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PAUL G. BRENNAN, ESTHER KOAI,  
JAKOB WEINGROFF, JESSICA  
WEINGROFF, RONALD PUORRO,  
KATHRYN PUORRO,  
  
Plaintiffs,  
  
v.  
  
BAY HEAD PLANNING BOARD and  
KAITLYN TOOKER BURKE and DONALD  
F. BURKE JR.,  
  
Defendants.

SUPERIOR COURT OF NEW JERSEY  
OCEAN COUNTY  
LAW DIVISION  
DOCKET NO. OCN-L-340-21

Civil Action

SUPPLEMENTAL CERTIFICATION  
OF PAUL BRENNAN IN  
OPPOSITION TO ORDER TO SHOW  
CAUSE AND IN SUPPORT OF MOTION  
TO DISSOLVE TEMPORARY  
RESTRAINTS

Paul Brennan, of full age, by way of certification states:

1. I am a Plaintiff in this matter. I reside at 157 Osborne Avenue, Bay Head, Block 3, Lot 4. Due to time constraints and identical subject matter, this certification is being submitted to support the filings for: opposition to the Order to Show Cause and in support of Motion to Dissolve Temporary Restraints, in opposition to Motion to Delete, in support of Motion to Intervene in the Default Approval Litigation OCN-L-1402-20 ("Default Approval Litigation"), and to support our motion to file an amended complaint in OCN-L-340-21 litigation. All filings involve the proposed development at 174 Twilight Road, designated as Block 3, Lot 13 ("Lot 13").

2. I, and many other residents of Bay Head, knew of threats in three letters by Donald Burke Sr. to the Borough of Bay Head on behalf of Defendants Kaitlyn Tooker Burke and Donald Burke Jr. to use Lot 13 for affordable housing ("Property"). See Exhibits A, B and C consisting of the letters threatening affordable housing on the site.

3. I have submitted my certifications to this Court and testified to the Planning Board during the application explaining the issues regarding the necessary widening of Warren Place for minimum road safety requirements.

4. Knowledge of Burke's affordable housing threats is already in the Complaint filed in this litigation, where it is specifically suggested that the affordable housing threats are a ploy to change Planning Board conditions of approval. See excerpts below from the original complaint filed in this litigation on February 8, 2021.

a. "247. It is possible that Burke has threatened to develop the lot for affordable housing as a way to convince Borough officials to relieve him of some of the conditions imposed by the Planning Board."

b. "249. Plaintiffs do not oppose affordable housing but oppose its use to threaten a municipality to achieve the goal of eliminating unfavorable conditions of approval or obtaining approvals that are not justified."

5. Michele R. Donato, our attorney, informed us of the Borough's COAH affordable housing obligations and also explained that site suitability is an essential component to receive a builder's remedy.

6. In response to the affordable housing threats, I researched the Borough's efforts to address its affordable housing obligation. In the previous Fair Housing Plan prepared for the Borough in 2006, Lot 13 is listed as unavailable due to environmental constraints.

7. Although we are not opposed to affordable housing, we are aware that Lot 13 could not accommodate affordable housing due to its environmental constraints. Lot 13 is connected to a wetlands complex that the New Jersey Department of Environmental Protection ("NJDEP") classified as Category 1 wetlands ("C-1") in the original wetlands permit for Lot 13. Ms. Donato explained that C-1 waters are entitled to the highest protections under the federal Clean Water Act and under New Jersey law. See Exhibit D.

8. The original 2014 wetlands permit obtained by the Voorhees Estate excluded any development on the northeastern portion of the property. (See Exhibit E p.2.) It was only after the Burkes cleared and filled this area and planted lawn, and later submitted false information to the NJDEP, claiming this cleared area was historically a lawn, that the NJDEP granted the current wetlands permit. The extensive unpermitted activity is detailed in the report of Geoffrey Goll, P.E. of Princeton Hydro, who is a well-known engineer specializing in environmental and stormwater matters. See Exhibit E.

9. In addition to the wetlands constraints, the conditions of approval of the 2005 Voorhees subdivision required the wooded area on the tract to be preserved. Despite several requests for public records made under the Open Public Records Act ("OPRA"), the Borough could only produce the 2005 Resolution and the minutes.

10. I then located the filed subdivision map for the former Voorhees tract that includes Lot 13 and saw the wooded area preservation line that included a significant part of the Burke lot. We presented the filed Subdivision Map, the 2005 subdivision resolution and the minutes of the 2005 subdivision to the Planning Board as exhibits. See Exhibit F.

11. After neighbors attended the January 2020 Planning Board meeting, Donald Burke Sr. filed a complaint to the Borough against Jessica and Jacob Weingroff, owners of Lot 5, regarding drainage of their property. The property was graded as required by the Borough, but to avoid controversy, the Weingroffs regraded their property. Burke Sr. then questioned the drainage features of Lot 1, attempting to interfere in the sale of the property, by requesting seller disclosures. Having experienced the aggressive tactics of Donald Burke Sr. during the Planning Board application, and in an effort to stay current with his activities, I have filed numerous requests for information under OPRA.

12. Prior to receiving the executive session minutes, I had been actively informing concerned residents of Bay Head that the affordable housing threats were a ploy by Burke to eliminate the Planning Board condition to widen Warren Place for fire safety, emergency access, and vehicular access as the current paved road is only ten feet wide and allows one vehicle to travel at a time. Although the road is not marked as "one way," that is the only traffic the dead-end alley currently supports.

13. During the Planning Board hearings, there was extensive consideration of Burke's request for a waiver of road width and sidewalk requirements of the Borough Code. Burke's fire safety expert initially testified on July 15, 2020, that Warren Place must be widened to 20 feet to comply with state Fire Code. The fire safety expert also testified at that time that a turn-around was required for dead-ends greater than 150 feet.

14. After this testimony, Burke then sought to maintain Warren Place at its current ten-foot cartway width. The same fire safety expert later repudiated his prior statements about code requirements after Planning Board members pointed out the presence of wetlands in the right-of-way. The widening of Warren Place and the requirement for a turn-around for vehicles are basic safety conditions that the Planning Board imposed, and upon which we relied. We never expected that the condition would be eliminated in litigation that we were not parties to. To monitor the ongoings of the Borough in light of the affordable housing, I began in earnest to submit OPRA requests to determine the facts.

15. In September 2021, I sent a flurry of OPRA requests to the custodian, triggered by Planning Board Chairman William Furze telling my neighbor: "I think this will all be over by the end of the month." This statement was in response to a comment by a neighbor to Chairman Furze, referencing the multiple affordable housing threat letters sent to Bay Head by Burke.

16. With my prior belief that the affordable housing threats were a bluff and a threat, I knew "this will all be over" meant one of

two things -- either the town was in the process of acquiring Lot 13 as rumored by residents, or a deal had been made to alleviate Burke of his NJDEP difficulties, by removing the condition imposed by the Planning Board to widen Warren Place for fire safety.

17. I began by ruling out the first option that the town was planning to acquire the lot. I did this by requesting legal billings from Borough attorney Cipriani. These billings indicated that appraiser Henry Mancini had been emailed on April 9, 2021. However, a subsequent request for billings for any completed appraisal generated no results. There was no further correspondence with Mr. Mancini or any other appraisers. At this point, I knew there was no intent to acquire Lot 13. I figured that there was a deal made to remove Warren Place road safety conditions.

18. In January 2021, we learned of Donald Burke Sr.'s affordable housing threats, at which point, in compliance with the request of Borough attorney Jean Cipriani, we agreed not to publicize those threats in order to avoid confrontations from fair housing advocates in the state who pursue municipalities that do not comply with their constitutional affordable housing responsibilities. We acquiesced to her request not to expose these issues and place the Borough in a vulnerable position.

19. Through additional legal bills and correspondence from both Borough attorney Cipriani and Jeffrey Surenian, Special Counsel for affordable housing, I could see that the Borough attorneys were negotiating directly with Burke Sr. and directing the actions of

Planning Board attorney Steven Zabarsky related to the Default Approval litigation docket OCN-L-1402-20. See Exhibit G.

20. The prior knowledge that Bay Head Borough attorneys and Burke were negotiating settlement of the Default Approval OCN-L-1402-20 under threat of affordable housing, as opposed to Bay Head Planning Board and Burke as the Court is being led to believe, was the primary reason for my OPRA request dated September 20, 2021 for "all Council meeting minutes to include executive session minutes between the dates of 12/1/2020 and 9/20/2021."

21. I have submitted and received results to numerous OPRA requests over the past two years, some of which were subject to redactions. I have read the OPRA "Citizens Guide" produced by the Government Records Council. The Citizens Guide details specific exempted material, which is not subject to OPRA, and, therefore, allowed to be redacted. I have also consulted with my attorney regarding these same OPRA guidelines.

22. My intention in requesting the executive minutes, which I anticipated to be redacted, was to legally challenge any redactions. There were two paths that I thought I could potentially follow to challenge the redactions. First, the time period stated in the regular session minutes to maintain confidentiality of the executive session is ninety days. (See Exhibit H.) The date of the last Bay Head Council meeting that included an executive session was June 7, and by the September 20, 2021 date of my OPRA request, the 90-day period had passed. Therefore, I believed that the redacted information must be released.

23. Secondly, I intended to challenge the validity of the redactions themselves, because I believed that the redactions were potentially related to settlement of OCN-L-1402-20. Because Borough Council is not a party to the Default Approval Litigation, Council should not be discussing settlement through that litigation. Further, I sought to determine whether Council had engaged in discussions regarding Planning Board conditions. These conditions were previously subject to Planning Board public hearings. I was of the opinion that because the conditions were previously subject to public hearings, any change of these conditions in a closed portion of the Council meeting was likely a violation of the MLUL and the Open Public Meetings Act. Therefore, the redactions themselves would have violated the Open Public Records Act. I filed complaints for violations of OPRA by Bay Head through the Government Records Council, and I am aware that these issues can also be brought before the court.

24. The executive session minutes were sent to me on September 23, 2021 by the Borough as separate files from the regular minutes. As anticipated, they were mostly, though not entirely, redacted. Prior to closely reviewing the documents, I followed up with the Borough attorney to clarify the reasons for the redactions on each document, and I asked the Borough to clarify which Burke matter the redacted minutes were specifically related to, as Burke has a number of current issues. These issues include the affordable housing threats, the Planning Board conditions, a fee challenge, and the Default Approval Litigation OCN-L-1402-20. The reasons for the redactions that were initially offered by the Borough were vague, and I did not believe

they met the legal standard. Throughout this controversy, I have personally researched public access to records, and have done so without the assistance of counsel.

25. When I first received the executive session minutes, I was on a work trip, away from home, without a computer, operating on my iPhone. Walking through the Charlotte airport, I moved the text of each executive session minutes via "copy" and "paste" method from my email inbox into the iPhone application "Notes" so that I could review them in airplane mode later. Only a portion of the text was visible due to the document length, and the narrow format of Notes. As the initial visible portion of the minutes were not redacted, it was not immediately obvious to me that the redactions had disappeared.

26. "Notes" is a standard pre-installed application on the iPhone XR. According to Apple, Notes allows you to "capture a quick thought, create checklists, sketch ideas, [...] and keep your notes updated across all your devices." The ease and user friendliness of the Notes application is marked by its quick accessibility from the iPhone home screen. Notably, Notes is not a specialized application used for hacking redacted government documents.

27. I routinely use Notes to organize important files from email for ease of access. Unlike some other standard iPhone applications such as "iBooks," Notes allows files to be available even without internet access as they are saved off the iCloud drive, on the hard drive. Other options, such as leaving the documents in the email Inbox, or moving the files to iBooks, result in the files being inaccessible to me while in airplane mode (this may be due to my

device storage being nearly full). As my work requires frequent air travel, Notes allows me to read documents without internet access while in airplane mode.

28. When I later opened Notes to look at the documents, it became apparent there were no longer any redactions. The June 7, 2021 executive session minutes was the first document I read. According to the regular session minutes, this June meeting was the last meeting with a Burke subject matter in an executive session.

29. On May 18, just weeks prior to this council meeting, Burke had become more aggressive and explicit with his affordable housing threats. (See Exhibit C.) This letter caused quite a stir with the Borough Governing Body. Legal bills indicate that Donald Burke Sr. secured a private zoom meeting with Bay Head Council just days prior to the Council meeting, possibly in defiance of the Open Public Meetings Act. (See Exhibit I.) Due to the increasing intensity of the affordable housing threats by Burke Sr., Bay Head Borough Council was likely operating under duress. Borough attorney Robin Labue described the executive session topics at the June 7<sup>th</sup> meeting to be the Burke Planning Board litigation and the Burke affordable housing issue. (See Exhibit J.) This paragraph will be further clarified, with the actions taken during the Bay Head Council executive session pending the outcome of the Order to Show Cause.

30. Only later did I realize, once I had access to a computer, that the redactions were able to be removed through a simple copy and paste in any basic word processing program (e.g. Microsoft Word, Adobe Acrobat, Gmail). The black boxes could also simply be deleted in

Adobe or Word. Additionally, on the iPhone, one could inadvertently unredact without ever leaving the mailbox application. Recently, I have read information related to these types of "embarrassing redaction failures" in an ABA article by Judge Herbert B. Dixon Jr. (See Exhibit K.), and a technical guide published by Adobe. See Exhibit L.

31. Following the receipt of the executive session minutes, I shared the minutes with fellow plaintiffs, my attorney, and also directly quoted the minutes in email correspondence to the Council people expressing my disappointment with them. I also disclosed the content (affordable housing threats as a ploy to change Warren Place road conditions) to many residents of Bay Head, through email or word of mouth. In doing so, I was mainly reciting information to which I had prior knowledge and attempting to avoid having our lawsuit settled without our participation.

32. **Prior to** receiving the improperly redacted executive session minutes, I already had knowledge of most of the "confidential" information within the executive session minutes through numerous prior OPRA requests, none of which were subject to redactions. Due to the limited timeframe for this response, and the extensive nature of the documents reviewed, I am only submitting limited exhibits; the records reviewed are hundreds of pages of material. The documents reviewed include:

- a. Bay Head Planning Board attorney Stephen Zabarsky's correspondence with Burke Sr.

- b. Bay Head Borough Special Counsel affordable housing attorney Jeffrey Surenian's correspondence with Burke Sr.
- c. Legal bills from Bay Head attorney Cipriani, Jeffrey Surenian and the Planning Board attorney.
- d. The NJDEP warning letter that Burke cannot widen Warren Place without a permit modification and that his current Planning Board site plan exceeds his current permit allowances. See Exhibit M.
- e. NJDEP database showing Burke has taken no action to modify his NJDEP permits.
- f. The testimony at the original hearings, where it was obvious that Burke Sr. had no intention to widen Warren Place or to modify his NJDEP permit. Burke Sr. went so far as to convince his Fire Expert to change his testimony mid-hearings to claim the fire code which he had previously testified to did not apply to the same development. This reversal of opinion by the Fire Expert occurred only after the Planning Board members noted wetlands in Warren Place.

33. Burke Sr. has accused me and Michele R. Donato, my lawyer, of criminal activity based entirely on a letter written by attorney Cipriani. I assure the Court I did not commit any such crimes, and, in fact, did not even advise my attorney of these circumstances until the last week of September. I have no special computer skills. I utilized no hacking tools. I did not alter any metadata. I did not improperly access any database. There was no encryption breaking. No software program was downloaded or otherwise utilized to alter the

redacted document. Of note, Ms. Cipriani's letter dated October 4, 2021, does not even accuse me of taking any of those actions. I have neither the knowledge, nor skillset to take any of the actions Mr. Burke Sr. accuses. The criminal accusations of Mr. Burke Sr. are completely baseless.

34. I have spoken in front of Bay Head Council numerous times over the last two years, attempting to apprise them of the issues of Burke's unpermitted wetlands activity. While I knew Burke's intention with the affordable housing threats, I was very surprised and dismayed to see that Bay Head Council was successfully duped by his affordable housing bluff.

35. I had become consumed with reviewing documents obtained through OPRA to find out how the default approval litigation was being handled. In discussion with my attorney, she advised that Borough Council could not revise the Planning Board approval without public participation and notice.

36. After discussions with my attorney, I learned that the Bay Head Governing Body and Planning Board are distinct autonomous entities; both with explicit powers under the law. The power to rezone the property, and to allow affordable housing, lies solely with Borough Governing Body. The power to negotiate any Planning Board litigation is an autonomous function of the Planning Board. These are two separate and distinct matters that should not be influenced by each other. By inserting itself into the negotiation of Planning Board conditions of an application under active appeal, Bay Head

Council is operating under the color of law, thereby robbing myself and my fellow Plaintiffs of our right to due process.

37. At the August 3, 2020 Council meeting, while the Burke Planning Board hearings were ongoing, I caught Borough Council in an attempt to introduce an amended sidewalk ordinance. This ordinance would have eliminated the sidewalk requirement for Warren Place. My objection led to the proposed ordinance being tabled.

38. This sidewalk ordinance change was also inappropriate, because the Burke Planning Board hearings were still ongoing and the proposed ordinance was not listed on the agenda. I emailed each Council person after that meeting and explained the downstream effect that the ordinance would have on the active Burke application, and why it was improper, detailing that it was an attempt to relieve Burke of the requirement to modify his wetlands permit. My attorney also questioned the legality of the proposed ordinance, which would allow the Borough engineer to grant design waivers, which are only allowed to be granted by the Planning Board.

39. Planning Board attorney Zabarsky refused to allow me to testify to this occurrence during the Burke Planning Board hearings.

40. The OPRA results I received **prior to** the improperly redacted executive session minutes when compiled and analyzed, reveal that:

- a. Burke plans to challenge the Warren Place road widening conditions through Default Approval OCN-L-1402-20. See Exhibit N.

- b. Planning Board attorney Zabarsky has already advised Burke Sr. that Default Approval OCN-L-1402-20 is not the proper place to challenge Warren Place road widening conditions. See Exhibit O p.5.
- c. Burke Sr. has sent numerous affordable housing threat letters to Bay Head. Burke has no affordable housing plan. See Exhibit A, B, and C.
- d. Affordable housing site suitability criteria requires proper road access as an explicit condition.
- e. Burke has taken no action to modify his wetlands permit for the Warren Place road improvements currently required either for his single-family home approval, or for any affordable housing site plan. Burke's NJDEP permit expires in 2024.
- f. The record of these proceedings demonstrates the numerous wetland violations that would make any modification that opens the permit to appeal problematic for Burke. Additionally, the NJDEP is investigating Burke for extensive wetlands violations at numerous properties in Brick Township, further complicating any permit modification attempt by Burke. See Exhibit P.
- g. Bay Head Borough affordable housing attorney Surenian and not Planning Board attorney Zabarsky is negotiating settlement with Burke for OCN-L-1402-20. See Exhibit G.

h. Surenian is dictating all actions by Planning Board attorney Zabarsky regarding standstills and consent agreements on OCN-L-1402-20. See Exhibit G.

41. Prior to the court-ordered temporary restraint that I am currently subject to, I had voluntarily exercised personal restraint in disseminating the full content of the executive session minutes. This was out of respect for Bay Head Borough privacy interests. Once Ms. Donato learned of the unintended redactions, she advised me that this is not her area of expertise, and until specialized advice could be received, to refrain from further disseminating the minutes. I did not wish to cause Ms. Cipriani any problems and Ms. Donato recommended that we meet with her to address the issues.

42. On September 28, 2021, I met with Ms. Jean Cipriani and Ms. Donato. I advised Ms. Cipriani of the nature of the Borough's redaction failure. I then demonstrated to Ms. Cipriani the Borough's failure to properly redact on my iPhone, using the copy and paste function. As a result of that discussion, Bay Head has taken steps to correct the redaction method and to prevent future breaches.

43. On the advice of Ms. Donato, I agreed not to further disclose the unredacted documents, until we received proper guidance, as it is not an area of the law with which she was familiar.

44. Ms. Cipriani's October 4, 2021 letter (See Exhibit Q.) entered as evidence by Mr. Burke is vague and understandably seeks to not disclose the true nature of the redaction failure. Ms. Cipriani's letter states, "[...] Mr. Brennan took some action resulting in the removal of the redaction." This statement is made despite knowing

exactly how the redaction failure occurred. This is evidenced not just by my statements, but by the fact that Bay Head has now corrected their improper redaction method in response to my meeting with Ms. Cipriani.

45. Mr. Burke's accusations have jumped to conclusions neither supported by Ms. Cipriani's letter, nor by fact. Ms. Cipriani never stated to me that she believed it was illegal to disseminate the information, nor that she believed any action I took in unredacting the documents was illegal. The strongest statement supplied by Ms. Cipriani's letter was that the "use of minutes... was improper." Nevertheless, Burke Sr. has falsely accused me and Ms. Donato of criminal acts.

46. In her October 4, 2021 letter submitted as evidence by Burke Sr., Ms. Cipriani asked that "until the manner of obtaining the unredacted documents is made clear," that the documents not be used for any purpose nor distributed in any manner. Ms. Cipriani advised Ms. Donato that "if any software program obtained was used to alter the redacted form, those unredacted documents were improperly obtained."

47. At the date of writing the October 4, 2021 letter, Ms. Cipriani knew the exact manner of the redaction failure of the documents. Ms. Cipriani also knew that no software program was used to alter the redacted form. My interpretation of Ms. Cipriani's statements quoted above was that she did not believe it was illegal to distribute the documents, or that the documents were improperly

obtained. If Ms. Cipriani believed any illegality occurred, she had all the information to state it definitively.

48. Bay Head Borough, the responsible party for the confidentiality of the information I received, has not sought to intervene in this matter to prevent dissemination of the information. To my knowledge, no Borough official or attorney has filed any police reports, nor have they sought to take any other official action to prevent me from distributing the material.

49. As a resident and taxpayer of Bay Head, I have a vested interest in protecting the confidentiality of the executive session minutes to the greatest extent possible. It appears that Bay Head Council, the Planning Board, and their counsel have been a victim of Burke Sr.'s manipulative actions. My only motives are a fair and just outcome, while also protecting my First Amendment rights.

50. After our meeting on September 28, 2021, Ms. Cipriani forwarded to Ms. Donato a copy of the confidentiality order on consent signed by the court, between Burke and the Bay Head Planning Board related to Default Approval OCN-L-1402-20. See Exhibit R.

51. Plaintiffs had sought to consolidate that Default Approval Complaint and this action, since they involve the same application. Planning Board attorney Zabarsky also consented to the proposed consolidation, despite what appears to be attempted interference by Surenian, Cipriani, and Burke trying to convince him otherwise. (See Exhibit G p.11.) When I read this information, I appreciated Mr. Zabarsky's honesty and integrity.

52. I took time to carefully read the confidentiality agreement Ms. Cipriani sent. I realized that by engaging third parties Bay Head Borough, Bay Head Borough Council, and Bay Head Special Counsel Jeffrey Surenian in "confidential" negotiations related to OCN-L-1402-20, Mr. Burke has violated the confidentiality order on that case. That order, dated April 28, 2021, is specifically limited to the parties listed: the Bay Head Planning Board and the Burke Defendants. The order **explicitly prohibits** third parties. The breach of the confidentiality of the "negotiation" is through the actions of Donald Burke Sr. Donald Burke Sr. is the subject of the court-ordered confidentiality, and he intentionally violated the court order by engaging numerous third parties. Furthermore, by allowing this Court to believe that the negotiations of OCN-L-1402-20 were between Burke and the Bay Head Planning Board, Burke Sr. has intentionally deceived the court.

53. As a certified civil trial attorney, Burke understands the distinction between Bay Head Borough Council and Bay Head Planning Board. Ms. Cipriani also clearly understands this distinction as well. In her letter dated October 4, 2021 submitted by Burke Sr. as evidence, she states that the Borough is not a party to the litigations (OCN-L-340-21 & OCN-L-1402-20): "As you are all aware, and as has been stated at numerous public meetings, the Borough Council is not a party to the above-referenced litigations and has taken no part in, nor position on, the court proceedings in these matters."

54. Ms. Cipriani is careful to tell the truth: she expresses in her letter that the Borough "has not taken any part in the court proceedings in these matters." The Borough has, however, exerted influence and taken positions on these matters improperly outside of the court proceedings, as the executive session minutes and other disclosed documents also reveal.

55. Because Burke has misled the court and engaged third parties including Bay Head Borough Council, the Mayor and Borough attorneys, specifically Mr. Surenian and Ms. Cipriani in negotiations related to OCN-L-1402-20, the confidentiality of the entire court order has been intentionally violated by Burke.

56. I currently have outstanding OPRA requests for Burke-Surenian correspondence. Bay Head Borough has not yet provided all of the requested correspondence. However, Bay Head has taken the legal position that the correspondence between Burke and Surenian is subject to OPRA by providing portions of the request. (See Exhibit G p.18) Further, Borough attorney Jean Cipriani has acknowledged to me via email that Burke's intentional violation of the court-ordered confidentiality has placed these documents within the public domain. (See Exhibit S.) When these documents are eventually provided, the entire proposal to settle OCN-L-1402-20 will be revealed. The legal billings indicate Burke Sr. has sent this proposal directly to Mr. Surenian and Ms. Cipriani, which is an overt intentional breach of the confidentiality agreement to which he is subject.

57. It appears Planning Board attorney Zabarsky's involvement in the settlement negotiations related to OCN-L-1402-20 is solely at

the behest of Mr. Surenian and Ms. Cipriani. Further, it appears there is no direct negotiation at all between Mr. Zabarsky and Burke. See Exhibit G.

58. I have contacted national First Amendment and public citizen advocacy groups who have rendered opinions that my conduct was not criminal and that case law throughout the country allows release of information when confidential information was previously subject to dissemination. By violating his own confidentiality agreement, Burke let the cat out of the bag. This occurred prior to my receipt of the documents.

59. To summarize, I legally received improperly redacted information.

- a. Of the information that I received, most was already known to me and the public prior to the redaction failure.
- b. Of the information that I received, most had already been widely disseminated by me prior to the redaction failure.
- c. I did not break any law to unredact the documents.
- d. When I read the documents in question, I was not subject to any court order regarding the confidentiality of the information.
- e. When I read the information, I was not the responsible party for the confidentiality of the information.
- f. After receiving the Confidentiality Order from Ms. Cipriani, I realized that Burke Sr. intentionally broke the Confidentiality Order he was under by engaging the Borough Council and counsel for the Borough. In doing so, Burke

Sr. was not just deceiving the Court, but Burke had obliterated any hope of continued confidentiality, because the cat was out of the bag.

- g. The first breach of the Confidentiality Order occurred prior to me reading or receiving the redacted minutes. There were numerous individuals outside of the court-ordered confidentiality agreement on OCN-L-1402-20 who were involved in that negotiation. This breach allows disclosure of the information to others, rendering the information no longer confidential, even if it was properly confidential at the outset. The responsible party for breaking court-ordered confidentiality is Donald Burke Sr.

60. Mr. Burke Sr. has recently publicly provided support for my continued statements that the affordable housing threats were solely a bluff. Burke Sr. clarified that the intent for the property was a single-family development, admitting to reporter Alissa Deleo this very fact in the October 15, 2021 edition of the Ocean Star. (See Exhibit T.) This public admission against interest regarding any intent to create multifamily housing is also supported by the fact that he has made no efforts to modify his plans to accommodate multifamily affordable housing.

61. I also just recently learned that Burke's affordable housing correspondence campaign began even prior to the end of the Planning Board hearings for his single-family approval. This likely had an undue influence on his eventual Planning Board approval that we are currently challenging. See Exhibit U.

62. Additionally, Burke has not even met the statutory requirement to claim default approval. Burke did not provide notice of default approval to the newspaper or the residents within 200 feet as required by the law. n exhibit submitted as evidence of newspaper publication in OCN-L-1402-20, is a newspaper clipping advertising the Planning Board hearings for his application, not his claim of default approval. See Exhibit V.

63. The executive session minutes are a critical piece of evidence in this case. They reveal the improper behavior of Burke in his attempt to circumvent and deceive the Court. They also expose the explicit undue influence by third party Bay Head Borough; this evidence is critical to our case, and has the potential to invalidate the entire Planning Board approval. To file a meaningful amended complaint, it is best to use the received executive session minutes as evidence to amend the complaint. However, there is still a pending Order to Show Cause, and the admissibility of those minutes is currently unresolved.

64. We also seek to amend the complaint with public records of the Voorhees subdivision, that were previously unavailable. These records were provided to me on June 14, 2021 and are also the subject of Government Records complaint Brennan v. Bay Head, GRC-2020-166, which is still pending final judgement. The documents provided to date are still missing a document required by the Voorhees Subdivision Resolution: the "Proposal to Preserve the wooded area." See Exhibit F p.5.

65. At the time of the Voorhees subdivision, Borough ordinance merged all contiguous properties that were nonconforming in any respect, if in common ownership. During the hearings on the Burke variances, we did not have these documents despite OPRA requests.

66. At the time of the Voorhees subdivision, a minor subdivision was limited to no more than three lots and could not contain off-tract improvements.

67. Voorhees Subdivision records indicate that Bay Head Planning Board analyzed lot merger by ordinance with regard to the Voorhees tract in 2005. The Planning Board, however, only looked at Lot 5's impact on the subdivision, declaring that because it was conforming that merger had not occurred. It does not appear that nonconforming Lot 12 or 13's impact on the proposed subdivision was analyzed. See Exhibit W p.4.

68. We raised the issue of merger contained in the Borough ordinance in the Planning Board hearings, since it reveals the self-created hardship of Voorhees who sold the lot to Burke.

69. These documents also directly implicate the legal opinion rendered by the Board attorney in 2020, that the 2005 subdivision did not include Lot 13. These subdivision records include plans for Lot 1 which was involved in the subdivision of the Voorhees tract, which is contrary to statements by the Board attorney on the record, that this subdivision was limited to Lots 2 and 4. (See Exhibit W p.7.) His opinion also ignored the unambiguous delineation on the recorded subdivision map of the wooded areas to be preserved, and the fact that the original Voorhees garage was entirely on Lot 13 and marked "to be

removed." (See Exhibit F.) The fact that we did not have these additional records during the hearings resulted in the erroneous ruling by the Board attorney that the Voorhees subdivision was not related to Lot 13.

I certify that the foregoing statements made by me are true to the best of my knowledge. I understand that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

Dated: November 1, 2021



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Paul Brennan