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January 28, 2022

By Certified Mail Return Receipt Requested

Stephen G. Gray  
Chairman  
Carver Zoning Board of Appeals  
Carver Town Hall  
108 Main St.  
Carver, MA 02330

Re: Demand for Enforcement of the Zoning Bylaw pursuant to G.L. c.40A, § 8,  
SLT Construction Corporation and Ricketts Pond Business Park, LLC

Dear Mr. Gray and Members of the Board:

This firm represents Save the Pine Barrens, Inc. (STPB), a non-profit group with a mission to protect the land and waters of Southeastern Massachusetts, including in Carver. On behalf of our client, STPB, we hereby appeal, pursuant to G.L. c.40A, §8, the decision of the Building Commissioner to refuse to enforce the Zoning Bylaw against SLT Construction Corporation (SLT) and RPBT, LLC (RPBT) for conducting unlawful earth removal in the “Spring Street Innovative District” (SSID). The Building Commissioner’s decision was emailed to the undersigned on December 30, 2021.

The location of the unlawful earth removal is Assessor’s Map 32 on numerous lots including but not limited to lots, 1-2, 1-1, 1-3, 1-A, 1-4, 1-5, and 1-6 (the “Site”). These lots are located in the SSID. The Carver Zoning Bylaw prohibits earth removal in the SSID district.

Let me emphasize that STPB is not appealing to this Board the violations of the Earth Removal Permit, which are numerous. This appeal is for violations of the Zoning Bylaw by the conduct of activities on land on which those activities are prohibited.

Earth removal by SLT and RPBT on the site constitutes the primary use of the property. *Indianhead Realty, Inc. v. Zoning Bd. of Appeals of Plymouth*, 97 Mass. App. Ct. 1108 (Rule 1:28 decision), *rev. denied*, 486 Mass. 1104 (2020). An “incidental use” is one that is not the primary use of the property but subordinate and minor in significance. *Old Colony Council-Boy Scouts of Am. v. Zoning Bd. Of Appeals of Plymouth*, 31 Mass. App. Ct. 46 (1991). Where

the net effect of excavation is the creation of a sand and gravel operation, it is not minor or incidental.

Earth removal on this site is not necessary or incidental to any primary use.

The Earth Removal Committee's (ERC) issuance of a permit to SLT for earth removal at the site in July 2018 does not change this analysis. The ERC permit does not supersede the Town's Zoning Bylaw, Use Regulations Table. Section 2230 prohibits earth removal in the SSID zoning district.

On November 17, 2021, the ERC purported to issue an Earth Removal Permit to Marob Trust, Mary McGrath, for an earth removal operation on land abutting the SLT site on Map 32, Lot 4. Mr. Opachinski held himself out as a representative of Marob Trust and described his plan to "expand" the current earth removal operation from the RPBT/SLT land onto Lot 4. The issuance of this permit is the subject of a separate action recently filed in Superior Court, C.A. No. 2283CV00032.



Photo of earth removal and sand mining operation, December 14, 2021.

Immediate enforcement is essential. The SLT/Opachinski/RPBT earth removal operations at the site violate and continue to violate the Zoning Bylaw.

The Zoning Act, G.L. c.40A, §8 provides for an appeal to your Board when a zoning enforcement officer refuses to take enforcement action when a violation of the Zoning Bylaw is brought to his attention.

Your authority to hear and decide appeals is set forth in Section 5223 of the Bylaws. The ZBA has no published documents setting forth the filing fee or other fee required as a prerequisite for docketing an appeal under Section 5223. Upon information and belief, Carver has no such fee schedule and determines the filing fee, if any, under Section 5223 on a case by case basis. Therefore, this appeal will be considered docketed on the date stamped by the zoning clerk. The abutters list will be obtained in a reasonable time and sent to the zoning clerk for preparing the public notice of the hearing.

I respectfully request that you schedule a hearing on this appeal. RPBT, SLT, Opachinski, and its officers, agents, contractors, subcontractors and affiliates must be ordered to stop earth removal operations at the SSID Site immediately, and you must prohibit any further expansion of the earth removal. On information and belief, SLT has expanded earth removal operations on to Lot 4, the property without a valid permit from the Earth Removal Committee. This will be the subject of a separate request for enforcement.

STPB further demands that, if SLT/Opachinski/RPBT do not comply, you bring suit in superior court or land court to enforce the Zoning Bylaw and restrain violations of it by its continuing excavation and refusal to restore the land.

Sincerely,



Donna M. Brewer  
for Save the Pine Barrens, Inc.