SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003892-19T2

RICHARD A. BRUMMEL, Plaintiff-Appellant v. TOWNSHIP OF WAYNE, MAYOR AND COUNCIL OF THE TOWNSHIP OF WAYNE, CHAIRMAN AND ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF WAYNE WAYNE, GRACE UNITED PRESBYTERIAN CHURCH OF	WAYNE, Defendants-Respondents. CIVIL ACTION ON APPEAL FROM: SUPERIOR COURT, LAW DIV. PASSAIC COUNTY Docket # PAS-L-1001-20 HONORABLE THOMAS F. BROGAN, J.S.C., P.J.

==========

BRIEF IN SUPPORT OF APPEAL
PLAINTIFF-APPELLANT RICHARD A. BRUMMEL
(REVISED PER ORDER OF February 4, 2021)

==========

RICHARD A. BRUMMEL, PLAINTIFF-APPELL.*pro se*
MAILING ADDRESS:
P.O. BOX 162, OAKLAND, N.J. 07436
HOME ADDRESS:
70 WANAQUE AVE., #3, POMPTON LAKES., N.J. 07436
Tel. (201) 749-7065, Email: rxbrummel@gmail.com

Table of Contents

Table of Judgements, Orders, and Rulings To Be Appealed

Table of Authorities

Court Rules --

Statutes --

Case Law

Table of Appendix

Preliminary Remarks

1. Plaintiff is an environmental activist who read in the news about the seemingly futile efforts by residents in a nearby community to prevent destruction of a roughly three-acre neighborhood forest, and he joined the fray, taking a leadership role to organize a 'last-ditch' effort.

2. When land-clearing seemed imminent, Plaintiff invoked his standing to sue under the N.J. Environmental Rights Act ("NJ-ERA", "the Act", N.J.S.A. 2A:35A-1 *et seq*.), and he filed a 'bombshell' Complaint charging local officials with multiple glaring violations of local environmental statutes.

3. After extensive motion practice at both trial and appellate levels, and after an initial hearing on a preliminary injunction, the Honorable Court shockingly dismissed the Complaint *sua sponte* in the course of what was announced as a second

hearing on the proposed preliminary injunction.

4. The Court erred on both procedural and substantive grounds. The Court gave no notice prior to what was effectively a *sua sponte* 'motion to dismiss'.

5. The Honorable Court seemed simply unhinged by Plaintiff's tenacious litigation style. The disposition of the case seems significantly the product of 'bad-blood' between the Honorable Court and Plaintiff, *see*, e.g. T2, pp. 14 *ff.*

6. The Honorable Court opined in the very first hearing that allowing Plaintiff to prevail on the merits would invite interference in other salutary development, such as schools and hospitals (T2, p. 32, *ll.* 14-25; p. 33, *ll.* 1-5).

7. In its final pronouncements, the Court revealed remarkable hostility to various established legal rights: the Court held contrary to the clear language of the law that the NJ-ERA did

not grant citizens wide-ranging standing in matters affecting the State's environment (T2, p. 15, *ll.* 20 *ff.*), and notwithstanding Plaintiff's explicit strategy of challenging statutory violations, not the zoning decision *per se*, the Court held the case should not have been argued in Court, but rather before the Zoning Board of Adjustment (T2, p. 20, *ll.* 24 *ff.*),.

8. Reversing the decision will have the important salutary effects of correcting judicial error arising from personal animus and self-serving error in legal analysis; salvaging the opportunity for the public to preserve a precious piece of local-woodland; permitting the constituents of Defendant Township to better understand their government's failures in protecting open-space; and to impel reform of the deeply-flawed local environmental stewardship, as documented in the Complaint.

Procedural History

9. Plaintiff on March 20, 2020, filed a verified Complaint (Pa109) by order to show cause requesting various types of injunctive relief; appointment of a special master; and rescission of subdivision-approval.

10. Plaintiff presented bombshell causes of action (Pa123 *ff.*), as follows:

(1) By unilaterally vetoing – in secrecy -- an initial sales offering of 'open space' (the subject forest) by Defendant Church, the Defendant Mayor violated Township rules mandating the Township "Open Space Committee" make any "initial determination" regarding potential acquisition of open-space by the Township (Pa124);

(2) Defendant Township permitted its statutorily-required "Open Space Committee" to lapse and disappear,

notwithstanding its explicit statutory duties to protect open-space (Pa130);

(3) Defendant Chairman of the Zoning Board of Adjustment, in publicly 'charging' the board *prior* to its debate and vote on final-subdivision approval for the forest in question, grossly misrepresented the statutory duty of the board, which required among other things that it preserve “mature woodlands” such as the forest at issue “to the maximum extent possible” (Pa119); and,

(4) Defendant Township's annual budget-statements for the “Open Space, Recreation, Farmland and Historic Preservation Trust Fund” (“the Open Space (etc.) Trust Fund”, “the Fund”) routinely omitted data on 'cumulative revenues' and 'classes' of expenditures, thus obscuring the evolution of the Fund into a 'slush-fund' for Mayoral pet-projects to the gross neglect of

open-space protection (Pa132).

11. Plaintiff deferred to the last moment serving the Complaint on Defendants while seeking *ex parte* injunctive relief from the Superior Court and the Appellate Division due to the delicacy of preventing preemptive clearing of the woods (Pa140).

12. Plaintiff on March 30th requested permission of the Appellate Division to file an emergent appellate motion for *ex parte* relief, but it was denied. Thereupon, on April 1, 2020, Plaintiff served the Defendants.

13. The Church on April 13th and 16th, respectively, filed an answer (Pa207), and a letter-brief alleging inter alia Plaintiff lacked standing to sue.

14. The Zoning Board of Adjustment filed a letter-brief on April 14th alleging, inter alia, the harm to be caused by the

destruction of the subject forest was not irreparable and the harm in any event would not be to Plaintiff and Plaintiff misconstrued the mandate of the Zoning Board of Adjustment.

15. The Township filed a letter-brief on April 15th alleging, inter alia, even if the Mayor had passed the sales-offer to the Open Space Committee the outcome likely would not have been different and the zoning ordinances were misconstrued.

16. On April 22, Plaintiff served on all the parties and the Court (but did not file) a motion to recuse and for a change of venue which alleged, inter alia: the Hon. Judge Thomas F. Brogan demonstrated a bias toward development in his conversations with Plaintiff and in his perceived self-described role as "the Mount Laurel judge". But on April 23rd Plaintiff notified all the parties he had a change of heart and did not file the motion.

17. Plaintiff filed a reply-brief in further support of the preliminary injunction(s) on or about April 27th.

18. The trial Court on April 30th conducted a roughly two-hour hearing on the preliminary injunction (T1) at which the parties argued the merits of the underlying case.

19. When Defendant Church raised a fresh argument – not previously raised -- that Plaintiff lacked standing because he had failed to provide thirty-days' notice as provisionally-required by the New Jersey Environmental Rights Act, NJ-ERA, Section 2A:35A-11, the Court deferred judgement pending a further hearing.

20. Pursuant to Plaintiff's subsequent motion, the Court set a briefing schedule for the issue of Plaintiff's standing pursuant to NJ-ERA 2A:35A-4(a), Municipal Land Use Law ("MLUL") 40:55D-4, and Court Rules R. 4:26-1.

21. On or about May 8th, Plaintiff submitted a brief arguing inter alia that a 'request' for emergent-status pursuant to NJ-ERA Section 2A:35A-1 could be 'read into' his pleading as a *pro se* litigant, or that alternatively Plaintiff could claim standing as an interested party under MLUL 40:55D-4 and the Court rules.

22. Defendants filed opposing letter-briefs on or about May 14th, and Plaintiff filed a reply on or about May 18th.

23. While the issue of Plaintiff's standing was pending, on or about May 15, 2020, a neighbor of the forest at issue, John A. Demetrius, with Plaintiff's assistance filed a motion to intervene pursuant to R. 4:33-1 and R. 4:33-2, and an order to show cause to delay any further hearings on the preliminary injunction.

24. On or about May 18th, Plaintiff also filed a motion to delay

the scheduled hearing for Mr. Demetrius's motion to intervene to be heard.

25. The Court took umbrage in a series of emails at the inference Plaintiff was behind the intervention and had assisted in the writing of the motion to intervene.

26. In briefs opposing the motion to intervene, both the Defendant Church and the Defendant Township alleged the papers were written by Plaintiff, and should be disregarded by the Court.

27. On or about May 25th, the proposed-intervenor, Mr. Demetrius, filed a letter by JEDS requesting to withdraw his papers.

28. On May 26th, the Court held its follow-up hearing on the preliminary injunction (T2, p. 1, *ff.*).

29. The Court immediately quizzed the proposed-intervenor,

Mr. Demetrius, about the authorship of his papers (T2, p. 8, *ll.* 23 *ff.*), which Mr. Demetrius attributed to Plaintiff.

30. Based on its inquiries, the Court granted the proposed-intervenor's request to withdraw his motion (T2, p. 12, *ll.* 3-4), and then the Court summarily dismissed Plaintiff's verified Complaint (T2, p. 14, *ll.* 7-10).

31. Prior to enumerating legal bases for the 'dismissal' the Court stated as an overarching basis for foreclosing the planned hearing that Plaintiff was “doing nothing but playing fast and loose with the Court”, by implication because of Mr. Demetrius' attempted intervention (T2, p. 14, *ll.* 13-16).

32. The Court further stated it was acting because of Plaintiff's lack of notice -- hence lack of standing -- under the NJ-ERA (T2, p. 15, *ll.* 7-8); and Plaintiff's purported misuse of the NJ-ERA in a land-use matter (T2, p. 15, *ll.* 8-11).

33. The Court further found the case was "frivolous, harassing or wholly lacking in merit" under NJ-ERA 2A:35A-4(c), later specifying it found the case "wholly lacking in merit" (T2, p. 17, *11*. 1-6; p. 18, *ll.* 15-17).

34. The Court also held Plaintiff lacked standing under alternate theories Plaintiff raised aside the from the NJ-ERA (T2, p. 17, *ll.* 11-13).

35. Plaintiff objected at the time to the absence of a pending motion to dismiss the case (T2, p. 16, *ll.* 11-14), and requested a temporary stay pending appeal (T2, p. 16, *ll.* 20-22).

36. The Court denied the injunction (T2, p. 16, *ll.* 20-22) and rejected the procedural objection (T2, p. 16, *ll.* 11, *ff.*).

37. On May 29th, the Court signed an order supplied by Defendant Township finding only lack of standing under the NJ-ERA and finding the matter "frivolous, harassing or

wholly lacking in merit", in general terms (Order, Pa2).

38. The Court also added a 'coda' finding Plaintiff had failed to show "candor" to the Court and engaged in the unauthorized practice of law when Plaintiff assisted the proposed-intervenor with his papers to intervene for standing, and did so in a contumacious manner (Order, Pa2).

39. Plaintiff timely appealed the dismissal to the Appellate Division by notice of appeal (Pa313).

40. Plaintiff filed an appeal of the denial of the preliminary injunction with this Court on or about July 6, 2020, which was denied on August 13, 2020.

41. Plaintiff appealed this Court's denial with the Supreme Court, requesting certiorari on or about September 3, 2020, which was denied on February 9, 2021.

42. (The papers related to the two motions appealing the

injunction are omitted from the appendix because they are not relevant to this appeal.)

Correction of CCIS

43. Please note: Plaintiff wishes to notify the Court hereby that in response to Question 10 on the CCIS for this appeal, Plaintiff failed to note that at the second hearing on the preliminary injunction (T2, p. 24) the Hon. Judge Brogan did indeed issue oral findings and opinions and Plaintiff relies on them herein, in addition to the written "order" issued on May 29, 2020 (Pa1). Furthermore the transcript of the first hearing was obtained and supplied the Court and parties.

Facts

44. On February 18, 2020 the Defendant Zoning Board of

Adjustment memorialized its granting of final subdivision approval for the Defendant Church to largely clear and cut down an approximately three-acre wooded area located in a residential neighborhood for the construction of five houses (Minutes, Appendix, Pa191).

45. The Zoning Board of Adjustment ("the Board") had previously granted preliminary subdivision approval in 2016 (Pa299).

46. Plaintiff, an environmentalist residing in a neighboring municipality, filed written opposition to the final approval during the Board's February 18th meeting (Pa222), and on March 4, 2020, joined about a dozen citizens opposed to the subdivision at the Defendant Township Council regular meeting, and submitted extensive oral and written testimony describing procedural failings in the process leading to the

subdivision (Pa227), later formalized in the causes of action in the verified Complaint (Pa109).

47. On or about February 26, 2020, the Pastor of Defendant Church unexpectedly sent an email to the Defendant Mayor asking if the Township could acquire the woodland with open-space funds to preserve it (Pa180).

48. Without any evident process of consultation, including any meeting of the moribund and non-functional Township "Open Space Committee", the Mayor rejected the idea in a secret email to the Church on March 2, 2020 (Pa179).

49. At the Township Council meeting of March 4th, Plaintiff appealed to the Council to step in and overrule the Mayor, but it did not (Pa227).

50. Plaintiff, along with a local resident, sent an urgent request to Defendant Mayor and two Council members on March 5,

2020 for an emergency meeting of the Township Environmental Commission to address acquiring the land, but no action occurred (Pa250).

51. On March 20th, Plaintiff filed the verified Complaint and supporting papers, with the order to show cause requesting *ex parte* injunctive relief to prevent any destruction of the forest at issue (Pa109).

52. To date, upon information and belief, despite various claims by the Defendant Church and the Defendant Township that all necessary permissions are in place to level the forest, there has been no work done on the ground since the case was filed except in about June, 2020 new spray-paint markings appeared along the center of a roadway leading to the entrance to the proposed subdivision.

53. As issues were raised about Plaintiff's standing, Plaintiff

went door-to-door in the direct neighborhood of the forest at issue and obtained a volunteer-intervenor plaintiff to assure the case would go forward with or without Plaintiff's standing resolved in his favor.

54. The proposed-intervenor filed his motion to intervene on or about May 15th in advance of the hearing on Plaintiff's standing (Pa10, *ll.* 23 *ff.*).

55. The Court in emails to Plaintiff and then in the second preliminary injunction hearing expressed dismay Plaintiff may have co-written the papers the proposed-intervenor filed (Pa10, *ll.* 23 *ff.*) , and on May 25th the proposed-intervenor wrote a letter to the Court seeking to withdraw the papers (Reference by Court, Pa14, *ll.* 3-4).

56. At the final hearing on May 26th, the Court quizzed the proposed-intervenor, John A. Demetrius, whether Plaintiff had

largely written his papers and the proposed-intervenor answered in the affirmative (Pa10, 23 *ff.*).

57. The Court thereupon permitted the proposed-intervenor to withdraw, without prejudice (Pa14, *ll.* 3-4), and immediately thereafter dismissed the case (Pa16, *ll.* 8 *ff.*), finding that the NJ-ERA was not intended to supply standing in such cases and other grounds described in the procedural history, *supra* (see, Pa17 *ll.* 7 *ff.*).

58. The Court did not permit any further argument of the standing issue as had been planned for this hearing.

59. On May 29th the Court issued its order of dismissal (Pa1) as described in the procedural history, *supra*.

60. In the period after the dismissal, Plaintiff has appealed the dismissal to the Appellate Division by notice of appeal (Pa313).

61. Plaintiff also requested the Appellate Division issue a preliminary injunction, and being denied, Plaintiff appealed the denial of injunctive relief to the N.J. Supreme Court by a motion for leave to appeal, which was denied.

62. To date to Plaintiff's knowledge there has been no destruction of the woods at issue.

Argument

I -- The Trial Court's Un-Noticed Dismissal Of The Complaint As Frivolous (etc.) Was Procedurally And Substantively In Error (Located in the record at Pa2, Order of the Court; and at Transcript T2 , p. 16, l. 25; p. 17, ll. 1-6)

Raised Below T2, p. 16, ll. 11-14; p. 19, ll. 5-11

63. It was error for the Court to abruptly dismiss the case on an unannounced *sua sponte* motion, on the highly arguable ground of frivolity (etc.), because in the first place motions

require notice, and in the second place the case was extremely well-documented and well-grounded to the extent the Court recounted at the initial hearing multiple grounds it felt required analysis (Pa78, *ll.* 3-16).

64. In addition the Court was inconsistent on what basis it was invoking a catch-all provision of the NJ-ERA, N.J.S.A. 2A: 35A-4(C) for dismissal, stating one ground in its oral decision, then stating another in its written order (T2, p. 17, *11*. 1-6; p. 18, *ll.* 15-17).

65. At the time the Court announced it was short-circuiting the scheduled hearing, Plaintiff strongly objected that the action was procedurally improper (Pa18, *ll.* 11-14).

Motions Cannot Ignore Procedural Rules

66. It is a well-established that a motion, even a *sua sponte*

one by the Court, must in all but the most exigent circumstances follow the normal procedures to allow parties notice and the opportunity to be heard.

67. Thus the Appellate Division held that a motion to dismiss must be filed with adequate time to respond as established by the Rules of the Courts:

> "*The minimum requirements of due process of law are notice and an opportunity to be heard.* Doe v. Poritz, 142 N.J. 1, 106 (1995). The opportunity to be heard contemplated by the concept of due process means an opportunity to be heard at a meaningful time and in a meaningful manner. *ibid*. *Indeed, our rules of court contemplate that motions be made in writing.* R. 1:6-2(a). Moreover, ordinarily, motions must be filed and served not later than sixteen days before a specified return date .... *The procedure resorted to by the trial judge in this case defeated those purposes*. ... [P]laintiff came to court prepared to pick a jury, but rather, was required to defend a motion, brought by the court *sua sponte*, to dismiss his Complaint."
>
> *Klier v. Sordoni Skanska Const. Co.*, 337 N.J. Super. 76, 84 (App. Div., 2001), emphasis added.

68. The Appellate Division further held that a *sua sponte* dismissal can amount to an improper shortcut absent a true

emergency[1]:

> "A *sua sponte* dismissal of the Complaint against C.H. as happened here violated the due process rights of the parties.... *We refused to condone a procedure whereby a judge sua sponte, without notice to a party, resorts to a 'shortcut'...* and circumvents the basic requirements of notice and opportunity to be heard...."
>
> *N.J. Div. of Youth & Family Servs. v. C.H. (In re J.B.)*, 428 N.J. Super. 40, 60 (App. Div., 2012), emphasis added, citations and internal quotations omitted

69. In *Klier*, the trial Court had sought to 'shortcut' the trial by asking the parties to brief in essence a 'motion for dismissal' in two days, and the Plaintiff successfully argued on appeal that it had been unable to offer adequate expert testimony in that time period (*ibid.* at 82).

70. In *N.J. Div. of Youth & Family Servs.*, the trial Court

[1]The Court held: "Although we held in Enourato that a Law Division judge has the power to dismiss a case on the same day the Complaint was filed, we also observed that 'only an extraordinary situation could justify such a procedure.' Enourato, *supra*, 182 N.J. Super. at 64-5...Only because *the situation before the judge was truly emergent* in nature...did we conclude that the trial judge properly exercised his discretion in dismissing a Complaint...that threatened a proposed bond sale the next day," (*Klier*, *ibid.* at 85, emphasis added).

dismissed the case just prior to hearing defense-witnesses at trial (*ibid.* at 44), because the Court determined the facts in evidence could not sustain a finding of guilt (*ibid.* at 57).

71. The present case is most similar to the latter cited case, wherein that trial Court in *N.J. Div. of Youth etc.* purported to make a factual determination based on evidence, but was found by the Appellate Division to have violated procedural requirements:

> "The Division and the Law Guardian both argue *the trial judge's sua sponte dismissal of the case denied the Division and J.B. their due process of law rights* of notice and an opportunity to be heard. *They emphasize that defendants made no motion to dismiss as to C.H....*
>
> We agree with the Division and the Law Guardian that the court's *sua sponte* dismissal of the abuse or neglect Complaint against C.H. was *a due process violation necessitating a remand*."
>
> *N.J. Div. of Youth and Family Svcs*., *ibid.* pp. 58-9, emphasis added

72. The appellants also asserted the trial Court finding was

flawed substantively, inasmuch as they had made a prima facie showing of merit, and that the appellate court should make a de novo determination, which it did (*ibid.*, at 46 and 69, respectively).

73. In the present matter, aside from the procedural violation, the abrupt dismissal deprived Plaintiff of actual recourse as well. Given notice, Plaintiff would have been able to redirect the trial Court's attention to the multiple clear violations of Township ordinance and state budgetary requirements (Complaint, (Pa26, *ff.*)), which are prima facie actionable matters, and clearly not "frivolous" etc.

74. Furthermore the allegations would have been presumed true on a motion to dismiss as "frivolous" etc. pursuant to the NJ-ERA[2], as our Supreme Court has held, analogously, with

[2]See, NJ-ERA, N.J.S.A. 2A:35-4(c).

respect to "failure to state a claim", to wit:

> "*...[O]n a Rule 4:6-2(e) motion, the plaintiff must receive every reasonable inference, and the Complaint must be searched in depth and with liberality* to determine if a cause of action can be gleaned even from an obscure statement, particularly if further discovery is taken.
>
> *Banco Popular No. America v. Gandi*, 184 N.J. 161, 183 (N.J. 2005) (emphasis added, citations and internal quotations omitted)

75. Plaintiff would argue that procedurally, the provisions of N.J.S.A. 2A:35A-4(c) for dismissal warrant the same standard of proof as Rule 4:6-2(e) (etc.).

Merits Were Clearly Not Frivolous

76. Notably, in its rush to judgement, the trial Court has not issued any broader opinion on its finding the case was frivolous; Plaintiff lacked standing; and Plaintiff engaged in a defiant pattern of unauthorized practice of law, all disputed by Plaintiff and appealed as far as the N.J. Supreme Court.

77. But it is also noteworthy that while Defendants disputed aspects of two of the four causes of action raised in the verified Complaint, they did *not* move for dismissal, and none had (publicly)[3] argued the case was frivolous, etc., pursuant to N.J.S.A. 2A:35A-4(c).

78. Indeed, none disputed the budgetary shortcomings; none disputed the Mayor lacked authority to reject a sales inquiry; and none disputed that the Open Space Committee was non-existent.

79. The trial Court also failed to clarify its "findings" in these areas.

80. Thus having raised such serious and undisputed issues in the Complaint it is truly unfounded for the Court to have ruled

[3]There is some circumstantial evidence that improper *ex parte* communications occurred due to the evident intimate connection and rehearsed quality of communication on the record between the Court and the attorney for the Church, e.g. T2, p. 20, *ll.* 1-6.

the Complaint "patently frivolous, harassing or wholly lacking in merit" (Decision, Pa2), or "wholly lacking in merit" (T2, p. 18, *ll.* 15-17).

81. Indeed it seems improper that the Court in its order simply quoted the language of the statute, without standing by its oral finding as to whether it is ruling that the suit was "patently frivolous" or "harassing" or "wholly lacking in merit", *supra*.

82. The Appellate Division is left to guess – as is Plaintiff – which ground the Court based its decision on, which is an improper position to be in. But whatever ground it is indefensible, given the facts presented, and the prima facie case thus created, and it reflects ill on the entire adjudication process by that Court.

83. The merits of the case were overwhelmingly clear – and clearly merited adjudication on the merits if at all possible, not

as the trial Court seemed to find, only if there were no way to avoid such a judicial determination.

84. Indeed the Court gave every indication at the first hearing – before it took umbrage at Plaintiff's effort to bring in an intervenor – that it saw the case as a deep and wide one. Thus in telling Defendant Church how the case might proceed, the Hon. Judge Brogan stated:

> "...[L]et's say in 90 days after transcripts are obtained and the Court has a chance to *review the actions of the board to see if it was arbitrary and capricious*, and if it decides *the argument that, you know, there was a violation of township protocol and not properly referring to the commission for open space*, or somebody makes a motion, hey, wait a second, like you said, A, you can't, you didn't get the requisite notice or even provide the requisite notice, the attacking this under the Environmental Protection Act, and, B, you don't have the nexus for the Consumer Fraud Act (sic). *So the case may be only open as to the Township of Wayne for failure to abide by their own protocol* if there's such thing as a private action or any violation."
>
> (Pa78, *ll.* 3-16, emphasis added)

85. The issues raised by Plaintiff, a layman non-resident are

nevertheless stark, and show significant legal detective-work to wit:

86. The Township that had no Open Space Committee, though one is mandated and demanded for essential work by its ordinances (Complaint, Appendix pp. 130a *ff.*); the Township had a clear procedure for the initial evaluation of offers of open space – via such an Open Space Committee -- yet the Mayor in this highly controversial matter, secretly rebuffed the Church's offer of the instant open space, by which the much criticized-Church shockingly reversed itself on 'development' and told the Township it felt a moral imperative to sell the land to the public for protection at a deep discount (Complaint, Pa126 *ff.*); the Township Zoning Board chairman essentially renounced his Board's statutory mandate to protect all mature woodlands “to the maximum extent possible”, and

instead substituted as the Board's mandate his own preference for *laissez-faire* development (Complaint, Pa118 *ff.*); and omissions in the Open Space (etc.) Trust Fund accounting statements made the use of funds for 'anything but open-space' hard to discern, while the Mayor turned the fund into a slush fund for recreation-hard-development (Complaint, Pa132 *ff.*).

87. Thus it is truly remarkable – and baseless – for the Court to have made the finding of frivolity – or whatever ground is supposed to be guessed from its Decision – given the significant issues this case raised as a matter of public interest, as well as the Court's own acknowledgement (*supra*) that there were significant issues to review.

88. Thus, the trial Court's dismissal on the grounds the verified Complaint was frivolous (etc.) was procedurally flawed, and

substantively lacking in basis.

89. Indeed the order seems less based on facts and law than the trial Court's bias, misinformation, and becoming 'unhinged' by the alleged improper introduction of the proposed-intervenor to assure standing (see T2, p. 14, *11.* 13 *ff.*).

90. Should it be argued that the finding of frivolity (etc.) was only based on alleged lack of standing, Plaintiff would reply: (1) standing is argued *infra* and will readily dispose of both prongs of the order; and (2) the Court appears to have laid out two separate grounds because it believed there were two (Pa2).

II - The Dismissal Based On A sua sponte 'Motion To Dismiss' For Lack Of Standing Was Also Flawed Procedurally And Substantively (Located in the record at Pa2, Order of the Court; and at Transcript T2, p. 15, ll. 1-15, 20-25; and T2, p. 17, 11-12)

Raised Below by Plaintiff at T2, p. 16, ll. 11-14; p. 19, ll. 5-11

91. Plaintiff orally opposed the finding of the Court he lacked standing under the NJ-ERA or the MLUL during the hearing of May 26, 2020 (T2, p. 16, *ll.* 11-14), as well as in Plaintiff's brief on standing[4] (Pa318 *ff.*)

92. There was no good reason for the Court to ignore the provision of the NJ-ERA allowing notice to be waived where an urgent risk of irreparable harm was present, particularly where a case with significant public interest was brought by a *pro se* litigant who should be accorded special consideration

[4]The brief is included in the appendix to demonstrate that the issues were raised below, as permitted, R. 2:6-1(a)(2).

(*infra*).

93. Further, the *sua sponte* finding of Plaintiff's purported lack of standing (Decision, Pa2), is affected by the same procedural flaws, *supra*, as the dismissal for alleged frivolity (etc.), to wit: a motion to dismiss (etc.) must, except in the most urgent cases, be made on notice, in writing, with an opportunity to answer (*supra*).

94. A distinction here from the circumstances with respect to the dismissal for alleged frivolity (etc.), is that it might be argued that 'standing' was significantly briefed in this case, so there was no actual harm – from a procedural standpoint -- in the trial Court's "shortcut" (quoting *N.J. Div. of Youth & Family Servs., ibid.*, at 60).

95. But even if that were so, this Court should still perform de novo review on the substantive justifications for what was

effectively a 'motion to dismiss', and in doing so the papers should be read in a light most favorable to Plaintiff (see, *Banco Popular*, *ibid.*, at 183), yielding several grounds substantiating Plaintiff's standing as follows:

Various Grounds For Standing Were Demostrated

96. First, Plaintiff alleged in the verified Complaint a variety of personal harms from the destruction of the subject forest to supply a basis as an "interested party" under the MLUL, N.J.S.A. 40:55D-4, (Complaint, Pa113, ¶¶ 11-13; Complaint, Pa115, ¶ 20).

97. Second, and far more significant, is the issue of whether Plaintiff genuinely voided his standing under the NJ-ERA by inadvertently failing to provide thirty-days prior notice prior to filing a suit invoking the NJ-ERA for standing (NJ-ERA

Section 2A:35A-11), or alternatively to request leave of the Court to dispense with the notice requirement because the matter was urgent (NJ-ERA Section 2A:35A-11).

98. Plaintiff argued immediately upon the issue being raised in the hearing of May 26th that the imminent risk to the woods was real or fully expected, and that the *pro se* Plaintiff's request for the waiver provided or in the statute could be 'read into' his Complaint *and* Affidavit of emergency:

> [Plaintiff:] "And then, ellipsis, ' provided, however, that if the plaintiff in an action brought in accordance with N.J. Court Rules, 1969, can show that immediate and irreparable damage will probably result, the court may waive the foregoing requirement of notice.' *And, you know, I don't think at any point that there has been a denial that there's a threat to this woods, and so I would invoke that*."
>
> (T1, p. 59, *ll.* 3-9)

99. Given that the Court was effectively entertaining a motion to dismiss, the Court was required to presume as true, per

Banco Popular, *supra*, the extensively-documented risk to the forest of probable imminent irreparable damage justifying a waiver from notice per N.J.S.A. 2A:35A-11.

Clear Basis For Emergency Waiver of Notice

100. The Court itself acknowledged there was and implicitly *had always been* (i.e. at the time of filing) an imminent danger to the forest when, at the end of the first hearing, the trial Court requested the Defendant Church to defer any tree-cutting until the following week:

> "[Court:] And, Mr. Rubin, I know you're, you want to represent your client and your position, as your client is being hurt financially, *but would you hold any tree felling until at least Monday*?"
>
> (T1, p. 80, *ll.* 24 *ff.*)

101. Plaintiff had been raising the alarm of imminent danger of "any tree felling" (*id.*) since the very beginning of the case, in

his Affidavit of emergency (Pa270-271, ¶¶ 1-12) and Complaint (Pa139-140, ¶¶ 121-132.), and yet the courts had rejected his emergency applications.

102. So the trial Court actually surprised Plaintiff by finally acknowledging that the danger was imminent, inasmuch as the Defendant Church could *at any time* cut down the trees, *supra*.

103. Indeed, nothing had changed in the circumstances surrounding the development when the Court asked the Defendant Church to "hold any tree felling until at least Monday" (T1, p. 80, *ll.* 24 *ff.*).

104. Thus by clear inference notwithstanding its reluctance to issue an emergency order, the danger to the trees had *always* been potentially imminent.

105. Consequently, such a finding would have permitted the trial Court to excuse the absence of thirty-days' prior notice

per N.J.S.A. 2A:35A-11, thus Plaintiff's claim of standing pursuant to the NJ-ERA would not have been negated by his failure to submit notice or request a waiver, as the Court held (Order, Pa2).

106. But the Court did not even address the question (Order, Pa2), simply finding an absence of notice, and neglecting to address the presence or absence of basis for a waiver, as obligated by the terms of the statute, and given Plaintiff's strenuous arguments and request at the hearing (T1, p. 59, *ll.* 3-9, *supra*).

107. While the waiver by the Court is not mandatory under the statute (N.J.S.A. Section 2A:35A-11), in this case, given the merits of the case and the important public interests involved – deferring destruction of a forest, and fixing Defendant Township's derelict environmental practices – it would have

been an unreasonable exercise of discretion for the Court to explicitly refuse to waive notice in this case, and a decision subject to appeal.

108. But it did so tacitly, and without justification.

109. The fact the trial Court failed to even broach the topic should not prevent this Court from rejecting that implicit holding, or, *at least* remit the case and oblige the trial Court to make its own judgement, subject to re-review.

110. In the interests of judicial economy, however, this Court should respectfully make its own determination, if the factual record is sufficient, and find in Plaintiff's favor that waiver was warranted and thus his standing is restored under the NJ-ERA.

Implicit Request For Waiver

111. In addition to Plaintiff's making the request of the Court in the hearing, Plaintiff in his briefs had argued his failure as a *pro se* litigant explicitly to request waiver from notice in the papers was remediable by inferring its presence pursuant to relaxed rules of dismissal established in *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), among other cases, where the U.S. Supreme Court held work of *pro se* litigants deserved a careful analysis before dismissal:

> "*The handwritten pro se document is to be liberally construed*. As the Court unanimously held in Haines v. Kerner, 404 U.S. 519 (1972), *a pro se Complaint, 'however inartfully pleaded,' must be held to 'less stringent standards* than formal pleadings drafted by lawyers' and *can only be dismissed for failure to state a claim if it appears '"beyond doubt that the plaintiff can prove no set of facts in support* of his claim which would entitle him to relief."' *id.*, at 520-521, quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)."
>
> *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (emphasis added)

112. It would have been a simple matter for the trial Court to

simply inquire of Plaintiff – a *pro se* litigant who had prior legal experience in New York but not in New Jersey, and certainly not with the NJ-ERA or a similar act – whether he wished to be relieved on the notice requirement, pursuant to the statute.

113. Plaintiff had explicitly requested waiver on the record in the first hearing, as soon as the issue was raised (T1, p. 59, *ll.* 3-11), but the Court failed to engage the question.

114. While *Estelle* addresses causes of action, the tenor of the Court's holding appears to apply to every element of a pleading that might result in dismissal.

115. But aside from arguing that the absence of an explicit request does not imply its absence implicitly, it is notable that the statute *does not even require* a request, but merely a *finding* by the Court of urgency:

> "[Notice is required]...provided, however, that if the plaintiff in an action brought in accordance with the 'N.J. Court Rules, 1969,' *can show that immediate and irreparable damage will probably result*, the court may waive the foregoing requirement of notice."
>
> (N.J.S.A. § 2A:35A-11, emphasis added)

116. Thus when Plaintiff explicitly sought to invoke the waiver provision, the Court failed to entertain it then and there (T1, p. 58 *ff.*, *ll.* 22 *ff.*), and ignored the issue in its Decision (Appendix p. 2a), and improperly so.

117. This Court should thus respectfully rectify the trial Court's negligence and grant the waiver as warranted by the facts at the time of filing, and thus restore Plaintiff's standing under the NJ-ERA.

Court Recklessly Rejected General Applicability of NJ-ERA

118. It appears that the Hon. Judge's failure to explore alternatives to dismissal arose regrettably from His Honor's

baseless rejection of the broad applicability the Legislature intended by the NJ-ERA, as stated in the Act:

> "The Legislature finds and determines that the integrity of the State's environment is continually threatened by pollution, *impairment and destruction*, that *every person has a substantial interest* in minimizing this condition, and that it is therefore in the public interest to *enable ready access to the courts* for the remedy of such abuses."
>
> (N.J. Stat. § 2A:35A-2, emphasis added)

119. The Act states further:

> "*Any person* may commence a civil action in a court of competent jurisdiction against *any other person* alleged to be in violation of *any statute, regulation or ordinance* which is designed to prevent or minimize pollution, impairment or *destruction of the environment*."
>
> (N.J.S.A. § 2A:35A-4(a), emphasis added)

120. But the trial Court held, notwithstanding the multiple statutory violations Plaintiff alleged in his Complaint (Pa112, ¶6, etc.), the NJ-ERA should *not* apply:

> "...[The reality is you didn't comply with the act. You didn't give 30 days' notice. *The Act was never meant to deal with municipal land-use approvals*. What was, as Mr. Rubin says, this is an

action in lieu of prerogative writ in sheep's clothing”

(T2, p. 17, *ll.* 7-11, emphasis added)

121. The trial Court stated further:

> "It was an abuse of the Environmental Rights Act to come in, because *that would then be, (sic) allow any person, whether they had standing in a particular town or not, to come in* and say, well, half an acre has to be disturbed because we're putting in a subdivision.
> ....
> So I am dismissing. Please feel free to go to Appellate Division."
>
> (T2, pp. 15-16, *ll.* 20 *ff.*, emphasis added)

122. Thus the trial Court failed to acknowledge and indeed ignored or actively disputed the clear intent of the NJ-ERA to remove 'standing' as a technical impediment to the protection of the State's environment.

123. Furthermore, the trial Court erroneously – and self-servingly – cast Plaintiff's case as one challenging the *substance* of the zoning determinations at issue, rather than

the raft of procedural violations Plaintiff specifically focused his case on, pursuant to the statutory violations.

124. Challenged for failing to provide transcripts of zoning hearings as required for a prerogative writ, Plaintiff answered that while he labelled the case as such it was actually broader and should henceforth be construed as a case challenging statutory violations apart from the zoning proceedings:

> "I think it's possible that this case can be considered simultaneously, a writ in lieu of prerogative, but also to [sic] a statutory action. So you can, so when I attack [sic], and I would assert that, that it has both elements, and I will argue both of them."
>
> (T1, p. 83, *ll.* 10-15).

125. In fact each cause of action in the Complaint cites the Defendant Township's statutes or the State's, rather than the substantive determinations of the zoning entity (Pa 109a, *ff.*, Complaint).

126. Furthermore, three of the four causes of action refer to Defendant Township conduct entirely separate from the work of the zoning board: the Complaint argues (1) the Township lacked an open-space committee; (2) the Mayor improperly exercised a veto over acquiring the forest at issue; and (3) the Township was routinely filing incomplete statements of its open-space trust fund (Pa 109a, *ff.*, Complaint).

127. Thus even following the trial Court's logic that the zoning matters are outside the purview of the NJ-ERA, Plaintiff made clear throughout the case that it was based on statutory violations which invalidated the work of the zoning board, irrespective of the substance of its decisions.

128. Thus this Court should respectfully reject in its entirety the erroneous findings of the trial Court which purport to constrain the reach of the NJ-ERA with respect to the types of

environmental issues that the act covers, and sustain Plaintiff's standing under the Act both with respect to waiver of the notice requirement, and the applicability to the issues raised in the Complaint.

129. (The two points are subsumed under the noticed substantive and procedural errors with respect to standing that Plaintiff appealed.)

Liberal Application of Standing

130. Beyond the standing afforded to Plaintiff by the NJ-ERA, consistent case-law which Plaintiff cited to the trial Court inclines jurisprudence in this State towards a generous construction of standing, particularly where public-interest or land-use matters are at issue.

131. The Supreme Court held there should be a “liberal

approach to standing in zoning issues”:

> "*New Jersey's courts have long taken a liberal approach to standing in zoning cases and ... [thus] have broadly construed the MLUL's definition of ‘interested party.’* DePetro v. Twp. of Wayne Planning Bd., 367 N.J. Super. 161, 172, 842 A.2d 266 (App. Div. 2004). Nevertheless, standing requires that, in addition to establishing its 'right to use, acquire, or enjoy property,' a party must establish that that right 'is or may be affected.' N.J.S.A. 40:55D-4.B.”
>
> *Cherokee LCP Land, LLC v. City of Linden Planning Bd.*, 234 N.J. 403, 416-17 (N.J. 2018) emphasis added

132. The appellate Court held that where the public interest was at stake, the showing of private harm needed to establish standing was “slight”:

> “*...[T]he Court has consistently held that in cases of great public interest, any slight additional private interest will be sufficient to afford standing.* A plaintiffs particular interest in the litigation in certain circumstances need not be the sole determinant. That interest may be accorded proportionately less significance where it coincides with a strong public interest."
>
> *People for Open Government v. Roberts*, 397 N.J. Super. 502, 510 (App. Div., 2008), emphasis added, citations and internal quotations omitted.

133. The appellate Court also held there was generally “a

fairly low threshold for standing" in the State:

> "*New Jersey courts generally have set a fairly low threshold for standing*, and have afforded litigants the benefits of liberal interpretations of the standing requirements. Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 81 (App.Div. 2001)."
>
> *Spinnaker Condominium Corp. v. Zoning Board*, 357 N.J. Super. 105, 110-11 (App. Div., 2003), emphasis added

134. Those holdings are consistent with the intent of the Legislature in the NJ-ERA to eliminate standing *entirely* as a the hurdle to adjudication on the merits in environmental cases *per se*.

135. With regard to the cited cases, while Plaintiff may not enjoy an economic 'right' as associated with a tax-lien, as in *Cherokee*, nevertheless as a member of the public at large, Plaintiff does enjoy a 'right' to enjoy the wildlife and natural property as it was viewable and accessible from the public streets abutting the forest, as defined in the MLUL, N.J.S.A.

Section 40:55D-4.

136. On a side-note, it appears the Court began to argue at one point that Plaintiff could have provided thirty-days' notice without having jeopardized the forest during the period immediately after the zoning approval but before the final "memorialization" vote (T1, p. 57, *ll.* 5 *ff.*).

137. But on the contrary, Plaintiff did not even plan to file suit until it was clear the Township would not intercede, which Plaintiff and others sought in the weeks after the zoning approval (Complaint, Pa127 *ff.*), and indeed the Defendant Church's Pastor himself was hopeful the facts would change (Complaint, Pa116a, ¶ 23).

138. Thus, in the first place, with or without relying on the generous standard of proof applicable on a motion to dismiss, the facts and law would have supported Plaintiff's standing

pursuant to the NJ-ERA, taking proper advantage of the emergency 'waiver'.

139. But furthermore, the presumptions accorded Plaintiff on a motion to dismiss would also have permitted Plaintiff to successfully invoke per quod standing as an “interested party”, pursuant to the MLUL, and a “real party in interest”, per Rule 4:26-1.

140. As a consequence, the dismissal order of the Court with respect to standing is in error both procedurally and substantively, and should respectfully be reversed.

III -- Whether Plaintiff Deserved Censure Of The Court For 'Unauthorized Practice Of Law' Was Not Properly Established (Located in the record at Pa2, Order of the Court; and at Transcript T2 , p. 15, ll. 1-4)

Not Raised Below By Plaintiff

141. The trial Court seems to have become 'unhinged' by Plaintiff's strategy to in part address the potential of the notice-issue (*supra*) negating his standing under the NJ-ERA by recruiting a local resident with more 'organic', per quod standing to intervene in the case to assure its survival.

142. Plaintiff found a fifty-year resident of a house on the border of the woods in question, a distinguished man who had been chairman of the Township's “Rent Levelling Board”, the man averred.

143. The subtext of the Court's aggressive dismissal on all bases – frivolity and standing under the NJ-ERA etc. -- was

the Court's stated impression that it had been 'hoodwinked' by the introduction of the intervenor, notwithstanding the proposed intervenor's well-established right to intervene (T2, p. 14, *ll.* 13-16).

144. Insofar as the record reflects that Plaintiff assisted in the preparation of the proposed-intervenor's legal papers (T2, p. 8), Plaintiff does not here offer dispute.

145. However, the trial Court's broad finding that Plaintiff was essentially contumacious (Decision, Pa2) is unfounded based on any record.

146. There is respectfully nothing in any record that suggests Plaintiff acted in an improper manner "despite the Court's multiple warnings not to do so" (Pa2), and such a finding should not stand absent a factual record, of which there is none.

147. The Court may have misapprehended Plaintiff's attempts during the second hearing to absolve himself of the implication of having coerced the proposed-intervenor to act, by asking the Court to establish that Mr. Demetrius had decided of his own free will to intervene:

> "All right, Your Honor, the question that the Court posed to Mr. Demetrius was whose idea was it. But I would imagine the more relevant question is having received the idea, did you of your own free will decide to do so"
>
> (T2, p. 12, *ll.* 20-24)

148. The Court had earlier in the hearing opined that by seeking to establish on the record Plaintiff had not coerced Mr. Demetrius – notwithstanding loaded, leading questions by the Court -- Plaintiff was attempting to represent Mr. Demetrius in the questioning (T2, p. 10, *ll.* 22-25), but it should ultimately have been clear Plaintiff's intent was to protect himself, not represent Mr. Demetrius.

149. Such a minor confusion should provide no basis for the Court's aggressive finding in its order, and this Court should respectfully dismiss or remand it.

150. On a related issue, inasmuch as the trial Court held Plaintiff's supposed misconduct against him for the purpose of dismissal, the penalty flawed as a matter of law.

151. In his oral opinion at the second hearing on the preliminary injunction, the Hon. Judge Brogan told Plaintiff that the dismissal under the NJ-ERA was for "the totality of what we just went through" (T2, p. 17, *ll.* 4-6), meaning the examination of Mr. Demetrius regarding the authorship of his papers to intervene.

152. But an "unclean hands" dismissal – for some misconduct -- is only warranted where the impropriety is directly related to the *subject matter* of the action, not unrelated matters,

according to common law, e.g. *Goodwin Motor Corp. v. Mercedes-Benz of N.A.,* 172 N.J. Super. 263, 271 (App. Div., 1980).

153. In *Goodwin* the Court held that "the clean hands doctrine" applies only when alleged improper conduct occurs in *the underlying issue* of the case:

> "The clean hands doctrine must be applied with just discretion and courts may not exercise their equitable powers arbitrarily. Untermann v. Untermann, 19 N.J. 507 , 518 (1955).
>
> "...[A] court of equity will deny its remedies to a suitor who has been guilty of bad faith, fraud or unconscionable acts *in the transaction which forms the basis of the lawsuit. id.* at 517, 117 A.2d 599...."
>
> *Goodwin Motor Corp. v. Mercedes-Benz of N.A.*, 172 N.J. Super. 263, 271 (N.J. Super. 1980)

154. By contrast in the present circumstances any alleged improper acts by Plaintiff occurred not in the underlying "transaction" (*Goodwin Motor Corp*., *id.*) -- e.g. the zoning

actions and the actions surrounding the open-space issues – but in the litigation related to the proposed-intervenor.

155. Thus it was improper as a matter of law for the trial Court in any way to base its dismissal of the Complaint on Plaintiff's allegedly assisting the proposed-intervenor as a non-attorney.

156. This Court should respectfully thus reverse or remand the finding of the trial Court that Plaintiff was a contumacious in his legal effort and that the impropriety of those efforts should be punished by dismissal.

Conclusions

157. Both the substantive grounds upon which the trial Court dismissed the Complaint – lack of standing and alleged frivolity (etc.) -- and the procedures the Court followed in doing so simply do not withstand scrutiny, on the facts or the

law.

158. Plaintiff brought a highly documented, detailed and meritorious case which revealed for the first time Defendant Township's rigged environmental-protection practices and deceptive open-space budgeting disclosures.

159. In the present era of intense land development, the deficiencies identified affect not only the three-acre "neighborhood-forest" at issue but also massive ongoing development throughout the Township.

160. The deliberate crippling of the open space laws and the zoning process has weakened the power of citizens to push back at the loss of their open space, as they often attempt to do, and thus presents a critical issue of public interest.

161. Not only the open space but also the integrity of governmental processes is at stake.

162. The trial Court showed animus to Plaintiff, as well as to the intent of the Legislature, which through the ground-breaking NJ-ERA intended to create an unobstructed path to the courthouse for meritorious cases dealing with environmental protection, free of often-misapplied 'standing' hurdles.

163. Ironically, the NJ-ERA notwithstanding, this case provides a clear example of exactly how 'standing' hurdles not only are typically erected to frustrate important cases getting a hearing on the facts, but also remain improperly ingrained in the mentality of the state's bar.

164. The trial Court became unreasonably exercised by the effort of a *pro se* Plaintiff – who was unfamiliar with nuances of State law – to introduce a neighbor into the case by assisting in preparing his motion papers, and in a pique threw

out the case on hasty, unannounced, and meritless *sua sponte* motions.

165. The purported finding that this case is frivolous (etc.) flies in the face of the Court's own earlier conclusions described in an extensive two-hour-long vetting of the case for the purpose of a preliminary injunction.

166. The finding of lack of merit also flies in the face of the facts detailed in the voluminous Complaint, and cannot pass the scrutiny required on a motion to dismiss, which requires a presumption of truth as to the alleged facts, which in this case showed shocking misfeasance by Defendant Township.

167. Furthermore, the trial Court demonstrated an unseemly proclivity to accept the assertions of the Defendants even on issues that required further argument, such as whether a sales-inquiry by email was enough to trigger the Township's own

mandated procedures for considering acquisition of open space (T1, p. 30, 11. 11-25; p. 31, *ll.* 1-12; p. 76, *ll.* 11-25; p. 77, *ll.* 1-20).

168. Plaintiff has frankly been around the ringer with this case, repeatedly denied injunctions and compelled to file voluminous papers with various courts, and denied the opportunity to file electronically, at a great additional expense for a private citizen working in the public good.

169. The Courts have not given Plaintiff any consideration, whether to (1) grant needed injunctive protection, (2) hear the case on an urgent basis, (3) file an abbreviated transcript, (4) file electronically or even (5) to waive minor 'deficiencies'.

170. Inasmuch as Plaintiff selflessly seeks to protect natural resources and to compel a notorious Township to obey its own ordinances and fundamental fairness, and inasmuch as the

facts and the law are so compelling in Plaintiff's favor, it is troubling the Courts have demonstrated so little sympathy or support.

171. Indeed, it seems as if each level of the judiciary is looking instead to protect someone's vested interest: the trial Court protecting the Wayne officials and developers, and the appellate Courts protecting their colleagues lower on the bench.

172. Plaintiff sincerely hopes this Court will, at long last, awaken to the merits and justice of this case, and reverse the dismissal of the Complaint by the trial Court, and remand such portions of the case as demand reconsideration, in addition to a hearing of the Complaint on the merits, and reconsideration of the proposed and essential preliminary injunction.

173. Plaintiff respectfully requests the Court grant such other and further relief as the Court deems necessary and proper.

DATED: Pompton Lakes, New Jersey
March 4, 2021

_____
RICHARD A. BRUMMEL,
Plaintiff-Appellant, *pro se*