

TOWN OF SOUTHAMPTON

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August 26, 2020

Fred W. Thiele, Jr., Assemblyman 1st District
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Bridget Fleming, Suffolk County Legislator
75 Washington Street
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59 Encore Blvd.
Eastport, NY 11941

Elena M. Loreto, President Noyac Civic Council
44 Harrys Lane
Sag Harbor, NY 11963-1509

Dear Assemblyman Thiele,
County Legislator Fleming,
& Concerned Civic Organization Representatives:

I would like to take this opportunity to thank Assemblyman Thiele and Legislator Fleming for all of their diligent work on this continuing matter. It is because of Assemblyman Thiele's tireless persistence that the local municipalities have more land use control over certain activities of sand mines throughout Long Island. In addition, Legislator Fleming led the County Health Department efforts for water quality testing at the site, which has proven to be extremely vital concerning the storage of vegetative waste at the subject property. In addition we certainly appreciate the continuing contributions of Ms. Elena Loreto, Mr. DeLuca, Ms. Spilka and Ms. Esposito.

In regards to the actions the Town has taken, please be advised that the Southampton Town Attorney's Office is involved in an active investigation, and prosecution of numerous pending Justice Court dockets (each containing multiple charges) against the sand mine and operation known collectively as "Sand Land." All pending charges are currently scheduled for court conferences on September 11, 2020 at 1:00p.m. before the Hon. Deborah Kooperstein.

Docket 18-110374 consists of 23 misdemeanor charges for littering in violation of Town Ordinance (T.O.) § 211-2(c) naming SandLand Corp. as the defendant. Several dockets charge John Tintle, the owner of the site, individually with 4 counts of change of use in violation of T.O. § 330.177(a), and 4 counts of violation of approval or conditions in violation of T.O. § 330.167.1.

As highlighted by your letter, the Southampton Town Attorney's Office has diligently worked to pursue four appellate court actions, all resulting in favorable decisions; and to obtain a Supreme Court Injunction, dated June 11, 2020, prohibiting "Sand Land" from all activities beyond the scope of mining and sale of sand and gravel.

In addition, the Southampton Town Attorney's Office has worked in conjunction with the Southampton Town Building Inspector to issue a Cease and Desist Letter, and the Division of Code Enforcement to arrange for and coordinate continuing on-site surveillance operations.

It is important to note that the latest NYS Department of Environmental Conservation Permit modification, issued on May 1, 2020, prohibited importation of vegetative waste; however permits importation of crushed stone, crushed concrete aggregate and finished compost to create salable aggregate and sand based soils. This permit merely states that the permittee is responsible for obtaining other permits required. The Town of Southampton Attorney's Office filed multiple complaints with the D.E.C throughout the permit renewal process. In the D.E.C.'s response to comments, the agency did acknowledge that the D.E.C. issued permit did not in any way limit the obligations of "Sand Land" to satisfy local requirements of law.

On May 22, 2020 Code Enforcement Officials served Counsel to Sand Land, and "Sand Land" with a Notice of Violation, and Ceast and Desist letter issued by Chief Building Inspector Dennis O'Rourke.

On May 27, 2020 I personally spoke with Brian Matthews, Esq., and demanded that "Sand Land" remove all prohibited materials from the site. Mr. Matthews had taken the position that stone was allowed on site, and stated that "Sand Land" had no plans to bring in concrete aggregate or similar material. This position has been the primary remaining point of contention in ongoing litigation in the Supreme Court.

On June 11, 2020, Hon. Denise Molia J.S.C. issued a temporary injunction, enjoining and restraining Sand Land Corp. and Wainscott Sand and Gravel Corp. from "processing trees, brush, stumps, leaves and other clearing debris into top soil or mulch and from storing, selling, or delivering mulch, top soil, and wood chips" during the pendency of the ongoing Supreme Court action. The Defendant's motion to dismiss was denied and the case shall progress forward before the Hon. Denise Molia for findings of fact to be determined.

Notably, Hon. Denise Molia J.S.C.'s temporary injunction, does not address storage, sale, or importation of gravel. The Town Attorney's Office has maintained the position that all materials other than sand, are prohibited on site; and continues to litigate aggressively in order to assert that Sand Land is in violation of the latest certificate of occupany, local zoning laws, and

the Southampton Town Code pursuant to authority granted by New York State Municipal Home Rule Law.

On June 18, the Southampton Town Attorney's Office filed a Notice of Entry, and on July 8, 2020 the Defendant filed a notice of interlocutory appeal. The Southampton Town Attorney's Office has yet to be served with the Appellant's brief on this matter.

On June 25, 2020 the division of Code Enforcement was granted permission to view the Sand Land site from a neighboring property. On June 26, 2020 a Code Enforcement Officer, accompanied by an Assistant Town Attorney, did a site visit to photograph conditions of alleged violations within "Plain-view." These photographs, along with the observations of the Code Enforcement Officer are part of an ongoing investigation and prosecution.

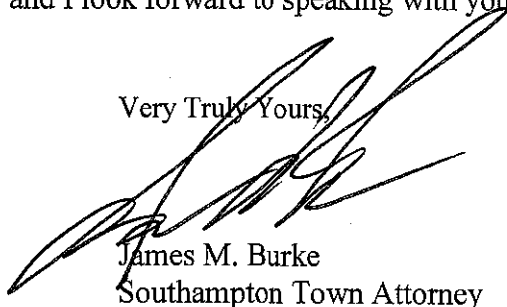
On July 14, 2020, as per my directive, an Assistant Town Attorney notified "Sand Land" through their counsel, that it is the position of Southampton Town that "Sand Land" is in violation of the certificate of occupancy for the site, and a direct Order of the Supreme Court of the State of New York. "Sand Land" was directed to cease delivery of prohibited materials, and remove the same in an expeditious manner.

On July 17, 2020, the Assistant Town Attorney again notified "Sand Land" through their counsel Brian Matthews, Esq., that the activities taking place at the Sand Land site are in violation of the Supreme Court Injunction, most recently issued Certificate of Occupancy, Zoning Board Decision and Town Code of the Town of Southampton. The Assistant Town Attorney demanded immediate removal of all non-permitted materials being processed, stored, sold, and delivered to the Sand Land site.

As you know, due to the unprecedented and ongoing COVID-19 Pandemic, all New York State Courts, including the Southampton Town Justice Court were temporarily closed for new filings of Town Ordinance related matters, and conference of pending cases. The New York State Office of Court Administration directed the Courts to re-open on July 14, 2020 with social distancing protocols and limited capacity calendars put in place. Conference of the referenced court dockets was promptly scheduled for September 11, 2020.

If you wish to discuss this matter in further detail I would be more than happy to review the concerns you have raised and how we may address them moving forward. Thank you for your continuing contribution in this matter, and I look forward to speaking with you in the near future.

Very Truly Yours,



James M. Burke
Southampton Town Attorney

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