STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: September 15, 2025)

CHARLESTOWN FARMS, LLC; and PECKHAM CHARLESTOWN FARMS, LLC	:	
Plaintiffs,	:	
v.	:	**C.A. No. WC-2021-0350**
JOSEPH L. WARNER, JR., IN HIS CAPACITY AS BUILDING/ZONING OFFICIAL FOR THE TOWN OF CHARLESTOWN; IRINA GORMAN, IN HER CAPACITY AS TREASURER FOR THE TOWN OF CHARLESTOWN; and THE TOWN OF CHARLESTOWN	:	
Defendants.	:	

DECISION

LICHT, J. Plaintiffs Charlestown Farms, LLC (Charlestown Farms) and Peckham Charlestown Farms, LLC (Peckham) (collectively, Plaintiffs) challenge the zoning restrictions the Town of Charlestown (the Town or Charlestown) and Joseph L. Warner, Jr. (Mr. Warner), in his capacity as Building/Zoning Official for the Town of Charlestown, Rhode Island (collectively, Defendants) imposed upon three pieces of property owned and/or leased by Plaintiffs, namely, Plat 24, Lot 3, Lot 4, and Lot 4-1, all of which are located at 565 Alton Carolina Road in Charlestown, Rhode Island (collectively, Subject Properties). Plaintiffs argued that the Town's zoning restrictions cannot impair their ability to mine sand and gravel on Lot 3, Lot 4, and Lot 4-1 and to wash sand and gravel on Lot 4 as the Subject Properties' prior owners conducted such activities prior to these zoning restrictions going into effect, making the Subject Properties preexisting legal

nonconforming uses. However, Defendants maintain that only Lot 4 qualifies as a preexisting nonconforming use for the limited purpose of sand and gravel mining.

In June 2025, this Court conducted a four-day bench trial. For the reasons stated herein, the Court finds there to be a preexisting nonconforming use on Lot 4-1 to engage in extractive activities, as well as a preexisting nonconforming use on Lot 4 to wash sand, which includes the right to operate a paddlewheel washing facility. However, the Court does not find there to be pre-existing nonconforming uses on Lot 3 to engage in extractive activities.[1]

I

Facts and Travel

A

Chains of Title

Before determining whether the Subject Properties have preexisting nonconforming uses, the Court will set forth each parcel's chain of ownership and historic use. For the trial, the parties stipulated to a timeline of events, which is attached hereto as Exhibit A.

On November 8, 1950, Norman E. Kenyon[2] (Norman) and Russell E. Kenyon[3] (Russell) purchased Lot 4.[4] (Pls.' Ex. 1); (Defs.' Ex. Q). Norman and Russell, as Kenyon Bros. Inc. (Kenyon Bros.), operated a commercial sand and gravel mine on Lot 4. (Pls.' Post-Trial Br. Ex. A – Stipulated Undisputed Facts ¶ 5.) Years later, on August 27, 1973, Russell and Norman subdivided

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[1] The Plaintiffs originally sought to process broken asphalt and concrete on Lot 4, but they conceded at post-trial argument that they were no longer seeking the right to conduct such activity.
[2] The Court refers to Norman E. Kenyon by his first name rather than his last name as to not confuse him with Russell E. Kenyon. No disrespect is intended.
[3] The Court refers to Russell E. Kenyon by his first name rather than his last name as to not confuse him with Norman E. Kenyon. No disrespect is intended.
[4] At this point in time, Lot 4 was comprised of present-day Lot 4, Lot 4-1, Lot 4-2, Lot 4-3, and Lot 5. (Pls.' Post-Trial Br. Ex. A ¶ 4.)

Lot 4 to create Lot 5, which was deeded to Russell, on which he built his personal residence. (Defs.' Ex. R); (Morrone Trial Tr. 141:23-142:6, June 23, 2025).

On October 5, 1983, Kenyon Bros. purchased Lot 3, a parcel of land bordering present-day Lot 4 to the south, from Penn Central Corp. (Penn Central), a now defunct railroad company. (Defs.' Ex. S.) A few years later, on September 21, 1987, Norman and Russell subdivided Lot 4 to create Lot 4-1, granting Lot 4 to Norman and Lot 4-1 to Russell. (Pls.' Ex. 3); (Defs.' Ex. T); (Defs.' Ex. U). Shortly thereafter, on November 11, 1987, Norman sold Lot 4 to Carl M. Richard (Carl M.).[5] (Defs.' Ex. V.)

Throughout the 2000s and 2010s,[6] there were ownership changes concerning Lot 3 and Lot 4 that ultimately led to the properties being sold to Charlestown Farms. On November 17, 2003, Carl E. Richard[7] (Carl E.) sold Lot 4 to Morrone Land Company, LLC (Morrone Land), whose principal was Joseph Anthony Morrone, Sr. (Mr. Morrone). (Pls.' Ex. 8); (Defs.' Ex. Z). Thereafter, on April 24, 2008, Robert W. Kenyon (Robert) and Russell E. Kenyon, Jr.'s Trust (Russell Jr.'s Trust) acquired Lot 3 from Kenyon Bros. (Defs.' Ex. AA.) Robert and Russell Jr.'s Trust held on to Lot 3 until selling it to Pawcatuck River Properties, LLC (Pawcatuck), which was owned by Mr. Morrone, on October 16, 2017. (Pls.' Ex. 9); (Defs.' Ex. BB).

On March 15, 2019, Charlestown Farms purchased Lot 3 from Pawcatuck and Lot 4 from Morrone Land. (Pls.' Ex. 10); (Pls.' Ex. 11); (Defs.' Ex. CC); (Defs.' Ex. DD). Two months later, on May 14, 2019, Charlestown Farms purchased Lot 4-1 from Robert and Russell Jr.'s Trust.

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[5] The Court refers to Carl M. Richard by his first name and middle name initial rather than his last name as to not confuse him with Carl E. Richard. No disrespect is intended.

[6] From the 1980s through the early 2000s, Lot 4-1 and Lot 4 changed hands a couple times within the Kenyon and Richard families, respectively. (Defs.' Ex. W); (Defs.' Ex. X); (Defs.' Ex. Y).

[7] The Court refers to Carl E. Richard by his first name and middle name initial rather than his last name as to not confuse him with Carl M. Richard. No disrespect is intended.

(Defs.' Ex. EE.) Charlestown Farms went on to sell the Subject Properties, as well as Lot 4-2 and Lot 4-3 to Peckham on October 28, 2021 for $23 million dollars.[8] (Miozzi Trial Tr. 64:6-10, June 23, 2025); (Pls.' Ex. 12, 13); (Defs.' Ex. FF says $3.7 million).

B

The Applicable Zoning Regulations

On July 8, 1974, Charlestown's first zoning ordinance went into effect, which prohibited "[m]ining, quarrying, gravel pits and loam stripping" on land within the Town (the 1974 Ordinance). (Pls.' Ex. 2 at 2); (Defs.' Ex. L at 1). However, the 1974 Ordinance exempted "[r]eal property acquired or leased prior to the effective date of this ordinance for the purpose of earth removal or the processing of sand and gravel and in use for such purpose on the date of the enactment of this ordinance," deeming such property to be a "lawful nonconforming use" that did not require a special exception. (Pls.' Ex. 2 at 3); (Defs.' Ex. L at 2). The 1974 Ordinance only required a special exception for "[a]ny expansion or enlargement of an earth removal operation, including the processing of sand and gravel, beyond the extent of real property held or leased for said purpose at the time of adoption of this ordinance[.]" (Pls.' Ex. 2 at 4); (Defs.' Ex. L at 3).

In 1998, Charlestown enacted a second zoning ordinance, which redefined the prohibited uses of land within the Town (1998 Ordinance). (Defs.' Ex. M.) Specifically, the 1998 Ordinance "prohibited within the Town of Charlestown in order to foster long term environmental sustainability . . . [e]xtractive [i]ndustries." *Id.* at 2. The 1998 Ordinance went on to clarify that "[e]xisting extractive industries shall be allowed to continue on the site of their original extraction"

[8] While these parcels were sold for $23 million, Peckham is withholding $1 million in escrow pending the outcome of this suit, with Mr. Miozzi only receiving this lump sum if Plaintiffs are successful. (Miozzi Trial Tr. 64:11-24, June 23, 2025.) Regardless of the outcome of the case, Mr. Miozzi must pay half of Plaintiffs' legal fees. *Id.* at 64:22-24.

and "[t]he Zoning Board of Review *may permit the expansion of an existing operation to real property acquired before the effective date of this ordinance* as a special use permit[.]" *Id.* at 3-4 (emphasis added).

The Charlestown Code of Ordinances defines extractive industries as "[t]he extraction of soils and/or minerals including: solids, such as coal and ores; liquids such as crude petroleum, and gases, such as natural gases. The term also includes quarrying, well operations, milling, such as crushing, screening, washing and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity."[9] Town of Charlestown, R.I., Code of Ordinances, ch. 218, art. 1, § 218-5.

C

Current Use of Lot 3, Lot 4, and Lot 4-1

Upon acquiring the Subject Properties, Charlestown Farms continued to extract and process material on Lot 3 and Lot 4. (Miozzi Trial Tr. 49:24-50:3, June 23, 2025.) On Lot 4, Charlestown Farms blasted, crushed, screened, and washed[10] the sand and stone mined. *Id.* at 50:4-7. On Lot 3, Charlestown Farms extracted the bank run gravel and sold it for use in septic systems. *Id.* at 50:7-11. Because the bank run gravel was sold in its raw form, there was no need to wash this material. *Id.* at 50:12-15. Topsoil also was screened on Lot 3. *Id.* at 50:16-17. As for Lot 4-1, Charlestown Farms did not mine or extract the land as they had yet to exhaust resources on Lot 4 and instead only cleared the tree line leading to Lot 4. *Id.* at 51:14-52:17, 78:8-18. While the Subject Properties were acquired by Peckham in 2022, neither Lot 3 nor Lot 4-1 are currently

[9] This language mirrors that which is contained in the Rhode Island Zoning Enabling Act of 1991, codified at G.L. 1956 § 45-24-31(26).

[10] The washing process allows for sand particles to be brought within a specific size range. (Miozzi Trial Tr. 50:18-21, June 23, 2025.) The washing process uses water pressure to siphon out smaller sand particles by running the sand through screens with different sized holes. *Id.* at 50:21-51:12.

being mined per an agreement between the parties to halt operations until this action concludes. (Kappel Trial Tr. 26:2-5, June 24, 2025.)

D

Issues with the Town and Administrative/Judicial Proceedings

On July 14, 2021, Mr. Warner sent a cease-and-desist letter to Thomas Miozzi (Mr. Miozzi), the then owner of Charlestown Farms (the Cease and Desist). (Pls.' Ex. 14); (Defs.' Ex. JJ); (Miozzi Trial Tr. 28:15-23, June 23, 2025). While the Cease and Desist acknowledged that Lot 4 had a legal nonconforming use, Mr. Warner clarified that there was no right to wash sand, process broken asphalt and concrete, install permanent power service equipment, and erect new structures, all of which went beyond a mere increase in activity and instead constituted an expansion or intensification, requiring a special use permit. (Pls.' Ex. 14 at 1); (Defs.' Ex. JJ at 1). Mr. Warner mandated that the clearing of Lot 4-1 and extraction activity on Lot 3 cease as such activity did not exist prior to July 8, 1974, and no special use permits were ever obtained for these parcels between July 8, 1974 and July 1, 1998. (Pls.' Ex. 14 at 2); (Defs.' Ex. JJ at 2). Mr. Warner also issued a notice of violation on July 14, 2021 that reiterated the conclusions of the Cease and Desist and gave Mr. Miozzi and Charlestown Farms thirty days to file an appeal (the Notice of Violation). (Pls.' Ex. 15); (Defs.' Ex. II).

Charlestown Farms opted to appeal the Notice of Violation to Charlestown's Zoning Board of Review (ZBR), which unanimously decided to deny the appeal as to all three parcels on September 7, 2021. (Pls.' Ex. 17.) After appealing to the Superior Court, Associate Justice Sarah Taft-Carter reversed the ZBR, finding that it exceeded its authority and prejudiced Plaintiffs "in both (1) making a scope and extent determination of Lot 4's nonconforming use and (2) making a finding on the legality of the pre-existing use of Lots 3 and 4-1." *Charlestown Farms, LLC v. Town*

of Charlestown Zoning Board. of Review, No. WC-2021-0434, 2023 WL 9017777, at *13 (R.I. Super. Dec. 21, 2023).

E

The Instant Litigation

Charlestown Farms filed its Complaint in this action on July 30, 2021. *See generally* Compl. Thereafter, on October 25, 2024, Plaintiff filed an Amended Complaint, which added Peckham as a plaintiff. *See generally* Am. Compl. The Amended Complaint advanced three claims against Defendants: Count I – Declaratory Relief pursuant to G.L. 1956 § 9-30-1; Count II – Temporary, Preliminary, and Permanent Injunctive Relief; and Count III – Inverse Condemnation.[11] *See id.*

F

Trial Testimony

Six witnesses testified at trial. A summary of the trial testimony is provided below beginning with fact witnesses and then turning to expert witnesses.

1

Plaintiffs' Fact Witness: Thomas Miozzi

Mr. Miozzi, who operated a trucking and paving business since 1981 and later incorporated the business in 1997 with the name T. Miozzi, Inc., learned that Mr. Morrone, the owner of Morrone Land Company, was thinking of selling the quarry he operated on Lot 3 and Lot 4. (Miozzi Trial Tr. 28:15-23, 36:9-18, June 23, 2025.)

[11] The Court severed Count III for inverse condemnation prior to trial.

While discussing purchasing the quarry, Mr. Morrone showed Mr. Miozzi a zoning certificate[12] for Lot 4[13] but stated he was unable to obtain one from the Town for Lot 3. *Id.* at 36:19-25, 59:21-61:3. Mr. Miozzi found the zoning certificate for Lot 4 to be significant in his decision to purchase Lot 4 as it ensured that extractive industries could take place on the land. *Id.* at 37:1-38:3. Mr. Morrone also presented Mr. Miozzi with a box of other information prior to purchasing Lot 3 and Lot 4, including aerial photographs of the parcels, maps, quarry plans, wash pond engineering plans, and at least one of Robert's sworn affidavits.[14] *Id.* at 38:13-40:16, 41:14-42:10, 61:10-64:3; (Pls.' Ex. 6). Mr. Miozzi also visited both parcels prior to his purchase where he observed active mining on Lot 4 and evidence of extraction on Lot 3.[15] (Miozzi Trial Tr. 40:17-42:4, June 23, 2025.) Based on his due diligence, in 2019, Charlestown Farms, of which Mr. Miozzi was the owner, purchased Lot 3[16] and Lot 4. *Id.* at 29:8-30:4, 42:5-24.

Thereafter, Mr. Miozzi was informed by Mr. Morrone that Robert was looking to sell Lot 4-1. *Id.* at 43:6-11. Due to his desire to continue the mining operations from Lot 4, Mr. Miozzi

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[12] A zoning certificate is a document issued by a town indicating the current permissible uses of a parcel located in the town. (Miozzi Trial Tr. 59:13-20, June 23, 2025.)

[13] The zoning certificate for Lot 4 was issued on October 1, 2008. (Pls.' Ex. 4.)

[14] Robert executed two affidavits prior to Mr. Miozzi purchasing the property – one in 2011 and another in 2017. The 2011 affidavit stated that the Kenyon family mined Lot 4 since the 1950s. (Pls.' Ex. 5.) The 2017 affidavit stated, among other things, that Robert observed Lot 3 being used for the extraction of stone, gravel, sand, and topsoil since 1960. (Pls.' Ex. 6.) While Mr. Miozzi was initially unable to identify which affidavit was provided to him by Mr. Morrone, (Miozzi Trial Tr. 61:13-62:14, June 23, 2025), he later identified on cross-examination that he looked at the 2011 affidavit prior to purchasing Lot 3 and Lot 4. *Id.* at 66:17-67:2; (Pls.' Ex. 5).

[15] The evidence of extraction on Lot 3 included the existence of an open phase of bank run gravel without any weeds or vegetation growing therein. (Miozzi Trial Tr. 40:25-41:6, June 23, 2025.)

[16] Mr. Miozzi did not see the lack of a zoning certificate for Lot 3 as a reason to back out of the sale for two main reasons. First, Mr. Morrone was only willing to sell Lot 4 if Lot 3 was also purchased. (Miozzi Trial Tr. 67:10-19, June 23, 2025.) Second, based on Mr. Miozzi's physical examination of the land and review of the material presented in the box, Mr. Miozzi was relatively confident that Lot 3 was being operated in a similar manner as Lot 4 such that he could prevail if he was potentially challenged by the Town for mining Lot 3. *Id.* at 67:19-68:17.

reached out to Robert and negotiated the purchase of Lot 4-1. *Id.* at 42:25-43:20. As part of his due diligence prior to purchasing Lot 4-1, Mr. Miozzi walked the property[17] where he observed evidence of mining due to significant haul roads existing, trees being cut to a specific width leading to an extraction site, and soft materials being excavated from the parcel's surface. *Id.* at 44:17-46:7, 69:5-12. Mr. Miozzi also considered Robert's representations that he and his family mined Lot 4-1 prior to the 1974 Ordinance going into effect and that neither he nor his family overtly abandoned their use thereof. *Id.* at 47:3-20. Mr. Miozzi did not receive a zoning certificate for Lot 4-1 and did not receive any box of evidence for the parcel. *Id.* at 73:1-13.

Upon acquiring the Subject Properties, Mr. Miozzi used Lot 4 to extract and process material, meaning his operations would blast, crush, screen, and wash sand and stone on the property. *Id.* at 49:24-50:7. Mr. Miozzi concluded that sand washing had already been conducted on Lot 4 prior to his purchase of it due to his observations of washing on a stockpile located on Lot 4. *Id.* at 54:14-21. Without getting permission from the Town, Mr. Miozzi also built a concrete pad on Lot 4 to house a paddlewheel washing facility.[18] *Id.* at 74:6-75:1. On Lot 3, Mr. Miozzi extracted bank run gravel for sale in septic systems. *Id.* at 50:7-17. Because he had not yet exhausted the resources on Lot 4 and was in the process of working his way to the east on that parcel, Mr. Miozzi did not himself encroach onto Lot 4-1 but only cleared the tree line exactly to the lot line. *Id.* at 51:14-52:17, 78:8-18.

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[17] Mr. Miozzi walked Lot 4-1 with a colleague of his who he planned to borrow money from prior to purchasing the parcel. (Miozzi Trial Tr. 68:18-69:5, June 23, 2025.) While there was some confusion as to whether Mr. Miozzi's deposition testimony contradicted this, *id.* at 69:13-71:23, Mr. Miozzi made clear on redirect examination that his deposition testimony was that he did not walk Lot 4-1 prior to purchasing Lot 3 and Lot 4 but rather walked it later prior to purchasing Lot 4-1 itself. *Id.* at 80:15-81:4.

[18] While Mr. Miozzi had to demolish the pad after receiving the Notice of Violation, he was able to continue using the paddlewheel washing facility. (Miozzi Trial Tr. 75:18-76:14, June 23, 2025.)

In fear that the Town might challenge Mr. Miozzi's use of the Subject Properties, Mr. Miozzi contacted Robert and asked him to complete a third affidavit, which provided that the Subject Properties were all mined prior to the 1974 Ordinance. *Id.* at 48:3-49:16, 73:22-25; (Pls.' Ex. 7). Mr. Miozzi made clear on cross-examination that he would not have purchased the Subject Properties had he known that extractive industries was not allowed on the properties. (Miozzi Trial Tr. 57:23-58:18, June 23, 2025.)

While the Court is cognizant that Mr. Miozzi has an obvious interest in the outcome of this case, in that he stands to lose $1 million if Plaintiffs do not succeed, the Court found Mr. Miozzi to be honest and direct when testifying.

2

Plaintiffs' Fact Witness: Joseph Anthony Morrone, Sr.

Mr. Morrone[19] previously owned Lot 3 and Lot 4, eventually selling the parcels to Charlestown Farms, owned by Mr. Miozzi. (Morrone Trial Tr. 82:1-12, June 23, 2025.)

Mr. Morrone lived within the vicinity of Lot 3, Lot 4, and Lot 4-1 his whole life and began to visit the quarry in the 1970s, making him extremely familiar with the Subject Properties. *Id.* at 82:18-83:4, 101:14-16. His observations of the parcels over the years are as follows.

Beginning with Lot 3, Mr. Morrone recalled the railroad extracting material off the land during its many years of ownership prior to the Kenyon family acquiring the land. *Id.* at 97:9-12.

[19] Mr. Morrone's career in the sand and gravel industry began when he was between the ages of thirteen and fifteen in the mid-to-late 1970s during which time he worked for his uncle's business. (Morrone Trial Tr. 83:19-84:8, June 23, 2025.) Mr. Morrone's work required him to mine sand, gravel, and stone, process sand, and sell the end product to consumers. *Id.* at 84:18-24. In 1989, Mr. Morrone opened his own sand and gravel business entitled Morrone Trucking, Sand, and Gravel, Inc., which required him to do similar work to that which he undertook with his uncle. *Id.* at 85:12-19. Mr. Morrone's business still operates today. *Id.* at 86:5-17. Prior to purchasing Lot 3 and Lot 4 for his business, Mr. Morrone leased gravel banks to extract materials from and, in time, owned two other gravel banks. *Id.* at 85:25-86:4, 86:25-87:13.

Mr. Morrone observed this activity during his high school years in the late 1970s and early 1980s as he frequented a camp area on the back end of Lot 3. *Id.* at 120:15-22. At this point in time, Mr. Morrone observed excavation on Lot 3 through the middle of the property. *Id.* at 120:23-121:3. Years later, in 2004, Mr. Morrone took photographs at Lot 3, which captured various pieces of mining equipment on site, including a screener, *id.* at 110:2-111:4, and other equipment used in conjunction with the screener. *Id.* at 113:25-115:9; (Pls.' Ex. 22). After acquiring Lot 4 but prior to purchasing Lot 3, Mr. Morrone observed excavation activities on Lot 3 while purchasing material from Robert. (Morrone Trial Tr. 116:24-117:16, June 23, 2025.)

As for Lot 4-1, when he was approximately eleven or twelve years old, Mr. Morrone observed extractive industry activities on site, including the removal of gravel from the front area bordering Route 91, the removal of topsoil, and the presence of trucks hauling materials. *Id.* at 102:11-104:4, 139:12-23, 140:15-20. After acquiring Lot 4, Mr. Morrone walked Lot 4-1 at which time he noticed remnants of roads on Lot 4-1 leading to quarry holes[20] he believed predated 1974.[21] *Id.* at 104:16-105:8. Mr. Morrone noted that the quarry holes on Lot 4-1 did not look to be naturally occurring to him as there was evidence of drill holes left in the rocks on the property. *Id.* at 105:19-23. Mr. Morrone also categorized the quarry holes as predating 1974 due to Robert's representations to this point, as well as his observations of black powder on the quarry holes, which was an older practice utilized before blasting licenses and procedure existed. *Id.* at 106:12-18. Mr. Morrone provided ample picture evidence of the quarry holes scattered across Lot 4 and Lot 4-1,

[20] Quarry holes are a ledge face that was historically blasted with black powder to extract rocks, pieces of granite, and other materials. (Morrone Trial Tr. 105:9-18, June 23, 2025.)
[21] Mr. Morrone was previously interested in purchasing Lot 4-1 but never followed through on this desire. (Morrone Trial Tr. 101:16-102:2, 104:20-23, June 23, 2025.)

indicating that extractive activities took place on both parcels.[22] *Id.* at 107:6-110:1; (Pls.' Ex. 22). Mr. Morrone also stated that he observed a quarry pit/gravel bank on Lot 4-1 while walking the property but admittedly did not see the pit when examining aerial photography of the site. (Morrone Trial Tr. 128:6-131:11, 139:25-140:6, June 23, 2025.)

After years of familiarizing himself with the Subject Properties, Mr. Morrone, through Morrone Land, leased and eventually purchased Lot 4 in 2003. *Id.* at 87:20-88:1, 93:1-8, 126:8-17. Mr. Morrone extracted, processed, hauled, and sold materials from Lot 4 using various pieces of equipment, including a rock crusher, a sand screw,[23] pumps, a dragline, bulldozers, excavators, and trucks. *Id.* at 87:20-89:2. Thereafter, around 2008, Mr. Morrone began to wash sand on Lot 4 but did not obtain prior approval from the Town as he felt washing was already qualified under his zoning certificate. *Id.* at 126:18-127:15. After purchasing Lot 4 and getting the requisite permissions from the State of Rhode Island, Mr. Morrone erected a pond on the property that was used by his machines to wash sand. *Id.* at 92:3-21.

After years of paying to extract materials from Lot 3, Mr. Morrone purchased the parcel from Russell Jr.'s Trust and Robert through his company Pawcatuck in 2017. *Id.* at 93:9-12, 95:6-20, 96:25-97:6, 143:15-19; (Pls.' Ex. 9). While initially claiming that he did not request a zoning certificate for Lot 3, Mr. Morrone acknowledged that he was denied a zoning certificate in December 2018 but continued to mine the land anyway as he felt it was grandfathered based on

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[22] Mr. Morrone said that he could differentiate between what photographs were taken on Lot 3, Lot 4, and Lot 4-1 because there were certain physical characteristics on the land that indicated where the borders were located. (Morrone Trial Tr. 122:12-123:10, June 23, 2025.) Mr. Morrone also said that there were poles located between Lot 3 and Lot 4 every seventy-five to one hundred feet that also indicated the property lines. *Id.* at 123:11-25.

[23] A sand screw removes the silt by agitating the sand particles under low water pressure so that the fine particles separate into a silt pond. (Morrone Trial Tr. 89:3-10, June 23, 2025.)

Robert's affidavit, who swore that he witnessed prior mining activity at the site. (Morrone Trial Tr. 132:13-136:17, 142:13-143:14, June 23, 2025); (Pls.' Ex. 6); (Defs.' Ex. G).

While Mr. Morrone was in the process of upgrading to a better sand washing system, a mutual contact connected him with Mr. Miozzi who was said to be interested in purchasing Mr. Morrone's quarry. (Morrone Trial Tr. 89:15-90:19, June 23, 2025.) In the course of selling to Mr. Miozzi, Mr. Morrone provided several affidavits he had previously obtained from Robert when trying to get financing from a bank. *Id.* at 119:10-23. In March 2019, Mr. Morrone sold Lot 3 and Lot 4 to Charlestown Farms. *Id.* at 93:13-15, 102:6-7. Mr. Morrone never abandoned the right to mine Lot 3 and/or Lot 4 and has no knowledge of any of the prior owners of Lot 3, Lot 4, and/or Lot 4-1 abandoning their rights to mine either. *Id.* at 121:4-21.

Despite Mr. Morrone testifying about events remote in time, the Court found him to be a highly credible and honest witness.

3

Defendants' Fact Witness and Plaintiffs' Rebuttal Witness: Joseph Warner, Jr.

Mr. Warner has been the building and zoning official and floodplain manager for Charlestown for the past fifteen years.[24] (Warner Trial Tr. 36:12-17, June 25, 2025.) Mr. Warner's current position requires him to enforce civil zoning ordinances, attend zoning board hearings, and

[24] Mr. Warner worked in residential and commercial construction for twenty-three years. (Warner Trial Tr. 37:2-5, 101:7-102:10, June 25, 2025.) He then worked as a building inspector for the Town of South Kingstown for four to five years, where he worked under the building and zoning official. *Id.* at 36:17-37:17, 102:16-103:4. Afterwards, Mr. Warner began working for Charlestown where he remains today. *Id.* at 36:12-22. Mr. Warner is a member of various professional organizations and boards, including the Flood Mitigation Association, the Association of State Floodplain Managers, the Rhode Island Building Officials Association, the Building Code Standards Committee, and the Rhode Island Rehabilitation Building and Fire Code Board, and has professional certifications, such as certified floodplain manager certification. *Id.* at 38:6-39:1.

pursue municipal court actions for zoning violations, as well as familiarize himself with zoning caselaw and the Rhode Island Zoning Handbook. *Id.* at 37:6-38:5, 39:2-21, 103:5-12.

Mr. Warner noted that prior to the 1974 Ordinance, the Town had no restrictions on what could be done with land within the Town. *Id.* at 40:2-16. While the 1974 Ordinance restricted certain activities, it grandfathered in existing mining operations as legal nonconforming uses and allowed for special use permits to intensify or expand a mining operation's activities both on the existing lot and on after-acquired property. *Id.* at 42:17-22. These rules stayed in place until the 1998 Ordinance went into effect, which encompassed a broader definition of activity under "extractive industry" and allowed extractive industries to expand both on the existing lot and on after-acquired property if the entire operation predated the 1974 Ordinance and the after-acquired property was purchased prior to the 1974 Ordinance. *Id.* at 42:23-45:8.

Mr. Warner was approached in February 2020 by an electrician seeking an electric permit to install a three-phase service[25] for Lot 4.[26] *Id.* at 46:19-47:1. After receiving the permit request, Mr. Warner scheduled a visit to the Subject Properties on February 11, 2020 with John Miozzi (John),[27] the foreman of the site and the brother of the then-owner, Mr. Miozzi. *Id.* at 49:2-22. During this site visit, Mr. Warner discovered that a large concrete slab had been constructed on

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[25] A three-phase electrical service involves very high amp grades and high voltage service, which usually is used to power heavy duty industrial machinery. (Warner Trial Tr. 48:11-14, June 25, 2025.)

[26] It is unclear whether Mr. Warner had knowledge of the Subject Properties prior to February 2020. During his direct examination, Mr. Warner seemed quite certain that while he had previously met Mr. Morrone, he had never heard of Charlestown Farms or the operation running there prior to February 2020. (Warner Trial Tr. 45:14-18, 46:19-47:15, June 25, 2025.) However, during cross-examination, Mr. Warner directly contradicted this by stating that he was apprised of Charlestown Farms' operation by the Town's prior zoning official immediately upon taking over his post with the Town, which is why he did not proceed with enforcement of Lot 3 as this was the same position his predecessor took. *Id.* at 103:17-104:2, 126:13-129:3.

[27] The Court refers to John Miozzi by his first name rather than his last name as to not confuse him with Thomas Miozzi. No disrespect is intended.

Lot 4 for which no permit was ever obtained. *Id.* at 50:1-21. After informing John that he would need to look into the matter, Mr. Warner was put in contact with Mr. Miozzi. *Id.* at 50:22-51:10.

Mr. Warner reached out to Mr. Miozzi on February 24, 2020 via e-mail and requested various items relevant to whether a permit could issue, such as proof of Department of Environmental Management (DEM) approval.[28] *Id.* at 51:11-55:21, 130:23-137:8; (Defs.' Ex. H). Ultimately, Mr. Warner determined that Mr. Miozzi did not qualify for permitting because, among other reasons, he failed to obtain DEM approval and his proposed plans appeared to be an expansion of a nonconforming use. (Defs.' Ex. I); (Defs.' Ex. F); (Warner Trial Tr. 57:23-65:4, June 25, 2025).

After the COVID-19 pandemic, Mr. Warner learned that Charlestown Farms purchased not only Lot 4 but also Lot 3 and Lot 4-1 despite, in his view, these properties never being used previously for extractive activities. (Warner Trial Tr. 67:6-68:16, June 25, 2025.) Based on his concern that Lot 3 and Lot 4-1 were being used impermissibly for extractive activities, Mr. Warner conducted his own investigation over the course of three to four months in which he examined the prior use of each parcel, the Town's zoning ordinances, the Rhode Island Zoning Handbook, the Zoning Enabling Act, the parcels' past deeds, old photographs of the Subject Properties,[29] and the parcels' zoning certificates.[30] *Id.* at 68:17-70:1, 71:7-17, 96:2-22, 104:7-105:3, 106:13-22. Mr.

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[28] DEM approval was critical for the wash plant given that the plant intended to pull from a portion of the Town's groundwater supply, posing the risk of potential contamination of the groundwater from the sand particles. (Warner Trial Tr. 131:14-22, June 25, 2025.)

[29] These photographs depicted Lot 4's mining activities and machinery but were not produced during discovery as Mr. Warner felt they had no relevance. (Warner Trial Tr. 105:4-106:8, June 25, 2025.) As requested by Plaintiffs' counsel during cross-examination, *id.* at 106:9-13, Mr. Warner produced these photographs and was questioned on them during his rebuttal testimony. (Warner Trial Tr. 86:18-89:2, June 26, 2025); (Pls.' Ex. 33).

[30] Mr. Warner did not speak with any of the prior owners of the Subject Properties during the course of his investigation. (Warner Trial Tr. 109:11-112:15, June 25, 2025.)

Warner also used his own personal knowledge of Lot 3, which he obtained when Mr. Morrone sought and was denied a zoning certificate for the parcel in December 2018.[31] *Id.* at 73:18-22.

In reviewing the prior use of the property, Mr. Warner paid special attention to aerial images ranging from 1939 through 2019 that were stored in the geographic information systems (GIS) of the Town and the State of Rhode Island (RIGIS). *Id.* at 77:23-94:21; (Defs.' Ex. O). In his view, it was not until the aerial photograph captured in Spring 1988 that extractive activities were visible on the border of Lot 4 leading into Lot 3, indicating that encroachment into Lot 3 occurred sometime after the previous aerial photograph was captured in March 1985. (Warner Trial Tr. 86:6-24, 106:5-22, June 25, 2025); (Defs.' Ex. O at 8). While there was a bit more encroachment into Lot 3 as of Spring 1997, aerial images captured in Spring 2006 and Spring 2008 showed that there was no further encroachment in this area thereafter and no activity whatsoever on Lot 4-1. (Warner Trial Tr. 86:25-88:4, June 25, 2025); (Defs.' Ex. O at 9-11). In Spring 2008, a water pond first became visible on Lot 4, indicating that the water table had been penetrated around that time.[32] (Warner Trial Tr. 87:22-88:2, June 25, 2025); (Defs.' Ex. O at 11). Throughout the early-to-mid 2010s, Lot 3 showed evidence of potentially new extractive activity, albeit minor. (Warner Trial Tr. 123:4-124:3, 125:15-126:4, June 25, 2025.)

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[31] Of particular importance, Mr. Warner discovered from RIGIS and Town GIS aerial images that the extraction activities on Lot 4 encroached onto Lot 3 between 1985 and 1988. (Warner Trial Tr. 75:4-76:11, 77:12-17, 112:16-24, June 25, 2025.) While Mr. Warner communicated to Mr. Morrone that a zoning certificate could not issue, he opted to forego challenging Mr. Morrone's activities on Lot 3 given that his walk of the parcel in 2018 revealed that the encroachment was "minor" such that he did not want to put Mr. Morrone "in a situation." *Id.* at 73:23-74:19, 112:20-113:21.

[32] Mr. Warner knew that this pond was being used to dredge sand but never saw any washing equipment to confirm sand washing was taking place. (Warner Trial Tr. 138:20-140:13, June 25, 2025.) While Mr. Warner acknowledged that photographs inherited from the past zoning official showed the water pond surrounded by heavily rusted, old machinery used to extract gravel and sand below the waterline, (Warner Trial Tr. 86:18-89:2, June 26, 2025); (Pls.' Ex. 33), it was not made clear whether this equipment could have been used for washing sand as well.

Initially, Mr. Warner stated that the significant encroachment into Lot 3 did not occur as of December 2018 when Mr. Morrone sought a zoning certificate for the parcel but rather only became visible in aerial images from Spring 2019, which marks the point in time when Charlestown Farms became the owner of the Subject Properties. *Id.* at 88:5-94:21, 125:7-14; (Defs.' Ex. O at 12-13). However, Mr. Warner later acquiesced that aerial photographs captured in Spring 2018 and Fall 2018[33] depicted trees being cleared on the border of Lot 4 and Lot 3, which then were replaced with mounds of material. (Warner Trial Tr. 89:3-91:23, June 26, 2025); (Pls.' Ex. 34 at 1-2). Further, aerial photographs captured in Winter 2018-2019 and Spring 2019 established that this landscape still existed on Lot 4, though Mr. Warner was not sure if these images were captured before or after Charlestown Farms acquired the property in March 2019. (Warner Trial Tr. 92:2-13, June 26, 2025); (Pls.' Ex. 34 at 3-4). As such, the significant encroachment Mr. Warner observed actually predated the sale to Charlestown Farms and existed during Mr. Morrone's ownership, including at the time he requested a zoning certificate from the Town in December 2018. (Warner Trial Tr. 116:3-11, 117:8-25, 119:6-21, June 25, 2025); (Warner Trial Tr. 94:12-18, June 26, 2025).

Based on his investigation, Mr. Warner recognized a preexisting legal nonconforming use on Lot 4 but found the proposed electrical service and wash plant structure to be expansions requiring a special use permit. (Warner Trial Tr. 96:23-97:11, June 25, 2025.) As for Lot 3, Mr. Warner found no evidence of extraction activity pre-zoning and no activity thereafter until minor encroachments unfolded between 1985 and 1988, after which point the parcel remained unchanged

[33] Mr. Warner claimed that the photographs contained in Exhibit 34 were not made available to him until 2021. (Warner Trial Tr. 89:19-25, 92:14-93:17, 96:6-97:18, June 26, 2025.) As such, he based his determination that only a minor encroachment had occurred prior to Mr. Morrone's sale of Lot 4 and Lot 3 on his most recent imagery, which was a 2014 aerial photograph contained in Exhibit O. *Id.* at 95:1-12.

until sometime between 2018 and 2019 when significant activity began to unfold therein. *Id.* at 97:12-99:5, 116:3-11, 117:8-25, 119:6-21. Mr. Warner found no evidence of any extraction activity on Lot 4-1 prior to zoning in 1974 nor any activity on the parcel after it was subdivided, with the roads previously erected on the parcel not leading to any actual mining sites[34] and actual mining activity only being evident therein in 2021. *Id.* at 99:6-18, 142:8-150:18. For these reasons, Mr. Warner issued the Notice of Violation and the Cease and Desist[35] to Charlestown Farms, both of which it appealed to the ZBR. *Id.* at 100:9-18, 140:14-141:18.

Although the Court does not believe that Mr. Warner intentionally sought to be deceitful, the Court found Mr. Warner to be an unreliable witness in that he failed to turn over relevant photographic evidence of Lot 4 in the Town's possession and contradicted himself on key points, such as his prior awareness of Charlestown Farms' operations. Moreover, the Court finds troubling the fact that he allowed Mr. Morrone to continue mining Lot 3 but months later he halted Mr. Miozzi and Charlestown Farms from doing the same thing.

4

Plaintiffs' Fact and Expert Witness: Jason Kappel

Jason Kappel (Mr. Kappel) is a licensed geologist and the director of technical services at Peckham, which requires Mr. Kappel to oversee all aspects of environmental compliance, environmental permitting, mine planning, inventory calculations, and resource approvals. (Kappel Trial Tr. 3:12-4:4, June 24, 2025.) In addition to testifying about the facts surrounding Peckham's

[34] Mr. Warner supposed that these roads were for timber extraction but noted that they could have been used additionally for four-wheeler trails, walking trails, or firewood trails. (Warner Trial Tr. 147:12-149:19, June 25, 2025.)

[35] The Cease and Desist recognized that the doctrine of diminishing assets was relevant to the question of a lawful preexisting nonconforming use on Lot 4. (Defs.' Ex. JJ); (Warner Trial Tr. 165:11-166:5, June 25, 2025). However, there was never any attempt to apply this doctrine to Lot 3 and Lot 4-1 until trial. (Warner Trial Tr. 166:19-168:6, June 25, 2025.)

purchase of the Subject Properties, Mr. Kappel was offered as an expert witness by Plaintiffs in mine planning, resource evaluation, and rock quality testing.[36] *Id.* at 6:2-14; (Pls.' Ex. 23).

Mr. Kappel explained that multiple sand washing methods could have historically been used by the Kenyon family, all of which would require a water source. (Kappel Trial Tr. 8:1-14, June 24, 2025.) The water sources available on Lot 4 included the adjacent river and naturally occurring ponds, the latter of which form when groundwater is exposed thus creating a pond of water that can be used for washing sand. *Id.* at 8:15-9:3. The ponding method would not consistently be available on the land but rather would depend on the time of year, rainfall, and the groundwater levels. *Id.* at 9:7-23. Mr. Kappel doubted that the material extracted on Lot 4 could have been sold without utilizing one of these historic washing methods to separate the fine sand particles as an unwashed mix of sand would create several issues when incorporated into products, such as by causing asphalt not to bind or inhibiting asphalt from properly laying down. *Id.* at 10:3-23. Nonetheless, Mr. Kappel acceded on cross-examination that he had no way of definitively knowing that sand washing actually occurred on Lot 4. *Id.* at 42:24-44:25. Rather, Mr. Kappel made an educated conclusion that washing must have occurred based on historic ledgers showing sand was sold from this parcel as far back as the 1940s and his knowledge that sand needed to be washed to meet size specifications prior to it being sellable. *Id.* at 50:15-51:16.

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[36] Mr. Kappel attended Rensselaer Polytechnic Institute in Troy, New York where he received a bachelor's degree in geology with a concentration in hydrogeology and a master's degree in geology with a concentration in environmental geochemistry. (Kappel Trial Tr. 4:10-19, June 24, 2025.) Mr. Kappel started working as a professional geologist in 1995 and has continued in this field ever since. *Id.* at 4:5-9. Mr. Kappel began working at Peckham in 2018 as the environmental compliance manager and was promoted to his current role as the director of technical services in 2020. *Id.* at 3:18-22. Mr. Kappel has several professional organization affiliations, including the National Sand and Stone and Gravel Association, the National Asphalt Pavement Association, and the New York Construction Materials Association. *Id.* at 4:20-5:3. Mr. Kappel has conducted geological assessments, including mine planning and resource evaluation, for Peckham's other properties across New England and New York. *Id.* at 5:4-10.

Mr. Kappel opined that, in his expert opinion, the mining method observable on Lot 4 occurred between the 1930s and the 1970s. *Id.* at 11:21-12:1, 45:2-9. During this time period, a specific method of blasting was performed in which small holes were drilled close to one another and then filled with black gun powder to blast through the rock. *Id.* at 10:24-11:20, 13:21-14:5, 45:2-19; (Pls.' Ex. 22 at 80). This method contrasts with the modern method, which involves drilling substantially larger holes further apart from one another without the use of black powder. (Kappel Trial Tr. 10:24-11:20, 13:21-14:5, 45:2-19, June 24, 2025.) There is further evidence that blasting occurred on the parcels prior to 1970 due to the heavy vegetation growth in the drilled holes and the decomposition of the holes. *Id.* at 12:2-13:20; (Pls.' Ex. 22 at 81).

Prior to purchasing the three parcels, Mr. Kappel conducted due diligence for Peckham.[37] Of particular importance, Mr. Kappel looked at bedrock geology maps published by the United States Geological Survey (USGS) which showed that Alaskite gneiss bedrock (Alaskite), useful for construction aggregates, existed on the parcels. (Kappel Trial Tr. 28:23-29:21, 40:2-4, June 24, 2025); (Pls.' Ex. 23 at 2). To confirm the presence of Alaskite specifically on Lot 4-1 prior to purchasing, Mr. Kappel walked the parcel, observed the rock outcrops, drill raked,[38] collected bedrock, and lab tested the bedrock to see how the material held up in temperature fluctuations. (Kappel Trial Tr. 32:22-37:15, June 24, 2025.) Due to this geological testing confirming that

[37] Mr. Kappel evaluated Lot 3, Lot 4, and Lot 4-1 through Peckham's due diligence process, which required him to walk the sites, observe the resources firsthand, examine publicly available mapping from the State of Rhode Island, read the historic deeds for the parcels, review other available public resources on the geology of the sites, examine the zoning certificate for Lot 4, and consider the environmental resources on the land, like wetlands. (Kappel Trial Tr. 5:15-25, 19:2-21:11, June 24, 2025.)

[38] Drill raking refers to when machinery brings rock materials anywhere from ten to fifty feet below ground to the surface. (Kappel Trial Tr. 33:9-22, June 24, 2025.)

Alaskite was present on Lot 4-1, as well as Lot 4-1 containing obvious blasting areas,[39] being adjacent to Lot 4, and containing historic roads, Mr. Kappel concluded that extractive industries were historically undertaken on Lot 4-1 in an effort to continue mining in an easterly direction from Lot 4 to Lot 4-1. *Id.* at 38:1-41:3, 42:6-9.

On cross-examination, Mr. Kappel made clear that, if Lot 4-1 were allowed to be mined, Peckham plans to continue the operations Mr. Miozzi already began on Lot 4. *Id.* at 47:23-49:9. While market demand could always fluctuate and impact operations, Peckham did not intend to drastically change the character of the operations on the Subject Properties. *Id.* at 49:10-50:9.

The Court found Mr. Kappel to be credible and well-informed when rendering both his fact and expert testimony.

5

Plaintiffs' Expert Witness: Brian Bower

Brian Bower (Mr. Bower) is a self-employed consulting forester, which requires him to maintain woodlands for clients by removing, maintaining, and cultivating forest vegetation, as well as a forest management planner, which requires him to develop forest management plans[40] using digital ortho quad photographs[41] (DOQs). (Bower Trial Tr. 52:7-17, 54:8-55:23, June 24, 2025.) Mr. Bower was offered as an expert witness by Plaintiffs in forestry, as well as aerial photography

[39] Mr. Kappel did not personally observe any blast sites on Lot 4-1 but rather was relying on the testimony of Mr. Miozzi and/or Mr. Morrone to this point. (Kappel Trial Tr. 46:22-47:8, June 24, 2025.)

[40] Forest management plans separate a particular property into different forest types, such as by sorting different varieties of trees. (Bower Trial Tr. 55:8-17, June 24, 2025.)

[41] DOQs are aerial photographs that are fitted to the contours of the earth and used to map properties. (Bower Trial Tr. 55:17-23, 58:6-13, 60:23-61:18, June 24, 2025.) Mr. Bower uses DOQs daily to determine forest types and soil types, as well as to locate forest roads and water features. *Id.* at 57:18-58:5, 61:19-62:7, 120:23-25.

and soil insofar as these two fields relate to forestry.[42] *Id.* at 69:17-70:12. Mr. Bower was specifically engaged to determine the uses of the Subject Properties prior to 1974 by using historical aerial photographs of the parcels and his own observations from his three site visits. *Id.* at 70:25-71:16, 74:22-75:1.

The aerial photographs Mr. Bower considered largely came from RIGIS and the United States Department of Agriculture's USGS system.[43] *Id.* at 72:1-7. Mr. Bower's expert report focused primarily on three aerial photography dates, examining monoscopically[44] how the landscapes changed throughout these years. *Id.* at 76:23-77:9, 121:12-122:12; (Pls.' Ex. 26.)

First, Mr. Bower looked at aerial photography from 1962 (1962 Aerial Photograph). (Bower Trial Tr. 76:13-17, June 24, 2025.) The 1962 Aerial Photograph showed that forest roads existed throughout the parcels, which Mr. Bower confirmed by physically walking the site. *Id.* at 77:10-78:16. Mr. Bower added these forest roads[45] to the geographical information maps for the

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[42] Mr. Bower initially attended the State University of New York for two years before transferring to Cornell University's College of Agriculture and Life Science where he earned his bachelor's degree in forest science and resource economics in 1980. (Bower Trial Tr. 52:20-53:4, June 24, 2025.) Beginning in 1982, Mr. Bower worked as a forestry consultant for various private landowners and forest companies looking to harvest wood. *Id.* at 53:19-54:12. Mr. Bower's consulting services require him to advise clients on how to take advantage of state and federal programs offering tax relief for forest and open land. *Id.* at 55:12-56:16. Mr. Bower also provides general environmental consulting and soil analysis services. *Id.* at 59:16-60:5. Mr. Bower has several professional certifications, including a certified forester national designation from the Society of American Foresters, forester licenses from the States of Massachusetts and Vermont, and cooperating consulting forester status in the State of New York. *Id.* at 53:8-18. Mr. Bower completes continuing education every year to maintain his membership with the Society of American Foresters. *Id.* at 62:15-63:5. Mr. Bower has worked with Peckham for the last twenty-five years, attributing 40 percent of his work last year alone to Peckham. *Id.* at 123:5-18.

[43] The photographs from RIGIS were taken every few years whereas USGS took pictures every single year beginning in the late 1930s. (Bower Trial Tr. 72:16-73:3, June 24, 2025.)

[44] Monoscopic photographs are two dimensional images from which one cannot derive the elevation or topography of the land. (Bower Trial Tr. 122:3-12, June 24, 2025.)

[45] A forest road is a road in the forest that was man-made. (Bower Trial Tr. 111:23-112:2, 127:15-19, June 24, 2025.) In the context of mining or logging operations, these roads are anywhere from

parcels as indicated by the black dash lines across the 1962 Aerial Photograph. *Id.* at 78:2-79:19; (Pls.' Ex. 26 at 3). The 1962 Aerial Photograph also shows evidence of mining and gravel extraction[46] in specific sections of Lot 3 as indicated by Point 406 and Point 407. (Bower Trial Tr. 79:21-83:8, June 24, 2025); (Pls.' Ex. 26 at 3). In Mr. Bower's view, the 1962 Aerial Photograph shows that mining was in effect as of 1962 given that Point 406 and Point 407's respective tonality was bright white, signifying no vegetation but only granular soils consistent with extractive activities.[47] (Bower Trial Tr. 79:21-80:22, 126:3-15, June 24, 2025.)

Second, Mr. Bower looked at aerial photography from 1963 (1963 Aerial Photograph). *Id.* at 83:9-11; (Pls.' Ex. 26 at 4). Even though the 1963 Aerial Photograph is leaf on,[48] a couple major changes can be observed on Lot 4-1 due to the light tonality of the image indicating reflecting sand, including that an approximately 1,600-foot road was constructed and approximately 1.35 acres of forest land was cleared. (Pls.' Ex. 30); (Bower Trial Tr. 83:15-84:16, 109:24-110:6, June 24, 2025). The 1,600-foot road ends at a triangular clearing area as indicated by the lighter tonality on the image within the triangle, as well as Mr. Bower's own observations while walking the land, which revealed a leveled area containing regenerated pitch pine. (Bower Trial Tr. 85:17-86:20, June 24, 2025.) Mr. Bower found this clearing and twelve-to-fourteen-foot-wide road to be

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ten, twelve, or fourteen feet wide. *Id.* at 127:2-4. These roads do not consist of asphalt but rather consist of the land itself. *Id.* at 127:7-14.

[46] The aerial photographs indicate mining or gravel extraction areas through the use of red dash lines and modern-day property lines through the use of yellow dash lines. (Bower Trial Tr. 79:21-81:6, 82:22-25, June 24, 2025.)

[47] Mr. Bower's physical examination of Lot 3 also indicated that there was evidence of mining due to lack of vegetation, the removal of rocks, and signs of visible excavation. (Bower Trial Tr. 80:11-15, June 24, 2025.) Mr. Bower was able to confirm that what he observed present-day existed in 1962 based on his reading of the tonality of the 1962 Aerial Photograph. *Id.* at 80:16-22.

[48] While most aerial photographs were taken leaf off in the late fall, winter, and early spring, not all the photographs Mr. Bower considered were taken leaf off. (Bower Trial Tr. 73:11-21, June 24, 2025.) No matter, Mr. Bower noted that some photographs being leaf on did not impact his analysis as older aerial photographs already vary in quality. *Id.* at 73:22-74:3.

significant in that it showed time and money was invested to create some sort of profit-making endeavor, which Mr. Bower estimated to be in furtherance of extracting topsoil.[49] *Id.* at 86:21-87:12, 132:22-133:3. Mr. Bower also observed evidence of water storage or groundwater on Lot 4 as indicated by blue dash lines in the 1963 Aerial Photograph due to the dark tonality of the patch contrasting with the light tonality of the existing mine and the shape of the dark tonality remaining the same when looking at future aerial photographs. *Id.* at 90:25-93:23, 110:15-23.

Third, Mr. Bower looked at aerial photography from 1972 (1972 Aerial Photograph).[50] *Id.* at 93:16-21; (Pls.' Ex. 26 at 5). Lighter tonality indicates that the forest road erected on Lot 4-1 still exists in 1972, which was further confirmed by Mr. Bower's own walking of the property. (Bower Trial Tr. 85:1-16, June 24, 2025.) There also was evidence that a forest road existed on Lot 3 leading to Point 407. *Id.* at 126:21-127:19. The main difference between the 1972 Aerial Photograph and the 1963 Aerial Photograph is the addition of a new body of water within the existing mine on Lot 4 as shown by the dark tonality of the shape, signifying to Mr. Bower that either the owners dug below the groundwater line or added new water storage.[51] *Id.* at 93:22-94:14. The significance of this body of water is its possible use for sand washing. *Id.* at 94:15-24.

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[49] Mr. Bower rules out Lot 4-1 being used to harvest timber given that there were no tree stumps and no evidence of barking along the trees from timber machinery towing trees out of the forest. (Bower Trial Tr. 87:13-90:22, June 24, 2025.) Further, Mr. Bower does not believe Lot 4-1 or even Lot 3 were used for commercial timbering based on the 1972 Aerial Photograph given that the tonality of the parcels shows sand soil textures, which is notably devoid of the requisite nutrients to grow quality trees. *Id.* at 94:25-96:7.

[50] While there may have been aerial images taken of the parcels in 1973, Mr. Bower used the 1972 Aerial Photograph due to its higher quality. (Bower Trial Tr. 114:11-20, June 24, 2025.)

[51] Mr. Bower disagrees with Mr. Grip's opinion that this dark toned section is a mounded soil material as it is unlikely that mounded material remained in the exact same position for almost ten years as shown in the 1963 Aerial Photograph and the 1972 Aerial Photograph. (Bower Trial Tr. 115:18-117:13, June 24, 2025.) However, Mr. Bower acknowledged that they both could be correct in that the owners could have mined out that area, stacked that excavated soil, which could have been either dry or wet, and eventually hit groundwater in that same location. *Id.* at 118:17-119:1.

Based upon these aerial photographs and his physical examination of the sites, Mr. Bower concluded that Lot 4-1 was historically used for extractive purposes given the evidence of land clearing and road creation. *Id.* at 96:8-19, 134:15-19. As for Lot 3, Mr. Bower concluded based on the same photographs and site visits that Lot 3 was used prior to July 1974 for extractive industries given the areas of extraction consistently showing up across all images.[52] *Id.* at 96:20-97:5.

The Court found Mr. Bower to be a credible and well-prepared witness.

6

Defendants' Expert Witness: Randall Grip

Randall Grip (Mr. Grip) is the president of Aero-Data Corporation, an aerial photography and mapping company specializing in historical aerial photo study. (Grip Trial Tr. 6:3-10, 7:6-10, June 26, 2025.) Mr. Grip was offered as an expert witness by Defendants in photogrammetry[53] and aerial photograph interpretation.[54] *Id.* at 9:19-23. Mr. Grip was specifically engaged to

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[52] While the mining sections on Lot 3 eventually became overgrown, his modern-day photographs taken on his site visits show that there is evidence of (i) roads traveling from Lot 4 into Lot 3, (Pls.' Ex. 27 at 1-2), (ii) a depression at Point 406 where mining once took place, *id.* at 3, (iii) lack of vegetation regrowth at Point 407, *id.* at 4, (iv) a road leading into Lot 4-1 and a depression created by a rubber wheel at Point 408, *id.* at 5-6, (v) a mounded soil pit that is not naturally occurring at Point 409, *id.* at 7, (vi) a road around Point 410 on Lot 4-1 as indicated by cut blade marks in the leveled land, *id.* at 8, and (vii) a forest road marked by rock cut on the boundary line between Lot 4 and Lot 4-1. (Bower Trial Tr. 97:6-108:5, 134:23-147:9, June 24, 2025.)

[53] Photogrammetry allows one to create maps and measurements by overlapping photographs to create a three-dimensional image. (Grip Trial Tr. 8:2-9:16, June 26, 2025.)

[54] Mr. Grip earned his bachelor's degree in geography from Louisiana State University with an emphasis on mapping sciences. (Grip Trial Tr. 6:11-17, June 26, 2025.) Mr. Grip has worked in aerial mapping and photograph interpretation for more than thirty years. *Id.* at 7:11-13. Throughout his career, Mr. Grip has interpreted aerial photographs in hundreds of projects. *Id.* at 7:14-17. Mr. Grip is a member of various professional organizations, including the American Society of Photogrammetry and Remote Sensing, the Urban and Regional Information Systems Association, and the Louisiana Urban and Regional Information Systems Association. *Id.* at 7:18-23. Mr. Grip has been an expert in aerial photo interpretation and photogrammetry in thirty-five to forty cases, one of which was in Rhode Island. *Id.* at 7:24-9:16.

examine available aerial imagery of the Subject Properties using his professional methodology to discern whether mining, quarrying, or extracting occurred on these sites prior to 1974. *Id.* at 10:7-15, 52:25-53:10. To do so, Mr. Grip considered aerial photographs provided by Plaintiffs, the records of the ZBR hearing, maps showing the property boundary lines, drone videos, and Mr. Bower's report.[55] *Id.* at 10:23-11:9, 48:11-49:6. Mr. Grip acknowledged that he neither personally visited the Subject Properties nor spoke with anyone who had visited the parcels. *Id.* at 50:15-51:16.

Mr. Grip examined two types of photographs to conduct his analysis: stereo photographs and ortho photographs.[56] *Id.* at 19:11-20:4. Beginning with the stereo photographs, Mr. Grip obtained historical aerial photography from government providers, such as RIGIS and USGS, and created one full subject site image of the Subject Properties using the entire photo mission obtained by aerial flight.[57] *Id.* at 11:25-15:22, 17:8-25. Next, Mr. Grip examined ortho photographs, which are special types of images in that they remove distortions in the images from aircraft turbulence, level said images, and apply a terrain model of the ground surface to create a map-like image. *Id.* at 18:18-19:10. Mr. Grip then intertwines these two types of photographs with the control source images from USGS, synthesizing this information into a coordinate system called the Universe Transverse Mercator (UTM). *Id.* at 22:12-23:17.

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[55] Mr. Grip acknowledged that the records from the ZBR's hearing and the drone footage were not disclosed as materials he relied upon in his expert report but claimed that this was due to such materials not being germane to his ultimate opinion. (Grip Trial Tr. 49:4-23, June 26, 2025.)
[56] Mr. Grip was prevented from referencing any other stereo photographs except the 1961 and 1970 images disclosed in his expert report. (Grip Trial Tr. 29:6-31:5, June 26, 2025.)
[57] This methodology has been used since 1928. (Grip Trial Tr. 15:23-16:16, June 26, 2025.)

Beginning with Lot 3, Mr. Grip did not find any evidence of mining or extractive activities. *Id.* at 25:6-9. After examining aerial photographs from 1939[58] through the 1970s, Mr. Grip concluded that neither Point 406 nor Point 407 were mining sites as there was no evidence that Lot 4's operations continued into Lot 3. *Id.* at 30:13-31:18, 31:23-33:21, 36:16-18, 71:18-73:4. Although Mr. Bower observed lighter color patches in these areas, Mr. Grip attributed this to a few possible factors, including variable contrast in images procured by different vendors, the pictures being captured during different times of year, and changes in vegetation growth. *Id.* at 33:21-34:14, 68:3-70:19. Mr. Grip did not find Point 406 to be a mining site but instead thought it was a vegetation-free, low elevation area, which could have been due to glacial activity or some other non-mining activity years prior. *Id.* at 35:10-36:24, 63:21-64:2, 65:12-67:16, 70:23-71:3. Further, Mr. Grip did not find any evidence of roads moving from the active mine site on Lot 4 to Point 406. *Id.* at 35:7-9. Mr. Grip hypothesized that what Mr. Bower mistook for a road could have been a pathway going across Lot 3 to the railroad, which likely was connected to railroad activity, not mining activity. *Id.* at 37:11-39:4. There also was no indication that Point 407 was used as a mining site as it consistently showed up on maps from 1939 through 1970 as a wooded area. *Id.* at 36:23-37:10.

Mr. Grip acquiesced that there was evidence of mining on Lot 4. *Id.* at 53:4-8, 54:11-23. However, Mr. Grip disagreed with Mr. Bower that water storage existed in the 1962 Aerial Photograph and the 1972 Aerial Photograph. *Id.* at 39:5-16. Although Mr. Grip did observe evidence of water in the area now covered by a pond on Lot 4 in a 1961 aerial photograph, this area was much smaller than the water area cited by Mr. Bower and likely only held precipitation

[58] The aerial photographs begin in 1939 as this is the earliest date Mr. Grip could find. (Grip Trial Tr. 47:20-48:1, June 26, 2025.) His aerial photography ended in 2014 as this was the control date he selected, meaning the date the coordinate information from GIS was obtained. *Id.* at 48:2-10.

water. *Id.* at 73:9-75:11. Instead, Mr. Grip found the supposed body of water pointed out by Mr. Bower to be a mound of extracted material that could have possibly been used later in time to re-fill the area mined. *Id.* at 39:13-42:8, 76:1-77:11. The mere fact that this patch appears darker than the surrounding mining area does not automatically equate to this patch depicting a body of water. *Id.* at 78:4-17. Rather, the fact that this pile remained untouched for years indicates it's a solid mound of material. *Id.* at 79:15-80:5.

Finally, Mr. Grip turned his analysis to Lot 4-1, which he found did not contain excavation activity, former excavation sites, or roadways leading to excavation sites. *Id.* at 42:9-44:4, 80:8-17. While Mr. Grip acknowledged that a road, triangular shaped clearing, and a road cutout possibly designed to allow trucks to pass one another when traveling the road appeared between 1962 and 1963, he does not see this as support for there being extractive activities on Lot 4-1 as there were no cut lines into the land or piles of material indicating that mining or extracting actually was taking place. *Id.* at 81:2-84:16. Looking at the stereo photograph from 1970, (Defs.' Ex. P at 27), the clearing area on Lot 4-1 appears naturally lower in elevation than the surrounding area of Lot 4-1, which is a mounded, dome-like terrain. (Grip Trial Tr. 45:21-46:10, June 26, 2025.) Because the clearing was lower in elevation naturally, Mr. Grip did not find this to be evidence of excavation on Lot 4-1. *Id.* at 46:11-16.

Although Mr. Grip failed to disclose some stereo photographs that, in part, underpinned his expert opinion, the Court found Mr. Grip to be an honest, qualified expert, albeit slightly underprepared compared to Plaintiffs' experts. However, the Court found his testimony less persuasive because he never physically visited the site. *Id.* at 50:15-25.

II

Standard of Review

"In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58[.]" Super. R. Civ. P. 52(a). "Pursuant to this authority, '[t]he trial justice sits as a trier of fact as well as of law.'" *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)). '"Consequently, [he or she] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences."' *Id.* (quoting *Hood*, 478 A.2d at 184). "Also, 'it is permissible for the trial justice to draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" *Rhode Island Mobile Sportfishermen, Inc. v. Nope's Island Conservation Association, Inc.*, 59 A.3d 112, 118 (R.I. 2013) (quoting *Cahill v. Morrow*, 11 A.3d 82, 86 (R.I. 2011)).

The Court "'need not engage in extensive analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" *Parella*, 899 A.2d at 1239 (quoting *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998)). "[The] trial justice's analysis of the evidence and findings in the bench trial context need not be exhaustive . . . if the decision reasonably indicates that [the trial justice] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses[.]" *JPL Livery Services, Inc. v. State of Rhode Island Department of Administration*, 88 A.3d 1134, 1141 (R.I. 2014) (internal quotations omitted).

III

Findings of Fact and Conclusions of Law

This case centers around whether nonconforming uses existed on Lot 3 and Lot 4-1 prior to the 1974 Ordinance, as well as whether there has been an expansion or intensification of a nonconforming use on Lot 4.

"A nonconforming use is a particular use of property that does not conform to the zoning restrictions applicable to that property but which use is protected because it existed lawfully before the effective date of the enactment of the zoning restrictions and has continued unabated since then." *RICO Corp. v. Town of Exeter*, 787 A.2d 1136, 1144 (R.I. 2001). "Thus, [f]or a nonconforming use to be sanctioned, it must be lawfully established prior to the implementation of the zoning restriction or regulation." *Id.* (internal quotation omitted). "The burden of proving a nonconforming use is upon the person or corporation asserting the nonconforming use, and that party must prove that the use lawfully was established before the zoning restrictions were placed upon the land." *Id.* "That burden cannot be sustained by hearsay or unsworn testimony or when the evidence of such alleged prior use is contradictory." *Id.* "The reason for imposing such a heavy burden of proof[59] needed to establish the existence of a nonconforming use is because

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[59] Defendants argue that *RICO Corp. v. Town of Exeter*, 787 A.2d 1136, 1144 (R.I. 2001) intended to impose a clear and convincing evidence standard when proving a nonconforming use as this was the Superior Court's interpretation of *RICO Corp.* in *Town of Scituate v. Martinelli*, No. PC 2012-2230, 2016 WL 7242822, at *9 (R.I. Super. Dec. 7, 2016). However, as Plaintiffs point out, the Superior Court's categorization of *RICO Corp.* does not align with the language of *RICO Corp.* itself. Specifically, *RICO Corp.* provides that:

> "The burden of proving a nonconforming use is upon the person or corporation asserting the nonconforming use, and that party must prove that the use lawfully was established before the zoning restrictions were placed upon the land. . . . *That burden cannot be sustained by hearsay or unsworn testimony or when the evidence of such alleged prior use is contradictory. . . . The reason for imposing*

[n]onconforming uses are necessarily inconsistent with the land-use pattern established by an existing zoning scheme." *Id.* (internal quotation omitted).

Plaintiffs contend that they met the requirements of the 1974 Ordinance because the Subject Properties were acquired prior to the effective date "for the purpose of earth removal or the processing of sand and gravel and in use for such purpose on the date of the enactment." *See* 1974 Ordinance.

The Court believes it needs to analyze this case according to the *RICO Corp.* standard.

The Court will address each parcel separately.

A

Expansion of a Nonconforming Use on Lot 4

Plaintiffs contend that washing sand and processing broken asphalt and concrete are permissible uses that fall within Lot 4's preexisting legal nonconforming use. However,

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> *such a heavy burden of proof* needed to establish the existence of a nonconforming use is because [n]onconforming uses are necessarily inconsistent with the land-use pattern established by an existing zoning scheme. . . . The law . . . generally views nonconforming uses as detrimental to a zoning scheme, and the overriding public policy of zoning . . . is aimed at their reasonable restriction and eventual elimination. . . . Nonconforming uses are a thorn in the side of proper zoning and should not be perpetuated any longer than necessary. The policy of zoning is to abolish nonconforming uses as speedily as justice will permit." *RICO Corp.*, 787 A.2d at 1144–45 (internal quotations omitted) (internal citations omitted) (emphasis added).

Nowhere in *RICO Corp.* does the Supreme Court establish that the clear and convincing evidence standard controls in nonconforming use cases. Rather, *RICO Corp.* only touches on the burden of proof when specifying that there is a "heavy burden" on the proponent in nonconforming use cases in that they cannot carry their burden through the use of hearsay testimony, unsworn testimony, or contradicting evidence. This statement in and of itself does not convey to this Court that the Supreme Court intended to wholly forego the preponderance of the evidence standard but rather that it sought to clarify that unsubstantiated, conclusory evidence is not enough to carry the proponent's burden in nonconforming use cases.

Defendants argue that there is no evidence of these activities taking place on Lot 4 prior to the 1974 Ordinance going into effect, thereby making such activities expansions or intensifications require Town approval.

Thus, the real dilemma the Court faces for Lot 4 is whether Plaintiffs presented sufficient evidence such that the activity constitutes a nonconforming use. Based on the evidence presented at trial, the Court finds that Plaintiffs demonstrated that washing occurred prior to the 1974 Ordinance and thus there is a legal nonconforming use on Lot 4 to wash sand and gravel.[60]

Russell and Norman, and later Kenyon Bros., operated a commercial sand and gravel mining operation on Lot 4 predating the 1974 Ordinance and documented their sales in a business ledger. (Pls.' Post-Trial Br. Ex. A, ¶ 5); (Pls.' Ex. 28); (Pls.' Ex. 5); (Pls.' Ex. 7). The business ledger entries showed that sand was sold from Lot 4 as far back as the 1940s. (Pls.' Ex. 28.) Among plenty of other purchasers, the business ledger entries showed that sand and gravel was sold to the State of Rhode Island. *Id.* at 554-58. Relying on these business entries, Mr. Kappel testified that he believed washing must have occurred on Lot 4 for a couple reasons. First, Mr. Kappel testified that Kenyon Bros. would not have been able to sell sand commercially for so many years without washing the sand prior to sale, as unwashed sand could cause a multitude of issues depending on how the sand was used, including by causing problems with asphalt binding and application. (Kappel Trial Tr. 10:3-23, 50:15-51:21, June 24, 2025.) Second, Mr. Kappel knew that for sand to be sold to the State of Rhode Island, the Rhode Island Department of Transportation, and Rhode

[60] As previously mentioned, the 1974 Ordinance barred "[m]ining, quarrying, gravel pits and loam stripping" on land within the Town, unless such activity was already taking place prior to the ordinance's effective date. (Pls.' Ex. 2 at 2-3); (Defs.' Ex. L at 1-2). The prohibited activity was redefined in more general terms in the 1998 Ordinance as "[e]xtractive [i]ndustries", which notably included washing. (Defs.' Ex. M); Town of Charlestown, R.I., Code of Ordinances, ch. 218, art. 1, § 218-5. Therefore, washing must have occurred prior to 1974 for it to be a permissible activity on Lot 4.

Island Bridge Authority, the sand had to meet certain size specifications, which is only accomplished by washing the sand to filter the fine sand particles. *Id.* at 18:21-19:1, 44:16-21, 51:9-16. Given the product issues that could result from unwashed sand and the washing requirements of the State of Rhode Island, a purchaser from Kenyon Bros., the Court is persuaded by Mr. Kappel's expert opinion that Kenyon Bros. washed the sand they mined prior to selling it in the years leading up to the 1974 Ordinance.

While it seems Mr. Morrone was the first owner of Lot 4 to construct a man-made washing pond on site, (Morrone Trial Tr. 126:18-127:15, June 23, 2025), the Court is persuaded by the testimony of Mr. Bower and Mr. Kappel that Lot 4's geography provided Kenyon Bros. other methods to wash sand on site. Specifically, Mr. Kappel testified in detail how either the adjacent river or naturally occurring groundwater ponds that developed at different points in the year could have provided the water sources needed to properly wash the sand on site. (Kappel Trial Tr. 8:1-9:23, June 24, 2025.) Further, Mr. Bower found that the 1963 Aerial Photograph and the 1972 Aerial Photograph indicated that groundwater, water storage, or materials wet from washing were located on Lot 4 in two spots, as these areas (i) contrasted with the surrounding mine by way of their dark tonality, (ii) were in close proximity to the existing mining operation on Lot 4, and (iii) remained consistent in size and location for almost a full decade. (Bower Trial Tr. 90:23-93:23, 110:15-23, June 24, 2025); (Pls.' Ex. 26 at 4-5). Mr. Bower also found that a third water source possibly used for sand washing was detectable in the 1972 Aerial Photograph due to the patch's dark tonality and location within the existing mine on Lot 4. (Bower Trial Tr. 93:22-94:24, June 24, 2025); (Pls.' Ex. 26 at 5). While Mr. Grip testified that these dark patches were not necessarily bodies of water but instead likely were mounds of material extracted from the existing mine on Lot 4, (Grip Trial Tr. 73:9-80:5, June 26, 2025), the Court is not persuaded that excavated materials

would remain in the exact same position for nine consecutive years without any movement whatsoever. Further, in light of Mr. Bower and Mr. Kappel's insights as to the need to wash sand prior to selling it to the State and others, the Court finds it much more plausible that these stagnant, dark-toned patches were bodies of water that Russell and Norman, and later Kenyon Bros., used to wash the sand extracted on Lot 4 in order for it to be suitable for sale.

While the Court agrees with Plaintiffs that a nonconforming use exists to wash sand and gravel on Lot 4, there remains a secondary issue of whether Plaintiffs' paddlewheel washing facility constitutes an intensification or expansion of its nonconforming use.

"Minor repairs, changes or alterations that do not substantially change the nature of [a nonconforming] use or expand the area of the use are unlikely to be held unlawful." *Cohen v. Duncan*, 970 A.2d 550, 565 (R.I. 2009) (internal quotation omitted). '"Ordinarily a mere increase in the amount of business done in pursuance of a nonconforming use, *or a change in the equipment used*, does not constitute a change of the use itself."' *Cohen*, 970 A.2d at 565 (quoting *Santoro v. Zoning Board of Review of Warren*, 93 R.I. 68, 71, 171 A.2d 75, 77 (1961)) (emphasis added).

Both Mr. Miozzi and Mr. Morrone testified that the paddlewheel washing facility was not a larger scale operation than the previous washing facility but rather was merely a different piece of equipment that accomplished the same result. (Miozzi Trial Tr. 74:9-13, June 23, 2025); (Morrone Trial Tr. 91:9-14, June 23, 2025). The Court finds both Mr. Miozzi and Mr. Morrone's descriptions of the paddlewheel washing facility to be credible as each witness washed sand throughout his career and therefore was familiar with such operations. As such, the Court finds that Plaintiffs have adduced sufficient evidence that this new washing facility is not an expansion or intensification as it only utilizes a different piece of equipment to do the same act of washing sand and gravel on Lot 4. This evidence remains unrebutted as there is no contrary evidence

demonstrating how the paddlewheel washing facility will drastically differ from the washing equipment previously utilized.

Therefore, the Court finds that Plaintiffs presented ample evidence indicating that washing took place on Lot 4 prior to the 1974 Ordinance such that washing constitutes a legal preexisting nonconforming use. Further, the Court does not find the paddlewheel washing facility installed on Lot 4 to be an intensification or expansion of this nonconforming use.

B

The Existence of a Nonconforming Use on Lot 4-1

Plaintiffs advance two main arguments as to why there is a nonconforming use to extract or mine on Lot 4-1. First, Plaintiffs contend that, pursuant to the doctrine of diminishing assets, the extractive activities taking place on Lot 4 prior to the 1974 Ordinance established a nonconforming use for all the land then comprising Lot 4, which includes present-day Lot 4-1. Second, Plaintiffs contend that Lot 4-1 qualifies as a nonconforming use in and of itself as there was evidence of mining thereon predating the 1974 Ordinance. Defendants push back on both these arguments, contending that the doctrine of diminishing assets is inapplicable due to the subdivision of Lot 4-1 and, regardless, there is neither evidence of any historical intent to mine Lot 4-1 nor evidence of actual mining or extraction on Lot 4-1. Additionally, Defendants argue that any intent to mine Lot 4-1 in the past was abandoned once the parcel was subdivided.

1

Doctrine of Diminishing Assets

"The doctrine of diminishing assets has evolved from the recognition that extractive industries use the land itself and all resources that are found on a given parcel comprise the ongoing business. As opposed to other nonconforming uses in which the land is merely incidental to the

activities conducted upon it, . . . quarrying contemplates the excavation and sale of the corpus of the land itself as a resource." *Town of West Greenwich v. A. Cardi Realty Associates*, 786 A.2d 354, 362 (R.I. 2001) (internal quotation omitted). "The land is considered a diminishing asset and the use need not be restricted to the precise geographical area where extraction activities were going on when the lot became nonconforming. . . . Unlike other nonconforming uses of property which operate within an existing structure or boundary, mining uses anticipate extension of mining into areas of the property that were not being exploited at the time a zoning change caused the use to be nonconforming." *Id.* at 362–63 (internal quotations omitted). "Thus, when there is objective evidence of [a landowner's] intent to expand a mining operation, and that intent existed at the time of the zoning change, the doctrine of diminishing assets protects the unique character of land that has been reserved for excavation and allows expansion into those areas." *Id.* at 363 (internal quotations omitted).

In determining whether a landowner has a right to expand operations as a nonconforming use under the doctrine of diminishing assets, the Supreme Court adopted the three-prong *Wolfeboro* test articulated by the Supreme Court of New Hampshire, which provides as follows:

> "'First, [the landowner] must prove that excavation activities were actively being pursued when the [ordinance] became effective; second, [the landowner] must prove that the area that he desires to excavate was clearly intended to be excavated, as measured by objective manifestations and not by subjective intent, and, third, [the landowner] must prove that the continued operations do not, and/or will not, have a substantially different and adverse impact on the neighborhood.'" *Id.* at 363 (quoting *Town of Wolfeboro v. Smith*, 556 A.2d 755, 759 (N.H. 1989)).

The Court will address each prong of the *Wolfeboro* test to discern whether Plaintiffs have carried their burden to establish that the doctrine of diminishing assets applies to Lot 4-1.

The *Wolfeboro* test first requires proof that excavation activities were pursued when the ordinance became effective. By Defendants' counsel's own admission throughout this case and at the time of trial, Lot 4, which then included present-day Lot 4 and Lot 4-1, was being mined and extracted prior to the 1974 Ordinance going into effect such that a nonconforming use existed for the parcel. (Trial Tr. 18:5-7, June 23, 2025.) Further, Defendants' counsel acknowledged that but for the subdivision of Lot 4-1 this doctrine would protect Plaintiffs' ability to extend their operations on Lot 4 into the area now comprising Lot 4-1. (Trial Tr. 10:18-11:2, June 25, 2025.) With these admissions in mind, the Court finds there to be adequate proof that mining activities were being pursued on Lot 4, which then included Lot 4-1, at the time the 1974 Ordinance went into effect. As such, prong one is satisfied.

The *Wolfeboro* test next requires objective manifestations of intent to mine or extract in a given area of the property. "[A]n owner of a nonconforming earth removal or extractive enterprise has the right to continue his or her operations into other areas of the parcel that can be shown, by objective evidence, to have been intended for excavation as of the date of the ordinance that rendered the use nonconforming. The burden of establishing an intent to excavate a particular area falls on the landowner, the party who bears the burden of establishing a nonconforming use in the first instance. This burden of proof may not be met with evidence merely demonstrating that an owner *planned* to expand at a later point or *intended* to expand into a given area." *Cardi*, 786 A.2d at 363-64.

In *Cardi*, the Supreme Court recognized that a landowner had a nonconforming use to engage in earth and gravel removal activities, but a question remained as to whether this right could be exercised on a certain portion of the lot not yet extracted. *Id.* at 364. The Court found evidence of an objective intent to mine this section of the property because certain operations were

already underway at the time the ordinance went into effect, such as clearing trees, lowering the land grade, and stockpiling loam. *Id*

Mr. Bower testified at length that his analysis of aerial photographs captured prior to the 1974 Ordinance led him to believe that Lot 4-1 was historically used for extractive purposes given the evidence of land clearing and road creation. (Bower Trial Tr. 96:8-19, 134:15-19, June 24, 2025.) More specifically, Mr. Bower concluded based on aerial photographs of Lot 4-1 that between 1962 and 1963 an approximately 1,600-foot road was constructed leading to an approximately 1.35-acre triangular clearing area therein. (Pls.' Ex. 26 at 3-4); (Pls.' Ex. 30); (Bower Trial Tr. 83:15-84:16, 109:24-110:6, June 24, 2025). Mr. Bower was able to identify these points as roads and clearings due to their light tonality in the 1963 Aerial Photograph, their shape remaining pretty consistent nearly a decade later in the 1972 Aerial Photograph, and his own observations of these improvements while walking the parcel present-day. (Bower Trial Tr. 85:1-86:20, June 24, 2025.) Mr. Bower found this twelve-to-fourteen-foot-wide road and triangular clearing to be indicative of mining or extracting as compared to timber harvesting due to the lack of tree stumps or barking along the trees from timber machinery, as well as the tonality of the parcels showing sand soil textures inept to promote quality tree growth. *Id.* at 86:21-96:19, 132:22-133:3, 134:15-19. Mr. Kappel bolstered Mr. Bower's opinion through his own testimony that there was evidence of a road and clearing area on Lot 4-1 and his geological testing confirming that Alaskite was present on Lot 4-1 near the existing operation on Lot 4. (Kappel Trial Tr. 38:1-41:3, 42:6-9, June 24, 2025.) Notably, Mr. Bower and Mr. Kappel found the same types of physical features on Lot 4-1 to be relevant as did the court in *Cardi*, which found an objective intent to mine based on there being observable mining preparation activities on the new site and the new site being in close proximity to an existing dedicated mining site.

Mr. Grip provided expert testimony contrary to that proffered by Mr. Bower and Mr. Kappel. Namely, Mr. Grip found that Lot 4-1 did not contain excavation activity, former excavation sites, or roadways leading to excavation sites but rather only sections of land naturally lower in elevation. (Grip Trial Tr. 42:9-46:16, 80:8-17, June 26, 2025.) However, Mr. Grip later acknowledged that a road, triangular shaped clearing, and a road cutout possibly designed to allow trucks to pass one another when traveling the road appeared between 1962 and 1963 based on aerial photographs of Lot 4-1. *Id.* at 81:2-23. While Mr. Grip rejected the notion that these improvements correlate with extractive activities due to lack of cut lines into the land and lack of material piles existing, *id.* at 81:2-84:16, the Court is not persuaded by Mr. Grip's attempts to discount the importance of the road, clearing area, and cut out, especially considering Mr. Grip could not say specify what other purpose these roads would have served. *Id.* at 84:12-85:11. Rather, the Court shares the opinion of Mr. Bower and Mr. Kappel that these improvements serve as objective evidence of the Kenyon family's intention to continue Lot 4's mining operations into Lot 4-1.

The positions embraced by both Mr. Bower and Mr. Kappel are further bolstered by Robert's affidavit, which attests that Lot 4-1 had been used in connection with his family's sand and gravel operation since the 1950s, (Pls.' Ex. 7), as well as Mr. Morrone's observations around 1973 or 1974[61] of gravel and topsoil being removed from Lot 4-1 and trucks hauling such materials off site.[62] (Morrone Trial Tr. 102:11-104:4, 139:12-23, 140:15-20, June 23, 2025.) Because Robert

[61] Mr. Morrone testified that he was born in 1962 and observed these activities around the ages of eleven or twelve, meaning his observations were made between 1973 and 1974. (Morrone Trial Tr. 83:3-4, 103:14-104:2, June 23, 2025.)

[62] When asked how he remembered the specific activities of Lot 4-1 from his younger years, Mr. Morrone candidly replied that "[s]ome kids are into baseball, I was into dump trucks." (Morrone Trial Tr. 104:5-12, June 23, 2025.)

sold off his ownership in Lot 4-1 a year prior to executing his affidavit and Mr. Morrone had no personal stake in the litigation, the Court finds these fact witnesses' testimony to reinforce a finding that the mining or extracting activities on Lot 4-1 prior to the 1974 Ordinance evidence that the then-owner's objective intent was to mine the parcel. Accordingly, the Court finds that prong two is satisfied.

Lastly, the *Wolfeboro* test requires that the continued operations not have a substantially different and adverse impact on the neighborhood. Mr. Kappel testified that Peckham only planned to continue the existing operations on Lot 4 into Lot 4-1. (Kappel Trial Tr. 47:23-49:9, June 24, 2025.) Specifically, Mr. Kappel testified that Peckham planned to utilize the same equipment, same employees, and same scale of operations as was used on Lot 4 under Mr. Miozzi and Charlestown Farms, meaning that the only thing to change would be "that the rock instead of being withdrawn from [Lot] 4 would be withdrawn from [Lot] 4-1[.]" *Id.* at 48:8-22. While Mr. Kappel did not discount the possibility that market demand could fluctuate and impact operations, he affirmed that Peckham did not intend to drastically change the character of the operations on Lot 4-1. *Id.* at 49:10-50:9. The Court views Mr. Kappel's testimony on this point to be candid and credible. While Defendants had no obligation to introduce any evidence to the contrary, they left Mr. Kappel's testimony on this point unrebutted. Accordingly, the Court is not inclined to find that the proposed operations on Lot 4-1 would be drastically different than the existing operation on Lot 4 or pose an adverse impact on the surrounding community. Rather, the operations of Lot 4 would continue to persist as they already exist today with the only difference being that Lot 4 would no longer be the area mined after depletion but instead operations slowly would migrate eastward into Lot 4-1. Accordingly, the Court finds that Plaintiffs have carried their burden on prong three.

While the Court finds that Plaintiffs have satisfied the *Wolfeboro* test such that the nonconforming use for mining operations on Lot 4 should also extend to Lot 4-1, Defendants argue that the subsequent subdivision of Lot 4-1 constituted an abandonment[63] of this nonconforming use such that the doctrine of diminishing assets cannot extend protections to Lot 4-1 in the current action.

"[The Supreme Court], time and time again, has emphasized that the mere discontinuance of a nonconforming use for a period of time does not, ipso facto, constitute an abandonment of that use." *Washington Arcade Associates v. Zoning Board of Review of Town of North Providence*, 528 A.2d 736, 738 (R.I. 1987). "[T]o establish abandonment, proof of two factors is required; one, intent to abandon and two, some overt act, or failure to act, which would lead one to believe that the owner neither claims nor retains any interest in the subject matter of the abandonment." *Id.* "[T]he mere discontinuance of a nonconforming use for a period of time does not constitute an abandonment of that use." *Town of Coventry v. Glickman*, 429 A.2d 440, 442 (R.I. 1981). The Supreme Court reiterated this concept "We need only repeat what we have said before: nonuse is not conclusive evidence of abandonment." *Id.* at 443. "The burden of proving abandonment is on the asserting party." *Washington Arcade Associates*, 528 A.2d at 738.

[63] Although Plaintiffs contend that abandonment needed to be pled as an affirmative defense to be actionable at trial, Rule 8(c) of the Superior Court Rules of Civil Procedure does not list abandonment as one of the defenses that must be affirmatively pled or waived. The Court could not locate any Supreme Court or Superior Court cases that categorized abandonment as an affirmative defense either. Therefore, Defendants' failure to affirmatively plead abandonment does not preclude them from asserting the defense now. Moreover, while Defendants stated in their response to interrogatories that they did not believe any activity had been abandoned on Lot 3 and Lot 4-1, this response was made prior to Plaintiffs pursuing a new theory of their case at trial, i.e., that the doctrine of diminishing assets applies to Lot 4-1 and Lot 3. Just as the Court allowed Plaintiffs to pursue this new theory for the first time at trial, the Court will also allow Defendants to pursue abandonment as a defense to this new theory.

The Court finds that Defendants failed to adduce sufficient evidence demonstrating that any overt act of abandonment was undertaken by the owners of Lot 4-1. As stated in *Glickman*, any lapses in use of Lot 4-1 for mining or extracting is not evidence in and of itself of abandonment of Lot 4-1 for extractive purposes. Although Defendants argued at length that any nonconforming use existing for Lot 4-1 was abandoned through the 1987 subdivision of Lot 4, Defendants failed to cite any binding or nonbinding cases supporting their position. Moreover, the Supreme Court has stated, " [f]urthermore, it is clear that a nonconforming use is an alienable property interest . . . . A mere change in ownership does not destroy the nonconforming use." *Glickman*, 429 A.2d at 442 (internal citations omitted). Rather, Defendants' argument is wholly predicated on their own subjective opinions. Because Defendants had the burden to establish that a subdivision legally constitutes an overt act of abandonment and failed to satisfy this burden, the Court will not deem the 1987 subdivision to be an act of overt abandonment. Rather, when Russell acquired Lot 4-1 in 1987, the non-conforming use came with the conveyance.

Therefore, the Court finds that Plaintiffs presented ample evidence proving that a nonconforming use to mine or extract exists for Lot 4-1 pursuant to the doctrine of diminishing assets.

2

Evidence of Mining or Extracting on Lot 4-1 Prior to 1974

Because the Court finds that the doctrine of diminishing assets establishes a nonconforming use for Lot 4-1 due to its prior ownership in common with Lot 4, the Court need not evaluate whether Lot 4-1 independently qualifies as a nonconforming use in and of itself. However, the Court would like to briefly note that its independent analysis of Lot 4-1 would have also led it to recognize a legal nonconforming use for Lot 4-1. As discussed in the Court's *Wolfeboro* test

analysis, the Court concurs with Mr. Bower and Mr. Kappel that the road, cut out, and clearing area erected on Lot 4-1 between 1962 and 1963, and the continued existence of these improvements as of 1972, indicate that the owners of Lot 4-1 were actively continuing the mining activities of Lot 4 into Lot 4-1 prior to the 1974 Ordinance going into effect. In addition, the testimony of Mr. Morrone about seeing extraction activity near Alton Carolina Road and observing blast holes as well as Robert's affidavit are additional evidence of mining and extracting as of 1974 such that it independently qualifies as a preexisting nonconforming use.

Accordingly, even without the doctrine of diminishing assets, a nonconforming use for extractive activities would still exist for Lot 4-1.

C

The Existence of a Nonconforming Use on Lot 3

Lastly, the Court must address whether extracting or mining activity took place on Lot 3 prior to the 1974 Ordinance. Just as they did for Lot 4-1, Plaintiffs advance two main arguments as to why there is a nonconforming use to extract or mine on Lot 3. First, Plaintiffs contend that, pursuant to the doctrine of diminishing assets, the extractive activities taking place on Lot 3 prior to the 1974 Ordinance created a nonconforming use for the entire parcel. Second, Plaintiffs contend that Lot 3 qualifies as a nonconforming use as there was evidence of mining thereon pre-dating the 1974 Ordinance. Defendants push back on both these arguments, contending that the doctrine of diminishing assets is inapplicable and, nonetheless, not satisfied in that there is neither evidence of mining or extracting on Lot 3 prior to 1974 nor any evidence that the railroad intended to mine the parcel prior to 1974.

Unlike Lot 4-1, which was a part of Lot 4 prior to 1974, Lot 3 did not come into ownership by the Kenyon family until 1983 when Kenyon Bros. purchased the parcel from Penn Central.

(Defs.' Ex. S); (Pls.' Ex. 11); (Defs.' Ex. CC). Therefore, the doctrine of diminishing assets cannot apply to Lot 3 vis-à-vis Lot 4 because Lots 3 and 4 were not under common ownership in 1974. Rather, the doctrine of diminishing assets only comes into play for the entirety of Lot 3 *after* it is shown that some portion of Lot 3 in and of itself qualifies as a nonconforming use.

To briefly reiterate, a nonconforming use only exists if it can be shown by the landowner that the use was lawfully established before the zoning restrictions were placed upon the land. *See RICO Corp.*, 787 A.2d at 1144. Again, this burden "cannot be sustained by hearsay or unsworn testimony or when the evidence of such alleged prior use is contradictory." *Id.*

At trial, two fact witnesses were offered to substantiate Plaintiffs' argument that Lot 3 had a nonconforming use to engage in mining or extracting activities.

The first witness presented was Mr. Morrone. While crossing Lot 3 to reach a camp area on the back end of the parcel between the late 1970s and early 1980s, Mr. Morrone recalled seeing the railroad, the then owner of Lot 3, extracting material off the land. (Morrone Trial Tr. 97:9-12, 120:15-121:3, June 23, 2025.) Although Mr. Morrone had other observations of Lot 3 from the early 2000s onward, *id.* at 110:2-111:4, 113:25-115:9, 116:24-117:16, his only knowledge of Lot 3 around the time of the 1974 Ordinance stems from these visits to the parcel to visit the campground during his high school years. While the Court found Mr. Morrone to be an honest and candid witness, Mr. Morrone had absolutely no knowledge of any activities on Lot 3 prior to 1974 as is necessary to establish a nonconforming use in this case. Rather, Mr. Morrone specifically stated that his observations were made anywhere between 1979 and 1981, meaning his observations took place five to seven years after the zoning ordinance was enacted. *Id.* at 120:15-22. For this reason, the Court finds Mr. Morrone's testimony irrelevant to whether there was a nonconforming use on Lot 3 prior to 1974.

The second witness presented was Robert by way of his affidavits. Particularly, Robert attested in his 2017 affidavit that he lived in the vicinity of Lot 3 since 1960 and had at all times observed the parcel being used for the extraction of stone, gravel, sand, and topsoil. (Pls.' Ex. 6.) Robert also attested in his 2020 affidavit that Kenyon Bros. purchased Lot 3 from Consolidated Rail in 1983 and that Consolidated Rail previously used the parcel as a source for fill. (Pls.' Ex. 7.) The Court is wary of Robert's statements on this issue given his failure to properly identify Penn Central as the owner of Lot 3 prior to its sale to Kenyon Bros. Because Robert could not recall Penn Central but instead swore in his affidavit that Consolidated Rail was the seller of the parcel, the Court is reluctant to rely on Robert's 2020 affidavit insofar as Lot 3 is concerned in fear that his memory may not be as reliable for this parcel. For these reasons, the Court does not find Robert's affidavits support the argument that there was a nonconforming use on Lot 3 prior to 1974.

Because the Court is not persuaded by Robert's affidavits and Mr. Morrone's testimony fails to discuss the pre-1974 use of Lot 3, the only remaining source of support is the testimony of Mr. Bower.[64] Mr. Bower identified apparent mining and extraction sites in the 1962 Aerial Photograph at Point 406 and Point 407 due to these sections being covered in bright white tonality, which indicated to him that the area contained no vegetation but only granular soils consistent with extractive activities. (Pls.' Ex. 26 at 3); (Bower Trial Tr. 79:21-83:8, 126:3-15, June 24, 2025). Mr. Bower also recognized two forest roads in the 1962 Aerial Photograph, one of which led to Point 407 and remained evident in both the 1963 Aerial Photograph and the 1972 Aerial

[64] This Court's review of Mr. Kappel's testimony indicated that he did not offer any substantive testimony as to the historical use of Lot 3 predating the 1974 Ordinance. Rather, his testimony largely concerned the washing activities on Lot 4, the historic blasting methods on Lot 4, and the evidence of extractive activity on Lot 4-1.

Photograph. *Id.* at 78:5-16, 126:21-127:19; (Pls.' Ex. 26 at 3-5). Mr. Bower corroborated what he visually examined on these aerial photographs when walking Lot 3, during which time he noted evidence of mining at Point 406 and Point 407 due to lack of vegetation, the removal of rocks, and signs of visible excavation. (Bower Trial Tr. 80:11-15, June 24, 2025.)

However, as Mr. Grip discussed in his testimony, Mr. Bower's opinion is susceptible to one major weakness; namely, the tonality of Point 406 and Point 407 drastically differs throughout the three years of aerial photographs examined by Mr. Bower, most notably from 1962 to 1963. While in 1962, Point 406 and Point 407 appear in light tonality similar to the active mine on Lot 4, (Pls.' Ex. 26 at 3), these two points turn dark toned the very next year in the 1963 Aerial Photograph. (Pls.' Ex. 26 at 4.) Although the 1963 Aerial Photograph was leaf on unlike the 1962 Aerial Photograph, this leaf on difference did not seem to affect the tonality of the active mine on Lot 4 or the light tonality of the newly erected triangular clearing on Lot 4-1. While cleared areas certainly can grow in over time, as was seen for the triangular clearing on Lot 4-1 in the 1963 Aerial Photograph compared to the 1972 Aerial Photograph, (Pls.' Ex. 26 at 4-5), the Court is not persuaded that such growth could occur in the matter of one year.

Like the Court, Mr. Grip also was not persuaded by this argument. While Mr. Grip agreed that Point 406 was a naturally occurring depression or low-level area, (Grip Trial Tr. 33:19-23, June 26, 2025), he found no evidence that Point 406 or Point 407 were mining or extracting sites. Rather, Mr. Grip testified that these points could appear in light tonality for plenty of other non-mining reasons, such as variable contrast in different vendors' images, the pictures being captured during different times of year, sun glare from water sources located at these points, and changes in vegetation growth. *Id.* at 33:21-36:15, 68:3-70:19. Because there is no clear reason as to why the tonality of Point 406 and Point 407 shifted so drastically in the matter of one year, the Court

does not find the light tonality appearing in 1962 and 1972 to itself affirmatively indicate that mining or extracting activity was taking place on Lot 3.

Although Mr. Bower did identify at least one road going from Lot 4 to Point 407 in the aerial photographs taken in 1962, 1963, and 1972, the Court does not view this road to itself indicate that Point 407 is a mining or extracting site. Given the lack of consistency in Point 407's tonality from 1962 through 1972, there is no actual evidence that Point 407 is itself a mine or extraction site such that this road must necessarily be a hauling road stemming from Lot 4. This point is strengthened considering, unlike Lot 4-1, Lot 4 was not owned in common with Lot 3 during this time frame. As such, the Court is more persuaded by the expert opinion of Mr. Grip that any roads running through Lot 3 during this time period are likely connected to the running of the railroad itself, not any mining activity. *Id.* at 37:9-38:22.

Therefore, the Court does not find there to be a nonconforming use to mine or extract on Lot 3. Because the Court finds that no portion of Lot 3 qualifies as a nonconforming use, the Court need not address whether the doctrine of diminishing assets applies to the entirety of the parcel.

IV

Conclusion

While the Court finds there to be a nonconforming use on Lot 4-1 to engage in extractive activities, the Court does not find there to be a nonconforming use to do the same on Lot 3. As for Lot 4, the Court finds there to be a nonconforming use therein to wash sand, which includes the right to operate the paddlewheel washing facility on site. The parties shall confer and present an order and judgment.

Exhibit A

Case Number: WC-2021-0350
Filed in Washington County Superior Court
Submitted: 6/23/2025 8:16 AM
Envelope: 5184335
Reviewer: Emily M.

STATE OF RHODE ISLAND
WASHINGTON, SC

SUPERIOR COURT

CHARLESTOWN FARMS, LLC; and
PECKHAM CHARLESTOWN FARMS, LLC
Plaintiffs

vs.

JOSEPH L. WARNER, in his capacity as Building/Zoning Official for the Town of Charlestown; IRINA GORMAN, in her capacity as Treasurer for the Town of Charlestown and the TOWN OF CHARLESTOWN

Defendants

C.A. No. WC-2021-0350

STIPULATED TIMELINE

11-08-1950	Norman E. Kenyon and Russell E. Kenyon purchase Lot 4 from Milton Duckworth and Welcome S. Carmichael (bk. 0032/ pg. 0404)
08-27-1973	Subdivision by deed of Lot 4 into Lot 4 and Lot 5. Lot 5 deeded to Russell E. Kenyon Jr. from Norman E. Kenyon and Russell E. Kenyon (bk. 0049/pg. 0102)
10-05-1983	Kenyon Bros., Inc. purchases Lot 3 from Penn Central Co. (bk. 0073/pg. 0668)
09-21-1987	Subdivision by deed of Lot 4 into Lot 4 and Lot 4-1 • Lot 4 → Norman E. Kenyon (bk. 0096/pg. 0147) • Lot 4-1 → Russell E. Kenyon (bk. 0096/pg. 0149)
11-11-1987	Carl M. Richard purchases Lot 4 from Norman Kenyon (bk. 0097/pg. 0158)
05-15-1993	Russell E. Kenyon, Jr. and Robert W. Kenyon acquire Lot 4-1 from Russell E. Kenyon (bk. 0130/pg. 0922)
03-9-1995	Louise Richard acquires Lot 4 from Carl M. Richard (bk. 0144/pg. 0147)
10-26-2001	Carl E. Richard acquires Lot 4 from Louise Richard via her Last Will and Testament (bk. 0205/pg. 0526)
11-18-2003	Morrone Land Company, LLC purchases Lot 4 from Carl E. Richard (bk. 0255/pg. 0132)

04-24-2008	Robert W. Kenyon and the Russell E. Kenyon, Jr. Trust acquire Lot 3 from Kenyon Bros., Inc. (bk. 0320/pg. 0074)
10-16-2017	Pawcatuck River Properties, LLC purchases Lot 3 from Robert W. Kenyon and the Russell E. Kenyon, Jr. Trust (bk. 0431/pg. 0085; bk. 0431/pg. 0090)
03-15-2019	Charlestown Farms, LLC purchases Lot 3 from Pawcatuck River Properties, LLC (bk. 0445/pg. 0431)
03-15-2019	Charlestown Farms, LLC purchases Lot 4 from Morrone Land Company, LLC (bk. 0445/pg. 0433)
05-14-2019	Charlestown Farms, LLC purchases Lot 4-1 from Russell E. Kenyon, Jr. Trust and Robert W. Kenyon (bk. 0447/pg. 0146; bk. 0447/pg. 0152)
10-29-2021	Peckham Charlestown Farms, LLC purchases Lot 3, Lot 4, Lot 4-1, Lot 4-2, and Lot 4-3 from Charlestown Farms, LLC (bk. 481/pg. 248)
03-11-2022	Peckham Charlestown Parcel II, LLC purchases Lot 5 from Robert W. Kenyon (bk. 485/pg. 356)

Plaintiffs,
By their Attorneys,

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CERTIFICATION

I hereby certify that on the 23rd day of June 2025, the within document has been e-filed with the Court and e-served through the Superior Court's Electronic Filing System to all registered members and is available for viewing and downloading viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Sarah D. Boucher

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Charlestown Farms, LLC, et al. v. Joseph L. Warner, Jr., et al.**
CASE NO:	**WC-2021-0350**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**September 15, 2025**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Jeffrey K. Techentin, Esq.** **M. Hamza Chaudary, Esq.** **Colten H. Erickson, Esq.**
For Defendant:	**Michael Desisto, Esq.** **Sarah D. Boucher, Esq.**