

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

Plaintiff,

vs.

City of Long Branch,
A Municipal Corporation of NJ
Adam Schneider, Mayor;
Mary Jane Celli, Councilwoman;
Howard Woolley, Administrator;
Kevin Hayes, Director Building &
Development; Michelle Bernich,
Zoning Officer; Terry Janeczek,
Chairperson, Zoning Board; Michael Irene,
Zoning Board Attorney; Zoning Board;
Edward Bruno and E&L Paving, Inc.;
Ray Greico & Atlantic Paving (& Coating), LLC;
Joe Rosario & Rosario Contracting Corp.,
dba Rosario Mazza Demolition and Recycling Co;
Custom Lawn Sprinkler Co., LLC.;
R. Brothers Concrete, LLC.; Richard Braha;
Seashore Daycamp

Defendants,

Plaintiff, Brian Asarnow, located and doing business at those premises commonly known as 55 Community Place, referenced on the Municipal Tax Map as Block 237 Lot 22, in the City of Long Branch, County of Monmouth and State of New Jersey, by way of Complaint against the defendants in their official and individual capacities, herein says:

PARTIES

PLAINTIFF

1. Plaintiff Brian D. Asarnow (hereinafter "plaintiff") as of August 1995, is the owner in fee of the above mentioned property which is located in the industrial zone adjacent to, within 200 feet of and directly across the street from lots illegally acquired and used by Ed Bruno & E & L Paving Co. (hereinafter "Bruno/E&L") The property is located at the end of a dead end street with no legal turnaround for trucks and other traffic. Plaintiff uses the property as an office, lab and for light manufacturing and rents space to other businesses.

SUPERIOR COURT OF NJ
MONMOUTH VICINAGE
RECEIVED-CIVIL DIVISION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MONMOUTH COUNTY

Docket No. MON. L- 403911

Civil Action

**AMENDED COMPLAINT FOR NUISANCE;
DECLARATORY RELIEF;
TORT AND TORTIOUS INTERFERENCE;
CIVIL CONSPIRACY,
BREACH OF FIDUCIARY DUTY;
CIVIL RIGHTS;
BREACH OF CONTRACT**

(JURY DEMANDED)

2011 AUG 26 P 12:10
SUPERIOR COURT OF NJ
MONMOUTH VICINAGE
RECEIVED-CIVIL DIVISION

DEFENDANTS

1. Defendant Long Branch ("Long Branch") is a municipal corporation with offices at 344 Broadway, Long Branch, New Jersey 07740.
2. Defendant Adam Schneider is Mayor of Long Branch at all relevant times complained of .
3. Defendant Mary Jane Celli is a councilwoman of Long Branch at all relevant times complained of
4. Defendant Howard Woolley is Business Administrator of Long Branch at all relevant times complained of.
5. Defendant Kevin Hayes was formerly Chief of Code Enforcement and is now Director of Building of Development and at all relevant times has also been Fire Marshall.
6. Defendant Michelle Bernich is Zoning Officer at all relevant times complained of.
7. Defendant Terry Janeczek is Chairperson of the Zoning Board at all relevant times complained of.
8. Defendant Michael Irene is Attorney to the Zoning Board at all relevant times complained of.
9. Defendant Zoning Board of Adjustment is appointed by Mayor and Council of Long Branch per the Municipal Land Use Act to render impartial zoning decisions in the public interest.
10. Defendants Edward Bruno and E&L Paving Company (Bruno/E&L) own lots adjacent Plaintiff which are in violation of zoning, subdivision, land use and laws of NJ Department of Environmental Protection (DEP)
11. Defendant Ray Greico and his company Atlantic Paving (& Coating), LLC are illegal occupants of same aforesaid lots owned by Bruno/E&L.
12. Defendants Joe Rosario & his companies Rosario Contracting Corp., dba Rosario Mazza Demolition and Recycling Co. and Custom Lawn Sprinkler Co., LLC.; are illegal occupants of these same lots owned by Bruno/E&L
13. Defendant R Brothers Concrete is an illegal occupant of these same lots owned by Bruno/E&L and Seashore Daycamp
14. Defendant Seashore Daycamp is located at 404 Broadway Long Branch, across the brook and within 200 feet from Plaintiff, and owns lot 52 adjacent Plaintiff which is illegally occupied by R. Brothers Concrete, LLC and used for stockpiling dirt and other materials and equipment. It was previously represented by the City Attorney's law firm. Its principal, John Villapiano, previously received political contributions from the City Attorney's law firm and individuals therein. and he and his family may also be clients of the City Attorney.
15. Defendant Richard Braha parks his truck and operates his metal recycling business in the street opposite Plaintiff's driveway blocking access thereto by delivery trucks and trespasses on Plaintiff's property.

FIRST COUNT

(Continuing Private Nuisance)

2. E&L Paving Company is the owner in fee of lot 13.02, which when purchased in 1965 was in the R zone (no map available) and later became part of the I zone and is presently so, and upon which a garage and office was built as its headquarters.
3. E&L also owns lots 19, 20, 21 which when purchased in 1972 were in the R7 zone, currently the R4 zone and which adjoin a brook in a flood zone. Prior to E&L's purchase, the lots were used by Defazio Dry Cleaners for its non-conforming retail use. Only the rear garage still remains.
4. E&L also owns lots 32.02 (aka 32b), purchased 1974, 38.02 (1971), 39 (1965) and 40 (1977), all now known as lot 32.02, which were previously in the R(lot 39) and R7 zone and now the C-2 zone, and adjoin

20-11.2 / Pg 72a

zone by this Ordinance and meeting the requirements set forth in the Schedule; Section 1202.1 further requires a zoning permit and states "Zoning permits shall hereafter be secured from the Zoning Officer prior to the issuance of a building permit for the construction, erection, or alteration of any structure or part of a structure or upon any change in the use of the land or a structure." Section 504.3 (Storage of Materials) states "No persons shall store materials of any kind on the premises in any district except for the construction of a structure to be erected on the premises upon which the materials are stored for a period of one year from the date of commencement of such storage, unless a permit is granted by the governing body."

5.4c Pg 534

Section 505.1 (Prohibited Uses) states "Any use not specifically permitted in a zoning district established by this Ordinance is hereby expressly prohibited from that district and further provided that the following uses and activities shall be specifically prohibited in any zone in the City of Long Branch; 505.7 "Any use which emits excessive and objectionable amounts of dust, fumes, noise, odor, smoke, vibration, glare or waste products."

20-5.56 / Pg 549

Section 504 (Preservation of Natural Features) states "No structure shall be built within 50 feet of the bed of a stream..." As defined in section 302.78, Structure is "A combination of materials to form construction on, under or above ground level and that is safe and stable and includes, among other things (including improved parking areas), stadiums, platforms, radio towers, sheds, storage bins, fences and display signs."

5.4a Pg 53a

20-3.67 / Pg 51a

11. Long Branch Zoning Ordinance 345 was subsequently adopted in 1989 and is still in effect.

12. Chapter IX of Long Branch Ordinance 284 (Land Subdivision), pursuant to 19-2 (Purpose) states "It shall be administered to insure the orderly growth and development, the conservation, protection and proper use of land and adequate provision for circulation, utilities and services." To effect proper circulation for traffic, section 19-8.2a. (Design Standards - Streets) provides "Where appropriate existing streets abutting the subdivision shall be extended and incorporated into the design of the tract." 19-18.2k requires a cul de sac at the end of a dead end street. (Sec. 20, Chap. 433, Laws of 1953 similarly provides for vehicular access) 19-5 requires subdivision approval, even for minor subdivisions, by the planning board before filing and recording with the county clerk. Chapter 377 of the 1953 laws provides for enforcement in Superior Court for violation of the preceding. and Chapter 141 of the Laws of 1960 provides detailed requirements for the approval of any maps to be filed with a county recording officer.

1991

13. Long Branch Subdivision Ordinance 300 was subsequently adopted March 12 1991 and is still in effect.
14. Based upon these regulations in effect at the time of use or improvement of lots initially acquired, and the lack of any approvals received by Plaintiff in his OPRA requests to Long Branch (Exhibit F, pg 78), **Bruno/E&L unilaterally, and unlawfully, commenced and thereafter expanded his non-permitted use and failed to obtain subdivision approval on any parcels he acquired or sold.**
15. Bruno/E&L, a developer, has bought, sold and assembled illegally subdivided lots and has evaded and failed to provide a cul de sac, or otherwise provide consistent, unfettered vehicular access as intended and required in Ordinance 284 or provide a 50' buffer along the brook as also required therein. (current requirements are 100')
16. Bruno/E&L and Long Branch **and officials** have long been well aware of the non-permitted use and expansion thereof and the evasion of three site plans.(p 81-96)
17. Bruno/E&L pled guilty in Nov. 2, 1983 to "Storing of Vehicles & Equipment Outdoors and Moving of Soil" and evaded its first site plan.
18. A restraining order was entered in January 1986 on one of the lots. (p 82)
19. In late 1998, Bruno/E&L was cited for allowing tractor-trailers (containing municipal waste) to park across from Plaintiff, violation of the restraining order, expansion of a non-conforming use and numerous other violations. A summons issued. (p. 86) The zoning officer confirms that "nothing should be on this property, except for natural growth, until such time as Mr. Bruno is granted site plan approval to use it for something else." (p 87)
20. In 1999, Bruno/E&L demolished the house across the street and subsequently expanded the non-permitted use without any site plan approval.
21. Under pressure, Bruno/E&L submits a site plan Feb 29, 2000 (ZB00-06) for only these 2 lots seeking use and other variances and relief. A letter of Nov. 8, 2000 from the previous zoning officer to the zoning board of adjustment acknowledges "the paving business is not a permitted use" and that "no files were found granting same pre-existing use" on the adjacent properties.
22. The site plan application is thereafter dismissed Nov. 27, 2000 for lack of prosecution and Bruno/E&L is nevertheless, allowed to continue to use the lots for his use.

23. Another violation notice issues March 15, 2002 for parking of vehicles, and dumping/stockpiling of soil on the same lots violated in 1983.
24. Another site plan is filed in 2002 (ZB02-08) which added all contiguous lots owned by Bruno/E&L and sought use and other variances and relief. The June 5, 2002 report of the zoning board engineer confirms " a construction yard is not a permitted use in either the I or C-2 zone. A variance for the expansion of a non-conforming use is required." (p 95) Additional variances for a 100 ft buffer, outside storage of materials, and others are indicated as being required.
25. As confirmed by the April 21, 2003 letter of the zoning board secretary to Bruno/E&L's attorney, this application was also allowed to be evaded under pretext of awaiting completion of Seashore Daycamp's application in which a land swap was to occur with Bruno/E&L. Bruno/E&L owned lot 40 on Seashore's side of the brook and Seashore owned lot 52 on Bruno/E&L's side of the brook.
26. Seashore never did obtain the required subdivision approvals and the land swap is invalid as is its own site plan which relies on E&L owned lot 40. This is known by Long Branch's tax assessor and by zoning and planning thru a letter from the assessor to planning director Carl Turner inquiring of same.
27. Seashore also improperly includes lots owned by E&L on Seashore's site plan and obtains bulk variances thereto though having nothing to do with Seashore's site plan. Seashore further fails to notice the public that E&L's lots will be considered in its site plan application. .
28. The site plan applications are made with the zoning board instead of the planning board, though having no jurisdiction to decide subdivisions or site plans.
29. Bruno/E&L's site plan applications affirm his knowledge of and need to obtain these use and other variances (pg. 81).
30. Defendants code enforcement personnel were regularly seen visiting the area. Yet despite all this, Bruno/E&L has been permitted to operate, expand and continue its nuisance use, to the detriment of the general welfare and Plaintiff in particular.
31. Defendant Long Branch similarly allowed Plaintiff's other previous neighbor, Golden Crust Bakery to evade the zoning laws to Plaintiff's detriment.

Golden Crust's site plan, though approved Feb. 21, 1980 by defendant Long Branch for commercial and accessory retail use, conspicuously fails to consider parking, loading/unloading and handling of its roof drainage and waste streams.

32. Consequently, Golden Crust uses Plaintiff's property and the street for this and illegally maintains a trailer across the street on Bruno/E&L's lot for storage. Though a letter from the zoning officer of June 27, 1979 stresses that the "garage located within the building shall continue to be used for business vehicles.", this was obviously evaded and not heeded during the site plan proceedings.

33. As stated on page 14 of Plaintiff's 5/14/07 appraisal report (Date of Valuation 10/1/2006), "as a result, delivery and garbage trucks in the street cause congestion on the narrow dead end street, and the parking in front of subject by trucks, commercial vehicles and customers, renders ingress and egress to subject impossible at times. Numerous photos were presented to the appraiser by the subject owner which I have reviewed and I concur, contribute a significant degree of external obsolescence. The bakery building also has its dumpster placed in front of the building which the subject owner states is unsightly and causes a bad odor due to rotting yeast as well as garbage ending up on subject property. It appears that a dumpster in front of the bakery building violates zoning law. There are additional encroachments by the bakery due to waste streams which the subject owner states was not considered in their site plan. Collectively these external factors have a negative effect on not only the subject but the neighborhood in general."

34. Several requests to/for code enforcement were made by Plaintiff thru the years and many bags of bread seen carried away by code enforcement personnel, particularly at Christmas, but no abatement occurred until Golden Crust moved to a new location

Defendant Long Branch's enforcement efforts, if any, have been a mere charade, never actually meant to gain compliance or abatement.

35. Notice of the continuing tort was served upon Defendant Long Branch on Sept. 25, 2002 mentioning earlier appraisals done July 28, 2000 and July 28, 2002 also showing depreciation specific to Plaintiff.

This was met with a letter from the City Attorney threatening recovery for frivolous litigation based upon an unrelated matter dating to Oct. 2, 1998 where Plaintiff was denied standing, without prejudice, due to lack of an

appraisal showing special damage.

36. Due to the ongoing and continuous nature of the violations described herein and palpable failure of Defendant Long Branch and Officials to prevent or abate same, a nuisance has been created which has interfered with Plaintiff's use and enjoyment of his property.

37. Defendant Long Branch and Officials have breached their duty to take positive action to prevent or abate said nuisance.

38. Defendant Long Branch and Officials failure to prevent or abate the nuisance is palpably unreasonable under N.J.S.A. 59:2-3d. The mayor, administrator and director of building and development at all relevant times have had knowledge of and control over the charade at enforcement alleged herein.

39. Defendants' perpetuation of an ongoing nuisance has proximately caused Plaintiff damages in that the nuisance has a depreciating effect on Plaintiff's property and has disrupted activities associated with the enjoyment of the property, and has created irreparable injury until abated.

40. The continued illegal use of lots by Bruno/E&L, Atlantic Paving, Rosario Mazza Corp and others and the failure by Defendant Long Branch and officials to prevent said use violates provisions of N.J.S.A. 40:55D-1, et seq. and Long Branch Ordinances 300 and 345.

41. Plaintiff is an interested party pursuant to N.J.S.A. 40:55D-18 and Ord 345-79, to bring the within action.

WHEREFORE, Plaintiff requests the following relief against Defendants:

- (a) compensatory damages;
- (b) consequential damages;
- © punitive damages per N.J.S.A. 2A:15-5.10 (Bruno/E&L and officials)
- (d) costs;
- (e) attorneys fees; and
- (f) such other relief as the Court deems necessary and just.

SECOND COUNT

(Escalation of/Creation of New Nuisance)

42. The Plaintiff repeats and incorporates each of the preceding allegations as if fully set forth herein

43. Despite knowledge of the above, on Aug. 3, 2009 Long Branch zoning officer Bernich unlawfully granted a zoning permit (p 98) to Bruno/E&L and successor tenant/prospective owner Atlantic Paving, to “continue pre-existing partially(?) non-conforming use for Paving company for two buildings, yard and parking area” thereby grandfathering the illegal use. No other companies or uses are listed.

44. Owners of Atlantic Paving and Rosario-Mazza had earlier approached and told Plaintiff that they wanted to buy the properties and continue the same use to which Plaintiff replied he would resist such efforts due to the detrimental effect on his property (as well as being illegal under the Statutes, common law and ordinances of the City of Long Branch).

Nevertheless, increasing intensity and detrimental use of the properties by various businesses occurred and Plaintiff called zoning and was informed a zoning permit had issued to Bruno/E&L and Atlantic Paving to continue the existing use. Upon obtaining a copy of the permit the end of September 2009 in response to his OPRA request (Exhibit H, pg 97), Plaintiff visited the zoning officer to point out the aforementioned facts, to no avail, and then delivered a letter to the Mayor and Administrator on October 1, 2009. (p. 104)

45. On October 12, 2009 Plaintiff reported that his neighbors were using their vehicles to trespass on his property. A police report was taken.

46. The mayor and administrator would not respond so Plaintiff circulated a petition in December to adjoining neighbors and environmental groups.

47. Immediately thereafter, a website of Plaintiff's was hacked, information stolen, and obscene and intimidating messages left. Similar voice mail messages followed with stones thereafter being thrown at Plaintiff on several occasions and his vehicle and building being damaged by Joe Rosario and employees of Rosario- Mazza.

48. The police took one hour to respond and falsified this in the police report

49. On January 12, 2010 an arson occurred consuming 2 of Plaintiff's vehicles including construction

equipment contained therein, and damaging a wall of Plaintiff's building, all since occupation by these tenants. .

50. Plaintiff thereafter presented these petitions and facts to the City Council on Jan.26, 2010 and Feb. 9 and Feb. 23, 2010 (Exhibit I, pg 102).

51. At the Jan. 26 meeting, the city attorney thanked Plaintiff and said a notice of violation was being issued to Atlantic Paving as Rosario Mazza was not on the illegal permit. and had established a demolition and recycling yard across from Plaintiff.

52. The city attorney failed to mention that a certificate of occupancy was issued to same Defendants one week prior. (see below herein)

53. On January 27, 2010, Defendant issued a notice of violation to Atlantic Paving which states "you have expanded the use of the property beyond the scope of your approved zoning permit dated 8/3/08. You must comply with the following:

1) The demolition /disposal business must be removed from the property. All trucks, equipment, dumpster containers and any other items related to this business must be removed.

2) You must remove all piles of construction material, firewood, and dirt/soil that is being stockpiled on the site . A re-inspection will be made on or about February 26, 2010. Failure to comply will result in a summons being issued in Municipal Court."

54. To date, upon information and belief, no summons or fines have issued. Rosario Mazza Demolition & Recycling and the owner's other business, Custom Lawn and Sprinkler, and other tenants and uses not listed on the zoning permit remain. Containers of demolition waste are still being processed by Rosario -Mazza and dirt and other materials continue to be stockpiled by occupants. The Notice of Violation (which is not being enforced anyway), is also insufficient to obtain compliance with the zoning permit since it fails to include all other businesses not on the permit.

55. Thereafter, Joe Rosario and Rosario Mazza trespassed onto Plaintiff's property on numerous occasions with trucks loaded with heavy demolition material causing damage. (photos/video)

56. Rosario Mazza and sometimes Atlantic Paving purposefully block access to and from Plaintiff's property, the removal of garbage (Plaintiff and his tenants put refuse by the entrance in front of the directory side of the

entrance}, and prevent trucks from turning around at the end of the narrow dead end street by parking boats and other equipment therein. (see photos, Exhibit L) . On one occasion when Plaintiff received a delivery, Rosario drove his truck over and parked across from Plaintiff's driveway thus blocking the truck from leaving.

57. Police needed to be called and Officer Houston stated they had a right to park in the cul de sac area as an "imaginary curb extension" existed there.

58. On another occasion,. Plaintiff had to unload chemicals in the street one block away as the tractor trailer driver, upon seeing the congestion, refused to come over. Defendant Rosario told Plaintiff "bet you thought you were getting a delivery today."

59. Beginning April 16, Atlantic Paving and Rosario Mazza are continuously parking by and across from the entrance and on both sides of the narrow street causing congestion and restricting access of trucks visiting Plaintiff. Defendants, to date, continue to place equipment and traffic cones in the dead end zone to block Plaintiff's use thereof.

60. Heavy cranes/ excavation and other noisy equipment began being used by Rosario Mazza for processing debris and scrap across from Plaintiff's new offices. .

61. The stockpiling of dirt and materials has created a noisy, dirty condition which also blows onto Plaintiff's property.

62. When Plaintiff sought to take some pictures of this April 21 from the dead end, Joe Rosario came speeding down the street and attempted to run over Plaintiff. (photos).

63. Stones and bricks were then thrown at Plaintiff's property by Rosario and 2 employees and the building damaged. . Police were called and took a report (p.160)

64. Another incident was reported to police May 8 2010 regarding damage to Plaintiff's auto and box truck but the officer, Hector Umana would not document any damage. He had done this on prior occasions.

65. On June 16, 2010 stones were again thrown at Plaintiff and his property and his automobile windshield was chipped. Police came and took a report (not Hector Umana).

66. On Dec. 17, 2010 Defendant Braha is seen trespassing onto Plaintiff's property with his scrap truck upon talking with Defendant Bruno. He gets out of the truck. When subsequently confronted by Plaintiff, Braha

states that Bruno is his father-in-law.

67. Corruption is also operating against Plaintiff and as the situation had become untenable, Plaintiff sought and was denied immediate injunctive relief from the Superior court.

68. Following a review by Long Branch Officials, a letter sent March 13, 2010 from the City Attorney refuses to rescind the permit, claiming a CO was not needed at inception, and instead targets and threatens retaliation against Plaintiff who has already obtained permits following two administrative reviews, (including site plan approval -Exhibit J, pg 120)

69. Plaintiff's permits have previously never been an issue .

70. Defendant's arbitrary and capricious claim is evident particularly by the statement "The fact that zoning permits are issued does not cure the fact that site plan approval was and still is necessary" (for Plaintiff but not for Defendants?!) The April 7 letter from same attorney does nothing to change this.

71. An obviously contrived Certificate of Occupancy issued to Rosario-Mazza ^{256a} under auspices of Kevin Hayes, was subsequently discovered by Plaintiff and is also ultra vires as they are not listed on the zoning permit, a necessary prerequisite. Its purported date of issuance of Jan. 19, 2010 follows the zoning permit by 6 months, the arson by one week and precedes the notice of violation by one week and contradicts same.

72. As confirmation of the contrivance, an email dated March 5, 2010 from Kevin Hayes to Michele Bernich with copy to Howard Woolley mentions a new abatement date of 3/15/10 for the Notice of Violation (NOV) of 1/27/10. . Why enforce the NOV if a valid Certificate of occupancy exists?

73. An ultra vires mercantile license also was previously issued at same time as the unlawful zoning permit to "Atlantic Paving and Misc. Contractors" and the application lists Edward Bruno as landowner and Raymond Greico and Joe Rosario as "principals in the business" This is novel even for Long Branch as mercantile licenses are to be issued to one business per application. This further demonstrates to what lengths Long Branch will go to continue and escalate the nuisance use while purporting to seek abatement of same. .

74. On August 22, 2011, Plaintiff, thru an OPRA request, discovered a building permit issued 3/15/11 for renovations so to continue the commercial use of the garage on Morris Ave. (lots 19, 29, 21).

75. The building permit falsely lists Atlantic Paving and Misc. Contractors as the new owner in fee. (ASSESSOR)

confirms Bruno/E&L is the owner)

76. The building permit is also ultra vires in the primary sense and utterly void and directly reviewable as it depends on the similarly ultra vires zoning permit and the property should have reverted to the residential use.

77. The building is also in a flood zone and renovations are prohibited without prior NJ DEP approval (NJAC 7:13-2.4)

78. Plaintiff called the secretary of the building department, Jennifer, to inform her of this in February prior to the dept. issuing a stop work order for work done on the garage without a permit. .

79. On June 5, 2009 a Notice of Violation issued to E&L for "improper handling of solid waste" on the same property containing the garage. A reinspection and summons occurred July 7, 2009 (photos) with fine and court costs assessed against E&L Paving.

80. Due to the continued stockpiling of debris, the property containing the garage was cited for a dangerous condition and as an attractive nuisance Sept. 21, 2009 (abated 10/13/09) and again on Nov. 19, 2009 with court appearance Dec. 14, 2009 for which fine and court costs were assessed.

81. This is all further evidences the continuing nuisance and the need for lots 19, 20 and 21, which are within 200 feet from Plaintiff, to revert to the residential use in accordance with state and local land use law and ordinances..

Significant Investment at Risk

82. Prior to Plaintiff leasing a portion of the 6000 sf building, the building, which lacked sewer service, was used for automobile restorations and was in a deplorable and neglected condition with wrecks strewn about the outside. Residential neighbors also complained about the exhaust from the illegal paint spray booth. (No such neighbors have ever complained about Plaintiff's use of the building.)

83. Three months into the lease, Plaintiff was informed the building was in the process of foreclosure and that he had to leave or buy the building. Plaintiff purchased the building and obtained either informal minor site plan approval or waiver thereof and a zoning permit after renouncing the auto body shop use in his application. Plaintiff continues to use a portion of the building for his business and rents the rest out as provided for in his

93. Defendant Long Branch's issuance of a Certificate of Occupancy to Rosario Mazza 6 months after issuance of the unlawful zoning permit which fails to list them, is palpably unreasonable.
94. Defendant Long Branch's issuance of the building permit despite knowledge thereto that it is unlawful and failure to verify the owner in fee, is palpably unreasonable
95. Defendant Long Branch's issuance of a single mercantile license to numerous existing and future businesses is palpably unreasonable.
96. Defendant Long Branch's refusal to abate the notice the notice of violation, as is or as corrected to include all parties not on the illegal zoning permit, is palpably unreasonable.
97. The failure to conduct a proper investigation and apprehend those involved in the arson is palpably unreasonable and has encouraged additional escalation of the nuisance.
98. The mayor, administrator and director of building and development at all relevant times have had knowledge of and control over the ultra vires acts and charade at enforcement alleged herein.
99. The escalated illegal use of lots by Bruno/E&L, Atlantic Paving, Rosario Mazza Corp and others and the failure by Defendant Long Branch and officials to prevent said use violates provisions of N.J.S.A. 40:55D-1 et seq and Long Branch Ordinances 300 and 345, is palpably unreasonable under N.J.S.A. 59:2-3d., and has caused additional damages, disruption and loss of peaceful possession to Plaintiff.
100. Defendants' willful and malicious acts are designed to either drive Plaintiff away or gain Plaintiff's acquiescence to the unlawful occupation by Atlantic Paving, Rosario Mazza Corp and others due to Plaintiff getting in the way of their special relationship by seeking to vindicate his property rights.
101. Plaintiff is an interested party pursuant to N.J.S.A. 40:55D-18 and Ord 345-79, to bring the within action.

WHEREFORE, Plaintiff requests the following relief against Defendants:

- (a) compensatory damages;
- (b) consequential damages;
- © punitive damages per N.J.S.A. 2A:15-5.10 (private defendants and officials)
- (d) costs;

- (e) attorneys fees; and
- (f) such other relief as the Court deems necessary and just.

THIRD COUNT

(Declaratory Relief Against Private Defendants)

102. The Plaintiff repeats and incorporates each of the preceding allegations as if fully set forth herein

103. Bruno/E&L did not obtain a Certificate of Occupancy though required by Ordinance.

104. The Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq, and Long Branch Ordinances do not permit the zoning officer ex parte to grant a de facto use variance and bypass the site plan approval process. The officer knew or should have known that a use variance was required and had never been previously obtained by Bruno/E&L on any lot..

WHEREFORE, Plaintiff requests the following relief against Defendants Bruno/E&L and Atlantic Paving and Rosario Mazza Demolition and others:

105. A declaratory judgment that Bruno/E&L unilaterally commenced and thereafter expanded a non-permitted use, and that all lots listed thereon are to be vacated within 30 days and to remain so until full and proper planning board approval is obtained and which shall further abide any appeals thereto

- (a) costs;
- (b) attorneys fees; and
- (c) such other relief as the Court deems necessary and just.

FOURTH COUNT

(Declaratory Relief Against Private Defendants)

106. The Plaintiff repeats and incorporates each of the preceding allegations as if fully set forth herein

107. Pursuant to MLUL and local ordinance, when a pre-existing non-conforming use has been discontinued or abandoned, the use is to revert to the residential use in a residential zone. A new non-conforming use is not permitted.

108. MLUL does not provide for lots not owned by the applicant and having nothing to do with the application to receive consolidations and variances

WHEREFORE, Plaintiff requests the following relief against Defendants Bruno/E&L and Atlantic Paving and Rosario Mazza Demolition and others:

109. A declaratory judgment that the zoning permit obtained by Bruno/E&L and Atlantic Paving is ultra vires in the primary sense, utterly void, collaterally estopped and of no effect and that all lots listed thereon are to be vacated within 30 days and to remain so until full and proper planning board approval is obtained and which shall further abide any appeals thereto

110. A declaratory judgment that building permit 11-0171 issued March 15, 2011 is ultra vires in the primary sense, utterly void, collaterally estopped and of no effect and that all lots listed thereon are to be vacated within 30 days and to remain so until full and proper planning board approval is obtained and which shall further abide any appeals thereto

111. A declaratory judgment that the certificate of occupancy issued to Joe Rosario under false business name Atlantic Paving and Misc. Contractors is ultra vires in the primary sense, utterly void, collaterally estopped and of no effect and that all lots listed thereon are to be vacated within 30 days and to remain so until full and proper planning board approval is obtained and which shall further abide any appeals thereto

112. A declaratory judgment that the mercantile license issued to "Atlantic Paving and Misc. Contractors" is ultra vires in the primary sense, utterly void, collaterally estopped and of no effect.

113. . A declaratory judgment that consolidations and bulk variances granted to Bruno/E&L lots 32.01, 32.02, 39, and 19, 20 and 21 in Seashore Daycamp ZB03-12 are ultra vires in the primary sense, utterly void, collaterally estopped and of no effect.

- (a) costs;
- (b) attorneys fees; and
- (c) such other relief as the Court deems necessary and just.

FIFTH COUNT

(Intentional Infliction of Emotional Distress)

114. The Plaintiff repeats and incorporates each of the preceding allegations as if fully set forth herein

115. Beginning in late September Joe Rosario would occasionally go out of his way to taunt Plaintiff and

occasionally trespassed onto his property with his pickup utility truck. (see, i.e. 10/12/09 police report)

116. Plaintiff's "Call to Action" and attached petition was circulated Dec. 8, 2009 to approximately 15 neighbors.

117. On Dec. 13, ²⁰⁰⁹ obscene, intimidating, threatening voicemails began being left on Plaintiff's business and private telephone lines at his office by Joe Rosario, who mentioned Plaintiff's name and previously used similar language in person. . .

At the same time, another individual, taking a more humorous approach and purporting to be Mayor Oxley of Long Branch, left many long, and annoying voicemails on Plaintiff's business line. This went on for 8 months.

118. On Dec. 14, stones were thrown by Rosario and his employee at Plaintiff and his property and struck Plaintiff's car doing damage to the trunk and roof. (photos) and building. Rosario told Plaintiff "put that on the internet" Police were called and arrived after an hour and took a report. (response time falsified)

119. On Dec. 19, Plaintiff discovered that his website FairtrialNJ, had been hacked into and files and information removed and similar obscene, intimidating and threatening messages left in one of the administrator use files.

120. At least two other incidents of stone throwing occurred in Dec. and January 2010 in addition to new voicemails.

121 . An arson occurred January 12, 2010. It was videotaped and apparent that several persons were involved. It was orchestrated by Joe Rosario and Ray Greico whose car was used to pickup the arsonist and with the possible knowledge of Defendant Bruno. Insurance losses of approximately \$50,000 were incurred.

122. Around and after this time, Rosario would trespass onto Plaintiff's driveway apron and property with giant demolition trucks with full container loads of waste, for purposes of damaging same and in fact, has so damaged them.

Defendant also willfully rode over Plaintiff's belgium block curbing in the parking lot entrance.

Plaintiff's video has recorded numerous episodes of vehicular trespass by Rosario and Rosario-Mazza Corp.

123. In addition to Plaintiff's car being hit by stones and bricks, other significant, unexplained damage has occurred including bashing in of the passenger side front roof post/windshield frame and sanding of the trunk

and knife marks .in several locations. (police reports/photos/appraisals) This has resulted in Plaintiff holding off on buying a new car and interfered with his social life and lifestyle.

124. Plaintiff's building , particularly the garage doors, have also surreptitiously been damaged Unit one is new with no prior occupants yet the garage door and weatherstrip have been damaged. Police reports were filed.

125. Plaintiff has had to purchase a surveillance computer and cameras at home as well, as a result of the damage to his car. Plaintiff attributes the damage to the private Defendants as there is no other explanation.

126. On Dec. 17, 2010, Defendant Braha, who frequently parks his scrap metal truck across from Plaintiff's east driveway, was videotaped trespassing onto Plaintiff's property with his truck upon talking with Defendant Bruno. He is seen getting out of the truck for purposes of scouting the security camera system to plan future damage and/or then causing damage. When subsequently confronted by Plaintiff, Braha states that Bruno is his father-in-law. Plaintiff filed a police report in 2009 complaining of the removal of \$200 of metal from outside his property and believes Defendant Braha was responsible

127. Were it not for Plaintiff's security cameras, the property would be even more extensively damaged.. The upgrading and monitoring of security has cost Plaintiff significant time and money.

128. As the next Count alleges, Plaintiff suffered the loss of a long time tenant due to the arson.

129. All throughout occupation by these occupants of Bruno/E&L lots, Bruno could be seen in photos visiting the area and he is fully aware of and primarily responsible for the damage caused by these occupants, along with his company E&L Paving which owns the lots in question.

130. Aside from the ultra vires permits issued, the support of Long Branch officials is most evident in a videotape following the May 2010 municipal election showing Rosario throwing Plaintiff's opposition election flyers all about Plaintiff's parking lot and thereafter placing a Schneider Team campaign sign thereon.

131. The malicious, outrageous behavior of Defendants Joe Rosario, Rosario-Mazza, Custom Lawn Sprinkler, Ray Greico, Atlantic Paving with the full support of Bruno/E&L and Long Branch Officials is designed to intimidate Plaintiff into leaving so they can continue their illegal use and special relationship unchallenged.

132. Plaintiff has suffered additional compensatory and consequential damages including time away from his business due to the outrageous acts of these Defendants.

133. Plaintiff has suffered severe emotional distress, anxiety, loss of sleep and other emotional issues due to the outrageous acts of these Defendants.

.WHEREFORE, Plaintiff requests the following relief against Defendants:

- (a) compensatory damages;
- (b) consequential damages;
- © punitive damages per N.J.S.A. 2A:15-5.10 (private defendants and officials)
- (d) costs;
- (e) attorneys fees; and
- (f) such other relief as the Court deems necessary and just.

SIXTH COUNT

(Tortious Interference With Economic Advantage and Contractual Relations)

134. The Plaintiff repeats and incorporates each of the preceding allegations as if fully set forth herein

135. Due to the Arson, Plaintiff's longtime tenant FaiilSafe, LLC , which had several vehicles parked in the lot in which the arson occurred, notified Plaintiff that it was not going to renew its lease and would be vacating the premises.

136. Plaintiff's right to pursue lawful businesses and other endeavors free from undue influence and molestation created a protectable interest of prospective economic advantage on the part of Plaintiff.

137. By engaging in the course of conduct chronicled herein, Defendants have intentionally interfered with Plaintiff's prospective economic advantage without justification, thereby establishing malice on the part of Defendants.

138. Defendants' tortious interference with Plaintiffs' prospective economic advantage has caused loss of prospective gain, and has resulted in damages to Plaintiffs.

WHEREFORE, Plaintiff requests the following relief against Defendants:

- (a) compensatory damages;

- (b) consequential damages;
- © punitive damages per N.J.S.A. 2A:15-5.10 (private defendants and officials)
- (d) costs;
- (e) attorneys fees; and
- (f) such other relief as the Court deems necessary and just

SEVENTH COUNT

(Breach of Fiduciary Duty)

139. The Plaintiff repeats and incorporates each of the preceding allegations as if fully set forth herein

140.. Long Branch, as a public entity, and its officials, stand in fiduciary relationship with its constituents.

141. As fiduciary and trustees of the public, Long Branch and officials are under an inescapable obligation to serve the public, including taxpayers such as Plaintiff, with the highest fidelity, intelligence, skill, diligence, conscientiousness, reasonableness, good faith, honesty, and integrity.

142. Long Branch and officials are further obligated to be impervious to corrupting influences, and must transact it business frankly, openly, and fairly. **In further breach thereof:**

143. Defendant Long Branch's special relationship with Bruno/E&L is evident as its zoning board, using Seashore Daycamp's application ZB03-12, unlawfully takes jurisdiction of matters involving subdivisions and site plans and includes/approves subdivisions and consolidations and bulk variances thereto of lots owned by Bruno/E&L. Paving on January 26, 2004. The zoning board engineer's report confirms the inappropriateness and novelty of this merger.

144. No prior public notice of consideration of these E&L lots was received.

145. The zoning board chairperson, and board attorney, previously recused themselves in front of the board and public in E&L's own site plan application ZB00-06, which E&L evaded, and in which the zoning board again had no jurisdiction (Nov. 13, 2000 minutes containing recusal - long missing).

146. As pointed out to the zoning board attorney, by letter dated Sept. 11, 2000 as to ZB00-06, applicant Bruno/E&L should not be coming before the board for relief while having outstanding violations and unclean hands.

147. Nevertheless Bruno/E&L's 3rd and final application ZB02-08 is addressed Aug. 12, 2002 and Oct. 28, 2002, though not concluded and thereby evaded.

148. Defendant's municipal judge George Cieri, earlier heard the summons (p.86) against Bruno/E&L though simultaneously and continuing to serve as their attorney in real estate transactions. (p 9, 83) (In one such transaction involving the land swap with Seashore Daycamp for lot 40, he knowingly fails to first obtain subdivision approval though having served previously as attorney to the planning board which grants these approvals.) Plaintiff had a matter in court the same day as Bruno and saw Bruno there.

149. Councilwoman Celli lives across the street from the Morris Ave. eyesore (lots 19, 20, 21) yet remains silent as the neighborhood deteriorates around her. Her family member Michael G.Celli, Sr. was a previous zoning officer

150. Councilwoman is an old friend of Defendant Bruno who grew up in the area.

151. Councilwoman has served as council president and should have basic knowledge of zoning laws.

152. Councilwoman knows the zone is residential and should have reverted to the residential use upon purchase and use by Bruno/E&L.

153. Though Plaintiff presented petitions and reported the violations and the arson to the city council, upon information and belief, no effort has been made to abate the violations or arrest those involved in the arson.

154. The arson investigator, corporal Scott Beaver was also originally assigned to the criminal investigation to apprehend those involved in the arson.

155. The investigation has gone nowhere due to corruption on the part of corporal Beaver who tipped off the prime arson planner, Joe Rosario to remove evidence of a new threat, i.e. fire extinguishers and torches left in the street opposite plaintiff for several days after veiled threats made by Rosario.

156. Upon first meeting corporal Beaver after the arson, he refereed to Joe Rosario as "junior" Rosario and it was obvious that the 2 already knew each other. He also stated he would use all resources to get the arsonists. .

157. Upon information and belief, no report of the arson was made to the FBI or to the media.

158. The police response time to the rock throwing incident on 12/14/09 was one hour, as evidenced by phone records, and the time on the police record was falsified to conceal this.

159. The city attorney's arbitrary and capricious statement in his March 13, 2010 letter that "lot 13.02, which has a building on it, construction thereon predated any requirements for a certificate of occupancy under any City Ordinance" is a knowing lie, does not account for the illegal use and expansion of the other lots and seeks to cover his conflict of interest in the matter

160. On November, 9 2010 Plaintiff appeared before the new city council to inform them that the city attorney may have a conflict of interest which is inhibiting enforcement, his firm having previously represented Seashore Daycamp, who has intertwining interests with Bruno/E&L involving a land swap. Plaintiff read from and submitted a statement to council containing these allegations.

161. As part of the land swap agreement, Bruno/E&L was to be allowed to continue to use the portion of lot 52 on its side of the brook illegally, i.e. without a use variance, all with the approval of Defendant Long Branch and Officials, who fail to abate and therefore encourage the illegal use.

162. The city attorney's firm and members thereof also formerly contributed to the political campaigns of Seashore's principal, John Villapiano .

163. Upon information and belief, other conflicts of interests may exist.

164. Minutes of the November council meetings were conspicuously missing from the Long Branch web site as of August 23, 2011. .

165. Plaintiff visited the city clerk on August 15, 2011 and was given a copy of the Nov. 23 meeting but not of the Nov. 9 meeting which is still unaccounted for.

166. On August 22, 2011 Plaintiff visited the clerk to receive his OPRA request regarding any building permits and violations on Bruno/E&L lots 19, 20, 21. and was given a copy of the Nov. 9, 2009 minutes.

167. The minutes conspicuously fail to mention the alleged conflict of interest brought by Plaintiff to the council's attention.

168 On August 24, 2011, the November 9 and 23, 2001 minutes are finally found on the Long Branch website along with the other minutes.. .

169. Pursuant to requests by an Appellate Div. judge to resolve the entire matter, Plaintiff made a settlement offer to Defendants which was rejected. City attorney claims the administration was consulted. Pursuant to the

sunshine act, council is to be consulted regarding litigation.

170. The city attorney thereafter alleges the council was consulted prior to rejecting the offer. Executive minutes fail to list the matter prior to the rejection and only indicate discussion subsequent to Plaintiff's inquiry and the rejection.

171. Upon information and belief, the city attorney and officials have attempted to conceal from council and the public his conflict of interest and council has failed to independently and thoroughly review Plaintiff's allegations thereto.

172 Defendant Long Branch and Official's conspiracy to conceal or willfully exclude the alleged conflict of interest in its minutes and thereafter delay publishing same violates the Open Public Meetings Act (sunshine law), NJAC 10:4-6 et seq, i.e. 10:4-12(b)(7) and 10:4-14.

173. Long Branch and officials knew or should have known that there existed a special relationship of trust and confidence between them and Plaintiff.

174. By engaging in the course of conduct described herein, Long Branch and officials breached their fiduciary duties to Plaintiff, and said breach proximately caused Plaintiff damages.

WHEREFORE, Plaintiff requests the following relief against Long Branch and officials:

- (a) equitable relief permanently enjoining the nuisance and declaring that Defendant Long Branch and Officials violated NJAC 10:4-6 et seq,
- (b) compensatory damages;
- (c) consequential damages;
- (d) punitive damages per N.J.S.A. 2A:15-5.10 (private defendants and officials)
- (e) interest;
- (f) costs;
- (g) attorneys fees; and
- (h) such other relief as the Court deems necessary and just including fines for violating the sunshine act..

EIGHTH COUNT

(Civil Conspiracy)

175. The Plaintiff repeats and incorporates each of the preceding allegations as if fully set forth herein

176. Private Defendants, upon information and belief, through the unlawful agreement of Ed Bruno, Joe Rosario, Ray Greico, and their employees, relatives and friends, conspired among themselves to commit the unlawful acts described herein against Plaintiff

177. City officials Schneider, Woolley, Hayes, Bernich, Janeczek and Irene through the unlawful agreement among themselves and with Ed Bruno, Joe Rosario and Ray Greico and others, conspired among themselves to commit ultra vires acts.

178. The aforementioned wrongful conduct is the result of an unlawful agreement among Defendants to inflict wrong and injury on Plaintiff.

179. Said conduct has caused Plaintiffs to be harmed and suffer damages.

180. By reason of the foregoing, Defendants have engaged in civil conspiracy.

WHEREFORE, Plaintiffs demand judgment as follows:

- a. such equitable relief as the Court may deem necessary to remedy the injustices and unconstitutional deprivations perpetrated upon Plaintiff;
- b. compensatory damages;
- c. consequential damages;
- d. punitive damages
- e. costs of suit;
- f. interest;
- g. attorneys fees; and
- h. such other relief as the Court deems necessary and just.

NINTH COUNT

(Civil Rights Act of 1871 - 42 U.S.C. § 1983)

181. The Plaintiff repeats and incorporates each of the preceding allegations as if fully set forth herein

182. Defendant Long Branch and Officials have a history and pattern of violating Plaintiff's right to equal protection of the laws due to Plaintiff's challenging Defendants in seeking to vindicate his property rights.

183. In an earlier matter, a Superior Court judge found that Long Branch may have violated Plaintiff's constitutional rights in the denial of a street opening permit.

184. In that matter, the Mayor insists in a deposition that "only a phone call is needed to enforce the laws."

185. The mayor and administrator Woolley also admit that they frequently pass the Bruno/E&L properties on Morris Ave. on their way to work.

186. A few blocks away on the oceanfront, the City institutes eminent domain, citing low property values due to blight and under utilization, (see, i.e. Cottage Emporium & Lighthouse Mission, et. al v. Broadway Arts Center; City of Long Branch & Mayor, et. al.; A-0048-07T2, A-4415-07T2, A-4416-07T2 , Long Branch v. Anzalone , et. al (MTOTSA) , **yet knowingly creates and refuses to abate blight stemming from the**

Bruno/E&L properties. In fact, Long Branch specifically creates a new position of Director of Building and Development for Kevin Hayes with key duty of prevention of blight- yet Plaintiff's property value is allowed to decline due to Mr. Hayes's continued refusal to properly enforce the laws.

187. Though Plaintiff already had obtained building permits for the office addition, Long Branch nevertheless, under Mr. Hayes's auspices, seeks to re-evaluate the plumbing permits in order to deprive Plaintiff of a shower in his private bath under the ADA claiming a "mistake" had been made. Plaintiff, who had already installed sewer service and 2 fully ADA accessible bathrooms and whose plans show several more where none existed prior, upon calling the DCA plumbing code specialist in Trenton, was told that is up to the local plumbing official to interpret the extent of the ADA code. Plaintiff submits, however, it is not up to the local official to interpret **twice** simply because he does not agree with the previous official's interpretation or may have other motives. (The building official claimed they were afraid of getting sued by MONOC or other such ADA activist organizations) It should be noted that neither of Plaintiff's 2 neighbors had been made to make their buildings more accessible as required by the ADA (the bakery has a retail accessory use approval) nor has Long Branch itself installed an ADA accessible bathroom in recent renovations to its building department undertaken by Mr. Hayes. Plaintiff's building is not zoned for retail use or public in nature.

188. In response to an application for a zoning permit for a recent tenant, Long Branch zoning department (which reports to the Director of Building and Development) allows that Plaintiff may place a 20' storage container in only 2 locations on his property. Yet code enforcement, also under Mr. Hayes of Building and Development, after 18 months, refuses to abate its Notice of Violation demanding all dumpster containers be removed from the Bruno/E&L lots where the occupant Rosario-Mazza has no zoning permit. .

189. While refusing to equally enforce the laws as regards Plaintiff, Defendant Long Branch, nevertheless, continually and deliberately seeks to target Plaintiff and raise his taxes.

190. Long Branch most recently sought to double Plaintiff's taxes by seeking to impose a recent valuation of almost 192% over fair market value and fails to mail Plaintiff notice as to the Municipal hearings, thus making a tax appeal and appraisal necessary.

191. A review of listings obtained from the County Tax Board reveals that Plaintiff's property was one of the most over-assessed in Long Branch.

192. On one occasion in early 2010, Plaintiff was walking by the counter serving the assessor in City Hall, and the assessor, whom Plaintiff had never met, comes to the counter and asks when Plaintiff is going to finish his building.

193. Plaintiff takes all this as further evidence of Long Branch's efforts over the years to humiliate, harass, discriminate against and target Plaintiff stemming from his attempts to vindicate his property rights:

194. The one hour police response to the Dec. 14 , 2009 stone throwing incident and resultant falsification of this in the police report was very disturbing and traumatic to Plaintiff.

195. At the time, police personnel were at an all time high and no limitation of resources prevented prompt dispatch around the corner to Plaintiff.

196. Based on other incidents where Mr. Hayes's handpicked lieutenants were dispatched when Plaintiff wanted to file complaints of property damage, and they would always list "0" damage", this dispatch also seems orchestrated and response predicated upon Plaintiff being the caller. In the report made 6/24/2009 complaining of trespassing and theft of metal from the property, only police officer Hector Umana appeared - the 2 others mentioned on the report were not present. He refused to acknowledge what obviously appeared to be bootprints

on the outside wall of Plaintiff's new office addition and on another occasion, damage to Plaintiff's car.

197. Previously in a municipal court matter (before judge Cieri) , he lied to support a story concocted by Mr. Hayes that Mr. Hayes was not present (though appearing in the police report) and did not tell a defendant he had 7 days to remove the 300 tires he dumped on Plaintiff's property or go to jail.

198. The prosecutor told Plaintiff in conference that "I already got my justice from defendant " and Plaintiff had to prosecute on his own in which several other city witnesses would not appear..

199. The March 13, 2010 letter from the City Attorney refuses to rescind the permit and instead targets and retaliates against Plaintiff who has already obtained permits following two administrative reviews, (including site plan approval), in effect at the time. (Exhibit J, pg 120) Plaintiff's permits have previously never been an issue. Defendant's arbitrary and capricious claim is evident particularly by the statement "The fact that zoning permits are issued does not cure the fact that site plan approval was and still is necessary" (for Plaintiff but not for Defendants?!)

The attorney's arbitrary and capricious statement in his March 13, 2010 letter that "lot 13.02, which has a building on it, construction thereon predated any requirements for a certificate of occupancy under any City Ordinance" is a knowing lie, does not account for the illegal use and expansion of the other lots and seeks to cover the conflict of interest in the matter.

200. These and other willful conduct and actions by Defendant Long Branch and Officials, under color of state law and local ordinances, all in order to humiliate, retaliate against and otherwise treat Plaintiff as a second class citizen, and in a manner that shocks the conscience, have caused Plaintiff to be deprived of his civil rights under the Fifth and Fourteenth Amendments of the United States Constitution and has otherwise violated 42 U.S.C. Sec. 1983.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- a. such equitable relief as the Court may deem necessary to remedy the injustices and unconstitutional deprivations perpetrated upon Plaintiffs;
- b. compensatory damages;
- c. consequential damages;

- d. punitive damages versus officials of Long Branch
- e. costs of suit;
- f. interest;
- g. attorneys fees; and
- h. such other relief as the Court deems necessary and just.

TENTH COUNT

(Breach of Contract)

201. The Plaintiff repeats and incorporates each of the preceding allegations as if fully set forth herein.

202 Defendant Long Branch has failed to recognize and enforce the no parking zones around and across from the entrances to Plaintiff's parking lots as delineated on the site plan approval of September 16, 2003.

203. Police were called Nov. 9, 2009 and Jan. 7, 2010 as Defendant Rosario purposefully blocked trucks which had just delivered to Plaintiff, from leaving. Though Plaintiff pointed out to Officer Houston of traffic, that they had no right to be there in the first place, Plaintiff was told they could park in the cul de sac area, where the imaginary Curb was and also around the entrances to my parking lot if they wanted. Officer Houston radio contacted Kevin Hayes, Chief of Code Enforcement, prior to making this determination..

204. Defendant Long Branch's pleadings in the prerogative writ matter confirms the breach of contract

205. Plaintiff, in reliance upon the site plan approval, pursuant to contract law, has made significant investment on his property with the expectation that he and his tenants will have full access to and reasonable, undisturbed use of the property.

206. On several occasions, due to parking by private defendants, trucks have been unable to access the driveway on the east of Plaintiff's property where a tenant exists in the rear. The tenant has had to come 110 feet to the street to receive his cumbersome lumber.

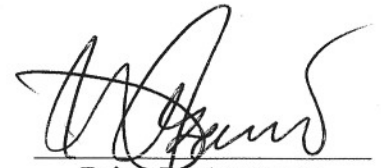
207. This and other incidents of restricted access has depreciated the value and desirability of Plaintiff's property and threatens loss of existing and future tenants. and other damages.

WHEREFORE, Plaintiff requests the following relief against Defendant Long Branch:

- (a) compensatory damages;

- (b) consequential damages;
- (c) costs;
- (d) attorneys fees; and
- (e) such other relief as the Court deems necessary and just

Dated: August 25, 2011



Brian D. Asarnow

JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

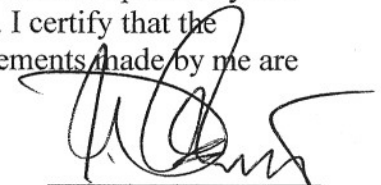
DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, the trial counsel for Plaintiff has not yet been determined.

CERTIFICATION PURSUANT TO RULE 4:5-1

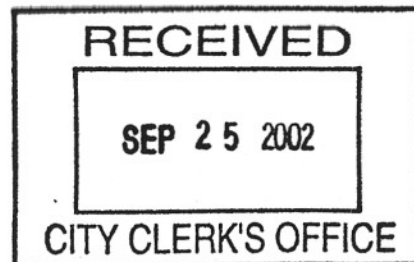
To the best of my knowledge, the matter in controversy, i.e., action for damages, is not the subject of any other court or arbitration proceeding, nor is any other court or arbitration proceeding contemplated. However, Appeal A-000999-10T4 is pending and seeks direct review of issues of law by prerogative writ directed at Long Branch. The issues are 1) that a CO was required prior to occupancy by Bruno/E&L 2) voiding of the zoning permit and 3) abatement of the 1/27/10 notice of violation It also seeks recognition and enforcement of the no parking zones in Plaintiff's approved site plan and seeks an impartial venue due to bias exhibited by the previous monmouth vicinage judge The First Count herein may be impacted if the Appeals court determines that a matter of law exists and that a CO was required prior to Bruno/E&L's occupancy. The creation of a continuing nuisance does not necessarily hinge on this, however. The Tenth Count herein is impacted by the Appeal. To the best of my knowledge, no other parties should be joined in this action. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: August 25, 2011



Brian D. Asarnow

**NOTICE OF CLAIM AND INTENT
TO BRING LEGAL ACTION
PURSUANT TO N.J.S.A. 59:1-1 et seq.**



A. Claimant: Mr. Brian D. Asarnow
55 Community Place
Long Branch, NJ 07740

B. TO: Clerk
City of Long Branch
Municipal Building
344 Broadway
Long Branch, NJ 07740

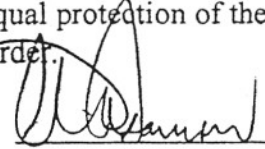
C. Date of Occurrence: July 28, 2000 and/thru July 28, 2002 and continuing. (continuing violation)
Location: Immediate vicinity of 55 Community Place

Transactions giving rise to claims: Knowing failure/refusal to properly enforce section 20 of its zoning ordinances on neighboring properties as evidenced by two appraisal reports issued on the above dates and other documentation earlier made known to Long Branch. Said failure is, palpably unreasonable and also denies equal protection of the laws, in violation of claimant's federal constitutional rights. The second appraisal documents new facts involving the rearrangement of and placing of additional equipment including snowplows and stockpiled materials since the first appraisal. No court has yet examined either appraisal report or these facts.

D. Description of Loss: The losses in property value have proximately occurred due to the knowing failure/refusal to uniformly and properly enforce zoning ordinances as written and intended as to E&L Paving and Golden Crust Bakery. Said ordinances, based upon the land use act, N.J.S.A. 40:55D-18 et seq. intend that property owners are to receive site plan approvals and zoning permits prior to utilizing properties and not well after the fact, if at all. Long Branch's own zoning permit states this. The fact that property values in general may be increasing is irrelevant as supported by caselaw in that claimants property value would be still higher without these negative factors.

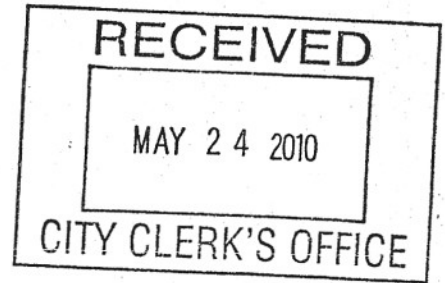
E. Parties causing injury: Long Branch zoning officer A. Juska and superiors Business Administrator H. Woolley and Mayor Schneider and possible members of council, upon information and belief. As Ed Bruno and E&L paving continues to operate and expand his activities without any approvals and with full knowledge thereof and to claimant's detriment, they too will be added as a party. As the bakery's dumpster and other waste streams and lack of provision for offstreet parking for its commercial vehicles and retail business continues to negatively impact claimant's properties and are not considered in its site plan, Rosann Guisto and Golden Crust will be added as a party. As William Montgomery and M&M Sealcoating, a tenant of E&L Paving, whose sweeper parks on E&L lots and entered claimant's property for the sole purpose of lifting the pavement and did so and begun the deterioration which continues to occur, they too will be added as parties.

F: Claimant seeks damages of \$40,000 as of October 2, 1998 and since April 1997 based upon photographic evidence and based upon subsequent mitigation having occurred prior to the first appraisal. Claimant seeks \$25,000 in damages based upon the second appraisal. Claimant seeks costs and any other damages as allowed by law. Claimant retains the right to proceed in federal court for violation of his rights to equal protection of the laws and to add the cause of action for the denial of permits as allowed by previous court order.


Brian D. Asarnow

Dated: September 24, 2002
Enclosed: 7/28/00 and 7/28/02 appraisals

**NOTICE OF CLAIM AND INTENT
TO BRING LEGAL ACTION
PURSUANT TO N.J.S.A. 59:1-1 et seq.**



A. Claimant: Mr. Brian D. Asarnow
55 Community Place
Long Branch, NJ 07740

B. TO: Clerk
City of Long Branch
Municipal Building
344 Broadway
Long Branch, NJ 07740

C. Date of Occurrence: September 24, 2009 or March 13, 2010

Affected Location: Above location

Transactions giving rise to claims: Letter of City Attorney dated March 10, 2010 indicating the zoning permit issued 8/3/09 to E&L Paving and Atlantic Paving is "totally appropriate" and thus will not be rescinded. This follows prior notice and appeals by claimant to Mayor, Administrator and entire City Council.

Claimant's letter with enclosures dated and served October 1, 2009 upon the Mayor and Administrator constitutes full and valid tort notice as to the September 24, 2009 accrual date when claimant obtained copy of the illegal permit.

D. Description of Loss: Grandfathering of unilaterally commenced, non-permitted use and expansion thereof upon illegal subdivisions, due to issuance of illegal zoning permit. The permit is also overbroad and makes no provision for parking, traffic flow, setback, buffers or other requirements associated with a site plan review, as this process has been evaded. This has resulted in loss of peaceful possession and property value due to creation of a nuisance & blighted condition and the loss of vehicular flow and access at the end of the dead end street, congestion and restricted access to claimant's property and the forcing of public traffic onto claimants property and need for an electrically operated access gate.

E. Parties causing injury: Zoning Officer Michelle Bernich and superiors, Mayor Adam Schneider, Administrator Howard Woolley, then council of Long Branch excepting councilman Unger.

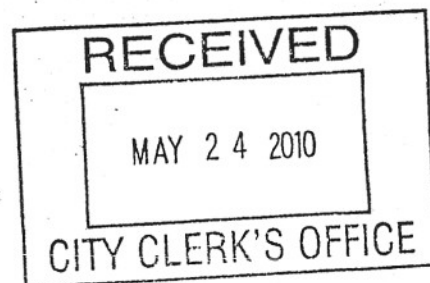
F: Amount of Loss: To be determined by jury trial and expected to exceed \$77,000 based upon property depreciation alone.

A handwritten signature in black ink, appearing to read "Brian D. Asarnow".

Brian D. Asarnow

Dated: May 24, 2010

**NOTICE OF CLAIM AND INTENT
TO BRING LEGAL ACTION
PURSUANT TO N.J.S.A. 59:1-1 et seq.**



A. Claimant: Mr. Brian D. Asarnow
55 Community Place
Long Branch, NJ 07740

B. TO: Clerk
City of Long Branch
Municipal Building
344 Broadway
Long Branch, NJ 07740

C. Date of Occurrence: April 16, 2010

Affected Location: Above location

Transactions giving rise to claims: Palpable failure to enforce notice of violation issued January 27, 2010 to Atlantic Paving. Palpable failure to issue and enforce a notice of violation sufficient to obtain full compliance with the zoning permit since other businesses not on the permit also illegally use the properties for stockpiling, equipment and materials and parking. Palpable failure to conduct a proper arson investigation that is intended to apprehend those behind and carrying out the arson videotaped on Jan. 12, 2010 at the above location.

D. Description of Loss: Loss of peaceful possession and property value due to creation of a nuisance & blighted condition and the loss of vehicular flow and access at the end of the dead end street, congestion and restricted access to claimant's property and the forcing of public traffic onto claimants property and need for an electrically operated access gate. Harassment and damage to claimant's property, including arson, due to failure to remove illegal occupants from lots owned by E&L Paving and Seashore Day Camp (lot 52) on south side of brook. 1 hour police response to stones thrown at claimant and property is palpably unreasonable. Claimant will continue to hold Long Branch responsible for further palpably unreasonable conduct of its employees as a continuing tort

E. Parties causing injury: Director of Building and Development and Code Enforcement and Fire Marshall Kevin J. Hayes, Sr., Mayor Adam Schneider and Administrator Howard Woolley, and Council of Long Branch, excepting councilman Unger. Long Branch Police Dept and Arson Investigator Scott Beaver.


F: Amount of Loss: To be determined by jury trial.

A handwritten signature in black ink, appearing to read "Brian D. Asarnow".

Brian D. Asarnow

Dated: May 24, 2010

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS) Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed.		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:		
	ATTORNEY / PRO SE NAME <i>Brian D. Asarnow</i>		TELEPHONE NUMBER <i>732-870-2570</i>	COUNTY OF VENUE <i>Monmouth</i>	
	FIRM NAME (if applicable)		DOCKET NUMBER (when available)		
	OFFICE ADDRESS <i>55 Community Pl Long Branch, NJ 07740</i>		DOCUMENT TYPE		
			JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
NAME OF PARTY (e.g., John Doe, Plaintiff) <i>Brian D. Asarnow Plaintiff</i>		CAPTION <i>Brian D. Asarnow v. Long Branch et al</i>			
CASE TYPE NUMBER (See reverse side for listing) <i>Mixed 699</i>		IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.			
RELATED CASES PENDING? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS <i>A-000999-1074</i>			
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN			
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.					
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION					
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input checked="" type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS			
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input type="checkbox"/> NO					
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION <i>Assignment to impartial judge or venue.</i>					
DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION			
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?			
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).					
ATTORNEY SIGNATURE: <i>[Signature]</i>					