

LAW OFFICES OF
ROTHSTEIN, MANDELL, STROHM, HALM & CIPRIANI
A PROFESSIONAL CORPORATION
150 AIRPORT ROAD, SUITE 600
P.O. BOX 3017
LAKEWOOD, NEW JERSEY 08701

(732)363-0777/ FAX: (732)905-6555
www.rmsmlaw.com

EDWARD M. ROTHSTEIN (1941-2002) ~ PETER R. STROHM (1971-2016) ~ ROBERT A. ROTHSTEIN (1974-2019)

CHARLES H. MANDELL
CERTIFIED WORKER'S COMPENSATION ATTORNEY
LAURA M. HALM
JEAN L. CIPRIANI

MICHAEL L. PESCATORE
KEVIN P. GILMARTIN
LAUREN R. STAIGER
ROBIN LA BUE
ANDREA E. WYATT
MICHAEL S. NAGURKA

Of Counsel:
ANGELA M. KOUTSOURIS

July 5, 2019

The Honorable Joseph D. Grisanti, J.M.C.
Brick Township Municipal Court
401 Chambers Bridge Road
Brick, New Jersey 08723

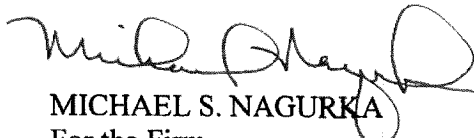
Re: Jackson Township v. WSNP, LLC, et al.
Summons No. 1511-SC-017741 and No. 1511-SC-011742

Dear Judge Grisanti:

Please let this letter serve as notice that the undersigned will be representing the Township of Jackson as Municipal Prosecutor in the above-referenced matter. As discussed, this matter is scheduled for trial on July 17, 2019 at 9:00 a.m. Further, an Order to Show Cause has been filed by the undersigned on behalf of the Township that is returnable on July 26, 2019.

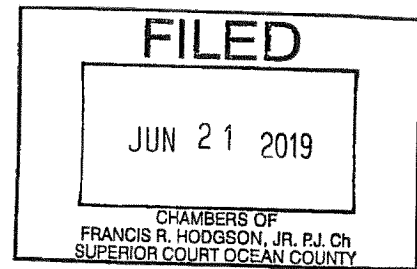
Thank you.

Respectfully submitted,


MICHAEL S. NAGURKA
For the Firm
mnagurka@rmsmlaw.com

cc: Adam Pfeffer, Esq.
Terrence Wall (via e-mail only – twall@jacksontwpnj.net)

GILMORE & MONAHAN, P.A.
Ten Allen Street, 4th Floor
P.O. Box 1540
Toms River, NJ 08754
(732) 240-6000
Michael S. Nagurka, Esq. – Attorney ID #061562014
Attorneys for Plaintiff, Township of Jackson



TOWNSHIP OF JACKSON,

Plaintiff,

v.

WSNP, LLC, MEIR KATZ, YOSEPH
INGBER, JOHN AND JANE DOES 1-10,
ABC LLC'S 1-10, DEF PARTNERSHIPS 1-
10, GHI GENERAL PARTNERSHIPS 1-10,
JKL LIMITED LIABILITY
PARTNERSHIPS 1-10, MNO LIMITED
LIABILITY LIMITED PARTNERSHIPS 1-
10, AND XYZ CORPORATIONS 1-10,

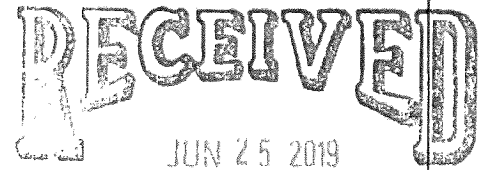
Defendants

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY, CHANCERY DIVISION

DOCKET NO.: OCN-C-

C 115-19

ORDER TO SHOW CAUSE



GILMORE & MONAHAN

THIS MATTER having been opened to the court by plaintiff, Township of Jackson, by way of the filing of a Verified Complaint, and the court having reviewed the Verified Complaint, Certification and other supporting documents, and the defendant having been given notice of same, and for good cause shown;

IT IS ON THIS 21st day of June, 2019,

ORDERED that the Defendants show cause before the court on the 26th day of July, 2019, why an order should not be issued preliminary enjoining and restraining WSNP, LLC from conducting assemblies at its location against Township Code and restraining any

SCANNED

resident of the property, including Defendant Yoseph Ingber, from holding assemblies at 146 S. New Prospect Road without first applying to the Planning Board for a Change of Use;

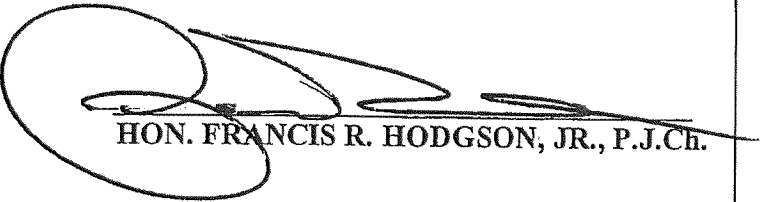
AND IT IS FURTHER ORDERED that:

1. A copy of this Order to Show Cause, verified complaint, legal memorandum and any supporting affidavits or certifications submitted in support of this application be served upon the defendants personally within four (4) days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.
2. The plaintiff must file with the court its proof of service of the pleadings on the defendants no later than three (3) days before the return date.
3. Defendant shall file and serve a written response to this order to show cause and proof of service by the 18th day of July, 2019.
4. The original documents must be filed with the Clerk of the Superior Court in the County listed above. A list of these offices is provided. You must send a copy of your opposition papers directly to Judge Francis R. Hodgson, Jr., J.S.C., whose address is 206 Courthouse Lane, Toms River, New Jersey, 08753. You must also send a copy of your opposition papers to the plaintiff's attorney whose name and address appears above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition and pay the required fee and serve your opposition upon your adversary, if you want the court to hear your opposition to the injunctive relief the plaintiff is seeking.
5. The plaintiff must file and serve any written reply to the defendant's order to show cause opposition by the 22nd day of July, 2019. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge Hodgson.
6. If the defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default; provided that the plaintiff files a proof of service and a proposed form or order at least three days prior to the return date.

7. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.
8. Defendant shall take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this complaint you or your attorney must file a written answer to the complaint and proof of service within 35 days from the date of service of this Order to Show Cause; not counting the day you received it.
9. These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$135.00 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.
10. If you cannot afford an attorney, you may call the Legal Service office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.
11. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than 7 days before the return date.

ILMORE & MONAHAN
A Professional Corporation
COUNSELLORS AT LAW
Jlton Street Professional Center
Ten Allen Street
P.O. Box 1540
Toms River, New Jersey 08754

Dated:



HON. FRANCIS R. HODGSON, JR., P.J.Ch.

Superior Court of New Jersey
Ocean County Court House
Order Prepared by the Court

STATE OF NEW JERSEY

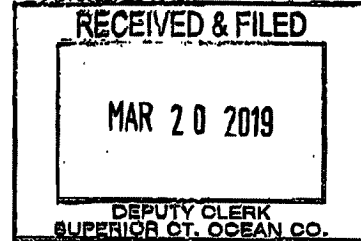
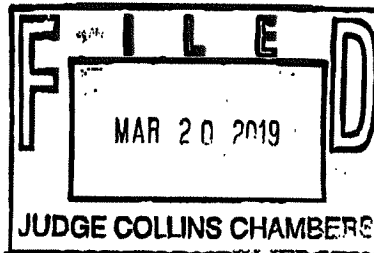
v.

WSNP, LLC
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
OCEAN COUNTY

Brick Township Municipal Court
No. 18-09

ORDER

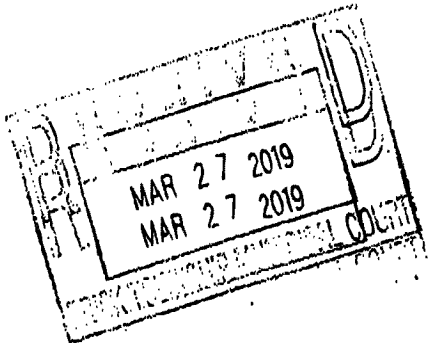


THIS MATTER having come before the Court for de novo review on a municipal appeal of the above-named defendant, and the Court having considered the record below and submissions by the parties, and oral argument, and for good cause having been shown;

IT IS, on this 20th day of March, 2019:

ORDERED that the Defendant's appeal seeking to vacate the municipal court's decision and to remand the matter is **DENIED**.


MICHAEL T. COLLINS, J.S.C.



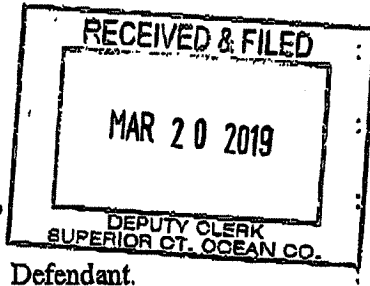
STATE OF NEW JERSEY,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
OCEAN COUNTY

v.

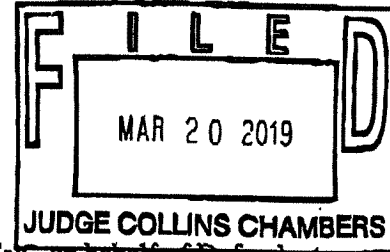
Brick Township Municipal Court
No. 18-09

WSNP, LLC,



Defendant.

DECISION



This matter was brought before the Court by Adam Pfeffer, Esq., on behalf of Defendant, WSNP, LLC, and Michael S. Nagurka, Esq., representing the State.

PRELIMINARY STATEMENT

WSNP ("Defendant") leased the property located at 146 South New Prospect Ave. ("Property") in Jackson to Yoseph Ingber ("Ingber") on June 1st, 2017. The location of the Property was zoned "residential" by the zoning regulations of Jackson. Once he moved in, Ingber "invited" people to his home for religious services, specifically the Sabbath, on Fridays and Saturdays.

Jeffrey Purpuro ("Purpuro") in his capacity as the Jackson Zoning Officer began an investigation into the Property on June 28th, 2017. Purpuro investigated for 33 days, visiting the Property approximately 33 times for inspection. On July 21st, 2017 with Defendant's knowledge, Purpuro was finally able to investigate the interior of the Property. Purpuro found numerous folding chairs and tables, but there was no dining table and the kitchen appeared unused. Purpuro reported that there was no vehicle at the Property during most of his inspections. Purpuro also reported that there was bedroom furniture and reported that he believed two bedrooms may have been used.

On July 31st, 2017 Defendant was issued a summons for violating of Jackson municipal ordinance 224-2.A(3) ("Ordinance"). Specifically, Defendant was charged with changing the use of the Property to a place of assembly without first obtaining approval from the Jackson planning board. A trial was held in Brick Township Municipal Court on June 4th, 2018. Both parties agreed during a pre-trial conference that if it were determined Ingber was, in fact, residing at the Property, then the charge would not stand. However, the State contended that from the time the ticket was written up to and throughout the trial that Ingber was not in fact residing at the Property.

Purpuro testified for the State at trial. Along with the previously mentioned observations, Purpuro testified that the folding chairs and tables found would not normally be used in a single family home. Purpuro observed no couch or furniture (beyond the limited furniture in the bedroom), a podium on the back porch, and a light in the attic that "had been on for weeks on end." Purpuro testified that in his ten years of investigating homes, he had never seen one like this. He testified that, beyond the two unmade beds and possibly a dresser in the two bedrooms, "in the rest of the house absolutely no evidence that anyone had-was ever living there."

James Arehill ("Archill"), a neighbor, drove by the Property on a regular basis and testified to seeing anywhere from 40 to 50 people assemble at the address on the weekends and that at least 8 to 15 cars were parked at the property on the weekend. But during the week, Arehill stated he never saw any people or cars at the Property.

The property manager Yhuda Tomor ("Tomor") revealed during cross-examination of that he visited the Property many times, usually on Saturdays; that he was not an employee of WSNP; he was not paid by WSNP; he filled out the paperwork for the township when Ingber

began renting the Property and he did not meet Ingber before he began renting. Ingber also testified that Meyer Katz, the owner of Defendant, had visited the Property many times.

In upholding the conviction for the ordinance violation, the court stated it had to determine the primary use of the Property, not merely whether Ingber was residing there. The court found both Tomor and Ingber's testimony to be evasive and not credible. The court ultimately concluded the Property was being used as a place of assembly relying on the routine assembly of people at the Property on Friday evenings and Saturday mornings. The court explicitly stated it need not determine exactly what type of assembly was occurring at the Property, only that the Property was being used primarily as a place of assembly.

The court found that there can be multiple uses of a single property and that the finding of the Property being used for a residential purpose does not mean the Property could not also be used as a place of assembly. Therefore, the court found the Property was used as a place of assembly and accordingly found Defendant guilty for failure to seek and to obtain approval to change the use of the Property.

ARGUMENTS

Defendant argues that controlling case law mandates incidental religious activity at a residence does not convert the residential use of that Property, therefore, holding services at the Property did not violate any ordinance. Defendant makes arguments stating that the ordinance seeks to prevent gatherings for religious purposes in violation of the US and New Jersey Constitutions. Defendant essentially argues the ordinance directly prohibits prayer and other religious services from being performed at the Property.

Defendant also argues the zoning ordinance is unconstitutionally vague because it does not use or define "place of assembly." Defendant argues that because an individual person would

not know from the ordinance what a "place of assembly" is or when it applies, application of the ordinance is arbitrary and capricious. Defendant argues the conviction must be vacated because the ordinance does not provide explicit standards for determining when a property is considered a "place of assembly."

Defendant submits the municipal court erred by expanding the narrow scope of the issues before it and the agreed-upon issue was whether Ingber was residing at the Property or not. Defendant argues the Brick court improperly analyzed whether the Property was being primary used as a place of assembly. In the alternative, Defendant also argues that even if the Brick court were authorized to determine the primary use of the Property, the State failed to prove beyond a reasonable doubt that the Property was being used as a place of assembly and not as a residence.

The State argues the municipal court properly interpreted the ordinance in upholding Defendant's conviction. The State argues the Jackson zoning ordinances clearly dictate that use of a residence in an R-1 zone is a conditional use which will be permitted so long as the proper application is made before the Jackson planning board. See §244-42, §244-47. The State argues this case is straightforward as Defendant failed to apply to the planning board before converting the primary use of the Property to a place of assembly. The State argues the Brick court properly assessed the testimony of the witnesses which established a factual basis supporting use of the Property as a place of assembly rather than simple residence.

The State also argues the present matter is distinguishable from cases cited by Defendant in its argument that the ordinance violated religious rights of Defendant and Ingber. The State argues Farhi v. Comm'rs of Deal, 204 N.J. Super. 575 (Law Div. 1985) does not control this case because incidental use of a Property for religious services was not the issue before the Brick court. The State argues Defendant's use was significant and regular, resulting in traffic

congestion as over fifty people congregated at the Property every weekend. Additionally, the State argues the fact that over fifty people per weekend congregating at the Property distinguishes this case from State v. Cameron, 100 N.J. 586 (1985), where twenty-five or so people would meet at a minister's home. The State submits that the number of people congregating at the Property establishes the Property's primary use is a place of worship. See Welch v. Chai Ctr. For Living Judaism, Inc. 2016 N.J. Super. Unpub. LEXIS 1906 (August 15, 2016). In Welch, the Appellate Division upheld a deed that prohibited a residence from being used as a shul to host social gatherings and to conduct religious services because the use was "dissimilar to the humble Property of the minister which was subject to review in Cameron." The State argues the Property is primarily a place of worship where Ingber may or may not reside, rather than a residence similar to the Cameron residence where a few individuals met routinely for religious services at a private residence.

ANALYSIS

A. Credibility of Witnesses

The Court feels compelled to first make findings regarding the testimony of the witnesses. Pupuro provided testimony for the State which established that the interior of the Property had an unusually high number of folding tables and chairs for a single family home; there was a podium on the back porch; the kitchen appeared unused and the only evidence of someone living in the Property was two unmade beds and a dresser. It was Pupuro's opinion, as a zoning enforcement officer with at least ten years' experience, that no one was or ever had resided in the Property. Additionally the State's other witness reported seeing no activity at the Property during the week, but a large number of people and cars there on Fridays and Saturdays. The Court finds the State's witnesses' testimony to be credible.

On the other hand, the Court finds the testimony of the witnesses for Defendant to be incredible. Defendant's witnesses routinely avoided directly answering questions, revised those answers when challenged and on occasion contradicted themselves. On some occasions it appeared Defendant's witnesses were fabricating facts as they testified. Specifically when Ingber was asked if Meyer Katz had ever visited the Property during the alleged assemblies, he testified as follows:

"Q- Have you seen Mr. Katz for assembly?

A- Yes

Q- And how many times--

A- Oh. Katz? Yeah.

Q- And how many times would you say Mr. Katz has come for assembly?

A- He's actually-- Meyer Katz? He's actually not there. No, he doesn't come.

Q- So you did just say--

A- I didn't see him to meet--and again, he comes. I do not, like--he does come, but I don't know how often.

Q- But he has come.

A- Yeah. He comes. He comes."

B. Findings

The Court finds the Jackson zoning ordinances clearly list the permitted principle uses for a residence in the R-1 zone. §244-47(A). R1 Residential Zone. Those uses are community residence for the developmentally disabled, community shelters for victims of domestic violence and detached single-family dwelling units. *Id.* But the ordinance does not explicitly limited R-1 to just those three uses. Section (C) lists conditional uses of residences in R-1 zones, which include churches and places of worship. §244-47(C)(2).

In order to use R-1 residences for one of these conditional uses, the owner of the property must follow the procedural requirements of §244-108 and §244-115. Anyone seeking to use their property for one of the listed conditional uses must submit an application to the Jackson Planning Board for review. §244-108. The numerous procedural requirements listed are intended to insure

a balance between arising uses, activities, or structures that may be necessary in the residential zone with the desire to maintain the overall general welfare of the area. Id.

The Court finds these ordinances are not vague. Defendant argues the ordinances are vague because the municipal court found the property was improperly used as a place of assembly but the ordinances do not use the term "place of assembly". This argument is not persuasive because the facts clearly establish religious activities were occurring at the Property and places of worship are clearly listed under the conditional uses section.

There is no genuine dispute that religious activities occurred on a regular basis at the Property. Defendant admits religious activities routinely occurred at the Property when arguing that the ordinances violate Defendant's right of free expression of religion. The only dispute is over the primary use of the property. This Court finds that there was sufficient credible evidence to support the conclusion that the Property was being used primarily as a place of worship.

Defendant readily admitted individuals routinely gathered at the Property on the weekend for religious activities; Purpuro observed items, specifically a large amount of folding tables, chairs and a podium, routinely used to host large gatherings of people; a large volume of cars and people were observed at the Property on Fridays and Saturdays, but not during the week and Purpuro testified that based on his experience he concluded no one lived at the Property. These facts clearly support a finding that the Property was primarily used as a place of worship rather than a residence. Consequently Defendant's vagueness argument lacks merit because the language of the ordinance is clear that Defendant needed to make an application to the planning board before changing the primary use of the Property to a place of worship.

Finally, contrary to Defendant's argument, the Court finds that the ordinances allow for conditional uses of residences as places of worship and do not prohibit religious services from

being conducted on a property within the R-1 zones. The Court also finds it irrelevant whether Ingber resided at the Property because the ordinances do not prohibit multiple uses of one property. Defendant was only required to submit an application to the Jackson planning board in order to convert the primary use of the Property from a single family dwelling to a place of worship. Defendant did not make this application prior to changing the primary use of the Property. Accordingly, Defendant's appeal seeking to vacate the municipal court's ruling which upheld Defendant's conviction under the ordinance is **DENIED**.


MICHAEL T. COLLINS, J.S.C.