



City of East Providence

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CITY MANAGER
PETER GRACZYKOWSKI

October 26, 2011

Laurie A. Grandchamp, P.E.
Supervising Engineer
Office of Waste Management
Rhode Island Department of Environmental Management
235 Promenade Street
Providence, RI 02903

RECEIVED
D.E.M. / OWM
2011 NOV - 1 P 1:40

Re: TLA-Pondview Construction and Demolition Debris Processing Facility located at One Dexter Road

Dear Ms. Grandchamp,

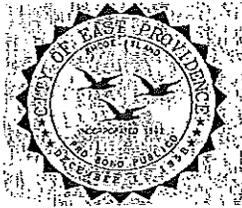
The City is aware of the amendments to R.I. Gen. Laws §23-18.9-8(d) requiring: (1) receipt of a letter of compliance from the host municipality, issued by the City Manager with City Council approval, that all applicable zoning requirements of the host municipality have been complied with; and (2) that if the host community finds the all applicable zoning are no longer complied with that the host community is authorized to issue a non-compliance letter.

For your information, on May 27, 2011, the Zoning Officer of the City of East Providence issued a Notice of Violation to this entity. A copy of the May 27, 2011 Notice of Violation is attached hereto. TLA appealed that Notice to the Zoning Board of Review. On October 19, 2011 after three hearing sessions, the Zoning Board of Review unanimously affirmed the Zoning Officer's findings of violations. Accordingly, this letter shall serve as the letter of non-compliance pursuant to R.I. Gen. Laws §23-18.9-8 for the specifically enumerated violations of local zoning ordinances that have not been met by this entity as set forth in the May 27, 2011 Notice of Violation.

Concurrent with the issuance of this letter of noncompliance, under separate cover, the City, as a property owner within a 1000' radius of this operation, objects to the granting of the license pursuant to Section 23-18.9-8(h)(1). Should you require further information from the City please do not hesitate to contact me.

Very truly yours,


Peter Graczykowski
City Manager



DOC # 00003063

Bk# 3264 Pg# 175

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27 May 2011

Kenlin Properties, LLC
C/o Linda Foley
50 French Street
Rehoboth, Massachusetts 02769

Re: 1 Dexter Road, East Providence, RI – Variance Violations
Map 304; Block 01; Parcel 001.10
Waterfront District – Dexter Road Subdistrict

To Whom It May Concern:

'Kenneth J. Foley - Pondview Construction' (hereinafter 'Pondview'), was approved for a 150-ton recycling and C&D facility, said operation being deemed a prohibited land use due to the fact that outside processing and recycling was not permitted and there was no explicit land use designation pursuant to Section 19-98 'Schedule of Use Regulations', of the City of East Providence Zoning Ordinance. Since the initial approval date of 11 February 1998 (hereinafter 'Approved Variance'), pursuant to Section 19-96 'Prohibited Uses', of said Zoning Ordinance, '*disposal, processing or recycling of solid waste*', has now been deemed prohibited Citywide. Furthermore, subsequent to said action, the subject property has been rezoned Waterfront District – Dexter Road Sub-district, further acknowledging the prohibitive nature of the referenced land use.

It was the determination of this office when seeking permission to expand the operation from 150-tons to 500-tons that said expansion would be outside the scope of the 'Approved Variance.' Those aspects of the operation that would require intensification in order to handle a three-fold increase, would not only violate the manner in which the operation was initially testified to and eventually approved, but also result in substantial changes (modifications) to the approved site plan.

TLA Pondview, the present owner and operator of the approved 150-ton recycling and C&D facility, has now been issued by the Department of Environmental Management (hereinafter 'DEM'), a 1,500-ton per day license. In rendering a determination as to the appropriateness of the expanded operation, DEM received testimony from numerous sources, including the City of East Providence Zoning Officer. This testimony was not only provided for the benefit of DEM, but also counsel for TLA Pondview. It was the conclusion of this office that a now ten-fold increase would once again be well outside the scope of the 'Approved Variance,' necessitating

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revisiting said approval if TLA Pondview desired to engage in an altogether different land use operation. DEM approved the 1,500 ton per-day proposal on 2 May 2011.

In so approving the 1,500-ton per-day license, DEM has explicitly noted that their approval results from substantial compliance with the 'Requirements of the Solid Waste Regulations.' Any, and all other pertinent regulatory requirements, remain within the purview of the respective reviewing agency. This is well acknowledged in Condition No. 5 of their approval, which states the following:

"It shall be the facility's responsibility to ensure compliance with all applicable zoning requirements and local ordinances of the City of East Providence. The granting of this license in no way restrict the City's right or ability to enforce all applicable ordinances and zoning requirements. In the event that local zoning limits the operation of the facility to more stringent conditions than provided in this license, the facility shall submit a proposed amendment to this license within twenty-one (21) days of the effective date of those conditions to reflect consistency with the conditions imposed by the City of East Providence."

A land use established by variance, must operate in perpetuity in the manner so approved, regardless of the ownership of said operation. TLA Pondview is bound by all limitations / restrictions imposed pursuant to the 'Approved Variance,' granted 'Pondview.' The following is a summary of the operational inconsistencies between the 'Approved Variance' and that which was recently granted a license by DEM on 2 May 2011. These inconsistencies result in altogether vast and new land use operation that in no way mirrors the 'Approved Variance.'

I. Site Plan Modifications / Inconsistencies

Pursuant to original submitted application, dated 31 December 1997, in response to Question No. 8 of the ZBR Application, counsel documented on the 'Attached Sheet' that, "*The Board of Review has previously granted permission for outside storage*". The insinuation was that the issue of open storage had already been addressed to some degree, thereby minimizing said issue. A thorough review of all preceding ZBR approvals in regard to the subject property has determined that 'open storage' permission was garnered on two (2) separate occasions, 26 February 1986, and once again on 27 May 1987. However, in both instances, the dedicated 'open storage' areas either did not mirror the present application or were entirely outside the perimeter of the subject property. Therefore, the site plan submitted in conjunction with the 'Approved Variance,' is the plan that establishes the extent (scope) of the operation and illustrates the areas 'limited to open storage.'

A thorough review of the site plan submitted in conjunction with the 'Approved Variance,' and 2011 DEM approved 'Site Layout Plan', was conducted to determine what, if any,



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inconsistencies resulted. In order to accomplish this task, the services of DiPrete Engineering were engaged to overlay the two (2) site plans and document any 'major' changes. The results of said analysis are provided below:

1. Particular attention was focused on the North and Northwest corner of the property, because of the notation on the ZBR Approved site plan, acknowledging 'Limit of Work'. After comparing the site plan approved by the Zoning Board of Review to that which was recently approved by DEM, it is abundantly clear that the present operation / extended operation has aggressively encroached into areas otherwise unapproved for either processing and/or open storage. The 'Concrete Processing & Crushing Area', as well as 'Unprocessed C&D / Crushed Concrete - Pile No. 1', areas have extended well into the area previously outside the perimeter of 'Limit of Work' area identified on the 'Approved Variance' site plan.
2. The ZBR Approved site plan did not illustrate any activities situated along the entire southerly and southeasterly corner of the property. Other than what appears to be an outline of 'Pavement Remains', no activities are documented. However, the DEM submission illustrates that the area is currently / or intended to be used for both open storage and distribution (rail-line spur). Specifically, open storage area 'Pile No. 3 - Fines for Rail Shipment', 'Pile No. 5 - Fines & Street Sweepings' and the previously identified rail-line spur are all located within the area previously identified for non-activity.
3. Finally, within the area actually approved for open storage, said area being centrally and to the rear of the present facility, there are acknowledgments of certain stored materials that were not part of the original 'Approved Variance' submission. In particular, are 'Street Sweepings' and 'Crushed Concrete.'

In addition to the 'Approved Variance' site plan, which clearly identifies those areas limited for 'open storage', there is extensive explicit testimony that substantiates these open storage limitations.

a. Page 44, Lines 3 through 20, of the 28 January 1998, Hearing Transcript - Mr. Morra: "With regards to the storage, what exactly will you be storing, and where will it be inside this building? Will it be in external containers? Will it be open? Can you elaborate on that, please?" Mr. Foley: "The unprocessed material will always be stored in the containers inside the building. If, for some reason, the machine broke down, the containers we put inside the building, we have 70,000 square feet available to use. They would be put indoors, and it's part of our operating plan by the state that any open or - open containers, either full or empty, have to be covered or put under a shelter or building or lean-to or something; so we have to abide by that. The processed materials, the wood chips, would be - part of them will be



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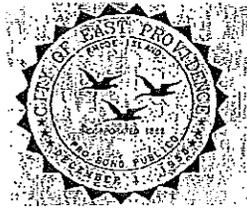
stored on that concrete pad up to – I think the state allows – I think 100 tons is our limit....”

b. Page 64, Lines 23 through 24, through Page 65, Lines 1 through 8, of the 28 January 1998, Hearing Transcript – Mr. Saveory: “All right. Now, the storage of the processed chips are going to be stored on the pad, only?” Mr. Foley: “That’s correct.” Mr. Saveory: “Not on the asphalt?” Foley: “No.” Saveory: “That is also limited to the pad area?” Mr. Foley: “That’s correct.”

c. Page 22, Lines 15 through 24, through Page 24, Lines 1 through 3, of the 11 February 1998, Hearing Transcript – Mr. Morra: “Mr. Foley, with regards to the storage. At the previous meeting, you had claimed that all the storage would be placed inside the building or contained; is that correct?” Mr. Foley: “The finished product, we have the storage. The concrete pad, where open storage is allowed, but any processed material, going wherever, we put in trucks and it’s ready to go.” Mr. Morra: “It’s covered up?” Mr. Foley: “Right.” Mr. Morra: “When you say ‘the pad,’ the pad will have this building over it, though?” Mr. Foley: “That’s right.” Mr. Morra: “So, that is contained, as well, correct?” Mr. Foley: “Correct.” Mr. Morra: “What about any other storage on the site? What about unrecycled wood, wood, piles of wood; is that going to be left out?” Mr. Foley: “It will be indoors or under cover at all times. Unprocessed material will be either indoors or under cover.” Mr. Morra: “Now the processed will be where?” Mr. Foley: “The same, you know – this – certain products, for example, a clean ship, which is – it’s clean. There’s no paint. Nothing on it. It’s just like the barque and mulch you see on J & J materials, that type of material, we may stockpile on the pad, but everything else goes –” Mr. Morra: “It’s all inside?” Mr. Foley: “That’s correct.” Mr. Morra: “Or it’s off the site, correct?” Mr. Foley: “Right, that’s correct. And we’re limited by DEM on the height, the spacing, and it all has to be on that pad.”

d. Page 33, Lines 11 through 24, through Page 34, Lines 1 through 3, of the 11 February 1998, Hearing Transcript – The Chairperson: “Again, the ordinance, is it against the ordinance to store it inside?” Mr. Butterworth: “No, it’s like any other product.” Mr. Chairperson: “Okay. So, it’s better, right?” Mr. Butterworth: “It’s better.” Mr. Morra: “We want it inside, right?” Mr. Butterworth: “What I’m saying is the outside storage pad is where he can store –” The Chairperson: “Outside storage.” Mr. Butterworth: “Outside storage stuff.”

It abundantly clear that the approved ‘open storage’ area was constrained to the pad illustrated on the site plan submitted in conjunction with the ‘Approved Variance.’ The present / proposed operation has well exceeded the ‘approved’ pad-site, expanding not only in a southerly direction, but also in a northerly direction thereby encroaching into that which was otherwise identified as the ‘Limit of Work’ area.



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All operational activities, to include the 'wood processing' and 'open storage', shall be limited to the 'Approved Variance.' Any expansion of said storage area is deemed a 'major modification' resulting in introduction of an altogether different land use operation, and thus violation of said approval. The expanded 'open storage' must immediately cease and be removed. Please limit all 'open storage' to the approved 'pad site' illustrated on the 'approved' site plan, and refrain from any further expanded 'open storage' activities.

II. Operation Identification and Material Storage

Pursuant to original submitted application, dated 31 December 1997, in response to Question No. 8 of the ZBR Application, counsel documented on the 'Attached Sheet' that, "The proposed use is primarily the recycling of natural and processed wood materials into mulch products. These materials include tree stumps, wood siding and other lumber products...Metal reclamation takes place only in the sense that nails or other metal fastening devices are removed...The metal reclamation is therefore completely accessory and simply an incidental part of the process".

1. It is the determination of this office pursuant to extensive testimony proffered by 'Pondview,' that the quantity of material permitted on-site on a daily basis is synonymous with that which may be grinded on a daily basis, namely 150-tons. Throughout Pondview's testimony, the quantity then sought, namely 150-tons, was explicitly identified as being synonymous with the grinding component of the operation. This is substantiated by the following excerpted testimony:

a. Page 9, Lines 4 through 5, of the 28 January 1998, Hearing Transcript – Mr. Maaila: "How many tons every day would you recycle of wood?" Mr. Foley: "Right now, that permit allows 150 tons."

b. Page 11, Lines 16 through 17, of the 28 January 1998, Hearing Transcript – Mr. Maaila: "Do you have an objective to expand this program?" Mr. Foley: "Right now, our permit is for 150 tons a day..."

c. Page 14, Lines 13 through 16, of the 28 January 1998, Hearing Transcript – Mr. Maaila: "What percentage of the business is that to you?" Mr. Foley: "It would be 25 percent of the business, and in 6 months, it will be 50, and within a year, it will be strictly – 150 tons will be Pond View waste."



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d. Page 15, Lines 3 through 6, of the 28 January 1998, Hearing Transcript – Mr. Foley (responding): "...The minute – there will be a scale there, and that will regulate the amount of – so, we don't exceed that 150 tons. I want to say they want to see 150 coming in and 150 going out."

e. Page 9, Lines 19 through 24, through Page 11, Lines 1 through 18, of the 11 February 1998, Hearing Transcript – Mr. Morra: "So whatever you're willing to do would be helpful. Now, the 150-ton capacity, are you willing to submit that that's where your capacity would be for this variance?" Mr. Foley: "I don't think that's – I don't think that's – I don't think I should be held to that. I don't think that's fair. It wasn't easy getting that permit - that registration, as this gentleman pointed out. It's a registration, but they just don't hand those out. That took a year-and-a-half of a lot of engineering and insurance and reviews and bonding. We got a \$36,000 cash bond up there, so if something happens, everything will be taken care of. And pest control and waste drainings and the things they put you through, which is good, but, you know, they're there to protect the environment, the city, myself, everybody. So they're very strict, you know. But like any other business, I don't want to have my hands tied. I would like to expand, whether it be 250 tons or whatever, in the future." Mr. Maaia: "Can I confer with my client?" Mr. Morra: "Sure." Mr. Foley: "As far as the 150-ton for the 18-months, there's no problem, you know, after talking to my counsel." Mr. Morra: "You have no problem limiting it to the 150 tons?" Mr. Foley: "For this variance? No." Mr. Morra: "Yes, right. My concern, Mr. Foley, is this. I think – you know, I think we all know that the process to go above and beyond 150 tons is substantial, is it not, with the state, let's just say?" Mr. Foley: "Oh, yeah." Mr. Morra: "There's a lot more regulations?" Mr. Foley: "A lot more involved, absolutely." Mr. Morra: "That would then present a whole new project to us, I believe. You have to understand something. It's this Board's first and foremost responsibility to safeguard the city. Do you agree with that?" Mr. Foley: "Absolutely."

f. Page 12, Lines 5 through 24, of the 11 February 1998, Hearing Transcript – Mr. Morra: "...What about traffic? Now, as far as the 150 tons per day, how many trucks per day would be going there a day?" Mr. Foley: "Before I answer that, to go way back, the last time we have been through this, the Chief of Police come down with his traffic people and they, at no time, had any problems with the amount of traffic that we created, the road conditions, and so on. But it probably – you know, each container say is 4 to 5 tons, and 150 tons, I'd say 30 trucks inbound a day, and to remove that, it's probably 6 outgoing, removing the finished product, so-to-speak, 36 to 40 trucks in an eight- to ten-hour time. It depends on what time the outgoing trucks leave." Mr. Morra: "How many trucks would you say total a day?" Mr. Foley: "I'd say around 40." Mr. Morra: "Forty, total?" Mr. Foley: "As far as the recycling business, 40 trucks."



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The referenced 150-ton limit per day is further substantiated by the number of daily anticipated truck trips delivering material to the subject site, as testified to by 'Pondview.'

a. Page 16, Lines 3 through 10, of the 28 January 1998, Hearing Transcript – Attorney Maala: *"When you bring the operation of the material to this operation and it has to be processed, you provide them in trucks; is that correct?"* Mr. Foley: *"That's correct."* Attorney Maala: *"The trucks going down Dexter Road, can you estimate how many trucks on a daily basis that makes a trip down that road on an 8- to 10-hour day?"* Mr. Foley: *"Approximately, 30 or say, 3 or 4 per hour."*

b. Page 50, Lines 10 through 19, of the 28 January 1998, Hearing Transcript – Mr. Morra: *"Okay. What about as far as the traffic coming in and out of this facility, for instance? Are these going to be strictly your drivers?"* Mr. Foley: *"For now, I would say, 25 percent of the traffic would be for Pond View trucks, yes, but now, there would be other trucks coming from within the state, and it would be – we estimate 30 trucks a day. That's about three an hour, four an hour, somewhere in that range."*

It is abundantly clear that the 'Approved Variance' was limited to 150-tons, and not simply the grinding of 150-tons. 'Pondview' repeatedly testified as to the exact quantity, as evidenced by both the amount of anticipated truck-trips and capacity of each truck load – 4 to 5-tons per truck and between 36 to 40-trips. In fact, 'Pondview' acknowledged that it was not objectionable to limiting the operation to 150-tons, **'For this variance? No.'** [Citation II.1.e of this report]

This office previously concluded in 2003 that the 500-ton increase was clearly unsupported by the 'Approved Variance,' and reasserts that an increase to 1,500-tons is a violation of said approval. Therefore, any expansion beyond the 150-tons is deemed a violation of said approval, resulting in introduction of an altogether new land use operation and voidance of said 'Approved Variance.' Please do not acceptance any materials beyond the 150-ton limit per-day, otherwise it will result in voidance of the 'Approved Variance' and subsequent cessation of the entire operation.

III. Type of Materials Approved for Recycling and Processing

As referenced above, the proposed operation was predominantly approved for 'wood recycling,' with incidental metal reclamation. The subject operation was not only defined by application submission, but also by explicit testimony.



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a. Page 7, Lines 21 through 24, of the 28 January 1998, Hearing Transcript – Mr. Maaia: "What type of material would be recycled?" Mr. Foley: "We have a separate permit, and we're able to process wood, whether it be construction or demolition-type wood."

b. Page 8, Lines 23 through 24, through Page 9, Lines 1 through 3, of the 28 January 1998, Hearing Transcript – Mr. Maaia: "Would you recycle any contaminated or non-recyclable material, like tires or anything of that nature?" Mr. Foley: "No we would not. That's like I say, we have a permit from the State of Rhode Island, and they only allow you to process and grind wood products."

c. Page 13, Lines 22 through 24, through Page 14, Lines 1 through 9, of the 28 January 1998, Hearing Transcript – Mr. Maaia: "In the past, we have had people concerned about assurances that you could give the Board and the public and anyone else who had some concern about certain problems; for example, what is your interest – tell this Board that you could bring the type of product that you have testified that you will bring in there and bird-dog and watch it, and ensure a program in place that will bring only wood in there." Mr. Foley: "Like I say, everything that comes in that building is – we hope to operate or own roll-off containers. That's our ultimate goal and strictly run it for our own company and use -."

d. Page 51, Lines 23 through 24, through Page 52, Lines 1 through 9, of the 28 January 1998, Hearing Transcript – Mr. Morra: "Now, as far as the time of operation that you've received a permit from the DEM, what is that for? Is that strictly wood or would you be allowed to do other facets at this facility?" Mr. Foley: "No, it's strictly a C & D permit, strictly for construction and demolition." Mr. Morra: "You have stated, again, prior on the record, that you're not going to do any processing of tires, concrete block grinding, anything –" Mr. Foley: "Absolutely not."

e. Page 13, Lines 7 through 15, of the 11 February 1998, Hearing Transcript – Mr. Morra: "...Now, you're only going to grind wood, correct?" Mr. Foley: "That's correct. It's not any type of grinding concrete block or anything." Mr. Morra: "You would agree that this variance would be limited to wood only, correct?" Mr. Foley: "That's right."

It is abundantly clear that wood products would be the predominant material handled, and for which a variance was granted. However, as evidenced by the TLA Pondview's 1,500-ton license application to DEM, specifically Section 7.2.02 'Storage (Page 16)', wood products now comprise less than one-half of all C&D Materials Incoming. By TLA Pondview's own admission, said materials comprise 35% to 45% of all Incoming Materials (revised submission application – page 16). The remaining 55% - 65% of all incoming materials as acknowledged by TLA Pondview within their own submission package to DEM, are comprised of materials neither

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addressed nor approved by the Zoning Board of Review. The referenced materials are as follows:

- Miscellaneous metals – primarily iron, aluminum, stainless steel
- Rock, concrete, cinder/concrete block, stone, brick, aggregate, and mortar
- Street sweepings

Other than wood products, with the occasional metal item (nails, screws, etc.) discovered during the sorting and processing component of the operation, all other received materials are explicitly in violation of the 'Approved Variance.' Please refrain from any further practice of receiving (to be received) unapproved non-wood materials. Failure to refrain from this unapproved practice will result in voidance of your 'Approved Variance.'

IV. Miscellaneous Inconsistencies – Outside Scope of ZBR Approval

1. **Hours of Operation:** 'Pondview' testified to on 28 January 1998 (Page 8 of Testimony), that the hours of operation would be *'Monday through Friday, seven to five and on Saturday mornings, seven to noontime; no evenings, no Sundays.'* 'Pondview' proceeded to testify that there would be no evening or night operations, whatsoever.

'Pondview' has continuously argued that there is a unique distinction between the hours of operation and hours allocated to the 'grinding' component of the operation. However, no such distinction was offered during testimony. When prompted about the operation in general, very strict hours of operation were offered to the ZBR. Further evidence to same is referenced below:

a. Page 42, Lines 22 through 24, through Page 43, Lines 1 through 10, of the 28 January 1998, Hearing Transcript – Mr. Morra: *"What, again, were the hours of your operation? What days and what hours?"* Mr. Foley: *"Seven to five, Monday through Friday; and then, Saturday morning, seven to noon."* Mr. Morra: *"Seven to five, Monday through Friday?"* Mr. Foley: *"That's correct?"* Mr. Morra: *"Then seven to noon on Saturday?"* Mr. Foley: *"Yes."* Mr. Morra: *"No hours on Sunday?"* Mr. Foley: *"None."*

b. Page 39, Lines 9 through 20, of the 11 February 1998, Hearing Transcript – The Chairperson: *"I do, Mr. Morra. Motion was made by Mr. Morra to grant the use variance with the stipulations of grindings to a 150-ton limit per day; grinding hours no earlier than 8:00 a.m. to 4:00 p.m., Monday through Friday, and 8:00 a.m. to noon, Saturday; berm in place before operation begins grinding; building must be built within 18 months; and all the*

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variances will be null and void if the stipulations are not met." Mr. Morra: "Did you address the hours of operation, as well?" The Chairperson: "Yes, I did."

It is abundantly clear that the hours of operation were constrained to that which was testified and eventually approved. It has been 'Pondview's' long-standing contention that hours of operation were solely applicable to the 'grinding-component' of said operation. However, by the Board's own testimony during the motion phase, they acknowledged that it was equally applicable to the operation in general – Mr. Morra: "Did you address the hours of operation, as well?" The Chairperson: "Yes, I did."

Pursuant to TLA Pondview's DEM submission, Section 7.2.02 'Storage (Page 16)', 'The operating day will increase from 10.5 hours to 12.5 hours to allow materials adequate time for processing.' Considering that the operation was limited to an eight-hour work-day, Monday through Friday (8:00 a.m. to 4:00 p.m.), and four-hours on Saturday (8:00 a.m. to 12:00 p.m.), TLA Pondview is presently in violation of the 'Approved Variance.' Expanding the operation to a 12.5-hour work-day only exacerbates an already documented violation. The subject operation must therefore immediately be reduced to the conditionally 'Approved Variance.' Failure to acknowledge the referenced violation and institute corrective action, will result in cessation of the entire operation.

2. Landscape Berm:

a. Page 42, Lines 6 through 21, of the 28 January 1998, Hearing Transcript – Mr. Morra: "I have some questions to start with for Mr. Foley. Mr. Foley, as far as mitigating between the other businesses and the other residential area between your facility and these other uses, what have you proposed, as far as landscaping berms?" Mr. Foley: "There's going to be an earth berm put in place around the machine to be landscaped, and it would have evergreens on the top, either cedar pines or hemlocks for aesthetics and also for the noise. The berm will be 13 feet, and the trees will be planted on top of the berm." Mr. Morra: "And you will maintain those trees? If they were to die, you will plant new ones, make sure they're watered and so on?" Mr. Foley: "Yes."

It no longer appears that an earthen berm with natural vegetation atop (trees) has been maintained. This was a specified condition of approval that necessitates immediate correction. Failure to reintroduce the berm in the manner so testified, will result in voidance of the entire variance.



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3. Number of On-Site Machines:

a. Page 85, Lines 12 through 16, of the 28 January 1998, Hearing Transcript – Mr. Silva: "And one other question. How many machines are you going to have on that site?" Mr. Foley: "Just the one; one grinder, that's all."

TLA Pondview's DEM Submission Package – Section 1.5.08 'Equipment Addition' [Page 7], acknowledges that both a second 'electric waste screen' will be added to accommodate the increased waste processing as well as one 'intermittent operation rock crusher.' Testimony only documents the presence of a single grinder, and as previously evidenced, acceptance of rocks / stone was not anticipated pursuant to the 'Approved Variance.' These modifications are clearly outside the scope of the 'Approved Variance', resulting in violation of said variance.

As a result of the preceding analysis, this office has concluded that the following identified inconsistencies / violations must immediately cease and be corrected and/or activities refrained in the future. Failure will result in voidance of the 'Approved Variance' and subsequent cessation of the entire operation.

- Cease from any 'operational activity' and 'open storage' that is located outside the pad-site, illustrated on the approved site plan.
- Cease from any further expansion beyond the approved 150-ton per-day limit.
- Cease from acceptance of unapproved – non-wood – materials, to include:
 - Miscellaneous metals – primarily iron, aluminum, stainless steel
 - Rock, concrete, cinder/concrete block, stone, brick, aggregate, and mortar
 - Street sweepings
- Immediate reduction in hours of operation in accordance with the 'Approved Variance' and refraining from any further increase in said hours.
- Immediate replacement of earthen berm with trees atop.
- Removal / non-increase in the number of on-site machinery in accordance with the 'Approved Variance.'



Bk: 3264 Ps: 186

City of East Providence

DEPARTMENT OF PUBLIC WORKS

CITY HALL
145 TAUNTON AVENUE
EAST PROVIDENCE, RHODE ISLAND 02914-4505

ZONING OFFICER

Should you have any questions regarding this Notice of Violation, please contact this office at (401) 435-7720, Monday through Friday, 8:00 AM to 4:00 PM. Thank you in advance for your immediate attention to this matter.

Sincerely,

Edward Pimentel, AICP
Zoning Officer

FIRST NOTICE OF VIOLATION

Reg. Mail and Cert. Mail Return Receipt Requested – Article No. 7160 3901 9846 3932 8814

Cc: Orlando Andreoni, Interim City Manager
Robert Walker, Building Official
Robin Main, Esquire
Complaint File

Stephen Coutu, Director of Public Works
Law Department
TLA Pondview, C/o Jack Walsh

RECORDED
2011 Jun 16 01:43:31P
EAST PROVIDENCE, R.I.
KIM A. CASCI
CITY CLERK

TEL (401) 435-7720

FAX (401) 435-7727
TDD (401) 431-1633