Atlantic Paving & Contracting, LLC
Long Branch Zoning Board Application ZB13-10

Applicant seeks to legalize the nuisance use as an outdoor storage & contractors yard along a brook for multiple businesses and subdivide the lot to add two houses on the residential portion of the lot. The stockpiling of dirt and other material will be moved closer to Plaintiff's new offices. Applicant seeks to evade adding a cul de sac as required by ordinance for subdivisions at dead ends, just as they have evaded in previous subdivisions and dismissed unprosecuted site plans. Instead, they seek to enclose the entire dead end with sliding gates.
Applicant's attorney provided a case and land use expert and seeks to purport that simply rearranging, moving the increasing mess they have illegally created, albeit removing some of the trailers where the fencing will go, will benefit the area and warrant a use variance. As pointed out to the board, this violates the unclean hands doctrine and unlike the case presented, Mr. Bruno the original and current landowner's use was illegal when first commenced, and is not pre-existing legal,

Standard of Review: Decisions of Zoning and Planning Boards must not be "arbitrary, capricious and unreasonable" As to presentation of evidence, the NJRE (NJ Rules of Evidence) used in Courts don't necessarily apply - evidence need only be relevant to the issues being considered, If evidence such as depositions are allowed under NJRE, however, and it is relevant, it should be allowed in.

This is the fourth site plan for a use variance for the E&L Paving owned property due to pressure of litigation and the municipal court. The first two were filed in 1986 and 2000 and were dismissed without prejudice for lack of prosecution. Two fines were paid in 2000 for expansion of use without prior approval. The third application was filed 2002 and withdrawn 5 years later. The current application was filed Oct. 9, 2013 and continues. The Applicants are also in municipal court since March 2013 with at least 14 summonses for expansion of use, however all along they been allowed to operate while in violation rather than being prevented as required by law. (Ordinance 345-75 E3 requires the zoning officer to terminate all violations within 30 days.) Furthermore, municipal courts don't offer injunctive relief anyway – that's done thru restraining orders in Superior Court. Long Branch obtained one in 1986 against Bruno/E&L Paving for stockpiling and certainly knows this. As the Long Branch Municipal Offices and Court are both on Broadway, this charade/conspiracy has become known as the longest running play on Broadway.

The original zoning board and attorney are Defendant's in the active lawsuit/appeal for participating in the conspiracy and breach of fiduciary duty which has allowed Applicant to evade the zoning laws. All except the former viee-chairman, who now serves as chairperson, have properly recused themselves.

Plaintiff/ FairtrialNJ's founder, whose property and new office addition is directly adjacent to and across the street, has provided the opposition and was allowed to freely cross examined the witnesses. He finally got to put on the opposition case on Feb. 27, 2017 with his appraiser first testifying as to the ongoing depreciation affirmed by the tax board and continued depreciation if the plan is approved. Plaintiff went next but ran out of time. Two adjacent neighbors also voiced

objections. The zoning officer, Michelle Bernich who issued the dirty zoning permit was in attendance as emissary of the municipal court which does not grant injunctive relief. The final hearing is set for April 24, 2017.

Rigging?: Though fairness was provided in one respect as noted, it was obvious that the board professionals had rigged (good word – thanks Pres. Trump) their review to advocate for Applicant. They appear to have their marching orders. The zoning board engineer, is Elizabeth Waterbury, formerly of Elizabeth Waterbury Associates, now part of Cranmer Engineering which touts "Integrity, Innovation, Excellence" on its letterhead. (Ms. Bernich used to work for Ms Waterbury at the former). The zoning board planner is Mr. David Roberts of Maser Consulting, a major land use/engineering firm. Conflicts attorney is Mr. Kevin Kennedy, Esq. Amazingly, neither the zoning board engineer or planner knew or mentioned the cul de sac requirement in their initial review though the site plan is entitled "sub-division" and a dead end is present in an industrial zone with no circulation on the narrow street. Ms. Waterbury was concerned about a shade tree but not about the cul de sac. When questioned about it and told about the evasion of the requirement in previous subdivisions, she states applicant's property is "already constructed" though significant site changes are evident and have been discussed with the board. She also states that DPW, Defendant Hayes, (who recruited the DPW director), and the zoning officer met and DPW wasn't interested in a P type or any cul de sac though it would enable garbage collection and snow plowing. Nevertheless, it was pointed out to her that no one is asking DPW to do anything either to the dead end street or onsite as to a cul de sac. – that's purely the subdivider's responsibility. The position of the board engineer & planner not to require a cul de sac, if adopted, would be arbitrary, capricious and unreasonable and struck down by most reviewing courts in the US, albeit perhaps not in Monmouth Superior Court from past experience. Per the above meeting with DPW, Applicant agreed to widen the street 7 feet by removing the grassy ROW and that a no parking zone should occur to allow vehicles to pass while trucks unload in the street, but that requires an Ordinance be passed by the city council and is a separate issue from a cul de sac.
Some of the other obvious rigging:

- The board planner failed to do a basic investigation and count the total number of cars and pieces of equipment onsite and parking offsite during and after the workday in order to gauge the space needed versus what is alleged/proposed. Its obvious from photos sufficient space is lacking now. It will only get worse when the houses are built - that's a reasonable assumption and the standard is reasonableness.
- The board professionals though claiming to visit the site and witnessing the various pieces of equipment and processes in close proximity to neighbors, including sorting of scrap metal, failed to require applicant to have basic independent sound testing done
- Despite being a major consideration as to the extent of the buffer area and available lot, DEP has not yet been consulted though the marking out of wetlands has occurred. This is unreasonable. However due to Plaintiff's building shaking due to the 2 excavators and concrete pulverizing machine operating over there in addition to the noise, NJDEP was called. (See "DEP Notified" as to how this was handled) No questions either or concern by the board as to applicants lack of reasons for waiving the 100' riparian buffer required under "preservation of features", Ord. 345-11A
- Applicant was made to propose a staging schedule for the various parts of the project but there was no concern or questioning by the board during the staging review as to the

removal of the curbs and street widening. This was totally omitted. Since circulation of traffic is required regardless of any use approved, the rest of the staging should be contingent on the city council first approving this.

- The zoning board engineer requests a stormwater drainage report yet it appears the city engineer was not authorized by the city administrator to furnish a report about the changed plans which added stone and retention basins, to see whether sufficient. Plaintiff called the engineer who confirmed this and further stated that "he didn't think parking of heavy trucks on stone surface is plausible or advisable."
- Due to Plaintiff's objection as to the lack of specificity in the application as to the number of vehicles and businesses and pieces of equipment proposed, counsel had Applicant set benchmarks on this. While this is being done, counsel asks if garbage pickup will be private for the various businesses at the site without any prior mention of such by Applicant who has been using city service. Applicant nevertheless states "yes". Applicant claims all yard employees will come in, get their vehicles and leave so only 2 persons are onsite in the office and 1 in garage. So why is commercial collection being mentioned by the conflicts counsel? Could this be intended to downplay the need for a cul de sac for city garbage trucks to maneuver and advocate for applicant's use by instituting private collection? According to Applicant's engineer, the City is to depend on Applicants access to snowplow the end of the street and turn around.(Fortunately, the board rejected the proposed use and noted Applicant's mistruths and the cul de sac requirement in its Resolution below)

Plaintiff/objector made the points that due to unclean hands, Applicant was not entitled to relief. Also, the use, if any was restricted to the inside of the garage so no outdoor use lawfully preexisted. Plaintiff documented how Bruno's use was unilaterally created and this is about establishing a new nuisance outdoor use contrary to the case submitted by Applicant. Plaintiff also showed why the Application should be denied with prejudice/permanently;

- Use Detrimental: Plaintiff documented that the use is detrimental and depreciates the area, and will continue to do so if approved, according to the appraiser. This alone should deter the approval.
- Other Beneficial Uses Exist: Plaintiff showed other beneficial indoor uses exist for the property such as a new warehouse with a cul de sac and widened street with no parking on the north side. The appraiser testified that this could eliminate the depreciation and benefit the area.
- Insufficient Space for Use: There's insufficient space for the use now and it will only get worse if houses are constructed where equipment was stockpiled. A cul de sac will further rule this out, which is why it is resisted. This is the type of use that should be located with other outdoor uses, not in the middle of a city block in close proximity to a new office addition, homes and a school yard.
- Use Not Enforceable: It was shown how Long Branch has willingly permitted the use to continue and expand since 2002 though no prior site plan approvals ever obtained and prior findings of guilt and a restraining order for same. The 1986 restraining order, 2 findings of guilt in 2000 and 14 outstanding summonses issued to both Atlantic Paving and E&L Paving were documented.
  The point was made that any assurances by these Applicants as to noise, dirt, number of companies and employees, no off-street parking, a cul de sac clear of operating

equipment, will need close monitoring by code enforcement who has shown it is disinterested in abating any violations. As further evidence that even the simplest violations are incapable of being reasonably abated by Long Branch at this location, it was documented how an abandoned truck parked on the street in front of Plaintiff's property was not removed for 8 months despite 2 complaints to the Police and a letter to the Mayor and Administrator. Plaintiff showed how the zoning board denied a prior application for a use variance elsewhere in town due to the conditions of use such as parking being impossible to monitor and enforce.

Though the board secretary's comments during Plaintiff's questioning and testimony seemed hostile, it is hoped that, after having the total picture presented, enough members will display good will and disregard the rigging and provide honest service and deny this unreasonable, worst possible use for the area. However "anything can happen in Jersey" as the lottery ad. proudly and accurately notes.

4/28/17 Final Hearing: **Application Denied!**

Plaintiff concluded his above opposition arguments and documentary evidence which laid bare Applicant's lies to the substitute board and Applicant's unclean hands due to not abating the violations. Applicant's attorney sought to bring in the recent trial verdict and Plaintiff's rigging contentions as proof that perhaps Plaintiff was an unreasonable conspiracy monger. Plaintiff responded by enlightening the board on the history of corruption, stated that he was treated fairly in presenting his opposition, and that a trial judge nominated to the NJ Supreme Court had allowed for a conspiracy including the regular zoning board members and attorney. Plaintiff then asked the board to disregard the rigging of the board professionals, and nevertheless provide honest service and end this hoax/charade/conspiracy, and that it should take less than five minutes to do so. Plaintiff's two neighbors thereafter also stated their opposition to this use.
Most of the board except Mr. Ging, the board vice-chairman and substitute chairperson, who is defendant in the damages matter, and Mr. Goldman, an alternate member, listened and returned a 5-2 vote in less than 5 minutes, to deny the Application (board secretary voting with the majority, to his credit. The minutes totally lack any mention of testimony by Plaintiff and distorts and manipulates parts of the record by misstating that Plaintiff stated that the dirty zoning permit was validated by a court and that Mr. Turner stated the original use as a paving company was illegally created whereas Plaintiff testified to this. Mr. Turner's deposition testimony states the use was to be contained within the original garage and he didn't know why all the other lots are on the permit)

2/8/18 update:

A 50 page Resolution to deny the application was adopted July 10, 2017 with 4 for the resolution and none opposed or abstaining. A multitude of reasons supported by the record were given for the denial including those mentioned above. The board affirms that a cul de sac may be required despite the disinterest shown by its engineer and planner. The board also finds that a certificate of non-conforming use must be obtained by Applicant to prove its allegation the use is pre-existing legal and can be grandfathered. God bless them.

Since the expansion was denied, this means the outdoor use must cease. However this did not occur and the blocking of Plaintiff's access to his property by parking of vehicles and things across and around the parking lot entrances escalated to the point where even small trucks could not exit the property without police assistance. Plaintiff visited the municipal court 1/8/18, the hearing date for the neighbor's summonses by the conflict judge and found that it was again adjourned and subsequently that an appeal had been filed 8/23/17 under Docket Mon L-3030-17. The court again refused to adjudicate the summonses for expansion of use without prior approval which has nothing to do with the appeal to allow the use to lawfully commence or expand. This is intended to aid the neighbors who claim in their appeal the use is pre-existing legal based upon the dirty permits, a subject the municipal court judge wants to avoid. New findings of guilt would certainly evidence that the permits are dirty. So the conspiracy, aided by the courts, and official misconduct continue as the appeal is now used as cover for the illegal occupation to continue.

5/16/18:

The Appeal – the most dishonorable Jamie S. Perri, JSC presiding:

Despite the 3 ½ year application while operating in violation, 7 hearing dates over 18 months, (12/12/16 hearing not mentioned in Resolution) and 50 page Resolution containing multitudes of reasons for the denial based on the record, the Applicant feels shortchanged and appealed naming both zoning board and Long Branch. (A "Stipulation of Dismissal"/of Long Branch was filed 9/20/17 under threat of frivolous sanctions by Long Branch for failure to state any claim) Plaintiff discovered that the City's insurance company was not asked for coverage and Long Branch, a Defendant in Plaintiff's damages action is responsible for funding the defense! – a most uncomfortable situation. Since only one significant supported reason to deny is sufficient and there are tons, the appeal lacks any merit towards the board either. However the true reasons for the appeal are obvious:

- It is filed for purposes of delay: it has interrupted the municipal court proceedings, and (applicant believes) provides lawful cover for the unlawful occupation to continue while attempting to strangle Plaintiff's operations in the hopes he will settle. Not likely.
- Its cheap considering the additional profit made from the continued illegal occupation.
- Its before judge Perri, whom applicant's attorney knows from this website and her contrived summary judgment dismissal of Long Branch in the damages suit (see "Case(s)" – L 1919-08, L4039-11) is not fond of Plaintiff, the main objector, who has reported her several times to AOC for her advocating and dirty procedural tricks. Her brethren in the appellate div love to indulge her nevertheless, which is why she does it - she would do likewise for them, regardless whether justice is being served. While normally the Assignment judge hears prerogative writ matters as i.e. evidenced in the Monmouth Mall matter

Guerra et. al v. Eatontown (Mon L-3767-16) judge Perri, the pretrial judge, is assigned to the matter (no jury for the trial) giving the appearance of **rigging.** (anyone, even the assignment judge from Long Branch should be more impartial) Remains to be seen if she will again create her own facts and apply her own standard of review in order to reverse or force an unwholesome settlement despite unclean hands in what should be a slam dunk affirmation.

Intervention Denied!

NJ Court Rule 4: 33-1 permits one who has an interest in a matter to intervene if his interests are not being adequately protected by the existing parties and the intervention is timely and does not prejudice the existing parties.
At the. 3/12/18 pre-trial conference Plaintiff/Objector filed a motion to intervene based on the facts that: it is timely and without prejudice to the parties; due to the conflict of defendant Long Branch financing the defense (Plaintiff argued "In the worst case, funding for the defense, or lack thereof for any subsequent appeal, can be used as coercion to attempt a settlement which satisfies Defendants and their co-conspirator surrogates (as alleged in the damages matter) and which makes a mockery of the board hearing process); Plaintiff is seeking an injunction pursuant to the entire controversy doctrine should the appeal be denied. "As Zoning boards don't enforce zoning ordinances or seek injunctive relief for same, my interests as Petitioner cannot possibly be served in that regard either by the existing parties."
The judge's secretary called and left a message there would be no oral argument even before Plaintiff filed his reply. The parties objected to the motion and the court predictably denied it on the basis: the board's interest directly coincides with Objector's; "the board, as a municipal entity, has an obligation to defend itself and has retained counsel to do so (zoning violations are to be terminated within 30 days but that hasn't occurred); the court is concerned that due to Objector's other litigation, other issues (such as an injunction?) would be raised and "complicate" and "delay" matters (in Plaintiff's damages action the same judge said injunctive relief should have been sought in the prerogative writ matter which preceded it and used this to dismiss); its untimely (though filed 3 months prior to the court date of June 19 and no prejudice to either party – Plaintiff Atlantic Paving gets to use the property illegally a little longer & zoning board did not express concerns about lack of enforcement during hearing process and has no jurisdiction as to enforcement anyway); 4 days insufficient to consider a short brief by Objector and unspecified "detriment" to other parties if rescheduled; no settlement contemplated according to board and if so, Objector will be involved.

Records Blocked?
Collusion no Illusion

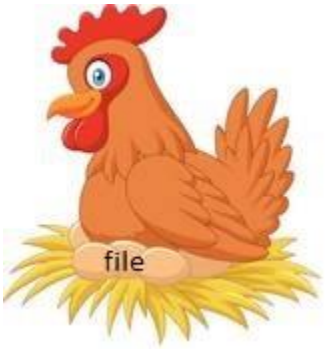
Though courts have discretion in granting the motion, when an applicant's interests are clearly not protected by existing parties, intervention is mandatory. Though the court's decision may seem reasonable, since then it and the zoning board (and Russia lol) have so far blocked Objector from obtaining a copy of Appellant's pretrial memorandum and Brief as requested so Objector can see the issues and determine whether his interests are actually being adequately protected going forward. Upon Objector emailing the Order of Denial to the zoning board attorney, he receives an email back 4/11/18 with copy to Mr. Hayes stating "for record-keeping

purposes (whatever that means) I must advise you that I am not representing your interests in connection with the litigation case. Rather I represent the Long Branch Zoning Board of Adjustment"

4.11.18 letter

Previously the board attorney told Objector to file a copy of his motion with the board secretary for the public record, which was done. Previously the board attorney also oversaw the OPRA requests to the board secretary made by Objector.
On 5/8 an email was sent to the zoning board secretary with copy to board attorney inquiring whether Plaintiff Atlantic Paving had filed the aforementioned documents for the public record as Objector had done. The secretary forwarded to the board attorney and no response has been obtained since so a formal OPRA was filed 5/14/18 with the city clerk to make them readily available. Under OPRA, such records should be readily accessible for review without necessarily waiting up to 7 business days. The uncharacteristic lack of response and cc to city administrator Mr. Hayes, a named defendant who has refused to abate the violations of the Appellant may indicate his influence on the independent, impartial zoning board and attempt to block records and run out the clock prior to the trial. If so this would be more misconduct.

Judge Sitting on File Hatching More Mischief?



Similarly, the court record request was made 4/30/18 and on 5/8 a representative sends Objector's own motion filing instead of what was requested. When advised of the error, she subsequently says "its being worked on" but refuses to answer what is being provided and whether at least the pretrial memorandum and brief can be sent in the meantime.
"Coincidentally" the request form has notation by the judge that she has the jacket/record. Can't the busy judge leave her nest for an hour and find something else to do and let the clerk copy/scan the file? Trenton records was contacted and has done nothing to effect the records either. Looks like judge Perri also is intent in running out the clock prior to trial and keeping Objector in the dark.
Certainly doesn't look like the parties are looking after objector's interests as the court maintains so another motion and/or OPRA action against Long Branch may be needed if not soon remedied. (Guess who would be assigned to this? Judge Perri again? Lol. Can't make this up)
Trial by the judge (no jury) is set for June 19 in the neighbor's appeal of the 50 page zoning board resolution..

Will she reverse the zoning board denial as the neighbors' seek and make a mockery of the zoning board hearing process? The mutual dislike between her and Plaintiff (Plaintiff reported her 3 times prior to AOC for her advocating and dirty procedural tactics such as demonstrated herein – is offset by her blind love and protection of municipal agencies who she claims have unlimited discretion.(see Case(s))
The public is invited to see how the sausage is made.

6/8/18

The zoning board has knowingly failed to provide the pretrial order and Plaintiff's Brief per the 5/14 request. The response was due 5/23/18 and no extension of time had been requested so it is a clear violation of OPRA.
http://www.nj.gov/grc/public/docs/Citizen's%20Guide%20to%20OPRA%20(July%202011).pdf

Another OPRA request was made 5/22/18 for the Brief of Defendant Zoning Board of Adjustment which was to be filed by 5/25 according to the pretrial order and this has not been obtained either. On 6/1 (which is beyond the 7 business days allowed under OPRA) the clerk informed that the records would be ready 6/15 or possibly sooner but gave no legitimate or any reason why the brief which was to be prepared and filed could not also be copied and produced.
The court finally emailed Plaintiff's pretrial memorandum and Brief on 5/21 which was stamped "Received" by the judges secretary on 5/4/18.

MON.L.3030.Plaintiffs Appeal Brief

The zoning boards Brief was obtained 6/5/18 and is dated 5/31/18 (past the 5/25 deadline) and is not stamped "Received"

Mon.l.3030.Zoning Board Appeal Brief

According to the clerk "it was efiled so not stamped "Received" The 4/30 request sought information about the format of the exhibits and transcripts filed but no response. The tile will be inspected onsite. Nevertheless, if the Brief was filed 5/31, the zoning board should have provided a copy to Objector by 6/9 and hasn't done so and the 6/15 date is illegitimate under OPRA and another violation of the statute. Seems pretty clear that Objector is being obstructed/delayed from learning if his interests are being protected so a timely motion could be made. Motions take 2-4 weeks to be scheduled and the trial date is June 19. Nevertheless the brief refers to the transcripts and supports several of the many reasons given to deny and also supports the contention that the Resolution of the entire board, and not verbal statements/opinions of individual members or lack thereof is what governs. It also provides the legal standard – its not whether the application could have been approved but whether the board was arbitrary, capricious and unreasonable in its review. Remains to be seen if this judge will employ the standard or substitute her own.
It was learned that Judge Thornton, the Assignment (chief) judge (from Long Branch) and not Judge Perri ordinarily presides over the OPRA disputes though she could pass it to another judge since Long Branch is involved.

6/15/18

The court clerk emailed that " I have verified that all documents entered into our system are also available in eCourts . Also, please note there is no cd contained in the file." Ecourt filings became mandatory for civil cases on 1/15/18 and are only available to the public thru the local vicinages which have computers for this. Objector visited the courthouse 6/15 and used the public computer containing efilings and verified that the transcripts and exhibits were not efiled.

Mon. L.3030.17 efilings

The menu shows that the brief dates were changed: plaintiff due 5/4 and defendant zoning board due 6/1 and the 5/22/18 opra for the zoning board brief was received back today so in compliance with the 2nd opra, but certainly not the first.

The court clerk (pleasant lady) further verified with chambers who have the physical file, supposedly including the exhibits and transcripts which were hard filed prior to ecourt going into effect, that the cd (exhibit O-33) was not filed. The cd contains important audio/visual of the neighbors processing metal and other construction debris from demolition jobs and laying to waste (lol) Plaintiff's claims there was no evidence to support opposition claims that a class b recycling facility is actually contemplated whereas only "storage and stockpiling" was applied for. According to DEP solid waste bureau (See NJ DEP Notified) processing/sorting is to be done at the demolition site and not here.

Troubling that the court was asked 4/30 about the exhibits and transcripts format and that objector only found out the status by visiting 6/15. The clerk also advised that the judge will make the entire file available after the trial, and not now. Objector will see at the trial whether physical documents of the transcript and exhibits actually exist for possible submission into evidence. The clerk was asked to mention to the judge the lack of the cd and that the zoning board attorney would also be informed along with other comments on the brief, in preparation/support of the trial. It is hoped/expected that he will make use of the comments since in the common interests of the zoning board and Objector.

11/4/18

On 6/19/18 the court resisted efforts by Plaintiff's attorney to further delay the matter based upon supposed "chaos" due to the recent municipal election and new mayor and administration and zoning board need to approve any "settlement". The zoning board attorney at first bought into it stating the new board would have to be consulted about any settlement or delay. The court properly found its been going on too long already, and she would try it and the parties could settle with the municipal court after. The bench trial thereafter proceeded for 1-2 hours, and the parties returned after lunch for the decision which found the board acted properly and dismissed the matter with prejudice including the idea of a use variance for an outside contractor's yard with multiple contractors operating. This is to cease. Evidently her partiality to protection of municipal entities exceeded the mutual animosity between her and FairtrialNJ's founder and prior plaintiff.

It would have been just too obviously corrupt even for her to find otherwise and even the "no news" media might have inquired. – nah, not likely.

A good day for justice after all though as of this date, the use is still not terminated pending zoning approval for an approved use. The municipal court continues to grant adjournments rather than trying the matter, finding obvious guilt and fining the occupants into submission. That judge, who appears now to be complicit in the conspiracy, and has let things go on far too long and made a mockery of the court, will now be exposed to his superiors. See "Unabated Violations and Non-Disposed Summonses Continue. Crimes Too"