

KING MOENCH HIRNIAK & MEHTA, LLP

Matthew C. Moench, Esq. (031462007)
Michael L. Collins, Esq. (068092013)
51 Gibraltar Drive, Suite 2F
Morris Plains, New Jersey 07950-1254
973-998-6860
973-998-6863 (facsimile)
Attorneys for Defendant Town of Phillipsburg
Town Council, governing body of the municipality

BRENDA KORMANDY, GARIS
KORMANDY, JANICE HOSBACH,
DAVID P. MORISETTE, and SANDRA S.
MORISETTE,

Plaintiffs,

v.

TOWN OF PHILLIPSBURG TOWN
COUNCIL, governing body of the
municipality,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
WARREN COUNTY

Docket No.: WRN-L-248-21

Civil Action

ANSWER

Defendant Town of Phillipsburg Town Council, governing body of the municipality, by way of answer, says:

1. Defendant lacks sufficient information to admit or deny the allegations and leaves Plaintiffs to their proofs. To the extent any further response is required, Plaintiffs' allegations are denied.

2. Defendant lacks sufficient information to admit or deny the allegations and leaves Plaintiffs to their proofs. To the extent any further response is required, Plaintiffs' allegations are denied.

3. Defendant lacks sufficient information to admit or deny the allegations and leaves Plaintiffs to their proofs. To the extent any further response is required, Plaintiffs' allegations are denied.

4. Admit.

5. The content on Defendant's website constitutes a public record that speaks for itself. Defendant denies the remaining allegations.

6. Defendant admits that the Phillipsburg Council adopted Ordinance 2021-14 on second reading at its meeting on May 4, 2021, and that notice of adoption of said ordinance was published on May 13, 2021. The remaining allegations seek to characterize a document that speaks for itself and state legal conclusions. To the extent any further response is required, the remainder of Plaintiffs' allegations are denied.

7. Admit.

8. Plaintiffs' allegations in the first two sentences are ambiguous as they fail to define the terms "affected" and "all of the lands" and are therefore denied. Plaintiffs' allegations in the third sentence seek to characterize a document that speaks for itself and is therefore denied.

9. Defendant lacks sufficient information to admit or deny the allegations and leaves Plaintiffs to their proofs. To the extent any further response is required, Plaintiffs' allegations are denied.

10. Plaintiffs' allegations seek to characterize a document that speaks for itself and state legal conclusions. Plaintiff's allegations are therefore denied.

11. Defendant admits the first sentence. Defendant further admits that the Planning Board submitted the Consistency Report to the Council, which is referenced in Ordinance 2021-14. Defendant denies the remaining allegations.

12. Defendant admits the first sentence. Defendant objects to the second sentence to the extent “[v]arious redevelopment plans that have included this area” is ambiguous and therefore denies these allegations.

13. Plaintiffs’ allegations seek to characterize a document that speaks for itself. Plaintiffs’ allegations are therefore denied.

14. Defendant objects to the allegations to the extent that “this area” is ambiguous. Plaintiffs’ allegations are therefore denied.

15. Defendant objects to the allegations to the extent that “the area that is legislated by the Ordinance” is ambiguous. Plaintiffs’ allegations are therefore denied.

16. Defendant objects to the allegations to the extent that “the area that is legislated by the Ordinance” is ambiguous. Plaintiffs’ allegations are therefore denied.

17. Denied.

18. Plaintiffs’ allegations seek to characterize a document that speaks for itself. Plaintiff’s allegations are therefore denied.

19. Plaintiffs’ allegations seek to characterize a document that speaks for itself. Plaintiff’s allegations are therefore denied.

20. Plaintiffs’ allegations seek to characterize documents that speaks for themselves. Plaintiff’s allegations are therefore denied.

21. Plaintiffs’ allegations seek to characterize documents that speaks for themselves. Plaintiff’s allegations are therefore denied.

22. Plaintiffs’ allegations seek to characterize documents that speaks for themselves. Plaintiff’s allegations are therefore denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Defendant objects to the extent that Plaintiffs' allegations assert hypotheticals that fail to satisfy the applicable pleading standards. To the extent that any further response is required, Plaintiffs' allegations are denied.

Count One – Violations of Due Process

30. Denied.

Count Two – Inconsistency with Master Plan

31. Defendant repeats and reiterates each and every answer to the preceding paragraphs as if fully set forth herein.

32. Denied.

33. Denied.

34. Defendant objects to the extent that Plaintiff's allegations assert legal conclusions. Notwithstanding the foregoing, denied.

Count Three – Conflict of Interest

35. Defendant repeats and reiterates each and every answer to the preceding paragraphs as if fully set forth herein.

36. Defendant lacks sufficient information to admit or deny the allegations and leaves Plaintiffs to their proofs. To the extent any further response is required, Plaintiffs' allegations are denied.

37. Defendant objects to the extent that Plaintiffs' allegations implicate application of the attorney-client privilege. Notwithstanding the foregoing, Defendant lacks sufficient information to admit or deny the allegations and leaves Plaintiffs to their proofs. To the extent any further response is required, Plaintiffs' allegations are denied.

38. Plaintiffs' allegations seek to characterize a colloquy at a public meeting that speaks for itself. To the extent any further response is required, Plaintiffs' allegations are denied.

39. Defendant objects to the extent that Plaintiffs' allegations seek to assert legal conclusions. To the extent any further response is required, Plaintiffs' allegations are denied.

Count Four – Arbitrary and Capricious Lawmaking

40. Defendant repeats and reiterates each and every answer to the preceding paragraphs as if fully set forth herein.

41. Defendant objects to the extent that "acts and omissions complained of in this complaint" is ambiguous. Notwithstanding the foregoing, denied.

AFFIRMATIVE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiffs' Complaint In lieu of Prerogative Writs fails to state a cause of action upon which relief can be granted and should therefore be dismissed.

SECOND SEPARATE DEFENSE

Plaintiffs' claims are time barred.

THIRD SEPARATE DEFENSE

Some or all of Plaintiffs' claims are or may be barred by virtue of the equitable defense of the doctrine of laches.

FOURTH SEPARATE DEFENSE

Plaintiffs' claims are frivolous or groundless and known to Plaintiffs to be frivolous and groundless and without foundation in fact and/or law. Furthermore, this suit is pursued in bad faith for the purpose of harassing Defendants.

FIFTH SEPARATE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of Estoppel.

SIXTH SEPARATE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine and principles of Res Judicata.

SEVENTH SEPARATE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine and principles of Collateral Estoppel.

EIGHTH SEPARATE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrine of Waiver.

NINTH SEPARATE DEFENSE

Plaintiffs' claims are barred, in whole or in part, as they are contrary to public policy.

TENTH SEPARATE DEFENSE

If Plaintiffs sustained any injury or is entitled to any damages, such injury and damages were wholly, or in part, caused by Plaintiffs' own acts or omissions, negligence, lack of due care, fault, and violation of the law and or by that of Plaintiffs' agents or employees. In the event that

Plaintiffs are found to have sustained any injury and are entitled to damages, Plaintiffs' recovery against Defendant, if any, must be reduced by Plaintiffs' proportionate damages caused by the acts and conduct of Plaintiffs and/or their agents or employees.

ELEVENTH SEPARATE DEFENSE

Defendant reserves the right to amend this Answer to assert additional defenses and to make future allegations upon completion of further investigation and discovery.

TWELFTH SEPARATE DEFENSE

Any action taken by Defendant was undertaken in the good faith performance of their official duties, without malice, and were, therefore, absolutely privileged.

THIRTEENTH SEPARATE DEFENSE

The action by Defendant is entitled to a presumption of validity and reasonableness and was not arbitrary, capricious, or unreasonable.

FOURTEENTH SEPARATE DEFENSE

The action by Defendant was based upon evidence contained in the record satisfying all necessary legal proofs.

FIFTEEN SEPARATE DEFENSE

The action by Defendant is consistent with the intent and purpose of the Master Plan and will not impair its intent or purpose.

SIXTEENTH SEPARATE DEFENSE

Plaintiff lacks standing to bring this prerogative writ action.

SEVENTEENTH SEPARATE DEFENSE

Plaintiffs failed to raise objections during the record below and therefore have waived their opportunity to now appeal the instant decision.

EIGHTEENTH SEPARATE DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands.

NINTEETH SEPARATE DEFENSE

Defendant at all times acted in conformance with the Local Redevelopment and Housing Law.

DESIGNATION OF TRIAL COUNSEL

Matthew C. Moench, Esq., is hereby designed trial counsel pursuant to Rule 4:25-4.

KING, MOENCH, HIRNIAK & MEHTA, LLP
Attorneys for Defendant

By: /s/ Michael L. Collins, Esq.

Dated: August 26, 2021

CERTIFICATION PURSUANT TO R. 4:5-1

It is hereby certified in accordance with R. 4:5-1 that the specific matter in controversy is not, to my knowledge, the subject of any action pending in any Court, nor of any pending arbitration proceeding. I know of no other party who should be joined in this action at this time. I hereby certify that these statements made by me are true and that I am aware that if any of these statements is willfully false, I am subject to punishment.

KING, MOENCH, HIRNIAK & MEHTA, LLP
Attorneys for Defendant

By: /s/ Michael L. Collins, Esq.

Dated: August 26, 2021

Civil Case Information Statement

Case Details: WARREN | Civil Part Docket# L-000248-21

Case Caption: KORMANDY VS PHILLIPSBURG TOWN COUNCIL

Case Initiation Date: 06/25/2021

Attorney Name: MICHAEL L COLLINS

Firm Name: KING, MOENCH, HIRNIAK & MEHTA, LLP

Address: 51 GIBRALTAR DR STE 2F

MORRIS PLAINS NJ 079501254

Phone: 9739986860

Name of Party: DEFENDANT :

TOWNOFPHILLIPSBURGTOWNCOUNCIL

Name of Defendant's Primary Insurance Company

(if known): JOINT INSURANCE FUND

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Answer

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: JANICE HOSBACH? NO

Are sexual abuse claims alleged by: GARIS KORMANDY? NO

Are sexual abuse claims alleged by: BRENDA KORMANDY? NO

Are sexual abuse claims alleged by: SANDRA S MORRISETTE? NO

Are sexual abuse claims alleged by: DAVID P MORRISETTE? NO

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? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? 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? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

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 *Rule* 1:38-7(b)

08/26/2021
Dated

/s/ MICHAEL L COLLINS
Signed