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Lawsuit To Stop Development Of Church Forest Reaches NJ's Top Court

Wayne, N.J., September 6, 2020 -- The fight against development of the three-acre church-owned forest in Wayne, off Preakness Ave., reached the state Supreme Court last Thursday, September 3, when a “motion for leave to appeal” was filed by the now one-man environmental movement, about three weeks after the Appellate Division refused to grant an injunction.

Environmental activist Richard Brummel, who lives in Pompton Lakes, filed a wide-ranging environmental lawsuit last March against the Township of Wayne, its Mayor Christopher Vergano, the Township Council, and the Zoning Board and its chairman, as well as the Church (as an interested party).

Brummel alleged among other things the Township illegally failed to have an Open Space Committee, and the Mayor exceeded his statutory authority in summarily rejecting the Church's last-ditch request to save the forest using the Township's “Open Space, Recreation, Historic and Farmland Preservation Trust Fund.”

See Photo Essay on the forest, here: <http://planet-in-peril.org/nj/wayne/grace-photos-1.html>

Website update at Planet-in-Peril.org, top of page.

In his motion to the Supreme Court, Brummel, a self-taught non-lawyer who led about a dozen environmental legal actions in his home-state of New York before he moved to New Jersey in 2017, claims that important issues of municipal "misfeasance" and judicial "error" warranted review by the state's Supreme Court.

See the Affidavit and Brief filed in the Supreme Court by mail Thursday, September 13th:

<https://drive.google.com/file/d/19Sd0cGdYKIUQzynyOXfUqUjycEnrxfdh/view?usp=sharing>

<https://drive.google.com/file/d/1b3U-TZluRF4x8k7Dd7n9CbcAKQEFRWat/view?usp=sharing>

According to the state Supreme Court practice manual, only about ten percent of the cases appealed to the court are allowed to proceed to formal review and decision (Supreme Court of New Jersey, “A Guide to Filing for Litigants Without Lawyers” (February, 2020), p. 4, “Grounds for granting certification”).

Brummel argued, in the requisite nine hard-copy sets of briefs, affidavits, and

document appendices mailed to the Court in Trenton, that this case was special, and the alleged improper actions of the government agencies and the lower courts should not be left to stand. In summarizing the lawsuit he wrote:

"Plaintiff alleged four causes of action: (1) Defendant Mayor secretly vetoed a sales-inquiry by Defendant Church which sought to have the forest in question preserved as open-space, notwithstanding that Township rules require the Open Space Committee make the "initial determination" on open-space acquisition (Appendix, p. 44a); (2) Defendant Township allowed its statutorily-mandated Open Space Committee to lapse and disappear, notwithstanding its designated duties to protect open space, including the initial determination regarding land-acquisition (Appendix, p. 48a); (3) Defendant Chairman of the Zoning Board of Adjustment, in his 'charging' the board to vote on final-subdivision approval for the forest in question, materially misrepresented the duty of the board to protect mature woodlands "to the maximum extent possible" (Appendix, p. 37a); and (4) Defendant Township's annual budget-statements for the "Open Space, Recreation, Farmland and Historic Preservation Trust Fund" ("the Open Space (etc.) Trust Fund", "the Fund") routinely omitted required data on cumulative revenues and classes of expenditures, thus obscuring the evolution of the Fund into a 'slush-fund' for mayoral pet-projects (Appendix, p. 50a)." (Brief to Supreme Court in Support of Motion for Leave to Appeal)

Brummel exhorted the Supreme Court to act:

"This Court thus respectfully has a strong interest in reviewing and correcting the prior actions in this case because (1) the underlying matters raised in the complaint are far too serious to ignore – as the trial Court surprisingly showed itself all too willing to do, given any option to side with Defendants; and (2) the serious errors of practice by the trial Court – essentially dismissing a meritorious case by fiat, not motion – respectfully should not be allowed to stand."

Brummel strongly criticized the initial judge in the case, Superior Court (Passaic County) Presiding Judge Thomas F. Brogan, for improperly dismissing the case on a "whim" because the judge was irritated by the tactics Brummel used to try to keep the case alive after his "standing to sue" was challenged based on a narrow technicality in New Jersey's generous "environmental right to sue" law:

"That such a case was dismissed essentially on a whim by a trial Court that took umbrage should be inexcusable. That is was done on a public-interest matter, in full view of the watching press, compounds the impact of the violation of public trust.

There is more than enough substantive matter in this case for this Court's limited time and effort to be justified to grant this motion for leave to appeal, and for the issues raised to be fully aired and resolved at the highest level of this State's judiciary."

Judge Brogan abruptly dismissed the case on May 26th, during the second of two hearings nominally set up to decide whether a preliminary injunction would be issued, after it was suggested that Brummel, a non-lawyer, had illegally ghost-written the papers

of a proposed allied "intervenor" in the case -- a man who was a longtime neighbor of the forest whom Brummel had recruited to assure that a challenge to Brummel's "legal standing" would not scuttle the case.

The New Jersey "Environmental Rights Act" (New Jersey Statutes, 2A:35A) is one of the most progressive laws on "standing to sue" in the U.S., granting "standing to sue" in environmental matters to anyone, regardless of whether they live near the location of the alleged environmental harm, or can whether show that they are personally "injured" by the harm, as is required in most states and in federal environmental practice.

But through an oversight, Brummel neglected to give the state and the parties thirty-days' notice of his plans to invoke the law. Brummel argued to Judge Brogan in Superior Court that his oversight was excused by a provision of the Act covering matters of imminent harm, but Judge Brogan dismissed the case anyway, on his own unannounced summary motion.

Brummel appealed to the Appellate Division and requested a preliminary injunction to protect the forest in the interim, but that court rejected the request without an opinion on August 14th, prompting Brummel to turn to the state's highest court last Thursday, at the 20-day deadline to do so.

Said Brummel, "So far I have spent approaching \$2,000 in court fees, copying, and mailing, and probably a few hundred hours writing, testifying, organizing, etc., all because I believe that this forest is a valuable ecological entity, that wildlife depends on it, that Wayne has completely violated its own environmental law, and that the case is important," Brummel said. "But we are dealing with a system that doesn't fully respect the law or the environment, particularly when money or power is a stake. I have guarded optimism there are responsible people in the judiciary that will do what is right in the end, but I have been proven wrong before," Brummel lamented.

Reiterating what he argued in the Passaic County court and the Appellate Division, Brummel laid out for the Supreme Court justices four alleged serious violations of local ordinance and state fiscal laws by the Township, its officials and boards, which he argued should "procedurally" invalidate the approval of a five-house subdivision in the now wildlife-filled church-owned forest:

Brummel said the Clerk's Office of the Supreme Court told him the Court will decide in some weeks if it will accept the appeal. The opposing side, represented by Gregory F. Kotchick Esq. (Durkin and Durkin, Phone (973) 244-9969, Gkotchick@durkinlawfirm.com) for the Township Defendants, and A. Michael Rubin, Esq. (Wayne, N.J., Tel. 973-694-4222, amrubinlaw@verizon.net) for the Grace Presbyterian Church, has ten days to file opposition to Brummel's motion.

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