

Brian Asarnow

From: Brian Asarnow [mailto: [REDACTED]]
Sent: Tuesday, May 08, 2018 9:40 AM
To: 'Miller, Tammy'; 'rich.paul@dep.nj.gov'; 'Mike.Hastry@dep.nj.gov'
Subject: FW: long branch matter , 63 Community Place- Case 17-02-03-1333-41 CLUE Incident # 633395
Attachments: DEP.E&L.pdf

Good morning:

It will be almost 3 weeks. Please advise if/when DEP plans to answer the simple question posed and if the neighbors are in compliance.

I erred below in that NJAC 7:13 was first effective June 2, 1975 with a 25' minimum buffer requirement for regulated waters which includes streams/creeks, and it is now 50' minimum.

I'll be updating the website in a few days and plan to make the response or lack thereof public and take other steps as needed to have the laws properly enforced.

Thanks,

Brian Asarnow

From: Brian Asarnow [mailto: [REDACTED]]
Sent: Friday, April 20, 2018 11:33 AM
To: 'Miller, Tammy'
Cc: 'Smith, Paul'; 'Gregory, Alissa'; 'Kropilak, Michele'; 'Dragon, Elizabeth'; 'Rich.Paul@dep.nj.gov'; 'Mike.Hastry@dep.nj.gov'
Subject: RE: long branch matter , 63 Community Place- Case 17-02-03-1333-41 CLUE Incident # 633395

Dear Ms. Miller:

Meant to get back to you sooner but been busy myself.

A plain reading of the Flood Hazard Area Control Act NJAC 7:13-2.2-2.4 confirms a riparian zone with a 50' buffer requirement since 1970. The original regulation began in early 1980 and had a 25' buffer requirement as confirmed by Mr. Gary McCarthy of DEP. A FEMA zone x flood zone also exists – see below.

Please indicate if DEP disagrees and contends there is no regulated buffer zone along the creek. This is a plain English simple request.

On 4/11/17 I emailed proof that the use/activity was begun illegally in the 60's and expanded illegally before and since early 1980 when NJAC 7:13 originated. I included a history of E&L acquired lots, tax map and FEMA flood hazard map of the area. That evidence as well as a 2009 zoning permit and numerous violations and summonses for expansion of use which coincides with the expanded activities and area of activity in a regulated zone are at this link:

<https://drive.google.com/drive/folders/1Ju7KWgvsxRrMuTuOnEn66vHHz7-CWU5S?usp=sharing>

The photos (DEPpartC) show a house in 1997 which was demolished in 2000 at which time asphalt was applied and covered up and other regulated activities including alteration of topography, removal of vegetation and stockpiling materials and equipment expanded. The photos (I have many more) show relatively light activity until 2009 when a zoning permit issued which prohibits stockpiling and expansion of use and is the basis for the summonses.

CLUE Administrator Jameson's assertion that "the continuation of unregulated activities is not a violation" predates my evidence and also does not consider that the activities are regulated in the riparian zone, and by law are to be abated pending proper permits, especially in the area where the house once stood.

Under the "unclean hands doctrine" discussed previously, one who begins a use illegally is not entitled to gain from it. Also, while I understand that solid waste and CLUE are different departments, I would think the regulatory status of the area would be of interest to solid waste as well and CLUE would be interested in solid waste activities in a regulated zone.

With all this in mind please provide an answer to the above question and whether DEP is now going to enforce against the continued defiling of this stream area where wildlife used to nest and have been chased away. I'm sure the public will want input into any permits for a construction yard involving stockpiling and recycling.

Very Truly Yours,
Brian Asarnow

From: Miller, Tammy [mailto:Tammy.Miller@dep.nj.gov]
Sent: Friday, March 16, 2018 4:50 PM
To: Brian Asarnow
Cc: Smith, Paul; Gregory, Alissa; 'khayes@longbranch.org'; Kropilak, Michele; Dragon, Elizabeth
Subject: RE: long branch matter , 63 Community Place- Case 17-02-03-1333-41 CLUE Incident # 633395

Mr. Asarnow,

I was off last Friday so I could not call you as you wished. this week has been very busy as well, and I still have reports that are due by the end of today, but I wanted to touch base with you.

The local solid waste inspector from the CEHA program followed up on your complaint last spring regarding the concrete recycling business that you mentioned. She has been to the site a couple of times. You would have to contact them through the Monmouth County Health Dept. for a report on their findings at 732-683-8686.

This new incident that you called in on 2/21/18 (which was not sent to Coastal & Land Use Compliance & Enforcement) was inspected by Solid Waste Enforcement inspectors. I suggest you follow up with them to discuss their findings. I cannot answer your permitting question regarding what Solid Waste requires for recycling facilities.

As you mentioned again, & we have discussed this in the past, these activities in this area started somewhere around the 1960's, before the DEP was formed . I also previously provided you with copies of letters that our previous Director sent directly to you in 2009 & 2010, in which he stated these activities pre-date the current Flood Hazard Area Control Act rules & reiterates to you that there are no freshwater wetlands or transition areas here as well.

Our office has received & followed up on 7 complaints from you at this same location. Our investigations found no violations in 2002, 2004, twice in 2005, 2007 & 2009. (I just realized my report from last year is still pending)

I do believe the Department has been responsive to your concerns, Mr. Asarnow. I'm sorry but we are separate from the local CO's & zoning board matters you mention regarding these on-going activities in this area.

Sincerely,

Tammy Miller | NJDEP-Bur. of Coastal & Land Use Compliance & Enforcement
1510 Hooper Ave., Suite 140 | Toms River, NJ 08753 | phone 732.255.0787 | fax 732.255.0877

Please consider the environment before printing this e-mail



From: Brian Asarnow [mailto: [REDACTED]]
Sent: Thursday, March 08, 2018 2:08 PM
To: Miller, Tammy <Tammy.Miller@dep.nj.gov>
Subject: FW: long branch matter , 63 Community Place- Case 17-02-03-1333-41 CLUE Incident # 633395

Dear Ms. Miller:

I would like to discuss this matter tomorrow, particularly whether you/DEP feel activities in this riparian zone are regulated or not.

Despite the original occupant E+L beginning his occupancy in the 60's prior to DEP 's formation, he did so illegally and never obtained a CO.

Furthermore, the lots along the creek were purchased since 1970 and the activity including an unlicensed recycling facility with bins and stockpiling has increased without any DEP approval. Do you claim none is needed? You have had plenty of time to investigate/confirm that R Brothers Concrete, Atlantic Paving, LLC and Rosario Demolition do not share principals/owners and that Rosario lied to you. A Notice of violation should have been issued and this sorted out in court. Mr. Paul Smith confirmed that. I called in a complaint 2/21 (case# 18-02-21-1338-42) regarding concrete crushing (they also sort steel and other materials other than concrete) and Just the other day I observed a different company illegally dumping a load over there. FYI Atlantic Paving's zoning board application to try to legalize the contractor's yard was denied and is on appeal. The neighbor's and I are tired of this dump/nonsense. Please review your notes so we can talk tomorrow and email your answer to the above. I will have our own expert if need be and bring it to the Commissioner's attention if honest service is not had.

Thanks,

Brian Asarnow

From: Brian Asarnow [mailto:b.asarnow@comcast.net]
Sent: Thursday, April 20, 2017 3:10 PM
To: 'Tammy.Miller@dep.nj.gov'
Subject: FW: long branch matter , 63 Community Place- Case 17-02-03-1333-41 CLUE Incident # 633395

Hello:

I'm following up to see if this has been looked into yet?

If I don't hear back next week I'll assume its closed out with no issues.

Are you unable to answer 1 & 2?

Thanks,

Brian Asarnow

From: Brian Asarnow [mailto:b.asarnow@comcast.net]
Sent: Tuesday, April 11, 2017 4:21 PM
To: 'Tammy.Miller@dep.nj.gov'
Subject: FW: long branch matter , 63 Community Place- Case 17-02-03-1333-41 CLUE Incident # 633395

I just noticed that you cc'd Kevin Hayes of Long Branch already, a defendant in a conspiracy lawsuit regarding supervising issuance of the dirty permits and failing to abate pending site plan approval. I advise you to also consult with the DAG about this aspect now.

From: Brian Asarnow [mailto:b.asarnow@comcast.net]
Sent: Tuesday, April 11, 2017 4:06 PM
To: 'Miller, Tammy'
Subject: RE: long branch matter , 63 Community Place- Case 17-02-03-1333-41 CLUE Incident # 633395

I've talked with an Env./Land Use Engr. previously and will touch base again with him after I finish with you, but in meantime:

1. What's your explanation as to how you can have a wetlands fringe /wetlands waters boundary lines marked out yet have no wetlands present? Why bother with the markout? Do you distinguish between state open water wetlands and freshwater wetlands? The former has no buffer, the latter does? How do these differ?
2. I guess its not a drainage ditch then?
3. My notes show the engineer confirms my contention that a buffer is required since it's a flood zone. He also says clean drainage over to the creek must be considered. The plans call for drywells. No detention basins planned so all the dirty runoff could get into the creek. The creek has had to be cleaned in the past. I also testified at the zoning board hearing that I did get water backing up into my building years back.
4. Mr. Jameson did not have knowledge that the activities were never authorized or approved. Photos show that lot 19.01 is substantially clear of activity on 6/1/09 and 9/16/09 just prior to the dirty permits issuing. The use was illegal at the time the flood hazard regulations took effect. Also, the use went back down essentially to zero though it should be zero, as even with the 8/3/09 zoning permit, the use is to be inside. (See his deposition portion provided) As also argued to the zoning board; **Caselaw does not permit an illegal use/activity to become a non-conforming use eligible for grandfathering. See Gross v. Allen, 117 A.2d 275, 37 N.J. Super (1955) wherein held "a use in violation of ordinance when begun cannot rise to status of a non-conforming use. R.S. 40:55-48, N.J.S.A. See also Ianieri v. Zoning Bd. Of Adjustment of East Brunswick, 468 A.2d 1072, 192 N.J. Super 15 (1983) where a homeowner sold antiques from home which was a non-permitted use and never obtained a variance. Held "zoning ordinance, which permits issuance of certificate of occupancy for any building or use of land existing at time of enactment of ordinance, did not validate uses of property which were illegal when ordinance was adopted." " a non-conforming use is a use which was permitted when commenced but is prohibited by a subsequently adopted zoning ordinance" As held at [6], "the courts have uniformly rejected attempts by property owners to secure valid non-conforming uses by unilateral action which violates the zoning ordinances, and any attempt by a municipality to extend retroactive approval to illegal conduct can fare no better" referring to Hilton Acres v. Klien, supra 35 NJ at 581, 174 A.2d 465. As held at [10-12], " the enforcement of a zoning ordinance ordinarily may not be prevented on grounds of estoppel merely because a suit to terminate the illegal use could have been commenced earlier."**

THE SAME PRINCIPLE APPLIES HERE – CALLED THE "UNCLEAN HANDS DOCTRINE" You cannot get relief from a government agency or court while your hands are dirty. E&L doesn't get the benefit of pre-existing use claimed by Mr. Jameson since his activity was never authorized by zoning or DEP. You can confirm this with a DAG, hopefully one that provides honest service and is immune from Long Branch influence. The current occupants are therefore required to vacate pending obtaining of DEP permits after public notice. The affected neighbors want to weigh in on this.

Thanks,
Brian Asarnow

From: Miller, Tammy [<mailto:Tammy.Miller@dep.nj.gov>]
Sent: Tuesday, April 11, 2017 3:00 PM
To: Brian Asarnow
Cc: Smith, Paul; Kevin Hayes ()
Subject: RE: long branch matter , 63 Community Place- Case 17-02-03-1333-41 CLUE Incident # 633395

Brian,
Thank you for the information that you provided regarding your complaint concerning Rosario Contracting Corp. (formerly E&L Paving), block 237, lot 19.01

please read through the LOI for Seashore Day Camp that you sent (1325-06-0016.1 dated Nov. 21, 2006), it confirms what I was telling you on the phone last week. **There are no freshwater wetlands or buffers on the site, and the watercourse is considered a state open water.** In addition, another surrounding business received the same LOI. South

7th Ave. Storage Corps, Block 237, Lot 33, 1325-06-0020.1 issued Jan. 18, 2007, also states that wetlands are absent on the site and that the watercourse is a state open water (with no buffers)

Further, I was able to obtain the letters that our Administrator Marcedius Jameson sent you , as well, dated Dec. 1, 2009 and Jan. 19, 2010. He advised you that the activities of concern to you predate the current Flood Hazard Area Control Act Rules. He also advised you then that this watercourse has no associated freshwater wetlands or transition areas .

Rosario may need something from Solid Waste regarding the concrete recycling. They also received the complaint & have their own Incident # (630135) I have copied the Supervisor on this email

Any of the local issues or concerns you have such as zoning, site plan approval or CO's cannot be addressed by this Bureau or the Department.

I will still ride by the site as soon as I can, but I hope this satisfies your questions regarding the Flood Hazard Area rules and freshwater wetlands in terms of your issues with 63 Community Place.

Should you have any further questions, please contact me at the phone # listed below

Sincerely,

Tammy Miller
Environmental Specialist III
NJ Dept. of Environmental Protection
Bur. of Coastal & Land Use Compliance & Enforcement
1510 Hooper Ave., Suite 140
Toms River, NJ 08753
732.255.0787 phone 732.255.0877 fax

Please consider the environment before printing this e-mail



NOTE: This E-mail is protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521. This E-Mail and its contents may be Privileged & Confidential due to the Attorney-Client Privilege, Attorney Work Product, Deliberative Process or under the New Jersey Open Public Records Act.

If you are not the intended recipient of this e-mail, please notify the sender, delete it and do not read, act upon, print, disclose, copy, retain or redistribute it.

From: Brian Asarnow [mailto: [REDACTED]]
Sent: Monday, April 10, 2017 4:26 PM
To: Miller, Tammy
Subject: RE: long branch matter - Case 17-02-03-1333-41

Please see attached
The photos will be sent later or early am tomorrow.

From: Miller, Tammy [mailto: Tammy.Miller@dep.nj.gov]
Sent: Monday, April 10, 2017 12:06 PM

To: Brian Asarnow

Subject: RE: long branch matter - Case 17-02-03-1333-41

No problem at all, thanks

Tammy Miller

Environmental Specialist III

NJ Dept. of Environmental Protection

Bur. of Coastal & Land Use Compliance & Enforcement

1510 Hooper Ave., Suite 140

Toms River, NJ 08753

732.255.0787 phone 732.255.0877 fax

Please consider the environment before printing this e-mail



NOTE: This E-mail is protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521. This E-Mail and its contents may be Privileged & Confidential due to the Attorney-Client Privilege, Attorney Work Product, Deliberative Process or under the New Jersey Open Public Records Act.

If you are not the intended recipient of this e-mail, please notify the sender, delete it and do not read, act upon, print, disclose, copy, retain or redistribute it.

From: Brian Asarnow [mailto:██]

Sent: Monday, April 10, 2017 8:10 AM

To: Miller, Tammy

Subject: long branch matter - Case 17-02-03-1333-41

Good Morning:

I should have most or all of the info. over to you by noon – was working on taxes last week

Brian Asarnow