

11/4/22

TO: Planning Board members  
Enclosed are concerns  
regarding issues with  
composting and rock processing  
at two sites managed by  
Onyx Corporation.

Respectfully submitted by

Spring Brook Farm

MEETING DATE: October 13, 2022

TIME: 6:00pm

If Applicable please fill in Executive Session START TIME:  
state approx time:

SUBJECT of Executive Session:

Re-open to Public? If yes

**BOARD OF HEALTH**

NAME of BOARD/COMMITTEE

Town Clerk Office  
Use Only

**Butterick Municipal Building, One Park Street, Sterling, MA Basement Meeting Room**  
LOCATION ROOM

Name: David Favreau

DESIGNATED AUTHORITY OF BOARD/COMMITTEE CALLING THE MEETING

**AGENDA**

6:00: Meeting to order. Roll Call

General Business Updates....including but not limited to the following:

1. Approve any available minutes: August 11 & September 8, 2022
2. Correspondence: Onyx Corp. Chocksette Road RE: Dust complaints
3. Health Agent Report: Update on Summons, Annual Seasonal Flu Clinic update, Sterling Nursing Home Fay Spoford update.
4. 64 South Nelson Road: request for Construction Permit extension.
5. Signatures Required: None
6. DPH – Interagency Updates
7. Other Items: Rodent concern.

64 South Nelson Road: Request for Construction Permit extension.

12 Main Street: Review of Title 5 Inspection report discrepancy of bedroom count.

57 Kendall Hill Road: Review of Title 5 Inspection report discrepancy of bedroom count.

Presence of cyanobacteria (algae) cells in West Waushacum Pond.

6:15: Appointments and Agenda Items:

8. **24 Ford Road Variance Request:**

Sterling Subsurface Sewage disposal Regulations: Reg. IV. a., Leach beds to be 1000 square feet minimum, with 12" of stone beneath the pipes (1066 sq. ft. of Presby type system provided with no stone beneath pipes).

Review of future agenda Items and meeting date.

Adjourn

[http://homenewshere.com/daily\\_times Chronicle/news/woburn/article\\_39b53bea-75a8-11e9-8810-63c84ca1b6f1.html](http://homenewshere.com/daily_times Chronicle/news/woburn/article_39b53bea-75a8-11e9-8810-63c84ca1b6f1.html)

Developer to contest order

## City demands halt of sale of materials

Ledges in North Woburn

By PATRICK BLAIS

May 13, 2019



**SHUT IT DOWN** - Woburn Police Chief Robert Rufo (l), Woburn Police Dept. Captain John O'Neil (second from right), and Woburn Building Commissioner Tom Quinn (far right) serve the **cease and desist notice** to the Onyx Co site supervisor (in hard hat). The action was brought on by company doing the clearing reportedly running a quarry operation, selling the items removed which was not reportedly approved by the City Council. Below, an 8-wheel dump truck looks to enter the site at 1042 Main St.

(joebrownphotos.com)

**WOBURN** - A Connecticut-based construction company will contest a cease-and-desist order issued by city officials yesterday that mandates the immediate halt of crushed rock and other aggregate materials sales from the controversial Ledges at Woburn site in North Woburn.



On Thursday afternoon, Building Commissioner Thomas Quinn ruled Woburn 38 Development LLC and Acton-based excavation contractor Onyx Corporation were violating at least five clauses of Woburn's Zoning Code by arranging for the direct sale of processed rock from the sprawling nine-acre construction zone at 1042 Main St.

"As soon as we were notified the contractor was selling aggregate material on that site, we took swift action," said Mayor Scott Galvin, who this morning assured residents that the city will do what's necessary to ensure Quinn's order is enforced.

The parcel, which sits perched over Route 38 by the Altavesta Elementary School and the Wilmington line, has been crawling with construction workers and excavation equipment in recent months as demolition contractors blast away at the ledge-riddled terrain.

Ordering the landowner to immediately cease-and-desist all sales operations, Quinn is threatening to levy fines of up to \$1,500 for each day the alleged unlawful activity continues.

According to Galvin, who met with Quinn in City Hall on Thursday before the order was hand-delivered to construction managers at 1042 Main St., the enforcement action stemmed from neighborhood complaints about advertisements posted directly to Onyx Corporation's website and Facebook page.

Galvin characterized those arrangements as blatant violations of both local zoning ordinances and a comprehensive permit issued under protest last year for the wildly unpopular 168-unit housing development.



Haverty also warned that Woburn 38 Development's entire construction timetable, which calls for at least two years of blasting and earthworks activity, could be prolonged considerably should Quinn's cease-and-desist order stand.

When asked how long of a delay could be expected, the area lawyer responded that his client has not yet had time to calculate the construction timeline impact.

"It's allowed by the comprehensive permit, and it does not constitute a violation of the zoning ordinances," said Haverty. "This is very typical. It's expensive to shop material off site, and [doing so] eats up the value of selling it.'

"From our perspective, any requirement [to permanently halt sales] would increase the time it takes to remove this material from the site. So if Onyx is limited to only removing material in their trucks, the construction process will take longer," he added.

For weeks now, those residing around the construction zone at 1042 Main St. have lodged a multitude of complaints about poor dust control measures, idling construction vehicles, heavy trucking traffic, and property damage from the detonation of explosives at the construction site.

Onyx Corporation and Maine Blasting and Drilling have been hired by Franklin Construction Company to remove nearly 420,000 cubic yards of materials from the nine-acre site.

In order to remove such a vast volume of ledge, Maine Blasting and Drilling crews eventually plan to daily set off two controlled demolition charges, each containing the equivalent of 2,000-to-2,500 pounds of TNT.

Onyx Corporation will also use heavy machinery to crush and grind an estimated 357,632 cubic yards of materials. Overall, a total of 418,281 cubic yards of materials are to be removed by heavy dump trucks. Those heavy vehicles, according to the petitioner, will travel to and from 1042 Main St. some 13,332 times over the next two years.

Local officials like Galvin, who has ordered public safety in North Woburn, have insisted there is nothing the city construction work.



"They were inviting contractors to come to the site and pick it up. That is not allowed, and we're going to make sure the contractor tows the line," the mayor vowed during a phone interview this morning.

As part of his cease-and-desist order, Quinn opined Onyx Corporation cannot treat the construction zone as a retail business operation. Pointing out the parcel sits within a mixed single and two-family housing district, the building commissioner contends the proposed sale of processed ledge violates the following R1/R2 use restrictions:

- Prohibitions on both retail and business service establishments, as well as service uses in connection to those operations;
- Prohibitions on the outside storage of new or used building materials;
- And a blanket citywide ban on quarry operations.

Disputing the validity of Quinn's order on Friday, Concord attorney Paul Haverty, representing landowner Woburn 38 Development LLC, argued active construction zones are exempt from those local zoning ordinances.

Haverty, whose firm Blatman, Bobrowski & Haverty specializes in municipal land use and Chapter 40B law, also insisted that an underlying April of 2015 Housing Appeals Committee (HAC) decision clearly stipulates that his client can excavate and sell landscaping materials to offset the development costs associated with the 168-unit project.

Woburn 38 Development is an umbrella entity of Connecticut-based Franklin Construction Company, which was required under the state's 40B statute to create the separate corporate holding. Under the state statute, which allows builders to skirt local building and zoning ordinances in communities that lack adequate affordable housing, corporations are restricted in how-much profit can be generated from approved developments.

Though prepared to contest Quinn's order, officials representing Franklin Construction are temporarily complying with the ruling.



"We have removed any advertisements for the sale of material, and we have limited the removal of materials leaving the site to [authorized vehicles] from Onyx Corporation," said Haverty on Friday morning. "I think it's fair to say we disagree with the interpretation. We're looking for clarification as to what the extent of the order is, and we're reserving all our rights until we get that clarification."

According to both Galvin and Woburn 38 Development, both sides plan on sitting down to discuss Quinn's order further next Tuesday.

### Neighborhood chaos

This morning, the mayor acknowledged that Woburn 38 Development, per 2015's HAC decision, has been granted a myriad of local zoning ordinance exemptions to facilitate the affordable housing project.

However, he scoffed at the notion that Onyx Corporation can turn the site into an aggregate materials' wholesaler.

"Under the HAC decision, it was clear that Onyx was allowed to do that work. But they only have the authority to remove the stuff from that site. [Once its trucked away from the city], they can do whatever they want with it," said Galvin.

"This has become a very, very sensitive issue. And we're dealing with the fallout of an HAC decision that we feel is totally wrong," added the mayor. "Nobody in this city supports that project...Nobody. But we're going to do our very best to make sure the owner and the contractor comply with the construction plan, local ordinances, and state law."

According to Haverty, the city's objections to the proposed sale of materials ignore the fact that contractors like Onyx Corporation routinely sell crushed stone and rock from active construction sites.

Again describing that activity as allowed, the Concord Chapter 40B specialist claimed that aspect of the construction plan was disclosed and discussed at length during ZBA meetings and subsequent proceedings before the HAC and othe



Specifically, the city spent nearly a decade battling the Ledges at Woburn development and a former iteration of the Chapter 40B project proposed by Burlington builder Anthony Santullo. Spending more than \$100,000 to litigate Woburn 38 Development's modified proposal — which more than tripled the amount of earthworks activity at the site — Woburn's Zoning Board of Appeals (ZBA) lost its second protracted legal campaign against the project last winter.

Particularly, in Feb. of 2018, the Mass. Supreme Court, the state's highest court, refused to hear an appeal of a 2015 HAC ruling that overturned the ZBA's denial of a comprehensive permit for the 168-unit apartment complex, which will be clustered in three, three-story buildings.

