

**TOWNSHIP OF DENNIS
ZONING BOARD OF ADJUSTMENT
571 Petersburg Road
Dennisville, NJ 08214
(609) 861-9705**

SEPTEMBER 28, 2011

MINUTES

This meeting was published in accordance with the "Open Public Meetings Act". Notice of this meeting was published in an annual meeting notice in the Cape May County Herald and posted in Township Hall.

The meeting was called to order by Chairman Sorenson. The following members were present: Mr. Sorenson; Ms. Mascia, Mr. Jones, Mr. Germanio; Mr. Haig; Mr. Penrose; Mr. Kelly; Mr. Baldwin and Mr. Robertson. Also present were Tony Harvatt, Board Solicitor and Vincent Orlando, Board Engineer.

Mr. Harvatt administered the oath of office to Mr. Kelly.

R.E. PIERSON CONSTRUCTION, INC. - Block 224, Lots 68.01, 73, 74.02, 75.03 and 78.04:

Located on Woodbine-Ocean View road in Ocean View in both the B (Business) and C (Conservation) Districts. Applicant seeking a use variance to construct and operate a ready mix concrete plant and a Class B. recycling facility in addition to the existing mining operation. Applicant also requesting a height variance where 35 feet is permitted and 82 feet is proposed.

Mr. Sorenson advised that both all Alternates would vote on this application; as Mr. Kelly, Mr. Germanio and Mr. Turner were recusing themselves due to conflicts.

Mr. Harvatt indicated that this hearing may go on longer than this evening and if a member is not able to attend any hearing related to this application, in order to vote he or she will have to listen to the recording of the meeting missed.

James Pickering, Esquire appeared as attorney for applicant. He indicated that he will be joined during the course of meeting by Bill Ziegler as co-counsel. The applicant is here tonight to present an application for a concrete plant and a Class B recycling facility. He indicated that ordinarily they would not need approval for the recycling facility but due to multiple uses on the property, they are before the Board. Mr. Pickering discussed an asphalt plant as an accessory use, but the applicant is seeking use as a concrete plant.

Mr. Harvatt advised that Mr. Germanio is currently sitting on the Board and he recused himself from the last hearing on this matter. Now, due to a change in ownership of a parcel, it is believed that he is no longer within the 200 feet. Mr. Germanio has been advised by the Construction Office that his property is 214 feet from the subject property. Mr. Harvatt wants to make sure that his sitting on the Board for this application would not be an impediment. Mr. Pickering indicated that he would hate to see the matter proceed and then find out that Mr. Germanio's property is within the 200 feet. Mr. Harvatt suggested that Mr. Germanio remain sitting on the Board tonight and that Mr. Pickering flush out the issue. Mr. Pickering feels that if that information finds Mr. Germanio's property within 200 feet that it will invalidate the hearing tonight. It was decided that Mr. Germanio will recuse himself from this application. Mr. Harvatt announced that Mr. Germanio will recuse himself and that Mr. Penrose will now vote.

Mr. Harvatt administer the oath to Mark Gibson.

Mr. Pickering questioned Mr. Gibson.

Mr. Gibson testified that he is a professional land surveyor and a principle of Gibson and Associates, and he has been licensed professionally since 1987. He further testified that he is familiar with the subject property. He review past ownership of the property. He confirmed that he has been on the subject property, that he lives and owns property in South Seaville and his office is located in Ocean View. His office surveyed the property for the applicant. (Survey marked as A-1.) He referred to the survey and indicated the property location and roads in the vicinity of same. He described the subject site as being what you would expect of a mining site, with grading and standing water; and that the site is licensed for mining. He referred to the survey and indicated the section of the property purchased by Mr. Ay later in his ownership which has never been mined. He confirmed that the portion along Corson Tavern Road is not used at all and that Mr. Ay owns property and retains an easement in that area. Mr. Gibson is currently working on the application which is to come before the Planning Board for its mining permit renewal. He discussed the Letter of Interpretation (LOI) which exists with respect to the property. which was valid for 5 years and was extended for an additional period in 2009. He referred to an aerial photograph from 2010 of the site and described the location of the site. He advised that topographics have been updated this summer and are illustrated on the survey. He discussed the zoning of the property and showed the location of the various zones encompassing this property. He referred to an aerial photograph and described surrounding properties and their uses. (Aerial photograph marked as Exhibit A-2.) He described what is located on the Cape May County site. He referred to applicant's site and indicated the approximate location of various uses and proposed uses. He testified that the proposed facility would be approximately one-half mile from the nearest commercial site, one-half mile from the nearest residential site; about 900 feet to the nearest campground and more than and one-half mile from next campground (Resort Campground).

Robert Sandman, Esquire appeared on behalf of Resort Campground at the previous hearings and advised that he would like to cross-examine the witness.

Mr. Harvatt then discussed how to proceed. Mr. Pickering agreed as long as he can cross-examine after each witness.

Mr. Sandman indicated that he has many exhibits and would like to spread out on a table. Mr. Harvatt suggested that he set up on table in rear of room.

Mr. Sandman then proceeded to question Mr. Gibson.

In response to Mr. Sandman's questions, Mr. Gibson responded that the site does abut Corson Tavern Road, the easement is owned by the applicant and is wide enough for a street. He further indicated that he would have to check the Easement Agreement as to any restrictions for egress and ingress. The easement is for the benefit of Mr. Ay; he doesn't know of any restriction by applicant to use it as access, but reserved the right to check the easement document. He discussed the amount of vegetation, the type and its location on site. Mr. Gibson agrees that much of the vegetation has been removed. He discussed the buffer line along property line of Resort Campground. He indicated that he has done soundings of the pond in that area in the past and believes approved plans allow for a depth of 65 feet. He described the buffer as being sloped with a 12 to 14 feet, 3 to 1 or 2 to 1 vegetated slope. He described the area of dredge as he last knew of its location and indicated that the other ponds on site are more shallow. He has not sounded the actively dredged area recently. He described adjacent properties to the site - all of which are commercial and in the Business Zone. He confirmed that there is a common line between the subject site and Outdoor World Campground and that the campground encroaches in several areas on the applicant's site. He testified that certain areas are not eligible to be mined and described those areas and reasons why they could not be mined; and in order to mine those areas, the applicant would need to obtain a variance. He described the difference between sandwash and mining, but indicated that Mr. Mitchell would probably be better at explaining same.

Mr. Sorenson then asked if the Board had any questions for Mr. Gibson.

Ms. Mascia asked for a closer look at the aerial photo.

Mr. Sorenson then ask the public if there were any questions for Mr. Gibson.

Matt Blake, after taking the oath, asked if a permit is required by local ordinance or otherwise to do sandwashing on 15 acre parcel. Mr. Gibson advised that the site had received approval for sandwashing about 3 or 4 years ago. Mr. Blake then asked Mr. Gibson to point out where the refuge is located. Mr. Gibson pointed out the location where he believes the refuge is located adjacent to site. Mr. Gibson further indicated that there are environmentally sensitive areas in the vicinity. Mr. Blake then asked why there was a distinction between residential and campground uses. Mr. Gibson indicated that as he understands it, campgrounds are non-conforming uses and no additional campgrounds are permitted in the Township.

Walter Kaczor was then sworn in and started to give his opinion. Mr. Harvatt advised that at this time only questions to Mr. Gibson are being entertained and that opinions and comments will be allowed later. Mr. Kaczor then questioned the opening of the road. Mr. Gibson advised that he-

does not know of any plans at this time, but knows of no restrictions and reserved his answer until he is able to re-read agreement.

Mr. Sandman raised an objection, saying that Mr. Gibson is testifying as surveyor and now is giving planning testimony. Mr. Gibson said it is his belief that there would need to be an application to the Planning or Zoning Board and notices sent to use as roadway. Mr. Sandman asked whether or not it was a permitted use. Mr. Gibson indicated that he was not sure.

Ms. Mascia inquired about the distance from Woodbine Ocean View Road to Mr. Ay's lot. Mr. Gibson indicated that it was approximately 1250 feet.

Mr. Sorenson asked if there were any further questions for Gibson.

Mr. Pickering indicated that the applicant would need road opening and County approval and possibly State review before it could be used as road. Mr. Sandman wanted to know what if applicant wanted to use as is as a dirt road. Mr. Gibson advised that- Mr. Ay currently uses it as access to his property and that approximately 200 - 250 feet of same is paved, then the dirt portion makes its way to applicant's site and a gated entrance established for safety purposes and that the gate was placed as a condition of approval.

Mr. Pickering then called his next witness, Curt Mitchell.

Mr. Harvatt administered the oath to Mr. Mitchell.

Mr. Pickering directed questions to Mr. Mitchell.

Mr. Mitchell, in response to Mr. Pickering's questions, described a sandwash and how it operates. He referred to the survey and showed the location of the sandwash. He testified that the sandwash is a permanent structure and is taxable and that the applicant previously asked the Township to make it permanent instead of moveable. Mr. Mitchell advised that he has been with the company for 23 years, and his job includes marketing, front man for expansions, etc. He further testified that the applicant has no intention of doing anything with the "pencil" area; and that Mr. Ay is a good neighbor; the property is narrow and they would have to build and construct a road; and it makes no sense to use that road for trucks when they have access on Corson Tavern Road. He further testified that they currently have 13 employees and just recently hired an additional driver; and that the employees on site include a plant manager, dredge operator, load manager, office manager, and the balance are truck drivers. He further testified that the mining operation is fully permitted by the Township and by the State, and that they have been mining at this location for about 5 years. He added that business is not as good as it used to be. He also indicated that new mixes require a higher quantity of crushed stone; that concrete sales are down because concrete is used mostly in construction, which is down; and they no longer have asphalt. He advised that the hours of operation are generally 6:30 a.m. to 3:00 p.m. He described traffic on to and off of the site and said that ideally they try to get the trucks out early and back by 3:00 p.m., which is in the

applicant's best interest so don't they have to pay overtime. He also said that depending on where trucks are going depends on how many trips are in and out of site on any given day. They try to maintain the best utilization of the trucks and keep them running full. As a rule, he advised, the plant is closed for 6 to 8 weeks in the winter when it is slow and they then perform maintenance and build up supply. He advised that the sand plant can't be run when it is freezing. He further advised that since they have been on the site, the applicant has had a temporary Class B operation, which was done by approaching the Township and sending notices, that is then sent to the State and the State issues a temporary permit with a number of limitations. There are exemptions and restrictions to this process and Mr. Mitchell advised of the 2 that he is familiar with. Mr. Mitchell indicated that the machinery for the temporary use is similar to the machinery that is being requested in this application and believes that was around this time of year. He anticipates 30,000 tons of recycling per year as a realistic number and that the recycling would involve the recycling of curbing, sidewalks, etc. from a size of about ½ inch to a sand consistency. He indicated that 12 to 14 tons would be the average in each incoming truck and 24 tons outgoing and those numbers would be used to determine the approximate number of trucks in and out based on the 30,000 tons anticipated. He also indicated that employees would be multi-tasking and working at both the sand plant and the recycling facility. He advised that 30,000 tons is the goal they are shooting for, but will be less to begin with. Mr. Mitchell testified that the cement trucks carry 24 tons. He further testified that the sand for the concrete would come from the site; the stone would come from Pennsylvania; and that their trucks would take sand and bring back stone so there would be no additional truck traffic. He describe the various jobs, number; and that the starting pay is between \$22 to \$25.00 per hour, with benefits. He is aware of only 1 other concrete plant in Cape May County, which is Action Supply; and that there are a couple in both Atlantic County and Cumberland County. He advised that their trucks are covered with a tarp, which he believes is a State law, but which is also company policy. He referred to the plan and described the concrete plant machinery (Exhibit A-3 - plan for central mix plant from Erie Strager). He described the dimensions of concrete plant; that a typical plant is high and that the proposed plant is approximately 80 feet in height. He indicated that the applicant owns a facility in Winslow and described that site and how it would compare to the proposed plant at this site. (Aerial photos of Winslow plant marked as A-4.) He testified that the photos show site as it substantially is today. He described how the plant works. A photo (A-5) looking down on Winslow facility showing recycling facility at that location was submitted. He testified that the proposed recycling facility will look substantially like that at the Winslow plant. He described the crushers and how they work. He indicated that the applicant is only asking for concrete and asphalt recycling, nothing else. He further testified that they will need to get site plan approval and will be inspected by the State, usually monthly, that they are operating within all boundaries. He further indicated that the applicant is agreeable to making existing berm permanent as a sound barrier. He also testified that the dredge moves and pulls itself back and forth sideways and moving from one pond to another is a substantial project. His understanding is that only certain operations can function at the same time and others must be operating one at a time. Mr. Mitchell feels the site is well suited for the proposed uses; the site is 170 acres and already disturbed; it sits on and off the road; materials are there which minimizes truck traffic; and it located on a County roadway, which is a designated truck route.

Mr. Sorenson then asked for questions from the Board.

In response to questions from Ms. Mascia, Mr. Mitchell responded that they will recycle concrete and asphalt; there are presently 8 trucks on site; each averages 3 to 4 trips per day; they currently operate Monday through Friday; and if the application is approved, they will probably add about 5 more trucks, for about 20 additional trips per day. He said there can be some dust when crushing concrete, and the State is very strict about this, and that they use a mist to keep it at a minimum. He further indicated that their drivers need commercial driver's license, and that the company is careful about who they hire for liability reasons. Mr. Mitchell also said the width of the plant is about 24 inches, but is rather lengthy and that he is not sure of the length due to the angle required by conveyor belt.

In response to questioning by Mr. Jones, Mr. Mitchell advised that it is powered by electric and that the sound is minimized by operating it by itself.

In response to questioning by Mr. Haig, Mr. Mitchell indicated the site in Winslow is 14 to 17 acres in the area questioned by Mr. Haig. He described how rebar is removed, and that rebar is a small percentage and is scrapped at a scrap yard as they have no use for it. He also indicated that the Increased truck traffic would be from concrete, and that there would be no increase from existing uses.

In response to questioning by Mr. Jones, Mr. Mitchell advised that everything is on location.

In response to questioning by Mr. Penrose, Mr. Mitchell advised that for this application, the machinery has to be stationery and not portable. Mr. Pickering interjected that Mr. Pierson would be happy to make both structures permanent.

Mr. Harvatt administered the oath to Vincent Orlando, P.E. and Bruce Klein, P.E.

In response to questions by Mr. Klein, Mr. Mitchell discussed their hours of operation; truck traffic and times of operation; explained how weather affects operations; and discussed busier times of year - spring and fall. In discussing the truck traffic, he said that there be a run of trucks leaving first thing in the morning, but it evens out during day; and that the vast majority of the concrete trucks go out full, but not always - probably average is 90%.

In response to questions from Mr. Sandman, Mr. Mitchell indicated that the components of concrete are cement, stone and sand and also described the percentage of each in a concrete mixture. He also advised that additives are added and they are stored in large plastic containers and are brought in by truck. Mr. Mitchell also said that the trucks coming back to site are either coming back empty or loaded with stone, as the company tries to minimize truck trips and they would not send an empty truck from Ocean View to Pennsylvania as that is not cost effective. He also said that at the current rate they are going, the site has another 20 years of product available for removal. He then read from a document provided by Mr. Sandman indicating how many cubic yards were permitted to be removed at the time Pierson purchased property. Mr. Sandman identified documents and same were marked into evidence (O-1, Mining Agreement from 2006; O-2, Sand

Mining Only document.). Mr. Sandman then continued his questioning of Mr. Mitchell. Mr. Mitchell indicated that the numbers identified in the Mining Agreement were put in as a safeguard for the purchase of the property.

Mr. Sandman has concerns with the fact that there are 2 to 3 million yards to be mined and if they get the approval, they could get a contract tomorrow that could increase truck traffic tremendously. Mr. Pickering responded that they own the property, they have a lease and they can mine what they want tomorrow.

There was then a discussion between Mr. Harvatt and Mr. Sandman regarding the amount of mining.

Mr. Mitchell testified that they have a job now with Cape May County calling for 700,000 tons of fill dirt and they will not take 1 truck from their site because it is not feasible. They have no limitations on the amount of sand they can remove now. Sales are driven by the economy and deals that can be made with other contractors. He further testified that he is aware that summer weekend traffic is horrendous.

Mr. Sandman indicated that calculations of truck traffic for the anticipated goal of concrete production and calculations of truck traffic for the recycling facility would have to be added to mining truck traffic.

Mr. Mitchell discussed truck traffic and the number of trips for concrete, sand, recycling, stone, additives, customers, salesmen, and employees. He indicate that he is on the site at least once a week. He discussed the dust from product, saying that there can be dust if it is dry; there are items which need to be monitored; confirmed that Pierson has been cited in the past for reporting violations; and discussed safety of employees' eyes and ears when using equipment. He testified that they examine the material when it comes in, but they cannot check every single piece, for oil stains or contamination and that the examination is visual. If there is a repeat offender, they do not allow them to come back in. He discussed hours of operation and types of trucks and how much material they hold. He discussed the noise made by trucks delivering product, movement of product on site and noise generated by crushers. He agreed that noise is a problem and has to be controlled. He indicated that 2 existing sites are in closer proximity to residential areas than this site. Again, he described how a sandwash works. He discussed crushers and the noise generated by the machines, and that the machines have the potential for giving off emissions, but need to be maintained. There are occasions they work on Saturdays, but do not use the crushers on Saturdays. There are circumstances where a contract calls for working at nights or weekends. If this happened, they would have to ask for permission if the hours were beyond what the Board may approve. Doesn't know what portion of plant is considered permanent and, therefore, taxable. Pierson did at one time have plans to put an asphalt plant on this property, but has no plans at this time. He described the "disturbed site" and the fact that it was disturbed prior to Pierson purchasing the site, and that the site is pretty much open and he feels it is better to place on this site instead of disturbing another site; businesses are related and can help supplement each other. He referred to a page of sworn testimony from prior hearings and respond to Mr. Sandman's question regarding same.

Mr. Harvatt interrupted at this point and advised that the Board Chairman would like to end the hearing at 10:00 p.m. in order that the Board may conduct other business that needs to be taken care of.

Mr. Sandman continued with questions to Mr. Mitchell.

Mr. Mitchell advised that there is no real reason that they need to start any earlier than 6:30 a.m.

Mr. Sandman asked to mark Inspection Summary of R.E. Pierson Materials dated 9/9/11 as Exhibit O-3 and asked Mr. Mitchell to refer to same. Mr. Harvatt asked about the document. Mr. Sandman advised that it is a DEP document. Mr. Mitchell advised that he has never seen the document before, but says Pierson was out of compliance regarding record keeping but not sure what is actually refers to.

Mr. Sandman asked to mark Exhibit O-4 - same type of inspection report as O-3 relating to Dennis Township property. Mr. Mitchell read from the report, which says Pierson is out of compliance regarding water diversion. Again, Mr. Mitchell advised that he has never seen this document before.

Mr. Sandman asked to mark Exhibit O-5 - Inspection Summary Report with respect to Logan Township, R.E. Pierson, dated 9/9/11. Mr. Mitchell read from O-5, which said that Pierson was found out of compliance.

Mr. Sandman asked to mark Exhibit O-6 - Inspection Summary Report R.E. Pierson, Monroe Township, dated 6/2/11, which indicates applicant was cited for a non-compliance issue. (Sandman to make copies of Exhibits and provide to Board at next meeting.) Mr. Sandman then continued with his questions to Mitchell.

Mr. Mitchell testified that he doesn't know the exact number of employees at Winslow, but believes the number is similar to this site.

Mr. Sandman provided a copy of a portion of the deposition transcript of Mr. Mitchell's testimony (page 23). Mr. Mitchell was asked to start reading at bottom of page 22 and continue on to page 23. Mr. Mitchell read from the transcript concerning the peak number of trucks; and indicated that that was 2 years ago and is not what it is now.

Mr. Sandman then provided a copy of page 43 of the transcript to Mr. Mitchell and asked how many days of week on average they operated. Mr. Mitchell, reading from the transcript, said- 5 days, possibly 6. He then indicated that there was the possibility of 6 days per week operation. He also indicated that he had not previously seen the transcripts himself.

Mr. Sandman advised that he had no further questions of this witness.

Mr. Sorenson then asked the public for questions of Mr. Mitchell.

John Thompson was sworn in. In response to Mr. Thompson, Mr. Mitchell advised that he was at the plant in Ocean View at least once a week for several hours; he confirmed the numbers for the concrete plant; advised that they cannot run the concrete and recycling operations at same time; that the sand plant will continue to run; and that they will do as much business as they can get and will have to complete to get business.

Alma George was sworn in. In response to Ms. George, Mr. Mitchell advised that they have 2 plants in Pleasantville - Penn Jersey and Pierson; if the variance is granted, they will have to get CAFRA approvals and any other permits, they will begin hiring and cross-training; that training will probably be done by employees brought in from other sites; and also answered questions about new type of asphalt developed within last 10 years.

In response to another question, Mr. Mitchell indicated that the production of concrete doesn't use a lot of water; he explained how water is injected - about 25 gallons per barrel, and that the amount is minimal.

Ms. Mascia asked if it is necessary to have a Class B with concrete plant. Mr. Mitchell indicated that it is nice to have both, but not necessary.

At this point, Mr. Sorenson advised that he was calling a halt to the hearing tonight, and the application will continue at the Board's next meeting.

Mr. Pickering advised that he will not allow this application to carry on as it did last time.

Mr. Sorenson advised that the Board still had business to conduct.

RESOLUTIONS:

RISKO BURTON HOLDINGS - Block 262, Lot 11.14:

A motion to approve was made by Mr. Jones, seconded by Ms. Mascia and carried by all voting members.

ADD A ROOM - Block 256.03, Lot 14:

A motion to approve was made by Mr. Penrose, seconded by Mr. Jones and carried by all voting members.

PROFESSIONAL SERVICE CONTRACT - T & M ASSOCIATES:

Mr. Harvatt explained to the Board the purpose of this Resolution. A motion to approve was made by Mr. Haig, seconded by Ms. Mascia and carried by all voting members.

OTHER BUSINESS:

Mr. Sorenson requested a motion to pay the bills. A motion to approve was made by Mr. Jones, seconded by Mr. Baldwin and carried by all voting members.

There being no further comments or business to discuss, the regular meeting was adjourned at 10:17 p.m..

Carla A. Coffey, Secretary
Dennis Township Zoning Board of Adjustment

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