BRIAN D. ASARNOW
55 Community Place
Long Branch, NJ 07740
732-870-2570

BRIAN D. ASARNOW,

Plaintiff,

vs.

City of Long Branch, A Municipal Corporation;
Edward Bruno and E&L Paving, Inc.;
63 Community Place, LLC;
Ray Grieco & Atlantic Paving (& Coating), LLC;
Jose A. Rosario, Jr. & Rosario Contracting Corp.,
Custom Lawn Sprinkler Co., LLC.;
Brothers Concrete, LLC

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

Docket No. MON. L-1422-22

Civil Action

NOTICE OF MOTION FOR RECONSIDERATION AND CLARIFICATION (R. 4:49-2)

To:

Civil Div.Clerk, Monmouth County Superior Court, 71 Monument Park, Freehold, NJ 07749
Paul R. Edinger Esq, 211 Monmouth Road, Suite C, West Long Branch, NJ 07764

PLEASE TAKE NOTICE that the undersigned on the 11th day of October at 9:00 a.m. in the forenoon or as soon thereafter as may be heard, will move before the Monmouth County Superior Court, Freehold, NJ for an order granting Plaintiff's motion for reconsideration and vacating some or all parts of the court's August 28, 2024 Order of summary judgment pursuant to R. 4:49-2

PLEASE TAKE FURTHER NOTICE that at the date and place of hearing to be fixed by the court, the undersigned shall rely up his Certification including his Statement of Misstated and Material Facts, and Brief in support. Oral argument is requested.

PLEASE TAKE FURTHER NOTICE that a proposed form of order is submitted hereto.

Mr. Brian D. Asarnow, Plaintiff

Dated: 9/17/24

CERTIFICATION OF SERVICE

I hereby certify that the original of the within motion has been uploaded on JEDS September 17, 2024 for use by counsel same day and mailed by FedEx on September 18, 2024 to the Clerk of the Superior Court at Monmouth County Courthouse, 71 Monument Park, Freehold, NJ

Mr. Brian D. Asarnow, Plaintiff

Date: 9/17/24

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LAW DIVISION, MONMOUTH COUNTY

Docket No. MON. L-1422-22

Civil Action

BRIEF IN SUPPORT OF
MOTION FOR RECONSIDERATION

Dear Judge Acquaviva:

Please accept my letter brief in support of my motion for reconsideration of your Order of August 28, 2024. I refer to and rely on the existing record in lieu of a separate Appendix to prevent duplication and save resources and incorporate same hereto. I **further rely upon my Certification containing my Statement of Misstated and Corrected Facts as basis for reconsideration of the court's Order and Reasons** Oral argument is requested. .

My Certification has provided the true facts juxtaposed with the court's provided facts and I simply asks the court to reconsider all the points using these as it assuredly would result in a totally different outcome, This is contemplated in the first 2 prongs of the R.4:49-2.

Respectfully,

Mr. Brian D. Asarnow, Plaintiff

Dated: 9/17/24

PROCEDURAL HISTORY

Plaintiff incorporates his prior procedural history and adds:

Defendants filed their Motion on 7/8/24 requesting oral argument while Plaintiff was finishing his. Plaintiff filed his Motion (not cross motion) for Partial Summary Judgment thereafter on 7/8/24 at 8:13 PM and requested oral argument. The court treated Plaintiff's motion as a cross motion. Defendants were asked to argue their motion but Plaintiff was never asked and had to so request after Defendants were done and the court was about to conclude argument.

PRELIMINARY STATEMENT

During oral argument the court appeared to be advocating for the Defendants who failed to dispute Plaintiff's facts or reply at all to Plaintiff's opposition counterstatement of facts. Instead, in lieu of the standard for summary judgment being met by Defendants, the court su sponte took judicial notice of the pretrial record which it self creates and distorts and imputes laches not raised by Defendants which Plaintiff proved inapplicable. Per the above procedural history, Plaintiff's motion was treated as an after thought and oral argument begrudgingly allowed. Upon receipt of the opinion, its clear the court is seeking a means to the end of adopting the city's position that the litigation as to the use by all defendants spans decades, has already been determined to be lawful by prior decisions and there is nothing new to be decided in that regard. To be able to achieve this objective, as mentioned , the court creates its own facts and distorts the record as seen in Plaintiff's Statement of Misstated and Corrected Facts, herein. As to the illegal use as an outdoor construction yard by all defendants, the court first reads into a few paragraphs from prior litigation decisions and the zoning board resolution that the yard is legally preexisting whereas the paving use is the only use that has been approved and is being referred to. Plaintiff's undisputed material facts prove there is no foundation for such a positive reading. The 8/3/09 zoning permit is clearly only for the paving use, and defendants lack their own zoning and other permits as required. To solidify this hoax, the court finds that the permit is actually for mixed use and covers all defendants and magically makes that use legal after 15 years! This is so the court can now support the city's and defendant's claim of laches in that equitable relief should have been commenced back in 2009 so no relief available. However Plaintiff

proves how he did seek injunctive relief and enforcement immediately after the permit issued and in his subsequent nuisance claim and in opposing the zoning board application and that Long Branch issued summonses due to the expansion of use but never terminated it pending site plan approval. To prevent Plaintiff from claiming defendants are obviously operating without site plan approval due to rejection of their site plan by the zoning board and obtaining injunctive relief, the court finds the resolution allows that the yard is preexisting (though undefined) based on the court "modified" zoning permit and that only the expansion due to the subdivision is rejected so the yard gets to stay. The court further falsely claims the term construction yard is not defined and its up to the zoning board to determine if a construction yard is being operated in order to prevent direct declaratory and injunctive relief by Plaintiff under the MLUL. Plaintiff proves the term appears in Defendants' application, the zoning permit and the resolution which considers mere parking and storage evidence of the construction yard of which photos abound. The court invokes Mandamus though not raised in motion and claims due to laches found against Long Branch, Plaintiff is precluded from relief under the MLUL which along with local ordinance afford relief to interested parties independent of Municipal action. The court doesn't provide any support for this contention.

QUITE SIMPLY HOWEVER, THE YARD IS ILLEGAL THE ZONING PERMIT CLEARLY ONLY COVERS THE PAVING USE AND NO OTHER USES OR DEFENDANTS AND THE OTHER DEFENDANTS LACK THEIR OWN SETS OF PERMITS. THE ZONING BOARD REJECTION OF JULY 10, 2017 IS A NEW FACT NOT COVERED IN THE ORDER EXCLUDING EVIDENCE AFTER JUNE 11, 2015. LACHES DON'T APPLY. MLUL ALLOWS INDEPENDENT ACTION AGAINST THE DEFENDANTS FOR DECLARATORY AND INJUNCTIVE RELIEF. ALSO, EACH DAY IS A NEW VIOLATION OF LOCAL ORDINANCES. PLAINTIFF HASN'T BEEN ABLE TO CUT HIS GRASS IN THE AFFECTED AREA FOR OVER A YEAR OR THE LOADING ZONE DUE TO THE NEIGHBORS' USE OF LAND. (PHOTOS ATTACHED).

As to Plaintiff's abandonment claim, the court uses its main created fact that the zoning permit, which is clearly for the paving use, is actually for mixed use and covers all defendants who now all claim to be doing paving, and that Plaintiff should have known this new fact back then and sought equitable relief back then and is now precluded by laches and that all the Defendants and businesses are nevertheless active and operating so no abandonment of the non conforming paving

use has occurred. HOWEVER, THE ABANDONMENT IS RECENT, IN 2024, NO LACHES PERTAIN BASED ON A NEWLY RECREATED 2009 ZONING PERMIT AND IS DUE TO ATLANTIC PAVING CEDING THE USE OF ITS PERMITTED SPACE TO ROSARIO FOR HIS BUSINESSES PER CASELAW. The court claims it doesn't know if the buffers containing tees to cover up the illegal use are illegal improvements though Plaintiff proves installed subsequent to the zoning board rejection. The court relies on its re-creation of the 2009 permit to deny relief but in its Order suppresses Plaintiff from using this and other not previously used evidence still relevant to the use. The court learned in oral argument this was done in a prior trial where all evidence of illegal use was suppressed and affirmed on appeal. Similar to Defendants, the Court fails to provide any references to the record to support any of the conclusions in its opinion making it difficult to ascertain the source though Plaintiff has proven any inaccuracies in his Statement of Misstated and Corrected Facts.

LEGAL ARGUMENT

STANDARD OF REVIEW Rule 4:49-2

The time prescription of this rule applies to final judgments and orders. A motion to amend or reconsider interlocutory orders may be made at any time until final judgment in the court's discretion and in the interests of justice." See *Johnson v. Cyklop Strapping Corp.*, 220 NJ Super. 250 (App. Div. 1987) , certif. den, 110 NJ 196 (1988 and other cases under comments to this Rule.

"This rule is particularly useful where an opinion or order deals with unlitigated or unargued matters" See Calcaterra v. Calcatera, 206 NJ Super. 398 (App. Div. 1986). These motions have been funneled into that "narrow corridor" where either: (1) the Court has expressed its decision based upon a palpably incorrect or irrational basis; or (2) it is obvious that the Court did not consider, or failed to appreciate the significance of probative, competent evidence (3). or that there was good reason to consider new information. *Cummings v. Bahr*, 295 N.J. Super. 374, 384, 685 A.2d 60 (1996) (*citing D'Atria, supra*). Certainly, "if repetitive bites at the apple are allowed, the core will swiftly suffer." *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401, 685 A.2d 60 (Ch. Div. 1990).

POINT III

THE PAVING USE WAS CONFIRMED ABANDONED IN 2024. NO LACHES PERTAIN AND THE COURT'S DECISION TO DENY DECLARATORY AND INJUNCTIVE RELIEF IS BASED UPON A PALPABLY INCORRECT OR IRRATIONAL BASIS AND ALSO FAILURE TO CONSIDER PROBATIVE, COMPETENT EVIDENCE ON THE RESTRICTIONS OF THE USE WHICH WAS ABANDONED.

The basis of Plaintiff's abandonment claim before the court is seen in Plaintiff's Point III heading which states "the paving use was restricted to the inside of the garage headquarters and has been replaced by other unauthorized businesses and uses so the paving use should be found to have been abandoned. " Nowhere does Plaintiff claim abandonment of the paving use due to inactivity.

Per material fact 4a, and as briefed under this point on page 12, Carl H. Turner, Jr., Assistant Director of Planning & Zoning who supervised zoning officer Michelle Bernich who issued the 8/3/09 zoning permit provided probative, competent and still relevant deposition testimony that the paving use was confined to the garage headquarters industrial area despite other lots appearing on the zoning permit Violations consistent with this, i.e. prohibiting the use of the residential zone and for multiple uses/businesses followed and were not challenged by Defendants who instead filed a site plan. Mr. Turner was in the best position to interpret the zoning permit. The conditions against stockpiling and expansion of use are permanent and the issue of abandonment was never heard previously so the depositions are still relevant.

The abandonment is a new fact since the June 11, 2015 jury verdict (statement of misstated and corrected fact (hereafter SMCF) #5. As per Plaintiff's material fact 5 and 8/6/24 opposition certification pg 23 @ 6, the paving use was confirmed abandoned in the March 30, 2024 report of Plaintiff's land use expert Peter Steck based upon his visit to the site and the depositions of Raymond Grieco of Atlantic Paving that he operates the business instead in the non permitted C-2 zone and Rosario and his mechanic Taha Siyouf that the garage and office on Community Place are used for Rosario's businesses. As briefed, the ceding of use of the garage to Rosario for his businesses meets the two prong standards of both S&S Auto Sales, Inc. v. Zoning Board of Adjustment for the borough of Stratford, 373, NJ Super 603, 613-614 (App. Div. 2004) and Brown v. Gambrel, 358 Mo. 192 (1948) (lease of premises for a use different from nonconforming use constitutes abandonment) cited by court on page 33 of its reasons.

Nevertheless, as seen in SMCF 13, the court incorrectly attributes the paving use to all defendants and that they appear not to be operating at the site. In SMCF 14, the court takes judicial notice of the record which precedes the abandonment. In SMCF 19, the court creates a false account of Plaintiff's claims including that the original permittee is not using the property, the nonconforming use was therefore abandoned and paving is an impermissible use whereas no such statements exist by Plaintiff. In SMCF 29, the court again claims "here, Mr. Asarnow contends that the permittee is no longer operating on the property and thus has

abandoned. the nonconforming use" whereas no such statements by Plaintiff exist in the motion record. In SMCF 30 the court claims "private Defendants continue to operate multiple businesses on the property" as evidence the non-conforming (presumably paving) use is not abandoned which it thereafter uses to deny declaratory and injunctive relief. Finally in SMCF 31, the court makes a claim that if the non conforming use is not abandoned , it has been exceeded whereas no such statement exists in plaintiff's motion. The court questions the use of Turners deposition to determine abandonment though per supra the conditions of the permit against stockpiling and expansion of use have not changed and Mr. Turner knew most about the interpretation when issued and its still relevant to Plaintiff's abandonment claim. "The test for relevance is broad and favors admissibility" State v. Deaetore , 70 NJ 100, 116 (1976) N.J.R.E. 401, 402..

Clearly it is obvious that the Court did not consider, or failed to appreciate the significance of probative, competent evidence, i.e., reading of Plaintiff's motion papers and the true facts of the record seen in Plaintiff's SMCF including the relevancy of the use of Turner's deposition and related violation notices and summonses in determining the recent abandonment, though the issue not adjudicated prior. Clearly the courts use of activity or lack thereof as a basis to deny abandonment is palpably incorrect and irrational considering the issue raised by Plaintiff was the ceding of use of the garage by Atlantic Paving to Rosario for his businesses is what constitutes the abandonment. Clearly, the court finding the zoning permit, which is clearly for the for the paving use, SMCF 21, is actually for mixed use and covers all defendants who are now also all doing paving, and that Plaintiff should have sought equitable relief back then and is now precluded by laches and that all the Defendants and businesses are nevertheless active and operating so no abandonment of the non conforming paving use has occurred is palpably incorrect and irrational and perhaps corrupt. Clearly the court's use and "adjustment" of the 2009 zoning permit as a basis for laches in 2024, while suppressing any evidence in its Order prior to June 11, 2015, regardless whether used prior or relevant is palpably incorrect and irrational. For these reasons the court should respectfully amend its Order and affirm Plaintiff's abandonment claim.

POINT !V

THE COURT'S DECISION TO DENY DECLARATORY AND INJUNCTIVE RELIEf AS TO THE CONSTRUCTION YARD USE IS BASED UPON A PALPABLY INCORRECT OR IRRATIONAL BASIS AND ALSO FAILS TO CONSIDER PROBATIVE, COMPETENT EVIDENCE

PALPABLY INCORRECT OR IRRATIONAL BASIS:

Zoning Permit: The court's finding that "The 2009 Permit authorized a mixed use of the Property for a paving company and other contractors" on pg 21 of its reasons is an obvious and important error thereafter used throughout to impose laches and knowingly misinterpret select paragraphs from the litigation record. THough this may be on the application, that doesn't count. See SMCF 6 and 21.

Misinterpretation of Select Paragraphs from Record that Construction Yard is Legal:

The court uses its newly created zoning permit that it claims now covers all Defendants and uses to interpret or rather misinterpret select portions from the litigation record.

SMCF 28 wherein the mere recitation of a quote from the zoning board resolution about the existing use of the property does not legalize it.

SMCF 29 whereas the preexisting nonconforming use can only refer to the paving use based on the true zoning permit, lack of zoning permits by individual defendants and issue of legal use not adjudicated prior.

Laches Inapplicable/Inappropriate:

Plaintiff proved Defendant's pled laches inapplicable.

The court finds laches on pg 21 due to the re-created zoning permit now covering all defendants and uses. Plaintiff should have known this new fact when he filed his lawsuit in 2021. SMCF 21.

On page 22, The court finds Long Branch's enforcement of zoning and municipal ordinances are barred by statute of limitations and falsely claims Plaintiff is seeking Long Branch to enforce ordinances whereas Plaintiff's motions seeks enforcement of the offsite issues as a zoning matter due to lack of site plan approval. Nevertheless each day is a new violation of ordinances and Plaintiff has not waived his rights there. See SMCF 22, 25. The court provides no case to support such a premise considering the MLUL provides an independent pathway without involvement of municipal governments who corruptly choose not to enforce.

Finally on pages 30 and 31 though Plaintiff makes no claim in his motion about the paving use being exceeded in scope, the court applies laches there as well. Nevertheless if the court is referring to Defendant's 2013 zoning board application, the court admitted Plaintiff vigorously opposed it.

SMCF 31.

Prior Litigation, No Adjudication that Construction Yard is Legally Preexisting:

Use not adjudicated legal per material facts 1 and 2.

SMCF 7: In the 2010 prerogative writ matter injunctive relief was also sought thru a notice of violation.

SMCF 8: In the prerogative writ appeal , no merits were decided due to Plaintiff's failure to exhaust administrative remedies except that the zoning officer had authority to issue the zoning permit .

SMCF 9: Judge Perri in the city's summary judgment quotes from the prerogative writ appeal which did not adjudicate on the merits due to Plaintiff's failure to exhaust administrative remedies. Defendants failed to file summary judgment and were not granted affirmative relief so no "deeming" that the use was legal occurred as the court alleges.

SMCF 10: As to the trial, the jury did not and could not find the use legal as juries determine facts, not law.

Point V: Use of the Street and Plaintiff's Property Ancillary to the Illegal Construction Yard:

SMCF 13, 22: Plaintiff seeks enforcement under the MLUL as a zoning matter due to lack of site plan approval however as each day is a new violation of ordinances, Plaintiff has not waived his right to enforcement on that basis and has not been able to cut the grass in the ROW adjacent Defendants for over a year or use the dead end loading zone for trucks visiting his site. See Exhibit A hereto.

Unjust Requirements:

SMCF 23,24: The court unnecessarily/unjustly requires Plaintiff use the zoning board to determine if a construction yard is is operating and to stop same though zoning boards don't enforce.

SMCF 25: The court imputes need for mandamus though tried and not needed for MLUL.

SMCF 26: The court claims more evidence needed of the illegal use despite the undisputed material facts

FAILURE TO CONSIDER PROBATIVE, COMPETENT EVIDENCE:

Failure to read Plaintiff's Motion Papers: This seems evident based on the statements attributed to Plaintiff which don't exist in his motion papers. See Statement of Misstated and Corrected Facts Distortion Abundant, True Facts Ignored, Not Considered: This is seen throughout the Statement of Misstated and Corrected Facts.

CONCLUSION

Clearly, the "adjustment" of the zoning permit and needless requirement of the zoning board to resolve whether a construction yard exists and for more evidence and contention that the prior record of litigation has somehow "deemed the use legal, as well as the fact Plaintiff's papers were obviously not read and the facts of record distorted is reason to reconsider the matter

Clearly the actual record that should have been taken judicial notice of is that the zoning permit only covers the paving use and not all defendants and their various uses; defendants lack their own sets of required permits; that the construction yard use was never adjudged legal.; the previously non admitted, still relevant evidence as to restrictions on the paving use should be considered; and no laches exist preventing enforcement under the MLUL. The Brill standard should thereafter be applied and Plaintiff's motion granted.

Plaintiff seeks clarification as to whether he is barred from relief from Long Branch as to any offsite ordinance violations as a result of this matter.

Respectfully submitted,

Dated: 9/17/24

Mr. Brian D. Asarnow,

Plaintiff

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PLAINTIFF'S CERTIFICATION SUPPORTINIG RECONSIDERATION

BRIAN D. ASARNOW, of full age, being duly sworn upon his oath does hereby depose and say:

A. I am the Plaintiff in the above matter by reason of my ownership of adjacent property, my personal observations and my thorough review of the files pertaining to this matter. I have full and first hand knowledge of the facts and details contained herein. I make this Certification in support of my motion for reconsideration.

B. I received the Court's August 28 Order from ecourts by email on August 29, 2024.

C. I attach as Exhibit A recent photos of the portion of my property abutting the dead end adjacent to Defendants which I am unable to maintain. Also trucks cannot used the dead end loading zone to back into my parking lot.

D. I attach as Exhibit B a true copy of the 8/3/09 zoning permit

D. I include my Statement of Misstated and Corrected Facts and certify to same in support of my motion.

Statement of Misstated and Corrected Facts (CAPITALS)

Statement of Reasons:

1. On pg 3, para 1, as to This litigation is the latest episode in an on-going feud between ,on one side, Plaintiff Brian Asarnow, and on the other, his neighbors, Defendants Ray Greico, Jose A. Rosario, Atlantic Paving &Coating LLC (Atlantic), Rosario Contracting Corp. (Rosario Contracting), Custom Lawn Sprinkler Co. ,LLC (Custom Lawn), and 63 Community Place LLC (63 Community Place) (collectively ,the "Private Defendants") and the City of Long Branch. 63 COMMUNITY PLACE, LLC IS A NEW PARTY AND R BROTHERS CONCRETE, LLC ALSO A DEFENDANT.
2. On pg 3, para 3, as to "Mr. Asarnow has taken umbrage with Long Branch's issuance of a permit to the Private Defendants..",THE PERMIT IS NOT CHALLENGED IN THIS MATTER AND THE PERMIT CLEARLY NAMES ONLY ATLANTIC PAVING AS NEW OWNER. NO OTHER DEFENDANTS ARE NAMED. (EXHIBIT G, PG 68)
3. On pg 4, para 1 as to, "While his appeal was pending ,he filed a serial action against Long Branch and the Private Defendants in Superior Court. Although Long Branch was dismissed from the case, his claims for nuisance against the Private Defendants went to a jury. The Private Defendants prevailed. The Appellate Division again affirmed. WHILE THE EVIDENTIAL RULINGS INCLUDING SUPPRESSION OF EVIDENCE WERE AFFIRMED, THE USE AS A CONTRACTORS YARD WAS NOT ADJUDICATED OR LEGALIZED. SEE COUNTERSTATED FACTS 1D, 3, 4.
4. On pg 5, para , 1 as to "Thus, to the extent he seeks to have the use of 63 Community Place deemed impermissible or that the use is in violation of permit or ordinance, such are municipal functions and, due to Mr. Asarnow's delay in filing this action following his actual constructive knowledge of the alleged conduct, such are time barred." CONTRIVED. BASED UPON LIE THAT ZONING PERMIT IS FOR MIXED USE AND COVERS ALL DEFENDANTS AND ZONING BOARD NEEDED TO DETERMINE IF A CONSTRUCTION YARD ACTUALLY EXISTS WHEREAS TERM FOUND IN APPLICATION AND RESOLUTION. (SEE 23, 25 HEREIN)

MUNICIPAL COURTS DON'T GRANT INJUNCTIONS & MLUL PERMITS INTERESTED PARTIES TO OBTAIN ONE. NO LACHES EXIST. PLAINTIFF IN 2010 SOUGHT INJUNCTIVE RELIEF AS TO CORRECTING A NOTICE OF VIOLATION TO ADD ALL BUSINESSES NOT ON THE ZONIING PERMIT AND ENFORCMENT OF SAME. THE 2011 COMPLAINT SOUGHT TO TERMINATE THE NUISANCE USE. SEE ALSO 21- 25 INFRA. LONG BRANCH ISSUED SUMMONSES IN 2014, 2014 AND 2015 BUT DID NOT TERMINATE THE ILLEGAL USE.

Statement of Facts:

5, On pg 5, as to "litigation spans decades" THIS ADOPTS THE CITY ATTORNEY'S POSITION AND THAT ITS NOTHING NEW AND USE BY ALL DEFENDANTS ALREADY ADJUDICATED AND LEGALIZED SOMEHOW. LITIGATION IN GENERAL IS SINCE 2009 AND IT WAS FOUND AT LEAST A NEW NUISANCE MATTER BY COURT. ED BRUNO & R BROTHERS ALSO DEFENDANTS AND 63 COMMUNITY PLACE , LLC NEWLY JOINED.

Procedural History:

6, On page 6 as to "Much of Mr. Asamow's case focuses on a 2009 zoning permit (2009 Permit) issued to E&L and Atlantic" NONE OF IT DOES. CASE FOCUSES ON CREATION OF OF A CONTRACTOR'S YARD WITHOUT SITE PLAN APPROVAL, ABANDONMENT & NUISANCE. As to "The 2009 Permit application identified the Property's then-existing use as "mixed use" for "paving company [and] other contractors." (Emphasis added). The application further identified "existing businesses" as "E&L Paving and misc. contractors" and "proposed businesses" as "Atlantic Paving and misc. contractors." APPLICANTS LIE AND APPLICATIONS DON'T COUNT. THE ZONING PERMIT LISTS ONLY ATLANTIC PAVING AS NEW OWNER/USER AND IS NEVERTHELESS NOT CONTESTED OR AN ISSUE IN THIS MATTER.

7. On page 7, para 4, as to " In 2010, Mr. Asarnow filed a complaint in lieu of prerogative writ against the Private Defendants, the City of Long Branch, and others.[2] Mr. Asarnow alleged that Long Branch improperly issued zoning and construction permits to E&L and failed to enforce its ordinances. A SECOND COUNT SOUGHT INJUNCTIVE RELIEF THRU CORRECTION AND ENFORCEMENT OF A NOTICE OF VIOLATION TO REMOVE ALL

BUSINESSES, NOT JUST THE DEMOLITION BUSINESS BUT THE COURT PRETENDED IT DID NOT KNOW IF THE VIOLATIONS WERE ABATED SO TOOK NO ACTION. A THIRD COUNT SOUGHT ENFORCEMENT OF NO PARKING ZONES IN PLAINTIFF'S APPROVED SITE PLAN.

8, On page 8, para 2, as to "The Appellate Division affirmed, finding the Property's use was permitted by ordinance in the commercial and industrial zones." NO MERITS WERE ADJUDICATED ON THE USE DUE TO FAILURE TO EXHAUST REMEDIES, EXCEPT THAT THE ZONING OFFICER HAD AUTHORITY TO ISSUE THE ZONING PERMIT AND THE PERMIT WAS ONLY FOR THE PAVING USE.

9. On page 9, para 1, as to " Due to the entry of summary judgment, a large part of Mr. Asarnow's complaint dissipated. Any of the issues involving the issuance of the zoning permit which permitted the Private Defendants to operate at the Prope1ty were resolved as, in essence, the use was deemed permitted. FIRST PAGE OF SAME DECISION CONFIRMS DEFENDANTS FAILED TO FILE SUMMARY JUDGMENT AND WERE NOT GRANTED AFFIRMATIVE RELIEF SO NO "DEEMING" OCCURRED. THE ZONING PERMIT LISTS ONLY ATLANTIC PAVING AND NO OTHER DEFENDANTS PER ABOVE

As to "Judge Perri stated: *"The zoning permit purports to reflect the zoning office's conclusion that the use of the property is for a paving company for two buildings, yard and parking area permitted by the ordinance in the commercial/industrial zone. The Zoning Officer had the authority to take this action.[Mr.Asamow] should have appealed the Zoning Officer's issuance of the permit to the Board"* JUDGE PERRI IS SIMPLY QUOTING PG 13 FROM THE APPEAL. NO ADDITIONAL ADJUDICATION OCCURRED LEGALIZING THE USE FOR ALL DEFENDANTS.

10. On page 9, para 3. As to "Trial began in May 2015 against the Private Defendants.... The jury rendered a verdict in favor of the Private Defendants on all counts." ALL ZONING USE INCLUDING NUMEROUS OUTSTANDING SUMMONSES FOR EXPANSION OF USE INCLUDING FOR ALLOWING MULTIPLEUSES/ BUSINESSES WAS SUPPRESSED AND DEFENDANTS WERE THEREAFTER ALLOWED TO LIE THE USE WAS ALL LEGAL WITHOUT ANY REBUTTAL PRERMITTED. SEE PLAINTIFF'S OPPOSITION CERTIFICATION #5,6,7 AND BRIEF POINT 11.

THE JURY FOUND ONLY THE USE NOT A NUISANCE AND NOT THAT THE YARD WAS LEGAL WHICH IS AN ISSUE OF LAW FOR A COURT TO DETERMINE. On page 9, last para., as to "The Appellate Division affirmed in all respects."

THE APPELLATE DIV AFFIRMED THE EVIDENTIARY RULINGS INCLUDING THE SUPPRESION OF EVIDENCE BUT DID NOT FIND THE CONTRACTOR'S YARD USE LEGAL.

12. On page 10, para 2, as to "In 2018, Private Defendants filed another application, this time to the Planning Board. Two points must be made about the 2018 application. First, the application was presented to the Planning Board because several Zoning Board members were recused from the matter due to litigation with Mr. Asamow . Second, Mr. Asamow and the Private Defendants dispute whether the 2018 application differs from the2017 application. The Private Defendants maintain the 2018 application contained several differences from the2017 application, while Mr. Asarnow describes It as "identical" to the2017application. The record on this point is unclear." DEFENDANT'S COULD HAVE STILL USED THE ZONING BOARD BUT WERE LOOKING FOR A BETTER DEAL THRU THE PLANNING BOARD UPON WHICH THE NEW MAYOR SITS. THE PLANNING BOARD ENGINEER REPORT STATED IT APPEARS IDENTICAL AND NEEDED FURTHER INFO TO CONFIRM BUT THEY NEVER CAME BACK. SEE PLAINTIFF'S OPPOSITION EXHIBIT F, ON PG 92.

13. . On page 11, last para, as to "Count One seeks declaratory judgment: (1) that the use permitted by the 2009 Permit is restricted to the inside of the garage headquarters, and not the use of a paving company" NO, IT STATES FOR A PAVING BUSINESS" as to (2) that the Private Defendants are not doing paving work on the Property and appear to not be operating at the site" MODIFIED IN MOTION PAPERS IN POINT III THAT THE USE IS ABANDONED DUE TO THE PAVING COMPANY CEDING USE OF THE GARAGE TO ROSARIO FOR HIS BUSINESSES. As to (4) that parking across the Street is unlawful or alternatively ,that the ordinance allowing the parking is unlawful; DISTORTION: COMPLAINT STATES THAT PARKING ACROSS THE STREET FROM PLAINTIFF'S PARKING LOT <u>IN THE ABSENCE OF CURBS OR SITE PLAN APPROVAL OR ENABLING ORDINANCE</u> IS UNLAWFUL"

On page 12, para 1, as to " that no one other than Mr. Asarnow has a right to place any thing on or in front of his property" THE COMPLAINT ADDS "EXCEPT AS PERMITTED BY ORDINANCE" THE DEFENDANTS' PLACEMENT OF TRASH AND OTHER OBJECTS IN THE DEAD END LOADING ZONE VIOLATES SEVERAL CITY ORDINANCES. BRIEF Pg 18, 19.

14. On page 15, para 2, as to ." Here, the existence of and prior results of the record cannot gainfully be disputed. The Appellate Division's decisions and prior records speak for themselves. They are matters this court may take judicial notice of.N.J.R.E. 201." HOWEVER PER PLAINTIFF'S COUNTERSTATED FACTS 1-4, THE APPEAL AND OTHER DECISIONS DID NOT ADJUDICATE THE CONTRACTORS YARD USE IS LEGAL AND ARE UNPUBLISHED, NON PRECEDENTIAL AND NOT BINDING ON SUBSEQUENT COURTS AS TO EVIDENCE. ALSO, PLAINTIFF ATTEMPTED INJUNCTIVE RELIEF EARLY ON IN 2010 AND PROVED LACHES INAPPLICABLE IN HIS OPPOSITION WHICH WAS NOT DISPUTED. ALSO THE SITE PLAN REJECTIONS WERE NOT IN THE LAST APPEAL AND THE ABANDONMENT WAS REALIZED IN 2024 WELL AFTER THE LAST APPEAL DECIDED ON 9/18/17

15. On page 15, para 3, as to "As to Mr. Asamow's contention that the Private Defendants' opposition was so inadequate as to warrant the granting of his motion, this court disagrees. As Discussed infra, the sinquenone of a private nuisance is reasonableness That word is a clarion call for a fact finder analysis..HOWEVER PLAINTIFF DID NOT SEEK ADJUDICATION OF COUNT 3 FOR NUISANCE, ONLY COUNTS ONE AND TWO FOR DECLARATORY AND INJUNCTIVE RELIEF FOR WHICH NO DISPUTE CLAIMED OR REPLY FILED.

16. On page 16 paragraphs 1, 2 as to "Even where a motion for summary judgment is unopposed, the court must still correlate [the] facts to legal conclusions" PLAINTIFF SEEKS THIS USING THE TRUE FACTS OF RECORD (WHICH ARE UNDISPUTED) AS TO COUNTS ONE AND TWO.

Previously Litigated Issues.

17. On page 16, last para, as to "Mr. Asamow only sought relief against Long Branch for what he asserted was an invalid zoning board permit issued to Private Defendants" THE ZONING

OFFICER UNILATERALLY WITHOUT ZONING BOARD APPROVAL ISSUED THE PERMIT EXPANDING THE NONCONFORMING PAVING USE. THE DEFENDANTS WERE JOINED IN THAT MATTER. SEE DEFENDANTS' EXHIBIT E. for L-2153-10. PER 7 ABOVE, A SECOND COUNT SOUGHT INJUNCTIVE RELIEF THRU CORRECTION AND ENFORCEMENT OF A NOTICE OF VIOLATION TO REMOVE ALL BUT PAVING BUSINESS A THIRD COUNT SOUGHT ENFORCEMENT OF NO PARKING ZONES MARKED IN PLAINTIFF'S APPROVED SITE PLAN.

18, On page 17, para 1, AS TO THE 2011 COMPLAINT, DAMAGES HAD NOT YET ACCRUED IN THE 2010 COMPLAINT.

19. On page 17, para 3, as to "Here, Mr. Asarnow argues that there is no genuine issue of material fact that:1) The Private Defendants' use of the Property is illegal THE MULTI CONTRACTORS YARD IS ILLEGAL AND THE PAVING USE IS ABANDONED. SEE SUPRA. (2) the original permittee is not using the Property; the non-conforming use was abandoned; and paving is an impermissible use (3) if the nonconforming use has not been abandoned, its scope has been exceeded;; NO SUCH STATEMENTS EXIST IN PLAINTIFF'S MOTION. SEE 13 SUPRA. PAVING USE ABANDONED DUE TO CEDING THE GARAGE TO ROSARIO'S BUSINESSES. As to (4) the tree plantings and buffers used to coverup the illegal use are illegal improvements. THAT'S CORRECT. As to (5) parking across the street where no curbs exist is illegal; SEE 13 PRIOR. as to 6) no one other than Mr. Asamow has a right to place anything on or in front of his property in the loading zones, including solid waste. THE COMPLAINT ADDS "EXCEPT AS PERMITTED BY ORDINANCE AND IT IMPLIES THE NEIGHBORS.

Alleged Use of the Property

20. On page 18, para 2, as to "Therefore, such actions (nuisance) are limited to parties who can show that their use, ability to acquire, or enjoyment of their property has been harmed by the violation" MLUL AND LOCAL ORDINANCE ALSO PROVIDE FOR EQUITABLE AND INJUNCTIVE RELIEF IN SUPERIOR COURT TO .TO PREVENT VIOLATIONS. PLAINTIFF OBTAINED TEMPORARY RESTRAINTS IN CHANCERY WHICH THIS COURT PROMPTLY DISSOLVED UPON TRANSFER.

21. On page 20, last para, page 21 top, as to "Here, Private Defendants argue that they operate a paving business-and have done so on the property since the early 2000s-and that Mr. Asamow had knowledge of the use since at least 2009. As such, Private Defendants assert the doctrine of laches bars Mr.Asarnow from bringing this action Mr.Asarnow, in turn, argues that Private Defendants' use has expanded or been abandoned, rendering the doctrine of !aches inapplicable to the facts here. On this point, the Private Defendants are right" DEFENDANTS CLAIMS ARE AN ALLEGATION. ONLY ATLANTIC HAS A PERMIT FOR SUCH THOUGH ROSARIO MAY NOW CLAIM TO DO SOME PAVING. ONLY ATLANTIC PAVING IS ON THE ZONING PERMIT WHICH WAS CHALLENGED SOON AFTER ISSUANCE. SEE 7, 14, 17 AND 25. FROM 2010 THRU 2018 WHEN THE NUMEROUS SUMMONSES FOR EXPANSION OF USE, INCLUDING FOR MULTIPLE BUSINESSES, WAS HEARD, EITHER PLAINTIFF OR LONG BRANCH (FACIALLY) SOUGHT TO TERMINATE THE USE BY ALL BUT THE PAVING BUSINESS. As to ".In a word, other than private nuisance, Mr. Asamow's requested reliefs are woefully late. The 2009 Permit authorized a mixed use of the Property for a paving company and other contractors" **THIS IS AN ABSOLUTE LIE. SEE EXHIBIT G, PG 68**. IT ONLY PERMITTED A SUCCESSOR PAVING BUSINESS AND DEFENDANTS' LACHES ALLEGATIONS AS PLED WERE PROVEN INAPPLICABLE WITHOUT ANY REPLY THEREAFTER. SEE PLAINTIFF'S OPPOSITION BRIEF PAGES 5-9. UNDER ENTIRE CONTROVERSY DOCTRINE, THE ISSUE OF LACK OF SITE PLAN APPROVAL BY DEFENDANTS WAS NOT ADJUDICATED PRIOR **THOUGH ATTEMPTED**. UNDER COLLATERAL ESTOPPEL, THE ZONING USE OF THE PROPERTY AND WHETHER REASONABLE TO OPERATE WITH NUMEROUS OUTSTANDING ZONIING VIOLATIONS FOR LACK OF SITE PLAN APPROVAL WAS NEVER ADJUDICATED. UNDER RES JUDICATA,THE COURT FOUND IT'S A NEW NUISANCE MATTER. ALSO THE ABANDONMENT OF THE PAVING USE WAS ONLY CONFIRMED IN 2024 UPON VISIT OF PLAINTIFF'S LAND USE EXPERT TO THE SITE SO LACHES CANNOT APPLY THERE BUT THE COURT'S ORDER HAS SUPPRESSED ANY EVIDENCE PRIOR TO THE 2015 TRIAL JUDGMENT THAT MIGHT HELP PROVE ABANDONMENT THOUGH NOT ADMITTED OR ALREADY USED IN THE TRIAL.

22. On page 22, para 2, as to "However, the relief Mr. Asamow requests -Long Branch's enforcement of zoning and municipal ordinances - is nevertheless barred by statutes of limitation."

PLAINTIFF SEEKS ENFORCEMENT OF THE OFFSITE VIOLATIONS BY THE COURT AS ZONING VIOLATIONS UNDER MLUL DUE TO LACK OF SITE PLAN APPROVAL TO CREATE OR EXPAND THE USE BASED UPON THE ZONING BOARD REJECTION. ALSO EACH DAY IS A NEW VIOLATION OF ORDINANCES AND STATUTE OF LIMITATIONS INAPPLICABLE OR CAN BE CONSIDERED A TAKING. PLAINTIFF HAS NOT BEEN ABLE TO CUT HIS GRASS IN THE DEAD END ROW FOR OVER A YEAR DUE TO PLACEMENT OF THINGS THEREON BY DEFENDANTS.

As to " As described in detail in the court's statement of reasons supporting the March 2023 grant of summary judgment as to Long Branch, and incorporated therein by reference, various time limitations periods precluded relief.... Indeed, it would be perverse to allow Mr. Asarnow to seek relief against the Private Defendants under the MLUL where similar if not identical relief is time-barred as to Long Branch" ASSUMING AGUENDO THE RULINGS ARE CORRECT, PLAINTIFF IS SEEKING RELIEF UNDER THE MLUL SO NOT SIMILAR OR IDENTICAL. COURT PROVIDES NO CASES THAT MLUL OR LOCAL ORDINANCE DEPENDENS ON MUNICIPAL ACTION FIRST. SEE ALSO ABOVE IN 22

23. On page 23, as to " Mr.Asarnow asserts that a reasonable trier of fact must find that the Private Defendants are "operating a construction yard, storing construction vehicles and construction materials thereon regardless [of] whether trucks are painted white to disguise what business owns them.""Based on the photographs - snapshots of moments in time-there is no indication the utility vehicles are operated on the Property or are merely stored there". "The term "outdoor construction yard" is not defined by applicable ordinances. Moreover, Mr. Asamow does not argue that this use is "industrial"-a term of consequence in the context of zoning ordinances Mr. Asarnow's statement that Private Defendants are "operating an outdoor construction yard" is an allegation""Regardless, this court is not the appropriate venue to determine whether Private Defendants are operating an "outdoor construction yard" in violation of zoning ordinances. The appropriate party to hear such argument is the Long

Branch Zoning Board" PER MATERIAL FACT 6C, EXHIBIT O, PG 161, " APPLICANT IS SEEKING VARIANCE/ SITE PLAN APPROVAL AS A CONSTRUCTION YARD STORING CONSTRUCTION VEHICLES AND CONSTRUCTION MATERIALS .." AS PART OF THE REJECTED USE. PER MATERIAL FACT 6D, EXHIBIT O, PG 169, PARAGRAPHS 1&2, COMPANIES DOING MASONRY, ASPHALT, CONTRACTING AND IRRIGATION WORK ARE INDUSTRIAL USES NOT PERMITTED IN THE CITY'S C=2 COMMERCIAL ZONINIG DISCTRICT AND REQUIRE USE VARIANCE FOR THAT. APPLICANTS ORIGINAL ZONING BOARD APP, PG 114 STATES " SITE IS USED AS A CONTRACTOR'S YARD FOR PARKING OF VEHICLES AND INSIDE STORAGE" THE 2/20/15 AMENDED APP PG 119 REAFFIRMS "SITE IS PRESENTLY USED BY A PAVING COMPANY AND ASSOCIATED CONTRACTORS FOR PARKING OF VEHICLES AND STORAGE" ON PG 120 TERMS "YARD" AND "CONTRACTORS YARD" ARE ON THE APPLICATION. THE TERM "YARD" IS ON THE ZONING PERMIT. ORDINANCE 345-11C PROHIBITS OUTDOOR STORAGE "OF ANY KIND IN ANY DISCTRICT" NUMEROIUS SUMMONSES FOR EXPANSION IOF USE INCLUDING FOR MULTIPLE BUSINESSES IS IN EVIDENCE. NUMEROUS PHOTOS WERE SUBMITTED SINCE 2017 SHOWING AT LEAST STORAGE OF VEHICLES. THE CONTRACTORS YARD IS RECOGNIZED AND REJECTED BY THE ZONING BOARD AND AN UNDISPUTED FACT NOT RESPONDED TO BY DEFENDANTS. ITS NOT AN ALLEGATION AND NO ACTION BY THE ZONING BOARD IS CALLED FOR. AND ENFORCEMENT BY THE COURT IS APPROPRIATE.

24. On page 24, as to the zoning board jurisdiction/duties, NOT NEEDED OR RELEVANT. ALSO, ZONING BOARDS DON'T ENFORCE OR ISSUE INJUNCTIONS

25. On pages 24, 25, as to "If a litigant wants to direct a government official to "carry out required ministerial duties[,] " they must obtain a writ of mandamus""'Mandamus relief 'must be denied where equity or paramount public interest so dictates or there is other adequate relief available."'Mullen v.Ippolito Corp.,428 N.J.Super.85,102 (App.Div.2012) (quoting Ganou, 11 N.J.at302)). MANDAMUS WAS ALREADY TRIED TO ENFORCE SITE PLAN AND SOLID WASTE ORDINANCES AND REJECTED DUE TO MERE ISSUANCE OF 2 NOTICES OF VIOLATION. As to "Here, once again, Mr. Asarnow seeks to compel Long Branch to enforce various zoning ordinances .Although Long Branch is no longer an active patty to this present litigation, Mr.

Asarnow seeks relief the Long Branch Zoning Board May provide-termination of the alleged illegal use of the Property as an outdoor Construction yard. And, again, to the extent the MLUL allows Mr. Asamow a second pathway by litigating directly against the Private Defendants ,such is barred by laches. CONTRIVED. SEE 22, 23 PRIOR. THE CONSTRUCTION YARD IS CLEAR. NOT AN ALLEGATION. MLUL STANDS ON ITS OWN INDEPENDENT FROM MUNICIPAL ACTIONS. THE ZONING BOARD IS NOT NEEDED FOR THE MLUL PATHWAY. AS TO LACHES, NONE EXIST. THE ILLEGAL USE IS ALREADY MADE CLEAR, WAS NEVER LEGALIZED, AND NOT DISPUTED BY DEFENDANTS. PLAINTIFF'S COMPLAINT FILED 2021 WITHIN 6 YEARS OF THE 2017 ZONING BOARD REJECTION. INJUNCTIVE RELIEF WAS SOUGHT THRU THE 2010 COMPLAINT SECOND COUNT, **VIOLATION/SUMMONS ISSUED TO ATLANTIC PAVING IN 2011 FOR VIOLATION OF ZONING PERMIT (pg 44) AND 2013 FOR OPERATING IN VIOLATION OF ZONING PERMIT (PG 48,49) DUE TO BUSINESSES THAT ARE NOT ATLANTIC PAVING BEING ON SITE AND STOCKPILING MATERIALS AND MACHINERY.**, DEFENDANTS THEREAFTER FILED SITE PLAN APP IN 2013 TO "CREATE" CONTRACTORS YARD (PG 114) AND THEREAFTER RECEIVED NUMEROUS SUMMONES FOR CONTINUED EXPANSION OF USE WITHOUT SITE PLAN APPROVAL (PAGES 50-62) **INCLUDING FOR MULTIPLE BUSINESSES AND OUTDOOR STORAGE** AND ON 2/20/15 AMENDED AND ADDED ALL LOTS TO; "CURE EXPANSION OF USE ISSUES." WHICH COURT ADMITS PLAINTIFF "VIGOROUSLY OPPOSED" (REASONS PG 27) WASN'T PLAINTIFF TO ASSUME THE VIOLATION NOTICES AND SUMMONSES WERE MADE IN GOOD FAITH TO STOP THE UNLAWFUL USE? THEY WERE NOT. THE ILLEGAL USE WAS NOT TERMINATED PENDING SITE PLAN APPROVAL OR EVER. ALSO DEFENDANTS LACHES ARGUMENTS PROVEN INAPPLICABLE. ALSO, BY COURTS OWN ARGUMENT IN 23 PRIOR, THE PHOTOS DO NOT NECESSARILY SHOW A CONTRACTORS YARD AS ONLY STORAGE OF VEHICLES EVIDENT.

26. On pages 26, 27 as to "Here Mr Asarnow has not presented clear evidence of the alleged illegal use or zoning ordinance violations" citing Mullen and Garrou decisions. HE HAS. SEE ABOVE. ALSO MATERIAL FACT 11 PROVED THE ILLEGAL CONTRACTORS YARD USE AND WAS NOT DISPUTED.

27. On page 27 para 2, as to ".Unlike the facts in Garrou and Mullen, Mr.Asarnow's complaints to Long Branch were not ignored. Long Branch has not been indifferent to Mr.Asarnow's complaints. Rather, Mr. Asamow admits that there have been notices of violations issued. Likewise, Mr. Asarnow acknowledges that Long Branch denied the Private Defendants' 2017 Zoning Board application- which Mr. Asarnow vigorously opposed at the public hearings. Thus, Mr. Asamow concedes that his dispute is not that Long Branch has taken no action-as in Garrou and Mullen-but rather that he is dissatisfied with the extent of Long Branch's enforcement action. MERE ISSUANCE OF NOTICES OF VIOLATION WITHOUT ABATEMENT IS NOT ENFORCEMENT. NEVERTHELESS, ONCE DISCRETION EXERCISED, IT MUST BE DONE CORRECTLY AS AFFIRMED BY THE 2010 APPEAL THOUGH THE COURT DID NOT FOLLOW THROUGH PER 7 SUPRA. ZONING BOARDS DON'T ENFORCE. DENIAL IS NOT ENFORCEMENT. NO SUBSEQUENT ABATEMENT OCCURRED CONSISTENT WITH THE DENIAL. NEVERTHELESS **PLAINTIFF'S MOTION DOES NOT SEEK MANDAMUS**.

Effect of Zoning Board Resolution

28. On page 28, para 2, as to " Based on this language, Mr. Asarnow continues to contend the current use of the Property as an outdoor construction yard-without site plan approval -is illegal. IT IS. SEE 23, 25 SUPRA. ALSO, PLAINTIFF'S COUNTERSTATEMENT OF FACTS WHICH WERE NOT DISPUTED PROVE THE MULTI CONTRACTORS USE WAS NEVER APPROVED. DEFENDANTS' INITIAL ZONING BOARD APP FILED 10/9/13 EXHIBIT K PAGE 114 STATES "APPLICANT SEEKS TO **CREATE** A CONTRACTOR'S YARD AND TO EXPAND THE PERMITTED USE AND THE AMENDED APP ON PG 120 ADMITS ITS BEING USED AS AN ALLEGED CONTRACTORS YARD SEE ALSO 23, 25 SUPRA AND THE SUMMONSES INCLUDING FOR MULTIPLE BUSINESSES WHICH . REFUTES THE COURT'S CLAIM THE 8/3/09 ZONING PERMIT AUTHORIZED THE CONTRACTORS YARD. In quote from zoning board at bottom, as to ". *A portion of the [Property] is located in each of [Long Branch's] C-2 (Commercial) Zone, the I (Industrial) Zone, andthe R-4 (Residential) Zone.The [Property]is currently utilized to host various industrial, commercial uses, including a masonry/ concrete*

use, an asphalt paving use, and an irrigation company use" MERE RECITATION OF THE EXISTING USE DOES NOT LEGALIZE IT.

29. On page 29, paragraphs 1-3 including quote from Resolution, as to" *The Board is aware that certain portions of the site may likely constitute a pre-existing non-conforming use -which, per New Jersey law, is allowed to continue to exist. While the Board and or Public may have issues / concerns with regard to the same, it is, nonetheless, acknowledged that lawful pre-existing non-confo1ming uses are allowed to continue*" . THIS REFERS TO THE ONLY EXISTING APPROVED USE FOR A PAVING COMPANY INSIDE THE GARAGE. SEE COUNTERSTATEMENT OF FACTS AND MATERIAL FACT 4 NOT DISPUTED. NO FOUNDATION EXISTS OTHERWISE.

In paragraph 4, as to "Here, Mr.Asarnow contends that the permittee is no longer operating on the Property and thus has abandoned the nonconforming use" NO SUCH CONTENTION. POINT III STATES ABANDONED DUE TO CEDING THE USE OF THE GARAGE TO ROSARIO FOR HIS BUSINESSES PER CASE **BROWN V GAMBRIEL** CITED BY COURT.

30. On page 30, paragraphs 2&3, as to" "Notably, Mr. Asarnow does not argue that the Private Defendants ceased using the Property .To the contrary, Mr. Asarnow provides alleged evidence and argument to demonstrate the Private Defendants continue to operate multiple businesses on the Property. Accordingly, Mr. Asarnow's request for declaratory Judgment and injunctive relief on the grounds that the non-conforming use was abandoned must be denied." NO SUCH CLAIM WAS MADE THAT THE MULTI CONTRACTORS YARD USE WAS ABANDONED. ONLY THAT THE PAVING USE WAS ABANDONED AND MEETING REQUREMENTS OF THE CITED CASE. SEE ALSO BROWN V GAMBRIEL A CASE CITED BY THE COURT ON PAGE 33 OF REASONS

Exceeded Scope of Authorized Use

31. On page 30 para 4, as to " Mr. Asarnow argues that, if the nonconforming use authorized by the 2009 Permit is not abandoned, it has been exceeded ." NO SUCH STATEMENT EXISTS IN PLAINTIFF'S MOTION. On this point, Mr. Asarnow contends that the use of the Property "is restricted to the inside of the garage headquarters per Carl H.Turner , Jr. ,Assistant Director of Planning & Zoning who supervised the zoning officer []who issued the [Permit.]"DISTORTION: THE USE OF THE PROPERTY BY THE **PAVING COMPANY** IS RESTRICTED TO THE GARAGE.

As to, "Mr. Asamow does not indicate , and the court could not locate any definitive conclusion about the 2009 Permit. Mr. Asarnow makes no other argument on this point." TURNER ON PG 104 STATES BRUNO NOT TO USE LOTS 19,20,21 IN RESIDENTIAL ZONE & ON PG 106, ONLY THE HEADQUARTERS GARAGE TO BE USED. ON PG 110, THE PAVING BUSINESS IS RESTRICTED TO INSIDE THE GARAGE. NOTICES OF VIOLATIONS CONSISTENT WITH THIS FOLLOWED. MATERIAL FACT 5 PROVES THE ABANDONMENT AND PAGES 11-14 FULLY ARGUE THE POINT.

On page 31 as to " Nor does he demonstrate how Turner's deposition in a prior litigation is conclusive" THE ZONING PERMIT CONDITIONS HAVE NOT CHANGED AND MR TURNER KNEW MOST ABOUT INTERPRETATION OF SAME WHEN ISSUED.

THIS AND ALL ZONING WAS SUPRESSED IN THE 2015 TRIAL BUT IS STILL RELEVANT TO THE ABANDONMENT CLAIM..

As to "Further, as discussed supra, application of laches is plainly applicable where Mr Asarnow knew about the alleged exceeded scope as early as 2013" THE COURT DOES NOT CITE TO ANY RECORD AS TO THIS CONCLUSION HOWEVER THE INITIAL ZONING BOARD APP WAS FILED 10/9/13 (pg 113) AND PLAINTIFF VIGOROUSLY OPPOSED ACCORDING TO COURT AND IT WAS ULTIMATELY REJECTED. THE ABANDONMENT OF THE PAVING USE WAS NOT CONFIRMED UNTIL 2024 UPON VISIT BY PLAINTIFF'S LAND USE EXPERT AND DEPOSITIONS. AS TO THE CONTRACTOR'S YARD SEE 25 SUPRA.

Illegal Improvements

32. On page 31, last paragraph, as to "It remains unclear whether the "buffers and associated tree plantings" Mr. Asarnow references existed prior to the Private Defendants' application. And, as previously stated, denial of the application does not compel a finding that the use of the Property is illegal" POINT VI AND MATERIAL FACT 24 PHOTOS CONFIRM BUFFERS INISTALLED 10/1/19-10/18/19 . THE ZONING BOARD RESOLUTION OF REJECTION WAS 7/10/17 AND THE ABOVE FACTS INCLUDING THE COUNTERSTATEMENT OF FACTS PROVE THE MULTI CONTRACTOR'S YARD WAS NEVER LEGALIZED SO THE BUFFERS ARE ILLEGAL IMPROVEMENTS.

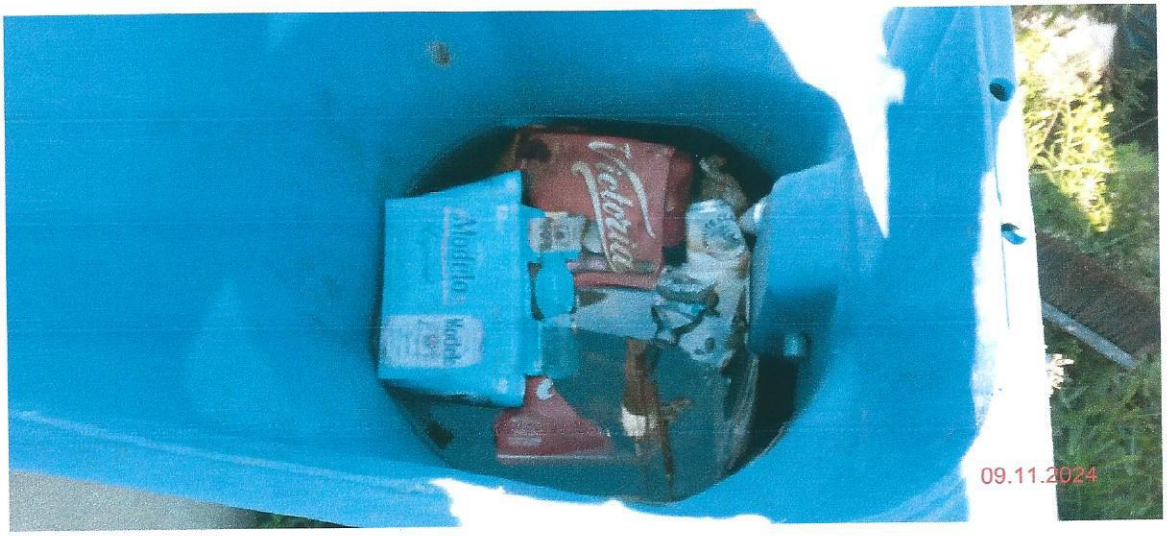
Abandoned Use.

SEE ABOVE, I.E. 29, 30, 31. THE ABANDONMENT IS SIMILAR TO WHAT OCCURRED IN BROWN V. GAMBREL. CITED ON PAGE 33 OF THE COURT'S REASONS. AS ABANDONMENT WAS CONRIMED IN 2024, THERE CAN BE NO LACHES AND THE ANCILLARY PERMITS CONTAINING THE NAME ATLANTIC PAVING & MISC. ARE ALSO VOID.

I hereby certify that the foregoing statements made by me herein are true. If any statements made by me are willfully false, I am subject to punishment.

Dated: September 17, 2024

Mr. Brian D. Asarnow



Εx. A

CITY OF LONG BRANCH
DEPT.OF PLANNING & ZONING
732-571-5647

Date Issued 08/03/09
Application # 090715-1
Permit # 080309-3

Z O N I N G P E R M I T

Site Location 63 COMMUNI COMMUNITY PLACE Block 237 Lot VARIOUS Qual BUS.

Owner E & L PAVING CO., INC
Address 63 COMMUNITY PLACE
LONG BRANCH, NJ 07740-
Development NEW PLANS SUBMITTED 7/31/09

Applicant JAMES M. SICILIANO
Address 63 COMMUNITY PLACE
LONG BRANCH, NJ 07740-

APPROVED 08/03/09 Zoning District I Application Date 07/15/09
Fee $ 10

This certifies that an application for the issuance of a Zoning Permit has been examined.

Use is: CONTINUE PRE-EXISTING PARTIALLY NON-CONFORMING USE FOR PAVING COMPANY FOR TWO BUILDINGS, YARD & PARKING AREA FOR LOTS 13.02, 32.01, 32.02, 37.01, 38.02, 39, 19, 20 & 21

Previously "E+L Paving"; New owner "Atlantic Paving"

Upon review it was determined that:

[X] Use is permitted by Ordinance Commercial/Industrial
[ ] Use is permitted by Variance approved on: / /
[ ] Valid Nonconforming Use is established by
  [ ] Zoning Board of Adjustment
  [ ] Zoning Officer

Conditions of Use are: NO INTERIOR, EXTERIOR OR SITE CHANGES
Comments: NO STOCKPILING OF SOIL OR EXPANSION OF USE PERMITTED

Michele Bernich 08/03/09
MICHELE J. BERNICH, ZONING OFFICER

YOU ARE RESPONSIBLE FOR OBTAINING ADDITIONAL APPROVALS, INSPECTIONS, REVIEWS, C.O.s, LICENSES AND/OR PERMITS FROM THE AGENCIES MARKED BELOW:

- X Zoning Permit for Signage from Planning & Zoning Office
- ___ Construction Permit(s) from Building Department
- X Commercial Certificate of Occupancy from Fire Prevention
- X Mercantile License from Health Department
- ___ Sanitary/Health Inspection from Health Department
- ___ Curb/Sidewalk/Apron Permit from Dept. of Public Works
- ___ Grading & Drainage Plan Approval by City Engineer
- ___ Grading & Site Inspection by City Engineer
- _X_ You must provide identical copies of this approved Zoning Permit as required by the marked Department(s) above

Contacts:

Building Department	*732-571-5690*
Fire Prevention	*732-571-5651*
Health Department	*732-571-5665*
Public Works	*732-571-6520*
City Engineer	*732-380-1700 x1206*

CC: ___ Kevin Hayes, Code Enforcement (732-571-5652)
___ Tax Assessor (732-571-5658) ___ City Engineer

BRIAN D. ASARNOW
55 Community Place
Long Branch, NJ 07740
732-870-2570

BRIAN D. ASARNOW,

Plaintiff,

vs.

City of Long Branch, A Municipal Corporation
Edward Bruno and E&L Paving, Inc.;
63 Community Place, LLC;
Ray Grieco & Atlantic Paving (& Coating), LLC;
Jose A. Rosario, Jr. & Rosario Contracting Corp.,
Custom Lawn Sprinkler Co., LLC.;
R. Brothers Concrete, LLC

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

Docket No. MON. L-1422-22

Civil Action

ORDER

.

THIS MATTER being first brought before the court by Plaintiff Brian D. Asarnow upon the filing of a Motion for Reconsideration of the Court's August 28, 2024 Order for partial summary judgment on the First and Second Counts of the Second Amended Complaint, and the court having considered the papers submitted by the parties and oral argument and and for good cause being shown;

It is on this day of , 2024 *ORDERED* that*:*

1. Atlantic Paving (& Coating), LLC has overtly ceded the use of the garage on Community Place block 237 lot 19.01 in the city of Long Branch to other businesses and is instead using the C-2 zone on lot 19.01 which confirms its intent to abandon the paving use on block 237, lot 19.01 in Long Branch which I so find has occurred;

2 The current use of Block 237, lot 19.01 on Community Place and Morris Avenue in Long Branch, NJ as a multi contractor construction yard by Atlantic Paving (& Coating) LLC, Rosario Contracting Corp., Custom Lawn Sprinkler, LLC, R.Brothers Concrete, LLC and any

other business or use thereon is unlawful and in violation of the Long Branch Board of Adjustment Resolution of Denial dated July 10, 201 and subsequent June 19, 2018 Order of Denial/Dismissal of the Appeal thereof and therefore violates NJSA 40:55D-1 et seq.

3. It appears that occupants of block 237 lot 19.01 in Long Branch, NJ aka 63 Community Place are using the streets and adjoining properties in violation of local ordinances or otherwise as part of the unlawful use of lot 19.01;

4. The buffers and tree plantings on block 237 lot 19.01 adjoining Community Place and Morris Avenue are unlawful and lack site plan approval and appear to encroach on the public right of ways thereon;

And it is *FURTHER ORDERED* that:

5. The use of Block 237 Lot 19.01 Long Branch New Jersey, aka 63 Community Place, by Atlantic Paving (& Coating) LLC, Rosario Contracting Corp., Custom Lawn Sprinkler, LLC, R.Brothers Concrete, LLC and any other business thereon shall terminate within days of entry of this order and all material, vehicles, equipment and objects thereon shall be removed and the lot cleared pending site plan approval for an approved use.

6. The use of the marked loading zone and grassy right of way in the dead end fronting Plaintiff's property by occupants of block 237, lot 19.01, for placement of solid waste and containers thereto, wooden posts and things and placement of pipes on Plaintiff's west boundary wall must cease and terminate within the time frame set forth above.

7. The use of Morris Avenue and Community Place for parking by occupants of block 237, lot 19.01 shall also terminate within the timeframe set forth above

8. The buffers and tree plantings on block 237 lot 19.01 adjoining Community Place and Morris Avenue are to be removed within the timeframe set forth above.

9. The trial judge shall consider all relevant evidence at trial for issues not previously adjudicated

10. The city of Long Branch shall use its police powers to enforce this Order

11. The Sheriff is authorized to remove and place a lien on any vehicles or equipment or things, consistent with the above, not removed by the termination date.

12. The owners of 63 Community Place may only use the property for their own personal use until site plan approval is obtained.

And it is *FURTHER ORDERED* that:

This Order shall be deemed served upon all parties when entered by the court on NJ eCourts or JEDS as applicable.

_____

Hon. Gregory L. Aquaviva, JSC

__ Opposed

__Unopposed