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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

A N A C T

RELATING TO THE REGULATION OF EARTH REMOVAL AND GRAVEL PROCESSING
IN THE TOWN OF COVENTRY

Introduced By: Senators Blais, Breene, and Raptakis

Date Introduced: January 08, 2002

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. For the purposes of promoting health, safety, or general welfare and in
2 order to effect uniform regulation within the Town of Coventry for earth removal and gravel
3 processing as hereinafter defined, and in order to protect and preserve the valuable natural
4 resources, groundwaters, aquifers and environment of the Town of Coventry, and in order to
5 further the objectives of the Coventry Comprehensive Community Plan, the Town of Coventry
6 shall have the power in accordance with the provisions of this act to provide by ordinance for the
7 regulation, control and licensing of earth removal as hereinafter defined, such power to be
8 restricted and exercised in accordance with sections 2 through 13 of this act.

9 SECTION 2. "Earth removal" shall mean the extraction, quarrying or removal of any
10 soil, loam, sand, gravel, stone, clay, shale or other earth material from deposits on any tract of
11 land on which it is found; excluding, however, earth removal as follows:

12 (a) Less than ten (10) cubic yards of material in the aggregate in any year from any one
13 lot;

14 (b) In grading land for construction of a roadway or for agricultural use as defined in any
15 ordinance enacted pursuant hereto;

16 (c) For the construction of a building for which a building permit has been issued;

17 (d) For a subdivision in accordance with a plat plan or plans approved by or in
18 accordance with an ordinance of the town or any duly authorized board of authority thereof;
19 provided, however, that the removal of such material necessarily excavated in connection with

1 lawful construction of a building, structure, street, driveway, sidewalk, path or other appurtenance
2 does not exceed that actually displaced by the portion of such buildings, structures, streets,
3 driveways, sidewalks, or paths, or other appurtenances below finished
4 grade.

5 “Gravel Processing” shall mean any facility used for the processing of more than ten (10)
6 cubic yards per day of soil, loam, sand, gravel, stone, clay, shale or other earth material from
7 deposits and which utilizes primary mechanical equipment used for processing, screening, or
8 washing of gravel or earth materials.

9 “Town council” shall mean the duly elected town council of the Town of Coventry.

10 “Zoning board of review” shall mean the zoning board of review established by the Town
11 of Coventry.

12 “Zoning officer” shall mean that person appointed by the Coventry town council and
13 charged with the duty to enforce the provisions of the Coventry zoning ordinance.

14 SECTION 3. An ordinance enacted pursuant to the authority contained in this act may:

15 (a) Set hours for earth removal as limited by subsection 4(a)(1);

16 (b) Establish set-back requirements as limited by subsection 4(a)(2);

17 (c) Require fencing and a lockable entrance gate as limited by subsection 4(a)(3);

18 (d) Regulate noise, vibration, smoke, water pollution, odors, fly ash, dust, fumes, vapors,
19 gases, and other forms of air pollution, toxic gases, heat, glare, and fire or other safety hazards as
20 limited by subsection 4(a)(4);

21 (e) Regulate water conditions and protect the groundwater table and aquifers as limited
22 by subsection 4(a)(5);

23 (f) Regulate travel routes, access, ingress, egress, road signage and parking; regulate
24 cleaning, repairing and/or resurfacing of truck routes as limited by subsection 4(a)(6);

25 (g) Regulate the use of explosives as limited by subsection 4(a)(7);

26 (h) Prohibit and/or regulate hydrocarbon or hazardous material storage, fuel tanks, and
27 vehicular maintenance/storage areas on property licensed for earth removal in accordance with
28 subsection 4(a)(8);

29 (i) Require a nontransferable license for the initiation or lateral expansion of earth
30 removal in accordance with section 6;

31 (j) Require a nontransferable license for gravel processing in accordance with section 6.

32 SECTION 4. Earth removal or gravel processing on tract of land in the Town of
33 Coventry. - - (a) With respect to earth removal or gravel processing operations on any tract of
34 land, said tract being in the Town of Coventry, such ordinance:

1 (1) May limit the hours of earth removal or gravel processing operations; provided,
2 however, (i) that no such restrictions shall be imposed for the period between 7:00 a.m. and 6:00
3 p.m. of any Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday (except a legal
4 holiday) except for reasonable conditions specially designed to safeguard the neighborhood and
5 its residents or to accommodate the neighborhood's schools and bus routes, which conditions are
6 imposed by the town council in issuing the earth removal or gravel processing license and (ii) that
7 no earth removal or gravel processing be allowed on Sundays or legal holidays.

8 (2) May prohibit the initiation or lateral expansion of earth removal; (i) within two
9 hundred (200) feet of a public road, (ii) within two hundred (200) feet of neighboring lot lines.

10 (3) May require: (i) the fencing of those portions of the boundary of the tract of land upon
11 which earth removal or gravel processing is being conducted adjacent to a residentially developed
12 property, such fencing to be six (6) feet in height and effective to control access to the area in
13 which such earth removal or gravel processing is being conducted; (ii) the installation of a
14 lockable entrance gate to the tract of land upon which earth removal or gravel processing is being
15 conducted, which gate is to be locked during hours of non-operation; and (iii) that when an
16 excavation will have a depth of more than fifteen (15) feet with a slope in excess of one (1) to two
17 (2), a fence at least six (6) feet high shall be erected to limit access to this area.

18 (4) May require: (i) calcium chloride, water or oil be applied to reduce dust and mud on
19 all nonhard surfaced roads to be used for vehicular ingress or egress to the tract of land on which
20 earth removal or gravel processing is to be conducted; (ii) where appropriate, the installation,
21 maintenance, and operation by the applicant of continuous recording instruments to measure the
22 effectiveness of all equipment used for drilling, digging and hauling, to control or lessen noise,
23 vibration, smoke, water pollution, odors, fly ash, dust, fumes, vapors, gases, and other safety
24 hazards and also may require that such recording instruments be tested at reasonable intervals
25 under the direction of the zoning officer to determine their accuracy and that the results of such
26 tests be filed with the town.

27 (5) May require that: (i) drainage be provided to prevent the permanent collection and
28 stagnation of surface or underground waters, and to prevent the flooding and erosion of
29 surrounding property and the pollution of ponds and streams; (ii) earth removal shall not encroach
30 closer than four (4) feet to the groundwater table in accordance with Department of
31 Environmental Management procedures and standards of measurement. Groundwater table
32 elevation determinations shall be made on all land from which earth products will be removed.
33 Groundwater table elevation determinations shall be made in the same manner as required by the
34 Department of Environmental Management in their rules and regulations establishing minimum

1 standards relating to location, design, construction and maintenance of individual sewage disposal
2 systems with “earth removal activity” substituted for “sewage disposal system” and “zoning
3 officer” substituted for the “Director”; and (iii) permanent water bodies shall not be created as a
4 result of earth removal activities, unless approved by the zoning officer as a part of a soil erosion
5 and sediment control plan under Coventry’s erosion and sediment control ordinance.

6 When the Department of Environmental Management determines specific dates, on a
7 yearly basis, relative to seasonal changes in highest groundwater table elevation, such dates may
8 be used by the zoning officer. When groundwater determinations are made outside the “wet
9 season” and percolation tests are required, such percolation tests shall follow the percolation test
10 procedures as set forth in the Department of Environmental Management regulations.

11 The zoning officer or his appointed representative shall witness all percolation and
12 groundwater determinations and shall certify to the accuracy of technical data recorded. Any
13 changes made in such Department of Environmental Management regulations relative to
14 groundwater level determination and percolation tests from time to time shall be considered part
15 of this act.

16 (6) May require that: (i) off-street parking be provided and utilized by all vehicles
17 engaged in or related to earth removal activity; (ii) any access to excavated areas or areas in the
18 process of excavation be adequately posted with “keep-out danger” signs; (iii) access roads be
19 constructed with a curve so as to help screen the operation from public view; and (iv) all trucking
20 routes and methods be subject to the approval of the Coventry safety commission, and such routes
21 be cleaned, properly posted with signs, repaired and/or resurfaced by the earth removal or gravel
22 processing operator where such is required by the town.

23 (7) Shall require that the use of explosives be done in accordance with the regulations for
24 storage or handling of explosives as set forth by the State of Rhode Island.

25 (8) May prohibit and/or regulate hydrocarbon or hazardous materials storage, fuel tanks,
26 and vehicular maintenance/fueling areas on property licensed for earth removal or gravel
27 processing.

28 **SECTION 5. Requirements for license application and zoning board of review approval.**

29 – As a condition precedent to the issuance of a license pursuant to section 6 hereof, any such
30 ordinance shall require: (i) either prior zoning board of review approval for a special use permit
31 or nonconforming status under the Coventry zoning ordinance for the tract upon which earth
32 removal or gravel processing shall occur; and (ii) the applicant’s submission to the town council
33 and town council approval of:

1 (a) a site plan at an appropriate scale prepared by a registered engineer, land surveyor or
2 landscape architect in compliance with the provisions of said ordinance and setting forth; (i) lot
3 lines, ownership, abutters, adjacent public streets, water courses, existing contours at appropriate
4 intervals, extent of earth removal or gravel processing and location at an appropriate scale; (ii)
5 proper provisions for vehicular traffic, service roads, control of entrances and exits to highways
6 and town roads; and (iii) the relation of temporary and future buildings and operations machinery
7 to the removal areas; delineation of removal areas and depths with an estimate of cubic yardage to
8 be removed; fencing and gates; method of removal; and distance of excavation to street and lot
9 lines or property lines.

10 (b) a restoration or reclamation plan prepared by a registered engineer, land surveyor or
11 landscape architect in compliance with the provisions of said ordinance at the same scale required
12 for the site plan in section 5(a) and as required by the Coventry Erosion and Sediment Control
13 Ordinance, and setting forth the existing contours of the tract of land at the appropriate intervals
14 and, based upon classifications of preliminary samples, the nature of the material to be removed,
15 including: (i) the final contours of the tract of land at appropriate intervals upon completion of
16 earth removal or gravel processing operations; and (ii) the type of ground cover to be planted or
17 applied upon completion of earth removal or gravel processing operations to effectively control
18 wind and water erosion; provided, however, if suitable fertile ground cover existed at the
19 beginning of earth removal or gravel processing, enough of said ground cover to be held in
20 reserve and reapplied for a minimum thickness of three (3) inches. The said land restoration plan
21 and its implementation applies to the conversion of the site and its planned restoration. It is
22 therefore required that: (i) any land restoration plan correspond to a situation which could
23 reasonably occur in the immediate future (zero to five years), and be revised as necessary as the
24 existing physical character of the removal area changes; (ii) the land restoration plan or any part
25 thereof which reasonably applies to an area shall be put into effect within one (1) year of
26 cessation of normal earth removal or gravel processing operation and completed by timetable of
27 restoration plan; and (iii) the land restoration plan include provisions for closure of operations by
28 phases on portions of the site and for removal of equipment from the site. The decision of the
29 zoning officer shall be final in determining when a restoration plan shall be put into effect, either
30 on the entire site or any portion thereof.

31 (c) An erosion and sediment control plan to be submitted and approved by the zoning
32 official, as required by the Coventry Erosion and Sediment Control Ordinance.

33 (d) A certification by a registered engineer, landscape architect or land surveyor that
34 completion of earth removal or gravel processing operations complies with the restoration plan.

1 (e) A bond to insure compliance with the restoration plan and to insure repairs to town
2 roads of damage caused by any hauling operations related to the earth removal or gravel
3 processing activity. The amount of the bond shall be calculated as follows: (i) an amount not to
4 exceed five hundred dollars (\$500) per acre of said tract of land; (ii) any reasonable additional
5 amounts required by the town council for anticipated road damage; and (iii) any amounts required
6 pursuant to the Coventry Erosion and Sediment Control Ordinance.

7 If the plan set forth in subparagraph 5(b) is not complied with, the Town of Coventry is
8 authorized and empowered to undertake and complete such plan and the owner of said tract of
9 land shall reimburse the Town of Coventry for such costs and the Town of Coventry shall have a
10 lien on said tract of land for such costs.

11 SECTION 6. As a condition precedent to any initiation or lateral expansion of earth
12 removal or gravel processing as herein defined, such ordinance shall require a license to be issued
13 by the town council following a public hearing to be held by the town council, with public notice
14 thereof at least ten (10) days prior to the date of hearing in a newspaper of general circulation in
15 Coventry and with notice by certified or registered mail to the applicant and to all property
16 owners within two hundred feet (200') of a tract boundary, and upon the submission of the
17 documents required by section 5 and approval thereof by the zoning official, and approval by the
18 zoning board of review of a special use permit (if required) and the payment of a license fee not
19 to exceed two hundred dollars (\$200), plus the costs of notice.

20 The license shall be issued only to the property owner of record of the land upon which
21 the earth removal or gravel processing shall take place and shall not be transferable (should the
22 land for which a license is issued by sold or otherwise conveyed, the transferee must obtain a new
23 license).

24 The license shall expire at the end of two (2) years and must be renewed biennially.
25 Together with an application for renewal of an earth removal or gravel processing license and
26 payment of the renewal fee not to exceed fifty dollars (\$50.00), plus the costs of notice, plans
27 shall be submitted to the zoning officer, showing any change or anticipated change from
28 originally submitted plans of earth removal or gravel processing activities. If no changes are
29 anticipated for the coming two (2) years, submission of new plans is not required.

30 The zoning officer, upon the Town of Coventry's receipt of an application for renewal of
31 an earth removal or gravel processing license, shall make a field inspection of such earth removal
32 or gravel processing activities to determine compliance with plans and approvals on file. Such
33 findings shall be sent to the town council with a determination of compliance or noncompliance.
34 The town council shall issue the license for another two (2) years upon determination of

1 compliance and payment of the biennial fee. Upon determination of noncompliance, the license
2 shall not be reissued until compliance with such ordinance.

3 In granting or reissuing a license hereunder, the town council may impose additional
4 reasonable conditions especially designed to safeguard the neighborhood and the town, which
5 may include conditions as to the overall operations set forth in this ordinance and as relating to
6 the site plan and restoration plan requirements. The town council may also conditionally approve
7 a license renewal, pending the applicant's compliance with the additional reasonable conditions
8 that it imposes.

9 SECTION 7. Appeals. - - Appeal from the decisions of the town council shall be taken in
10 accordance with title 45, chapter 5, sections 16 and 17 of the Rhode Island general laws.

11 SECTION 8. Revocation of License. - - Any such ordinance may also provide for the
12 revocation of any license issued under the authority of any such earth removal or gravel
13 processing ordinance by the town council for violations of any provisions of said ordinance or of
14 any conditions or stipulations imposed upon said license, after notice and a public hearing. The
15 town council shall fix a reasonable time for the hearing on revocation, give public notice thereof,
16 as well as due notice to the party in interest, and decide the same within reasonable time. Upon
17 hearing any party may appear in person or by agent or by attorney.

18 SECTION 9. Other Provisions. - - Any such ordinance may: (a) provide for a penalty for
19 the violation of any of its provisions of a fine not exceeding one hundred dollars (\$100) for each
20 offense, each day deemed to constitute a separate offense, such fine to inure to the Town of
21 Coventry; and

22 (b) provide that suit may be brought in the superior court in the name of the Town of
23 Coventry to restrain any violation of or to compel compliance with the provisions of any such
24 earth removal or gravel processing ordinance.

25 SECTION 10. Exemptions. - - Any such ordinance shall not apply to already licensed
26 earth removal or gravel processing activity being conducted on the date of its enactment on any
27 tract of land within the Town of Coventry until one hundred eighty (180) days after the enactment
28 of any such ordinance. Any such ordinance may provide that all existing earth removal or gravel
29 processing operations in the Town of Coventry shall be subject to the ordinance, but shall provide
30 that all earth removal or gravel processing licenses issued prior to the enactment of such
31 ordinance shall be valid until the town council acts on any new applications that are filed within
32 one hundred eighty (180) days after enactment of the ordinance. If a timely application for a
33 license is not filed by a property owner within one hundred eighty (180) days after the enactment

1 of any such ordinance, any earth removal or gravel processing license issued for said property
2 prior thereto by the Town of Coventry shall expire.

3 SECTION 11. Severability. - - If any provisions of this act or the application thereof is
4 held invalid, the validity of the remainder of this act shall not be affected thereby.

5 SECTION 12. Town of Coventry and State of Rhode Island to comply with Ordinance. -
6 - If the Town of Coventry or the State of Rhode Island, or any of its political subdivisions,
7 instrumentalities, public corporations or any other agency or organization acting pursuant to the
8 authority of the State of Rhode Island, or shall engage in earth removal or gravel processing for
9 municipal or state purposes, it or they shall substantially comply with the provisions of any earth
10 removal or gravel processing ordinance adopted pursuant to this act.

11 SECTION 13. Conflict of Laws. - - This act shall not be deemed to limit by implication
12 or otherwise any provisions of the Rhode Island Zoning Enabling Act of 1991 (title 45, chapter
13 24, sections 27 et seq.), the Soil Erosion and Sediment Control Act (title 45, chapter 46, sections
14 1 et seq.) or any ordinance enacted by the Town of Coventry pursuant to the authority of the
15 above-referenced laws, or any other state law or regulation of general application.

16 SECTION 14. This act shall take effect upon passage.

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