fund Description		Fund	Budget Total	Revenue Total	
CURRENT FUND		8-01	8,000.00	0.00	
Total Of All Funds:			8,000.00	0.00	

[Resolution #080309](#) - Resolution Amending Employee Handbook of Personnel Policies & Procedures Section – Retirement Plan and Group Life Insurance

Motion by Kelly, second by Carpenter, that Resolution #080309 be approved.

Roll Call:

Aye: Kelly, Carpenter

Nay:

Abstain: Spitzer

Motion carried.

**WHEREAS**, the Township Committee adopted Ordinance #1682 establishing the Employee Handbook of Personnel Policies & Procedures on November 11, 2003; and,

**WHEREAS**, the Township Committee wishes to amend the Employee Handbook of Personnel Policies and Procedures with respect to Retirement Plan and Group Life Insurance; and

**WHEREAS**, the State Legislature recently adopted Chapter 92 of the Laws of 2007 (N.J.S. 43:15C-1 et seq) to create the Defined Contribution Retirement Program to provide retirement benefits to various county and municipal officials; and

**WHEREAS**, N.J.S. 43:15C-2 requires the governing body of each county, municipality, and other local entity to adopt as appropriate, a resolution to determine the positions that are substantially similar in nature to the advice and consent of the Senate for appointments by the Governor of the State, pursuant to guidelines or policy that shall be established by the Local Finance Board in the Department of Community Affairs, and for which officials appointed to such positions shall be eligible for and shall participate in the Defined Contribution Retirement Program subject to the provisions of law; and

**WHEREAS**, the language changes are as follows, the new text is underlined; deleted text is ~~stricken~~.

**RETIREMENT PLAN & GROUP LIFE INSURANCE**

All regular Township employees earning more than \$1,500 annually must be enrolled in the New Jersey Public Employees Retirement System, Defined Contribution Retirement Program or the New Jersey Police & Fire Retirement System and are subject to the requirements and provisions of that plan. Please contact the Township Supervisor of Treasury Services for information on exceptions to these requirements. Group life insurance is offered as part of PERS, DCRP, or PFRS.

Membership in PERS or DCRP is determined by position or professional license. If an individual holds a professional license or certificate to perform and is serving in any of the following capacities, the person is qualified to join or remain in PERS and does not join DCRP:

Certified Health Officer	Tax Assessor
--------------------------	--------------

<u>Tax Collector</u>	<u>Municipal Planner</u>
<u>Chief Financial Officer</u>	<u>Registered Municipal Clerk</u>
<u>Construction Code Official</u>	<u>Licenses Uniform Subcode Inspector</u>
<u>Qualified Purchasing Agent</u>	<u>Certified Public Works Manager</u>

The following positions are deemed to be eligible for and shall participate in the Defined Contribution Retirement Program (DCRP):

<u>Township Administrator</u>	<u>Manager of Human Resources</u>
<u>Director of IT</u>	<u>Director of Parks &amp; Recreation</u>
<u>Supervisor of Treasury Services</u>	<u>Township Treasurer</u>
<u>Municipal Judge</u>	<u>Township Engineer</u>
<u>Court Administrator</u>	<u>Director of Library</u>
<u>Sewerage Authority Plant Superintendent</u>	<u>Manager of Community Service</u>
<u>Members of the Governing Body</u>	

The above named positions that are otherwise required to join DCRP are excused from membership if:

- They are a PERS member prior to 7/1/2007 and continuously thereafter. Continuously means that a period of no more than two years has elapsed from the time the individual left employment in a PERS position to the time the person was reemployed;
- They are eligible for membership or enrolled in another pension program;
- They are retired and receiving a benefit from another state pension plan;
- They are otherwise ineligible to join PERS
- The salary of the position is less than \$1500/year

A person earning less than \$5000 a year and is eligible for DCRP membership can decide to waive participation in DCRP. This decision is irrevocable for elected officials.

Membership in the DCRP shall be effective July 1, 2007 based on the criteria above.

The employee's contribution to the plan is deducted from the salary paid to such employee and remitted to the state as required by law. The Township contribution for each employee is determined by and subsequently remitted to the state in accordance with the provisions of the law.

Township employees having completed the required number of years of service and having attained the specified age may apply for retirement as provided for by the plan.

Full details on either of these retirement plans may be obtained from the Township Supervisor of Treasury Services.

**WHEREAS**, that these policies take effect immediately, to be codified into the Employee Handbook of Personnel Policies and Procedures in July, 2008;

**NOW, THEREFORE BE IT RESOLVED**, by the Township Committee of the Township of Bernards that the Retirement Plan and Group Life Insurance policy is implemented effective immediately.

[Resolution #080310](#) - Approval of Interlocal Agreement with the Township of Clinton for Litigation Expense and Representation in Connection with a Legal Challenge to the Validity of the Regulations Adopted by the Council on Affordable Housing (COAH) Motion by Carpenter, second by Kelly, that Resolution #080310 be approved.

Roll Call:

Aye: Kelly, Spitzer, Carpenter

Nay:

Abstain:

Motion carried.

**WHEREAS**, pursuant to Resolution #080252 adopted by the Bernards Township Committee on May 13, 2008, the township committee expressed their intent in joining with a grassroots efforts known as the “Seven Town Group” led by Mayor Nick Corcodilos of Clinton Township in mobilizing a legal challenge to the COAH Third Round Rules; and

**WHEREAS**, the Township of Clinton will act as the Lead Agency in organizing this effort through an Interlocal Agreement; and

**WHEREAS**, Bernards Township shall pay over to the Lead Agency the sum of \$8,000.00 upon entry into this Agreement. Such sum shall be held, along with all other similar funds received, by the Lead Agency in a separate fund for the purposes of funding the legal challenge; and

**WHEREAS**, the Interlocal Services Act, N.J.S.A. 40:8A-1, *et seq.*, permits municipalities to enter into agreements for the joint provision of services.

**NOW THEREFORE BE IT RESOLVED**, by the Township Committee of the Township of Bernards that we do hereby approve the Interlocal Agreement with the Township of Clinton for Litigation Expense and Representation in Connection with a Legal Challenge to the Validity of the Regulations Adopted by the Council on Affordable Housing (COAH).

**NOW THEREFORE BE IT FURTHER RESOLVED**, by the Township Committee of the Township of Bernards that we do hereby authorize the Mayor and Clerk to execute the agreement on behalf of the Township.

**TREASURER'S CERTIFICATION**

I, Terri Johnson, Supervisor of Treasury Services of the Township of Bernards, hereby certify that adequate funds are available for the above referenced purchase in the amount of \$8,000.00. Monies are available in: 2008 Budget, line item appropriation: Litigation #8-01-20-155-20A.

Date: 06/27/08

*Terri Johnson*  
FOR TREASURY  
CERTIFICATION ONLY

Terri Johnson, Supervisor Treasury Services

**PUBLIC COMMENT**

None

**ADJOURNMENT**

By unanimous consent, the meeting adjourned at 10:02 PM.

Respectfully submitted

---

Denise Szabo, Municipal Clerk

---

John Carpenter, Mayor