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Attorneys for Plaintiff Allied Recycling Inc. /Last Chance Salvage Inc.

ALLIED RECYCLING INC., and
LAST CHANCE SALVAGE INC.

Plaintiffs,

TOWNSHIP OF SOUTHAMPTON
ZONING BOARD OF ADJUSTMENT

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY
DOCKET NO. : L2090-14
CIVIL ACTION

COMPLAINT IN LIEU OF
PREROGATIVE WRITS

701

FACTS AND PROCEDURAL HISTORY

Plaintiffs, Allied Recycling Inc. (a New Jersey Corporation) and Last Chance Salvage Inc. (a New Jersey Corporation) (hereinafter "Plaintiff"), with a mailing address of 2658 Route 206, Mount Holly, New Jersey 08060, by way of Complaint in Lieu of Prerogative Writs against the Defendant, the Township of Southampton Zoning Board of Adjustment (hereinafter "Board") say:

1. Plaintiff, Allied Recycling Inc., is a for-profit junk yard operator, recycler etc. authorized to do business in the State of New Jersey,
2. Plaintiff, Last Chance Salvage Inc., is a for profit junk yard operator, recycler etc. authorized to do business in the State of New Jersey.

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3. The Board is a duly authorized zoning board of adjustment for the Township of Southampton (“Township”) pursuant to N.J.S.A. 40:55D-69.

4. At all times relevant herein the Board acted within the scope of and in the course of its relationship with the Township.

5. Plaintiff, Last Chance Salvage Inc. is the owner of the property known on the tax map of the Township of Southampton as Block 2401 Lot 36.02. The site is approximately 12.66 acres in size and is located in the RD Pinelands Zoning District of the Township. The site has approximately 700 feet of footage on New Road.

6. The site was carved out of a “mother” lot (the “mother” lot consisted of approximately 34.5 acres) that resulted from a subdivision applied for by Last Chance Salvage Inc. (incorrectly indentified as Last Chance Auto Salvage Inc.) and granted by the Southampton Township Planning Board and further described in a Resolution adopted by the Southampton Township Planning Board on October 7, 1993 and a copy of said Resolution is attached hereto as Exhibit “A”.

7. The Plaintiff Allied Recycling, Inc. purchased all of the shares of the Plaintiff Last Chance Salvage, Inc., the owner of the 12.66 acre site, on or about July 27, 2012.

8. The individual stockholders of Plaintiff Last Chance Salvage, Inc, the owner of the property, were Daniel and Pamela Giberson. The property has been in the Giberson families since the 1940s and has been used a junk yard since approximately 1947.

9. Junkyard, is defined in the Southampton Township zoning ordinances in two separate ordinance sections. It is defined in the Southampton Township Land Development ordinance (chapter 12-2.3) as follows “**Junkyard:** Any area of land that, with or without buildings, devoted to the storage, keeping the abandonment of junk or debris, whether or not it is

in connection with the dismantling, processing, salvage, sale or other use or disposition of thereof or of any material whatsoever”(emphasis added).. It is further defined in Chapter 4, the general licensing ordinance of Southampton Township as follows under Chapter 4-4.1a: “Junk yard” shall mean a place, location, yard, covered or uncovered or place in the township kept, maintained, or used for the purpose of buying and selling, exchanging or storing, rags, old metals, old bottles, old glassware, old plumbing fixtures, old lumber, unregistered motor vehicles unfit for reconditioning, dismantled old motor vehicles or parts thereof, used motor vehicles or parts thereof, used motor vehicle parts, motor vehicle junk or any other old material commonly called junk.”(emphasis added).

10. The Giberson family, either as owners/operators or as landlords has operated the site as a junkyard since the 1940s, prior to the enactment of the junkyard ordinance in September 7, 1965 when junkyards began to first be licensed in Southampton Township.

11. Since the licensing ordinance went into effect, the Giberson family has secured a license from the Township to operate a junkyard each and every year. Attached as Exhibit “B” is correspondence from the then Township attorney, dated August 3, 1967 to William Giberson, Daniel Giberson’s father, acknowledging that a junk business is being conducted on the site and requiring Mr. Giberson to secure a municipal license.

12. Shortly after Plaintiff Allied Recycling, Inc. first leased and subsequently purchased the stock of Plaintiff, Last Chance Salvage, Inc. Plaintiff Allied Recycling, Inc. made significant improvements to the site (removing thousands and thousands of tires, installed fencing, security lighting, etc.) and installed a weight scale. Southampton Township’s building inspector, Jody Mazeall, issued a citation to Plaintiff Allied Recycling, Inc., stating that a site plan application would have to be made even though there was no new development that would

necessitate a site plan application. The Southampton Township Land Development Ordinance, Section 12-2.3 defines a Minor Site Plan as follows: “ **Minor Site Plan:** any site plan for any new development or building alteration or addition not exempt from site plan review which involves grading, clearing or disturbance of an area less than five thousand (5,000) square feet” . Mr. Mazeall also refused to issue the annual junkyard license to Plaintiff Allied Recycling, Inc. without any municipal authority and issued a citation for an unlicensed business.

13. Notwithstanding Plaintiff Allied Recycling, Inc.’s contention that a site plan application was not required by the Southampton Township Municipal Ordinances, Plaintiff, nonetheless, made an application to the Southampton Township Zoning Board for minor site plan approval and a use variance inasmuch as the installation of the weight scale was deemed by Mr. Mazeall an expansion of the pre-existing non-conforming use. Clearly, the weight scale installation should not require a minor site plan approval. Nonetheless, Plaintiff Allied Recycling, Inc. proceeded, in good faith, to make the minor site plan and use variance application for the alleged expansion of the junk yard use on the site.

14. Although application was made to the Zoning Board at the end of 2011, the application was not first heard by the Zoning Board until March of 2013, until after Plaintiff received the New Jersey Certificate of Filing from the New Jersey Pinelands Commission for both the installation of the weight scale and the refurbishment (not expansion) of two existing buildings on the site as well as a sign installation. The Certificate of Filing from the New Jersey Pinelands Commission stated that the pre-existing non-conforming use could not be geographically expanded beyond the location as shown on the 1993 subdivision plan approved by the Southampton Township Planning Board.

15. At the Zoning Board hearing on March 14, 2013, Plaintiff began submitting its presentation to the Defendant Zoning Board and the hearing was, due to various conflicts, lack of a Defendant Zoning Board quorum (after the appearance of the Plaintiff and its experts), etc. rescheduled for August 8, 2013.

16. Between the March and August 2013 hearing dates, there was correspondence between the Plaintiffs' and Defendant's attorney whereby, among other things, it was requested by the Defendant's attorney that the Plaintiff apply for a Certificate of Non-Conforming Use pursuant to N.J.S.A. 40:55D-68, which Plaintiff subsequently did.

17. During the business day of August 7, 2013, one day prior to the scheduled Zoning Board hearing, the attorney for Plaintiff notified both the Zoning Board Secretary and Counsel for the Zoning Board that he could not be in attendance at the August 8, 2013 hearing because he was suffering from tick-borne illness and was subsequently admitted to the hospital for treatment.

18. Notwithstanding Plaintiff Attorney's notification, the Defendant Zoning Board held the August 9, 2013 hearing without Plaintiff representation or knowledge that the hearing would be held and heard testimony from residents objecting to the application and denied Plaintiff's application without prejudice, which would require the Plaintiff to submit a new application, escrow fees, etc. at a significant cost to Plaintiff.

19. On August 19, 2013, Counsel for the Township of Southampton filed a Complaint and Order to Show Cause requesting, among other things, that the junkyard be closed until a new application was submitted and approval was granted for the relief requested by the plaintiff. (Superior Court of New Jersey, Law Division, Burlington County Docket No.: BUR-L-2037-13). Additionally, Township Counsel directed that the junk yard be closed with no prior notice to

Plaintiff Allied Recycling, Inc. After a discussion with Township Counsel, said directive was rescinded.

20. The relief requested by the Township of Southampton was denied without prejudice and the matter was remanded to the Defendant Zoning Board of Adjustment, denying the earlier Defendant Zoning Board of Adjustment's dismissal without prejudice, and continuing the Applicant's Application including the testimony previously supplied at the earlier March 14, 2013 hearing.

21. It was determined that the matter would be heard at a special meeting to be held on September 19, 2013 and proper notice was given to all property owners and utility companies and the meeting advertised in the Burlington County Times.

22. At that special Zoning Board hearing on September 19, 2013, Plaintiff put forth its proofs regarding the Certificate of Non-Conforming Use application. Building on the testimony presented by the Plaintiff at the March 14, 2013 hearing, significant proofs were submitted to the Defendant with regard to the continued use of the site as a junk yard since 1947 and the continued Township licensing of the site as a junkyard since 1965. During said hearings Plaintiff presented expert witness testimony and exhibits in support of its Application. Plaintiff's experts were Gary Civalier, a licensed professional engineer and the Plaintiff's professional planner was James Miller, a licensed professional planner. Mr. Civalier testified as to the installation of the weigh scale and reconstructed driveway, the proposed refurbishment of the two existing buildings and the proposed sign to be installed at the entrance of the site. Mr. Civalier also testified as to the 1993 subdivision approval and the geographic limitations contained in that subdivision approval. Among the exhibits submitted was a plan of the site in its current condition, various aerial photographs from 1963 through 1995, the 1993 Southampton

Township Minor Sub-Division plan and the 1993 approving Resolution granted by the Southampton Township Planning Board. Mr. Miller also testified on behalf of the Plaintiff at the hearings. Mr. Miller, in addition to his other expert testimony, gave his expert opinion that, based upon the testimony presented, the site has always been used as a junkyard as defined by the Southampton Township Municipal Ordinances. The Defendant Board accepted the expert qualifications of both Mr. Civalier and Mr. Miller.

23. Further, Mr. Thomas Gabrysiak, President of both Plaintiff Allied Recycling, Inc. and Last Chance Salvage, Inc., testified that, first since leasing the junk yard site and subsequently since purchasing the stock of Last Chance Salvage, Inc. on July 27, 2012, he removed literally hundreds of tons of non-automotive “junk” from the site including, but not limited to, lumber, copper, iron, and other metals. Michael Ivins testified that he had personal knowledge of the site and stated that, over the years, the junk on that site was not limited to automobiles. Lastly, Mr. Daniel Giberson, the former owner of Last Chance Salvage, Inc., testified to the long history of that site. He testified that the site had historically received significant wood debris, appliances, metals, etc. In fact, Mr. Giberson stated that when the junkyard started in 1947 and for years thereafter, it received, processed and recycled thousands and thousands of tomato cans that were crushed for metal salvage.

24. When the Zoning Board Chairman opened up the meeting to the public at the conclusion of Plaintiff’s testimony, the Board Chairman advised any objectors to limit their comments specifically as to their knowledge regarding the historic use of the site. Notwithstanding the Board Chairman’s direction, the Board allowed numerous residents’s to testify and submit exhibits (pictures of a truck outside of the site) solely with respect what they considered was the present use of the site.

25. Neither the objectors nor the Board presented reliable, competent testimony in opposition to Plaintiff's Application or to the testimony of Plaintiff's expert witnesses or lay witnesses.

26. On September 19, 2013, after the conclusion of the hearings, the Zoning Board statutorily denied Plaintiff's Application for a Certificate of Non-Conforming Use by a vote of 2 votes in favor 4 votes against and 1 vote abstaining.

27. As a result of the decision of the Defendant Zoning Board, Plaintiff filed a complaint in Lieu of Prerogative Writs with the Superior Court of New Jersey, Law Division, Burlington County, Docket No. BUR L-002448 13. Said complaint, among other statements, claim that the Defendant Zoning Board acted in an arbitrary, capricious, and unreasonable basis by denying the Certificate of Non-Conforming Use by misinterpreting and misapplying the legal standards applicable to said application.

28. On or about April 10, 2014, the Honorable Ronald E. Bookbinder, A.J.S.C. issued a tentative disposition and, on May 23, 2014, Judge Bookbinder issued a Final Judgment. A copy of said tentative decision and Final Judgment are attached hereto as Exhibits "C" and "D". Said Judgment adopted and incorporated the findings of the tentative disposition dated April 8, 2014 and, among other things, remanded the matter back to the Defendant Zoning Board to determine the extent of the Plaintiff's "baseline" non-conforming use rights. Such determination to be based upon the record from the prior public hearings and any supplemental testimony/evidence presented by the Plaintiffs on the record. As a result of testimony presented

by the Plaintiffs, the Board must define as specifically as possible, the quality and intensity of the use on June 8, 1982.

29. Consistent with the Final Judgment, representatives of the applicant, at a hearing held on July 10, 2014, built upon and expanded upon the testimony that was presented at the March 2013 and September 2013 Zoning Board hearings.

30. Testimony was presented by Mr. Thomas Gabrysiak, President of both Plaintiffs Allied Recycling, Inc. and Last Chance Salvage, Inc., Fred Meyers, Michael Evans, and David Blyler. Mistery Blyler, Evans and Meyers all testified that the junkyard in question, prior to 1982, was used as a full service junkyard.

31. On July 10, 2014, after the conclusion of the hearing and in contravention of the testimony presented to the Board, the Zoning Board determined that the 1982 baseline non-conforming use of the property was as an "auto salvage" only.

32. On July 31, 2014 said resolution (Resolution No. 2014-82) was adopted by the Defendant Zoning Board and advertised in a newspaper of local circulation on August 4, 2014. A copy of said Resolution is attached hereto as Exhibit "E".

33. The significant factual and procedural history recited here is critical in that it points to the actions of the Defendant Zoning Board and the actions of the Township of Southampton (by bringing the Complaint and Order to Show Cause and issuing municipal complaints) to attempt to deny the Applicant's right to use the site as a junk yard consistent with the historical use of the property.

1. The Board's denial of Plaintiffs Application for a Certificate of Non-Conforming

Use was arbitrary, capricious, unreasonable, without legal or factual basis, and an abuse of discretion because the Board:

- (a) ignored the uncontroverted expert testimony presented by the Plaintiff's experts in support of the application;
- (b) ignored the uncontested testimony presented by the Plaintiff and Plaintiff's witnesses in support of the application regarding the historical use of the premises as a junkyard;
- (c) wrongfully relied on testimony that was not credible, inaccurate, incompetent, and unsupported by facts;
- (d) created findings and conclusions which were: (1) not based upon the competent, credible evidence; and (2) conclusory in nature in violation of governing case law;
- (e) acted upon information not before the Board and outside the record;
- (f) ignored findings and conclusions compelled by uncontroverted, competent, credible witness and lay evidence presented in support of the application;
- (g) misinterpreted and misapplied the legal standards applicable to the application;
- (h) acted in an arbitrary, capricious and unreasonable manner in denying the application; and
- (i) issued a ruling, which is not supported by the record or substantial evidence as required by the Municipal Land Use Act.

WHEREFORE, Plaintiffs demand that Judgment be entered against the Defendant as follows:

A. Determining that Plaintiffs' baseline rights are to use the property as a full service junkyard, consistent with the testimony presented during the course of the application.

B. Awarding attorney's fees and costs of suit;

C. Such further relief as the court may deem equitable and just.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Michael S. Ridgway, Esquire is hereby designated as trial counsel for Plaintiffs.

CERTIFICATION

Pursuant to Rule 4:5-1, the undersigned hereby certifies that this matter is not the subject of any other action or a pending arbitration proceeding (other than the matter referred to in Paragraph 19 of the Complaint) and no other action or arbitration proceeding is contemplated. The undersigned hereby certifies that there are no other parties who should be joined in the action at this time.

RIDGWAY AND STAYTON, L.L.C.
Attorneys for the Plaintiffs

Dated: 9/2/2014

By: 
Michael S. Ridgway, Esquire

EXHIBIT "A"

SOUTHAMPTON TOWNSHIP PLANNING BOARD
ROBERT L. THOMPSON BUILDING
5 RETREAT ROAD
SOUTHAMPTON, NEW JERSEY 08088

RESOLUTION OF MEMORIALIZATION 93.8

IN THE MATTER OF THE APPLICATION OF
LAST CHANCE AUTO SALVAGE, INC.

BE IT RESOLVED, by the Planning Board of the Township of Southampton in the County of Burlington and State of New Jersey, that,

WHEREAS, LAST CHANCE AUTO SALVAGE, INC. ("Applicant") is the operator of an auto salvage operation (commonly referred to as a "junk yard") on Lot 36.01, Block 2401, Southampton Township;

WHEREAS, Applicant has made application to this Board seeking approval of a minor subdivision of the aforesaid lot;

WHEREAS, the said application was considered by the Board at a public hearing on September 2, 1993;

The Board finds the following facts:

(1) That Daniel D. Giberson is the owner of the subject lot and has consented to this application;

(2) The existing lot 36.01 is approximately 34.411 acres in size, is located along New Road in a Rural Development Zone in the Pinelands area;

(3) Applicant received a Certificate of Filing from the Pinelands Commission dated June 4, 1993;

(4) The lot is presently dedicated to mixed uses, containing both the auto salvage yard and a single family residence;

(5) Applicant's proposal to divide the lot into new lot 36.02 (12.666 acres) and remainder lot 36.01 (21.751 acres) will create two (2) conforming lots, one dedicated to residential use only and the other dedicated to auto salvage only. To the extent the salvage operation spills over at present in one small area onto the proposed residential (remainder) lot, Applicant has promised to remove all junk cars or other salvage related operations from same;

(6) Applicant proposes no new development on either lot;

(7) The auto salvage operation is confined to an area delineated on the Plan submitted by Applicant - the remainder of proposed lot 36.02 is wooded.

NOW, THEREFORE, BE IT RESOLVED that this application for minor subdivision is hereby granted, subject to the following conditions:

- (1) Approvals from all other agencies having jurisdiction;
- (2) There shall be no further clearing of the wooded

portion of new lot 36.02, nor shall there be any expansion of the area devoted to auto salvage operations (or storage of junk cars);

(3) Applicant shall remove any junk cars, parts, or other salvage operations from new lot 36.01;

(4) This subdivision shall be recorded within the time prescribed by law by map or deed filed at the Burlington County Clerk's Office. Said subdivision lines shall be precisely in accordance with the lot lines set forth on the plan titled "Minor Subdivision" drawn by Raymond L. Worrell, II, dated April 26, 1993, submitted with this application.

The following requirements of the Township ordinances are hereby waived:

(1) Percolation tests and soil logs, due to the large size of the lots;

(2) Depiction of buildings on adjacent lots, due to large lot sizes and existence of substantial buffering.

SECRETARY'S CERTIFICATE

I hereby certify that the above is a true copy of a resolution adopted by the Planning Board of the Township of Southampton, in the County of Burlington and State of New Jersey,

in accordance with the authority granted to it under Ordinance
1976-3 and 1976-7 adopted in pursuance of the authority of
Section 14 of Chapter 433 of the Laws of 1953, and the amendments
thereto, at a meeting held on the 7th day of October, 1993


SECRETARY OF THE PLANNING BOARD

EXHIBIT "B"

LAW OFFICES
PARKER, MCCAY AND CRISCUOLO
115 HIGH STREET
MOUNT HOLLY, N. J. 08060

HAROLD T. PARKER
ALBERT MCCAY
ROBERT W. CRISCUOLO
WILLIAM V. WEBSTER, JR.
RICHARD J. DILL
BARRY T. PARKER
DAVID A. PARKER
ROBERT J. PARTLOW

TELEPHONE
267-2850
AREA CODE 609

August 3, 1967

Mr. William Giberson
Buddtown Road
Vincentown, New Jersey

Re: Our File No. 13047C

Dear Mr. Giberson:

The records of Southampton Township indicate you are the owner of Lot 36 in Block 2401 and that a junk business is being conducted on the premises, presumably by Eddie Fuller. The Township ordinance prohibits such a business without a license. We are presently engaged in a campaign to prosecute all violators, and prosecution will follow unless this condition is corrected by either removing the junk or obtaining a license by August 30th.

Very truly yours;

Robert W. Criscuolo
bah

ROBERT W. CRISCUOLO

RWC:bah

cc: Mr. Hector Irick
Mr. Edward Fuller

EXHIBIT "C"

This tentative disposition of the motion(s) before Judge Ronald E. Bookbinder in Burlington County, New Jersey is based on the papers submitted in the case below. The tentative disposition may not reflect the Judge's final decision, as discussed on the record at oral argument. Pursuant to New Jersey Court Rules, Judge Bookbinder may expand his findings of fact and conclusions of law. No further paper submissions will be permitted.

**ORAL ARGUMENT IS SCHEDULED FOR
THURSDAY, APRIL 10, 2014 AT 2:00 PM.**

**Allied Recycling Inc. and Last Chance Salvage Inc. v. Township of Southampton Zoning
Board of Adjustment**
Docket No. BUR-L-2448-13
April 10, 2014

ACTION IN LIEU OF PREROGATIVE WRITS

Michael S. Ridgway, Esq., Attorney for Allied Recycling Inc. and Last Chance Salvage Inc.
Phone: (856) 810-7723 Fax: 856-810-7729

Thomas J. Coleman, III, Esq., Attorney for Defendant Township of Southampton Zoning Board
of Adjustment
Phone: 856-222-0100 Fax: 856-222-0411

Bookbinder, A.J.S.C.

Preliminary Statement

Plaintiffs Allied Recycling Inc. and Last Chance Salvage, Inc. (hereinafter, collectively, "Allied") own a property historically used as an auto salvage yard. Allied seeks a certificate of non-conforming use from the Township of Southampton Zoning Board of Adjustment (hereinafter the "Board"), that permits use of the property as an auto salvage yard and a scrap metal yard. The Board denied the certificate of non-conforming use on the grounds that use as a scrap metal yard was not identical to the historic use as an auto salvage yard. The Board failed to consider whether the new intended use was substantially similar to the historic use, and therefore applied the incorrect legal standard. Arkam Machine & Tool Co. v. Lyndhurst, 73 N.J. Super.

528, 532 (App.Div. 1962). Therefore the Board's finding is vacated and the case is remanded to the Board for further hearings consistent with this opinion.

Statement of Facts and Procedural History

Allied owns and operates a salvage yard at 440 New Road, Southampton, New Jersey (Southampton Township Official Tax Map Plate 24, Block 2401, Lot 36.02) (hereinafter the "Yard"). Tom Gabrysiak is the primary owner of Allied (hereinafter "Gabrysiak").

The Yard had been effectively owned by the Giberson family from 1947 until July 27, 2012. The Giberson family began using the property as a salvage yard in 1963. Throughout the time that the Yard was owned by the Giberson family, the Yard was leased to various different individuals that ran the business continuously until July 27, 2012.

Sometime in the 1980's, one of the tenants operating the Yard purchased and installed a tire splitter, which splits tires in three in order to remove the tire rims. The tenant also placed cars into a fifty-five gallon drum and lit them on fire in order to strip away everything that was not metal.

On June 8, 1982, the Board adopted a master plan that designated the Yard as part of a Rural Development District, which is primarily zoned for agricultural and residential use. Junkyards are a prohibited use within the district. Southampton Ordinance § 19-2.6. Until 2013 no one filed for a certificate of non-conforming use, and to date no certificate of non-conforming use has been granted.

On May 7, 1993, the Gibersons formed the corporation Last Chance Salvage, Inc. (hereinafter "Last Chance"). Last Chance has also referred to as "Last Chance Auto Salvage, Inc." in various legal documents, including one drafted by the Gibersons' attorney. *Board's Brief*

Exhibit C & D, Norman Certification Exhibit D. Last Chance is owned and controlled by the Gibersons.

On September 2, 1993, the Board passed a resolution subdividing the Giberson's property into two portions. *Southampton Planning Board Resolution 93.8*. The first portion was sold off for residential use. The second portion, containing the Yard, was transferred into Last Chance's possession. As part of the subdivision the then existing footprint of the yard was restricted, and Last Chance agreed not to clear any of the woods surrounding the Yard or to expand the Yard's footprint.

Allied began leasing the Yard sometime in 2009 or 2010. Allied alleges that while leasing the Yard, Allied made significant improvements to the site including removal of thousands of tires, and installing fencing and security lighting, and installing a weight scale.

Jody Mazeall, Southampton Building Inspector, (hereinafter "Mazeall") determined that the weight scale had been improperly installed without a site plan application.

Last Chance, and subsequently Allied, received licenses to operate the Yard as a junkyard every year from 1963 until Mazeall determined that the weight scale was improperly installed without a site plan application. The earliest license submitted to this Court is dated December 19, 1989.

Allied argued that no site plan application was necessary. Nevertheless, on December 20, 2011, Allied submitted an application for minor site plan approval to install a weight scale and to refurbish two existing buildings. Allied also filed a use variance on the possibility that the weight scale would be determined an expansion of a pre-existing non-conforming use.

On July 27, 2012, Allied purchased the Yard from Last Chance.

Allied alleges that the Site has been used since 1963 as an all-purpose junkyard. The Board alleges that the Site was limited to use as an auto salvage yard.

On or about March 14, 2013, the Board held a public meeting on Allied's application. The Board subsequently recommended that Allied apply for a certificate of non-conforming use as well as a use variance. Allied amended its application to be consistent with the Board's recommendation.

On or about August 8, 2013, the Board held another public hearing on Allied's application. Allied's representative did not attend the meeting, and the Board dismissed the application without prejudice.

On or about August 19, 2013, Southampton filed an Order to Show Cause enjoining use of the property as a salvage yard pending Allied's re-application. The Court denied Southampton's motion.

On or about September 19, 2013, the Board held another public hearing on the application.

At the conclusion of the meeting on September 19, 2013, the Board denied the application, and formalized the denial by adopting Resolution No. 2013-10. *Allied's Exhibit A.* The Board found that Allied failed to meet its burden of proof because the Yard's current use as an all-purpose junkyard was not identical to the Yard's previous use as an auto salvage yard. The Board further found that Allied failed to present sufficient evidence regarding the types of junk previously stored at the yard, or the extent of the scrap processing that occurred at the Yard.

On or about October 7, 2013, Allied filed the instant action in lieu of prerogative writs.

Arguments

I. Allied's Brief

Allied argues that the Board's denial was arbitrary, capricious, and unreasonable. Allied argues that its application was for a non-conforming use existing prior to the adoption of the inconsistent zoning ordinance, pursuant to *N.J.S.A.* 40:55D-68 & 55D-5. Allied argues that such uses can be continued under *Kessler v. Bowker*, 174 *N.J. Super.* 478 (App. Div. 1979). Allied admits that it bears the burden of proving the nature of the use at the time of the adoption of the inconsistent zoning ordinance. Allied summarizes the prerogative writs standard of review.

Allied argues that the issue here is whether the current use is substantially similar to the historic use. Allied argues that the Yard was historically used as an all-purpose junkyard. Allied cites to *Arkam Machine & Tool Co. v. Lyndhurst Tp.*, 73 *N.J. Super.* 528 (App. Div. 1962). Allied admits that illegal expansions are not permitted absent a variance under *Weber v. Pieretti*, 77 *N.J. Super.* 423 (App. Div. 1962). Allied argues that the Board applied the incorrect standard by requiring identical prior and current uses.

Allied briefly summarizes the precedent on impermissible expansions of non-conforming use, citing to *Belleville v. Parillo's, Inc.*, 83 *N.J.* 309 (1980), *Hantman v. Randolph Twp.*, 58 *N.J. Super.* 127 (App. Div. 1959), and *Barbarisi v. Bd. of Adjustment, City of Patterson, etc.*, 30 *N.J. Super.* 11, (App. Div.). Allied also briefly summarizes the precedent on permissible expansions of non-conforming use, citing to *State v. Wagner*, 81 *N.J. Super.* 206 (Cty. Ct. 1963), *Institute v. Board of Adjustment*, 270 *N.J. Super.* 396 (Law Div. 1993), and *Stout v. Mitschele*, 135 *N.J.L.* 406 (Sup. Ct. 1947).

Allied argues that the instant case is distinct from all of the prior precedent due to the fact that Southampton has an ordinance that defines a junkyard, as well as an ordinance that defines

the use of a junkyard. Allied argues that the current use is both consistent with the Southampton ordinances and substantially similar to the historic use.

Allied also cites to *Marlboro Auto Wreckers v. Zoning Board or Adjustment*, Docket No. A-6137-08T26137-08T2 (App. Div. Jan. 27, 2010) (slip op.). Allied summarizes the facts and holding of *Marlboro Auto Wreckers*, which upheld defendant zoning board's denial of plaintiff junkyard's non-conforming use application. Allied argues that the instant case is distinct from *Marlboro Auto Wreckers*, as in *Marlboro Auto Wreckers* the town provided licenses for either automotive junkyards or non-automotive junkyards, while here Southampton permits both uses under the same license. Allied also argues that, unlike in *Marlboro Auto Wreckers*, Allied provided significant testimony and exhibits regarding the previous non-automotive junkyard use.

Allied reiterates that the Board applied the incorrect standard. Allied argues that the Board required the current use to be identical to the prior use. Allied argues that the proper standard is whether the uses are substantially similar.

Allied reiterates that the Southampton ordinances do not distinguish between a junkyard and an auto salvage yard.

Allied argues that it is permitted to deviate from historic proportions of auto, wood, and scrap metal processing.

Allied argues that the Board ignored the uncontroverted testimony of Allied's witnesses. Allied argues that the Board accepted the testimony of Allied's expert as probative and credible, but nevertheless denied the application.

Allied argues that the Board was influenced by the testimony of neighboring residents regarding signage, visibility, lighting, traffic, and noise. Allied argues that the Board did not find that current use was more intense than the prior use. Allied argues that these issues are irrelevant,

and should instead be addressed as aspects of the application for a use variance to expand the non-conforming use.

II. The Board's Reply

The Board argues that Allied's non-conforming use is limited to use as an auto salvage yard, rather than as an all-purpose junkyard. The Board argues that the testimony of Allied's witnesses was imprecise and nebulous on the topic of whether the Yard recycled scrap metal. The Board argues that the neighboring residents testified that the use of the yard changed dramatically in 2009. The Board argues that it found the residents' testimony to be credible. The Board cites to *Paruszewski v. Twp. of Elsinboro*, 297 N.J. Super. 531, 538 (App. Div. 1997).

The Board argues that Allied failed to meet its evidentiary burden. The Board argues that Allied had to demonstrate that the Yard operated continuously as an all-purpose junkyard since 1982.

The Board argues that Southampton Planning Board Resolution 93.8 found the Yard to be an auto-salvage yard only. The Board notes that the Gibersons did not challenge that finding.

The Board argues that Allied witnesses testified that in 2009 and 2010, Allied removed thousands of tires from the Yard. The Board argues that this is consistent with use for auto salvage alone. The Board argues that this cleanup is also evidence of Allied's intent to expand and intensify the use of the Yard.

The Board argues that the junkyard licenses, which do not distinguish between all-purpose junkyards and auto salvage yards, do not affect the scope of the non-conforming use. The Board cites to *Nickels v. City of Wildwood*, 141 N.J. 261 (1995), and *Avalon Home & Land Owners v. Bor. of Avalon*, 111 N.J. 205 (1988), for the proposition that a municipality cannot legislate the scope or expansion of a non-conforming use.

The Board summarizes the facts and holding of *Marlboro Auto Wreckers v. Zoning Board or Adjustment*, Docket No. A-6137-08T26137-08T2 (App. Div. Jan. 27, 2010) (slip op.).

The Board summarizes the facts and holding of *Paruszewski v. Twp. of Elsinboro*, 297 *N.J. Super.* 531, 538 (App. Div. 1997).

The Board argues that the facts here are similar to those in *Paruszewski*. The Board again argues that Allied relies upon nebulous and imprecise testimony. The Board argues that at best the testimony demonstrates that there may have been some sporadic or intermittent scrap-metal recycling.

The Board argues that although Dan Giberson testified about occasional recycling of non-auto refuse, he failed to provide dates, and failed to testify regarding the scope or quantity of material recycled. The Board argues that Dan Giberson was a passive landlord with little knowledge of the day to day operation of the Yard.

The Board argues that Dan Giberson chose the name Last Chance Auto Salvage. The Court notes that Last Chance was incorporated under the name Last Chance Salvage, Inc., although Dan Giberson does refer to it as Last Chance Auto Salvage.

The Board argues that Southampton Planning Board Resolution 93.8 restricted the use of the yard to auto salvage.

The Board argues that Dan Giberson is potentially biased, as Allied still owed him money for the purchase of the Yard. The Court notes that the money owed was not contingent upon award of the certificate of pre-existing non-conforming use.

The Board argues that the testimony of Michael Ivins, one of Last Chance's customers, was similarly sparse, nebulous, and imprecise. The Board argues that Ivins failed to state when he dropped off non-auto refuse.

The Board argues that the record is clear that the Yard was historically used for auto-salvage, and that the scrap metal recycling use only recently began in 2009. The Board argues that this change was concurrent with increased traffic of large tractor-trailers.

The Board argues that the residents testified that they only observed auto salvage being transported to or from the Yard. The Board argues that the residents testified that traffic to and from the Yard increased greatly when Allied took over operation of the Yard.

The Board argues that Allied concedes that the Yard has transitioned the proportion of auto-salvage to scrap metal recycling at the Yard. The Board argues that Allied believes that it can conduct any of the uses described in the junkyard license ordinance, whether or not those uses were pre-existing.

The Board argues that the residents are more credible than Allied's witnesses. The Board reiterates that Allied failed to meet its burden of proof under *N.J.S.A. 40:55D-68*.

The Board again summarizes the facts and holding of *Marlboro Auto Wreckers v. Zoning Board or Adjustment*, Docket No. A-6137-08T26137-08T2 (App. Div. Jan. 27, 2010) (slip op.).

The Board argues that unlike in *Marlboro Auto Wreckers*, Allied did not present any testimony regarding the prior and current ratio of scrap metal recycling to auto salvage. The Board also argues that unlike in *Marlboro Auto Wreckers*, a Southampton Planning Board resolution identifies the prior use as auto salvage alone.

The Board argues that the licensing ordinance does not modify the scope of the prior non-conforming use. The Board argues that under *Nickels v. City of Wildwood*, 141 N.J. 261 (1995), and *Avalon Home & Land Owners v. Bor. of Avalon*, 111 N.J. 205 (1988), municipal ordinances cannot modify the scope of a pre-existing use.

The Board argues that the instant action is effectively a challenge of Southampton Zoning Board Resolution 93.8. The Board argues that Dan Giberson failed to challenge that resolution, and that Allied cannot now raise a collateral attack on the resolution.

The Board summarizes the facts and holding of *County of Ocean v. Zakaria Realty, Inc.* 271 N.J. Super. 280, 288 (1994).

The Board argues that Allied cannot now oppose the restrictions contained in Southampton Zoning Board Resolution 93.8.

III. Allied's Reply

Allied argues that the testimony of Allied's witnesses was not nebulous or imprecise. Allied argues that Dan Giberson and Michael Ivins testified to specific facts that demonstrated that the Yard was used for scrap metal recycling. Allied also argues that Gabrysiak testified that there were over 40,000 pounds of non-auto scrap metal at the Yard prior to Allied's purchase.

Allied argues that Last Chance is incorporated under the name "Last Chance Salvage, Inc.," and is therefore not limited to auto-salvage.

Allied argues that Southampton Zoning Board Resolution 98.3 was for a minor subdivision, and that the Board had no authority to limit the future use of the yard in connection with the resolution. Allied argues that the resolution admits to non-auto salvage at the Yard in the statement, "Applicant shall remove any junk cars, parts, or other salvage operations from [the] new lot." *Southampton Zoning Board Resolution 98.3* at p. 3. Allied argues that the resolution only involves limitations on the geographical footprint of the yard, not on the use.

Allied argues that the instant case is distinct from *Marlboro Auto Wreckers v. Zoning Board or Adjustment*, Docket No. A-6137-08T26137-08T2 (App. Div. Jan. 27, 2010) (slip op.).

Allied argues that the instant case is distinct from *Paruszewski v. Twp. of Elsinboro*, 297 N.J. Super. 531, 538 (App. Div. 1997).

Allied argues that the instant case is distinct from *Nickels v. City of Wildwood*, 141 N.J. 261 (1995), and *Avalon Home & Land Owners v. Bor. of Avalon*, 111 N.J. 205 (1988), as in those cases the municipality passed ordinances well after the non-conforming uses began, and that those ordinance allowed extreme changes to the non-conforming use.

Allied argues that it does not seek to expand the footprint of the use, but rather a certificate of non-conforming use that is consistent with the prior use of the Yard.

Standard of Review

Appeals from an action by a planning board are reviewable for arbitrary, capricious, or unreasonable decisions. *Cell v. Zoning Bd. of Adjustment*, 172 N.J. 75, 81-82 (2002); *Burbridge v. Mine Hill Twp.*, 117 N.J. 376, 385 (1990). Factual determinations made below are presumed to be valid, and any applications of discretionary authority based upon factual determinations will not be overturned unless they are arbitrary, capricious, or unreasonable. The burden of proof rests on the movant. *Cell*, 172 N.J. at 82. Legal decisions, such as the proper legal standard to be applied to the facts, are reviewed *de novo*. *Nuckel v. Borough of Little Ferry Planning Bd.*, 208 N.J. 95, 102 (2011); *Green Meadows at Montville, L.L.C. v. Planning Bd. of Tp. of Montville*, 329 N.J. Super. 12, 24 (App.Div. 2000).

In the hearing below, the burden of proof rested on Allied by the preponderance of the evidence. *S&S Auto Sales, Inc. v. Zoning Bd. of Adjustment for Borough of Stratford*, 373 N.J. Super. 603, 614 (App.Div. 2004) “It is important that the evidence presented to the board establish exactly what the use was at the time of adoption of the ordinance, its character, extent, intensity, and incidents.” Cox & Koenig, *New Jersey Zoning & Land Use Administration*, § 11-

2.2, p. 299 (2014). “A nonconforming use is not restricted to the identical particular use which was in existence at the time of the enactment of the zoning ordinance, but embraces the same or substantially similar use within the zoning classification.” *Arkam Machine & Tool Co. v. Lyndhurst*, 73 N.J. Super. 528, 532 (App.Div. 1962). See also *Pugh v. Zoning Bd. of Adjustment*, No. A-5590-08T2 (App. Div. Apr. 16, 2010) (slip op. at 1). However, the scope of the non-conforming use should be strictly limited, and reduced “to conformity as is compatible with justice.” *Belleville v. Parrillo’s Inc.* 83 N.J. 309, 315 (1980).

Analysis

Allied argues that the Board erred by ruling that historic use of the Yard for non-automotive scrap metal was unsupported by the record, and by disregarding Allied’s argument that the current use is not a substantial change from the historic use. The Board erred in failing to consider whether the current use of the Yard for non-automotive scrap metal is a substantially different use than the historic use for automotive scrap metal. Therefore the case is remanded to the Board for further hearings consistent with this opinion.

In *Marlboro Auto Wreckers v. Zoning Board or Adjustment*, Docket No. A-6137-08T26137-08T2 (App. Div. Jan. 27, 2010) (slip op.), plaintiff Schechter owned three auto salvage yards, Marlboro Auto Wreckers, Morganville Auto Wreckers, and Schechter Enterprises. All three yards were operated as pre-existing non-conforming uses. *Id.* at p. 1-2. Schechter requested a permit to install a scrap metal bailer in order to process a greater proportion of non-automotive scrap metal on the property. *Id.* The Marlboro Zoning Board denied the permit, and Schechter appealed. *Id.* at 6.

The appellate court affirmed the Marlboro Zoning Board for the reasons stated in the trial court’s opinion. *Id.* at 18. The trial court considered the following facts: (1) Schechter admitted

that the yards were primarily used for automotive scrap; (2) Schechter could only find receipts for non-automotive scrap, and those few receipts were not reconciled with the proportion of automotive salvage at the yard; (3) two out of three of the yards were auto wreckers, indicating the owner's intent; and (4) the Marlboro Township required separate licenses for automotive salvage and scrap metal processing. *Id.* at 15-16.

Here, as in *Marlboro Auto Wreckers*, the Gibersons primarily used the Yard for auto salvage. While Allied presented some testimony below that local residents would occasionally bring non-automotive scrap to the Yard, Allied presented no evidence of the dates that this scrap was brought to the Yard, and it did not submit any evidence regarding the relative proportion of non-automotive scrap to auto salvage stored in the Yard. [T. 3/14/14 at 31; T. 9/19/13 at 35, 41-42, 56-59, 64.] Allied also produced receipts dated between August 28, 2009, and October 1, 2009, that describe sales and transfers of scrap to other yards. *Allied's Exhibit A-10*. The scrap is described as rolls of aluminum, wood debris, copper, brass, light iron, and steel. *Id.* However, Allied submitted no evidence that the refuse described existed at the yard prior to 1982, and Allied did not reconcile the receipts to the quantity of auto salvage in the Yard. Allied also presented testimony that there was a large quantity of auto salvage at the Yard in 2009, primarily in the form of over 140,000 tires. [T. 3/13/13 at 33-34.] Lastly, Allied presented expert testimony that aerial photography of the Yard taken in 2000 and 2007 show piles of miscellaneous material that are not automobiles. *Allied Exhibit A-2*, [T. 9/19/13 at p. 77-78.] However, Allied provided no evidence that these piles did not consist of dismantled automobiles, and Allied provided no evidence that these piles existed in 1982.

Additionally, although Last Chance was incorporated under the name Last Chance Salvage, Inc., Dan Giberson referred to the businesses that ran the Yard as Last Chance Auto

Salvage, S&P Autos, and S&S Autos. [T. 9/19/13 at 65-66.] The 1993 minor subdivision application filed by Dan Giberson's attorney refers to Last Chance as Last Chance Auto Salvage, Inc. *Board's Exhibit C*. The Board's 1993 resolution approving the subdivision also refers to Last Chance as Last Chance Auto Salvage, Inc., and describes Last Chance as the operator of an auto salvage operation. Southampton Planning Board Resolution 9.38.

However, unlike in *Marlboro Auto Wreckers*, Allied seeks to install a weight scale instead of a scrap metal bailer, and the Southampton licensing ordinances do not distinguish between auto salvage yards and scrap metal yards. Southampton Ordinance §§ 4-4.5, 12-2.3.

The record supports the Board's conclusion that Allied failed to demonstrate that the Yard was historically used for scrap metal prior to June 8, 1982. However, the Board failed to consider whether use as a scrap metal yard was a substantial change in use, and the record does not support a categorical distinction. Unlike in *Marlboro Auto Wreckers*, where Schechter sought to install new scrap metal processing equipment, there is no evidence in the record that conversion to a greater proportion of non-automotive scrap will necessarily include a greater amount of scrap processing. Moreover, unlike in *Marlboro Auto Wreckers*, the Southampton Ordinances do not exhibit any intent by the Gibersons or the Township to distinguish auto salvage from scrap metal.

Rather than considering whether scrap metal was a substantially different use than auto salvage, the Board found that the two uses were non-identical. Southampton Zoning Board Resolution 2013-10 at p. 6. Therefore the Board applied the incorrect legal standard. Insubstantial changes to the non-conforming use are generally permitted. For example, in *Schaible v. Board of Adjustment*, 15 N.J. Misc. 707, 709 (Sup. Ct. 1937), the Supreme Court of New Jersey held that a change in the types of material stored in a building is not a substantial

change if the new materials are no more or less detrimental or dangerous to the community. In Stout v. Mitschele, 135 N.J.L. 406, 409 (Sup. Ct. 1947), the New Jersey Court held that a minor change in a business, namely from a dairy farm to a horse farm, was not a substantial change.

“The focus in cases such as this must be on the quality, character and intensity of the use, viewed in their totality and with regard to their overall effect on the neighborhood and the zoning plan.” Belleville v. Parrillo's, Inc., 83 N.J. 309, 314 (1980). Here, the record is insufficient as to what the intended change in use from auto salvage to scrap metal will entail. Moreover, the Board did not determine the quality and intensity of the historic use. Therefore the Court must remand the case for further hearings.

First, the Board must set the baseline for the non-conforming use by defining, as specifically as possible, the quality and intensity of the use on June 8, 1982. Then, if the intended use is not consistent with the historic use, the Board must determine whether the intended use constitutes a substantial change.

Relevant factors may include, but are not limited to: (1) the environmental impact of storing scrap metal versus auto salvage; (2) the quantity, type, and weight of processing equipment used at the Yard; (3) whether Allied intends to expand the geographical boundaries of the Yard; (4) the height and visual impact of the material stored at the Yard; (5) the quantity and weight of traffic to and from the Yard; (6) the number of employees working at the yard; and (7) the overall effect of the change on the neighborhood; and (8) the Southampton Master Plan.

The Court notes, however, that an increase of intensity alone, without change to the nature or geographical footprint of the use, is insufficient to constitute a substantial change.

[T]he rule of law which prohibits a substantial extension or enlargement of the original use does not forbid an increase in the amount or intensity of use within the same area, so that such a nonconforming use may not only be continued but, also, may be increased in

volume and intensity. Neither is a mere increase in the volume of business conducted on premises constituting a nonconforming use normally considered to be an improper expansion of such a nonconforming use.

[*State v. Wagner*, 81 N.J. Super. 206, 210 (Cty. Ct. 1963) (cited approvingly by *Nuckel v. Borough of Little Ferry Planning Bd.*, 208 N.J. 95, 109-110 (2011)).]

Therefore, while the quantity and weight of traffic to and from the Yard, the number of employees working at the yard, and the overall effect of the change on the neighborhood are relevant, they are not determinative factors.

Additionally, the Board should consider whether aesthetic conditions could be applied that minimize the impact of the change. See *Burbridge v. Mine Hill Tp.*, 117 N.J. 376 (1990) (geographic expansion of a non-conforming junkyard is permissible where landscaping and screening improves the visual conformity and impact on nearby residences).

Lastly, Allied argues that it should be permitted to use the Yard in any way that is consistent with Southampton Ordinance definitions of a junkyard. The definitions contained in Southampton Ordinance §§ 4-4.5, 12-2.3, are not relevant to the instant case. “[A] municipality may not by ordinance authorize the expansion of a non-conforming use.” *Nickels v. City of Wildwood*, 140 N.J. 261, 265 (1995) (citing *Avalon Home & Land Owners Asso. v. Avalon*, 111 N.J. 205, 206-08 (1988)). In *Marlboro Auto Wreckers, supra*, Docket No. A-6137-08T26137-08T2 at p. 16, the court considered the municipal licensing ordinances only in so far as they evidenced the historic intent of the owner. Here the historic use of the Yard is narrower and less intense than the use permitted by Southampton ordinances and licensing. Therefore the ordinances neither demonstrate the intent of the historic landowner, nor do they expand the permissible non-conforming use. Therefore Southampton Ordinance §§ 4-4.5, 12-2.3 are not relevant.

Tentative Disposition

For the reasons set forth above, the Board's determination is hereby **VACATED**, and the above captioned case is **REMANDED** for further hearings consistent with this opinion.

EXHIBIT "D"

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FILED with the Court

MAY 23 2014

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

Attorneys for Defendant, Township of Southampton Planning Board

ALLIED RECYCLING, INC. and
 LAST CHANCE SALVAGE, INC.
 Plaintiffs,

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 BURLINGTON COUNTY

Docket No. BUR-L-2448-13

vs.

Civil Action

TOWNSHIP OF SOUTHAMPTON
 ZONING BOARD OF ADJUSTMENT
 Defendant.

FINAL JUDGMENT


THIS MATTER, having been brought before the Court on cross-applications by the parties through their attorneys, Michael Ridgway, Esq. of the law firm of Ridgway and Stayton, for the plaintiffs, Allied Recycling, Inc. and Last Chance Salvage, Inc., and Thomas J. Coleman, III and Christopher Norman, of the law firm of Raymond, Coleman, Heinold & Norman, LLP for the defendant, Township of Southampton Zoning Board of Adjustment, and the court having considered the submissions and arguments of counsel, and for good cause shown,

IT IS HEREBY ORDERED, this 23rd day of May 2014, as follows:

1. The cross-motions filed by Plaintiffs and Defendants are hereby denied for the reasons set forth in the Court's April 8, 2014 tentative decision.
2. The Court hereby adopts and incorporates the findings and conclusions of the April 8, 2014 tentative opinion, except that, on the remand of the application to the Southampton Township Zoning Board, the legal burden of proof on the establishment plaintiffs' nonconforming use rights shall rest exclusively with the plaintiffs.
3. At the remand hearing, the Southampton Township Zoning Board shall determine the extent of plaintiffs' "baseline" nonconforming use rights, through the issuance of a Certificate of Nonconforming Use; such determination shall be based on the record from

the prior public hearings and any supplemental testimony and/or evidence plaintiffs adduce on the record.

4. At the remand hearing, the Southampton Township Zoning Board shall determine whether plaintiffs' proposed use is substantially similar to the baseline nonconforming use rights, as elucidated in *Arkam Machine & Tool Co. v. Lyndhurst*, 73 N.J. Super. 528, 532 (App. Div. 1962), ^{and other applicable decisions 192} such determination shall be based on the record from the prior public hearings and any supplemental testimony and/or evidence plaintiffs adduce on the record.
5. At the remand hearing, plaintiffs may also pursue relief, in the alternative, to seek a use variance, pursuant to N.J.S.A. 40:55D-70(d)(1), to allow for the operation of a full service junkyard/recycling center, in the event the Southampton Township Zoning Board determines that the Certificate of Nonconforming Use does not encompass a full service junkyard/recycling center.
6. The Southampton Township Zoning Board shall conduct the remand hearing no later than July 17, 2014. Accordingly, plaintiffs must timely file any supplementary documents in advance of the remand hearings to meet this filing deadline.
7. Because the Court has not issued an order granting a stay or injunctive relief, the Township of Southampton is not precluded from enforcement of any zoning violations with respect to activities conducted on plaintiffs' real property.
8. The Court shall not retain jurisdiction in this matter and it is hereby dismissed without prejudice.



Honorable Ronald E. Bookbinder, A.J.S.C.

EXHIBIT "E"

WHEREAS, the following exhibits were introduced by the Applicant at the July 10, 2014 Public Hearing:

- Exhibit 7-10-1 - 1970 Photograph of site in question;
- Exhibit 7-10-2 - 1995 Photograph of site;
- Exhibit 7-10-3 - 2002 Photograph of site;
- Exhibit 7-10-4 - 2007 Photograph of site;
- Exhibit 7-10-5 - 2014 Google Earth Photograph of site;
- Exhibit 7-10-6 - Applicant's Minor Site Plan; and

WHEREAS, the following exhibits were introduced by the Applicant at the March 14, 2013 and September 19, 2013 Public Hearings;

- A-1 - Color rendering of site plan;
- A-2 - 1963 aerial photograph of Property, without Falcon Drive;
- A-3 - 1965 aerial photograph of Property, without Falcon Drive;
- A-4 - 1970 aerial photograph of Property, without Falcon Drive;
- A-5 - 1995 aerial photograph of Property, with Falcon Drive;
- A-6 - 1993 Resolution of the Southampton Planning Board approving minor subdivision of Block 2401, Lot 36.01, into Lot 36.01 (21.751 acres) and the Property (Lot 36.02 -12.666 acres);
- A-7 - 1993 Minor Subdivision Plan prepared by Lord, Anderson and Worrell;
- A-8 - Photograph of screening taken on March 8, 2013;
- A-8 - April 4, 2013 Letter of Thomas J. Coleman, III, Board Solicitor to Michael Ridgway, Applicant's Attorney (misidentified as a second Exhibit A-8);
- A-9 - April 16, 2013 Letter from Michael Ridgway to Thomas J. Coleman in response to April 4th letter;
- A-10 - Sampling of receipts for materials taken off the Property;
- A-11 - 2007 aerial photograph;
- A-12 - 2000 aerial photograph from the Delaware Valley Regional Planning Commission; and

WHEREAS, the following exhibits were introduced by nearby residents and members of the public at the September 19, 2013 Public Hearing:

- B-1 - Photograph of large purple truck taken on August 14, 2013;

- B-2 - Photograph of truck;
- B-3 - Photograph of loaded truck;
- B-4 - Photograph of same truck taken at 1:30;
- B-5 - Photograph of Pennsylvania truck;
- B-6 - Photograph of debris piles; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and the public, makes the following findings of fact with respect to the establishment of the 1982 base line nonconforming use rights of the Property:

1. The Applicant is the owner of the Property located at 440 New Road in the Rural Development Zoning District of the Township of Southampton. The Property is 12.666 acres +/- in area. A junk business has operated from the property for a considerable number of years and the Township has issued licenses for a junkyard since 1967. The Applicant identified the current use of the Property as a junk/salvage/recycling yard.

2. The Applicant proposed to install a weight scale and refurbish existing buildings. The weight scale was installed without the Applicant first obtaining the required approvals or permits.

3. The existing business is a non-conforming use in the Rural Development Zone and the Applicant filed an Application for minor site plan approval and a (D) variance for its proposal. The Applicant subsequently amended its application to also request, in the alternative, a certificate of non-conforming use and a (D)(1) variance.

4. The Applicant filed a Complaint in Lieu of Prerogative Writ after the Board denied a Certificate of Non-Conforming Use for the Applicant's use of the Property.

5. The matter was remanded to the Board to determine the base line nonconforming use rights of the Property, from the date of the original adoption of the Rural Development Zoning requirements in 1982.

6. Michael Ridgway, Esquire, represented the Applicant from the filing of the Application, including the March 14, 2013 and September 19, 2013 Public Hearings. He further represented the Applicant at the July 10, 2014 remand hearing.

7. The Applicant offered the following testimony at the March 14, 2013 and September 19, 2013 Public Hearings as pertaining to the Issuance of a Certificate of Non-Conforming Use:

a. Dan Giberson

- The Property had been in the ownership of his family from 1947 up until its sale in 2009 to the Applicant and it has had a history of tenant/operators including his parents, Mr. Eddie Fuller, Shiny Pointset and Freeman Pointset;
- Over the years, tomato cans, automobiles, televisions, washing machines and wooden boats were taken to the site;
- Dan Giberson had no involvement in the operation of the junkyard and was a passive landlord, who merely collected the rent from the tenant/operators;
- The Applicant still owes Giberson monies from the sale of the property in 2010; Mr. Fuller acquired equipment for tire-rim removal in the early 1980's for \$30,000 and, thereafter, on-site tire storage became a substantial part of the junk yard operation until the time the property was acquired by the Applicant;
- In 1993, Giberson made application for a minor subdivision approval under the name, "Last Chance Auto Salvage", and Resolution 93.8 contained specific findings of fact and a condition of approval restricting the use of the site to an "auto-salvage yard".
- The business name of the prior tenant/operators of the site prior to the minor subdivision approval was either "S & P Autos" or S & S Autos".
- Pursuant to Resolution 93.8 of the Southampton Planning Board, the auto salvage yard could only encompass 3.5 acres of the entire 12.66-acre Property.

b. Thomas Gabrysiak²

- The Applicant purchased all of the stock of Last Chance Salvage from Mr. Pointset on July 27, 2012;
- The Applicant had rented the Property prior to its purchase in 2010 ;

² Testified at the March 14, 2013 Hearing and represented himself as an owner of the Applicant.

- When the stock was acquired from Mr. Pointset, the Applicant took a year to clean up the site to remove approximately 135,000 tires and other vast stockpiles of miscellaneous non-recyclable materials to transition its use to a auto-salvage yard and full-scale scrap metal recycling operation;
- The current business operation is now a full-scale junkyard and is not limited to auto salvage;
- The “junkyard business” has evolved over the past few years with scrap metal recycling becoming a greater percentage of use in relation to auto-salvage;
- Business scrap-metal delivery receipts were provided by the Applicant for calendar years 2009 and 2010, but no such receipts were provided by the Applicant, relating back to the relevant time period of 1982;
- Applicant’s current business operation now has 15-20 employees who work on- and off-site in trucks at any given time.

c. James Miller³

- A certificate of non-conformity should be granted because the use as a junk yard has continued since 1963; the definition of junk yard includes a reference to any other material considered junk and a reference to selling or exchanging;
- Recycling is one of the activities that goes on at a junk yard;
- The use proposed by the Applicant is similar to that of the prior owners and is consistent with the definition of junk yard in the Township Ordinances;
- The only change has been in the ownership of the site;
- The scale modernizes the use, but does not change it;
- The site is particularly suited for a recycling center.

d. Michael Ivins

³ Recognized at the March 14, 2013 Hearing as the Applicant’s Professional Planner and qualified to offer expert testimony in his field.

- When Mr. Pointset operated the salvage yard, it resembled “Sanford and Sons”, but now the Property has been cleaned up;
 - He personally took items to the junk yard, including, old washing machines, transmissions, wife fencing and old metal.
8. The Applicant offered the following additional testimony at the Remand Hearing:
- a. Gary Civalier⁴
 - The 1970 Photograph (7-10-1) shows an abundance of material on the site;
 - The 1995 Photograph (7-10-2) is an aerial photograph that shows the subdivision of the Property and the site has a large amount of material stored on site;
 - The 2002 Photograph (7-10-3) is an infrared photograph that shows the site having a large amount of material on it;
 - The 2007 Photograph (7-10-4) still shows a large amount of material on the site;
 - The 2014 Photograph (7-10-5) shows the site as it currently exists and has been considerably cleaned up from prior years;
 - The current use of the Property appears to be less intense than in prior years’ use, but admitted that he had not been on the Property in 1982, and only has personal knowledge from 2010 to the present date;
 - Admitted that he could not tell how much of the debris shown on the Photographs submitted was wood.
 - b. Thomas Gabrisiak
 - At the current time, 50% of the use is auto salvage and 50% is recycling;
 - We moved our equipment onto the site in 2010-2011;
 - We sell car parts;
 - We have 2 employees every day on-site, not including truck drivers;

⁴ Recognized by the Board at the March 14, 2013 Public Hearing as the Applicant’s Professional Engineer and qualified to offer expert testimony in his field.

- We crush the cars now the same way that has been done from a long time ago.
- c. Alexander Litwornia
 - He is the Applicant's Traffic Engineer, licensed in the State of New Jersey and has been qualified by land use boards in the State of New Jersey to provide expert testimony in his field;
 - Testifies about the Traffic Report he prepared and submitted to the Board⁵.
- d. Fred Myers
 - He resides at 126 Grassy Lake Road in Shamong and he is 62 years old;
 - In 1982 he was in his mid 20's and visited the Property on a recurring basis;
 - From 1973 until 1996 he owned a fire alarm company and visited the site every couple of months to deliver refuse, consisting of conduits, batteries, hardware and cabinets;
 - He would deliver the refuse in a van and dumped it on scrap piles at the site;
 - He observed various piles consisting of steel beams, tires, aluminum siding; wood, mobile homes and construction debris;
 - The debris piles were at least 12 feet in height and the tire piles were higher;
 - A loader was used to move the piles;
 - The site contained more junkyard materials in 1982 than what exists there today;
 - It was 50% auto salvage and 50% non-auto salvage;
 - A small scale was used to weigh the refuse brought to the site;
 - He does not have any receipts evidencing the material he brought to the site;

⁵ The testimony of Mr. Litwornia was largely regarding current activity and current traffic counts on the site. Litwornia provided no testimony regarding the 1982 use of the site for the purpose of determining the 1982 base line nonconforming use rights of the Property.

- There were 4 workers at the site when he delivered refuse to the site.

e. Michael Evans

- He resides at 1 Whoopaditty Lane, Woodland Township and is 58 years old;
- He has been employed by the Applicant as a truck driver since September, 2013;
- He frequently visited the site as a teenager as his family was friends with the then owner of the Property;
- He saw steel, tires, cars, light iron, I-beams, washers and bath fixtures when he would visit the site as a teenager;
- There were approximately 6 employees at the site in the late 1960's early 1970's;
- When the site was owned by the Fullers and Pointsets, the junkyard material storage was significant and disorganized;
- The Applicant has cleaned-up the Property and it is much more open;
- The prior owners would fill the cars with light iron and then crush the cars;
- Admitted that he did not know what percentage of use was attributable to auto salvage.

f. David Blyler

- He resides on Fellowship Road in Moorestown and is 71 years old;
- When in high school he would visit the site with his grandfather;
- We bought and sold stuff at the site;
- I bought a car engine there and scrapped a corrugated roof there;
- I walked the site before and after 1982;
- There were huge piles of cars and tires on site;
- He also saw I-beams, bar joists, roof trusses, 8-10 urinals, wood, shingles, sheetrock and appliances around the perimeter;
- A scale the size of a dining room was used to weigh material back then;
- The prior operator paid me for copper;

- Could not state what percentage of use was attributed to auto salvage;
- The use never really changed.

9. The following testimony was provided by interested persons, including nearby residents and others with persons with personal knowledge, at the public hearings:

- a. Bruce Gsell who testified that the prior operation was very small and it was locals dropping miscellaneous junk materials;
- b. Josh Wolf, New Road (across the street from the site), noted that truck traffic to/from the site was previously flatbed trucks under prior operators, which is now replaced by large tractor trailers under the Applicant's operation;
- b. John Wishart, Falcon Drive, who testified that it was previously a small junk yard and more heavily wooded than it is now; the view of trees has now been replaced by large piles of scrap-metal.
- c. Ben Lerner, Falcon Drive, who testified that he moved to Falcon Drive 34 years ago and he is concerned that the site has now become an industrial site and a fire hazard to the community, since the Applicant commenced operations there;
- d. Kathleen Wishart, Falcon Drive, who asked questions regarding the 1993 subdivision approval and whether it restricted the use to auto-salvage only; Introduced exhibit 7-10-7, a Photograph of the site taken on September 14, 2013 showing that the piles of junkyard materials are much higher today than under prior operators;

Patricia Topham, New Road, who presented a series of truck photographs, and testified that the trucks now coming to/from the site are oversized and create a safety concern for school-bus drop offs as these oversized trucks are too wide for the narrow existing residential roadway; She has resided at 450 New Road since 1977; back then, she would see a tow truck every now and then; the noise from the site was very low back then; she did not know there was a junk yard there until the 1990's; the site is totally different now.

- f. Lawrence Burke who testified that there is now large piles of scrap-metal debris at the site, that was not present five years ago; has lived at 3 Falcon Drive since 1989; he took the Photograph identified as Exhibit 7-10-7; he took the photograph standing at the fence that separates his property from the Applicant's Property. Nancy King who testified that, previously, the operation was a small-scale auto-salvage yard with no need for a weight scale, as the junk vehicles could be weighed in Trenton or Camden; now, there are larger out-of-state trucks coming to/from the site transporting scrap-metal materials; moreover, in the past, she never saw the refrigerators, microwave ovens, and other household appliances that she now sees at the site; King has lived in the nearby New Road neighborhood since the early 1980's.
- h. Steven Jenkins, 446 New Road, who testified that the Applicant has cleared out brush and trees that previously existed on the site; Jenkins has lived near the site for 20 years and went deer hunting on the property and noticed then the site, prior to its operation by the Applicant was smaller-scale and involved mainly auto-salvage and school buses; he previously dated Mr. Fuller's daughter and is familiar with the site; he visited the site when he was growing up; the site was all cars in the 1960's, 1970's and 1980's and he would estimate the car use at 90% of the activity; the site is now very visible from his back yard in comparison to when he first moved in and you could not see the site.
- i. Penny Sundstram, who testified that there are now piles of debris at the site that did not previously exist;
- j. J. P. Price, who testified that there is more going on at the site in comparison to the operations of prior operators; has lived in the neighborhood for 30 years and sold his 77' Monte Carlo to the prior operator for auto-salvage..
- k. Jack Reilly
 - He has lived in the Township since 1978 and resides at 16 Falcon Drive;

- He purchased auto parts from the Freemans to restore cars;
- He would visit the site 1 –2 times per week and during that time, the yard was more than 50% cars;
- Back then, you would hear little noise coming from the site but he can now hear noise from his home due to the increased amount of scrap metal being moved;

l. Mrs. Devone

- She resides at 13 Falcon Drive;
- She remembers cars coming to the site on flatbed trucks;
- There were always “odds” and “ends” on the site;
- Back then, there was not a lot of noise coming from the site.

m Robert Marcantonio

- He resides in Tabernacle;
- When he was younger, he would visit the site often with his father;
- What is on-site now is not what was on site back then;
- The cars used to be stacked 3-4 cars high;
- Before 1982 he went there for autos and took recycling metal there;
- Could not state what the percentage of auto-salvage activity existed at the site in 1982.

n Rose Chappine

- She has resided on New Road since 1961;
- She never was on the site but recalls seeing flatbed trucks with cars being delivered to the site;
- She has never heard noise from the site, then or now.

o. Patricia Travaglio

- She has resided at 8 Falcon Drive since 1976;
- She never heard noise or could see any part of the operation previously but now hears noise from the site and can see the operations.

p. Bill Kelly

- Had lives on Floyd Drive since 1979;

- He visited the site in 1980 and 1981 to purchase parts to repair his cars;
- Only remembers seeing cars on site but cannot state what other activity may have been occurring on site.

q. Dan Siwak

- He has lived on Falcon Drive since 1975;
- He never visited the site but has driven by;
- Back in 1982 it was quiet and a small operation.

10. After hearing the testimony from the multiple public hearings, Board Member Robbins summarized the unanimous consensus of the board members as follows: that the main and predominant purpose of the salvage yard operation at the site, up and until the relevant nonconforming use right time period in 1982, was “auto-salvage” with occasional metal-scrap being placed into the vehicles to increase weight and enhance sales; that there was some ancillary acceptance of certain non-recyclable materials for storage and dumping to which the tenant/operators derived little or no income; and that the nature of the proposed junk-yard operation transitioned, when scrap metal pricing meaningfully increased, subsequent to 2005, and became a more economically viable business activity to which the Applicant sought to establish and expand the existing operation to a full-scale auto junkyard with scrap metal recycling activity in 2009.

11. Board Member Haas further stated that Applicant has not submitted any financial records supporting its claim that the use in 1982 was other than auto salvage.

AND WHEREAS, based upon the above factual findings, the testimony provided by the Applicant’s witnesses and the testimony of the public, the Zoning Board of Adjustment has come to the following conclusions:

1. The 1982 base line non-conforming use rights of the Property, to which a Certificate of Nonconforming Use shall issue, is “auto-salvage”, which includes the sale of salvaged auto parts and the crushed remains of motor vehicles.

2. The “auto-salvage” use alone was the primary business undertaken at the Property in 1982 when baseline nonconforming use rights were established; any other activity on the Property, including the dumping of junk materials and the recycling of scrap-metal can only be characterized as “sporadic” and “anecdotal” and not giving rise to the establishment of any

property right under *N.J.S.A. 40:55D-68*. Applicant has failed to meet its legal burden of proof to establish that scrap-metal recycling was a lawful and continuous nonconforming use right “business activity” at the property in 1982 when the Rural Development Zoning District use requirements were formally adopted and subsequently prohibited, to this date, any junkyard use.

3. The Applicant was unable to produce any financial records supporting its application for a Certificate of Nonconforming Use that the 1982 use of the Property was both auto- salvage and scrap-metal recycling. The only quantification established at public hearings by Applicant was that it had removed approximately 135,000 tires from the Property since commencing operations in 2009, which evidence is only supportive of auto-salvage yard operation.⁶

4. The Applicant could only offer anecdotal testimony from a few witnesses in general terms about other non-car materials being dumped and/or stored on site or occasionally placed within the interior of a motor vehicle to enhance auto-scrap returns. Such testimony was rebutted by that from several other nearby neighbors and residents familiar with the site during the relevant 1982 time period, who claimed that the site operated as a smaller-scale “auto-salvage” yard operation.

4. The evidence pertaining to the 1993 minor subdivision application and approval obtained by Dan Giberson, the prior owner, is compelling and objectively supports a finding that the non-conforming use rights of the Property are limited and restricted to an “auto-salvage” yard.

5. The increase in the noise levels and traffic, since the Applicant commenced operations at the site in 2010 is further indicative of a significant change of use of the Property from auto-salvage to scrap-metal recycling many years after the nonconforming use rights of the property had been established in 1982.

6. The Board also finds support for its decision based on the factual summary presented Board Member Robbins as set forth above and incorporates herein such findings in its decision of this application.

⁶ Testimony of Thomas Gabrysiak at the March 14, 2013 Public Hearing.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Southampton, on the 10th day of July, 2014, that this Board determines that the 1982 base line non-conforming use of the Property was an auto salvage yard.

ROLL CALL VOTE

Those in Favor of Board's Determination: 7
Those Opposed to Board's Determination: 0
Those Abstaining: 0

CERTIFICATION

I hereby certify that this foregoing Resolution is a true memorializing resolution, as adopted by the Zoning Board of Adjustment of the Township of Southampton in accordance with its decision at its special meeting on July 10, 2014.

**THE ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF SOUTHAMPTON**

Attested:



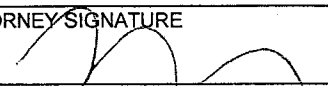
Stephen Zoltowski
STEPHEN ZOLTOWSKI, CHAIRMAN

Sheri Hannah
SHERI HANNAH, SECRETARY

Dated: 7/31/14
Date of Approval: 7/10/14
Date of Memorialization: 7/31/14

Appendix XII-B1

DATE: 11/12/14

 <p>CIVIL CASE INFORMATION STATEMENT (CIS)</p> <p>Use for Initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i>. Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or if attorney's signature is not affixed.</p>		FOR USE BY CLERK'S OFFICE ONLY	
		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	
		CHG/CK NO: 1112:41	
		AMOUNT:	
		OVERPAYMENT:	
		BATCH NUMBER:	
ATTORNEY/PRO SE NAME Michael S. Ridgway		TELEPHONE NUMBER (856) 810-7723	COUNTY OF VENUE Burlington
FIRM NAME (if applicable) Ridgway & Stayton, LLC		DOCKET NUMBER (when available) L 2010-14	
OFFICE ADDRESS 11 Eves Drive, Suite 180 Marlton, NJ 08053		DOCUMENT TYPE Complaint	
		JURY DEMAND <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
NAME OF PARTY (e.g., John Doe, Plaintiff) Allied Recycling Inc./Last Chance Salvage Inc., Plaintiffs		CAPTION Allied Recycling Inc./Last chance Salvage Inc. vs. Township of Southampton Zoning Board	
CASE TYPE NUMBER (See reverse side for listing) 701		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:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS	
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 type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input 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 checked="" type="checkbox"/> NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:			
 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 <i>Rule 1:38-7(b)</i>.			
ATTORNEY SIGNATURE 			

BURLINGTON COUNTY
SUPERIOR COURT
49 RANCOCAS ROAD
MT HOLLY NJ 08060

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (609) 518-2815
COURT HOURS 8:30 AM - 4:30 PM

DATE: SEPTEMBER 04, 2014
RE: ALLIED RECYCLING INC VS TOWNSHIP OF SOUTHAMPTON
DOCKET: BUR L -002090 14

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON RONALD E. BOOKBINDER

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003
AT: (609) 518-2830.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: MICHAEL S. RIDGWAY
RIDGWAY & STAYTON LLC
11 EVES DRIVE
SUITE 180
MARLTON NJ 08053-3114

JUCROG0