

FOR IMMEDIATE PRESS RELEASE

From: John P. Belardo, Esq., Bernards Township Attorney

Re: **Millington Quarry, Inc. v. Township of Bernards, et al.**
Docket No. SOM-L-475-08
Returnable: April 29, 2019
Decision of Hon. Thomas C. Miller, P.J.Cv.

What follows is a brief summary of the key points of the Court's decision and Orders, all of which are attached. The Township is encouraged that the Court expressly found that the quarry ordinance regarding rehabilitation of the quarry property remains in effect and applicable to MQI. The Court further ruled that MQI remains obligated to submit to the Planning Board an updated and revised quarry rehabilitation plan at a future date for the reasons set forth by the Township.

- The Quarry Oversight Committee (“QOC”) was formed in 2014 and has continuously and presently exists. The Court rejected MQI's claim to the contrary. (p. 19)
- The Township is bound by the April 29, 2014, Settlement Agreement to act only through the QOC and the 2019 Resolution creating the Quarry Advisory Task Force is no longer valid. The Township Committee may not appoint additional members to the QOC except for those designated under the terms of the Settlement Agreement. (pp. 20-24)
- Mayor Bianchi is allowed to appoint a “designee” to the QOC to act in her stead. This could include existing QATF member and BTSA Chairman Kevin Orr, Esq. Both Mr. Orr, Police Chief Michael Shimsky and Township Engineer Thomas Timko would constitute the QOC for 2019. (p. 22) The QOC can continue “to address any issues that may arise during the course of implementing the Rehabilitation Plan.”
- The court found “[i]n fact, there are several good reasons why the revised rehabilitation plan continues to be reasonably necessary, or at least some ‘limited’ rehabilitation plan.”...including that the:
 - (1) Township ordinances require a revised plan as a result of MQI filing its subdivision application with the Board of Adjustment. (p. 33);
 - (2) MQI has lost the ability to develop 12 of 50 residential lots shown in the 2008 Kevin Page, P.E. concept plan;

- (3) That MQI must show the permitted uses at the quarry property under the M-1 Mining Zone; and
- (4) That the lake size has been reduced. (p. 31-34)

The court specifically held at pp. 34-35:

“For those reasons, as enunciated by the Township, which have been summarized above, [(1) to (4)], **the Court finds that the Township has demonstrated that an updated rehabilitation plan is required under the terms of the parties’ Agreement and by Local Law. Additionally, for the reasons offered by the Township, the requirement for an updated Rehabilitation Plan is warranted in the public interest.** (Emphasis added.) In fact, the Township has a legitimate interest, pursuant to Ordinance Sections 4.9.5b.1. and 15, to review what the future “**permitted**” uses of the quarry property will be if subdivided because the 2008 Page Concept Plan previously approved is no longer valid as a result of the loss of at least twenty-four (24%) of the single family two acre homes, and 17 acres of the lake. Moreover, since the residentially deed restricted proposed Lot 6.01 will no longer contain 12 single family residential homes, [the Township] has the right to “ask” MQI what “**permitted**” use will now be put to the 50.285 acre contaminated capped lot 6.01. In that regard, the Township also submits that MQI has yet refused to inform the Township of any “**permitted**” use for this proposed lot. Certainly an updated Rehabilitation Plan⁹ may “flush out” that issue, which clearly is a matter that is in the public interest.

⁹ Or even a limited Rehabilitation Plan.”

- The Court found “[n]or has [MQI] unequivocally demonstrated, in the court’s view, that [MQI has] substantially completed the [rehabilitation] project. In fact, there is substantial evidence to the contrary. As such, the court is not able to sustain MQI’s position that, as a matter of law, the parties’ course of conduct demonstrates [MQI’s] compliance with the Settlement Agreement.” (p. 39)
- The Court further found there are “factual disputes” on the issue of MQI’s claim of substantial completion of the rehabilitation project. (p. 39)
- The Court also expressly rejected as “fallacious” MQI’s contention that since it is no longer operating a quarry or maintains a quarry license, MQI is not bound by the rehabilitation provisions of the Township quarry ordinance. (pp. 43-44)

- The Court ultimately held that:

“The Court is not prepared to...by providing either p[arty with a ‘declaration’ concerning the law regarding this subject. The Court has been provided with self-serving factual backgrounds by both parties, which, in this Court’s view cannot be said to be a complete record. The Court is simply reluctant to venture into this issue without a more robust record.”

Also, the issue raised is not one that is specifically addressed by the Settlement Agreement itself. **The matter is more properly raised in the context of a Declaratory Judgment action or a challenge to the Ordinances, as applied. In either instance, the Court would be provided with a more complete record in order to properly rule on the matter.** (Emphasis added.)

(d) Should the Court Declare MQI to be “in breach” as Requested by the Township?

The Township also asks the Court to declare MQI to be “in breach” of the Settlement Agreement since it has not submitted as new compliant rehabilitation plan.

However, the Court declines to rule on an issue with such significant ramifications in the context of this Motion. **The Court has found that MQI continues to have an obligation to file a Rehabilitation Plan.** (Emphasis added.) Notwithstanding the finding, the Court also finds that given the complicated and disparate factual versions offered by the parties, as well as the contested issues of law that have been analyzed in this opinion, it would be unfair, unjust and unwarranted to simultaneously declare MQI to be “in breach” as well. Further, this Court’s opinion now serves to clarify certain issues that have arisen regarding the parties’ interpretation of the Agreement and their respective positions. It would be inequitable to declare MQI to be in breach when the Court’s opinion on the disputed issues has only now been issued.

Also, for the reasons expressed in this opinion, the Court has determined that some of the “defenses” raised by MQI (see point (c) of this opinion) continue to be viable defenses, that could not be ruled upon as a matter of law as

a result of the factual disputes that burdens the motion record. The Court certainly cannot declare MQI to be in breach or to require them to take certain action which the Township has requested the Court to order.

As such, the Court will DENY WITHOUT PREJUDICE that portion of the relief requested by the Township.”