

August 10, 2020

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Re: CODE ENFORCEMENT ISSUES IN SOUTHAMPTON

Dear Supervisor and Southampton Town Board,

We write to express our growing concerns about the continuing illegal operations at the Sand Land facility, and the Town's failure to meet its legal obligations to enforce the law in the face of Sand Land's repeated flagrant violations. Considering the long record of illegal activity at this site, and the SCHS investigation showing Sand Land's contamination of the ground water and drinking water aquifer directly beneath it, we would expect a sense of alarm and urgency from the Board in enforcing the law and protecting our aquifer.

Despite voluminous irrefutable evidence of clear violations of the Town Code, four unanimous Appellate court decisions, a May 20, 2020 Cease and Desist letter and now a June 11, 2020 N.Y. Supreme Court injunction, the illegal activities continue unabated and the Town seems unwilling or unable to stop them. In addition, recent factually and legally incorrect statements by senior Town officials in the press indicate that those officials are confused or misinformed on the facts, the law, and the Town's legal obligations.

These statements dangerously undermine the rule of law, proper enforcement efforts, and contradict the Town's established legal position in cases currently before the courts. In addition, they seriously damage the Town's credibility with the public when citizens can clearly see with their own eyes what the Town refuses to acknowledge or act upon.

The Facts:

Sand Land is currently allowed to mine and sell the sand and gravel it mines from certain portions of this site. Sand Land is prohibited from importing, storing, processing or selling any off-site materials.

Yet, despite these prohibitions, Sand Land has continued to import, store, process and sell various off-site materials including stone, dirt, fill, and mulch. All of these activities have been meticulously documented and presented to Town officials, including photographs, videos, and eyewitness accounts of tractor trailers dumping off site material, on-site blending and processing, and sales of this material. Massive amounts of this off-site material are being stored on site. (See, photographs attached).

In addition, Sand Land illegally constructed, occupies and/or uses four buildings and an illegal scale on the site. Sand Land has no building permits, certificates of occupancy for these buildings, variances or approved site plan. When Sand Land sought to retroactively validate these illegal structures, a Town Planning Board Resolution rejected their proposed site plan on March 3, 2007 on 30 grounds, and stated that Sand Land must get variances and certificates of occupancy for their illegal structures and scale. Sand Land filed an application, #1100029, with the ZBA *in 2011*, but never perfected it and that application has apparently expired. *Nine years later* they still have not cured any of these deficiencies; the buildings and scale are still illegal and in use and the Town has not lifted a finger to close them down or cause them to be removed.

The Law:

Sand Land has been cited for over 150 documented violations of Federal, State, County, and Town law. **All of their current activities, except limited sand and gravel mining are illegal.** This has been litigated repeatedly and there are four relevant, unanimous Appellate Court rulings against Sand Land.¹ The Town code, as these Appellate opinions make clear, controls all non-mining activity and clearly prohibits all the receipt, storage, processing and sales activity at the site. Even the receipt and processing of material for reclamation has been prohibited at the site since May 1, 2020. (NYDEC Permit #1-4736-00851, page 3, number 6) and the DEC now admits that all these other activities are non-mining activities and controlled entirely by the Town.

Under the authority granted by the Town code and affirmed by these appellate rulings, the Town issued a Cease and Desist Letter on May 20, 2020. The Town's letter states that Sand Land must "CEASE AND DESIST all illegal activity in violation of approval or condition...Failure to comply with this notice will result in legal action taken upon you by the Town of Southampton".

In addition, on June 11, 2020, the NYS Supreme Court issued an injunction and "ORDERED that the application of plaintiff Town of Southampton for a preliminary injunction is granted to the extent that defendants Sand Land Corporation and Wainscott Sand and Gravel Corp are enjoined and restrained, pending determination of this action, from processing trees, brush, stumps, leaves and other debris into top soil or mulch and **FROM STORING, SELLING, OR DELIVERING MULCH, TOP SOIL, AND WOOD CHIPS**" (emphasis added).

¹Sand Land Corp. v. Zoning Bd. of Appeals of Town of Southampton, 137 A.D.3d 1289, 28 N.Y.S.3d 405 (2d Dept. 2016) (Article 78 decision); Sand Land Corp. v. Zoning Bd. of Appeals of Town of Southampton, 28 N.Y.3d 906, 68 N.E.3d 102 (2016) (Motion for leave to appeal denied); People v. Wainscott Sand & Gravel Corp., 59 Misc. 3d 67, 75 N.Y.S.3d 782 (N.Y. App. Term.), order recalled and vacated, 62 Misc. 3d 16, 89 N.Y.S.3d 819 (N.Y. App. Term. 2018); People v. Wainscott Sand & Gravel Corp., 62 Misc. 3d 16, 17, 89 N.Y.S.3d 819, 820 (N.Y. App. Term. 2018) (defendants' motion to dismiss the four accusatory instruments is denied, the accusatory instruments are reinstated).

Southampton Town's Legal Duties and Responsibilities:

Southampton Town has repeatedly pledged to protect our drinking water aquifer, enforce the law and stop all the illegal activity at Sand Land. Indeed, on February 13, 2020, a unanimous Town Board, in a letter to DEC, promised that “The Town takes seriously the laws we have in place to protect our aquifer..., the Town will assert its jurisdiction and take all necessary legal, civil, code enforcement and police action to stop these illegal operations should Sand Land engage in them.” Likewise, the four unanimous Appellate Decisions, the Town’s May 20, 2020 Cease and Desist Letter, and the June 11, 2020 NYS Supreme Court injunction make clear these activities are illegal and must be stopped. Yet all these illegal activities continue and the *Town’s inaction further enables these lawbreakers.*

Equally troubling are recent highly inaccurate statements by senior Town officials regarding the facts, the law, and the obligations of the Town to enforce it. The Southampton Press on July 7, 2020, quotes the Southampton Town Attorney as saying the Town “would take action if it believes a major violation occurs” and went on to say that it appears Sand Land has been working with inventory already on site. “If they are selling, great, get it off the site and don’t bring anymore in.” He then went on to say that he had instructed an assistant Town attorney to advise Sand Land “that we are taking that position.” The problem is that the Town has been furnished extensive, documented evidence that Sand Land is doing exactly that – bringing in off site material on a regular basis. The Town attorney’s comments not only misstate the facts and the law, they blatantly ignore (and thereby vitiate) the very court order and preliminary injunction that the Town fought so long to obtain.

Tractor trailers of off-site material have, and continue to be, dumped on the site virtually every day. Indeed, the picture accompanying the July 7, 2020 SH Press article quoting the Town Attorney, shows a massive early morning dump of off-site material, as well as voluminous amounts of illegally stored fill, bluestone and rock, early that same morning. In fact, on a recent brief visit to the site on June 26, 2020, a Town code official and an assistant Town attorney personally witnessed both a tractor trailer and a 10-wheel dump truck, dump illegal off-site material on the floor of the mine. The officials admitted the activity was illegal and said they were going to cite Sand Land for the obvious violation.

In addition, to be clear, Sand Land is not allowed to work with any “inventory” on site, except site mined sand and gravel. All other material is illegal and should have been removed long ago. Yet, although the Town has occasionally issued a summons for these violations, these are either contested by Sand Land and linger for years while the illegal activity continues; or settled as the insignificant cost of conducting a highly lucrative (though illegal) business. And now, years after multiple Appellate Court rulings, nearly three months since the Town’s Cease and Desist Letter, and over two months since The NYS Supreme Court issued an injunction, all the illegal activity at Sand Land continues.

It is important to note that this series of events is repeating the same history the Town had with Sand Land in 2016. At that time Sand Land said they would comply with the Code and Appellate Decisions but just needed a few weeks to remove all the material and clean up the site. When they never did, the Town was forced to go to Court for a Preliminary Injunction to enforce the law and Appellate Court rulings. That is the identical injunction that was finally granted by the court on June 11, 2020; and yet four years later we hear the Town is going to again allow Sand Land to thwart the law and continue to store and sell the illegal material.

Importantly, the Town does not have any legal basis to disregard a Court Order, or to decide what portions of it the Town will enforce, which violations of the Order they will ignore, and which are “major” or “real” enough for them to prioritize and enforce. It would indeed be unprecedented for a Town to spend years obtaining a court order and then refuse to enforce that very order. Unfortunately, the Town's position seems intended to seize defeat from a hard fought and critical legal victory. Once a Town asks for, and a judge grants, a court order, a Town needs to enforce it. To fail to strictly enforce a NYS Supreme Court Order in this fashion is the very definition of arbitrary and capricious behavior by the Town.

The law is absolutely clear, Sand Land cannot sell any material from this site other than sand and gravel mined from the site. Yet, if the SH Press is not misquoting the Town Attorney, the Town has given its blessing to Sand Land to retain and sell materials illegally brought to the site stating: “if they are selling, great.” Well, *not great*. This is completely wrong, and illegal. The Town's acquiescence to these ongoing violations undermines years of legal process and judicial rulings and orders. The illegal material cannot be received, stored, processed or sold: Period. The courts have clearly and repeatedly ruled those are not mining activities and are not legal at this site. Yet, as the Town has been repeatedly made aware through documentary evidence, these activities continue with illegal dumping and sales of illegally imported materials taking place virtually every day. For example, between July 7 and July 23, 2020, dumping and sales were observed and documented on July 7, 9, 13, 15, 16, 17, 20, 21, 22, and 23. These violations continue, including as recently as last Friday, August 7, 2020 (see photos attached). The illegal importation and sale of the non-native stone began on May 13, 2020 and also continues virtually every day. All these materials are prohibited and must be immediately removed from the site. To allow them to be sold and for Sand Land to continue to profit from its illegal activity stands the rule of law on its head.

Finally, according to press reports, the Town attorney believes that Sand Land “does have permission to process some vegetative waste for use in remediation areas it has mined clear of sand”. This is absolutely false. Even the DEC has made clear that there is no longer any such exception and that the importation, processing and storage of vegetative waste, or indeed any imported material, for reclamation, is not permitted. The current permit states that no new reclamation material can be imported and no processing for reclamation is permitted at the site, and that all necessary material for reclamation is loam that is buried at two specific locations on site. No other material on site is for reclamation. Permit #1-4736-00851/00001 page 1,3,8; NYDEC Response to Comments 5/1/2020, numbers 2,3,5,6,7; Sand Land/Alpha GeoScience letter to DEC, December 20, 2019, p3: “all reclamation will be done with the loam that exists on-site” (identifying two areas of buried sandy loam in the northeast and southwest of the site that sufficient to fully reclaim the site). All of this material needs to be removed from the site immediately.

Summary:

The Town must enforce the law and Town code, the results of four unanimous Appellate Decisions, its own Cease and Desist Letter, and, the recently issued court ordered injunction. All material, other than site-mined sand and gravel and the buried loam at the two specific locations identified in their permit materials, must be removed from the site immediately. Imported materials cannot be stored, processed or sold. And no new materials can enter the site, for any reason, including reclamation (as is clear from their permit Sand Land is no longer allowed to receive, process or store any material for reclamation

other than the two areas of previously buried loam on site. Both DEC and Sand Land have warranted that these buried reserves are sufficient to accomplish total reclamation of the site.)

All structures and scales must immediately be closed down and vacated, and then either removed or brought into conformity with the Town code through the required Town Planning and Zoning procedures. To date, Sand Land has made a mockery of the planning and zoning process by “scheduling” hearings before the ZBA (*since 2011*) and withdrawing and “re scheduling” the application when it is calendared.

If the rule of law is to mean anything in Southampton, a facility with extensive well documented site generated pollution and an extraordinary record of violations cannot be allowed to flout the law. Imagine any resident of Southampton constructing and occupying multiple buildings for years, without building permits, certificates of occupancy, a Town required site plan, or variances for structures and scales that are up to 108 feet in violation of a required minimum 110-foot set back. And imagine if a Town resident continued operations and occupancy *nine years after they have been cited as illegal*. It is inconceivable that if any other resident of Southampton engaged in even one of the many illegal activities that are ongoing at Sand Land, or was determined by the Suffolk County Health Department to have contaminated groundwater water and the drinking water aquifer; that the Town would not shut down the illegal activity and hold them legally responsible.

We call on the Town to do its legal duty and enforce the law immediately, without fear or favor.

Sincerely,

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