

NON-APPLICABILITY OF RES JUDICATA

Based on application history and the unique details of the current proposal, the below missive demonstrates that the current application for a proposed ready-mix concrete plant is not subject to *Res Judicata*, and therefore can be considered by the Dennis Township Zoning Board as a new and unique application.

Background

This application proposes to construct a ready-mix concrete plant on the Pierson Gravel pit site located in Dennis Township, Block 224, lots 68.01, 73, 74.02, 75.03 and 78.04. This site is currently licensed by Dennis Township as an active sand mine. There have been applications made to various Dennis Township boards, which have included the construction of a ready-mix concrete component, in addition to other light industrial uses. This application is for the addition of ONLY a ready-mix concrete plant.

This site has been utilized as a sand and gravel mine for well over 60 years, i.e., since the 1950's. R. E. Pierson acquired this site, with all active permits, in September of 2006 and has continued the mining operation without interruption.

An application for three (3) uses – an asphalt plant, a Class “B” recycling facility, and a concrete plant – was submitted to the Dennis Township Zoning Board of Adjustment in 2007. This application for use variances was approved, as evidenced by resolution 07-06. A technicality surrounding public notice was subsequently raised, resulting in vacation of the January 24, 2007 Zoning Board approval.

Subsequently, an application for two (2) uses – a ready-mix concrete plant and a class “B” recycling plant – was considered by the Dennis Township Zoning Board of Adjustment in 2007-2008. This application was denied, as indicated in Resolution 08-20. This action led to litigation between the Township of Dennis and the Applicant. This court case was amicably resolved under Docket No. CPM-77-09. Part of the resolution required the Dennis Township Zoning Board of Adjustment to adopt a resolution amending resolution 08-20 so that said denial shall have no *res judicata* effect (ref. resolution 10-17). Accordingly, an application for two (2) uses – a concrete plant and a class “B” recycling facility – was resubmitted to the Dennis Township Zoning Board of Adjustment in 2011. This application was reviewed, and the “D” or Use variances were denied, as evidenced by resolution 12-06.

Current Application

The current application is significantly different than both of the previous applications. The previous applications included an asphalt plant and a class “B” recycling facility. This application does not. The resolutions memorializing the denial of the previous applications cite excessive noise issues associated with the class “B” recycling facility's concrete and asphalt crusher equipment. The concrete plant currently proposed will generate lower and more intermittent noise levels than the recycling crusher. The size and capacity of the currently proposed concrete plant are also less than the unit in the prior applications.

Specifically, this application is different from the applications cited in resolutions 12-06 and 08-20 for the following reasons:

1. This application does not include a class "B" recycling plant; the project scope / uses are significantly reduced, i.e., by one-half.
2. The location of the concrete plant is different from previous applications, which will alter the internal traffic patterns and noise levels at the property lines, and virtually hide the plant from public view.
3. The height and capacity of the concrete plant have been reduced.
4. This application seeks relief which is entirely different and of lesser proportions than prior applications.

Non-Applicability of Res Judicata

A review of the previous applications and the reduction in uses and scope in the current proposal support the position that this is a new project, independent and separate from previous submittals, and that accordingly, *Res Judicata* is not applicable.