

Save the Pine Barrens, Inc.  
Community Land & Water Coalition  
PO Box 1699  
Plymouth MA 02362  
www.communitylandandwater.org

November 22, 2023

Steven Solari  
Interim Building Inspector/Commissioner  
Town of Halifax  
499 Plymouth Street  
Halifax, MA 02571  
BY HAND DELIVERY

Re: 250 Lingan Street – Request for Enforcement of the Halifax Zoning Bylaw:  
Mining in Zone II of Aquifer and Well Protection District

Dear Mr. Solari,

This is a request for enforcement of the Halifax Zoning Bylaw (“Bylaw”) to prevent the continuation of “Mining of Land” at 250 Lingan Street (“the Site”) in the Zone II - Aquifer and Well Protection District (“Zone II”) where it is a use prohibited under the Bylaw Use Table, Section 167-17.F(2)-28. This request also seeks the imposition of penalties under the Bylaw Section 167-23 for each day of violation and each cubic yard of aggregate material excavated in violation of the Bylaw.

This request is made to you as the zoning enforcement officer pursuant to G.L. c. 40A, § 7 of the Zoning Act and the Bylaw, Article VI, Administration, Section 167-18, Enforcement.

The persons alleged to be in violation of the Bylaw are Morse Brothers, Inc., Ryco Excavating, Inc. and those acting in concert with them.

This request is brought by and on behalf of residents of Halifax<sup>1</sup> who have been aggrieved by the prior mining operations on the Site, past and continuing violations of the Bylaw, and who will be aggrieved by future mining at the Site.

If you decline to act on this request for enforcement, you must notify the signatory below of any action or refusal to act and the reasons therefore within fourteen days of receipt of this demand letter. Section 167-18(A).

## **The Zoning Bylaw Unequivocally Prohibits Mining in the Zone II**

---

<sup>1</sup> These residents include Jeremy Gillespie, Mark Jacques, and Donald McNeil.

The Town of Halifax Zoning Bylaw prohibits sand and gravel mining in the Zone II of a drinking water well. The Site and the mining operation is located directly in the Town of Halifax YMCA Well site, Zone II an approved Wellhead Protection Zone under the MassDEP Drinking Water Program.

As stated in 310 CMR 22.02, a Zone II is:

"That area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield, with no recharge from precipitation). It is bounded by the groundwater divides which result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone IIs shall extend up gradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary)."

The Bylaw, Section 167-17 is entitled "Aquifer and well protection" and provides that the purpose is to "protect the public health by preventing contamination of the ground and surface water resources providing public water supply and potential sources of water supply."

The Bylaw, Section 167-17 (B) states, "The Town of Halifax finds that:

- (1) The Richmond Park and YMCA Camp well sites and their water sheds, along with the groundwater underlying Halifax, are the primary source of Halifax's existing and future water supply.
- (2) The water resource is connected with and flows into the recharge areas, surface water, lakes and streams which constitute significant recreational and economic resources to the Town used for swimming and other water related recreation.
- (3) Accidental spills and discharges of petroleum products and other toxic and hazardous materials and sewage discharge have repeatedly threatened the quality of such groundwater supplies and related water resources throughout towns in Massachusetts, posing potential public health and safety hazards and threatening economic losses to the affected communities.

The Town has an Aquifer and Well Protection Area Map that is part of the Zoning laws of the Town."

The Bylaw, Section 167-17.C, states, "Definitions pertaining to an Aquifer and Well Protection District.... MINING OF LAND – The removal or relocation of geologic materials, such as topsoil, sand, gravel, metallic ores or bedrock."

The Bylaw, Section 167-17.D, states, "Establishment of Districts. There are hereby established within the town certain aquifer and Well Protection Districts, which are delineated on an overlay map entitled "DEP Approved Zone II Delineation YMCA and Richmond Park Wellfields Town of Halifax, MA" dated January 2003. The map is hereby made a part of this chapter and is on file

in the office of the Town Clerk. The Aquifer and Well Protection Districts and other zones herein established shall be considered as overlaying other existing zoning districts.”

The Bylaw, Section 167-17F(1) states, “Within an Aquifer and Well Protection District, the requirements of the underlying districts continue to apply, **except that uses are prohibited where indicated by “N” in the following schedule**, and that uses are permitted where indicated by a “Y” and require a special permit where indicated by “SP”, even where the underlying district requirements are more permissive. Uses permitted in the underlying districts are otherwise allowed in the Aquifer and Well Protection District.” (Emphasis supplied)

“MINING OF LAND” is a Use prohibited in a Zone II under the Bylaw, Section 167-17F, Use Table (F), **Line 28** which states, “Removal of earth, loam, sand and gravel or any mineral in excess of 50 cubic yards, not incidental to construction of building” and is followed by “N”.

The Bylaw, Section 167-17F, Use Table Line 27 states, “The removal of soil, loam, sand, gravel or any other mineral substance within four feet of historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are redeposited within 45 days of removal on site to achieve a final grading greater than four feet above the historic high water mark, and except for excavations for the construction of building foundations or the installation of utility works, 310 CMR 22.2” and is followed by an “N”.

The Bylaw Section 167-7©, “Table of Use Regulations” states, “*N=Prohibited Use.*”

The zoning enforcement officer of the Town of Halifax has previously, and correctly, interpreted Section 167-17 of the Bylaw to prohibit the “MINING OF LAND” in a Zone II. This is established legal precedent for the interpretation and application of the Bylaw to mining activities in a Zone II.

## **Violations**

From at least 2002 to the present, Morse Brothers, Inc. and Ryco Excavating, Inc. and those acting in concert with them have conducted “MINING OF LAND” in the Zone II of the Town’s YMCA Wells. This Zone II covers the Morse Site at 250 Lingan Street. This mining of land is unequivocally prohibited in the Zone II.

On November, 16, 2023, the Halifax Board of Selectmen (“Board”) purported to issue an earth removal permit to Morse for the Site under the Town’s General Bylaw. This does not authorize Morse to violate the Zoning Bylaw’s prohibition against mining in a Zone II. A zoning bylaw may “confine earth removal to specified zoning districts, while a separate earth removal by-law may govern how earth removal is carried out within those districts.” *Toda v. Board of Appeals*, 18 Mass. App. Ct. 317, 320 (1984). Here, the Halifax Zoning Bylaw clearly and unequivocally confines earth removal to districts **other than the** Aquifer Protection District-Zone II. Morse and others cannot conduct mining of land on the Site without violating the Zoning Bylaw, despite the Board’s permit.

You are requested to issue an order directing Morse and Ryco and those acting in concert with them to cease and desist from any and all ongoing and future removal or relocation of geologic materials, such as topsoil, sand, gravel, metallic ores or bedrock on the Site.

Yours very truly,

*Margaret Sheehan*

Margaret E. Sheehan, Esq.  
P.O. Box 1699  
Plymouth MA 02362  
Email: [ecolawdefenders@protonmail.com](mailto:ecolawdefenders@protonmail.com)  
Phone: 774-260-7864