

File No. 01240-0128-GMM

Law Offices
PARKER McCAY P.A.
By: George M. Morris, Esquire
Atty ID #: 013122005
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, New Jersey 08054
(856) 596-8900
Attorneys for Plaintiff, Township of Southampton

FILED with the Court

SEP 17 2013

Ronald E. Eockbinder, A.J.S.C.

TOWNSHIP OF SOUTHAMPTON,

Plaintiff,

v.

ALLIED RECYCLING, INC., d/b/a LAST
CHANCE SALVAGE, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY
DOCKET NO. BUR-L-2037-13

CIVIL ACTION

ORDER OF REMAND

THIS MATTER having been opened to the Court by the Plaintiff, Township of Southampton, upon the filing of an Order to Show Cause seeking emergent and permanent restraints against the Defendant for failing to prosecute its application before the Southampton Zoning Board of Adjustment and for failure to secure permits under the Uniform Construction Code, and Plaintiff having appeared through their attorney, Parker McCay P.A. (George M. Morris, Esquire appearing) and the Defendant, Allied Recycling, Inc. d/b/a Last Chance Salvage, Inc., having appeared in opposition to said application through its attorneys Ridgway & Stayton, LLC (Michael S. Ridgway, Esquire appearing) and in-house counsel, Walter John Gabrysiak, Esquire, and the Court having reviewed the submissions of the parties, heard the arguments of counsel, and for good cause shown;

IT IS on this 17th day of ^{September} ~~AUGUST~~, 2013, ORDERED that the relief sought by the Plaintiff in the aforementioned Order to Show Cause be and the same is hereby **DENIED WITHOUT PREJUDICE.**

IT IS FURTHER ORDERED that the matter is **REMANDED** to the Southampton Township Zoning Board of Adjustment, that said application will be a continuation of the previously submitted application, that testimony, record and exhibits which were provided on May 9, 2013 as part of said application shall remain part of the current record and that the Defendant/Applicant shall notice and appear before the Zoning Board of Adjustment at the September 12, 2013 or arrange for and notice for a special meeting of the Zoning Board of Adjustment pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., so that the Defendant/Applicant may continue to provide testimony and public input may be heard on said application; and that said application shall continue to be heard on a monthly basis until a decision by the Board of Adjustment is rendered.

BE IT FINALLY ORDERED, that the Special Complaints # 556, 557, 558, 559 and 560 issued by Township Construction Code Official Jody Mazeall on June 5, 2012 and pending before the Southampton Township Municipal Court shall be adjourned until the resolution of the matter before the Zoning Board of Adjustment.



THE HONORABLE RONALD E. BOOKBINDER, A.J.S.C.

JUDGE'S CHECKLIST

_____ Opposed

_____ Unopposed

File No. 01240-0128-GMM

SUPERIOR COURT
BURLINGTON COUNTY

**Law Offices
PARKER McCAY P.A.**
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, New Jersey 08054
(856) 596-8900

FILED

2013 AUG 14 AM 8:53

AUG 14 2013

RECEIVED
BY: 005

Attorneys for Plaintiff, Township of Southampton

TOWNSHIP OF SOUTHAMPTON,

Plaintiff,

v.

ALLIED RECYCLING, INC., d/b/a LAST
CHANCE SALVAGE, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY
DOCKET NO. *Bur-L-2037-13*

CIVIL ACTION

VERIFIED COMPLAINT

801

Plaintiff, Southampton Township, by way of Verified Complaint against the Defendant,
Allied Recycling, Inc., d/b/a Last Chance Salvage, Inc., says:

COUNT ONE

(Violation of Southampton Zoning Code)

1. The Plaintiff, Township of Southampton, ("Township") is a corporate body politic in the State of New Jersey, with a principal place of business at 5 Retreat Road, Southampton, New Jersey 08088.
2. The Defendant, Allied Recycling, Inc., d/b/a Last Chance Salvage, Inc., ("Defendant") is a corporation of the State of New Jersey with a principal place of business of 2658 Route 206, Mount Holly, New Jersey 08060.
3. Defendant owns and operates a 12.66 acre parcel of land at Block 2401, Lot 36.02 on

LAW OFFICE
Parker McCay P.A.

BATCH 009

Charge Account # 78300

Amount \$ 200.00

BATCH 009

Charge Account # 78300

INDEXED
168

**COPY RETURNED
TO FILER**

the Township of Southampton Tax Map, commonly known as 440 New Road, Southampton, New Jersey 08088 (the "Property") upon which it operates a junkyard.

4. The Property is zoned Rural Development Zone in the Pinelands (RD Zone) pursuant to Township's Zoning Code.
5. The RD zone permits only the following nine uses: (1) single family detached housing; (2) Agriculture; (3) agriculture commercial establishments with restrictions; (4) churches; (5) schools; (6) professional offices; (7) public service infrastructure; (8) residential units with clustering with restrictions; and (9) planned retirement communities with Pinelands approvals. (Township Code, section 19-2.6(b)).
6. Defendants junkyard use is not permitted under the current zoning ordinance, but exists as a pre-existing, non-conforming use.
7. The junkyard use is a "non-conforming use" pursuant to N.J.S.A. 40:55D-68.
8. Defendant either (1) expanded the junkyard to include a weigh station and recycling operation which is an expansion of a pre-existing, non-conforming use or (2) the establishment of a new and separate use either of which is prohibited under the municipal zoning codes and the Municipal Land Use Law, N.J.S.A. 40:55D-68.
9. Defendant's own website promotes its recycling business and acknowledges that it accepts a variety of recyclable materials including all metals, batteries and computers.
See Exhibit A.
10. The Township issued a zoning violation to the Defendant on October 24, 2011 for the change of use. A true and accurate copy of the Notice of Violation is attached hereto as Exhibit B.
11. Said violation carries with it a penalty of \$1,000 per day for the continuation of

operation of the change in use without securing approval from the land use board.

12. As of August 12, 2013, six hundred and fifty-seven (657) days have passed without the Defendant halting its illegal operation. The fine to date is therefore \$657,000.00.
13. On December 29, 2011, Defendant was informed that it must appear before the appropriate Township land use board to file a site plan application and gain approval for the use. Exhibit C is a true and accurate copy of the communication regarding the required appearance before the board.
14. Defendant made no application to come before the land use board. On May 7, 2012, the municipality again noticed the Defendant to submit to the jurisdiction of the land use board. Plaintiff also provided notice to the Pinelands Commission of the outstanding issues. True and accurate copies of the May 7, 2012 communications are attached hereto as Exhibit D.
15. On January 2, 2013, the Defendant received its Certificate of Filing from the Pinelands Commission. A true and accurate copy of the Certificate is attached hereto as Exhibit E.
16. On January 18, 2013, the Defendant finally made application to the Southampton Township Planning Board. The matter was referred from the Planning Board to the Zoning Board of Adjustment because of the change in use created by adding the weigh station and associated uses.
17. Considerable communication between the Defendant's attorney and the Zoning Board attorney debated whether a junkyard is permitted to have a recycling component, whether the same was an expansion of the pre-existing, non-conforming use or whether the recycling aspect was a new, non-permitted use. True and accurate copies of the

communications known to the Township are attached hereto as Exhibit F.

18. On May 9, 2013 the Defendant appeared before the Zoning Board for a public hearing on its application for the use variance and site plan.
19. The Board heard multiple hours of expert testimony and public comment and carried the meeting forward to the next scheduled meeting, June 13, 2013, to continue the application, with the Applicant's consent.
20. On June 13, 2013, the Board had four members present, a quorum present at the meeting, but less than the five members required to grant a "D" variance. The matter was carried to the July 11, 2013 meeting with the Applicant's consent.
21. The Defendant did not appear on July 11, 2013 because its professionals were unavailable. The hearing was carried to the August 8, 2013 meeting with the Applicant's consent.
22. The matter was carried to August 8, 2013. The Township received notification from the Defendant's attorney on that date that he had become unavailable because of a medical condition. Township employees stressed the importance of an appearance by the applicant. During that evening's meeting, the meeting room was full of interested residents (approximately 75 people). When the Defendant did not appear, the application was dismissed without prejudice.
23. Defendant's inaction has and continues to cause irreparable harm to the Township through the continued illegal operation of an expansion of a non-conforming use at the Property without obtaining site plan approval and a use variance pursuant to N.J.S.A. 40:55D-68. Its laws remain unenforced.
24. Defendant's inaction has and continues to cause irreparable harm to the adjacent

residents of 440 New Road in terms of traffic impacts and destruction of the peace and enjoyment of their residences, such issues which should have been properly vetted before the Zoning Board and determined by that body.

25. The operation of a recycling center, weigh station and trailer without variance and site plan approval is a violation of the Municipal Land Use Law and Township ordinances.
26. Pursuant to N.J.S.A. 40:55D-18, the Township may seek to enjoin and restrain the Defendant's illegal action.

WHEREFORE, the Plaintiff demands and Order:

- a. Declaring that Defendant, Allied Recycling, Inc. is illegally operating a recycling center at 440 New Road, Southampton, New Jersey without obtaining the approval of the Southampton Township Zoning Board of Adjustment to operate a recycling center in a residential zone.
- b. In the Alternative, declaring that Defendant, Allied Recycling, Inc. is illegally operating a recycling center at 440 New Road, Southampton, New Jersey as an expansion of a pre-existing, non-conforming use without obtaining the approval of the Southampton Township Zoning Board of Adjustment to install and operate such a use. Declaring that Defendant is illegally operating a recycling center without obtaining site plan approval from the appropriate Board.
- c. Temporarily and permanently enjoining the operation of the facility for illegal recycling purposes beyond the junkyard facility that existed at the time the zoning ordinance was adopted to create zones and prohibit the junkyard use on the Property.
- d. Declaring that the Defendant has improperly installed equipment, expanded

facilities and conducted activity without regard for site plan approvals.

- e. Temporarily and permanently enjoining the Defendant from operating such facilities until it obtains variance and site plan approvals from the Zoning Board of Adjustment and conforms to each and every condition which may be imposed.
- f. An award of attorney's fees and costs of this action.
- g. Such other relief as the Court deems equitable and just in the circumstances.

COUNT II

(Enforcement of Uniform Construction Code Violations)

- 27. Plaintiffs repeats each and every allegation of Count One of this Complaint as if set forth here at length.
- 28. Defendant has installed a weigh station and trailer on site and has illegally run power to both facilities without applying for permits under the Uniform Construction Code permitting process.
- 29. The purpose of construction permits is to protect the public and users of buildings and structures from the negative and potentially deadly consequences of installing the same without review and approval of the plans and inspection by Township officials of the work performed by contractors.
- 30. Regardless of whether the use is permitted, Defendant's inaction jeopardizes the health and safety of employees, contractors and visitors to this site on a daily basis.
- 31. The operation of the weigh station, trailers, and recycling center without the appropriate construction permits is a violation of law.
- 32. Pursuant to N.J.S.A. 40:55D-18, the Township may seek to enjoin or restrain the

Defendant's illegal actions.

WHEREFORE, the Plaintiff demands and Order:

- a. Declaring that the Defendant has improperly installed equipment and expanded facilities without regard to the New Jersey Uniform Construction Code by failing to submit applications, gain approvals, be issued permits and submit to inspections, for among other things, the installation of a weigh station, the locating of a work trailer and the installation of electrical lines to operate the same.
- b. Temporarily and permanently enjoining the Defendant from occupying or operating such facilities until all Uniform Construction Code issues are fully approved by the Township's Construction Code Official
- c. An award of attorney's fees and costs of this action.
- d. Such other relief as the Court deems equitable and just in the circumstances.

COUNT III

(Consolidating and Enforcing Municipal Court violations)

33. Plaintiffs repeats each and every allegation of Counts One and Two of this Complaint as if set forth here at length.
34. On June 5, 2012, in an effort to enforce the municipal zoning codes, the Township filed and served municipal court complaints against the Defendant. A copy of the Special Complaint is attached hereto as Exhibit G.
35. The municipal court matters have been adjourned on ten (10) occasions while the Defendant claimed it was seeking Zoning Board approvals. Unless consolidated with this action, the matters are next scheduled for August 27, 2013. True and accurate

copies of the municipal court notices are attached hereto as Exhibit H.

36. The Defendant faces more than \$657,000.00 in daily penalties for zoning violations and another \$180,000.00 in weekly penalties for violations of the Uniform Construction Code. Both fines continue to accrue.
37. Defendant is illegally operating its business on the Property without all required approvals and permits.

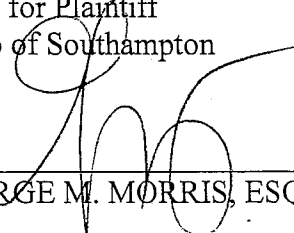
WHEREFORE, the Plaintiff demands an Order:

- a. Consolidating and Enforcing the Zoning Code Violations pending in the Southampton Municipal Court including the penalty provisions which exist for violation of the Municipal Zoning Code.
- b. Temporarily and permanently enjoining the operation of the facility until such time that the zoning and construction code penalties are resolved.
- c. Payment of all outstanding fines and penalties.
- d. An award of attorney's fees and costs of this action.
- e. Such other relief as the Court deems equitable and just in the circumstances.

DESIGNATION OF TRIAL COUNSEL

Please take notice that George M. Morris is herewith designated as trial counsel.

PARKER McCAY P.A.
Attorneys for Plaintiff
Township of Southampton

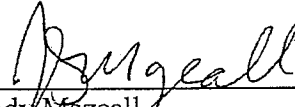
BY: 
GEORGE M. MORRIS, ESQUIRE

Date: August 14, 2013

VERIFICATION

I, Jody Mazeall, of full age, hereby certify as follows:

1. I am the Zoning Code Enforcement Officer and Construction Official for the Township of Southampton.
2. I have reviewed the allegations made in the foregoing Verified Complaint and certify that the factual allegations made are of my own personal knowledge.
3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statement made by me are willfully false, I am subject to punishment.



Jody Mazeall
Construction Code Official/Zoning Code
Enforcement Official
Township of Southampton

Dated: August 13, 2013

RECEIVED
BY: OOS

2013 AUG 14 AM 8:51

SOUTHAMPTON TOWNSHIP
CONSTRUCTION COURT