

# Case

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## Court scraps recycling case, returned to board

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Nobody wins.

After months of litigation over what kind of business can legally operate in an old junkyard, the court case, which pits a recycling company against the Southampton Zoning Board, may be over but the two sides will meet again.

In a written opinion Thursday, Burlington County Superior Court Assignment Judge Ronald Bookbinder vacated the board's decision to deny Allied Recycling expansion plans and kicked the matter back to that same governing body to sort out.

"Here, the record is insufficient as to what the intended change in use from auto salvage to scrap metal will entail," Bookbinder wrote. "Moreover, the board did not determine the quality and intensity of the historic use."

The board must set a baseline based on the township's master plan adopted in 1982.

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"Then if the intended use is not consistent with the historic use, the board must determine whether the intended use constitutes a substantial change," the judge ruled.

The battle began last September after Allied Recycling submitted an application to put in a truck scale and make improvements to a building on the property off New Road.

Residents voiced strong opposition to any expansion of operations at the site, fearing increased truck traffic, noise, lights and the potential for pollution of the wells in the area.

After hearing hours of testimony last fall, the board eventually denied the company's request for a certificate of non-conforming use that would permit the property to be used as an auto salvage yard and metal scrap yard.

The board shot down the application based on the grounds that recycling scrap metal was not identical to the long-standing operations of an auto-salvage yard.

"The board failed to consider whether the new intended use was substantially similar to the historic use, and therefore applied the incorrect legal standard," Bookbinder wrote in his decision. "Therefore the board's finding is vacated and the case is remanded to the board for further hearings consistent with this opinion."

"You're going back to the zoning board," the judge told the attorneys in Superior Court in Mount Holly on Thursday.

Despite the declaration by the judge that no one can lay claim to a victory in the case, Evesham attorney Mike Ridgeway, who represented Allied Recycling, believes the judge made the right call.

"We're pleased with the judge's ruling that the board used an improper standard when making its determination ..." he said.

He went on to say that the company will be ready to return to the board to have his clients application heard in June.

The burden still falls on the recycling company to convince the board that the proposed expansion is not substantial change in use of the property.

If it does, the Allied Recycling would need approval of a land use variance.

"This property has always been an auto salvage yard," said Thomas Coleman III of the Raymond Coleman Heinold Norman firm, which represents the board.

He added the company has expanded beyond the scope of what's allowed for the property by accepting all sorts of scrap metal, batteries among other items not related auto salvage.

"That's not what the property has historically been used for," Coleman said.

On Friday, Theresa Lettman of the Pinelands Preservation Alliance voiced concern about the consequences of expanding operations at the business.

"I think there's been a change in use," said Lettman, director of monitoring programs for the alliance. "It's become more than an auto salvage yard. I'm concerned about what impact (Allied Recycling's operations) will have on the water quality and storm runoff."

The owner of Allied Recycling said it's clear what the township and some of his neighbors want to do.

"This case is about how the township and a group residents want to put me out of business, a business that's been around since the 1940s," said Thomas Gabrysiak, president of family owned business.

Coleman disagreed.

"We're just enforcing what's on the books," he said.