

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

**934**

**CA 15-00113**

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, VALENTINO, AND WHALEN, JJ.

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IN THE MATTER OF CERTIFIED ROAD  
CONSTRUCTORS, INC., DOING BUSINESS AS  
MATERIAL SAND & GRAVEL, AND TROY  
SAND & GRAVEL CO., INC.,  
PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

TOWN OF RUSSIA ZONING BOARD OF  
APPEALS, RESPONDENT-RESPONDENT.

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TUCZINSKI, CAVALIER & GILCHRIST, P.C., ALBANY (ANDREW W. GILCHRIST OF  
COUNSEL), FOR PETITIONERS-APPELLANTS.

SCHMITT & LASCURETTES, LLC, UTICA (WILLIAM P. SCHMITT OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

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Appeal from a judgment (denominated order and judgment) of the  
Supreme Court, Herkimer County (Norman I. Siegel, J.), entered April  
16, 2014 in a CPLR article 78 proceeding. The judgment dismissed the  
petition.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs.

Memorandum: Petitioners commenced this CPLR article 78  
proceeding seeking to annul a determination of respondent, Town of  
Russia Zoning Board of Appeals (ZBA), denying petitioners' appeal of a  
stop work order issued by the "Codes/Zoning Enforcement Officer" of  
the Town of Russia (Town) after petitioners sought permission from the  
Town to update their asphalt-making machinery from older "cold mix"  
technology to incorporate a more modern "hot mix" process. Supreme  
Court dismissed the petition.

We affirm for reasons stated in the decision at Supreme Court.  
We add only that, contrary to petitioners' contentions, the ZBA did  
not improperly consider evidence submitted to the Town "by or on  
behalf of" petitioners with respect to previous, unrelated matters  
(see *Matter of Silveri v Nolte*, 128 AD2d 711, 712; cf. *Matter of  
Sunset Sanitation Serv. Corp. v Board of Zoning Appeals of Town of  
Smithtown*, 172 AD2d 755, 755), the ZBA fulfilled its obligation to  
"disclose all evidence upon which it relied in reaching a decision"  
(*Matter of Stein v Board of Appeals of Town of Islip*, 100 AD2d 590,  
590; see generally *Matter of Collins v Behan*, 285 NY 187, 188), and

the ZBA's "determination is supported by more than the generalized objections of neighbors" (*Matter of Ifrah v Utschig*, 98 NY2d 304, 308).

Entered: November 20, 2015

Frances E. Cafarell  
Clerk of the Court