



Jason Richer <jayricher@gmail.com>

SECTION 15. COMPLAINTS REGARDING VIOLATIONS Sec. 15.1

1 message

Jason Richer <jayricher@gmail.com>
To: Joanne Buttie <JButtie@nsmithfieldri.org>

Wed, Jun 15, 2022 at 8:18 AM

Town Of North Smithfield
Zoning Enforcement Officer
83 Green St
North Smithfield, RI 02896

June 15, 2022

Good morning, please forward to the appropriate individuals.

I am writing in order to file a complaint that Plat 7 Lot 38 AKA Pine Hill Rd Quarry is being mined without a license by Material Corp. The owner, Pound Hill Realty has never applied for or received a Special Use Permit to do Earth Removal nor has the owner applied for a Special Use Road Permit for trucks weighing in excess of 35,000 lbs. The site should be given a cease-and-desist order. It has been mined since 2013 without a license.

Enough is enough!

Why has the Zoning Officer/Town Solicitor not taken action? The pre-existing nonconforming status of Plat 7 Lot 38 was lost

upon the sale of the property on Jan 18, 2013. A portion (32 acres) was deemed restricted from lateral expansion and further mining.

SECTION 15. COMPLAINTS REGARDING VIOLATIONS Sec.**15.1. Procedure**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint with the Zoning Enforcement Officer. Such complaint shall be in writing and shall state fully the cause and basis for the complaint. The Zoning Enforcement Officer shall properly record the complaint, immediately investigate, taking action as needed thereon as provided by this ordinance. Within 14 days of the date the complaint was recorded, the inspector shall notify the complainant in writing of his findings and/or determinations. The complainant's personal information shall remain confidential and shall not be divulged to the complaine, or any other person (including town employees and elected officials) without written authorization of the complainant as part of the original formal written complaint.

Sec. 15.2.**Notice of violation and response to violations.**

Any person or corporation having received a notice of violation, shall have 30 days to respond. If no response is received within 30 days the zoning inspector shall forward the matter to the town solicitor for further action.

Violations shall be rectified within 30 days of the response to the Notice of Violation.

If in the opinion of the zoning inspector, no attempt is made to rectify the violation, the matter shall be referred to the town solicitor for further action.

An extension of 30 days may be granted if, in the opinion of the zoning inspector, the violator has made a reasonable attempt to comply but needs additional time to do so. Any violation not rectified within 90 days of the receipt of the notice of violation shall be forwarded to the town solicitor for further action.

(Ord. of 3-16-98)

Article IV Soil and Earth Removal Operations Sec 11-33 thru Sec 11-44.pdf is attached

5-6-3-5 Extraction of Earth Products2 (1).pdf is attached

Both documents above dictate that a sale of a pre-existing nonconforming lot loses its nonconforming status upon the sale of the property. The new owner must seek a Special Use permit as follows: **(He has not)**

Sec. 11-41. Exemptions from article provisions.

This article shall not apply to earth removal being conducted on the date of its enactment, on any tract of land, up to limits of presently owned property, within the town. The following conditions shall be considered as conclusive evidence that such real property is or has been used for the purpose of earth removal:

- (a) Such real property was acquired or leased prior to the effective date of this article;
- (b) Such real property was purchased by an individual, corporation or otherwise engaged at the time of acquisition in the business of mineral extraction;
- (c) Such real property, or the substantial portion of such property has not been permanently developed, for any residential, commercial (other than farm or agriculture) or industrial purposes;

11-20

- (d) Such real property contains mineral deposits of a demonstrable economic value;
- (e) Earth material has been removed from such real property, for commercial purposes, at regular intervals, over any six-month period, within the last three years; and
- (f) Upon the sale of any real property being used for earth removal activities, the nonconforming status of this section shall no longer be considered in effect and any subsequent earth removal activities must be licensed and conform to the regulations of this article. The application procedure shall conform to section 11-37 herein.

(Ord. of 6-18-79)

Sec. 11-37. License required.

(a) As a condition precedent to any earth removal as herein defined, a license shall be required to be issued by the town council following a public hearing to be held by the town council and upon the submission of the documents required by section 11-36 and approval by the zoning board of review of a special exception and the payment of a license fee of \$50.00 to the town.

(b) The license shall be issued only to the owner of record and shall not be transferable. Should an existing earth removal operation be sold, such operation shall no longer be considered nonconforming and must obtain a license as set forth under section 11-41, herein. This license shall expire at the end of one year and must be renewed annually, together with application for renewal of an earth removal license for another year. Plans shall be submitted to the zoning inspector showing any change or anticipated change from originally submitted plans of earth removal activities. If no changes are anticipated for the coming year, submission of new plans are not required, but the owner of record must so certify in writing upon application for renewal.

(c) The zoning inspector, upon receipt of application for renewal of an earth removal license, shall make a field inspection of such earth removal activities to determine compliance with plans on file. His written findings shall be sent to the town council with his determination of compliance or noncompliance. The town council shall thereafter issue the license for another year upon determination of compliance by the zoning inspector; upon the determination of noncompliance by the zoning inspector, the license shall not be reissued until compliance with this article.

(d) In granting or reissuing a license hereunder, the town council may impose such other additional, reasonable conditions specifically designed to safeguard the neighborhood and the town, which may include conditions as to the overall operations set forth in this article and as relating to the site plan and restoration plan requirements.

(Ord. of 6-18-79)

It has been revealed that Plat 7 Lot 38 sold on Jan 18 th 2013.

2013 Sale Deed.jpg attached

Following this sale, an application for a Special Use Permit was needed to continue Earth Removal Operations.

APRA requests returned no responsive documents when I asked for a copy of the Special use permit and copies of yearly receipts of the \$50 filing fee for the extension or modification of the Special Use Permit.

Based on the responses of the above-mentioned APRA requests and my own research of all Minutes of the N Smithfield Zoning Board and the N Smithfield Zoning Board of review on the SOS site, it has been determined that Pound Hill Realty LLC (PHR LLC) the current owner since 2013 has never been before the Zoning Board of Review to request a Special Use Permit for continued operation of the Pine Hill Rd Quarry. Considering the first step in gaining a Special Use Permit is an approval from the Zoning Board of review, the owner of PHR LLC could not have gone before the Town Council to request a Special Use Permit (SUP). Thus, the mining by Material Corp (AKA Material Sand & Gravel) is being conducted without a license.

My complaint is that well over a month has passed since I began to address this with the Town Clerk, Tax Assessor, The Assistant Zoning Official and the Zoning Official, all to no avail. The quarry has been allowed to continue operation.

Much to my dismay, the Town Solicitor was also informed in early May of the situation and it is still running as an unlicensed use of Plat 7 Lot 38 in opposition to all North Smithfield's Zoning Ordinances. It is a nonconforming use of a lot zoned RA-65. It would appear, no zoning official has been doing the yearly inspections the ordinance calls for.

I respectfully request The Zoning Enforcement Officer properly record my complaint, immediately investigate, take action as needed thereon **as provided by this ordinance**. Within 14 days of the date of the complaint was recorded, the inspector shall notify me in writing of his findings and/or determinations.

I have made note of several violations the Inspector should address: There is no fencing on the property. The quarry abuts other RA zone lots and this is a very unsafe situation and a violation of the SUP.

Mining has taken place well within the 200-foot buffer along most of the property's boundaries.

A section of Plat 7 Lot 38 was purchased and added to 07/38 from Plat 7 Lot 4. It comprises 32 acres and does not enjoy the nonconforming status as the rest of Plat 7 Lot 38. The 32 acres are restricted from mining. It has been mine extensively.

20220511_115403.jpg attached

Restricted plat 7 lot 4.jpg attached

Drainage shall be provided to prevent the permanent collection and stagnation of surface or groundwaters. Also, mining shall not encroach closer than 4 feet from the ground water table.

I count 5 retention ponds within the quarry looking at aerial views from Google Earth. At least 2 of the 5 retention ponds appear to be dug in below the groundwater table. Of those 2, one is in the northwest corner of the quarry and the other is parallel to the vehicle weighing scale.

There are no "Keep Out Danger" signs at the entrance to or within the area surrounding the quarry.

The Special Road Use Permit Material Corp provided to the state police for vehicles in excess of 35,000 lbs is not a Special Road Use Permit. It is a Court Order from **2001** granted to the former owners of the quarry, Constance and Leonard Pezza (Granite Realty). Note, it was not for the company now owned by Robert Pezza, (Pound Hill Realty)

The State Police told me the permit was dated 11/21/**2021** when in fact it is a court order dated 11/21/**2001**

Court Order Used as 35K Special Permit.pdf attached

Robert Pezze Owner.pdf attached

The current owner, since his purchase of the quarry in 2013 has never applied for or been granted a Special Use Road Permit for trucks over 35,000 lbs as required in Sec 15-9 Heavy Trucks – Permits on Certain Roads, Exceptions.

Sec 15-9 (2).JPG attached

Is there a current site plan? The last one I could find was from 1991. The restricted 32 acres was designated for a horse farm. The estimated removal of earth was 450,000 yards of earth and it was expected to take 4 years. 31 years have since passed. Based on the amount of Earth that has since been removed, the plans for the site have changed...

Is there a restoration plan?

Thank you,

Jason Richer
45 Douglas Pike
N Smithfield, RI 02896
North Smithfield, RI 02896

15 attachments



0 outline.JPG
103K



2013 Sale Deed.jpg
172K



22.png
1126K



20 loads per day.jpg
2781K



20220511_115403.jpg
2518K

P8 Pine Hill Before and After.jpg



412K



Website Pic - No Fencing.JPG
156K



Letter of intent.jpg
2359K



Horse track (2).JPG
27K





20220614_173853.jpg
3734K

Sec 15-9 (2).JPG
134K



 **5-6-3-5 Extraction of Earth Products2 (1).pdf**
185K

 **APRA Response on 35K Special Permit.pdf**
140K

 **Court Order Used as 35K Special Permit.pdf**
837K

 **Article IV Soil and Earth Removal Operations Sec 11-33 thru Sec 11-44.pdf**
467K