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February 9, 2023

By electronic filing & Overnight Mail

Honorable Michael J. Blee, A.J.S.C.
Chancery Division
Cape May County Superior Court
9 North Main Street,
Cape May, New Jersey 08210

Re: Department of Environmental Protection v. City of North Wildwood; "XYZ Corporations" 1-10; and "John and/or Jane Does" 1-10

NJDEP Response to NWW's 5-Day Order Amending the Court's February 1, 2023 Order

Dear Judge Blee:

This office represents the Department of Environmental Protection ("DEP") in the above referenced matter. On February 7, 2023, North Wildwood ("NWW") filed a letter and proposed form of amended order pursuant to the 5-day Rule that seeks to remove "Final Judgment" from paragraph 4 of the Court's February 1, 2023 Order. The DEP disagrees with this proposed amended order because the Court did in fact issue a final judgment as to all claims brought by DEP in its Order to Show Cause and Verified Complaint filed on December 6, 2022.



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February 9, 2023

Page 2

On February 1, 2023, the Court, in a summary proceeding pursuant to R. 4:67-6, entered a final judgement granting all of the relief sought in DEP's Order to Show Cause and Verified Complaint seeking temporary restraints and a preliminary injunction to enjoin NWW from: (1) installing a bulkhead between 15th and 16th Avenues until it has received permit approval from the DEP, (2) engaging in any further excavation, placement, or regrading of sand between 14th and 16th Avenues until it has a DEP permit to do so, and (3) engaging in any oceanfront construction, reshaping of the dunes, and or reconstruction of access points at 16th and 25th Avenues until it has a DEP permit to do so. The Court found that, as a matter of law, DEP was entitled to temporary restraints and a preliminary injunction because NWW violated DEP statutes and regulations, and enjoined NWW from installing the bulkhead at 15th and 16th Avenues, engaging in any further excavation, placement or regrading of sand between 14th and 16th Avenues, and engaging in any oceanfront construction, including reshaping of dunes or reconstruction of access points at 16th and 25th Avenues until it has a permit from the DEP authorizing the same. Moreover, the Court rendered a Final Judgment on the return date of DEP's Order to Show Cause and Verified Complaint. See R. 4:67-5.

Accordingly, DEP cannot consent to the removal of "Final Judgment" from paragraph 4 of the Court's February 1, 2023 Order. Prior to NWW's February 7, 2023 letter to the Court, DEP in good faith proposed clarifying language to NWW that the Court only entered a Final Judgment as to DEP's Order to Show Cause and Verified Complaint. However, NWW would not consent to this clarifying language recommended by DEP.

NWW incorrectly cites to R. 3:26-3(b) of the rules governing criminal practice to support the assertion that a final judgment for appeal purposes are judgments that finally resolve all issues as to all parties. This is not correct. The Court granted NWW's motion for leave to file a counterclaim pursuant to the entire controversy doctrine to allow NWW to preserve those claims. While DEP's Order to Show Cause and Verified Complaint has been fully adjudicated, NWW's counterclaim remains open for further adjudication as a separate claim. The Court in its discretion is permitted to enter final judgment on fewer than all the claims upon complete adjudication of a separate claim pursuant to R. 4:42-2(a), which was DEP's Order to Show Cause and Verified Complaint

February 9, 2023

Page 3

for temporary restraints and a preliminary injunction. The Court in its discretion retained jurisdiction over NWW's counterclaims.

Pursuant to the 5-day rule, and consistent with its position in this letter, the DEP now submits the attached proposed order for entry by the Court. R. 4:42-1(c). In addition, the DEP respectfully requests that the Court revise the discovery schedule entered on February 1, 2023 to require written discovery be propounded 30 days after the DEP answers NWW's counterclaims or the Court renders a decision on any motion to dismiss, because it is not currently clear what the scope of discovery will be and granting such an extension will alleviate the need for the parties to engage in unnecessary discovery.

Should the Court deem it appropriate, the DEP is willing to participate in a case management conference to discuss the these requests.

Thank you for the Court's attention to this matter.

Sincerely yours,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Kevin A. Terhune
Kevin A. Terhune
Deputy Attorney General

Encls.

cc: Anthony S. Bocchi, Esq. (by e-courts)

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

SUPERIOR COURT OF NEW JERSEY
CAPE MAY COUNTY
CHANCERY DIVISION

Plaintiff,

v.

DOCKET NO: CPM-C-55-22

CITY OF NORTH WILDWOOD, "XYZ
CORPORATIONS" 1-10; and "JOHN AND/
OR JANE DOES" 1-10,

Civil Action

Defendants.

AMENDED
ORDER

THIS MATTER, having been brought before the Court by way of an Order to Show Cause, Plaintiff's Motion for Temporary Restraining Order and Injunctive Relief, and Defendants' Motion for leave to file a Counterclaim; and Kevin A. Terhune, Esq., and Dianna E. Shinn, Esq., of the Deputy Attorney General Office, having appeared on behalf of Plaintiff; and Anthony S. Bocchi, Esq., of the firm Cullen and Dykman LLP, having appeared on behalf of Defendants; and the Court having reviewed the papers submitted and having heard oral argument; and for the reasons more fully set forth on the record; and for good cause shown;

IT IS on this ___ day of FEBRUARY 2023; ORDERED and ADJUDGED as follows:

1. Plaintiff's Motion for Temporary Restraining Order and Injunctive Relief is GRANTED and Defendants are hereby enjoined from:
 - a. Installing a bulkhead between 15th and 16th Avenues until it has received a permit authorizing the installation of same from the NJDEP;
 - b. Engaging in any further excavation, placement or regrading of sand between 14th and 16th Avenues until it has received a permit authorizing the installation of same from the NJDEP;
 - c. Engaging in any other oceanfront construction, reshaping of dunes and/or reconstruction of the access point at 16th and 25th Avenues until it has received a permit authorizing the installation of same from the NJDEP.
 - d. This is a final judgment on Plaintiff's Order to Show Cause and Verified Complaint for a Temporary Restraining Order and Injunctive Relief.
2. Defendants' Motion for leave to file a Counterclaim is hereby GRANTED.

3. Defendants must file an Emergency Authorization application with the NJDEP WITHIN TEN (10) DAYS of the Court's Order entered on February 1, 2023, seeking to:
 - a. Allow Defendants to install a bulkhead between 15th and 16th Avenues;
 - b. Allow Defendants to engage in further excavation, placement, or regrading of sand between 14th and 16th Avenues
 - c. Allow Defendants to engage in any other oceanfront construction, reshaping of dunes and/or reconstruction of the access point at 16th and 25th Avenues.
4. This Amended Order shall be electronically filed via e-courts thereby ensuring prompt service upon all counsel of record.

MICHAEL J. BLEE, A.J.S.C