
Brenda Kormandy and Garis Kormandy, Janice Hosbach, David P. Morrisette and Sandra S. Morrisette,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - WARREN COUNTY
	:	
Plaintiffs,	:	Civil Action
	:	
v.	:	
Town of Phillipsburg Town Council,	:	DOCKET NO. WRN-L-248-21
Defendant.	:	

PLAINTIFFS' INITIAL TRIAL BRIEF

Submitted by:

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Dated: April 13, 2022.

Table of Contents

	<u>Page</u>
Preliminary Statement	1
Statement of Pertinent Facts	2
A. Adoption of Ordinance 2021-14	2
B. The Material Conflicts Of Interest: At Least Three Of The Council Members Voting On Ordinance 2021-14, Including Two “Yes” Votes,” Were Disqualified By Prior Material Representations By The Florio Perrucci Law Firm; <i>Even One</i> Conflicted Vote For Or Against Suffices To Void The Ordinance	8
1. McVey DUI Prosecution	9
2. Maltreatment Of Personnel Lawsuits: Kelly Post-Sheedy	9
3. Maltreatment Of Personnel Lawsuits: Samuel Cappello	10
4. Maltreatment Of Personnel Lawsuits: Rick Thompson	11
5. Maltreatment Of Personnel Lawsuits: Sherry Corcoran	12
6. Unjustified Refusal To Reimburse Former Mayor Stephen Ellis’s Legal Fees.	13
ARGUMENT: There Are Numerous Disqualifying Conflicts Of Interest: Settled Law Mandates That Even One Such Conflict Voids Ordinance 2021-14 Ab Initio	15
CONCLUSION	22

List of Exhibits

Plaintiffs' Exhibit 1. Ordinance 2021-14 of the Town of Phillipsburg Adopting the District 5 (Riverside Industrial) Amendment - Riverfront Redevelopment Plan; adopted May 4, 2021

Plaintiffs' Exhibit 2. Town of Phillipsburg Land Use Resolution No. 2022-2 Granting Preliminary and Major Site Plan Approval and Bulk Approval in Application No. 2021-1, Peron Construction, LLC, Applicant/Owner for Block 2102, Lot 2.02, 170 Howard Street.

Exhibits from discovery responses provided by the Town of Phillipsburg:

Plaintiffs' Exhibit 3. A. Town of Phillipsburg Certification dated March 15, 2022, by Robert Bengivenga, Jr., containing responses to interrogatories and documents produced as follows:

Plaintiffs' Exhibit 3. B. Planning Board Escrow Account, listing by Account Description

Plaintiffs' Exhibit 3. C. Development Escrow Account - Peron Development (Perrucci)

Plaintiffs' Exhibit 3. D. Development Escrow Account - Perron Riverview-21-001

Plaintiffs' Exhibit 3. E. Land Use Escrow Account - Peron Riverview

Plaintiffs' Exhibit 3. F. Angela Knowles, "Consistency Review Report," for Proposed Amendment to the Riverfront Redevelopment Plan, dated February 25, 2021

Plaintiffs' Exhibit 4. Municipal Court Case Search, Defendant Frank McVey III, Case E18 11855, 2919 - Union Township Municipal Court [McVey DUI filings]

Exhibits from Post-Sheedy v. Town of Phillipsburg, et al., Superior Court of Warren County Docket No. WRN-L-000059-18

Plaintiffs' Exhibit 5. A. Case Summary

Plaintiffs' Exhibit 5. B. Complaint filed February 28, 2018

Plaintiffs' Exhibit 5. C Answer of Town of Phillipsburg, Robert Fulper, Danielle DeGerolamo, and Frank McVey, filed May 3, 2018, by Florio Perrucci Steinhardt & Cappelli, LLC, by Pdraig P. Flanagan

Plaintiffs' Exhibit 5. D. Defendants' Memorandum of Law in Support of Defendants' Summary Motion, filed October 24, 2019

Plaintiffs' Exhibit 5. E. Order filed January 10, 2020, denying Defendants' motion for summary judgment with Opinion of Hon. Yolanda Ciccone, A.J.S.C

Plaintiffs' Exhibit 5. F. Order of Disposition filed March 3, 2020, marked "Settled"

Exhibits from Cappello v. Town of Phillipsburg, et al., Superior Court of Warren County, Docket No. WRN-L-000127-18

Plaintiffs' Exhibit 6. A. Case Summary

Plaintiffs' Exhibit 6.B. Complaint filed May 2, 2018

Plaintiffs' Exhibit 6. C. Answer filed June 26, 2018, by Defendants' Town of Phillipsburg, Robert Fulper, Danielle DeGerolamo and Frank McVey, by Florio Perrucci Steinhardt & Cappelli, LLC, by Padraig P. Flanagan

Plaintiffs' Exhibit 6. D. Defendants' Summary Judgment Motion brief, filed December 11, 2019

Plaintiffs' Exhibit 6. E. Order denying summary judgment, filed January 24, 2020, with Opinion by Hon. Yolanda Ciccone, A.J.S.C

Plaintiffs' Exhibit 6. F. Order of Disposition filed March 3, 2020, by Hon. Thomas C. Miller, P.J.S.C.

Exhibits from Corcoran v. Phillipsburg, et al., Warren County Superior Court Docket No. WRN-L-000024-20

Plaintiffs' Exhibit 7. A. Case Summary

Plaintiffs' Exhibit 7. B. Complaint filed January 16, 2020

Plaintiffs' Exhibit 7. C Answer filed February 26, 2020, by Defendants' Town of Phillipsburg, Robert Fulper, Danielle DeGerolamo and Frank McVey, by Florio Perrucci Steinhardt & Cappelli, LLC, by Padraig P. Flanagan

Plaintiffs' Exhibit 7. D. Stipulation of Dismissal Without Prejudice filed July 21, 2021

Plaintiffs' Exhibit 7. E. Settlement Agreement dated August 19, 2020, itemizing three payments: Town of Phillipsburg, \$12,000 to Corcoran; Insurer, \$32,943 to Corcoran; Insurer, \$33,057 to Corcoran's attorneys

Exhibits from Thompson v. Fulper, et al., Warren County Superior Court Docket No. WRN-L-000159-20

Plaintiffs' Exhibit 8. A. Case Summary

Plaintiffs' Exhibit 8. B. Complaint filed May 20, 2020

Plaintiffs' Exhibit 8. C. Answer filed August 28, 2020, by Defendants' Town of Phillipsburg, Robert Fulper and Todd Tersigni, by Florio Perrucci Steinhardt Cappelli Tipton & Taylor, LLC, by Susan A. Lawless

Plaintiffs' Exhibit 8. D. Settlement Agreement dated March 24, 2021, stating \$115,000 as damages

Plaintiffs' Exhibit 8. E. Stipulation of Dismissal With Prejudice filed April 14, 2021

Exhibits from Ellis v. Town of Phillipsburg, et al., Warren County Superior Court Docket No. WRN-L-000057-18

Plaintiffs' Exhibit 9. A. Case Summary

Plaintiffs' Exhibit 9. B. Complaint filed February 26, 2018

Plaintiffs' Exhibit 9. C. Answer filed by Defendant Town of Phillipsburg

Plaintiffs' Exhibit 9. D. Certification of Robert Fulper dated April 24, 2019.

Plaintiffs' Exhibit 9. E. Order for Summary Judgment filed September 4, 2019 by Hon. Thomas C. Miller, P.J.S.C., awarding fees due from the Town of \$38,942.50

Plaintiffs' Exhibit 10. Ordinance 2021-27 of the Town of Phillipsburg Adopting the District 5 (Riverside Industrial) Amendment - Riverfront Redevelopment Plan, and rescinding Ordinance 2021-14, as passed by the Town Council

Plaintiffs' Exhibit 11. Summary of Action at the Town Council Meeting of May 4, 2021

Plaintiffs' Exhibit 12. Minutes of the Town Council Meeting of April 20, 2021

Plaintiffs' Exhibit 13. Email dated July 7, 2020 from Victoria Kleiner to David Morrisette responding to an OPRA request.

Table of Authorities

	<u>Page</u>
 CASES	
<u>Griggs v. Princeton Borough</u> , 33 <u>N.J.</u> 207 (1960).....	14
<u>Haggerty v. Red Bank Borough</u> , 385 <u>N.J. Super.</u> 501 (App. Div. 2006).....	14, 17, 18, 21
<u>Meehan v. K.D. Partners</u> , 317 <u>N.J. Super.</u> 563 (App. Div. 1998)	18
<u>Piscitelli v. Garfield ZBA</u> , 237 <u>N.J.</u> 333 (2019).....	15, 16, 17, 18, 20, 21
<u>Randolph v. Brigantine Planning Board</u> , 405 <u>N.J. Super.</u> 215 (App. Div. 2009).....	14, 18, 21
<u>Thompson v. City of Atlantic City</u> , 190 <u>N.J.</u> 359 (2007)	16
<u>Voorhees v. Preferred Mutual Ins. Co.</u> , 128 <u>N.J.</u> 165 (1992).....	19 n. 8
<u>Wyzykowski v. Rizas</u> , 132 <u>N.J.</u> 509 (1993).....	14, 15, 16, 17, 20, 21
 STATUTES	
<u>N.J.S.A.</u> 39:4-50	19
<u>N.J.S.A.</u> 40A:9-22.5(d).....	18, 20
Town of Phillipsburg Code § 27-1	13, 19
Town of Phillipsburg Code § 27-1A.....	13 n. 6
Town of Phillipsburg Code § 27-1B(2)	13 n. 6
Town of Phillipsburg Code § 27-2	13, 19

Preliminary Statement

Plaintiffs David Morrisette and Sandra Morrisette and Janice Hosbach file their initial trial brief in this action in lieu of prerogative writs. Plaintiffs challenge Ordinance 2021-14 of the Town of Phillipsburg, adopted on May 4, 2021, which made a significant and unlawful amendment to the Town's redevelopment plan. The amendment would allow the designated redeveloper and owner of the property involved, Peron Construction, Inc., to construct a large truck distribution warehouse on the last undeveloped waterfront property in the Town, contrary to the town's Master Plan and re-examination reports. The amendment was based on a contrived "Consistency Report" and still undisclosed concept plan, among other things.

Peron Construction, Inc., is owned by Michael Perrucci, Esq., a name partner in the Phillipsburg law firm of Florio Perrucci Steinhardt Cappelli Tipton & Taylor, LLC. (Florio Perrucci).

Plaintiffs filed this action on June 25, 2021, alleging several incontrovertible defects in the Ordinance and its adoption. Pursuant to the Case Management Order of the court issued on March 2, 2022, this brief will address only one of the defects, which will conclusively dispose of the case on its merits.¹ At least three of the five council members voting on Ordinance 2021-14 have in the recent past been given substantial legal representation by one or more lawyers in the Florio Perrucci firm. By settled law, this conflict of interest voids the ordinance ab initio.

Preliminarily, we note that the court permitted plaintiffs to serve discovery limited

¹ Plaintiffs reserve their right pursuant to the 3/2/22 CMC to file a brief addressing the other counts of the complaint should this conflicts issue not dispose of the case with finality.

to the conflicts issues, and that discovery was served on October 13, 2021. The Town resisted serving answers, but finally served its responses on March 16, 2022, five months later. The responses were cryptic, evasive and non-responsive, to say the least. While the normal remedy for such discovery abuse is to engage in motions practice, this initial brief on the conflicts issue was due in less than a month, so there was not enough time to pursue motions. Peron had in the interim obtained site plan approval and plaintiffs could ill afford to delay this brief in the event that Peron began construction activities. We note these abusive discovery responses in several instances in this brief, not to request relief at this time, but to note that the Town's actions in this case lack the most basic credibility. Our discovery requests and the Town's responses are Plaintiffs' Exhibit 3. We had to retrieve the relevant documents independently.

Statement of Pertinent Facts

A. Adoption Of Ordinance 2021-14

1. Plaintiffs David and Sandra Morrisette are residents of Phillipsburg. Plaintiff Janice Hosbach is a resident of Phillipsburg.

2. As filed initially, the complaint also included Brenda and Garis Kormandy, also residents of Phillipsburg. They asked to be removed as plaintiffs and in a case management conference, the Assignment Judge agreed to that request, but it has not yet been officially accomplished in the case. We request that this be done now.

3. The Town of Phillipsburg is an incorporated municipality organized under the laws of the State of New Jersey.

4. On the home page of its website, the Town advertises itself thus:

Welcome To Phillipsburg, New Jersey

Located on the Delaware River, in a beautiful setting of rolling hills, woodlands, and flowing waters, Phillipsburg, New Jersey offers the best of all worlds. Here, you can escape from crowded, impersonal developments, and find the joys of living in a close-knit community of families and friends, as you enjoy all the advantages of urban living as well as rural atmosphere - from a quaint downtown waterfront shopping district, to a choice of nearby airports.

Just 30 minutes from the Pocono Mountains, and midway between Philadelphia and New York City, Phillipsburg is an historic town with an exciting future. It's a place where the beauty, culture, tourism and recreational activities are enhanced with a growing base of small and mid-size businesses.

[www.phillipsburg.com]

5. At the time of adoption of the challenged ordinance, the subject site consisted of Block 2102, Lots 2.01 and 2.02, and is the last undeveloped Delaware River waterfront site in Phillipsburg (Site).² The Site was designated part of the Riverfront Development Area and as an area in need of redevelopment pursuant to the Local Redevelopment and Housing Law (LRHL). At some point thereafter, Peron Construction, Inc., was designated as the redeveloper and remains so today. In 2013, the Town adopted an amendment to the redevelopment plan zoning the subject site for a mixed-use development. (We use the term “zoning” in this brief not in the sense of a Municipal Land Use Law zoning, but as short hand for the commonly used land use designation under the LRHL.)

6. Under the 2013 amendment, permitted uses included mid-rise and low-rise residential, retail establishments and office uses in the mid-rise buildings, museums,

²The Land Use Board Resolution of approval of site plan recites that the site consisted of just Lot 2.02. Plaintiffs' Exhibit 2.

cultural and educational uses, parks and recreational facilities, and railway rights of way. Plaintiffs' Exhibit 14, pages 23-25.

7. Under the 2013 amendment, permitted uses for the Site did not allow large truck distribution warehouses. Plaintiffs' Exhibit 14 at pp. 23-25.

8. Lots 2.01 and 2.02 of the Site are owned by Peron Construction, Inc., which in turn is principally owned by Michael Perrucci, Esq., a partner in the Florio, Perrucci firm. Mr. Perrucci identifies himself as the "owner" of Peron on the law firm's website, <https://www.floriolaw.com/attorney/michael-j-perrucci/>.

On the site plan application and the Land Use Board's Resolution memorializing its approval of the site plan, Mr. Perrucci is identified as the owner of Peron.³ Plaintiffs' Exhibit 2 at p. 4.

9. Lot 1 of Block 2102 is part of the Town's Open Space inventory and was acquired by use of Green Acres funds. The original concept plan of Peron was to include this lot in its redevelopment scheme, which would have required that Lot 1 be removed from the Town's Open Space inventory. The proposed warehouse was to be 510,000 sq. ft. At some unspecified point, the Town requested that DEP remove Lot 1 from its Open Space Inventory. DEP refused that request. Peron accordingly revised its proposed site plan to avoid disturbance of Lot 1.

10. On April 20, 2014, The Town Council adopted on first reading Ordinance 2021-14, the subject of this action. Plaintiffs' Exhibit 1. The Ordinance amended the 2013

³ Despite this information being readily accessible in its own files, in its answers to our discovery, the Town frivolously asserted that it "lacks sufficient information" to confirm that Mr. Perrucci owns Peron. Interrogatory #7, Plaintiffs' Exhibit 3 at p. 6.

Redevelopment Plan to permit a heavy industrial use, namely, the Peron proposal for a large truck distribution warehouse.

11. On May 4, 2021, the Town Council adopted on second reading Ordinance 2021-14. Plaintiffs' Exhibit 1.

12. At the time of the adoption of Ordinance 2021-14 on first and second reading, the Town's Mayor was Todd Tersigni, which he remains today. The Council consisted of President Frank McVey III, Vice-President Robert Fulper, and members Danielle DeGerolamo, Randy Piazza and Harry Wyant. Ordinance 2021-14 was adopted by a vote of 3-2. Voting in favor were President McVey, Vice President Fulper and member Piazza. Those opposed were members DeGerolamo and Wyant. Plaintiffs' Exhibits 11 and 12.

13. In the April 20 meeting on first reading, plaintiff David Morrisette inquired as to whether any Council members had previously been represented by the Florio Perrucci firm. Plaintiffs' Exhibit 12 at p. 16. The Town Attorney recommended that no Council member answer the question. Ibid. However, member Harry Wyant later in the meeting stated on the record that he had been represented by the Florio Perrucci firm. Plaintiffs' Exhibit 12, at p. 17. The existence of, and nature of, this representation of Mr. Wyant was *not* disclosed in the Town's responses to the plaintiffs' discovery. As we do not know the nature of Mr. Wyant's prior representation, we will not rely upon that in this brief.

14. In the May 4 meeting on second reading, when plaintiff David Morrisette inquired as to whether any Council members had previously been represented by the Florio Perrucci firm, the Town Attorney refused to permit any answer to that obviously highly relevant

question. Certification of David Morrisette, ¶ 8.

15. On both first and second reading, two of the three “yes” votes, Council President McVey and Vice-President Fulper were in a conflict of interest. Council member DeGerolamo voted against the ordinance, but she, too, was disqualified as conflicted. As we set forth below, all three had been recently represented as defendants in multiple lawsuits by lawyers in the Florio Perrucci firm; in each case, they were sued in their individual capacities and therefore faced personal jeopardy. As we set forth in our argument below, by settled New Jersey law, all three of these members were disqualified from voting on Ordinance 2021-14, which voids the ordinance ab initio.

16. In addition, the Florio Perrucci firm had represented Council President McVey in a proceeding in which he was charged with driving under the influence, failure to stay within traffic lanes and failure to report an accident. Plaintiffs’ Exhibit 4. Finally, Vice-President Fulper also received substantial benefits from the Florio Perrucci firm in yet another recent case. Plaintiffs’ Exhibit 9B.

17. To sum up, at least three of the Council members voting on Ordinance 2021-14 had been represented by the Florio Perrucci firm, and law firm name partner Michael Perrucci was the owner of Peron, the beneficiary of the vote to allow a large truck distribution warehouse on the Town’s last undeveloped Delaware River waterfront site. Regardless of whether the conflicted member vote in favor of or against, any *one* of these disqualifications would be sufficient to void the ordinance ab initio.

18. In August, Council President McVey was charged with a criminal offense relating

to abuse of public office and resigned. Vice-President Fulper presided over Council meetings and Mark Lutz was appointed to replace McVey.

19. The parties to this action held a case management conference with then Assignment Judge Thomas Miller on September 15, 2021. Plaintiffs' counsel raised the conflicts issue and requested leave to serve limited discovery on that subject before the case proceeded to the merits. Accordingly, the court issued a case management order dated September 15, 2021, permitting the requested limited discovery. The discovery requests were served on October 13, 2021, two weeks after the CMC date. A subsequent CMC was held with Judge Miller on November 17, 2021.

20. In elections held on November 2, 2021, Council Vice President Fulper and McVey's replacement Mark Lutz were voted out of office. Danielle DeGerolamo did not seek re-election. Three new council members were elected: Peter Marino, Lee Clark and Keith Kennedy. Council members Randy Piazza and Harry Wyant remained in office. It was widely perceived that the new council would not vote to approve the rezoning of the redevelopment area.

21. In an effort to overcome some but not all of the defects in Ordinance 2021-20 before the new members of the Council took office in January 2022, the lame duck Council voted on November 23, 2021, on a new ordinance, No. 2021-27. Plaintiffs' Exhibit 10. Voting in favor were Vice-President Fulper and members Lutz, DeGerolamo and Piazza. Member Wyant voted against. Thus, at least two of the council members voting on Ordinance 2021-27 continued to be disqualified because of conflicts. Ordinance 2021-27 did not and could not

cure the conflicts defects.

22. The Town took the position in this litigation that Ordinance 2021-27 would moot Ordinance 2021-14 and therefore this lawsuit was moot. In consequence, the court allowed the overdue responses to plaintiffs' discovery to abide a subsequent case management conference in early 2022. However, Mayor Tersigni vetoed Ordinance 2021-27 and the Council did not override his veto.

Thus Ordinance 2021-14 remains the last legally binding Council action on the subject site and this action remains active.

23. In the meantime, Peron sought site plan approval from the Land Use Board (LUB). That approval was granted by the LUB in its meeting on January 27, 2022, and Town of Phillipsburg Land Use Resolution No. 2022-2 memorialized that approval on February 27, 2022. Peron sought, and the Land Use Board approved, construction of a 420,000 sq. ft. warehouse, ten "c" bulk variances, four permanent design waivers relating to landscaping and harmonious relation to the area, and two temporary waivers. The Board approved 352 passenger car parking spaces, 88 truck loading docks and 39 spaces for trailer truck parking. Plaintiffs' Exhibit 2.

B. The Material Conflicts Of Interest: At Least Three Of The Council Members Voting On Ordinance 2021-14, Including Two "Yes" Votes," Were Disqualified By Prior Material Representations By The Florio Perrucci Law Firm; *Even One* Conflicted Vote For Or Against Suffices To Void The Ordinance

In not one, but several instances, Council President McVey, Vice-President Fulper and Member DeGerolamo had received substantial and substantive assistance as individual defendants in a criminal prosecution and civil lawsuits defended by the Florio Perrucci firm.

1. McVey DUI Prosecution. On May 28, 2018, at approximately 9:30 p.m., then Council President Frank McVey III was arrested in Union Township and charged with multiple offenses: operating under the influence of liquor or drugs, driving across lanes and failure to report an accident. Plaintiffs' Exhibit 4. The court records do not reveal the nature of the accident. On February 26, 2019, McVey pleaded guilty to the charge of operating under the influence in exchange for dropping the other charges. Plaintiffs' Exhibit 4 at p. 5. His license was suspended for three months and he paid \$1,039 in fines and assessments. Ibid. McVey was represented by Donald E. Souders, Jr., a partner in the Florio Perrucci firm. Ibid.⁴

2. Maltreatment Of Personnel Lawsuits: Kelly Post-Sheedy. On February 28, 2018, Kelly Post-Sheedy, the then Superintendent of Recreation, filed a lawsuit against the Town and Fulper, DeGerolamo and McVey individually, alleging that when Fulper, DeGerolamo and McVey took office on January 1, 2018, they immediately sought to reduce her pay and took steps to terminate her. Plaintiffs' Exhibit 5B. The lawsuit alleged that these adverse actions were taken in retaliation for the plaintiff's exercise of her right to express political disagreement with the defendants, having nothing to do with her qualifications or conduct in her employment. The suit was brought under the New Jersey Constitution and the New Jersey Civil Rights Act and among other remedies sought damages from Fulper,

⁴ In its responses to our limited discovery, the Town misleadingly said that "In 2018, in his personal capacity, Frank McVey was represented by Donald Sanders (sic), Esq. of the Florio firm in connection with a *municipal court matter*. The total estimated cost of this representation was \$7,000." (Plaintiffs' Exhibit 3 at p. 5, emphasis added.) This highly misleading response also did not furnish any of the documents requested. The response also misspelled Mr. Souders' name.

DeGerolamo and McVey *individually*. Ibid. An answer was filed on behalf of the Town and Fulper, DeGerolamo and McVey individually, on May 12, 2018, and signed by Padraig P. Flanagan, a lawyer in the Florio Perrucci Firm. Plaintiffs' Exhibit 5C at p. 1.⁵

The Florio Perrucci firm filed a motion for summary judgment. Plaintiffs' Exhibit 5D. The essence of the defense was that Post-Sheedy was in a supervisory position and therefore could be disciplined for critical political activities. The motion was denied. Plaintiffs' Exhibit 5E. The case was subsequently settled by the Town's insurer for \$170,000. Plaintiffs' Exhibit 13. While we do not know at this point how this figure was calculated, it is obviously far higher than a nuisance value settlement. This case presented serious jeopardy for the individual Council members.

3. Maltreatment Of Personnel Lawsuits: Samuel Cappello. On May 2, 2018, Samuel Cappello, a Town employee holding several offices, filed a lawsuit against the Town and Fulper, DeGerolamo and McVey individually, alleging that Fulper, DeGerolamo and McVey took office on January 1, 2018, and took steps to eliminate his positions and reduce his pay. Plaintiffs' Exhibit 6B. The lawsuit alleged that these adverse actions were taken in retaliation for the plaintiff's exercise of his right to express political disagreement with the defendants, having nothing to do with his qualifications or conduct in his employment. Plaintiffs' Exhibit 6B at pp. 6-7. The suit was brought under New Jersey's Civil Rights Act and among other remedies sought damages from Fulper, DeGerolamo and McVey

⁵ In its non-responses to our discovery, the town only listed the captions and docket numbers for the Corcoran, Post-Sheedy, Cappello, and Thompson cases and otherwise unjustifiably refused to furnish most of the information and any of the documents requested. Plaintiffs' Exhibit 3. We independently retrieved the relevant documents.

individually. An answer was filed on behalf of the Town and Fulper, DeGerolamo and McVey individually, on May 12, 2018, and signed by Padraig P. Flanagan, a lawyer in the Florio Perrucci Firm. Plaintiffs' Exhibit 6C.

The Florio Perrucci firm filed a motion for summary judgment. Plaintiffs' Exhibit 6D. The essence of the defense was much like that asserted in Post-Sheedy: that Cappello was in a supervisory position and therefore could be disciplined for critical political activities. Plaintiffs' Exhibit 6D at pp. 18-19. The motion was denied. Plaintiffs' Exhibit 6E. The case was subsequently settled for a cash payment by the insurer of the Town of \$122,500. Plaintiffs' Exhibit 13. While we do not know at this point how this figure was calculated, it is obviously far higher than a nuisance value settlement. This case presented serious jeopardy for the individual Council members.

4. Maltreatment Of Personnel Lawsuits: Rick Thompson. On May 5, 2020, Rick Thompson, appointed by the previous Mayor in 2019 as Superintendent of Recreation, filed a lawsuit against the Town and Mayor Todd Tersigni and Fulper individually, alleging that Tersigni and Fulper took steps to terminate him. Plaintiffs' Exhibit 8B. The lawsuit alleged that these adverse actions were taken in retaliation for the plaintiff's exercise of his right to express political disagreement with the defendants, having nothing to do with his qualifications or conduct in his employment. Plaintiffs' Exhibit 8B at pp. 4-5. The suit was brought under the New Jersey Civil Rights Act and among other remedies sought damages from Tersigni and Fulper *individually*. Plaintiffs' Exhibit 8B at p. 8. An answer was filed on behalf of the Town and Tersigni and Fulper individually, on August 8, 2020, and signed

by Susan Lawless, a lawyer in the Florio Perrucci Firm. Plaintiffs' Exhibit 8C.

This lawsuit was settled by a cash payment by the Town of \$115,000. Plaintiffs' Exhibit 8D at p. 2. Again, this is no minor nuisance value settlement.

5. Maltreatment Of Personnel Lawsuits: Sherry Corcoran. On January 16, 2020, Sherry Corcoran, who had been a Confidential Assistant to then Mayor Stephen Ellis, sued the Town, Council President McVey, Council Vice-President Fulper and member DeGerolamo alleging that they acted illegally to reduce her pay and then terminated her. Plaintiffs' Exhibit 7B. The suit was brought under the New Jersey Civil Rights Act and among other remedies sought damages from Fulper, DeGerolamo and McVey *individually*. Plaintiffs' Exhibit 7B at p. 7.

The court ordered the parties to mediation, and the case was subsequently settled for a cash payment by the Town of \$78,000. Plaintiffs' Exhibit 7E. This is no nuisance value settlement. This was serious jeopardy for the individual Council members.

As to the Post-Sheedy, Cappello, Corcoran and Thompson lawsuits, we ask the court to notice that these are not instances in which a mayor or council member is sued in an official capacity for simply carrying out duties, such as having voted on or approved a challenged municipal action. In each instance, the defendants are individually alleged to have illegally tried to punish the plaintiff for expressing political views or for simply having been appointed by a member of another party. The defendants were alleged to have taken concrete steps to punish the plaintiffs.

Thus, these complaints allege willful and deliberate acts of wrongdoing. If proven to

the satisfaction of a jury, the allegations presented the defendants with the serious jeopardy of being compelled to pay monetary damages to the plaintiff. The Phillipsburg Town Code denies indemnification for any act of “actual fraud, actual malice or willful misconduct” in Section 27-2; see also Section 27-1.⁶

6. Unjustified Refusal To Reimburse Former Mayor Stephen Ellis’s Legal Fees. On February 26, 2018, then Mayor Stephen Ellis sued the Town and Council Member Fulper for refusing to reimburse his legal fees of \$9,275.00 in a municipal court criminal matter, which was dismissed for lack of evidence. Plaintiffs’ Exhibit 9B, pp. 1-2. (Not directly relevant here is that Ellis also sued one Blaine Fehley who had filed the criminal complaints against Ellis. Plaintiffs’ Exhibit 9B, p. 1.) The Town’s principal defenses appear to have been technical claims of lack of adequate notice of the underlying criminal complaint. Plaintiffs’ Exhibits 9C at p. 3, 9D at p. 1 and 9E at p. 2. The case file shows a rather tortured procedural history, Plaintiffs’ Exhibit 9A, but ultimately Hon. Thomas C. Miller, A.J.S.C., granted Ellis’s motion for summary judgment. Plaintiffs’ Exhibit 9E at p. 17. He awarded Ellis the contested fees from the underlying matter and also his fees and costs incurred in bringing the lawsuit, a total of \$38,942.50. Plaintiffs’ Exhibit 9E at p. 17.

⁶ Sec. 27-1A provides:

Except as provided herein, the Town of Phillipsburg may, upon the request of any present or former employee of the Town, provide for the defense of any civil action brought against such employee on account of an act or omission in the scope of his or her employment or service to the Town.

Sec. 27-2B(2) provides in relevant part:

The Town may refuse to provide for the defense and indemnification provided for in this chapter if the Town determines that:

The act or omission was because of actual fraud, actual malice, or willful misconduct....

One of Ellis's claims against Fulper was that prior to being elected to the Council, Fulper had supported Fehley's charges against Ellis, but refused to recuse himself from the Town Council vote to deny Ellis reimbursement of his municipal court fees. Plaintiffs' Exhibit 9B at p. 2. Count III of the complaint charged that Fulper violated his fiduciary duty by refusing to recuse himself, and sought damages from him. Plaintiffs' Exhibit 9B at p. 4.

Fulper was not represented by legal counsel, and filed an answer pro se, but he clearly relied on the defenses and motions of the Town, which was represented by Padraig Flanagan, a partner in the Florio Perrucci firm. Fulper also filed a certification (prepared by Flanagan) in support of the Town's motion for summary judgment. Exhibit 9D. Although not named as a defendant in that case, McVey also filed a supporting certification.

Thus, even though the Florio Perrucci firm never entered a formal appearance on behalf of Fulper, he was clearly relying on that firm's work for the town to protect him from any liability.

Directly relevant here, Judge Miller's May 24, 2019, order denying the Town's motion for summary judgment specifically held that if Fulper was indeed in a conflict of interest, the vote to deny reimbursement of Ellis' fees would be vacated in its entirety *regardless* of the status of the votes of the other council members. Plaintiffs' Exhibit 9E at p. 7. The court cited Griggs v. Princeton Borough, 33 N.J. 207 (1960), a predecessor case to Wyzykowski v. Rizas, 132 N.J. 509 (1993), Randolph v. Brigantine Planning Board, 405 N.J. Super. 215, 232 (App. Div. 2009), and Haggerty v. Red Bank Borough, 385 N.J. Super. 501 (App. Div. 2006). Plaintiffs' Exhibit 9E at p. 7. We rely on the latter three cases here, among others.

ARGUMENT: There Are Numerous Disqualifying Conflicts Of Interest: Settled Law Mandates That Even One Such Conflict Voids Ordinance 2021-14 Ab Initio

New Jersey has a strong line of statutory and case law prohibiting municipal council members from acting in any matter in which they have a potential conflict of interest. That authority mandates that Ordinance 2021-14 be voided.

There are two leading Supreme Court cases. The first is Wyzykowski v. Rizas, 132 N.J. 509 (1993). The Mayor of Neptune Township applied for Planning Board permission to construct a building with ground floor office space and eleven residential units in the Ocean Grove Historic District. A revised application reduced the number of residential units to six. (One issue not relevant here was whether the residential units would qualify as “accessory” uses.) After a “rocky procedural course”, 132 N.J. at 534 (Clifford, dissenting), several hearings and extensive testimony and exhibits, the nine member Planning Board approved the application by a vote of 3-2. The Mayor had appointed all three “yes” votes. Three other members including the Mayor disqualified themselves.

The Court stated the test for disqualification:

An actual conflict of interest is not the decisive factor, nor is "whether the public servant succumbs to the temptation," but rather whether there is *a potential for conflict*." Griggs v. Borough of Princeton, 33 N.J. 207,219, 162 A.2d 862 (1960) (citing Aldom, supra, 42 N.J. Super. at 502, 127 A.2d 190). A conflicting interest arises when the public official *has an interest not shared in common with the other members of the public*. Id. 33 N.J. at 220-21, 162 A.2d 862. Another way of analyzing the issue is to understand that "[t]here cannot be a conflict of interest where there do not exist, realistically, *contradictory desires tugging the official in opposite directions*." LaRue v. Township of East Brunswick, 68 N.J. Super. 435,448, 272 A.2d 691 (App. Div. 1961).

[Wyzykowski, 132 N.J. at 524 (emphasis added).]

The second leading case is Piscitelli v. Garfield ZBA, 237 N.J. 333 (2019), in which the

Court addressed facts very analogous to those in this case. In Piscitelli, the application for development before the Garfield Zoning Board of Adjustment was presented by several trusts in which Dr. Kenneth Conte, the President of the Garfield Board of Education, and members of his immediate family, had an interest. Five members of the zoning board were either employed by the Board of Education or had immediate family members who were so employed. No Board member disqualified himself or herself, and the application was approved.

On appeal, the Appellate Division affirmed the Board, and upheld the denial of the plaintiffs' request to take discovery on whether any Board members were patients of Dr. Conte or his physician or dentist brothers.

The Supreme Court reversed. Piscitelli, 237 N.J. at 345. The Court's discussion begins "[t]he overall objective 'of conflict of interest laws is to ensure that public officials provide disinterested service to their communities' and to 'promote confidence in the integrity of governmental operations.' Thompson v. City of Atlantic City, 190 N.J. 359, 364 (2007)."
Piscitelli, 237 N.J. at 349. The Court adds, "[a]n essential guarantee of the common law is the right 'to a fair and impartial tribunal.'" Piscitelli, 237 N.J. at 350, quoting Wyzykowski v. Rizas, supra, 132 N.J. at 522.

Here is the heart of the Court's holding:

We reverse and remand for further proceedings to decide whether any Zoning Board member had a disqualifying conflict of interest in hearing the application for site plan approval and variances in this case. The trial court must assess *two separate bases* for a potential conflict of interest. First, did Dr. Kenneth — as president or a member of the Board of Education — have the authority to vote on significant matters relating to the employment of Zoning Board members or their immediate family members?

Second, *did any Zoning Board members or an immediate family member have a meaningful patient-physician relationship with any of the three Conte doctors? If the answer to either of those questions is yes, then a conflict of interest mandated disqualification and the decision of the Zoning Board must be vacated.*

[Piscitelli, 237 N.J. at 340 (emphasis added).]⁷

Also persuasive is Haggerty v. Red Bank Borough, 385 N.J. Super. 501 (App. Div. 2006), in which the court confronted a challenge to two separate resolutions on a bifurcated application, the first granting a density variance and the second approving site plan and a bulk variance. As to the second resolution, the challenge was filed within the 45 day rule of R. 4:69-6, but over a year after the first resolution. Among the plaintiffs' claims was that the Vice Chair of the Zoning Board, acting as chair because the chair had recused himself, was also in a conflict of interest. (The trial court had denied plaintiffs' initial request to expand the record on their conflicts of interest allegations, finding that they were too speculative.)

On appeal, however, the Appellate Division reversed. It found that the Vice Chair was in a conflict of interest, and therefore, "[a]s a result of [the Vice Chair's] participation, the Board proceedings, *in their entirety, are void and must be set aside.*" Haggerty, 385 N.J. Super. at 527 (emphasis added). Thus, the court found that a conflict of interest so tainted

⁷ We note that the first part of this holding is that on remand the lower court should assess whether any member of the Zoning Board who were themselves or had relatives employed by the Board of Education had been subject to any "significant personnel decisions" in which Dr. Conte was involved, or were in "apprehension" of Dr. Conte's potential involvement in such decisions in the future. This would appear to go further than the Court did in Wyzykowski, which held that mere appointment by the Mayor was not a disqualifying interest. In Piscitelli, however, the Court ordered that a detailed inquiry into the circumstances of the Zoning Board members was required. This appears to require more scrutiny than Wyzykowski would have called for. The court need not resolve this issue here, but the precise facts of Piscitelli require that this court apply heightened scrutiny to the conflicted Council members here, in this closely analogous case.

the proceedings that a complaint filed *a year out of time* would still be considered. As Judge Miller noted in his May 24, 2019 opinion denying the Town's motion for summary judgment in the Ellis case we discussed above, Haggerty held that a sufficient number of non-conflicted votes in favor would *not* save the voided approvals. See Plaintiffs' Exhibit 9E at p. 7.

See also Randolph v. Brigantine Planning Board, 405 N.J. Super. 215, 232 (App. Div. 2009), in which the court voided a site plan approval because the Chair of the Board had been in a ten-year unmarried relationship with the brother and fellow employee of the Board's appointed professional engineer. The opinion contains an extensive discussion of the law of conflicts. The court's decision to void the site plan approval was made even though the Board Chair did not participate in or vote on ultimate approval, which passed by a 6-1 vote. Randolph is cited with approval in Piscitelli, 237 N.J. at 354.

Also applicable is the Local Government Ethics Law, which applies to all Council members. It provides in relevant part that

[n]o local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

[N.J.S.A. 40A:9-22.5(d).]

See also Meehan v. K.D. Partners, 317 N.J. Super. 563 (App. Div. 1998), which found a conflict involving a member of a Planning Board whose son was a witness, even though the son was *against* the member's position.

Applying this well settled body of law to Ordinance 2021-14 is straightforward and

conclusive. Again, although this is not dispositive, the challenged vote to approve the amendment was 3-2. Only one disqualified member is sufficient to void the ordinance.

Mr. McVey's vote in favor *alone* is therefore sufficient to void the approval and the ordinance ab initio. He was the beneficiary of at least five substantial representations by the Florio Perrucci firm.

One representation largely rescued him from the severe consequences of an arrest for drunk driving and leaving the scene of an accident, among other charges. On the DUI charge, he faced the jeopardy of the suspension of his license for up to seven months, penalties of up to \$500 plus other fees and assessments and incarceration for up to 30 days. N.J.S.A. 39:4-50. For failure to report an accident, he faced more fines and the possible loss of his license. For making an unsafe lane change – the most obvious explanation is that he was “weaving” due to his intoxication -- he faced more fines and possible incarceration of up to 15 days. His Florio Perrucci lawyer was able to negotiate a plea deal with loss of his license for only three months and no period of incarceration. Plaintiffs' Exhibit 4 at p. 5.

McVey was also a defendant in the Corcoran, Cappello, Thompson and Post-Sheedy lawsuits, and we again note that he was sued in his individual capacity and faced the possibility of personally paying damages to the plaintiffs if he were determined to have engaged in “willful misconduct,” grounds for the Town to deny indemnification. Phillipsburg Town Code, Section 27-2; see also Section 27-1.⁸ In each of these cases, the complaint alleged, and was supported by sufficient evidence to overcome the Town's summary

⁸ These provisions are quoted in relevant part in n. 6 above. We also note that New Jersey has a longstanding public policy prohibiting insurance for intentional wrongdoing. See, e.g., Voorhees v. Preferred Mutual Ins. Co., 128 N.J. 165, 180-181 (1992).

judgment motion, that McVey (and others) had initiated or supported making material adverse changes in the plaintiffs' employment pay and status, essentially to punish the employees' exercise of their First Amendment rights to criticize McVey and others. That would be sufficient to justify submitting to a jury the question of whether McVey's conduct was "willful misconduct."⁹

McVey thus had every reason to consider himself in *considerable* debt to the Florio Perrucci firm. This was unquestionably a "meaningful" attorney-client relationship involving a serious criminal matter and several civil suits with real personal jeopardy. Piscitelli, 237 N.J. at 359. This was a direct and indirect personal and financial involvement that might reasonably impair his judgment on the Peron matter. N.J.S.A. 40A:9-22.5(d). McVey had an interest "not shared by the general public," namely, an interest in favoring the law firm that saved him from serious criminal and civil jeopardy. Wyzykowski, 132 N.J. at 524. This is not a close call.

Piscitelli does not define or explain what is meant by "meaningful" in this context. But it surely means something more than a brief, passing relationship or one involving a trivial matter. However defined, Frank McVey had a meaningful attorney-client relationship with the Florio Perrucci firm that lasted at least from 2018 to 2021, involving one criminal (Plaintiffs' Exhibit 4), three civil matters (Plaintiffs' Exhibits 5C, 6C and 7C; Plaintiffs' Exhibit 3 at p. 5), and one involving preparation of two legal instruments (Plaintiffs' Exhibit 3 at p. 5).

⁹ McVey also used the Florio Perrucci firm to prepare two legal instruments. Plaintiffs' Exhibit 3 at p. 5.

Although this is not expressly mentioned in the cases or the statute, there is also this to consider. Attorney-client privilege protects communications between an attorney and client and thus encourages the client to disclose embarrassing or distasteful facts. It would be a breach of the privilege for an attorney to disclose those facts, but of course there are usually ways to let things leak out. This would be especially concerning to a politician who had to face the voters for re-election. This is much like the concern expressed in Piscitelli about whether Board of Education employees would be apprehensive about future employment decisions. 237 N.J. at 358.

Thus, applying Wyzykowski, Piscitelli, Haggerty, Randolph and the Local Government Ethics Law, McVey's vote in favor must be held to void Ordinance 2021-14 ab initio. This is the outcome regardless of the other votes on the ordinance. *The court's inquiry ends here.*

Council Member Fulper's affirmative vote only reinforces the necessity to void the ordinance. He faced precisely the same jeopardy and was represented to the same extent in his individual capacity as McVey in the Corcoran, Cappello, Thompson and Post-Sheedy lawsuits. In addition, even if the Florio Perrucci firm did not enter a formal appearance on his behalf in the Ellis lawsuit, he also faced individual jeopardy in that case on Count III, Violation of Fiduciary Duty, and relied very much on the Florio Perrucci motion filings on behalf of the Town.

Council Member DeGerolamo was also an individual defendant in the Corcoran, Cappello, Thompson and Post-Sheedy lawsuits. Plaintiffs' Exhibits 5C, 6C and 7C. She voted

against Ordinance 2021-14, but Haggerty holds that her participation in the meeting and the vote also mandates voiding Ordinance 2021-14.

CONCLUSION: For the reasons set forth in this brief and accompanying exhibits, plaintiffs respectfully request that this court adjudge and decree that Ordinance 2102-14 of the Town of Phillipsburg is void ab initio.

Plaintiffs also respectfully request that Brenda and Garis Kormandy be removed as plaintiffs from the case.

Respectfully submitted,

POTTER AND DICKSON

 /s/ Peter Dickson
Peter Dickson
Attorney for Plaintiffs

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Attorneys for Plaintiffs,
David P. Morrisette
and Sandra S. Morrisette
and Janice Hosbach

<p>Brenda Kormandy and Garis Kormandy, Janice Hosbach, David P. Morrisette and Sandra S. Morrisette,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Town of Phillipsburg Town Council, Defendant.</p>	<p>: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION - WARREN COUNTY : : Civil Action : : DOCKET NO. WRN-L-248-21 :</p>
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CERTIFICATION OF PETER DICKSON

1. I am Peter Dickson, counsel for the plaintiffs in this action. I have personal knowledge of these facts.
2. I certify the Plaintiffs' Exhibit 1 is a true and correct copy of Ordinance 2021-14 of the Town of Phillipsburg.
3. I certify that Plaintiffs' Exhibit 10 is a true and correct copy of Ordinance 2021-27 of the Town of Phillipsburg.
4. I certify that Plaintiffs' Exhibit 2 is a true and correct copy of the Resolution 2022-2 of the Phillipsburg Land Use Board.
5. I certify that Plaintiffs' Exhibit 3 is a true and correct copy of discovery

responses received from counsel for the Town of Phillipsburg in this matter.

6. I certify that Plaintiffs' Exhibit 4 is a true and correct copy of documents I retrieved from an online search of municipal court records.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



Peter Dickson

Dated: April 13, 2022.

Peter D. Dickson,
NJ Attorney ID # 001661979
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Attorneys for Plaintiffs,
David P. Morrisette
and Sandra S. Morrisette
and Janice Hosbach

Brenda Kormandy and Garis Kormandy, Janice Hosbach, David P. Morrisette and Sandra S. Morrisette,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - WARREN COUNTY
	:	
Plaintiffs,	:	Civil Action
	:	
v.	:	
Town of Phillipsburg Town Council,	:	DOCKET NO. WRN-L-248-21
Defendant.	:	

CERTIFICATION OF ELLEN DELATE

1. I am Ellen Delate, an adult resident of New Jersey and Assistant and Paralegal in the firm of Potter and Dickson, counsel to the plaintiffs in this action. I have personal knowledge of these facts.

2. I certify that Plaintiffs' Exhibits 5A, 5B, 5C, 5D, 5E, 5F, 6A, 6B, 6C, 6D, 6E, 6F, 7A, 7B, 7C, 7D, 8A, 8B, 8C, 8E, 9A, 9B, 9C, 9D, and 9E are true and correct copies of case summaries, pleadings, and orders retrieved from the e-filing records of the New Jersey Judiciary website.

3. I certify that Plaintiffs' Exhibit 11 is a true copy and correct copy of the Summary of Action at the Town Council Meeting of May 4, 2021, which was provided to

this firm in response to an Open Public Records Act request I made for a copy of the meeting minutes, which are not yet available.

4. I certify that Plaintiffs' Exhibit 12 is a true copy and correct copy of the Minutes of the Town Council Meeting of April 20, 2021, which I downloaded from the Town of Phillipsburg website.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.


Ellen Delate

Dated: April 13, 2022.

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NJ Attorney ID # 001661979
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Attorneys for Plaintiffs,
David P. Morrisette
and Sandra S. Morrisette
and Janice Hosbach

Brenda Kormandy and Garis Kormandy, Janice Hosbach, David P. Morrisette and Sandra S. Morrisette,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - WARREN COUNTY
	:	
Plaintiffs,	:	Civil Action
	:	
v.	:	
Town of Phillipsburg Town Council,	:	DOCKET NO. WRN-L-248-21
Defendant.	:	

CERTIFICATION OF DAVID MORRISETTE

1. I am David Morrisette, an adult resident of New Jersey and one of the plaintiffs in this action. I have personal knowledge of these facts.

2. I certify that Plaintiffs' Exhibits 7E and 8E are true and correct copies of documents I received from the Town of Phillipsburg in response to a request I made under the Open Public Records Act (OPRA).

3. I certify that the settlement figures for the Post-Sheedy and Cappello cases were given to me by the Clerk of the Town of Phillipsburg by email, a true and correct copy of which is Plaintiffs' Exhibit 13. I have made an OPRA request for these settlements, but as of this date I have not received any response.

4. I attended the Phillipsburg Town Council meetings of April 20 and May 4, 2021. In fact, I try to attend all such Council meetings. At the April 20 meeting and the May 4 meeting, the Council voted to adopt Ordinance 2021-14.

5. At the time of the April 20 and May 4 votes, the Town's Mayor was Todd Tersigni, which he remains today. The Council consisted of President Frank McVey III, Vice-President Robert Fulper, and members Danielle DeGeralomo, Randy Piazza and Harry Wyant. Ordinance 2021-14 was adopted by a vote of 3-2. Voting in favor were President McVey, Vice President Fulper and member Piazza. Those opposed were members DeGeralomo and Wyant.

6. In the April 20 meeting on first reading, I inquired as to whether any Council members had previously been represented by the Florio Perrucci firm. The Town Attorney recommended that no Council member answer the question. However, member Harry Wyant later in the meeting stated on the record that he had been represented by the Florio Perrucci firm.

7. In the May 4 meeting on second reading, when I inquired as to whether any Council members had previously been represented by the Florio Perrucci firm, the Town Attorney refused to permit any answer to that obviously highly relevant question.


8. In August, Council President McVey was reportedly charged with various criminal offenses relating to abuse of the 911 system and resigned. Shortly afterwards he was indicted for allegedly threatening Mayor Tersigni with a blackmail scheme. Vice-President Fulper presided over Council meetings and Mark Lutz was appointed to

replace Frank McVey.

9. It was reported that in elections held on November 2, 2021, Council Vice President Fulper and McVey's replacement Mark Lutz were voted out of office. Danielle DeGerolamo did not seek re-election. Three new council members were elected: Peter Marino, Lee Clark and Keith Kennedy. Council members Randy Piazza and Harry Wyant remained in office. It was widely perceived that the new council would not vote to approve the rezoning of the redevelopment area.

10. The Council voted on November 23, 2021, on a new ordinance, No. 2021-27. I attended this meeting. Voting in favor were Vice-President Fulper and members Lutz, DiGeralomo and Piazza. Member Wyant voted against. Mayor Tersigni vetoed ordinance 2021-27. No vote to override Mayor Tersigni's veto was attempted

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.


David Morrisette 4/12/2022

Dated: April 12, 2022.

1st Read 04-20-2021
2nd Read 05-04-2021

O: 2021 -14

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, NEW JERSEY ADOPTING THE DISTRICT 5 (RIVERSIDE INDUSTRIAL) AMENDMENT - RIVERFRONT REDEVELOPMENT PLAN

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**Redevelopment Law**”), authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment or areas in need of rehabilitation, as such terms are defined in the Act; and

WHEREAS, in accordance with the requirements of the Redevelopment Law, the municipal council (“**Town Council**”) of the Town of Phillipsburg (the “**Town**”) previously determined that the properties identified as Block 2102, Lots 1, 2.01, and 2.02 on the official tax maps of the Town constituted an area in need of redevelopment (the “**Riverfront Redevelopment Area**”) in accordance with the requirements of the Redevelopment Law; and

WHEREAS, Block 2102 Lot 1 is a parcel located in District 3 of the Riverfront Redevelopment Area that was encumbered using Green Acres funding and Block 2102 Lots 2.01 and 2.02 are located in District 5 of the Riverfront Redevelopment area; and

WHEREAS, Block 2102 Lot 1 in District 3 will merge with District 5 in order to effectuate the District 5 Amendment - Riverfront Redevelopment Plan; and

WHEREAS, in order to effectuate the redevelopment of the Riverfront Redevelopment Area and establish the riverfront districts, including Districts 3 and 5, the Town has previously adopted a redevelopment plan entitled “Revised Riverfront Redevelopment Plan” dated November 4, 2013 by Ordinance 2013-19 (the “**Revised RRP**”), pursuant to the authority granted under the Redevelopment Law; and

WHEREAS, the Town wishes to amend the Revised RRP to incorporate Block 2102 Lot 1 into District 3 and change District 5 from Riverside Residential to Riverside Industrial, to permit industrial uses and allow the related amendments to accommodate the aforementioned purposes as specifically set forth in the attached **EXHIBIT A** (the “**District 5 Amendment – RRP**”); and

WHEREAS, the Town has referred the District 5 Amendment – RRP to the Phillipsburg Land Use Board (the “**Land Use Board**”) for its review, report and recommendation in accordance with N.J.S.A. 40A:12A-7(e); and

WHEREAS, the Land Use Board, at a duly noticed and constituted public meeting, has reviewed the District 5 Amendment – RRP; and

WHEREAS, following such review the Land Use Board has rendered its report and recommendations to the Borough and recommended the adoption of the District 5 Amendment – RRP pursuant to N.J.S.A. 40A:12A-7(e); and

WHEREAS, the Town wishes to adopt the District 5 Amendment – RRP as recommended by the Land Use Board Resolution, attached hereto as **EXHIBIT B** (the “**Board Resolution**”).



1st Read 04-20-2021

2nd Read 05-04-2021

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF PHILLIPSBURG, IN THE COUNTY OF WARREN, AS FOLLOWS:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The District 5 Amendment – Riverfront Redevelopment Plan is hereby adopted pursuant to the terms of the Redevelopment Law.
3. The zoning district map included in the zoning ordinance of the Town is hereby amended to reference and delineate the District 5 Amendment – Riverfront Redevelopment Plan. The District 5 Amendment – Riverfront Redevelopment Plan shall supersede the applicable development regulations of the Town’s municipal code, as and where indicated.
4. If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of the Ordinance.
5. A copy of the Ordinance and the District 5 Amendment – Riverfront Redevelopment Plan shall be available for public inspection at the office of the Town Clerk during regular business hours.
6. This Ordinance shall take effect in accordance with all applicable laws.

ATTEST:

TOWN OF PHILLIPSBURG

VICTORIA L. KLEINER,
Municipal Clerk

TODD M. TERSIGNI
Mayor

DATED:

CERTIFICATION

I, Victoria L. Kleiner, Municipal Clerk for the Town of Phillipsburg, do hereby certify that the foregoing is a true copy of an Ordinance duly adopted by the Town Council at their April 20, 2021 meeting.

VICTORIA L. KLEINER,
Municipal Clerk

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2022-2

**RESOLUTION GRANTING PRELIMINARY AND MAJOR SITE PLAN APPROVAL AND
BULK APPROVAL IN NO. 2021-1**

**Peron Construction, LLC – Applicant/Owner
60 West Broad Street, Suite 201
Bethlehem, Pennsylvania 18018**

**Block 2102, Lot 2.02
170 Howard Street**

Application #2021-1

WHEREAS, Peron Construction, LLC, (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”) for Preliminary Major Site Plan Approval; Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c); and any and all design exceptions and/or waivers (collectively “the Application”), for the construction of an industrial building of approximately four hundred and twenty thousand square feet (420,000’) on the property identified on the Town Tax Map as Block 2102, Lot 2.02, with a street address of 170 Howard Street, Phillipsburg, Warren County, with three hundred and fifty-two (352) passenger car parking spaces, eighty-eight (88) loading docks and thirty-nine (39) spaces for trailer parking and to raze the existing structures which are located on the properties known as 560 and 562 South Main Street and identified on the Town Tax Map as Block 2015, Lots 1 and 3, in order construct roadway improvements; and

WHEREAS, the Board having satisfied itself that proper notice was given to neighboring property owners and to all others entitled to notice, as well as publication pursuant to both the Town of Phillipsburg Code and to N.J.S. 40:55D-12, on or about September of 2021 and again on or about November of 2021 and again on or about December of 2021; and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic, beginning in March of 2020, pursuant to the Executive Orders of the Governor of the State of New Jersey and the existing laws of the State of New Jersey, public gatherings have been limited in size, space, location and duration; and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic, pursuant to the Executive Orders of the Governor of the State of New Jersey and the existing laws of the State of New Jersey, public bodies, such as the Board, are expressly authorized by law to conduct public meetings remotely through the use of audio and video technology; and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic, it was the decision of the Board that it was in the best interests of the Board, the Town of Phillipsburg, the Applicant and the general public for this Application to proceed without further delay, consistent with the

Executive Orders of the Governor of the State of New Jersey and the existing laws of the State of New Jersey; and

WHEREAS, the Board was of the opinion, after consultation with its professionals, that the Board could consider this Application remotely and that its consideration would not be impeded whatsoever by considering the Application remotely; and

WHEREAS, the Applicant appeared before the Board at a regularly-scheduled meeting on September 23, 2021, at which time the following Board members announced to the public that they would be recusing themselves from consideration of the Application: Chairman Willaim Duffy, Mayor Todd Tersigni and Robert Bencivenga; and

WHEREAS, the Applicant appeared before the Board at a regularly-scheduled meeting on September 23, 2021, at which time the Applicant requested certain temporary waivers from the Preliminary Site Plan checklist requirements, said waivers being summarized in the Board Engineer's September 21, 2021 review letter, and the Board having determined that said waivers can be granted and the Application was determined by the Board to be complete; and

WHEREAS, the Applicant appeared virtually before the Board again at a regularly-scheduled meeting on November 22, 2021, at which time the Board granted the Applicant's request to carry the Application to the January 6, 2022 regularly-scheduled meeting in order to address additional concerns which were raised in the Board Engineer's September 21, 2021 review letter and otherwise; and

WHEREAS, the Board Engineer prepared a subsequent review letter dated December 31, 2021, which the Board incorporates by reference herein; and

WHEREAS, the Applicant appeared virtually before the Board again at a regularly-scheduled meeting on January 6, 2022, at which time the Board commenced a public hearing on the Application, more fully set forth herein below;

WHEREAS, Chairman Willaim Duffy, Mayor Todd Tersigni and Robert Bencivenga again announced to the public that they would be recusing themselves from consideration of the Application; and

WHEREAS, as a result of the preceding recusals, nonetheless, a quorum of five (5) Board members, identified below, was established; and

WHEREAS, at the preceding hearings, the Applicant was represented by Mark R. Peck, Esq., who presented a brief explanation concerning the Applicant's intended use of the subject property and the approvals sought; and

WHEREAS, the Board has received certain documentation and reports from the Applicant, the Board's professional consultants and other interested parties, all of these having been given due consideration and being the following:

- A. Town of Phillipsburg Zoning Permit Application, dated July 26, 2021;
- B. Town of Phillipsburg – “Application for Minor or Conventional Site Plans” for Block 2102, Lot 2.02, dated August 5, 2021, which included a Certification from the Collector of Taxes, dated July 26, 2021, that realty taxes and sewer payments are current;
- C. Town of Phillipsburg – “Application for Conventional Site Plan,” dated August 5, 2021;
- D. Town of Phillipsburg – Preliminary Site Plan Checklist for Conventional Site Plan, dated August 5, 2021;
- E. Town of Phillipsburg – Final Checklist for Conventional Site Plan, dated August 5, 2021;
- F. Transmittal letter submitted by Mark R. Peck, Esq., dated August 6, 2021;
- G. Preliminary Major Site plan entitled: “Preliminary Major Site Plan for Peron Development, LLC, Proposed Industrial Development, Map: 21, Block 2102, Lot 2.02,” prepared by Bohler Engineering NJ, LLC, dated July 31, 2021, and consisting of forty-one (41) sheets;
- H. Boundary and Topographical Survey entitled: “Boundary and Topographic Survey 170 Howard Street, Lots 1, 2.01 & 2.02, Block 2102, Town of Phillipsburg, Warren County, State of New Jersey,” prepared by Control Point Associates, Inc., consisting of one sheet, dated January 14, 2020, and revised on August 5, 2021;
- I. Stormwater Management Narrative, prepared by Bohler Engineering, LLC, dated August 6, 2021;
- J. Trip Generation Comparison Letter, prepared by McMahon Associates, Inc. dated July 29, 2021;
- K. Correspondence from Bohler Engineering, LLC, dated September 10, 2021;
- L. Town of Phillipsburg Ordinance 2021-14 – amending Riverfront Redevelopment Plan – District 5; and
- M. Town of Phillipsburg Tax and Sewer Certification from Tax Collector that taxes and sewer are paid through March 31, 2022; and

WHEREAS, the Applicant is requesting the following variances from the Town Ordinances:

1. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit parking spaces to be closer than ten feet (10’) to the building where L.O. 625-60(B)(5) prohibits the same;
2. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow deviation from the off-street parking, loading and driveway requirements of L.O. 625-25(E);
3. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow the issuance of a certificate of occupancy prior to the completion of parking facilities as required by L.O. 625-25(F);
4. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow parking area not to be screened by landscaping as required by L.O. 625-25(I);

5. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit the non-residential driveway to exceed thirty feet (30') at the property line and forty feet (40') feet at the curb line where L.O. 625-30(B) prohibits the same;
6. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit new construction without the off-street loading spaces required by L.O. 625-31(A);
7. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit new construction without the number of off-street loading spaces required by L.O. 625-31(C);
8. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit fewer parking spaces than required by L.O. 625-32(B)(1);
9. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to allow the removal of naturally-wooded buffers where L.O. 625-12(A)(1), prohibits the same; and
10. A "c" variance, pursuant to N.J.S. 40:55D-70(c), not to have to maintain and replace plantings in their natural state where L.O. 625-12(A)(3), requires the same; and

WHEREAS, the Applicant is requesting the following design waivers from the Town Ordinances:

1. A permanent waiver from L.O. 510-12(A)(1) which requires landscaping to be kept in its natural state, insofar as practicable;
2. A permanent waiver from L.O. 510-12(A)(2) which requires the proposed structure to relate harmoniously with the land and existing buildings;
3. A temporary waiver from L.O. 510-12(A)(4) which prohibits surface stormwater run-off from affecting adjacent properties;
4. A temporary waiver from L.O. 510-12(B)(2)(b) which requires trench drains across all driveway entrances;
5. A permanent waiver from L.O. 510-12(B)(2)(c)(2) which requires raised curbed islands at every fifth row of parking; and
6. A permanent waiver from L.O. 510-12(B)(2)(d) which requires shade trees; and

WHEREAS, the Board having considered the letters of the Board engineer dated September 21, 2021 and December 31, 2021, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

WHEREAS, the Applicant presented the sworn testimony of the following individuals on January 6, 2022:

1. Michael J. Perrucci, who is the Applicant's principal owner;
2. Bradford A. Bohler, P.E. who is the Applicant's engineer;
3. Oliver H. Franklin, Sr., RA, who is the Applicant's architect;

4. John R. Wichner, P.E., who is the Applicant's traffic engineer; and
5. John McDonough, PP, who is the Applicant's planner; and

WHEREAS, the following documents were marked as exhibits at the January 6, 2022 hearing and were discussed and testified to by the Applicant's witnesses. These are now included as part of the record:

1. A-1: Curriculum Vitae of Bradford A. Bohler, P.E.;
2. A-2: Curriculum Vitae of Oliver H. Franklin, Jr., RA;
3. A-3: Curriculum Vitae of John McDonough, PP;
4. A-4: Curriculum Vitae of John R. Wichner, P.E.
5. A-5: Aerial Exhibit of current location, page 1;
6. A-6: proposed rendering "Overall Site Plan Layout" C-301;
7. A-7: view corridor map;
8. A-8: color landscape rendering view #1;
9. A-9: color landscape rendering view #2;
10. A-10: color landscape rendering view #3;
11. A-11: proposed building floor plan, dated June 8, 2021;
12. A-12: architectural sheet A-2 depicting north and east elevations;
13. A-13: architectural sheet A-3 depicting south and west elevations;
14. A-14: color rendering of "eye level view;"
15. A-15: truck circulation exhibit "C" from Bohler engineering sheet 3;
16. A-16: October 27, 2021 aerial drone views – 3 photographs; and
17. A-17: January 2, 2022 letter from Phillipsburg Fire Chief; and

WHEREAS, as referenced below, subsequent to the January 6, 2022 hearing, the Board received additional documentation, which is now included as part of the record, as follows:

1. A-18: January 25, 2022 letter from Phillipsburg Fire Chief;
2. B-1: Certification of Board Member Bernie Brotzman; and
3. B-2: Certification of Board Member Keith Kennedy; and

WHEREAS, before the testimony of the Applicant's witnesses on January 6, 2022, the Board's engineer and the Applicant's Engineer discussed the temporary waivers from the Town's Site Plan checklist which were requested by the Applicant and which are referenced in the Board engineer's September 21, 2021 and December 31, 2021 letters and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the December 31, 2021 letter; and

WHEREAS, by unanimous vote on September 23, 2021, the Board granted the temporary waivers referenced above, and reaffirmed the same on January 6, 2022, by unanimous voice; and

WHEREAS, the Applicant first offered Michael J. Perrucci, Esq., who is the Applicant's principal who provided a history of his ownership of the subject property and testified as to his belief regarding the value of the project to the Town;

WHEREAS, Bradford A. Bohler, P.E., a New Jersey Licensed Engineer, of Bohler Engineering, LLC, was offered as the second witness, who after being sworn and accepted as an engineering expert, based upon Exhibit "A-1," provided testimony on behalf of the Applicant. Mr. Bohler discussed all the following. Site plan page 1 was marked as Exhibit "A-5." He provided testimony on the existing conditions of property with the exhibit. He then offered Exhibit "A-6," which is the proposed site rendering, C-301, "Overall Site Plan Layout" and explained what it represented. He testified regarding the need for a waiver at driveway width—comment 2g in the Board Engineer's December 31, 2021 letter. He then offered Exhibits "A-7" through "A-10" to provide views of the property as proposed. He testified regarding fire truck access to the site and that there are staircases on the building for firemen access. He testified regarding the proposed 352 parking spaces where the Town's ordinance requires 420 as noted in the Board Engineer's December 31, 2021 letter at comment 2j. Mr. Bohler then testified regarding the loading docks as raised in the Board Engineer's comments, to the Board Engineer's satisfaction. He then testified regarding grading and the need for a wall on the southern side of the property. Mr. Bohler discussed that shrubbery and grading will hide some of the parking spaces. He testified that the proposed basins are consistent with the New Jersey Department of Environmental Protection ("DEP") requirements. He said the DEP application required will be sought. He then discussed utilities, fire hydrants, gas and electrical locations on the site. He testified that lighting would be LED around the facility, on the buildings all sides and in the parking lot. Mr. Bohler stated that lighting would be consistent with the Town's Ordinances to the extent that lighting would remain in the site and not illuminate off-site. He said lights will be thirty feet (30') in height which is consistent with the Town Ordinances. He testified that evergreen trees will be a buffer on the southside. There will be 600 shrubs on the property. He testified that the issue of signage is unclear as of now because there is no tenant in place and that the Applicant would be in compliance or seek further relief from the Board. There would be a sign at both the east and west entrances. There is a proposal for a sign on the building not to exceed fifty percent (50%) of the wall space which is consistent with the Town Ordinances. Board Member Austin then asked of the length of the building. Mr. Bohler responded that it would be approximately one thousand two hundred feet (1200') long. Town Planner Knowles then inquired of the distance between the proposed building and the Delaware River. She also asked how high the plantings will grow. Mr. Bohler responded that distance between the proposed building and the Delaware River would approximately four hundred feet (400') on average. He testified that the proposed building would be forty-nine feet (49') tall. He said that from a Howard Street view, the proposed building would look like a thirty-nine foot (39') tall building based upon the grading. He said the plantings could grow between twenty-five feet (25') and fifty

feet (50') over their lifetime. Ms. Knowles then inquired about the traffic impact in the area. Mr. Bohler deferred the question to the Applicant's traffic engineer whose testimony would be subsequently offered. Ms. Knowles emphasized that it is important for the Applicant to work with the public to address traffic concerns. The Board Engineer then inquired about connecting the existing Warren County heritage trail next to the property to McKean Street for pedestrian traffic. Mr. Bohler said that was possible. The Board Engineer also stated that Warren County should be consulted regarding walking areas around the property to which Mr. Bohler agreed. Mr. Bohler then went through the Board Engineer's December 31, 2021 review letter. As for the possible variances listed in the Board Engineer's letter, Mr. Bohler stated that item 1a is addressed. Item 1b – he will work with fire department. Item 1c- testimony was provided. Item 1d – the parking lot will be completed prior to the issuance of the certificate of occupancy. Items 1e and 1f – Mr. Bohler believes the criteria have been met. Item 1g – testimony was provided. Items 1h through 1j are acceptable comments – variances needed. Items 1k and 1m – testimony was provided. Item 1n – the Applicant will replace all vegetation. As to design waivers, items 2a and 2b testimony was provided. Item 2c - Mr. Bohler believes was addressed to the Town Fire Chief's satisfaction. Item 2d – the Applicant will obtain a DEP permit and address the issue raised. Item 2e – testimony was provided. Item 2f – Mr. Bohler believes it is premature to address signage as an occupant of the proposed building has not been selected. Item 2g – Mr. Bohler stated that nothing will be stored outside of the building. Item 2h – Mr. Bohler believes that the engineering site standards are met. Items 2i and 2j – Mr. Bohler believes are not applicable because the Applicant does not intend to provide the Howard Street extension. Items 1g and 1h – Mr. Bohler believes issues are addressed. Item 1i -pedestrian access addressed. Items 1j and 1k – Mr. Bohler believes are compliant with the Town Fire Chief's request. Item 1m – Mr. Bohler confirmed that the Applicant will comply with the Town and Warren County's soil erosion plans. Items 2m and 2n – Mr. Bohler stated will be met. As to the Board Engineer's technical comments, the Applicant concurs with all of them and notes that some of the comments will be addressed in the DEP application. The Applicant does not intend to provide a turnaround area for trucks as noted in the Board Engineer's comment d(i) on page 24. The Board Engineer replied that he truck turnaround issue still needs to be addressed because the Town's experience with other properties in Town is that trucks are not always compliant. At that time, Mr. Zwicker stated that he concurred and that the issue must be addressed; and

WHEREAS, the Board was satisfied with Mr. Bohler's testimony, especially in light of the Board Engineer's comments and review, such that the Board did not have any additional questions or comments; and

WHEREAS, Oliver H. Franklin, Sr., RA, the Applicant's architect, was offered as the third witness, who after being sworn and accepted as an architectural expert based upon Exhibit "A-2," provided

testimony on behalf of the Applicant. Mr. Franklin briefly testified regarding Exhibits "A-11" and Exhibit "A-12" which were offered and accepted; and

WHEREAS, the Board was satisfied with Mr. Franklin's testimony such that the Board did not have any questions or comments; and

WHEREAS, John R. Wichner, P.E., the Applicant's engineer, was the fourth witness, who after being sworn and accepted as an engineering expert, based upon Exhibit "A-4," provided testimony on behalf of the Applicant. Mr. Wichner testified that a trip generation comparison letter was made in July of 2021 and submitted with the application. This letter addressed trip generations for a residential development in 2014 which was proposed on the site. He stated that now with a proposed industrial use that he conducted a full traffic impact study. He then testified that the site is adequate for truck traffic. After the brief presentation, he answered some general questions from the Board. Mr. Zwicker expressed concerned about truck traffic stacking outside the entrance to the site on Town streets. The Board Engineer inquired if there would be parking restrictions on McKeen Street and referenced Exhibit "A-15." In response, Mr. Wichner deferred that the issue would be addressed with the final design of the site. Mr. Peck then said that razing buildings off-site may free-up more space. The Board Engineer then asked if operations on site would be open all hours ("24/7"). Mr. Wichner responded that he could not answer because there is not yet an occupant of the premises. Mr. Wichner said that the focus of his study was on peak hours which he identified as 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. The Board Engineer then pointed-out that some parking spaces will be lost on South Main Street. Mr. Peck then interceded that the Applicant intends to work with the Town to replace lost parking spaces. The Board then inquired if the Town has a noise ordinance for truck traffic which the Board attorney stated he would investigate. Mr. Peck then said that the Applicant will comply with all municipal and state noise codes and regulations. The Board Engineer then stated that there are noise and pollution standards which must be addressed by the Applicant. Mr. Peck suggested that the Applicant could enter into a lease with the Town regarding no left-hand turns being allowed. The Board attorney questioned Mr. Peck if that was beneficial and enforceable as to non-parties to the lease to which Mr. Peck stated that the New Jersey Traffic Code enforcement would apply on-site. The Board inquired if Mr. Wichner had contacted the Phillipsburg School District to determine where bus stops and bus routes are located – to which he acknowledged he had not. Mr. Wichner then commented on the Board Engineer's comments beginning on page 39 of the December 31, 2021 review letter; and

WHEREAS, the Board was satisfied with Mr. Wichner's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, John McDonough, PP, the Applicant's planner, was offered as the fifth witness, who after being sworn and accepted as a professional planner, based upon Exhibit "A-3," provided testimony

on behalf of Applicant. Mr. McDonough testified that based upon testimony heard during the hearing he can opine that the requested zoning variances are appropriate and consistent with the Town's Riverfront Redevelopment Plan. He characterized the application as "reasonable and appropriate" from a planning perspective. He showed the Exhibit "A-16" drone views. He testified that the proposed building will blend with the existing landscape. Mr. McDonough testified that the Applicant's "c" variance relief is appropriate because the benefits of the development substantially outweigh the detriments (positive criteria) because there will be a business which is beneficial to the area and there are adequate facilities in place to accommodate the proposal. He believes that the overall flow, parking and traffic circulation are consistent with the neighborhood. He testified that the Applicant's offering of traffic restrictions is appropriate from a planning perspective. He stated that the zoning relief requested by the Applicant is all design relief. He believes that the parking supply will meet the industry standards. He testified that the driveway variances for width greater than 30' and 40' is necessary for adequate traffic flow; and

WHEREAS, the Board was satisfied with Mr. McDonough's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, the Board engineer and the Applicant's engineer had a brief discussion thereafter; and

WHEREAS, the Applicant did not offer any additional witnesses, documents or evidence; and

WHEREAS, the Town Planner, Angela Knowles, was present during the hearing and commented as noted above and did not have any further comment; and

WHEREAS, given the length of the hearing on January 6, 2022, and given the interest of the members of the public who were present and interested in the matter, the Board decided to continue the hearing to the next regularly scheduled meeting on January 27, 2022; and

WHEREAS, Board Member Tony Austin resigned from the Board on January 27, 2022, which resignation was accepted by the Board at the beginning of the meeting; and

WHEREAS, Town Council member Keith Kennedy was appointed by the Town Council as the Class III Board member and was sworn-in at the beginning of the January 27, 2022 meeting; and

WHEREAS, Mr. Kennedy was asked by the Board attorney if he had reviewed an audio, video or written transcript of the January 6, 2022 hearing and he stated affirmatively, and therefore, was eligible to participate in the hearing pursuant to N.J.S. 40:55D-10.2; and

WHEREAS, Board member Bernard Brotzman, who was not present at the January 6, 2022 hearing, was asked by the Board attorney if he had reviewed an audio, video or written transcript of the January 6, 2022 hearing and he stated affirmatively, and therefore, was eligible to participate in the hearing pursuant to N.J.S. 40:55D-10.2; and

WHEREAS, Mr. Kennedy and Mr. Brotzman have signed affidavits attesting to the preceding, which are marked as Exhibits “B-1” and “B-2” and made a part of the record; and

WHEREAS, on January 27, 2022, the Applicant stated that it did not have any additional testimony or evidence, and therefore, the Board asked for public comment and received much public comment; and

WHEREAS, there were numerous public comments and questions, both in favor and against the application, which were answered by the Board, its professionals, and the Applicant’s professionals; and

WHEREAS, the Board considered all of the preceding;

NOW THEREFORE, as a result of the Applicant’s presentation, testimony and exhibits presented by the Applicant’s witnesses as aforesaid and the documentation submitted, the Board finds as follows:

1. The subject property is located in the Town of Phillipsburg Riverfront Redevelopment Zone, Districts 3 and 5.
2. The Town Council passed Resolution 2021-14 which is incorporated by reference herein.
3. N.J.S. 40:55D-1, *et. seq.*, the “New Jersey Municipal Land Use Law,” provides for review and Approval of Preliminary and Final Major Site Plans by the Board.
4. The “Town of Phillipsburg’s Site Plan Ordinance of 1979” provides for review and Approval of Preliminary and Final Major Site Plans by the Board, pursuant to L.O. 510-1, *et. seq.*
5. The Applicant must obtain Preliminary and Final Major Site Plan Approval from the Board before it develops the subject property.
6. The Board has the authority to grant waivers from the provisions of Chapter 510 of the Town of Phillipsburg’s Ordinances, to wit, the “Town of Phillipsburg’s Site Plan Ordinance of 1979,” pursuant to N.J.S. 40:55D-51.
7. N.J.S. 40:55D-51(b) states: “The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions of the site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.”

8. A waiver is an acknowledgment by the Board that conditions of the property are satisfactory and meet the requirements of the Town of Phillipsburg Ordinances.
9. The Board has authority to grant variances from the provisions of N.J.S. 40:55D-1, et. seq., the “New Jersey Municipal Land Use Law,” pursuant to N.J.S. 40:55D-70 and pursuant Section 555-22 of the “Town of Phillipsburg’s Site Plan Review Ordinance of 1979.”
10. A variance is a deviation from the strict application of Chapter 625 of the Town of Phillipsburg’s Ordinances, *to wit*, the “Town of Phillipsburg Zoning Ordinance,” as set forth therein pursuant to N.J.S. 40:55D-62, et. seq., and the regulations established thereto.
11. It has been acknowledged by the Board that waivers of the requirements be granted as to each of the items contained in the Board’s Engineer’s December 31, 2021 letter.
12. The Board concurs that the condition of the property is satisfactory and meets the requirements of the Town of Phillipsburg Ordinances thereby authorizing the granting of waivers as requested by the Applicant.
13. The Board concurs that, in all other respects, the condition of the property is satisfactory and meets the requirements of the Town of Phillipsburg Ordinances.

NOW THEREFORE, BE IT RESOLVED THAT the Applicant’s request for the ten (10) variances from the “Town of Phillipsburg Zoning Ordinance,” under Chapter 625 of the Town of Phillipsburg’s Ordinances as noted above, pursuant to N.J.S. 40:55D-70(c), are hereby **GRANTED**, on Motion of Mr. Turnbull and Seconded by Mr. Hanisak:

ROLL CALL VOTE

Ayes: Mr. Zwicker, Mr. Turnbull, Mr. Hanisak, Mr. Penrose and Mr. Brotzman.
Nays: Mr. Kennedy
Abstentions: None.
Recused: Chairman Duffy, Mayor Tersigni and Mr. Bencivenga.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for the six (6) permanent waivers from the "Town of Phillipsburg's Site Plan Ordinance of 1979," for design waivers from the requirement under L.O. 510-1, et. seq., is hereby GRANTED, on Motion of Mr. Zwicker and Seconded by Mr. Penrose:

ROLL CALL VOTE

Ayes: Mr. Zwicker, Mr. Turnbull, Mr. Hanisak, Mr. Penrose and Mr. Brotzman.

Nays: Mr. Kennedy.

Abstentions: None.

Recused: Chairman Duffy, Mayor Tersigni and Mr. Bencivenga.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for a Preliminary Major Site Plan approval, is hereby GRANTED, on Motion of Mr. Zwicker and Seconded by Mr. Brotzman:

ROLL CALL VOTE

Ayes: Mr. Zwicker, Mr. Turnbull, Mr. Hanisak, Mr. Penrose and Mr. Brotzman.

Nays: Mr. Kennedy.

Abstentions: None.

Recused: Chairman Duffy, Mayor Tersigni and Mr. Bencivenga.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for Preliminary Major Site Plan approval for the construction of an industrial building of approximately four hundred and twenty thousand square feet (420,000') for the property identified on the Town Tax Map as Block 2102, Lot 2.02, with a street address of 170 Howard Street, Phillipsburg, Warren County, with three hundred and fifty-two (352) passenger car parking spaces, eighty-eight (88) loading docks and thirty-nine (39) spaces for trailer parking on the property known as Block 2101, Lot 2.02, located in the Town of Phillipsburg Riverfront Redevelopment Zone, District 5, and to raze the existing structures which are located on the properties known as 560 and 562 South Main Street and identified on the Town Tax Map as Block 2015, Lots 1 and 3, in order construct roadway improvements, is granted subject to the express and unaltered conformation with the following conditions:

1. The Applicant shall be bound to comply with all comments contained in the Board Engineer's review letters dated September 21, 2021, and December 31, 2021, as modified at the January 6, 2022, and January 27, 2022 hearings, unless altered by this approval, including any comments contained in subsequent reports. In the event that the Applicant is unable to comply with any of the Board Engineer's

requirements or recommendations, it is understood that it reserves the right to apply to this Board for relief therefrom.

2. The Applicant shall ensure that the building is constructed and erected in strict compliance with the Site Plan with the understanding that any deviation therefrom which is deemed by the Board's Engineer's to be a significant deviation from the Plan hereby approved shall require further review and approval by this Board.

3. The Applicant shall procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies.

4. The Applicant shall schedule a pre-construction conference with the Town Engineer's office at least two days prior to commencement of construction.

5. The Applicant shall pay all outstanding fees and deficiencies in the review escrow account and bring current all real estate taxes, sewer and water charges pertaining to this site before the commencement of construction.

6. Any portion of any prior Site Plan approvals are hereby vacated to the extent they may be inconsistent with this Site Plan.

7. The Applicant shall apply for, and obtain, approval from all other agencies and governmental bodies which may have concurrent jurisdiction over this project including, but not limited to, the New Jersey Department of Environmental Protection, Town of Phillipsburg Fire Chief, the Town of Phillipsburg Chief of Police, the Warren County Planning Board, the Warren County Soil Conservation District, the Phillipsburg Sewer Utility, Elizabethtown Gas, Aqua New Jersey and Jersey Central Power & Light ("JCP&L").

8. All necessary and proposed easements must be obtained before construction commences and be shown on the site plat drawing and be approved by the Board's Attorney and the Board's Engineer.

9. The Board recommends to the Town Council, as the redevelopment authority, that it require the Applicant to extend Howard Street as set forth in the Consistency Review Report entitled: "Proposed Amendment to the Riverfront Redevelopment Plan," dated February 25, 2021, which was prepared by Town Planner Angela Knowles, at the direction of this Board, upon referral from the Town Council in its Resolution No. 2021-14.

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Planning Board was duly adopted at its regular meeting on the 27th day of January, 2022, by a majority of the aforesaid members approving the oral approval for the contents herein on February 24, 2022.

Dated: February 24, 2022



KEITH ZWICKER Vice-Chairman

KING MOENCH HIRNIAK & COLLINS, LLP

Matthew C. Moench, Esq. (031462007)

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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

CERTIFICATION

Defendant Town of Phillipsburg Town Council, governing body of the municipality ("Phillipsburg") hereby sets forth its responses to Interrogatories as demanded by Plaintiffs, pursuant to Rule 4:17-(b)(i):

GENERAL OBJECTIONS AND RESERVATIONS OF RIGHTS

Phillipsburg makes the following general objections to the Interrogatories propounded by the Plaintiff. Each of these general objections is incorporated into Phillipsburg's specific responses as though set forth verbatim therein.

1. Phillipsburg's responses are made without waiver of, and are specifically intended to reserve and preserve until the time of trial, all objections to competency, relevance, materiality, privilege, and admissibility as evidence. Phillipsburg's responses to Interrogatories and any other or further discovery responses by Phillipsburg should not be construed as a waiver of any right to object on the grounds of competence, relevance, materiality, privilege, and/or any other proper grounds, to the use of any response or document, for any purpose, in whole or in part, in the trial of this action or any subsequent proceeding in this or other action.

2. Phillipsburg does not represent by this response to Interrogatories that Phillipsburg has fully completed the investigation and/or analysis of the matters addressed by Plaintiff's discovery requests. Phillipsburg anticipates that further investigation and analysis may supply additional



facts, reveal additional documents, and/or amplify the meaning of the facts presently known to Phillipsburg, all of which may lead to additions to and/or changes in the responses herein provided. Therefore, Phillipsburg reserves the right, but does not assume the obligation except as required, to amend, supplement, or modify response(s) based upon continuing investigation, analysis and/or further discovery.

3. Phillipsburg objects to each and every discovery request, the response to which may be derived or ascertained from business records or other documents that are in the possession or control of Plaintiff, or from documents that are readily available to Plaintiff. To the extent the response to a request can be ascertained or derived from documents in Plaintiff's possession, custody, or control, the development of that response is more convenient and less burdensome for Plaintiff than it is for Phillipsburg, and Plaintiff accordingly should bear that burden.

4. Phillipsburg objects to each and every discovery request that seeks disclosure of information that is not in Phillipsburg's possession or control.

5. Phillipsburg objects to each and every discovery request that seeks discovery or identification of confidential communications or information protected from disclosure by the attorney-client privilege and/or any other privilege against disclosure recognized by statute or common law including, without limitation, the protection of confidential, sensitive, proprietary business information. The inadvertent identification, disclosure or production of any document, communication or matter covered by such privilege(s) shall not be deemed a waiver thereof.

6. Phillipsburg objects to each and every discovery request that seeks disclosure or identification of confidential communications protected from disclosure by the attorney-work product doctrine and/or any other privilege against disclosure recognized by statute or common law including, without limitation, the protection of confidential, sensitive, proprietary business information. The inadvertent identification, disclosure or production of any document, communication or matter covered by such privilege(s) shall not be deemed a waiver thereof.

7. Phillipsburg objects to each and every discovery request to the extent that Plaintiff seeks information that is not limited in time or scope to the subject matter of this litigation. Phillipsburg specifically objects to any request or Interrogatory which seeks information that post-dates the allegations set forth in the Complaint.

8. Phillipsburg objects to each and every discovery request to the extent that Plaintiff seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Phillipsburg specifically objects to any request or Interrogatory which seeks information that post-dates the allegations set forth in the Complaint.

9. Phillipsburg object to each and every discovery request to the extent that it is vague, overly broad, unduly burdensome and/or oppressive.

10. Phillipsburg objects to Plaintiff's discovery request as being unduly burdensome in number and/or unintelligible in text and meaning. Phillipsburg has made reasonable efforts to

respond to Plaintiff's Interrogatories and does so without prejudice to its right to assert that the discovery requests, as a whole are oppressive and unreasonable.

11. Phillipsburg objects to the definition of words, terms or phrases contained in any discovery request to the extent the meaning supplied purports to be a binding definition of any word, term or phrase. By responding, Phillipsburg does not admit the appropriateness or applicability of the definition.

12. Phillipsburg objects to each and every discovery request to the extent it purports to create duties or obligations upon Phillipsburg that are more extensive than, or different from, those imposed by the New Jersey Rules of Court.

13. Because of the over breadth, ambiguity, vagueness and lack of specificity of Plaintiff's discovery requests, it is not possible for Phillipsburg to anticipate all possible grounds for objection with respect to the particular Interrogatory set forth herein. Therefore, Phillipsburg reserves the right to supplement these responses and to raise any additional objection(s) deemed necessary and appropriate in light of the results of further investigation, analysis and/or continuing discovery.

14. Phillipsburg's response is made without waiver of, and is specifically intended to reserve and preserve the right to seek incorporation of responses and documents produced in connection with Plaintiff's Interrogatories within the protection and scope of a Protective Order to be agreed upon by the parties or entered by the Court in this action.

15. Phillipsburg's response is made by its Town Administrator, based upon the information that is available to his knowledge, including information that has been provided to him by appropriate parties following a reasonable inquiry. Phillipsburg contends that this means of response is in accordance with Rule 4:17-4(a), which provides that "interrogatories shall be answered in writing . . . if a . . . governmental agency, by an officer or agent who shall furnish all information available to the party."

16. Phillipsburg's responses are limited to the time period of January 1, 2015 to present (the "Subject Time Period"), as set forth in Plaintiff's instructions.

17. "You" and "Members of the Governing Body" are defined to include the five members of the Phillipsburg Town Council at the time of the adoption of Ordinance 2021-14 that is placed under review in this action: Danielle DeGerolamo, Randy S. Piazza, Jr., Frank McVey, Harry Wyant, and Robert Fulper.

18. Each of the foregoing General Objections and Reservations of Rights is continuing in nature.

19. Unless otherwise stated, the defined terms utilized in Plaintiffs' request for interrogatories are incorporated herein.

RESPONSES TO INTERROGATORIES

1. Have you in any capacity ever been provided legal advice or representation by any lawyer or other professional of the Florio firm?

If so:

a. Please describe the nature of the engagement or representation, including the reason for the need for counsel;

b. Please state whether you were engaged or represented in your personal capacity or in some official capacity;

c. If you were engaged or represented in an official capacity, please describe that capacity, including identifying the office and the time period in which you held that office;

d. If you were engaged or represented in an official capacity, please identify the public body which authorized the engagement or representation;

e. Please state the time period in which you engaged the Florio firm or were represented by it;

f. Please state the amount of legal fees, and the amount of costs and disbursements, charged by the Florio firm, and provide copies of all invoices;

g. Please state the amount of legal fees, and the amount of costs and disbursements, paid to the Florio firm, and by whom, and if the amount set forth in this answer differs from the amount in subsection f, please explain the difference;

h. Please identify all other persons represented or involved in the engagement, and identify their status (plaintiff, executor, client, etc.);

i. If the Florio firm was paid by public funds, please provide a copy of all invoices and records of payment;

j. If the matter involved representation by the Florio firm in any litigation, arbitration or other adversary proceeding, please provide a copy of the initial complaint or other pleading or notice, a copy of the pleading or notice by which you joined or were joined, the date or dates of any hearings, the date or dates of any trials, the final disposition of the proceeding, and please provide a copy of any document evidencing the final disposition.

RESPONSE:

No Member of the Governing Body has been provided legal advice or representation by any lawyer or professional of the Florio firm during the Subject Time Period, except as follows:

a. In the below-listed cases, Phillipsburg was sued for various claims, and certain Members of the Governing Body were also sued in their official capacities. Phillipsburg made an insurance

claim to its insurer, the Statewide Joint Insurance Fund, which in turn appointed the Florio Firm to defend Phillipsburg and its elected officials in the following cases and listed Members of the Governing Body represented:

- i. Corcoran v. Town of Phillipsburg et al. – WRN-L-24-20 (Fulper, DeGerolamo, McVey)
- ii. Ellis v. Town of Phillipsburg et al. – WRN-L-57-18 (Fulper)
- iii. Post-Sheedy v. Town of Phillipsburg et al. – WRN-L-59-18 (Fulper, McVey, DeGerolamo)
- iv. Cappello v. Town of Phillipsburg et al. – WRN-L-127-18 (Fulper, McVey, DeGerolamo)
- v. Thompson v. Fulper et al. – WRN-L-159-20 (Fulper)

b. In 2018, in his personal individual capacity, Frank McVey was represented by Donald Sauders, Esq. of the Florio Firm in connection with a municipal court matter. The total estimated cost of this representation was \$7,000.

c. In April 2021, in his personal individual capacity, Frank McVey was represented by Michael DeMarco, Esq. of the Florio Firm in connection with the drafting and execution of two legal instruments. The total estimated cost of this representation was less than \$1,000.

2. Have you ever had any communication with any lawyer or professional in the Florio firm in which the possibility of engagement of or representation by the firm was included, such that you would consider the communication attorney-client privileged? If the answer is yes, please provide the information in #1.

RESPONSE: None, other than the instances set forth in #1.

3. Ordinance 2021-14 purported to be based on a “Consistency Report” by Van Cleef Engineering Associates, Inc. and dated February 25, 2021. Please state whether any professional in the Florio firm had any role in commissioning, reviewing or paying for the Consistency Report. If so, please identify the professional or professionals involved, describe fully the role played by such professional(s) and any amounts paid by the firm for any part of the Consistency Report.

RESPONSE: Phillipsburg specifically objects to this interrogatory to the extent that “professional in the Florio firm” is ambiguous. The Consistency Report was prepared by Van Cleef Engineering Associates, Inc. at the request of the Phillipsburg Planning Board and was reviewed by same. The Consistency Report was paid for through a developer’s escrow that was posted by designated redeveloper Peron Development. Phillipsburg lacks sufficient information to provide any further response.

4. The Consistency Report refers to a “Concept Plan” provided to the Town. Please state whether any professional in the Florio had any role in commissioning, reviewing or paying for that Concept Plan. If so, please identify the professional or professionals involved, describe fully

the role played by such professional(s) and any amounts paid by the firm for any part of the Consistency Report.

RESPONSE: Phillipsburg specifically objects to this interrogatory to the extent that “professional in the Florio” is ambiguous. The Consistency Report was prepared by Van Cleef Engineering Associates, Inc. at the request of the Phillipsburg Planning Board and was reviewed by same. The Consistency Report was paid for through a developer’s escrow that was posted by designated redeveloper Peron Development, and a copy of the escrow audit trail is attached hereto. Phillipsburg lacks sufficient information to provide any further response.

5. Please provide a copy of that Concept Plan.

RESPONSE: Attached.

6. Please identify any role played by the Florio firm or any professional in that firm in any communications to the New Jersey Department Of Environmental Protection regarding or in connection with any request by the Town of Philipsburg to remove Block 2102, Lot 1, from Green acres or open space protection. Provide a copy of all records evidencing or regarding that request. Please state whether the Town paid the Florio firm for any such involvement, and if so, provide a copy of any invoices and records of payment.

RESPONSE: The Municipal Clerk sent the attached letter to the New Jersey Department of Environmental Protection to “discuss the Town’s proposal and related procedural requirements for a major disposal or diversion of parkland located at Howard Street Rear, Block 2012, Lot 1, in the Delaware River Park, in the Town of Phillipsburg, Warren County, New Jersey.” The letter copied Seth R. Tipton, Esq., who is an attorney of the Florio Firm that represented the property’s designated redeveloper, Peron Development, Inc.

7. Please confirm that Michael Perucci, Esq., a partner in the Florio firm, owns or controls, directly or indirectly, Peron Construction, Inc. If the answer is “yes,” please confirm that this ownership or control, directly or indirectly, dates at least from January 1, 2020 and continues to the date of these answers.

RESPONSE: Phillipsburg lacks sufficient information to respond to this Interrogatory.

8. Please identify any other professional in the Florio firm who owns or controls, directly or indirectly, any interest in Peron Construction, Inc.

RESPONSE: Phillipsburg lacks sufficient information to respond to this Interrogatory.

9. Please identify all persons involved in reviewing or preparing or reviewing answers to these questions.

RESPONSE: These responses have been prepared in consultation with Richard Wenner, Esq., Township Attorney, and Michael L. Collins, attorney of record. The responses have been

prepared based upon information provided by Danielle DeGerolamo, Randy S. Piazza, Jr., Frank McVey, Harry Wyant, and Robert Fulper.

CERTIFICATION

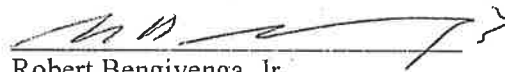
I certify that the foregoing answers made by me to these Interrogatories are true. I certify that in responding to the foregoing Interrogatories I have furnished all information available to me, and to my agents, employees and attorneys. As to those answers which are not within my personal knowledge, I certify that I have provided the name and address of every person from whom such information was received, or, where the source of such information is documentary, a full description of the document including its location.

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of said experts, either- written or oral are unknown to me, and if such later become known or available, I shall serve them promptly on the propounding party.

I certify that the copies of the documents annexed hereto are exact copies of the entire document and all documents in my custody or control that have been requested have been provided.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 3/15/2022


Robert Bengivenga, Jr.

General Ledger YTD Detail
TOWN OF PHILLIPSBURG

Fund: 12 PLANNING BOARD ESCROW ACC
For Period: 12 in 2005

Date: 6/6/2008
Time: 12:16:52 PM
Page: 333

User Id	Vendor Number	Vendor Name	Check Number	PO/VR Number	Tran Per Type	Tran Code	Transaction Description	Ref Code	Trans Date	Entry Date	Starting Debit Balance	Starting Credit Balance	Account Balance
	Account Number - 12-286-56-853-067		Account Description - #2003-001 SLEEP LAB 10% CB							Account Sub Total -	.00	9,600.00	9,600.00
	Account Number - 12-286-56-853-068		Account Description - #2003-002 MRI 10% CSH BD							Yearly Totals -	.00	10,800.00	.00
	Account Number - 12-286-56-853-068		Account Description - #2003-002 MRI 10% CSH BD							Account Sub Total -	.00	10,800.00	10,800.00
	Account Number - 12-286-56-853-069		Account Description - #2002-007 ZAPPA 10% CASH							Yearly Totals -	.00	1,590.00	.00
	Account Number - 12-286-56-853-069		Account Description - #2002-007 ZAPPA 10% CASH							Account Sub Total -	.00	1,590.00	1,590.00
	Account Number - 12-286-56-855-001		Account Description - WATERFRONT DEVELOPMENT								.00	.00	.00
	BOB				10 L	CR	WATERFRONT DEVELOPMENT	11528	10/14/2005	10/14/2005	.00	10,000.00	10,000.00
	BOB				10 L	CR	WATERFRONT DEVELOPERS FEE	11577	10/20/2005	10/20/2005	.00	5,000.00	5,000.00
	BRENDA				12 L	VR				Monthly Totals -	.00	15,000.00	15,000.00
	BRENDA		2087 DECOTIIS, FITZPATRICK, COLE &		12 L	VR	OCTOBER-RIVERFRONT	11721	11/29/2005	11/29/2005	3,937.78	.00	.00
			2087 DECOTIIS, FITZPATRICK, COLE &		12 L	VR	8/1-8/31-RIVERFRONT	11721	11/29/2005	11/29/2005	1,062.22	.00	.00
										Monthly Totals -	5,000.00	.00	5,000.00
										Yearly Totals -	5,000.00	15,000.00	10,000.00
	Account Number - 12-286-56-855-001		Account Description - WATERFRONT DEVELOPMENT							Account Sub Total -	5,000.00	15,000.00	10,000.00
	Account Number - 12-286-56-855-002		Account Description - PHILLIPSBURG ASSOCIATES								.00	.00	.00
	BRENDA				12 L	VR	JUNE-INGERSOLL	11721	11/29/2005	11/29/2005	13,543.11	.00	.00
	BOB				12 L	CR	PREFERRED R/E IR	11804	12/05/2005	12/05/2005	15,115.88	.00	.00
	BRENDA				12 L	VR	REDEV.INGERSOLL	11901	12/14/2005	12/14/2005	1,572.77	.00	.00
										Monthly Totals -	15,115.88	15,115.88	.00
										Yearly Totals -	15,115.88	15,115.88	.00
	Account Number - 12-286-56-855-002		Account Description - PHILLIPSBURG ASSOCIATES							Account Sub Total -	15,115.88	15,115.88	.00
	Account Number - 12-287-56-852-052		Account Description - #586-1998 SMP								.00	.00	.00
										Yearly Totals -	.00	.00	.00
	Account Number - 12-287-56-852-052		Account Description - #586-1998 SMP							Account Sub Total -	.00	.00	.00
	Account Number - 12-287-56-852-053		Account Description - #588-1998 ROD PIANELLI								.00	.00	.00
										Yearly Totals -	.00	.00	.00
	Account Number - 12-287-56-852-053		Account Description - #588-1998 ROD PIANELLI							Account Sub Total -	.00	.00	.00
	Account Number - 12-287-56-852-054		Account Description - #593-1998 PHILIP KAYS								.00	.00	.00
										Yearly Totals -	.00	.00	.00



General Ledger YTD Detail
TOWN OF PHILLIPSBURG

Fund: 12 PLANNING BOARD ESCROW ACC
For Period: 12 In 2006

Date: 6/6/2008
Time: 11:58:14 AM
Page: 351

User Id	Vendor Number	Vendor Name	Check Number	POWR Number	Tran Type	Tran Code	Transaction Description	Ref Code	Trans Date	Entry Date	Starting Debit Balance	Starting Credit Balance	Account Balance
	Account Number - 12-286-56-853-071						Account Description - #2006-013 120% CASH BOND			Yearly Totals -	.00	226,863.00	226,863.00
	Account Number 12-286-56-853-072						Account Description			Account Sub Total -	.00	226,863.00	226,863.00
BOB					10	L CR	CR PREFERRED R/E ENVIRONMENT	13783	10/12/2006	10/12/2006	.00	42,240.00	42,240.00
							Monthly Totals -			Yearly Totals -	.00	42,240.00	42,240.00
	Account Number - 12-286-56-853-072						Account Description - #2006-013 ENVIRONMENTAL C			Account Sub Total -	.00	42,240.00	42,240.00
	Account Number 12-286-56-855-001						Account Description WATERFRONT DEVELOPMENT			Yearly Totals -	.00	10,000.00	10,000.00
SANDY	271 GENERAL REFUNDS		1088		2	L VP	ESCROW REFUND	12358	02/27/2006	02/27/2006	10,000.00	.00	.00
							Monthly Totals -			Yearly Totals -	10,000.00	.00	10,000.00
BOB					3	L CR	CR WATERFRONT DEVELOPMENT	12675	03/30/2006	03/30/2006	.00	25,000.00	25,000.00
BRENDA	2087 DECOTIIS, FITZPATRICK, COLE &		34088		5	L VR	MAR. RIVERFRONT	12771	05/10/2006	05/10/2006	8,968.14	.00	25,000.00
BRENDA	2087 DECOTIIS, FITZPATRICK, COLE &		34551		7	L VR	5/06-RIVERFRONT	13058	06/27/2006	06/27/2006	8,968.14	.00	8,968.14
BRENDA	2087 DECOTIIS, FITZPATRICK, COLE &		34551		7	L VR	FEB. RIVERFRONT	13058	06/27/2006	06/27/2006	6,431.10	.00	6,431.10
							Monthly Totals -			Yearly Totals -	10,652.60	.00	10,652.60
	Account Number - 12-286-56-855-001						Account Description - WATERFRONT DEVELOPMENT			Yearly Totals -	29,620.74	25,000.00	4,620.74
	Account Number 12-286-56-855-002						Account Description PHILLIPSBURG ASSOCIATES			Account Sub Total -	29,620.74	35,000.00	5,379.26
BOB					1	L CR	CR PHILLIPSBURG ASSOCIATES	12187	01/23/2006	01/23/2006	.00	45,000.00	45,000.00
BOB					3	L CR	CR PHILLIPSBURG ASSOCIATES	12478	03/16/2006	03/16/2006	.00	45,000.00	45,000.00
BOB					3	L CR	CR PHILLIPSBURG ASSOCIATES	12478	03/16/2006	03/16/2006	.00	14,500.00	14,500.00
BOB					3	L CR	CR PHILLIPSBURG ASSOCIATES	12536	03/30/2006	03/30/2006	.00	5,281.10	5,281.10
BOB					3	L CR	CR VOID	12675	03/30/2006	03/30/2006	25,000.00	.00	25,000.00
							Monthly Totals -			Yearly Totals -	25,000.00	44,781.10	19,781.10
BRENDA	55 EXPRESS-TIMES		34016		5	L VR	IMPACT ANALYSIS	12771	05/10/2006	05/10/2006	294.20	.00	.00
BRENDA	2296 TRIAD ASSOCIATES		34092		5	L VR	ENVIRO.REVIEW RECORD	12771	05/10/2006	05/10/2006	5,800.00	.00	.00
							Monthly Totals -			Yearly Totals -	6,094.20	.00	6,094.20
BOB					6	L CR	CR PBURG ASSOC DEV FEES	12916	06/06/2006	06/06/2006	.00	15,750.00	15,750.00
SANDY	2317 KITTATINNY ARCHAEOLOGICAL		1097		6	L VP	SERVICES	13064	06/29/2006	06/29/2006	3,934.50	.00	.00
							Monthly Totals -			Yearly Totals -	3,934.50	15,750.00	11,815.50
BRENDA	2296 TRIAD ASSOCIATES		34558		7	L VR	MAY PROF. SVCS	13058	06/27/2006	06/27/2006	8,193.34	.00	.00
BRENDA	2296 TRIAD ASSOCIATES		34558		7	L VR	ENVIROINREVIEW	13058	06/27/2006	06/27/2006	2,700.00	.00	.00

12-286-56-855-001 Dev Escrow - Peron Developmnt (Perrucci)

From 01/01/2007 to 09/20/2021

Date	Source	PO#	Contract#	Check #	Vendor#	Vendor/Description	Budget	Debit	Credit	PO Encumber	PO Payment	Balance (CR)*
01/01/2007	GJ 6								5,379.26			5,379.26
05/14/2007	ENC	2152				Riverfront Development						5,144.62
06/05/2007	DJ 2517	2152	37846	2087	2087	DECOITIS, FITZPATRICK & COLE LL Riverfront Dev				234.64	234.64	5,144.62
06/05/2007	DJ 2603	2152	37846	2087	2087	DECOITIS, FITZPATRICK & COLE LL Reverse - Prin				(234.64)	(234.64)	5,144.62
06/05/2007	DJ 2691	2152	37846	2087	2087	DECOITIS, FITZPATRICK & COLE LL Riverfront Dev				(234.64)	234.64	5,144.62
06/12/2008	RJ 1030					Perron Waterfront Development			2,500.00			7,644.62
07/11/2008	ENC	5648				Legal Riverfront Development Project -Period E				2,265.30		5,379.32
08/05/2008	DJ 3680	5648	41782	2087	2087	DECOITIS, FITZPATRICK & COLE LL Riverfront Dev			(228.20)	228.20		5,379.32
08/05/2008	DJ 3680	5648	41782	2087	2087	DECOITIS, FITZPATRICK & COLE LL Riverfront Dev			(150.00)	150.00		5,379.32
08/05/2008	DJ 3680	5648	41782	2087	2087	DECOITIS, FITZPATRICK & COLE LL Riverfront Dev			(180.00)	180.00		5,379.32
08/05/2008	DJ 3680	5648	41782	2087	2087	DECOITIS, FITZPATRICK & COLE LL Riverfront Dev			(120.00)	120.00		5,379.32
08/05/2008	DJ 3680	5648	41782	2087	2087	DECOITIS, FITZPATRICK & COLE LL Riverfront Dev			(872.30)	872.30		5,379.32
08/05/2008	DJ 3680	5648	41782	2087	2087	DECOITIS, FITZPATRICK & COLE LL Riverfront Dev			(504.80)	504.80		5,379.32
08/05/2008	DJ 3680	5648	41782	2087	2087	DECOITIS, FITZPATRICK & COLE LL Riverfront Dev			(210.00)	210.00		5,379.32
06/01/2010	RJ 919					Perron Waterfront Development (Perrucci)			5,000.00			10,379.32
01/06/2014	RJ 11					Perron Construction Escrow			10,000.00			20,379.32
01/10/2014	ENC	18323				Riverfront Redevelopment				1,069.00		19,310.32
01/16/2014	ENC	18360				Rvrfrnt Red, Gen., Labor, Auction Prop, Pburg				1,440.00		17,870.32
02/04/2014	DJ 644	18323	59183	1523	1523	COURTER, KOBERT & COHEN PC Inv 83242 Rvrfrro			(1,069.00)	1,069.00		17,870.32
02/04/2014	DJ 648	18360	59183	1523	1523	COURTER, KOBERT & COHEN PC Inv 83529 Rvrfrnt			(1,440.00)	1,440.00		17,870.32
02/10/2014	ENC	18488				Gen., PBA 56, Com Prk Red, Sewer, Rem Frclsr, I				3,180.00		14,690.32
03/04/2014	DJ 1007	18488	59419	1523	1523	COURTER, KOBERT & COHEN PC Inv 83578 Rvrfrro			(3,180.00)	3,180.00		14,690.32
03/14/2014	ENC	18654				Gen, PBA, Labor, ComPrkRed, In Rem Frclsr, Rivf				915.00		13,775.32
04/01/2014	DJ 1427	18654	59660	1523	1523	COURTER, KOBERT & COHEN PC Inv 83953 Rvrfrnt			(915.00)	915.00		13,775.32
04/04/2014	ENC	18793				Gen., PBA, Labor, ComPrkRed, Rivfrnt Red, Aucti				450.00		13,325.32
04/15/2014	DJ 1596	18793	59729	1523	1523	COURTER, KOBERT & COHEN PC Inv 84106 Rvrfrnt			(450.00)	450.00		13,325.32
05/14/2014	ENC	19030				Gen., Labor, In Rem Frclsr, Com.Prk, Adv. Twp o				525.00		12,800.32
06/03/2014	DJ 2742	19030	60158	1523	1523	COURTER, KOBERT & COHEN PC Riverfront Red. th			(525.00)	525.00		12,800.32
06/18/2014	ENC	19231				Gen., Vs Twp. Grnwch, In Rem Frclsr, AuctionR				270.00		12,530.32
07/01/2014	DJ 3235	19231	60433	1523	1523	COURTER, KOBERT & COHEN PC Riverfront Red.			(270.00)	270.00		12,530.32
07/10/2014	ENC	19390				Gen., Habitability, Tax Appeals, Labor, Rivfr				420.00		12,110.32
08/05/2014	DJ 3758	19390	60702	1523	1523	COURTER, KOBERT & COHEN PC Riverfront Redevel			(420.00)	420.00		12,110.32
09/05/2014	ENC	19720				Professional services rendered as Bond Council				5,212.50		6,897.82
09/16/2014	DJ 4438	19720	61013	45	45	WILLENZ, GOLDMAN & SPITZER P.A Bond & revevel			(5,212.50)	5,212.50		6,897.82
10/06/2014	ENC	19875				Legal Services billing thru 9/25/2014				75.00		6,822.82
10/21/2014	DJ 5007	19875	61318	1523	1523	COURTER, KOBERT & COHEN PC Riverfront Redevel			(75.00)	75.00		6,822.82
10/21/2015	ENC	22201				Professional services rendered				380.16		6,442.66
10/21/2015	ENC	22202				Professional services rendered				636.00		5,806.66
10/21/2015	ENC	22203				Professional services rendered				150.00		5,656.66
11/12/2015	ENC	22309				Professional services rendered				3,188.20		2,468.46
11/16/2015	DJ 5363	22309	64782	1438	1438	BRUCE A JONES ESQ INVOICE 2015 -09			(150.00)	150.00		2,468.46
12/15/2015	DJ 5764	22309	64996	139	139	VAN CLEEF ENGINEERING ASSOC., Riverview at D			(3,188.20)	3,188.20		2,468.46
04/05/2016	DJ 1379	22201	66020	139	139	VAN CLEEF ENGINEERING ASSOC., INVOICE 910201			(380.16)	380.16		2,468.46
04/05/2016	DJ 1380	22202	66021	139	139	VAN CLEEF ENGINEERING ASSOC., INVOICE 910201			(636.00)	636.00		2,468.46

12-286-56-855-001 Dev Escrow - Peron Developmnt (Perrucci)

From 01/01/2007 to 09/20/2021

Date	Source	PO#	Contract#	Check #	Vendor#	Vendor/Description	Budget	Debit	Credit	PO Encumber	PO Payment	Balance (CR)*
08/31/2016	ENC	24207				Professional Services Rendered/INTERVIEW AT DE				180.00		2,288.46
11/10/2016	ENC	24642		68259	139	LEHIGH VALLEY LIVE SPECIAL MEETING NOTICE FOR				104.30		2,184.16
12/20/2016	DJ 5819	24207		68298	651	VAN CLEEF ENGINEERING ASSOC., RIVERVIEW AT D				(180.00)	180.00	2,184.16
12/20/2016	DJ 5868	24642				INACTIVE:LEHIGH VALLEY MEDIA G SPECIAL MEETIN				(104.30)	104.30	2,184.16
12/29/2016	ENC	24993	0001			WILLIAM MANDRY INVOICE FOR RIVER VIEW AT DELA				619.16		1,565.00
12/29/2016	ENC	25000	0001			VAN CLEEF INVOICE FOR RIVER VIEWINVOICE FOR R				1,565.00		-
01/17/2017	DJ 235	25000	0001	68525	139	VAN CLEEF ENGINEERING ASSOC., INVOICE FOR RI				(1,565.00)	1,565.00	-
01/17/2017	DJ 278	24993	0001	68557	789	WILLIAM E MANDRY INVOICE FOR RIVER VIEW AT DE				(619.16)	619.16	-
02/24/2021	RJ 534					Escrow-Peron Escrow			10,000.00			10,000.00
03/17/2021	ENC	35136				Howard Street - December 2020				1,312.50		8,687.50
03/17/2021	ENC	35137				Howard Street - January 2021				120.00		8,567.50
04/06/2021	DJ 1504	35137		81866	139	VAN CLEEF ENGINEERING ASSOC., Howard Street				(120.00)	120.00	8,567.50
04/06/2021	DJ 1534	35136		81890	677	LAVERY, SELVAGGI & ABROMITTIS P Howard Street				(285.00)	285.00	8,567.50
04/06/2021	DJ 1534	35136		81890	677	LAVERY, SELVAGGI & ABROMITTIS P Howard Street				(270.00)	270.00	8,567.50
04/06/2021	DJ 1534	35136		81890	677	LAVERY, SELVAGGI & ABROMITTIS P Howard Street				(757.50)	757.50	8,567.50
05/06/2021	ENC	35412				Howard Street - April				450.00		8,117.50
05/18/2021	DJ 2138	35412		82225	677	LAVERY, SELVAGGI & ABROMITTIS P Howard Street				(450.00)	450.00	8,117.50
06/11/2021	ENC	35642				Howard Street - May				30.00		8,087.50
06/15/2021	DJ 2596	35642		82511	677	LAVERY, SELVAGGI & ABROMITTIS P Howard Street				(30.00)	30.00	8,087.50
08/11/2021	ENC	35951				Howard St - July				1,590.00		6,497.50
08/17/2021	DJ 3607	35951		83093	677	LAVERY, SELVAGGI & ABROMITTIS P Howard St - Ju				(1,590.00)	1,590.00	6,497.50
09/20/2021	DJ 4120			298003379	6837	Town of Phillipsburg Move Dev Escrows to Trus		6,497.50				-
								-	6,497.50	32,879.26	-	26,381.76

* Liability Account. (Typically Credit Balance. Debit Balances are shown as negatives.)

Moved to
12-286-56-855-263

12-286-56-855-015 Dev Escrow - Perron Riverview-21-001

From 01/01/2007 to 09/20/2021

Date	Source	PO#	Contract#	Check #	Vendor#	Vendor/Description	Budget	Debit	Credit	PO Encumber	PO Payment	Balance (CR)*
03/26/2021	RJ 776					Transfer money that was deposited into wronga			5,000.00			5,000.00
03/29/2021	ENC	35213	0001			Professional Services from 2/1/21 - 2/28/21				3,866.50		1,133.50
04/06/2021	DJ 1510	35213	0001	81872	139	VAN CLEEF ENGINEERING ASSOC., Professional S				(3,866.50)	3,866.50	1,133.50
04/30/2021	ENC	35343				Professional Services from 03/1/21 - 03/31/21				570.00		563.50
04/30/2021	ENC	35347				Professional Services through 04/15/21				229.50		334.00
05/18/2021	DJ 2124	35343		82214	139	VAN CLEEF ENGINEERING ASSOC., Professional S				(570.00)	570.00	334.00
05/18/2021	DJ 2197	35347		82263	6631	WINEGAR, WILHELM, GLYNN & Professional Servic				(229.50)	229.50	334.00
07/01/2021	ENC	35716				Professional Services rendered through 06/29/				310.50		23.50
07/07/2021	DJ 2995	35716		82768	6631	WINEGAR, WILHELM, GLYNN & Professional Servic				(310.50)	310.50	23.50
08/09/2021	RJ 2214					LU Escrow-Perron Riverview-21-001		4,200.00				4,223.50
08/26/2021	ENC	35990				Professional Services from 07/1/21 - 07/31/21				120.00		4,103.50
08/26/2021	ENC	35992				Professional Services from 6/1/21 - 6/30/21				419.75		3,683.75
08/26/2021	ENC	35993				Professional Services from 04/01/21 - 04/30/2				3,523.50		160.25
09/08/2021	DJ 3949	35990	0001	88293	139	VAN CLEEF ENGINEERING ASSOC., Professional S				(120.00)	120.00	160.25
09/08/2021	DJ 3951	35992		83295	139	VAN CLEEF ENGINEERING ASSOC., Professional S				(419.75)	419.75	160.25
09/08/2021	DJ 3952	35993	0001	83296	139	VAN CLEEF ENGINEERING ASSOC., Professional S				(3,523.50)	3,523.50	160.25
09/20/2021	RJ 2655					LU Escrow-Perron Riverview-21-001			5,000.00			5,160.25
09/20/2021	DJ 4120			298003379	6637	Town of Phillipsburg Move Dev Escrows to Trus		5,160.25				-
								-	14,200.00		9,039.75	-

* Liability Account. (Typically Credit Balance. Debit Balances are shown as negatives.)

Moved to
12-286-56-855-263



12-286-56-851-263 LU Escrow-Peron Riverview

From 01/01/2007 to 10/14/2021

Date	Source	P0#	Contract#	Check #	Vendor#	Vendor/Description	Budget	Debit	Credit	P0 Encumber	P0 Payment	Balance (CR) *
09/24/2021	RJ 2707					Transfer from Trust to setup Peron Riverviewi			11,657.75			11,657.75
09/29/2021	ENC	36199				Professional Services from 08/01/21 to 08/31/				1,810.00		9,847.75
09/29/2021	ENC	36206				Professional Services through 09/28/21				1,701.00		8,146.75
10/05/2021	DJ 4437	36199		83591	139	VAN CLEEF ENGINEERING ASSOC., Professional S				(1,810.00)	1,810.00	8,146.75
10/05/2021	DJ 4470	36206		83621	6631	WINEGAR, WILHELM, GLYNN & professional Servic				(1,701.00)	1,701.00	8,146.75
10/14/2021	ENC	36300	0001			Professional Services from 09/1/21 - 09/30/21				3,074.50		5,072.25
							-	-	11,657.75	3,074.50	3,511.00	5,072.25

* Liability Account. (Typically Credit Balance. Debit Balances are shown as negatives.)



Consistency Review Report

Proposed Amendment to the Riverfront Redevelopment Plan

Angela Knowles, PP/AICP, LEED-AP
Lic.# 61250
Van Cleef Engineering Associates,
Inc.

Prepared for review by the
Phillipsburg Planning Board

February 25, 2021



Table of Contents

Existing Conditions 2

Project Summary..... 6

Permitted Uses in the Districts 6

 2004 Master Plan 8

 2017 Riverfront Redevelopment Plan – Districts 3 & 5 8

Recommendation to Town Council 9



Introduction

The purpose of this report is to assess the consistency of a proposed amendment to the 2017 Riverfront Redevelopment Plan with the permitted uses, bulk standards and general intent of the Redevelopment Plan for the Riverfront and with the Town's 2004 Master Plan. This report has been prepared in accordance with the Local Redevelopment and Housing Law (LRHL) Section 40A:12A-7e. which states that:

Prior to the adoption of a redevelopment plan, or revision or amendment thereto, the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan. This report shall include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate.

The Riverfront Redevelopment Area was designated an "area in need of redevelopment" pursuant to the LRHL by the Phillipsburg Town Council in August 2005. As illustrated in Map 1, the redevelopment area covers the length of the Delaware River waterfront from approximately Fifth Street at the northern end to Pursel Street at the southern end. It now incorporates six districts of varying uses and character.

As part of the Highlands Center planning process, Phillipsburg prepared an analysis of the 2005 redevelopment plan to determine its continued feasibility in light of evolving conditions and trends. The Riverfront Redevelopment Study – Final Report & Recommendations, which was prepared in November 2012, concluded that the 2005 redevelopment plan was still basically sound but that certain provisions of the plan should be revisited and revised. To that end, the study outlined recommendations for supporting the continued redevelopment of the riverfront, including recommendations for amending the 2005 redevelopment plan. One of the recommendations was to reconfigure and expand on the Riverfront Redevelopment Area districts to better reflect the existing and future land uses in those particular areas.

In this report, we are focusing on one lot in District 3 – Recreational Heritage and two lots in District 5 – Riverside Residential, more specifically Block 2102 Lots 1, 2, and 11 (Map 2). Initially this area was proposed for a several-hundred-unit apartment complex that never materialized and in the past 15 years the Town has struggled to find a suitable use for this site. We are now embarking on a similar process to what was completed in 2012, to evaluate whether a proposed amendment to the current Riverfront Redevelopment Plan (adopted in November 2017) is consistent with the goals of the Master Plan and the Riverfront Redevelopment Plan, and more specifically, if these particular parcels are suited for siting an industrial use in this District.

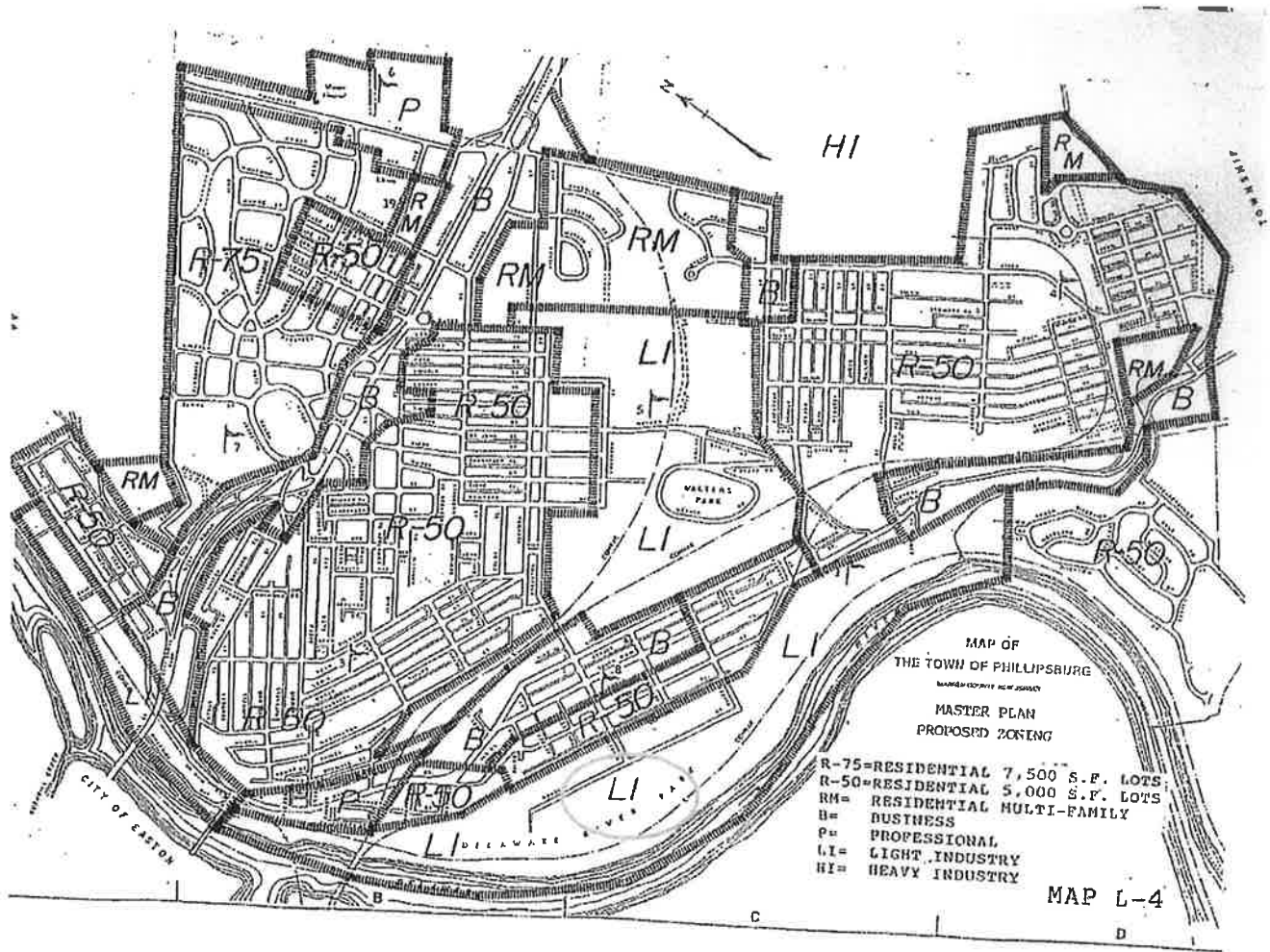
Existing Conditions

The subject parcels (Block 2102, Lots 1, 2, and 11) are located within Districts 3 & 5 and total approximately 43.6 acres in size. All three lots are currently vacant with overgrown vegetation.

- Lot 1 is 7.52 acres located within District 3 (Recreational Heritage) and is identified on the Town's Recreation and Open Space Inventory as municipal Open Space. As a part of this project, the Town is requesting a diversion from the NJDEP to remove this property from the ROSI so that it may become a part of the Redevelopment Plan for this project. The lot is an oddly shaped parcel that extends from Delaware River Park to the northwest of the site. It is surrounded by Lot 2 in District 5 and is therefore a logical parcel to include in the proposed redevelopment amendment to the redevelopment plan.
- Lot 2 is 31.3 acres located within District 5 (Riverfront Residential) with frontage on Howard Street and with rear access to the active railroad that parallels the river.
- Lot 11 is 4.89 acres located within District 5 (Riverfront Residential) and adjacent to Lot 2 with frontage on Howard Street. Lots 2 and 11 both have boundaries with the adjacent Redevelopment District 6 – Riverside Commercial.

Prior to this area being designated as part of the Riverfront Redevelopment Area, the zoning for these lots was identified as "Manufacturing" (1988 Town of Phillipsburg Master Plan). At that time, the Master Plan had recommended changing the existing zoning from a Manufacturing Zone to a Light Industrial Zone. That zone was codified on the zoning map as LI (Light Industry Zone) and has the same zoning regulations as the parcels that lie along Howard Street today. In subsequent reexamination reports, there were two separate overlays applied to these lots: The 2005 Redevelopment Plan which designated the area as an overlay zone known as the RA-3 (HR) zone and then the RRA-5 zone in the 2013 Riverfront Redevelopment Plan. These conditions are shown on the following maps, Map 3, Map 4, and Map 5.

Map 3: Zoning Map from 1988 Master Plan



Map 4: Redevelopment Area Zoning Map from 2005 Redevelopment Plan

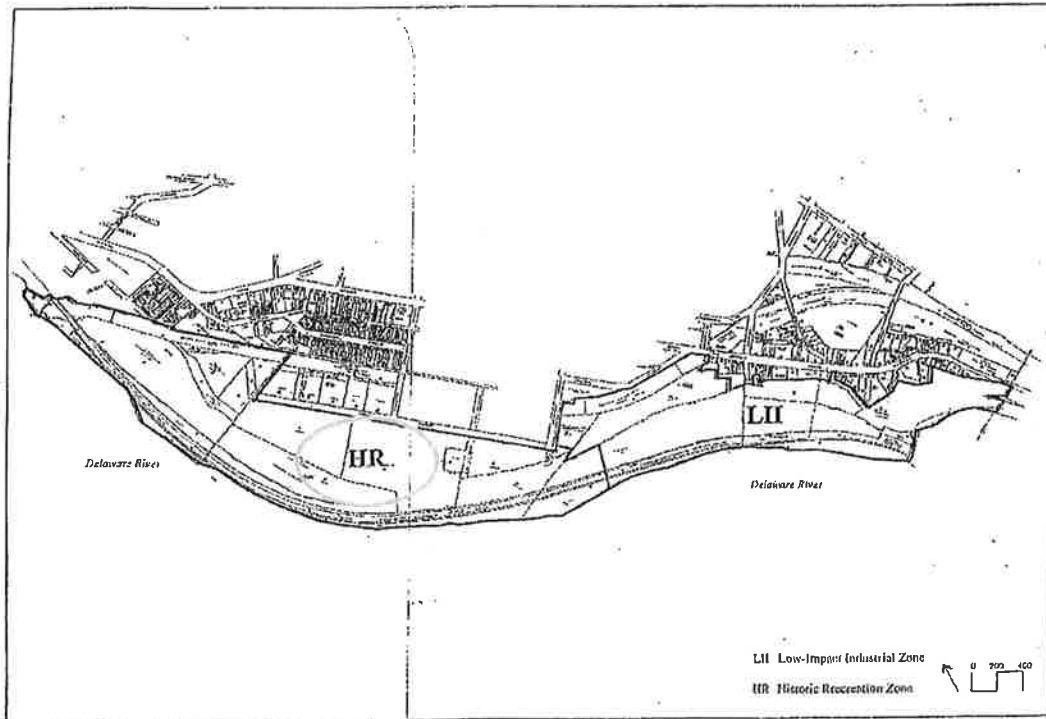
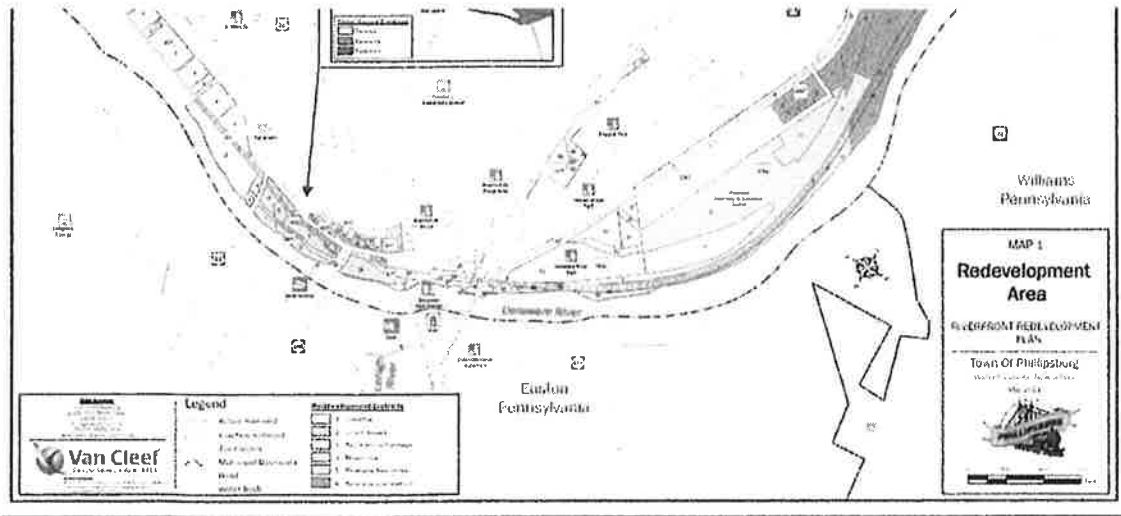


Figure 3: Redevelopment Area Zoning

Adapted From: Probst & Shapiro, Inc. 1989

Map 5: Redevelopment Districts from 2013 Redevelopment Plan



In light of these historical facts, it appears the underlying zoning would be in line with that of the Industrial zone on Howard Street and with flex space for more intense uses should they be desired. Therefore should the Council move forward with the amendment, we recommend the I-2 Zone standards be applied in the amended redevelopment plan for these parcels.

Project Summary

The current owner and redeveloper proposes to acquire that portion of Lot 1 that is currently listed as Municipal Open Space and then develop one (1) "industrial building" of approximately 510,000 square feet. A conceptual plan shared with the town shows a large industrial building situated parallel to Howard Street with approximately 382 parking spaces located on the northeast side of the building between the structure and Howard Street, approximately 45 trailer parking spaces on the north side of the building, and approximately 64 trailer parking spaces on the south side of the building. There appears to be a paved area behind the building (along the riverfront) for potential truck bays / loading docks, but none are shown on the plan. The concept plan also shows three means of ingress/egress from Howard Street – one 24' wide access from the northern end of the street, one 24' wide access from the southern end and another 35' wide access from the southern end of the street. The southern-most access point (the 35' access) would connect with McKeen Street and continue on to South Main Street.

The concept plan also indicates the location of a "proposed above-ground stormwater basin" to the rear of the building, along the riverfront; and the location of an extended paved path from the adjacent Delaware River Park.

Permitted Uses in the Districts

In order to determine the consistency of the proposed project and the proposed redevelopment plan amendment with the existing zoning permitted uses, we have outlined below the existing conditions for each parcel and each zone. We have included the permitted uses for another riverfront industrial zone (I-2 Zone) for comparison (See Tables 1 and 2 below). Should the Town accept this report and move forward with an amendment to the Riverfront Redevelopment Plan, it is recommended that the amended zoning regulations reflect those of the existing I-2 District with components of the Recreational Heritage District to ensure the history and the natural assets of the area continue to be celebrated within the development of these properties. This is discussed further in the Recommendations section of this report.

Table 1: Existing Redevelopment Area Districts

Subject Parcel	District
Block 2102, Lot 1	Recreational Heritage
Block 2102, Lot 2	Riverfront Residential
Block 2102, Lot 11	Riverfront Residential

Table 2: Current Permitted Uses

Primary Permitted Uses	I-2	Riverside Residential	Recreational Heritage
Manufacturing, fabrication, packaging and treatment of conversion of products	✓		
Scientific or research laboratories devoted to research, design, and/or experimentation and processing and fabricating incidental thereto.	✓		
Office buildings for business, professional, executive and administrative purposes.	✓		
Wholesale businesses	✓		
Retail sales associated with the principal use of the building	✓		
Trucking Terminal	✓		
Lumberyards and similar operations requiring bulk storage of materials, such as plumbing and building construction supplies, including the retail sale of such materials.	✓		
Mid-rise and low-rise residential buildings		✓	
Retail establishments and offices on the first floor of mid-rise building		✓	
Museums, cultural and educational facilities on the first floor of mid-rise or free-standing bldgs		✓	
Railroads and related activities			✓
Parks and outdoor recreation			✓
Tourism facilities and interpretive displays			✓

Consistency Review with the 2004 Master Plan and the 2017 Riverfront Redevelopment Plan

2004 Master Plan

The Township's 2004 Master Plan was prepared and adopted with an overarching goal to provide "guidance and aid in the process of redefining the direction of development in the Town. The Master Plan is divided into Plan Elements which each have their own set of goals, objectives and recommendations for advancing the Town's intent to provide a heightened quality of life for resident. One specific plan element is the Land Use Plan. The Land Use Plan was further broken down into goal areas: Housing, Commercial and Industrial. Relevant objectives from each of these goals areas include:

1. Reduce conflicts between residential and non-residential uses
2. Encourage the development and expansion of businesses and industries that will generate jobs and provide services for local residents.
3. Provide functional, accessible, and cost effective locations within the Town for industrial uses that enhance the economics for the individual uses and the Town as a whole.
4. Encourage and aid incompatible non-residential uses whose current location is or will negatively impact the future development/redevelopment of that area to find alternate, more appropriate and functional locations within the Town.

Additionally, the Land Use Plan made recommendations for each of the goal areas to consider in aiding with the implementation of the goals. Recommendations included:

- Review and revise standards for buffering, screening, lighting, and parking for non-residential uses adjacent to residences.
- Review the location and allowed uses in the Town's industrial zones to determine consistency with the Land Use objectives above and revise as needed.
- Provide for adaptive reuse of buildings to provide more compatible uses adjacent to residential zones/uses.
- Review design standards for industrial uses, giving proper consideration to off-site impacts, such as traffic, noise, lights, screening, landscaping, location of loading areas.
- Inventory the Town's vacant and/or underutilized industrial properties and reprioritize the list of potential redevelopment sites.
- Develop a program to encourage poorly located industries to relocate to more favorable locations within the Town.

2017 Riverfront Redevelopment Plan – Districts 3 & 5

The goals stated in the 2017 Riverfront Redevelopment Plan were created with the intent to promote new uses that would range in activities based on their locations. For instance, in District 3, the focus is on "recreation and railroad/canal heritage uses and is intended primarily for public recreational use such as parks and trails and associated tourism activities. It can also accommodate certain private tourism enterprises that complement the recreation/heritage experience such as the excursion train.

This district will also be the hub for the Riverfront Heritage Trail system". In District 5, the area was originally proposed to provide for "mid-rise residential buildings to be constructed primarily along the Howard Street frontage and low-rise residential buildings to be constructed between the mid-rise buildings and the Bel-Del right-of-way." Development in this district was also proposed to enhance and provide access to the adjoining park and recreation facilities including the proposed trail system and we would recommend these objectives to be carried forward into any amended redevelopment plan.

Conclusions & Recommendation

On the whole, it appears the proposed plan, would be consistent with the goals and objectives of the 2004 Master Plan and the intent of the 2017 Riverfront Redevelopment Plan. Since the adoption of this Redevelopment Plan, and the 2013 Plan which preceded this one, the Town has struggled to attract the desired residential development that would be appropriate for the district and the subject parcels. In that time, the Town has embarked on redevelopment activities elsewhere along the Riverfront where residential uses would be located, and are perhaps better suited. The proposed amendment speaks to the goals of the 2004 Master Plan in that it is proposing to locate industrial uses in a more favorable location in town: adjacent to an existing industrial zone and out of sight from residential and downtown uses.

There are a few concerns with the permitted uses proposed to change from residential to industrial. The proposed industrial use would increase truck traffic and potentially automobile traffic in an area that is in the midst of revitalizing to a more pedestrian-friendly area. We would caution the Town in permitting additional truck traffic to enter the downtown (South Main Street) so as to avoid conflicts with pedestrians and bicyclists and to preserve the downtown character of the neighborhood. We would recommend the Town revisit an initial proposal to this site which extended Howard Street south to bypass the downtown and intersect South Main Street somewhere around Center Street.

Similarly, we feel it is important to maintain some components of the existing District 3 with access to recreation and a continuation of the Heritage Trail System in this area. The proposed site plan indicates an existing paved path that enters the site from Delaware River Park and turns east toward Howard Street. It would be good to see that connection instead follow along the riverfront "behind" the proposed industrial buildings and provide an opportunity to link up with the Morris Canal Greenway further south. This would be especially important given the project's proposal to divert a portion of the Green Acres parcel on Lot 1.

Recommendation to Town Council

From these statements, and previous zoning designations over the past 30 years, it is clear that the Town envisioned this area - close to the river and railroad - as a non-residential, light industrial area. Goals and Objectives in the previous Land Use Plans provide the foundation for these uses and identify measures to ensure there is consideration for any off-site impacts and for neighboring residential uses.

Given the subject parcels are located adjacent to an existing I-1 zone, a Riverside Commercial Zone, and an established municipal park, there would appear to be little-to-no impact on the immediate neighboring properties if an amended redevelopment plan were to implement Heavy Industrial zoning standards. As with any large development, off-site impacts like traffic will need to be considered due to the project's proximity to the downtown.

It is for these reasons that the proposed amendment and concept plan appear to be consistent with the Master Plan and Riverfront Redevelopment Plan, and as long as any special conditions are met. We trust that the comments found herein are sufficient for the Council's review and consideration of the proposed amendment of the Riverfront Redevelopment Plan District 5.



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 Case: **E18 11855** Court: **2019** Type: **Moving** Defendant: **FRANK MCVEY III** Status: **Disposed**

Defendant Information

 Name: **FRANK MCVEY III** Gender: **Male** Eyes: **Hazel** Commercial License: **N**

Court Information

 Court Date: **07/05/2018** Court Time: **08:30 AM** Court Room: **0001**

Ticket Information

 Ticket Number: **E18 11855** Issue Date: **06/29/2018** Offense Date: **06/28/2018 09:36 PM**
 Court: **2019 - UNION TWP MUNICIPAL COURT** Agency & Officer ID: [2019 3261](#) Location: **18 MORRIS AVE**
 Mun. Of Offense: **2019** Municipality: **UNION TWP MUNICIPAL COURT**
 Transferred To: Transferred From:
 Status: **Disposed** Time Payment: Warrant: Bail:
 Entered Date: **06/29/2018**

Offense Information

 Offense: **39:4-50 - OPERATING UNDER INFLUENCE OF LIQUOR OR DRUGS**
 Death/Serious Injury: **N** Personal Injury: **N** Excess Weight: **00000**
 DWI Influence Type: Alcotest: Determined By: Reading 1/2:

Vehicle Information

 Make of Vehicle: **Jeep** Year of Vehicle: **2011** Type of Vehicle: **Station Wagon** Color: **Gold**

Disposition Information

 Plea: **No Plea** Plea Date: **07/05/2018** Disposition Date: **07/05/2018** Finding: **Dismissal**
 License Surrendered: Method: **Dism - Prosecutorial Discr** Disposition Type: **Dismissed** Accident Disp. Code:

Additional Information

Involved Persons

Person/Officer	Type
CHRISTOP F FAUSTINO	Officer

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Case: E18 11856 | **Court:** 2019 | **Type:** Moving | **Defendant:** FRANK MCVHEY III | **Status:** Disposed

Defendant Information

Name: FRANK MCVHEY III | **Gender:** Male | **Eyes:** Hazel | **Commercial License:** N

Court Information

Court Date: 07/05/2018 | **Court Time:** 08:30 AM | **Court Room:** 0001

Ticket Information

Ticket Number: E18 11856 | **Issue Date:** 06/29/2018 | **Offense Date:** 06/28/2018 09:36 PM
Court: 2019 - UNION TWP MUNICIPAL COURT | **Agency & Officer ID:** 2019 3261 | **Location:** 18 MORRIS AVE
Mun. Of Offense: 2019 | **Municipality:** UNION TWP MUNICIPAL COURT
Transferred To: | **Transferred From:**
Status: Disposed | **Time Payment:** | **Warrant:** | **Bail:**
Entered Date: 06/29/2018

Offense Information

Offense: 39:4-50.2 - CONSENT TO TAKE SAMPLES OF BREATH, RECORD
Death/Serious Injury: N | **Personal Injury:** N | **Excess Weight:** 00000
DWI Influence Type: | **Alcotest:** | **Determined By:** | **Reading 1/2:**

Vehicle Information

Make of Vehicle: Jeep | **Year of Vehicle:** 2011 | **Type of Vehicle:** Station Wagon | **Color:** Gold

Disposition Information

Plea: No Plea | **Plea Date:** 07/05/2018 | **Disposition Date:** 07/05/2018 | **Finding:** Dismissal
License Surrendered: | **Method:** Dism - Prosecutorial Discr | **Disposition Type:** Dismissed | **Accident Disp. Code:**

Additional Information

Involved Persons

Person/Officer	Type
CHRISTOP F FAUSTINO	Officer

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Case: E18 11857 | **Court:** 2019 | **Type:** Moving | **Defendant:** FRANK MCVEY III | **Status:** Disposed

Defendant Information

Name: FRANK MCVEY III | **Gender:** Male | **Eyes:** Hazel | **Commercial License:** N

Court Information

Court Date: 07/05/2018 | **Court Time:** 08:30 AM | **Court Room:** 0001

Ticket Information

Ticket Number: E18 11857 | **Issue Date:** 06/29/2018 | **Offense Date:** 06/28/2018 09:36 PM
Court: 2019 - UNION TWP MUNICIPAL COURT | **Agency & Officer ID:** [2019 3261](#) | **Location:** 18 MORRIS AVE
Mun. Of Offense: 2019 | **Municipality:** UNION TWP MUNICIPAL COURT
Transferred To: | **Transferred From:**
Status: Disposed | **Time Payment:** | **Warrant:** | **Bail:**
Entered Date: 06/29/2018

Offense Information

Offense: 39:4-88 - TRAFFIC ON MARKED LANES | **Personal Injury:** N | **Excess Weight:** 00000
Death/Serious Injury: N

Vehicle Information

Make of Vehicle: Jeep | **Year of Vehicle:** 2011 | **Type of Vehicle:** Station Wagon | **Color:** Gold

Disposition Information

Plea: No Plea | **Plea Date:** 07/05/2018 | **Disposition Date:** 07/05/2018 | **Finding:** Dismissal
License Surrendered: | **Method:** Dism - Prosecutorial Discr | **Disposition Type:** Dismissed | **Accident Disp. Code:**

Additional Information

Involved Persons

Person/Officer	Type
CHRISTOP F FAUSTINO	Officer

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Case: E18 11858 | **Court:** 2019 | **Type:** Moving | **Defendant:** FRANK MCVEY III | **Status:** Disposed

Defendant Information

Name: FRANK MCVEY III | **Gender:** Male | **Eyes:** Hazel | **Commercial License:** N

Court Information

Court Date: 07/05/2018 | **Court Time:** 08:30 AM | **Court Room:** 0001

Ticket Information

Ticket Number: E18 11858	Issue Date: 06/29/2018	Offense Date: 06/28/2018 09:36 PM
Court: 2019 - UNION TWP MUNICIPAL COURT	Agency & Officer ID: 2019 3261	Location: 18 MORRIS AVE
Mun. Of Offense: 2019	Municipality: UNION TWP MUNICIPAL COURT	
Transferred To:	Transferred From:	
Status: Disposed	Time Payment:	Warrant:
Entered Date: 06/29/2018		Bail:

Offense Information

Offense: 39:4-130 - FAILURE TO REPORT ACCIDENT | **Death/Serious Injury:** N | **Personal Injury:** N | **Excess Weight:** 00000

Vehicle Information

Make of Vehicle: Jeep | **Year of Vehicle:** 2011 | **Type of Vehicle:** Station Wagon | **Color:** Gold

Disposition Information

Plea: No Plea	Plea Date: 07/05/2018	Disposition Date: 07/05/2018	Finding: Dismissal
License Surrendered:	Method: Dism - Prosecutorial Discr	Disposition Type: Dismissed	Accident Disp. Code:

Additional Information

Involved Persons

Person/Officer	Type
CHRISTOP F FAUSTINO	Officer

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Case: **E18 11859** Court: **2019** Type: **Moving** Defendant: **FRANK MCVEY III** Status: **Disposed**

Defendant Information

Name: **FRANK MCVEY III** Gender: **Male** Eyes: **Hazel** Commercial License: **N**

Court Information

Court Date: **02/26/2019** Court Time: **06:05 PM** Court Room: **0001**

Assessed Totals

Assessed Total: **\$689.00** Fine Amount: **\$306.00** Cost Amount: **\$33.00** Misc Amount: **\$350.00**
Balance Due: **\$0.00** Last Payment Date: **02/26/2019**

Ticket Information

Ticket Number: **E18 11859** Issue Date: **06/29/2018** Offense Date: **06/28/2018 09:36 PM**
Court: **2019 - UNION TWP MUNICIPAL COURT** Agency & Officer ID: **2019 3261** Location: **18 MORRIS AVE**
Mun. Of Offense: **2019** Municipality: **UNION TWP MUNICIPAL COURT**
Transferred To: **0089 - PROSECUTOR - 06/29/2018** Transferred From: **0089 - PROSECUTOR - 09/11/2018**
Status: **Disposed** Time Payment: Warrant: Bail:
Entered Date: **06/29/2018**

Offense Information

Offense: **39:4-50 - OPERATING UNDER INFLUENCE OF LIQUOR OR DRUGS**
Death/Serious Injury: **N** Personal Injury: **N** Excess Weight: **00000**
DWI Influence Type: Alcotest: Determined By: Reading 1/2:

Vehicle Information

Make of Vehicle: **Jeep** Year of Vehicle: **2011** Type of Vehicle: **Station Wagon** Color: **Gold**

Disposition Information

Plea: **Guilty** Plea Date: **02/26/2019** Disposition Date: **02/26/2019** Finding: **Guilty**
License Surrendered: **Yes** Method: Disposition Type: **Disposed** Accident Disp. Code:

Item	Assessed
Fine	\$306.00
Cost	\$33.00
Misc Total	\$350.00
Total	\$689.00

Num	Miscellaneous Fees	Amount
1	Funds/Safe Neighborhoods	\$75.00
2	VCCB	\$50.00
3	Surcharge	\$200.00
4	Video Equipment Surcharge - County	\$25.00
Miscellaneous Total		\$350.00

Num	Sentence	Duration	Status
1	License Revoked	3 Months	
2	Intox Driver Res Ctr.	12 Hours	

Additional Information

[Involved Persons](#) [Payment](#)

Person/Officer	Type
CHRISTOP F FAUSTINO	Officer
P.O. C FAUSTINO	Complainant
DONALD E SOUDERS, JR., ESQ	Atty for Def.

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Ticket Detail

[Back](#) [Case Details](#)
Case: E18 11860 **Court:** 2019 **Type:** Moving **Defendant:** FRANK MCVHEY III **Status:** Disposed

Defendant Information

Name: FRANK MCVHEY III **Gender:** Male **Eyes:** Hazel **Commercial License:** N

Court Information

Court Date: 02/26/2019 **Court Time:** 06:05 PM **Court Room:** 0001

Ticket Information

Ticket Number: E18 11860 **Issue Date:** 06/29/2018 **Offense Date:** 06/28/2018 09:36 PM
Court: 2019 - UNION TWP MUNICIPAL COURT **Agency & Officer ID:** [2019_3261](#) **Location:** 18 MORRIS AVE
Mun. Of Offense: 2019 **Municipality:** UNION TWP MUNICIPAL COURT
Transferred To: 0089 - PROSECUTOR - 06/29/2018 **Transferred From:** 0089 - PROSECUTOR - 09/11/2018
Status: Disposed **Time Payment:** **Warrant:** **Bail:**
Entered Date: 06/29/2018

Offense Information

Offense: 39:4-50.2 - CONSENT TO TAKE SAMPLES OF BREATH, RECORD
Death/Serious Injury: N **Personal Injury:** N **Excess Weight:** 00000
DWI Influence Type: **Alcotest:** **Determined By:** **Reading 1/2:**

Vehicle Information

Make of Vehicle: Jeep **Year of Vehicle:** 2011 **Type of Vehicle:** Station Wagon **Color:** Gold

Disposition Information

Plea: Not Guilty **Plea Date:** 02/26/2019 **Disposition Date:** 02/26/2019 **Finding:** Dismissal
License Surrendered: **Method:** Dism - Plea Agmt **Disposition Type:** Dismissed **Accident Disp. Code:**

Additional Information

Involved Persons

Person/Officer	Type
CHRISTOP F FAUSTINO	Officer
P.O. C FAUSTINO	Complainant
DONALD E SOUDERS, JR., ESQ	Atty for Def.

[Back](#) [Case Details](#)

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Case: **E18 11861** Court: **2019** Type: **Moving** Defendant: **FRANK MCVEY III** Status: **Disposed**

Defendant Information

Name: **FRANK MCVEY III** Gender: **Male** Eyes: **Hazel** Commercial License: **N**

Court Information

Court Date: **02/26/2019** Court Time: **06:05 PM** Court Room: **0001**

Ticket Information

Ticket Number: **E18 11861** Issue Date: **06/29/2018** Offense Date: **06/28/2018 09:36 PM**
 Court: **2019 - UNION TWP MUNICIPAL COURT** Agency & Officer ID: [2019 3261](#) Location: **18 MORRIS AVE**
 Mun. Of Offense: **2019** Municipality: **UNION TWP MUNICIPAL COURT**
 Transferred To: **0089 - PROSECUTOR - 06/29/2018** Transferred From: **0089 - PROSECUTOR - 09/11/2018**
 Status: **Disposed** Time Payment: Warrant: Bail:
 Entered Date: **06/29/2018**

Offense Information

Offense: **39:4-88 - TRAFFIC ON MARKED LANES** Death/Serious Injury: **N** Personal Injury: **N** Excess Weight: **00000**

Vehicle Information

Make of Vehicle: **Jeep** Year of Vehicle: **2011** Type of Vehicle: **Station Wagon** Color: **Gold**

Disposition Information

Plea: **Not Guilty** Plea Date: **02/26/2019** Disposition Date: **02/26/2019** Finding: **Dismissal**
 License Surrendered: Method: **Dism - Plea Agmt** Disposition Type: **Dismissed** Accident Disp. Code:

Additional Information

Involved Persons

Person/Officer	Type
CHRISTOP F FAUSTINO	Officer
P.O. C FAUSTINO	Complainant
DONALD E SOUDERS, JR., ESQ	Atty for Def.

[Back](#)
[New Search](#)


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Ticket Detail

[Back](#)
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Case: E18 11862 | **Court:** 2019 | **Type:** Moving | **Defendant:** FRANK MCVEY III | **Status:** Disposed

Defendant Information

Name: FRANK MCVEY III | **Gender:** Male | **Eyes:** Hazel | **Commercial License:** N

Court Information

Court Date: 02/26/2019 | **Court Time:** 06:05 PM | **Court Room:** 0001

Ticket Information

Ticket Number: E18 11862	Issue Date: 06/29/2018	Offense Date: 06/28/2018 09:36 PM
Court: 2019 - UNION TWP MUNICIPAL COURT	Agency & Officer ID: 2019.3261	Location: 18 MORRIS AVE
Mun. Of Offense: 2019	Municipality: UNION TWP MUNICIPAL COURT	
Transferred To: 0089 - PROSECUTOR - 06/29/2018	Transferred From: 0089 - PROSECUTOR - 09/11/2018	
Status: Disposed	Time Payment:	Warrant:
Entered Date: 06/29/2018		Bail:

Offense Information

Offense: 39:4-130 - FAILURE TO REPORT ACCIDENT | **Death/Serious Injury:** N | **Personal Injury:** N | **Excess Weight:** 00000

Vehicle Information

Make of Vehicle: Jeep | **Year of Vehicle:** 2011 | **Type of Vehicle:** Station Wagon | **Color:** Gold

Disposition Information

Plea: Not Guilty | **Plea Date:** 02/26/2019 | **Disposition Date:** 02/26/2019 | **Finding:** Dismissal
License Surrendered: | **Method:** Dism - Plea Agmt | **Disposition Type:** Dismissed | **Accident Disp. Code:**

Additional Information

Involved Persons

Person/Officer	Type
CHRISTOP F FAUSTINO	Officer
P.O. C FAUSTINO	Complainant
DONALD E SOUDERS, JR., ESQ.	Atty for Def.

[Back](#)
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Complaint Detail

[Back](#)
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Case: S 2021 342 | **Court:** 2119 | **Type:** Complaint | **Defendant:** FRANK MCVEY | **Status:** Transferred To

Defendant Information

Name: FRANK MCVEY | **Gender:** | **Eyes:**

Court Information

Court Date: | **Court Time:** | **Court Room:**

Complaint Information

Complaint Number: S 2021 342 | **Issue Date:** 08/17/2021 | **Offense Date:** 08/13/2021 06:12 PM | **Arrest Date:** 08/18/2021
Court: 2119 - PHILLIPSBURG MUNICIPAL COURT | **Agency & Officer ID:** [2189 4544](#) | **Police Case No:** [2108-0604](#)
Mun. Of Offense: 2119 | **Co-Def Count:** 0 | **Complaint Plea:** No Plea
Complainant: JUSTIN BOYCE
Transferred To: 0089 - PROSECUTOR - 08/18/2021 | **Transferred From:**
Reason: Indictable
Status: Transferred To | **Time Payment:** | **Warrant:** | **Bail:**
Last Action Date: 08/19/2021

Charge Information

[ZC:33-3E](#)**Description:** CALLING 911 WITHOUT NEEDING 911 SERVICE
Charge Status: Active | **Degree:** 4th Degree

Additional Information

[Involved Persons](#)

Person/Officer	Type	Attorney ID	Agency Name
JUSTIN BOYCE	Officer		

[Back](#)
[Home Search](#)

Case Summary

Case Number: WRN L-000059-18

Case Caption: Post-Sheedy Vs Town Of Phillipsburg Et Al*Jhp Rec*

Court: Civil Part

Venue: Warren

Case Initiation Date: 02/28/2018

Case Type: Civil Rights

Case Status: Closed

Jury Demand: 6 Jurors

Case Track: 3

Judge: John H Pursel

Team: 1

Original Discovery End Date: 07/27/2019

Current Discovery End Date: 09/25/2019

of DED Extensions: 1

Original Arbitration Date:

Current Arbitration Date:

of Arb Adjournments: 0

Original Trial Date: 12/09/2019

Current Trial Date:

of Trial Date Adjournments: 0

Disposition Date: 03/03/2020

Case Disposition: Settled-While Scheduled For Trial

Statewide Lien:

Plaintiffs

Kelly Post-Sheedy

Party Description: Individual

Attorney Name: John F Mc Donnell

Address Line 1:

Address Line 2:

Attorney Bar ID: 000871984

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: JOHNMCDONNELLESQ@HOTMAIL.COM

Defendants

Robert Fulper

Party Description: Individual

Attorney Name: Padraig Pearse Flanagan

Address Line 1:

Address Line 2:

Attorney Bar ID: 021531999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: PAT@PPFLAWFIRM.COM

Town Of Phillipsburg

Party Description: Municipality

Attorney Name: Padraig Pearse Flanagan

Address Line 1:

Address Line 2:

Attorney Bar ID: 021531999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: PAT@PPFLAWFIRM.COM

Frank Mcvey

Party Description: Individual

Attorney Name: Padraig Pearse Flanagan

Address Line 1:

Address Line 2:

Attorney Bar ID: 021531999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: PAT@PPFLAWFIRM.COM

Danielle Degerolamo

Party Description: Individual

Attorney Name: Padraig Pearse Flanagan

Address Line 1:

Address Line 2:

Attorney Bar ID: 021531999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: PAT@PPFLAWFIRM.COM

Case Proceeding

Created Date	Scheduled Time	Court Room	Judge Name	Proceeding Description	Motion Type	Proceeding Status	Motion Status
03/29/2019	09:00	04		MOTION HEARING	MOTION TO COMPEL ANSWERS TO INTERROGATORIES	RSCHED	
04/26/2019	09:00	HCH1		MOTION HEARING	MOTION TO COMPEL ANSWERS TO INTERROGATORIES	COMPLETED	CM

**PLAINTIFFS'
EXHIBIT
5A**

11/14/2019	01:30	HCH1		SETTLEMENT CONFERENCE		NOT SETTLD	
11/22/2019	09:00	301		MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	RSCHED	
12/09/2019	09:00	HCH1		TRIAL		RSCHED	
01/10/2020	09:00	301		MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	COMPLETED	CM
01/27/2020	09:00	HCH1		TRIAL		NOT SETTLD	

Case Actions							
Filed Date	Docket Text			Transaction ID	Entry Date		
02/28/2018	Complaint with Jury Demand for WRN-L-000059-18 submitted by MC DONNELL, JOHN F, MC DONNELL ARTIGLIERE on behalf of KELLY POST-SHEEDY against TOWN OF PHILLIPSBURG, ROBERT FULPER, DANIELLE DEGEROLAMO, FRANK MCVEY			LCV2018367219	02/28/2018		
03/01/2018	TRACK ASSIGNMENT submitted by Case Management			LCV2018375675	03/01/2018		
05/03/2018	STIPULATION TO EXTEND TIME FOR ANSWER submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & FADER, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against KELLY POST-SHEEDY			LCV2018779835	05/03/2018		
05/03/2018	Answer W/Jury Demand submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & FADER, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against KELLY POST-SHEEDY			LCV2018780033	05/03/2018		
08/07/2018	MEDIATION Notice submitted by Case Management			LCV20181364177	08/07/2018		
08/06/2018	Order To Refer To Mediator Without Stay - GRANTED by Judge PURSEL, JOHN, H			LCV20181364563	08/07/2018		
03/13/2019	MOTION TO COMPEL ANSWERS TO INTERROGATORIES submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of KELLY POST-SHEEDY against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO *LINKED FILING*			LCV2019454315	03/13/2019		
03/15/2019	CLERK NOTICE: re: MOTION TO COMPEL ANSWERS TO INTERROGATORIES [LCV2019454315] -Other: Please provide Proof of Service			LCV2019475803	03/15/2019		
03/15/2019	The motion filed on 03/13/2019 will be decided on 03/29/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION TO COMPEL ANSWERS TO INTERROGATORIES [LCV2019454315]			LCV2019475822	03/15/2019		
03/21/2019	OPPOSITION TO MOTION submitted by CAHILL, KERRY of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against KELLY POST-SHEEDY *LINKED FILING*			LCV2019508512	03/21/2019		
03/26/2019	REPLY BRIEF submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of KELLY POST-SHEEDY against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO *LINKED FILING*			LCV2019537481	03/26/2019		
03/27/2019	DELETED - NOTICE OF APPEARANCE (NOT THE FIRST PAPER) submitted by CALIGUIRE, MARK, STEVEN of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against KELLY POST-SHEEDY			LCV2019540942	03/27/2019		
03/27/2019	5-DAY ORDER submitted by CALIGUIRE, MARK, STEVEN of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against KELLY POST-SHEEDY			LCV2019542090	03/27/2019		
03/27/2019	NOTICE OF APPEARANCE (NOT THE FIRST PAPER) submitted by CAHILL, KERRY of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against KELLY POST-SHEEDY			LCV2019542283	03/27/2019		
04/24/2019	The motion filed on 03/13/2019 was rescheduled to 04/26/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION TO COMPEL ANSWERS TO INTERROGATORIES [LCV2019454315]			LCV2019721788	04/24/2019		
04/26/2019	ORDER TO COMPEL ANSWERS TO INTERROGATORIES-Granted by Judge MILLER, THOMAS, C re: MOTION TO COMPEL ANSWERS TO INTERROGATORIES [LCV2019454315]			LCV2019735226	04/26/2019		
05/20/2019	DISCOVERY END DATE REMINDER Notice submitted by Case Management			LCV2019879465	05/20/2019		
06/19/2019	DISCOVERY EXTENSION STIPULATION submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of KELLY POST-SHEEDY against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO			LCV20191078786	06/19/2019		
06/20/2019	CLERK NOTICE: re: DISCOVERY EXTENSION STIPULATION [LCV20191078786] -The DED has been extended to 9/25/19.			LCV20191085261	06/20/2019		
07/09/2019	ORDER TO DELETE - Granted by Judge re: 5-DAY ORDER [LCV2019542090]			LCV20191185585	07/09/2019		
07/09/2019	DELETED - ORDER TO DELETE submitted by Case Management Staff			LCV20191185454	07/09/2019		
07/10/2019	ORDER TO DELETE submitted by Case Management Staff			LCV20191189676	07/10/2019		
07/10/2019	CORRECTION: re: [LCV2019540942] NOTICE OF APPEARANCE (NOT THE FIRST PAPER) submitted by CALIGUIRE, MARK, STEVEN of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against KELLY POST-SHEEDY on 03/27/2019 has been deleted as ordered by Judge PURSEL, JOHN, H - By request of the defendant.			LCV20191189721	07/10/2019		
07/10/2019	CORRECTION: re: [LCV20191185454] ORDER TO DELETE submitted by Case Management Staff on 07/09/2019 has been deleted as ordered by Judge PURSEL, JOHN, H - By request of the defendant.			LCV20191189722	07/10/2019		
07/22/2019	DISCOVERY END DATE REMINDER Notice submitted by Case Management			LCV20191265924	07/22/2019		
09/06/2019	COURT Notice submitted by Case Management			LCV20191592256	09/06/2019		

10/24/2019	MOTION FOR SUMMARY JUDGMENT submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against KELLY POST-SHEEDY *LINKED FILING*	LCV20191947355	10/24/2019
10/24/2019	The motion filed on 10/24/2019 will be decided on 11/22/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR SUMMARY JUDGMENT [LCV20191947355]	LCV20191948845	10/24/2019
11/05/2019	ADJOURNMENT REQUEST submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of KELLY POST-SHEEDY against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO	LCV20192034115	11/05/2019
11/12/2019	The motion filed on 10/24/2019 was rescheduled to 01/10/2020. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR SUMMARY JUDGMENT [LCV20191947355]	LCV20192079614	11/12/2019
11/12/2019	CLERK NOTICE: re: ADJOURNMENT REQUEST [LCV20192034115] -THE MOTION FOR SUMMARY JUDGEMENT HAS BEEN ADJOURNED TO JANUARY 10TH,2010.THANK YOU.	LCV20192079630	11/12/2019
11/23/2019	COURT Notice submitted by Case Management	LCV20192171792	11/23/2019
12/18/2019	Mediation Not Held-Case Returned To Court submitted by Court	LCV20192329382	12/18/2019
12/23/2019	BRIEF submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of KELLY POST-SHEEDY against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO	LCV20192364522	12/23/2019
12/24/2019	The motion filed on 10/24/2019 will be decided on 01/10/2020. Oral argument has been requested. You will be notified when oral argument is scheduled. Do not come to the courthouse unless you are so notified. Re: MOTION FOR SUMMARY JUDGMENT [LCV20191947355]	LCV20192367961	12/24/2019
12/24/2019	CERTIFICATION submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of KELLY POST-SHEEDY against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO	LCV20192368497	12/24/2019
01/06/2020	REPLY BRIEF submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against KELLY POST-SHEEDY *LINKED FILING*	LCV202029552	01/06/2020
01/08/2020	CLERK NOTICE: re: MOTION FOR SUMMARY JUDGMENT [LCV20191947355] -The Motion for Summary Judgment returnable on January 10, 2020 is scheduled for oral argument before the Honorable Yolanda Ciccone, A.J.S.C. in Somerset County Courtroom 301, 3rd Floor.	LCV202042119	01/08/2020
01/10/2020	ORDER FOR SUMMARY JUDGMENT-Denied by Judge CICCONE, YOLANDA re: MOTION FOR SUMMARY JUDGMENT [LCV20191947355]	LCV2020124402	01/17/2020
03/03/2020	ORDER OF DISMISSAL/CASE SETTLED - GRANTED by Judge THOMAS C. MILLER, P.J., CV.	LCV2020440881	03/03/2020

McDONNELL ARTIGLIERE
John F. McDonnell, Esq.
NJ Attorney ID No.: 000871984
60 Youmans Avenue
Washington, NJ 07882
(908) 689-5885
Attorneys for Plaintiff

KELLY POST-SHEEDY,
Plaintiff,

v.

TOWN OF PHILLIPSBURG, ROBERT
FULPER, DANIELLE DEGEROLAMO,
and FRANK MCVEY,
Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY
DOCKET NO.: WRN-L-

Civil Action

COMPLAINT AND DEMAND FOR
TRIAL BY JURY

Plaintiff, Kelly Post-Sheedy, residing in Phillipsburg, New Jersey, by way of Complaint against defendants, says:

FIRST COUNT

1. Defendant Town of Phillipsburg (“Town”) is a municipality in the County of Warren, State of New Jersey. The Town is governed under the Mayor-Council Plan under the Faulkner Act, N.J.S.A. 40:69A-1 et seq., by a Mayor and five-member Town Council. Members of the Town Council are elected at-large in partisan elections to four-year terms of office on a staggered basis.

2. Stephen R. Ellis, Jr. (“Ellis”), a Democrat, was elected Mayor of the Town in November 2015 and took office on January 1, 2016.

3. At present, and over the last several years, the Town Council has been ruled by a Republican majority with three Republican Council Members and two Democratic Members. The



relationship between Mayor Ellis and the Republican members of the Republican-controlled Town Council have been extremely bitter and strained.

4. In November 2017 defendants Robert Fulper, Danielle DeGerolamo and Frank McVey, Republicans, were voted onto the Town Council replacing three Republican Town Council Members.

5. Defendant Robert Fulper, a Republican, has been Town Council President since January 1, 2018.

6. Defendant Danielle DeGerolamo, a Republican, has been Town Council Vice-President since January 1, 2018.

7. Defendant Frank McVey, a Republican, has been Town Councilman since January 1, 2018.

8. In May 2011, plaintiff graduated Suma Cum Laude from Lehigh University (“Lehigh”) with a Masters degree. While a graduate student at Lehigh, she was awarded a Graduate Assistantship (“GA”) with the Athletic Department. As a GA, her primary responsibilities were within Public Relations. Plaintiff oversaw the development and growth of a student-athlete organization that completed weekly visits to inner-city schools to mentor children. The student-athletes under plaintiff’s supervision were role models to the at-risk youth and assisted them with homework, encouraged daily reading and played sports and other activities with them. The program was so successful that a local Health Care Network sponsored a collaborative reading program to operate with it. While earning her Masters degree plaintiff also worked with the Easton Area Middle School counseling department to implement programs strengthening the parent-child relationship, hosted lunch groups centered around behavior improvement plans and lead a school

wide anti-bullying campaign. Plaintiff was also responsible for the development of Red Ribbon Week programming, which taught teenagers the dangers of drug and alcohol abuse.

9. Immediately following graduation from Lehigh, Plaintiff was the youngest Family Engagement Manager hired by Community Services for Children, Inc. ("CSC"). CSC is a leader in early education and family development, promoting innovative practices affecting the lives of 40,000 children annually in 16 counties in Northeastern Pennsylvania. Within nine months at CSC, plaintiff was promoted to Enrollment Specialist Manager. While at CSC, Plaintiff supervised 10 staff who were responsible for enrolling low-income children into high-quality pre-school programs, monthly home visits to teach parenting skills, parent meetings to strengthen the parent-as-teacher approach, advocate for special needs children and ensure families had basic needs met through social services. Plaintiff participated in grant writing, corporate fundraising and ensured compliance with federal guidelines. While employed at CSC, plaintiff also assisted in a start-up company for event planning.

10. On or about May 1, 2017 Ellis appointed plaintiff to the position of Superintendent of Recreation with an annual salary of \$67,000.00. Plaintiff's appointment was approved 5-0 by the Republican-majority Town Council. The predecessor in plaintiff's title was paid a yearly salary of \$93,668.00.

11. The Town and the Joseph H. Firth Youth Center ("Center") have had a working partnership for over 50 years. The Center is a privately funded 501(c)3 non-profit organization located on Anderson Street in Phillipsburg. The Center is governed by a private Board of Directors. The Center provides recreational and educational facilities and programs, predominately for Town residents. The Center provides significant indoor facilities to the Town

at no cost, including a gym for youth basketball and wrestling, as well as classrooms and other indoor facilities for other recreational and educational programs.

12. A component of the relationship between the Town and Center involves the terms and conditions of the Center's Executive Director who simultaneously holds the title of Town Superintendent of Recreation. Thus, since plaintiff was appointed Town Superintendent of Recreation, she has also served as the Center's Executive Director. The Center's Board of Directors unanimously approved plaintiff's hiring an Executive Director.

13. Since registering to vote in or about 2005, plaintiff has been a registered Republican.

14. Plaintiff has received numerous positive reviews and accolades while the Town Superintendent of Recreation and Center Executive Director. Plaintiff's performance has exceeded all expectations. This has been publicly acknowledged by some defendants.

15. After her appointment on May 1, 2017 plaintiff accomplished a great deal as Superintendent of Recreation including the following achievements:

- a) Prepared the Playground Safety Handbook and the Aquatic Pool Safety Plan and Handbook as the Town had been out-of-compliance for nearly a decade without these required safety documents;
- b) Oversaw the final seven weeks of construction of a new Splash Pad at the Municipal Pool while renovating the deteriorating main pool, building and grounds and organized a Grand Opening Ribbon Cutting of the Splash Pad with local officials and corporate sponsors;
- c) Hired, trained and supervised over 30 Municipal Pool Staff, including Manager, Assistant Manager, Lifeguards, Gate Personnel and Maintenance. Supervised all Pool operations including budgeting, compliance with applicable Codes, maintaining water safety levels and testing requirements in accordance with the Department of Health, operating concessions and vending to ensure profitability and implemented new recreational opportunities, such as Dances, Family Picnic Night, and Volunteer Recognition Day. Despite being open five weeks less than the previous year due to construction, the Pool generated more revenue;
- d) Hired, trained and supervised 13 Playground Program Staff and re-developed the six-week Playground Program at five neighborhood parks. The program resulted in a 117% increase in daily attendance;
- e) Solicited sponsorships from a local business and resident to complete a Playground Painting Project at Firth Playground, the Town's most heavily used playground.

- Coordinated volunteers and seasonal staff to clean up weeds and debris and paint interactive graphics across the pavement;
- f) Recruited 50 Lafayette College Students to clean and weed the playground adjacent to the newly relocated Municipal Building as part of the Make a Difference Day initiative;
 - g) Completed trainings on personal time to enhance employee skills, such as Child Abuse Mandated Reporting, Child Health & Development, and Grant Writing seminars;
 - h) Developed the initial Phillipsburg Recreation Monthly E-Newsletter in October 2017 communicating recreational opportunities to over 700 residents;
 - i) Researched, developed and assisted with the campaign to educate residents about the November 7, 2017 Open Space Referendum. The Referendum passed, securing over \$150,000 annually to designated Town Recreation and Open Public Space initiatives. While surrounding municipalities have had this in place for nearly two decades, this was the first time Phillipsburg passed the initiative;
 - j) Organized the defunct volunteer Background Check process in compliance with the Town Ordinance. Worked with Clerk's Office and Police Department to streamline a system for volunteer youth organizations and acted as liaison between all entities. Created and monitored an internal system and spreadsheet for ease of processing;
 - k) Organized a Special Use Permit system for the renting of Town Parks;
 - l) Created, planned and executed the first ever joint festival with the Town and City of Easton focused on multiple cultures. The first ever Hispanic Cultural Festival was held July 29, 2017 at Riverside Way (Phillipsburg) and Scott Park (Easton);
 - m) Created, planned, and executed the Inaugural Phillipsburg Pork Roll Palooza at Riverside Way on October 14, 2017 which drew nearly 10,000 visitors to downtown Phillipsburg, the largest event held in Town history. Plaintiff created a social media campaign with no budget that attracted an audience of over 40,000 people. Pork Roll Palooza highlighted Town businesses and non-profit organizations, Town characteristics and pride. This was the first festival developed by a Town employee as all other events are sponsored through the Chamber of Commerce. After expenses, the inaugural Pork Roll Palooza generated nearly \$3,000 in profit for the Town;
 - n) Assisted the Chamber of Commerce with the planning and execution of the 30th Annual Ole Towne Festival;
 - o) Obtained assistance from Crayola to decorate vacant storefronts in downtown Phillipsburg. Obtained volunteers to paint windows with inspirational quotes;
 - p) Promoted and organized community spirit initiatives to invite locals to the newly relocated Municipal Building;
 - q) After years of neglect, updated on a regular basis three pages on the Town website, including the Municipal Pool, Parks/Recreation and Community Events pages;
 - r) Hosted Recreation Advisory Committee Meetings with Youth Sports organizations. Responsible for reconditioning equipment, distributing/collecting equipment, assigning fields and gyms for equitable practice times and partnered with Department of Public Works to ensure conditions of facilities.

- s) Assisted in the process of creating a short film produced by a local production company entitled "Phillipsburg." Aided the Chamber of Commerce in planning the premiere night, hosted at the new Phillipsburg High School with nearly 400 residents in attendance.

16. After her appointment on May 1, 2017 plaintiff accomplished a great deal as Center Executive Director including the following achievements:

- a) Opened the Center for 15 days when the public schools were closed and 10 days when the schools had half days to provide additional recreational and educational opportunities for children;
- b) Opened the Center early during emergency school closings;
- c) Created the Adopt-A-Member Campaign generating scholarships for almost 600 Center Members;
- d) Planned and executed the first Center-sponsored wrestling tournament, which generated profit of more than \$5,000.00 for the Center;
- e) Obtained \$10,000.00 in grants for capital improvements for the Center Multipurpose Room and \$25,000.00 for arts programming;
- f) Collaborated with the Board of Directors and Personnel Committee to revise Center personnel policies which had not been revised since 1994;
- g) Hired, trained and supervised 12 employees;
- h) Increased programming to include new initiatives such as Beginners Ballet, Ed Tarpey Basketball Clinic, All Day Indoor Camping Day, Game Show Spectacular, Centenary University Wrestling Clinic, Archery Tag Indoors (2), B.Y.O. TRIKE, Adult Hoops, MADE Fitness Clinic, Homework Help with NHS;
- i) Developed partnerships to increase programming at no cost to the Center, including Family Success Center of NORWESCAP, Y of Easton, PHS National Honor Society, Alliance Church, C.A.R.E.S., C.A.P.S., Municipal Alliance, Line Club, Lopatcong Youth Wrestling Association, Lafayette College, and more;
- j) Drastically increased participation in the paid After School Care Program resulting in substantially increased revenue; and
- k) Increased attendance for drop-in-hours, including elementary, middle and high school.

17. On or about March 1, 2016 Ellis appointed Sherry Corcoran ("Corcoran"), a Democrat, as his Confidential Secretary. Shortly thereafter, Corcoran's title was changed to Confidential Aide to the Mayor.

18. Subsequent to Corcoran's appointment, defendants Fulper, DeGerolamo and McVey publicly expressed their disapproval of Corcoran's appointment and, particularly, Corcoran's salary adjustment in 2017.

19. Corcoran's 2017 salary adjustment was approved by a majority of the members of the Republican controlled Town Council in 2017.

20. After Corcoran was appointed by Mayor Ellis in 2016 she took on additional duties due to the lack of appointments to the vacant Business Administrator and Human Resources Director positions.

21. Because of their job duties, plaintiff and Corcoran had frequent interactions while working for the Town. However, prior to their employment with the Town, plaintiff and Corcoran had not met.

22. On Sunday October 22, 2017 plaintiff posted a lengthy opinion statement on Facebook in response to (and linked to) a lehighvalleylive.com article. Lehighvalleylive.com is linked to the Express-Times newspaper. The Express-Times is the most widely distributed newspaper in Phillipsburg. Plaintiff posted this statement while away from work on her own personal time.

23. A copy of plaintiff's aforementioned October 22, 2017 post is attached as Exhibit "A". Its contents will not be repeated and are incorporated herein. Among other things, plaintiff's post expressed various personal opinions regarding the abilities, dedication and hard-working ethic of Corcoran and that Corcoran was the "target of a hateful campaign." Plaintiff's post noted the failure of the Town Council to appoint anyone to the vacant Business Administrator and Human Resources Director positions, resulting in additional duties for Corcoran. Plaintiff also expressed various personal opinions on other Town-related issues including, but not limited to, the fact that certain former Town politicians have various family members employed in various Town positions. Plaintiff also expressed support for Mayor Ellis.

24. Shortly thereafter, plaintiff, on her own personal time, posted additional statements and opinions including, but not limited to, statements supporting the justification for Corcoran's

salary and informing the public that other Town employees had received larger salary adjustments than Corcoran, but only Corcoran was targeted for a salary reduction.

25. As stated above, on January 1, 2018 defendants Fulper, DeGerolamo and McVey took office as members of the Town Council.

26. Immediately upon taking office, defendants Fulper, DeGerolamo and McVey began to request the Town Attorney to issue to plaintiff and Corcoran a series of Rice Notices informing them that the terms and conditions of their employment would be discussed by the Town Council. Defendants' intent was to significantly reduce the salaries of plaintiff and Corcoran. By law, a Rice Notice must be timely served on a Town employee in order to allow the Council to discuss the terms and conditions of that employee's employment.

27. Upon learning of this, and of the defendants' desire to reduce plaintiff's salary, the Center's Board of Directors forwarded a January 12, 2018 letter to the Town Council expressing strong support and admiration for the services and performance of plaintiff and objecting to any changes to the terms and conditions of plaintiff's employment, including any reduction of her salary. The Center's President specifically objected to any change to plaintiff's terms and conditions of employment without the Center's agreement.

28. The initial Rice Notice delivered to plaintiff at the direction of defendants informed plaintiff that her employment would be discussed at the Town Council's January 16, 2018 public meeting. As was her right, plaintiff requested that any discussion regarding her employment be done in public.

29. Plaintiff appeared at the January 16, 2018 meeting. Additionally, dozens of supporters for plaintiff also appeared. When some of these supporters addressed the Council President during

open public comment, defendant Fulper stated among other things, “Miss Sheedy is doing a great job”. However, despite the aforementioned Rice Notice, defendants took no action relating to plaintiff at the January 16, 2018 meeting.

30. On January 22, 2018 defendant Fulper sent Mayor Ellis an e-mail asserting, among other matters, that plaintiff and Corcoran would continue to receive Rice notices for subsequent Council meetings for the indefinite future. No legitimate purpose existed to do this other than to attempt to harass and intimidate the employees.

31. At no time did any member of the Town Council communicate with any representative of the Center to discuss any reason for reducing plaintiff’s salary. However, on or about January 16, 2018 defendant DeGerolamo informed the Center Board of Directors that the Town Council would be reducing plaintiff’s salary from \$67,000.00 to \$50,000.00.

32. At the Town Council meeting of February 6, 2018 defendant Fulper, as Council President, made a Resolution to reduce plaintiff’s salary from \$67,000.00 to \$50,000.00. Defendant Fulper’s asserted justifications were that plaintiff had no résumé or employment application on file, that he had “reached out to Miss Sheedy multiple times” and that plaintiff had not taken a required civil service exam.

33. Defendant Fulper’s aforementioned asserted reasons for reducing plaintiff’s salary were false and pretextual. Plaintiff did have a résumé and application “on file”. Also, Fulper had not “reached out” to plaintiff “multiple times”. Further, plaintiff was not required to take the asserted civil service exam in order to remain in her position. In fact, that particular civil service exam had not been offered for years.

34. For various other reasons, defendant Fulper’s asserted justifications for the salary reduction were post-hock fabrications, pretextual and done to intimidate and retaliate against

plaintiff. For example, defendant Fulper had only recently requested a copy of plaintiff's personnel file just hours before the February 6, 2018 meeting and defendants had discussed plaintiff's salary reduction well before any review of plaintiff's personnel file. Additionally, the salary reduction was not based on any objective criteria or recommendation and was contrary to all reports and evaluations regarding plaintiff's outstanding job performance and the strong recommendation of the Center Board of Directors and Mayor Ellis.

35. At the February 6, 2018 Town Council meeting defendants Fulper, DeGerolamo and McVey voted in favor of Resolution 2018-38 reducing plaintiff's salary from \$67,000.00 to \$50,000.00. Based upon the limited public discussion between defendants on the issue at the meeting, it was apparent that the decision had been made by them in private before the meeting. At the same meeting, shortly after passing the Resolution reducing plaintiff's salary, defendants' voted in favor of Resolution 2018-37 reducing the salary of the Mayor's Confidential Aide, Corcoran, from \$53,000.00 to \$45,000.00.

36. The statements and opinions contained in plaintiff's aforementioned statements, including, but not limited to, her October 22, 2017 post (Exhibit "A"), were protected under Article I, Paragraph 6 of the New Jersey Constitution. This constitutional provision guarantees plaintiff's rights to freely speak, write and publish her sentiments on all subjects and the right to be free of retaliation for expressive activity, criticism, complaints and grievances regarding matters of public concern and to be free from attempts to interfere with those rights.

37. Plaintiff's constitutionally protected conduct was a motivating factor in defendants' aforementioned retaliation, intimidation and coercion and related wrongful conduct, in reducing plaintiff's salary and in attempting to interfere with those rights by acts intending to intimidate,

silence, coerce and otherwise retaliate against plaintiff because of her constitutionally protected conduct.

38. Defendants' wrongful conduct would chill or silence a person of ordinary firmness from exercising constitutionally protected conduct in the future.

39. The wrongful acts of defendants were pursuant to color of law. Defendants are liable to plaintiff pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. ("NJCRA") for the violation of plaintiff's constitutional rights.

40. The Town is liable pursuant to the New Jersey Constitution and NJCRA for violation of plaintiff's rights as the actions of defendants Fulper, DeGerolamo and McVey, as a majority of the Town Council, constitutes an official policy decision and action of the Town and defendants' conduct in reducing plaintiff's salary by way of official Council vote and Resolution constitutes policy-making activity for which the Town is responsible.

41. Defendants Fulper, DeGerolamo and McVey created, caused, tolerated, condoned and/or participated in the aforementioned unconstitutional actions and violation of the NJCRA and proximately caused plaintiff's injuries.

42. As a result of defendants' wrongful conduct, plaintiff has suffered economic injury, deprivation of constitutional rights, emotional distress and has been otherwise injured.

SECOND COUNT

1. Plaintiff repeats the allegations of the First Count as if set forth at length.

2. Defendants' aforementioned retaliatory and wrongful actions involved political patronage discrimination and violated plaintiff's right to freedom of political association, including her right to not become politically affiliated with defendants or to otherwise support any political candidate or position.

3. Defendants retaliated against plaintiff because of her constitutionally protected conduct in not supporting defendants politically and to otherwise take action against Mayor Ellis and Corcoran for political reasons. Defendants were further motivated by plaintiff's constitutionally protected conduct in supporting the actions of Mayor Ellis and in not otherwise supporting defendants. Defendants also attempted to interfere with plaintiff's rights through intimidation and coercion.

4. Defendants' aforementioned retaliatory, coercive and other wrongful conduct is in violation of Article I, Paragraphs 1 and 18 of the New Jersey Constitution, which violations are made actionable by the NJCRA.

5. As a result of defendants' wrongful conduct, plaintiff has suffered economic injury, emotional distress and has been otherwise injured.

THIRD COUNT

1. Plaintiff repeats the allegations of the First and Second Counts as if set forth at length.

2. Defendants deprived plaintiff of her liberty interest in her reputation without due process in violation of rights protected Article I, Paragraph 1 of the New Jersey Constitution.

3. Plaintiff's reputation is a protected liberty interest under the New Jersey Constitution triggering required due process protections. Defendants deprived plaintiff of reputational and liberty interests by damaging her reputation and subjecting her to a constructive termination of employment without due process. Defendants' wrongful statements and actions asserted, or implied, that plaintiff was illegally hired, that plaintiff submitted no job application or résumé, was hired only for political reasons and was not qualified for the positions she held. Subsequent to the February 6, 2018 Council meeting, many published statements of the public repeated these false and damaging assertions.

4. As set forth above, defendants made and relied upon false, stigmatizing reasons for reducing plaintiff's salary and in connection with her constructive discharge and provided plaintiff no procedural mechanism to challenge or otherwise dispute defendants' false, damaging statements which harmed her reputation.

5. Defendants' conduct is in violation of the New Jersey Constitution and NJCRA.

6. As a result of defendants' wrongful conduct, plaintiff has been injured.

FOURTH COUNT

1. Plaintiff repeats the allegations of the First, Second and Third Counts as if set forth at length.

2. As a result of defendants' wrongful conduct, plaintiff resigned from her position and was constructively terminated from her employment on or about February 15, 2018.

3. As a result of defendants' wrongful conduct, plaintiff has suffered economic injury, emotional distress and has been otherwise injured.

FIFTH COUNT

1. Plaintiff repeats the allegations of the First, Second, Third and Fourth Counts as if set forth at length.

2. The individual defendants agreed between and amongst themselves, conspired and otherwise colluded to retaliate against plaintiff because of her aforementioned protected conduct and to deprive her of her rights in violation of the New Jersey Constitution and NJCRA.

3. As a result of defendants' wrongful conduct, plaintiff has been injured.

WHEREFORE, plaintiff demands judgment against defendants, individually, jointly and severally, for back pay, front pay, compensatory damages, emotional distress damages, damages

for the violation of, and interference with, plaintiff's constitutional rights, punitive damages, attorney's fees and costs, interest and any other relief the Court deems just and appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby requests a trial by jury as to all Counts and Issues.

CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)

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 R. 1:38-7(c).

RULE 4:5-1(c) DESIGNATION OF TRIAL COUNSEL

John F. McDonnell is hereby designated as trial counsel for plaintiff.

RULE 4:5-1(b)(2) CERTIFICATION

I, the undersigned, certify that the matter in controversy is not the subject of any other action or arbitration proceeding and no such action or arbitration proceeding is contemplated. Further, I am not aware, at this time, of any other parties that should be joined in this action.

McDONNELL ARTIGLIERE

By: _____

JOHN F. McDONNELL

DATED: February 28, 2018

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC

Pádraig P. Flanagan, Esq.

Attorney ID: 021531999

235 Broubalow Way

Phillipsburg, New Jersey 08865

(908) 454-8300

Counsel for Defendants, Town of Phillipsburg,

Robert Fulper, Danielle DeGerolamo, and Frank McVey

KELLY POST-SHEEDY,

Plaintiff,

v.

TOWN OF PHILLIPSBURG, ROBERT
FULPER, DANIELLE DEGEROLAMO,
and FRANK MCVEY,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: WARREN COUNTY
: Docket No.: WRN-L-59-18

CIVIL ACTION

: **ANSWER TO COMPLAINT,**
: **SEPARATE DEFENSES**
: **& JURY DEMAND**

Defendants Town of Phillipsburg (“Town”), Robert Fulper (“Fulper”), Danielle DeGerolamo (“DeGerolamo”), and Frank McVey (“McVey”), (collectively "Defendants"), by and through their attorneys, Florio Perrucci Steinhardt & Cappelli, LLC, in answer to the Complaint of Plaintiff, Kelly Post-Sheedy (“Plaintiff”), say:

FIRST COUNT¹

1. Defendants admit that the Town is a municipality in the County of Warren, State of New Jersey, and that the Town is governed under the Mayor-Council Plan of the Faulkner Act, but neither admit nor deny the remaining allegations of paragraph 1 since same consist of statements or conclusions of law to which no response is required.

2. Defendants admit the allegations of paragraph 2.

¹ In answering Plaintiff’s Complaint, Defendants deny any and all allegation contained in all headings or unnumbered paragraphs to the Complaint.



3. Defendants deny the allegations of paragraph 3.

4. Defendants deny the allegations of paragraph 4, except to admit that Fulper, DeGerolamo and McVey were voted onto the Town Council in November 2017.

5. Defendants admit that Fulper has served in the capacity of President of the Town Council since January 1, 2018.

6. Defendants admit that DeGerolamo has served in the capacity of Vice-President of the Town Council since January 1, 2018.

7. Defendants admit that McVey has served in the capacity of Town Councilman since January 1, 2018.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 8 and leave Plaintiff to her proofs.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9 and leave Plaintiff to her proofs.

10. Defendants admit that Plaintiff was appointed to the position of Superintendent of Recreation. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10 and leave Plaintiff to her proofs.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 11 and leave Plaintiff to her proofs.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 12 and leave Plaintiff to her proofs.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 13 and leave Plaintiff to her proofs.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 14 and leave Plaintiff to her proofs.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 15 and leave Plaintiff to her proofs.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 16 and leave Plaintiff to her proofs.

17. Defendants admit that Ellis appointed Corcoran in the capacity of his Confidential Secretary. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 17 and leave Plaintiff to her proofs.

18. Defendants deny the allegations of paragraph 18.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 19 and leave Plaintiff to her proofs.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 20 and leave Plaintiff to her proofs.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 21 and leave Plaintiff to her proofs.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 22 and leave Plaintiff to her proofs.

23. Defendants neither admit nor deny the allegations of paragraph 23 as it makes no allegations against them and further state that the content of Exhibit "A[.]" being a writing, speaks for itself.

24. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 24 and leave Plaintiff to her proofs.

25. Defendants admit that Fulper, DeGerolamo and McVey took office as members of the Town Council on January 1, 2018.

26. Defendants admit that Rice Notices were to be issued to Plaintiff and Corcoran. Defendants deny Plaintiff's allegation as to Defendants' intent. Defendants neither admit nor deny the remainder of the allegations of paragraph 26 since same consist of statements or conclusions of law to which no response is required.

27. Defendants admit that the Town received a letter dated January 12, 2018 from the Firth Youth Center. The letter, being a writing, speaks for itself.

28. The Rice Notice delivered to Plaintiff, being a writing, speaks for itself. Defendants neither admit nor deny the remainder of the allegations of paragraph 28 since same consist of statements or conclusions of law to which no response is required.

29. Defendants admit that Plaintiff appeared at the January 16, 2018 meeting and Defendant Fulper said something to the effect that Miss Sheedy was doing a good job. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity about her purported supporters and leave Plaintiff to her proofs. Defendants admit that the Town took no action relating to Plaintiff at the meeting.

30. Defendants admit that Fulper sent Mayor Ellis an email on January 22, 2018, which being a writing, speaks for themselves. Defendants deny the remaining allegations made in paragraph 30.

31. Defendants admit that DeGerolamo informed the Firth Youth Center that Plaintiff's salary would be reduced. Defendants are without knowledge or information sufficient

to form a belief as to the remaining allegations made in paragraph 31 and leave Plaintiff to her proofs.

32. Defendants admit that Fupler moved a resolution to decrease Plaintiff's salary to \$50,0000, but deny the remaining allegations made in paragraph 32.

33. Defendants deny the allegations of paragraph 33.

34. Defendants deny the allegations of paragraph 34.

35. Defendants admit voting in favor of Resolutions 2018-38 and 2018-37 on February 6, 2018, but deny the remaining allegations made in paragraph 35.

36. Defendants deny the allegations of paragraph 36.

37. Defendants deny the allegations of paragraph 37.

38. Defendants deny the allegations of paragraph 38.

39. Defendants deny the allegations of paragraph 39.

40. Defendants neither admit or deny the allegations of paragraph 40 since same consist of statements or conclusions of law to which no response is required. To the extent a response is required, Defendants deny same.

41. Defendants deny the allegations of paragraph 41.

42. Defendants deny the allegations of paragraph 42.

SECOND COUNT

1. Defendants repeat each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

2. Defendants deny the allegations of paragraph 2.

3. Defendants deny the allegations of paragraph 3.

4. Defendants deny the allegations of paragraph 4.

5. Defendants deny the allegations of paragraph 5.

THIRD COUNT

1. Defendants repeat each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

2. Defendants deny the allegations of paragraph 2.
3. Defendants deny the allegations of paragraph 3.
4. Defendants deny the allegations of paragraph 4.
5. Defendants deny the allegations of paragraph 5.
6. Defendants deny the allegations of paragraph 6.

FOURTH COUNT

1. Defendants repeat each and every response contained in the above paragraphs and incorporates same herein as if set forth at length.

2. Defendants deny the allegations of paragraph 2.
3. Defendants deny the allegations of paragraph 3.

FIFTH COUNT

1. Defendants repeat each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

2. Defendants deny the allegations of paragraph 2.
3. Defendants deny the allegations of paragraph 3.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding Defendants reasonable attorney's fees, costs of suit and such other and further relief as the Court may deem appropriate.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by the failure to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

Any claims by Plaintiff for emotional or physical injuries are barred by the exclusive remedy provision of the New Jersey Workers' Compensation Act.

THIRD SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

FOURTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTH SEPARATE DEFENSE

Any action taken by the Defendants is protected by an absolute and/or qualified privilege.

SIXTH SEPARATE DEFENSE

Defendants claim all rights, privileges and immunities afforded Defendants under both federal and state law, inclusive of the New Jersey Tort Claims Act.

SEVENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the New Jersey Tort Claims Act.

EIGHTH SEPARATE DEFENSE

Any action, or failure to act, on the part of Defendants was in the nature of the discretionary activity within the meaning of N.J.S.A. 59:2-3 and, accordingly, no liability may be imposed on Defendants.

NINTH SEPARATE DEFENSE

Any and all injuries sustained by Plaintiff are the result of her own negligence and/or misconduct or the actions of third parties or circumstances or situations over which Defendants had no control.

TENTH SEPARATE DEFENSE

Defendant acted at all times in good faith and without malice.

ELEVENTH SEPARATE DEFENSE

Plaintiff's damage claims are barred by the absence of damage.

TWELFTH SEPARATE DEFENSE

Plaintiff's claims for damages are barred, in whole or in part, by Plaintiff's failure to reasonably mitigate damages, if any.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, based on her failure to timely file a prerogative writ action.

FOURTEENTH SEPARATE DEFENSE

Defendants acted at all times for legitimate, non-discriminatory and non-retaliatory reasons.

FIFTEENTH SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim for injunctive relief.

SIXTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by her failure to exhaust her remedies under the grievance provisions of the collective negotiations agreement.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred by reason of her failure to avail herself of all administrative and contractual remedies and/or arbitrations.

EIGHTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part because the complained of actions, to the extent they occurred, were not arbitrary, capricious, irrational, or otherwise improper, but instead, were motivated by legitimate interests.

NINETEENTH SEPARATE DEFENSE

Plaintiff did not sustain any violation of her civil rights pursuant to a governmental policy, practice, or custom.

TWENTIETH SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim for punitive damages against Defendants.

TWENTY-FIRST SEPARATE DEFENSE

Defendants have not committed any violation of Plaintiff's rights under state law.

TWENTY-SECOND SEPARATE DEFENSE

The alleged acts of Defendants do not rise to the level of a constitutional violation, and therefore, Plaintiff did not suffer any infringement of her constitutional rights and/or such constitutional violations are not pled with sufficient particularity to support any claim.

TWENTY-THIRD SEPARATE DEFENSE

The alleged conduct did not violate clearly established statutory and/or constitutional rights of which a reasonable person would have known.

TWENTY-FOURTH SEPARATE DEFENSE

Defendants reserve the right to amend its Answer to insert additional defenses and/or supplement, alter, or change its Answer upon revelation of more definite facts by Plaintiff; upon the completion of further discovery and/or investigation; and/or based upon after acquired evidence.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding Defendants reasonable attorney's fees, costs of suit and such other and further relief as the Court may deem appropriate.

**FLORIO PERRUCCI STEINHARDT &
CAPPELLI, L.L.C.**
Attorneys for Defendants

By:



Pádraig P. Flanagan
ID No. 021531999

Dated: May 3, 2018

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Pádraig P. Flanagan is designated as trial counsel in this matter.

RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge and information, the matter in controversy is not the subject of any other pending action or arbitration proceeding and no other proceeding is contemplated. At the present, I do not know of any other party who should be joined in this action. This certification is made subject to further investigation and discovery.

**FLORIO PERRUCCI STEINHARDT &
CAPPELLI, L.L.C.**
Attorneys for Defendants

By:



Pádraig P. Flanagan
ID No. 021531999

Dated: May 3, 2018

KELLY POST-SHEEDY,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION: WARREN COUNTY
v.	:	Docket No.: WRN-L-59-18
	:	
	:	<i>CIVIL ACTION</i>
	:	
TOWN OF PHILLIPSBURG, ROBERT	:	
FULPER, DANIELLE DEGEROLAMO,	:	
and FRANK MCVEY,	:	
Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC
Pádraig P. Flanagan (ID No. 021531999)
235 Broubalow Way
Phillipsburg, New Jersey 08865
(908) 454-8300
*Counsel for Defendants, Town of Phillipsburg,
Robert Fulper, Danielle DeGerolamo, and Frank McVey*



TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	
A. The Parties	5
B. The Town of Phillipsburg’s Department of Recreation	5
C. Responsibilities of the Superintendent of Recreation	7
D. Responsibilities of Executive Director of Firth Youth Center	8
E. Plaintiff’s Employment with the Town of Phillipsburg	9
F. Plaintiff’s Posting on Facebook	10
G. Three New Members of Town Council Request and Are Denied Information from the Mayor’s Office	11
H. Town Council Votes to Reduce Plaintiff’s Salary	13
I. The FYC Board Takes Action to Compensate Plaintiff to Make up the Reduction of her Salary	14
J. Plaintiff’s Resignation as Superintendent of Recreation	15
K. The Town and Firth Youth Center Sever Their Longstanding Partnership	17
LEGAL ARGUMENT	
I. The First and Second Counts of Plaintiff’s Complaint Must Be Dismissed Because, As Superintendent of the Town’s Recreation Department, Plaintiff’s Position Was Not Protected By the First Amendment and Her Facebook Post Did Not Address a Matter Of Public Concern.	19
A. As Superintendent of Recreation, Plaintiff was not protected by the First Amendment right to free speech and association.	19
B. Plaintiff’s Facebook post did not address matters of public concern, but expressed Plaintiff’s personal grievance concerning her employment.	27
II. Plaintiff Was Not Deprived of Her Liberty Interest Without Due Process	30
III. Plaintiff’s Claim for Constructive Discharge Fails Because Plaintiff Was Not the Victim of Unlawful Retaliation and Because She Could Have Remained Employed Earning the Same Salary Had She Not Quit.	33
IV. Plaintiff’s Claim for Conspiracy Must be Dismissed.	36
V. Plaintiff’s Claims Against Defendant Council Members Must Be Dismissed Pursuant to the Doctrine of Qualified Immunity.	37

CONCLUSION

41

PRELIMINARY STATEMENT

Plaintiff, Kelly Post-Sheedy, formerly held the position of Superintendent of the Department of Recreation for Defendant, Town of Phillipsburg (“Town”). As Superintendent, Plaintiff also served as the Executive Director of the Firth Youth Center (“FYC”), a non-profit organization that entered into an arrangement with the Town for the purpose of providing indoor public recreational facilities in the Town. Plaintiff was appointed by Mayor Stephen R. Ellis, a Democrat, in or about April 2017 with the advice and consent of Town Council, which at the time, was controlled by a majority of Republicans. The Town paid Plaintiff an annual salary of \$67,000.00; the FYC did not contribute to Plaintiff’s salary.

In November 2017, Defendants Robert Fulper, Danielle DeGerolamo, and Frank McVey, all Republican, were elected to replace the outgoing Republican members of Town Council effective January 1, 2018. Among many of the issues the new Republicans campaigned concerned the Mayor’s hiring practices and decision to increase the salary of the Mayor’s confidential aide by 18 percent. One of the campaign slogans adopted by the Phillipsburg Republican Committee said: “no one does pork like the Phillipsburg Dems. Vote Republican” Plaintiff believes the term “pork” referenced in Republican slogans was used to attack her work in organizing the Town’s first pork roll festival in retaliation for publicly supporting Mayor Ellis and his confidential aide in a Facebook post linked to a local newspaper.

Immediately upon taking office, the three new members of Town Council requested information from the Mayor’s office consistent with their promise to investigate the Mayor’s hiring practices. Council requested a copy of the resumes for the Mayor’s confidential aide and Plaintiff. The Mayor’s office refused to comply with Council’s request despite the fact that both the Town Attorney and Deputy Counsel concluded that the resumes of successful candidates could be

produced in response to an open public records act request. In addition to not being provided Plaintiff's resume, the Mayor's office refused to advise Town Council that the Superintendent of Recreation was not required to take and pass a civil service exam -- a conclusion the Mayor's office had already reached. On February 6, 2018, Council voted to reduce Plaintiff's salary from \$67,000.00 to the lowest range authorized in the Town's Salary Ordinance because Council could not confirm Plaintiff's qualifications for the Superintendent position. Although Plaintiff accepted an offer from the FYC to make-up the \$17,000.00 reduction in salary, Plaintiff subsequently resigned her position with the Town and accepted a full-time position as Executive Director of the FYC at an annual salary of \$50,000.00.

The essence of Plaintiff's grievance is that she was the victim of local politics and constructively discharged in retaliation for writing a Facebook post in support of Mayor Ellis and his confidential aide. In the first and second counts of her Complaint, Plaintiff alleges Defendants are liable under the New Jersey Civil Rights Act for violating her constitutional rights to free speech and political association. In the third and fourth counts of her Complaint, Plaintiff alleges she was deprived of her liberty interest in her reputation and constructively terminated from her employment with the Town. In the fifth count, Plaintiff alleges Defendants conspired amongst themselves to retaliate against her for exercising her First Amendment right to free speech and political association.

The First Amendment protects certain public employees to speak as citizens and prohibits public employers from retaliating against low-level employees based on their political affiliation. Importantly, the First Amendment does not protect all public employees. That is to say not all public employment positions are immune from politics. Municipal positions such as Superintendent of Recreation do not enjoy First Amendment protection. Plaintiff was not a low-

level employee whose responsibilities were technical in nature. Plaintiff was an unclassified at-will employee of the Town and was not entitled to civil service tenure. As Superintendent, Plaintiff reported directly to the Mayor, was involved in policy initiatives such as the Open Space Referendum, participated in budgeting and long-range planning for the Department of Recreation, trained and supervised 43 municipal staff and 12 FYC employees, organized and coordinated Town initiatives with local businesses, created campaigns to generate scholarships, and developed community based partnerships with the Phillipsburg Chamber of Commerce, NORWESCAP, YMCA, and the Municipal Alliance. Further, Plaintiff's Facebook post constituted nothing more than a personal grievance that was of no interest to the public at large.

Plaintiff was not deprived of a liberty interest in her reputation without due process in violation of Article I, Paragraph 1 of the New Jersey Constitution. The statements Plaintiff attributed to Defendant Fulper did not have the capacity to harm Plaintiff's reputation. In fact, Defendant Fulper stated Plaintiff was doing a "fine job." The reason Defendant Fulper voted to reduce Plaintiff's salary was due to the fact that he could not verify Plaintiff's qualifications for the position of Superintendent because the Mayor's office refused to comply with Council's request for a copy of Plaintiff's resume. No one, including Plaintiff herself, advised Defendant Fulper that the Mayor's office concluded that Plaintiff's position did not require that she take and pass a civil service examination. Plaintiff suffered no harm to her reputation. To the contrary, Plaintiff enjoyed overwhelming public support for her decision to voluntarily terminate her employment with the Town.

Even if Plaintiff did enjoy the First Amendment right to public speech and political affiliation, Plaintiff cannot establish that she was constructively terminated or that she is entitled to any damages. The decision to reduce Plaintiff's salary was not so egregious or intolerable that

a reasonable person would have been forced to resign rather than continue employment. All Defendant Fulper said was that he could not conclude Plaintiff was qualified for the position of Superintendent because a copy of her resume was not on file with the Town and because Plaintiff did not take a Civil Service exam. Further, Plaintiff did not mitigate her alleged damages. At first, Plaintiff accepted the FYC's offer to make up the \$17,000.00 reduction in her salary. A week later, Plaintiff resigned her position as Superintendent and accepted a full-time position with the FYC earning a \$50,000.00 annual salary. Plaintiff would have remained whole had she not voluntarily resigned.

For all of these reasons, Plaintiff's claims, including her claims of civil conspiracy, should be dismissed with prejudice. At the very least, Plaintiff's claims against Defendants Fulper, DeGerolamo, and McVey should be dismissed pursuant to the qualified immunity doctrine because the question of whether the Superintendent of Recreation is entitled to First Amendment protection from a vote to reduce her salary under the circumstances of this case is not clearly established, and thus, a reasonable person would not know that the law forbade such action.

STATEMENT OF FACTS¹

A. The Parties

Plaintiff, a Republican, is the former Superintendent of the Department of Recreation for the Town of Phillipsburg. The Town of Phillipsburg (“Town”) is a municipality in the County of Warren, New Jersey. The Town is governed under the Mayor-Council Plan form of government under the Faulkner Act, N.J.S.A. 40:69A-31 to -48. (SOF 1) Defendants Robert Fulper, Danielle DeGerolamo, and Frank McVey are Republican members of Town Council who all assumed office on January 1, 2018.

B. The Town of Phillipsburg’s Department of Recreation

Plaintiff’s position with the Town was not a low-level or civil service position. According to the Town’s Code, the Superintendent of Recreation acts as the Director of the Department of Recreation reporting directly to the Mayor. (SOF 4) The duties of the Department of Recreation, as identified in the Town’s Code, include the following:

- (1) administering and operating municipal parks, pools, playgrounds, and facilities for indoor and outdoor sports, athletics, and recreational programs for the community;
- (2) sponsoring and administering cultural and recreational programs in cooperation with other public agencies and private organizations;
- (3) using the Department of Municipal Services to maintain and repair public buildings and grounds used by the Department for recreational activities, as well as facilities that may be made available by nonpublic sources;

¹ The numbers following each of the sentences in the Statement of Facts reflects the citation to the paragraph number set forth in the Statement of Undisputed Material Facts. All other citations not otherwise identified in the Statement of Undisputed Material Facts are supported by the record. Exhibits referenced in the Statement of Undisputed Material Facts and this brief are attached to the Certification of Counsel.

- (4) administering and operating parks, open space areas, and community facilities acquired by the Town for public recreation and conservation; and
- (5) cooperating and participating 'with other municipal, school, county, state, and federal agencies in the development, administration, financing and operation of recreation and conservation programs for the use and benefit of the inhabitants of the Town."

(Ibid.)

The Superintendent, "with the approval of the Mayor, may adopt suitable rules and regulations for the safety and conduct of persons using recreational facilities and for the preservation of public peace and order at public events" (SOF 5) The Code also provides for the establishment of a Recreation Advisory Committee to assist in the development of recreation programs to "promote the optimum coordination of public and other recreational facilities." (SOF 6) The Department of Recreation also "may, by agreement, cooperate in the administration, operation and staffing of the [Firth] Youth Center for the purpose of providing public recreational facilities for youth and adults." (SOF 7) This provision has since been repealed following Plaintiff's resignation. (Ibid.)

The Firth Youth Center ("FYC") is a 501(c)(3) nonprofit organization. (SOF 2) The FYC provided athletic, educational, and other structured "activities for the youth of Phillipsburg and the surrounding areas." (Ibid.) The Town and FYC until recently, had a "longstanding partnership." (SOF 3) The Town historically paid the salary for the Executive Director of the FYC (including benefits), paid the FYC an annual stipend of \$20,000.00, provided security to the FYC, and provided funding for additional programs. (Ibid.) In exchange, the FYC offered the Town access to its indoor facilities. (Ibid.) A written agreement governing the parties' relationship does not exist. (Ibid.)

C. **Responsibilities of the Superintendent of Recreation**

Plaintiff reported directly to the Mayor as Superintendent of Recreation and to the President of the Firth Youth Center for matters related to the FYC. (SOF 8) In her capacity as Superintendent of Recreation, Plaintiff:

- a. oversaw seven weeks of construction and renovations at the municipal pool;
- b. organized ribbon cutting with local officials and corporate sponsors;
- c. hired, trained, and supervised over 43 municipal staff;
- d. supervised pool operations including budgeting, compliance with applicable codes, maintaining safety water levels and testing requirements in accordance with the Department of Health;
- e. implemented new recreational opportunities and ensured the profitability of the municipal pool's operations;
- f. solicited sponsorships from local businesses and residents;
- g. developed the Phillipsburg Recreation Monthly E-Newsletter;
- h. researched, developed, and assisted the campaign to educate residents about the Open Space referendum, which passed and secured \$150,000 annually for Town Recreation and Open Space initiatives;
- i. implemented volunteer background checks in compliance with Town Ordinance;
- j. worked as a liaison between the Clerks Office, youth organizations, and the Police Department;
- k. implemented a Special Unit Permit process for renting the Town's parks;
- l. created, planned, and executed joint cultural festivals between the Town of Phillipsburg and City of Easton;

- m. created, planned, and executed Phillipsburg's first Pork Roll Palooza festival drawing 10,000 visitors, including the creation of a social media campaign to an audience of over 40,000 people, generating nearly \$3,000 in profit for the Town;
- n. organized and coordinated Town initiatives with local businesses and communities such as Crayola and the Phillipsburg Chamber of Commerce;
- o. Hosted Recreation Advisory Committee Meetings with youth sports organizations;
- p. Assisted in the creation of a short film called "Phillipsburg" produced by a local production company;

(SOF 9)

D. Responsibilities of Executive Director of Firth Youth Center

The Town's Supervisor of Recreation served in the dual role as Executive Director of the FYC. (SOF 10) As Executive Director of the FYC, Plaintiff:

- a. opened the Center to provide children additional recreational and educational opportunities during days off from school;
- b. created the Adopt-A-Member Campaign generating scholarships for nearly 600 Center members;
- c. organized the first Center sponsored wrestling tournament generating more than \$5,000 in profits;
- d. obtained \$10,000 in grants for capital improvements and \$25,000 for arts programing;
- e. revised personnel policies in collaboration with the FYC's Board of Directors and Personnel Committee;
- f. hired, trained, and supervised 12 FYC employees;
- g. increased programs to include new initiatives;

- h. developed community-based partnerships with the Family Success Center of NORWESCAP, Y of Eason, PHS National Honor Society, Alliance Church, C.A.R.E.S., C.A.P.S., Municipal Alliance, and Lion Club to increase programing without additional cost to the FYC; and
- i. increased participation in the paid After School Care program resulting in increased revenues.

(SOF 11)

As Superintendent, there was “a lot of [taxpayer] money that [was] under her supervision.”

(SOF 12)

E. Plaintiff's Employment with the Town of Phillipsburg

Plaintiff interviewed for the position of Superintendent of Recreation, in part, because she “always wanted to be a bigger part of Phillipsburg . . . and give back to [her] community.” (SOF 13) When Plaintiff interviewed for the position, Mayor Ellis and Mr. Russo advised Plaintiff that she “would be pretty much a department in and of myself that there wouldn’t be a lot of support that there was a lot of work to get done.” (SOF 14) During her interview with the FYC Personnel Committee, Plaintiff was asked to provide her “five-year plan” for the Center. (Ibid.)

In April 2017, Plaintiff was appointed by the Mayor to the position of Superintendent of Recreation at an annual salary of \$67,000.00 with the consent of Town Council. (Tr. 30:10 to 31:19) Plaintiff’s salary was entirely funded by the Town. (Tr. 27:11-18) Plaintiff began working for the Town on May 1, 2017. (SOF 16) Plaintiff reported directly to the Mayor and President of the FYC, and had a standing meeting with the Mayor once a week every Friday during the course of her employment. (SOF 17, 18) When Plaintiff was asked if her jobs duties were equally split

among the Town and FYC, Plaintiff responded that the FYC “is a large majority of the job that [she] was hired for.” (SOF 19)

F. Plaintiff's Posting on Facebook

On Sunday, October 22, 2017, Plaintiff posted a statement on Facebook responding to a ‘lehighvalleylive.com article.’ (SOF 20) “According to Plaintiff, she posted the article “during the campaign season before Councilman Fulper, Councilman McVey, [and] Councilwoman DeGerolamo were elected.” Plaintiff believed the lehighvalleylive.com article “was about their campaign stance, which was that the mayor was giving raises and jobs to friends.” (*Ibid.*) One of the so-called targets of the Republicans was Sherry Corcoran, the Mayor’s Confidential Aide. (*Ibid.*)

Plaintiff’s post explained her support of Corcoran as it related to Plaintiff’s own job performance as follows:

I work with this woman on pretty much a daily basis. She’s one of the main reasons I’ve been able to make so much progress since starting May 1st. And also one of the main reasons I haven’t thrown in the towel with the multitude of messes I’ve been forced to clean up. To name a few . . . she helped me get the splash pad project complete in < 6 weeks, encouraged me to push through the barriers to get pool dances going, helped with logistical roadblocks for Pork Roll Palooza, guided me through a mess of bureaucracy on many different tasks, taught me basic new employee responsibilities since zero training was provided, and has always been a sounding board for my crazy Recreation ideas.

* **

She’s a problem-solver, solution focused, willing to put in 50+ hours a week to get the job done, and a woman I am proud to have as a mentor. Again, from my first-hand experience, she’s one of the BEST employees Phillipsburg currently has.

(SOF 21)

Plaintiff wrote the post in violation of the Town’s policies governing an employee’s use of social media because Plaintiff’s post concerned matters related to the business of the Town. The

Communication Media Policy set forth in the Town's Personnel Policies and Procedures and Employee Manual, provides, in pertinent part:

To the extent that employees use social media outside of their employment and in so doing employees identify themselves as Town of Phillipsburg employees, or if they discuss matters related to the Town of Phillipsburg on a social media site, employees must add a disclaimer on the front page, stating that it does not express the views of the Town of Phillipsburg, and the employee is expressing only their personal views. For example: "The views expressed on this website/web log are mine alone and do not necessarily reflect the views of my employer." Place the disclaimer in a prominent position and repeat it for each posting that is expressing an opinion related to the Town of Phillipsburg or the town of Phillipsburg's business. Employees must keep in mind that, if they post information on a social media site that is in violation of Town of Phillipsburg policy and/or federal, state or local laws, the disclaimer will not shield them from disciplinary action.

(SOF 22)

Plaintiff also failed to prominently place a disclaimer that the statements contained in the post expressed her own personal opinions and not that of the Town. Despite her contention that she lost her position as Superintendent for her Facebook post, Plaintiff testified "I do not regret posting what I did." (*Ibid.*)

G. Three New Members of Town Council Request And Are Denied Information From the Mayor's Office

Defendants Fulper, DeGerolamo, and McVey were sworn in as members of Council for the Town of Phillipsburg on January 1, 2018. (SOF 23) The Job Description for a local government's Superintendent of Recreation, states that the "[p]ossession of a valid certificate as a Recreation Administrator issued by the NJ Board of Recreation may be required." (SOF 24)

By email dated January 12, 2018 to Mayor Ellis, Samuel Cappello,² and Mr. Russo, Plaintiff indicated that an e-blast from the New Jersey Recreational Park Association appeared to

² Mr. Cappello is a Plaintiff in another complaint filed against the same Defendants in this matter. In his complaint, Mr. Cappello also complains that he was denied the positions of Business

indicate that she was required to take a Recreation Certificate Exam and questioned whether she was required to obtain a New Jersey Certified Park and Recreation Professional Certification. (SOF 25) The following day, Mr. Cappello responded to Plaintiff's email to advise Plaintiff that the certification was not a requirement for the position and not necessary by law. (Ibid.)

Plaintiff attended the January 16, 2018 Town Council meeting in response to the Rice Notice she received. (SOF 26) Plaintiff indicated that she did not want to address Council in executive session and desired that discussions about her position be open to the public. (Ibid.) Many residents, including Plaintiff's family, attended the meeting to publicly support Plaintiff. (Ibid.) Although no action concerning Plaintiff's position with the Town was taken at that meeting, Plaintiff's supporters did not leave the meeting but spoke in support of Plaintiff, including the President of the FYC. (Ibid.)

On January 18, 2018, Councilwomen DeGerolamo requested the Mayor's office to provide her with a copy of Corcoran's resume. (SOF 28) Mr. Cappello forward the email to Mayor Ellis, the Town's Attorney Richard Wenner, and the Town's Deputy Attorney Christopher Troxell asking "[u]nder the circumstances, please advise on how I should respond." (Ibid.) Mr. Cappello received a response from both attorneys advising that "the resumes of successful candidates are to be disclosed." (Ibid.)

On February 6, 2018, Council President Fulper requested that a copy of Plaintiff's resume and application be provided prior to that evening's Town Council meeting. (SOF 29) Despite the advice the Mayor's office received three weeks prior, Mr. Cappello responded "I cannot disseminate any confidential Information from an employee's personnel file." (SOF 30) Attorney Wenner immediately responded advising that the employee's permission for

Administrator and Human Resources Manager in retaliation for his own Facebook post and support of Mayor Ellis.

a copy of their resume was not required and under OPRA and Executive Order #26 “the resumes of successful candidates shall be disclosed once the successful candidate is hired.” (SOF 31) The Mayor’s office still refused to comply with Council President Fulper’s request for a copy of Plaintiff’s application and resume. (SOF 32)

After Defendants Fulper, DeGerolamo, and Fulper assumed office, Mayor Ellis created a barrier between his appointees and Town Council. The Mayor instructed all Town Department Heads not to discuss Town business with Town Council. Mayor Ellis presumably issued this “edict” to all of his Department Heads out of his concern that Town Council may investigate his hiring practices. (Certification of Counsel, Exhibit L - Cappello Tr. at 273:4-24, 274:11-24, 275:9-21) In retaliation for Town Council’s actions, Mayor Ellis instructed the Town Attorney to issue Rice Notices to each individual member of Town Council, as well as the Municipal Clerk, after Plaintiff, Corcoran, and Cappello were issued Rice Notices in early January 2018. (SOF 27) It is not surprising then, that Town Council were never made aware that the position of Superintendent of Recreation did not require that Plaintiff pass a civil service exam or that Plaintiff’s application and resume were in the Mayor’s custody and control.

H. Town Council Votes to Reduce Plaintiff’s Salary

On February 6, 2018, Council passed a resolution to reduce Plaintiff’s salary from \$67,000.00 to \$50,000.00 -- the lowest range of the 2017 Salary Ordinance.³ (SOF 33) The resolution was passed by a vote of 3 in favor (all Defendants), one against (Council Member Davis), and one abstaining (Council Member Lutz). Plaintiff “chose not to” attend the Town

³ The Town Council, as the governing body, by ordinance, “...shall fix and determine the salaries, wages or compensation to be paid to the officers and employees of the municipality... who by law are entitled to salaries, wages, or compensation.” N.J.S.A. 40A:9-165. Consequently, the salaries, wages or compensation fixed and determined by ordinance may, from time to time, be increased, decreased or altered by ordinance. Ibid. (Emphasis added).

Council meeting of February 6, 2018 even though she again received a Rice notice because she “knew whatever was going to happen to [her] was in God’s plan.” (SOF 36) Plaintiff even instructed her supporters “to not attend.” (*Ibid.*) In voting to pass the resolution, Council President Fulper stated that although Plaintiff was “doing a fine job,” the Mayor did not provide Town Council with a copy of Plaintiff’s resume, application, or any indication when Plaintiff would be taking an exam that, which, at the time, Council President incorrectly believed was a job requirement. (SOF 33)

Although the Mayor and Mr. Cappello refused to turnover this important information to Town Council, Plaintiff would have had no objection to Council’s request. Indeed, Plaintiff told the Mayor and Mr. Cappello that Council President Fulper (and any other member of Council) could have access to her personnel file the day after Council requested Plaintiff’s resume. (SOF 34) According to Plaintiff, Council had every right to confirm that she was qualified for the position of Superintendent. (SOF 35)

I. The FYC Board Takes Action to Compensate Plaintiff to Make Up the Reduction of Her Salary

On February 7, 2018, the FYC Board of Directors unanimously agreed to make up the \$17,000 salary reduction. (SOF 38) Defendant DeGerolamo, as a member of Town Council, also held a voting position on the FYC’s Board of Directors. (SOF 37) As to the FYC’s proposed action, DeGerolamo responded as follows:

Jeff,

I absolutely support FYC making up the difference. I don’t know the center’s costs well enough to understand the impact, but I’m confident we (the town) can resolve it for the long term good of both.

A more comprehensive plan with the two parties makes absolute sense

If you need a vote, I would vote yes.

(Ibid.)

Plaintiff accepted the FYC's offer to directly pay her the \$17,000 reduction in her annual salary with the Town. (SOF 39)

J. Plaintiff's Resignation as Superintendent of Recreation

Plaintiff resigned her position as Superintendent despite the fact that the FYC Board unanimously agreed to compensate Plaintiff, and Plaintiff accepted, the \$17,000.00 reduced by Town Council. Plaintiff tendered her resignation as Superintendent of Recreation to Mayor Ellis by letter dated February 15, 2018. (SOF 40) When asked why she resigned, Plaintiff responded as follows:

I resigned because of the allegation in my complaint. Mr. Fulper said in a public statement that is on YouTube and all over social media that I am unqualified, there is no application on file, there is no resume on file and I didn't take an exam which I knew didn't even exist.

So those statements made about me were all lies, but now they are out in the public and now everybody living in Phillipsburg could have that view of me and that hurts me. I have done everything in life -- I am a lifelong Phillipsburg resident. I am what I am trying to cultivate from the Youth Center kids who are born and raised in Phillipsburg, who love their town, who go off, get some education and come back and want to serve their town and make it better.

That is what I want for the future of Phillipsburg. And that was taken away from me. I will never have that opportunity again. I felt like when I got that job. This is perfect, this is everything and hit the ground running.

And because I made a statement to support Mayor Ellis and his employee, I was subject to everything that I alleged. That is why I left.

Q. Are you done?

A. Yes.

(SOF 41)

Immediately after she resigned, Plaintiff accepted full-time employment as Executive Director of the FYC at an annual salary of \$50,000. (SOF 42) Her first day of work at the FYC was February 23, 2018. (SOF 43) According to Plaintiff, the FYC asked her to specify the salary

she wanted and that she responded as follows: “just pay me what I was going to be reduced down to, and we will take it from there, that I would figure it out.” (SOF 44) Plaintiff provided the following explanation for the reason she accepted employment with the FYC following her resignation with the Town: “I found much satisfaction in helping at-risk youth of Phillipsburg and did not want to let the circumstances stop me from making a difference in my community.” (SOF 45)

Mayor Ellis advised residents of Plaintiff’s resignation on the Town’s website. In his post, Mayor Ellis praised Plaintiff’s efforts stating that Plaintiff, “[a]s Recreation Director she has had the most impact on our Town not just for the children, but for all our residents.” (SOF 46) Mayor Ellis stated that Plaintiff and her staff “improved the Philipsburg Recreation Program by 100%.”

(Ibid.) He continued:

I have supervised over 500 people in my lifetime. It is very seldom you are privileged enough to experience work ethic, recreational professionalism, intelligence, inspiration, caring, and ability to “make things happen” as Kelly Post-Sheedy displayed.

(Ibid.)

Many Phillipsburg residents responded to the Mayor’s update about Plaintiff’s resignation in support of Plaintiff’s decision. (SOF 47) Following are just a few of the many responses from resident’s supporting Plaintiff.

This is such a loss to this town. Kelly made the so many strides, even with the summer playground program. It was the most structured I have seen it in the 6 years my kids have been participating. This is a loss that will be felt all over and it saddens me that politicking and egos have overrun what is best for this town’s future. Her shoes will be next to impossible to refill.

456 Sucks. This town was finally moving forward, and she was a big part of that.”

Very sorry to hear this. She was a great partner to the Library, and our children's librarians were already planning to work with her to expand our summary reading program.

This is a big loss for the town and our children, very sad day.

This truly grieves me. . I had the pleasure of presenting the much deserved Phillipsburg Downtown Association "Community Contribution Award" to Kelly just a short time ago. She has been an amazing asset to our community. Her departure is our town's serious loss.

So incredibly sad. She was doing so much good for our town. I have so much respect for her.

* * *

yes she actually brought some light to this town.

* * *

I am so sad to hear this. She was doing great things with the recreation programs in this town. This is a huge step backwards for the town. I hope the new town council is happy. Too bad the children are the ones that suffer.

(Ibid.)

K. The Town and Firth Youth Center Sever Their Longstanding Partnership

The relationship between the Town and FYC ended shortly after the Town took action to reduce Plaintiff's salary. (SOF 48) The FYC removed the Mayor and Council Vice President from its Board of Directors and Council modified the Town's Code to remove the FYC from the Town's recreation program. (Ibid.) Nevertheless, Plaintiff's acceptance of a full-time position as Executive Director focusing all of her efforts on FYC initiatives proved beneficial to the FYC -- in the FYC's President's own words "[t]hat was the dream." (SOF 49)

LEGAL ARGUMENT

The purpose of the summary judgment procedure is to provide a prompt, businesslike and inexpensive means of disposing of a cause of action. Judson v. People's Bank & Trust Co. of Westfield, 17 N.J. 67; Rothman v. Silber, 90 N.J. Super. 22, 33 (App. Div. 1966). Rule 4:46-2 provides that summary judgment shall be granted where the evidence demonstrates there is “no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” An issue of fact is genuine only, if considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate interferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.” Rule 4:46-2(c).

In 1995, the New Jersey Supreme Court refined the summary judgment standard to converge with the standard employed by the federal courts and the majority of state courts since 1986. The standard has been enunciated in Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995):

[u]nder this new standard, a determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential material presented, when viewed in a light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

Consequently, a motion for summary judgment cannot be defeated merely by pointing to any fact in dispute. Rather, a party opposing summary judgment must raise substantial issues of fact to defeat a motion. The opponent must therefore, raise questions of fact which can lead a rational fact finder to decide in the opponent’s favor if a trial were held. Thus, summary judgment should be granted “against a party who fails to make a showing sufficient to establish the existence

of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 533 (citations omitted).

I. THE FIRST AND SECOND COUNTS OF PLAINTIFF'S COMPLAINT MUST BE DISMISSED BECAUSE, AS SUPERINTENDANT OF THE TOWN'S RECREATION DEPARTMENT, PLAINTIFF'S POSITION WAS NOT PROTECTED BY THE FIRST AMENDMENT AND HER FACEBOOK POST DID NOT ADDRESS A MATTER OF PUBLIC CONCERN.

A. As Superintendent of Recreation, Plaintiff was not protected by the First Amendment right to free speech and association.

Plaintiff asserts violation of the New Jersey Civil Rights Act alleging she was deprived of her First Amendment rights to free speech and political association. The New Jersey Civil Rights Act ("NJ CRA"), N.J.S.A. 10:6-1 et seq., was adopted in 2004 "for the broad purpose of assuring a state law cause of action for violations of state and federal constitutional rights and to fill any gaps in state statutory anti-discrimination protection." Owens v. Feigin, 194 N.J. 607, 611 (2008). A person may bring an action under the NJ CRA in two circumstances: (1) when the person is "deprived of a right, or (2) when his rights are interfered with by threats, intimidation, coercion or force." Felicioni v. Administrative Office of Courts, 404 N.J. Super. 382, 400 (App. Div. 2008). New Jersey frequently follows federal law with respect to civil rights and employment claims as the NJ CRA was modeled after the Federal Civil Rights Act of 1871, 42 U.S.C.A. § 1983. See Tumpson v. Farina, 218 N.J. 450, 474 (2014) (recognizing that the NJ CRA was "modeled off of the analogous Federal Civil Rights Act"); Brown v. State, 422 N.J. Super. 406, 424-25 (App. Div. 2015) (observing that "our courts apply § 1983 immunity doctrines to claims arising under the Civil Rights Act . . . "[g]iven their similarity"). Plaintiff's claims fail because she was not deprived of a right guaranteed by either the federal or state constitutions.

In the First Count of Plaintiff's Complaint, Plaintiff asserts that Defendants unlawfully reduced her salary as the Town's Superintendent of Recreation from \$67,000.00 to \$50,000.00 in violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. ("NJCRA") for violating Plaintiff's First Amendment right to free speech. Plaintiff alleges Defendants reduced her salary for publishing a Facebook post in support of Mayor Ellis and the Mayor's Confidential Aide in response to a web-based article published by Lehigh Valley Live. In the Second Count of her Complaint, Plaintiff alleges that Defendants violated her right to freedom of political association pursuant to Article I, Paragraphs 1 and 18 of the New Jersey Constitution and is actionable by the NJCRA.

"The First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." Garcetti v. Ceballos, 547 U.S. 410, 417 (2006). Matters of "public concern" may include speech about "political, social, or other concern to the community." Swartzwelder v. McNeilly, 297 F.3d 228, 235 (3d Cir. 2002) (quotations omitted). Speech may also involve "a matter of public concern if it attempts 'to bring to light actual or potential wrongdoing or breach of public trust on the part of government officials.'" Baldassare v. New Jersey, 250 F.3d 188, 195 (3d Cir. 2001) (quoting Holder v. City of Allentown, 987 F.2d 188, 195 (3d Cir. 1993)). New Jersey's Constitution's "protections are no greater than those under the first amendment of the United States Constitution." Siss v. County of Passaic, 75 F.Supp.2d 325, 341 (D.N.J. 1999) (citations omitted).

The First Amendment also prohibits public employers from discriminating against "low-level" employees based on their political affiliation. Rutan v. Republican Party, 497 U.S. 62, 64-65 (1990). "A plaintiff who alleges retaliation for political affiliation must show: (1) he was 'employed at a public agency in a position that does not require political affiliation;' (2) he was

‘engaged in constitutionally protected conduct;’ and (3) the conduct was a ‘substantial or motivating factor in the government’s employment decision.’” Lapolla v. County of Union, 449 N.J. Super. 288, 298 (App. Div. 2017) (quoting Galli v. N.J. Meadowlands Comm’n, 490 F.3d 265, 271 (3d Cir. 2007)). Claims brought under the New Jersey Constitution are assessed in the same manner. See Fioriglio v. City of Atlantic, 996 F. Supp. 379, 391 (D.N.J. 1998).

Not all positions are immune from politics. Political affiliation can provide a sufficient basis for adverse employment actions in municipal government because a valid public goal “advanced in support of [political] patronage is the need for political loyalty of employees, not to the end that effectiveness and efficiency be insured, but to the end that representative government not be undercut by tactics obstructing the implementation of policies of the new administration, policies presumably sanctioned by the electorate.” Elrod v. Burns, 427 U.S. 347, 367 (1976). Thus, municipal positions that involve policymaking and the need for politically loyal employees do not enjoy First Amendment protection. See Armour v. County of Beaver, PA, 271 F.3d 417, 436 (3d Cir. 2001) (observing that appellate courts “have repeatedly concluded policymakers’ assistants’ jobs are not protected by the First Amendment”); Dyke v. Otlowski, 154 N.J. Super. 377, 383 (Ch. 1977) (holding that supervisor of senior citizens activities was a policymaking employee such that her discharge by the newly-elected mayor would be sustained as valid despite the mayor’s political motivations); Childress v. City of Orange Township, 2018 WL 1378722, *9 (D.N.J. Mar. 19, 2018) (holding that the position of Assistant City Attorney “was one in which political affiliation or loyalty could be permissibly considered”); Waskovich v. Morgano, 2 F.3d 1292 (3d Cir. 1993) (affirming grant of summary judgment dismissing director of State’s Division of Veteran’s Administrative Services who had responsibility for large budget and number of employees and who provided policy advice to his superiors); Curinga v. City of Clairton, 357 F.3d

305, 307, 309 (3d Cir. 2004) (affirming summary judgment dismissing former municipal manager's First Amendment action against the city and individual council members who "described his position as 'run[ning] the day-to-day business operations of the city'" reasoning that "public officials may be able to terminate a policymaking employee on the basis of political affiliation and conduct").

As the United States Supreme Court acknowledged, "the Governor of a State may appropriately believe that the official duties of various assistants who help him write speeches, explain his views to the press, or communicate with legislature cannot be performed effectively unless those persons share his political beliefs and party commitments." Branti v. Finkel, 445 U.S. 507, 518 (1980). The New Jersey Supreme Court observed that "Branti stands for the proposition that nontenured governmental attorneys, whose broad public responsibilities are confidential in nature and involve formulating or implementing policy relating to political beliefs, may be discharged when the effective performance of their duties is compromised because of a difference in political commitment." Battaglia v. Union County Welfare Bd., 88 N.J. 48, 62 (1981).

Factors that are relevant to this inquiry include "whether the employee has duties that are non-discretionary or non-technical, participates in discussions or other meetings, prepares budgets, possesses the authority to hire and fire other employees, has a high salary, retains power over others, and can speak in the name of policymakers." Galli v. N.J. Meadowlands Comm'n, 490 F.3d 265, 271 (3d Cir. 2007). The Third Circuit has indicated that "[t]he key factor seems to be not whether the employee was a supervisor or had a great deal of responsibility, but whether she has meaningful input into decision making concerning the nature and scope of a major program." Ibid. (internal citations omitted). "An employee with responsibilities that are not well defined or

are of broad scope more likely functions in a policy making position.” Elrod, supra, 427 U.S. at 368.

In Weisel v. Hooks, Judge Carchman held that the plaintiff, “who served as the ‘Confidential Secretary’” to the Secretary of State, was employed in “an unclassified position . . . [and] ha[d] no protected constitutional rights which preclude her dismissal for ‘political reasons.’” 277 N.J. Super. 78, 80-81 (Ch. Div. 1994). In that case, plaintiff held prior employment positions serving members of the Democratic Party and “was actively engaged in Democratic Party affairs.” Id. at 81. When Governor Whitman assumed office from Governor Florio following her successful election, plaintiff alleged that she was terminated by a Republican appointee because the Republican “was tired of having to explain having a democrat work for me as my assistant” and told the plaintiff that she could not continue her employment “‘because of politics.’” Ibid. Analyzing the job specifications published by the Department of Personnel for the plaintiff’s position, Judge Carchman concluded that “the position of ‘confidential secretary’ to the Secretary of State (and to the Assistant Secretary of State) confirms that its inherent duties are similar to those of the unprotected ‘confidential’ position of secretary to the mayor.” Id. at 87 (citing Faughender v. City of North Olmsted, Ohio, 927 F.2d 909 (6th Cir. 1991)).

In Busa v. Township of Gloucester, 458 Fed. Appx. 174 (3d Cir. 2012), the Third Circuit Court of Appeals affirmed the district court’s dismissal of the Director of Public Works for the Township of Gloucester’s § 1983 claim alleging he was wrongfully terminated in violation of the First and Fourteenth Amendments. Plaintiff, a Democrat, was appointed Director of Public Works when the Township was controlled by Democrats and continued to serve the Township when a Republican was subsequently elected mayor. Id. at 175. While serving the Republican mayor, the Democrat plaintiff was not active in Democrat functions. Members of the Township’s Democratic

Party were not pleased with the plaintiff's lack of support and failure to attend Democrat events. Ibid. Plaintiff was informed that he would not be reappointed to the position of Director when a Democrat was elected to replace the Republican Mayor. Id. at 175. The Third Circuit agreed that the plaintiff did not enjoy constitutional protection because the position of Director of Public Works was a policymaking position. Id. at 177. The Court relied on the fact that New Jersey's Civil Service job description "state[s] that the Director of Public Works 'plans, organizes, and directs the programs and activities of a comprehensive public works department.'" Ibid. The Court also noted that the plaintiff "reports directly to the Mayor and acts as an advisor to the Mayor on issues of policy with respect to the Township's public works." Ibid. Notwithstanding plaintiff's arguments that New Jersey enacted legislation to professionalize the position by requiring specific training and experience, the Court was satisfied that the Township, Mayor, and Council "demonstrated that the Director of Public Works is a policy-making position where political affiliation is an appropriate requirement because it involves discretion and decision making with respect to policy issues." Ibid.

The same principle applies to the head of a municipality's head of parks and recreation. In McGroarty v. City of Wilkes-Barre, 311 Fed. Appx. 553 (3d Cir. 2009), the Third Circuit upheld dismissal of the former director of the city's department of parks and recreation § 1983 claim alleging he was wrongfully terminated for supporting his brother's reelection campaign for mayor in violation of the First and Fourteenth Amendments. "The District Court granted summary judgment to the new mayor and City on the ground that [plaintiff's] job was political." Id. at 554. The Court rejected plaintiff's argument that his job responsibilities were of a technical nature and that he was micro-managed by the former mayor observing that the Court had focused its "analysis on the functions of the public office in question and not actual past duties of the

particular employee involved.” Id. at 555 (quoting Waskovich, supra, 2 F.3d at 1297. The job descriptions for the City’s department heads indicated that department heads “make policy and personnel decisions, advocate for the mayor and City, and propose a budget.” Ibid. Plaintiff also created a long-range plan for the department, attended weekly meetings with the mayor, managed staff, and spoke in public in the name of policymakers. Ibid.

Plaintiff, in this case, was not a low-level civil servant. Plaintiff was not employed under a collective bargaining agreement and she was not a tenured civil servant. Plaintiff was appointed by the Mayor as a Department Head and employed with the advice and consent of Council. As Superintendent of Recreation, Plaintiff held an unclassified policymaking position requiring the utmost confidence of the Town’s Mayor during the Mayor’s term of office. See N.J.S.A. 11A:3-4,-5; N.J.A.C. 4A:4-1.3 (b) (“unclassified” positions, including Department Heads, are not tenured and do not enjoy benefits of the Civil Service Act); N.J.A.C. 4A:3-1.3 (a), (b) (“unclassified” service positions include those having a title that serves “for a fixed term or at the pleasure of the appointing authority”). Pursuant to the Town’s Code, Plaintiff acted as the Director of the Department of Recreation reporting directly to the Mayor. (SOF 4) The Town’s Code defined the Superintendent’s responsibilities to include, among others, administering and operating recreational programs for the community; sponsoring and administering cultural and recreational programs with other public and private organizations; administering open space areas acquired by the Town for conservation; and cooperating with federal, state, and county agencies in the development and financing of conservation programs for the benefit of the Town’s residents. (Ibid.) All of these responsibilities involve policymaking functions serving the Mayor during the Mayor’s term of office.

Plaintiff was responsible for a significant share of the Town's budget and long-range planning. (SOF 14) According to Plaintiff, there was "a lot of [taxpayer] money that [was] under her supervision." (SOF 12) Plaintiff hired, trained, and supervised over 43 municipal staff and 12 FYC employees. (SOF 9, 11) Plaintiff exercised a great deal of independence in the performance of her responsibilities. (SOF 18) Indeed, when Plaintiff was interviewed, Plaintiff was told that she "would be pretty much a department in and of myself [and] that there wouldn't be a lot of support [and] there was a lot of work to get done." (SOF 14)

Plaintiff was intimately involved with the Town's policies and was the face of the Recreation Department. Plaintiff described her achievements to include researching, developing, and assisting in the campaign to educate residents about the Open Space Referendum, which passed and secured \$150,000.00 annually for the Town's Recreation and Open Space initiatives; creating, planning, and executing the Town's first Pork Roll Palooza festival drawing 10,000 visitors to generate revenues for Phillipsburg as well as cultural festivals with the City of Easton; organizing and coordinating Town initiatives with local businesses and the Phillipsburg Chamber of Commerce; soliciting sponsorships from residents and local businesses; and implementing new recreational opportunities to ensure the profitability of the Town's pool operations -- among others. (SOF 9)

In her dual role as Executive Director of the FYC, Plaintiff created campaigns to generate scholarships; obtained grants to fund arts programs and capital improvements; increased participation in paid After School Care programs to increase revenues; and developed community-based partnerships with NORWESCAP, YMCA, and Municipal Alliance. (SOF 11) See Martinez-Sanes v. Turnbaull, 318 F.3d 483, 490-91 (3d Cir. 2003) (holding that position of Coordinator of Special Events in the Department of Tourism primarily responsible for "creating and implementing

events for the community that celebrated cultural and historical holidays” was a policymaking position); Raker v. City of Charleston, 782 F. Supp. 308, 311 (S.D.W.V. 1992) (concluding Deputy Director of Parks, Recreation and Public Grounds was a policymaking position where the plaintiff had responsibility of implementation of “a new after school recreation program which was a campaign promise made by Mayor Hall”).

“Where, as a matter of law, a person is determined to have occupied a policymaking position, that person’s claims to protection from patronage dismissal under Elrod and Branti are disposable on a motion for summary judgment.” Ness v. Marshall, 660 F.2d 517, 522 (3d Cir. 1981) (concluding that issue of fact regarding mayor’s admission to plaintiff that she was satisfied with plaintiff’s work but dismissing him because of his political affiliation required affirmance of summary judgment dismissing the plaintiff’s claims because the trial correctly concluded that plaintiff occupied a policymaking position); see also Green v. Philadelphia Housing Authority, 105 F.3d 882,885 (3d Cir. 1997) (affirming summary judgment noting that the determination of whether state employee’s activity is protected from retaliatory conduct is an issue of law for the court to decide); Mummau v. Ranck, 687 F.2d 9, 10 (3d Cir. 1982) (3d Cir. 1982) (affirming grant of summary judgment after concluding as a matter of law that assistant district attorney may be dismissed on the basis of his political affiliation).

The First and Second Counts of Plaintiff’s Complaint must be dismissed as a matter of law.

B. Plaintiff’s Facebook post did not address matters of public concern, but expressed Plaintiff’s personal grievance concerning her employment.

Ms. Post-Sheedy did not engage in protected speech when she wrote the October 22, 2017 Facebook post referenced in her Complaint. It is true that certain public employees enjoy First Amendment protections if they speak as citizens on matters of public concern. Garcetti v. Ceballos, 547 U.S. 410, 417 (2006). However, the First Amendment “does not empower them to

‘constitutionalize the employee grievance.’” *Id.* at 420 (quoting Connick v. Myers, 461 U.S. 138, 154 (1983)); *see also* Miller v. Clinton Cty., 544 F.3d 542, 551 (3d Cir. 2008) (if a discrete unit of speech addresses only the employee’s own problems, and even if those problems brush against a matter of public concern by virtue of that employee’s public employment, then that speech is merely a personal grievance). Speech that raises a private grievance and is not of interest to the public at large is not speech on a matter of public concern. Baldassare, *supra*, 250 F.3d at 194-95; Bradshaw v. Township of Middletown, 296 F.Supp.2d 526 (D.N.J. 2003) (“speech pertaining to private grievances not of interest to the public at large is not speech on a matter of public concern”) (citation omitted); *see also* Kadetsky v. Egg Harbor Township Bd. of Educ., 164 F.Supp.2d 425, 435 (D.N.J. 2001) (teacher’s speech on school policies not of public concern because teacher “was motivated at all times by concern for his personal employment”).

Plaintiff’s Facebook post was created for Ms. Post-Sheedy’s personal benefit and to advocate for “the abilities, dedication and hard-working ethic of Corcoran [.]” Mayor Ellis’s Confidential Aide. Ms. Post-Sheedy attributed the progress she made as head of the Recreation Department to Ms. Corcoran. Ms. Sheedy credited Ms. Corcoran for guiding Ms. Post-Sheedy “through a mess of bureaucracy” and explained that Ms. Corcoran was “one of the main reasons I haven’t thrown in the towel with the multitude of messes I’ve been forced to clean up.” Ms. Post-Sheedy’s work place gripes and personal opinion of Corcoran are simply not matters of public concern. Further, Ms. Post-Sheedy cannot establish that her statements deserve protection as her statements were clearly intended to create disharmony, and thereby, impede the proper functioning of the Town’s operations. Simply stated, Plaintiff’s post involved her personal interests and not matters of public concerns. Plaintiff’s Facebook post, viewed in its entirety, was nothing more than a mechanism for airing Plaintiff’s personal grievances.

Further, Plaintiff's Facebook post violated the Town's policies and procedures. The Communication Media Policy set forth in the Town's Personnel Policies and Procedures and Employee Manual, provides, in pertinent part:

To the extent that employees use social media outside of their employment and in so doing employees identify themselves as Town of Phillipsburg employees, or if they discuss matters related to the Town of Phillipsburg on a social media site, employees must add a disclaimer on the front page, stating that it does not express the views of the Town of Phillipsburg, and the employee is expressing only their personal views. For example: "The views expressed on this website/web log are mine alone and do not necessarily reflect the views of my employer." Place the disclaimer in a prominent position and repeat it for each posting that is expressing an opinion related to the Town of Phillipsburg or the town of Phillipsburg's business. Employees must keep in mind that, if they post information on a social media site that is in violation of Town of Phillipsburg policy and/or federal, state or local laws, the disclaimer will not shield them from disciplinary action.

Not only did Plaintiff's post address her personal grievances, it also spoke to matters related to the Town of Phillipsburg. For example, Plaintiff complained that the Town failed to hire a Business Administrator and Town Council denied the position of Human Resources Director at an annual salary of \$40,000.00. (SOF 21, Complaint Exhibit A) According to Plaintiff, the Mayor's Confidential Aide was "the target of a hateful campaign" from people who probably couldn't keep up with her work ethic for one hour, let alone the 50+ she puts into a week[.]" (Ibid.) Plaintiff continues about how other administrations were guilty of hiring family members. (Ibid.) In violation of the Town's employment policies, Plaintiff did not provide a disclaimer anywhere on her post that her views were her personal views and not that of the Town of Phillipsburg. (Ibid.) This is exactly the type of disharmony the Town's policies are intended to avoid.

Even if Plaintiff did not hold a policymaking position, the facts would not support a claim that Plaintiff was deprived of her First Amendment rights. "A person of ordinary firmness would not be deterred from exercising his constitutional rights out of fear that someone might simply

disagree with his version of the facts, however ungraciously.” Bradshaw, *supra*, 296 F. Supp. 2d at 542 (concluding that plaintiff’s allegation that he was called “a liar” in retaliation for his speech did not state a claim for retaliation). Plaintiff testified that she did not regret publishing her Facebook post even though she believes she lost her position because of the post. (SOF 22) Plaintiff’s own testimony demonstrates that a person of ordinary fitness would not be deterred from communicating what she posted.

For all of these reasons, the First and Second Counts of Plaintiff’s Complaint must be dismissed with prejudice.

II. PLAINTIFF WAS NOT DEPRIVED OF HER LIBERTY INTEREST WITHOUT DUE PROCESS.

The Third Count of Plaintiff’s complaint alleges that she was deprived of her liberty interest in her reputation without due process in violation of Article I, Paragraph 1 of the New Jersey Constitution. In 1971, the United States Supreme Court held that an individual has a federal protectable interest in their reputation. See Wisconsin v. Constantineau, 400 U.S. 433 (1971). “[T]o make out a due process claim for deprivation of a liberty interest in reputation, a plaintiff must show a stigma to their reputation plus deprivation of some additional interest.” Hill v. Borough of Kutztown, 455 F.3d 225, 236 (3d Cir. 2006) (citations omitted). This is commonly referred to as the stigma-plus test in the Third Circuit. “The creation and dissemination of a false and defamatory impression is the ‘stigma,’ and the termination [or constructive termination] is the ‘plus.’ When such deprivation occurs, the employee is entitled to a name-clearing hearing.” Ibid.

The New Jersey Supreme Court also has found a protectable interest in reputation in Article I Paragraph 1 of the New Jersey Constitution, which is broader than those provided by the federal constitution. Doe v. Poritz, 142 N.J. 1, 104-06 (1995)). Under the New Jersey Constitution, all that a plaintiff must demonstrate is that false and defamatory statements were made in public

resulting in reputational injury to the plaintiff without being provided process due, that is a name-clearing hearing. In re L.R., 321 N.J. Super. 444, 460 (App. Div. 1999). In other words, New Jersey does not require the “plus” prong. As with the federal claim, a necessary element of a New Jersey constitutional reputation due process claim requires the dissemination of information to the public that causes harm to the plaintiff’s reputation. Poritz, supra, 142 N.J. at 105; In re L.R., supra, 321 N.J. Super. at 460. “Although the New Jersey Constitution extends due process protection to personal reputation, without requiring any other tangible loss, this does not mean that a liberty interest is implicated anytime a governmental agency transmits information that may impugn a person’s reputation.” In re L.R., supra, 321 N.J. Super. at 460 (citations and internal quotations omitted).

The statements that Plaintiff alleges harmed her reputation were certain statements made by Council President Fulper during the meeting of Town Council on February 6, 2018. (Complaint at ¶¶ 32, 33) There is no dispute that Plaintiff was served with a Rice notice and voluntarily opted to have discussions concerning her employment with the Town open to the public rather than discussed in executive session. (SOF 36) It is also undisputed that Plaintiff voluntarily chose not to attend the Town Council meeting and instructed her supporters not to attend the February 6th meeting even though she was present with her supporters at Town Council’s meeting of January 18 when she was first Rice noticed, because she “knew whatever was going to happen to [her] was in God’s plan.” (SOF 26, 36) Plaintiff was not denied a name-clearing hearing; she refused to attend Town Council’s meeting. For this reason alone, Plaintiff’s claim that she was deprived of her liberty interest without due process must be denied.

Further, the statements Plaintiff attributes to Council President Fulper had no capacity to harm her reputation in the community. As Plaintiff well knows, Council President Fulper told the

audience during the open hearing that Plaintiff was doing a “fine job.” (SOF 33) Plaintiff’s self-serving assertion that Council President lied when he said Plaintiff was not qualified, did not take the civil service exam required for the position, and that her resume was not on file totally misconstrues the facts. Council President’s statement that Plaintiff was not qualified for the position of Superintendent of Recreation was clearly a statement of opinion based on his misunderstanding of a civil service job description for the position. These were not statements of fact. These were statements of opinion and/or Council President’s conclusion as to a legal question. Shtutman v. Carr, 2017 WL 4402045, * 5 (App. Div. 2017) (affirming dismissal of fraud claim on summary judgment reasoning that statements such as the stock is “undervalued,” is “going to rise,” and “how much greater it’s going to be moving forward” were “not statements of fact but related to defendant’s opinions, and thus were not actionable”).

That Council President incorrectly interpreted the job description posted for that position by the Civil Service Commission does not make it an intentionally false statement of fact capable of harming Plaintiff.⁴ What is more concerning about Plaintiff’s allegations is the fact that she was advised on January 13, 2018, five days before the January 18, 2018 Town Council meeting, that certification through testing was not required. Further, Plaintiff knew Council President requested a copy of her resume, but she took no action at the February 6, 2018 Council meeting (because she declined to appear) to advise Council that she provided a copy of her resume to the Town when she applied for the position. It was not unreasonable for Council President to conclude that Plaintiff’s resume was not on file when Mayor Ellis and Mr. Cappello refused to respond to Council’s request despite the opinion of the Town Attorney and Deputy Town Attorney that

⁴ The Job Description states: “Possession of a valid certificate as Recreation Administrator issued by the NJ Board of Recreation may be required.” (SOF 24)

Plaintiff's resume could be provided to members of Town Council. If anyone is at fault here, it is the Mayor and Mr. Cappello, as well as Plaintiff herself.

Plaintiff cannot feign harm to her perceived reputation when she received overwhelming public support from Mayor Ellis, the FYC Board, and the public at large. According to Mayor Ellis, Plaintiff "improved the Phillipsburg Recreation Program by 100% . . . I have supervised over 500 people in my lifetime. It is very seldom you are privileged enough to experience work ethic, recreational professionalism, intelligence, inspiration, caring, and ability to 'make things happen' as Kelly Post-Sheedy displayed." (SOF 46) Town residents also spoke publicly in support of Plaintiff -- "This is such a loss to this town." -- "This is a big loss for the town and our children, very sad day." (SOF 47) Even Council President Fulper publicly stated Plaintiff was doing a "fine job." (SOF 33) Perhaps this is why Town Council received its fair share of criticism from Town residents -- "I am so sad to hear this. She was doing great things with the recreation programs in this town. This is a huge step backwards for the town. I hope the new town council is happy. Too bad the children are the ones that suffer." (SOF 47)

For these reasons, the Third Count of Plaintiff's Complaint must be dismissed.

III. PLAINTIFF'S CLAIM FOR CONSTRUCTIVE DISCHARGE FAILS BECAUSE PLAINTIFF WAS NOT THE VICTIM OF UNLAWFUL RETALIATION AND BECAUSE SHE COULD HAVE REMAINED EMPLOYED EARNING THE SAME SALARY HAD SHE NOT QUIT.

In the Fourth Count, Plaintiff alleges that she was constructively terminated from her employment as a result of Defendants' conduct. "In order to establish a claim for constructive discharge the plaintiff must first establish unlawful retaliation." Muench v. Township of Hadden, 255 N.J. Super. 288, 302 (App. Div. 1992). As previously discussed, Town Council's decision to reduce Plaintiff's salary was not unlawful. Pursuant to the Town's Code, "[t]he compensation of all officers and employees shall be made in such amount and at such rates as shall be prescribed

by the position classification and pay plan adopted by the Council.” Code § 5-4(B). “Council reserves the right to modify any and all of the pay ranges or position classification assignments as set forth in said [compensation] pay plan at any time.” Code § 100-6(B). “The power to adopt a statute, ordinance, or resolution generally includes the power to repeal it.” Siss, supra, 75 F.Supp.2d at 341 (citing In re Meadowlands Communications Systems, Inc., 175 N.J. Super. 53, 71 (App. Div. 1980), certif. denied, 85 N.J. 455 (1980)). Town Council was well within their authority to reduce Plaintiff’s salary from \$67,000.00 to \$50,000.00. See N.J.S.A. 40A:9-165 (providing, in part, as follows: “Salaries, wages, or compensation fixed and determined by ordinance, may, from time to time, be increased, decreased or altered by ordinance.”). As Superintendent of Recreation, Plaintiff held a policymaking position, did not enjoy First Amendment rights of free speech and political association, and thus, could be dismissed on the basis of her political association.

Even if Plaintiff did enjoy the First Amendment right to public speech and political affiliation, Council’s decision to reduce her salary from \$67,000.00 to \$50,000.00 would not support Plaintiff’s claim that she was constructively discharged -- especially where the Town fully funded Plaintiff’s salary when she devoted at least fifty-percent of her time to a not-for-profit youth center. The standard applicable to a claim for constructive discharge is much more stringent than a claim for hostile work environment. A claim for constructive discharge requires proof of unlawful retaliatory conduct so egregious and “intolerable that a reasonable person would be forced to resign rather than endure it.” Shepard v. Hunterdon Development Center, 174 N.J. 1, 28 (2002) (citation omitted). “More precisely, the standard envisions a ‘sense of outrageous, coercive and unconscionable requirements.’” Ibid. (quotation omitted). Constructive discharge requires not merely “severe or pervasive” conduct, but conduct that is so intolerable that a reasonable

person would be forced to resign rather than continue to endure it. Jones v. Aluminum Shapes, Inc., 339 N.J. Super. 412, 428 (App.Div.2001). “In addition, specific considerations are relevant to a constructive discharge analysis.” Shepard, supra, 174 N.J. at 28. Significantly, “an employee has the obligation to do what is necessary and reasonable in order to remain employed rather than simply quit.” Ibid. (quotation omitted); see Zubrycky v. ASA Apple, Inc., 381 N.J. Super. 162, 166 (App. Div. 2005) (“an employee cannot quit a job in which she is being paid less because of her gender and claim constructive discharge solely by virtue of the discriminatory wage differential”) (citation omitted).

Ms. Post-Sheedy does not have a viable claim for constructive discharge or damages. Ms. Post-Sheedy did not suffer conduct that was so intolerable that a reasonable person would have been forced to resign. See Morgan v. Union County Bd. of Chosen Freeholders, 268 N.J. Super 337, 354 (App. Div. 1993) (affirming trial court’s “conclusion that plaintiff’s claims of ‘severe humiliation, anxiety, and emotional distress’ were not sufficient to establish a cause of action” for emotional distress). If allegations relating to aggravation, embarrassment, headaches, and loss of sleep are insufficient to support a claim of emotional distress, Plaintiff can hardly support the claim that her working conditions were so intolerable she had no choice but to resign. Despite all that she has gone through, Plaintiff testified that she does not regret posting what she did. (SOF 22) Plaintiff’s testimony does not suggest that Council’s decision made it so intolerable that a reasonable person in the same position as Plaintiff would have found it so intolerable that they had no other choice than resign.

Moreover, Plaintiff did not meet her obligation “to remain employed rather than simply quit.” Shepard, supra, 174 N.J. at 28. The FYC Board unanimously agreed to make up the difference of Plaintiff’s salary and contribute \$17,000.00 towards her salary. (SOF 38) Plaintiff

accepted the FYC's offer. (SOF) She later resigned because Council President said she was unqualified, did not have an application on file, and didn't take the Civil Service exam.⁵ Council President's statements were not lies, they were his opinions and conclusions logically reached based on information known to him at the time he made the statements. Council President's statements were not so egregious and intolerable that Plaintiff had no other choice than to resign, especially where Council President publicly stated that Plaintiff was doing a "fine job," and where Plaintiff continued to receive overwhelming support from the Mayor, FYC Board, and the public at large. (SOF 33, 46, 47)

IV. PLAINTIFF'S CLAIM FOR CONSPIRACY MUST BE DISMISSED.

The elements of a claim for civil conspiracy are: "(1) a combination of two or more persons; (2) a real agreement or confederation with a common design; [] (3) existence of an unlawful purpose, or of a lawful purpose to be achieved by unlawful means[;]" and (4) special damages. Board of Ed. of City of Asbury Park v. Hoek, 66 N.J. Super. 231, 241 (App. Div. 1961), rev'd on other grounds, 38 N.J. 213 (1962). In a civil conspiracy, unlike criminal conspiracy, "the conspiracy is not the gravamen of the charge, but merely a matter of aggravation, enabling the plaintiff to recover against all defendants as joint tortfeasors." Ibid. "The actionable element is the tort which the defendants agreed to perpetuate, and which they actually committed." Ibid. (citation omitted). Thus, "[a] conspiracy cannot be the subject of a civil action unless something is done which, without the conspiracy, would give a right of action." Ibid. (citations omitted).

⁵ Plaintiff's claim for damages, that is the difference between her initial Town salary of \$67,000.00 and \$50,000.00 she is receiving from the FYC, is wholly without merit. First, Plaintiff had already accepted the FYC offer to make up that differential. Second, when she later voluntarily resigned her position with the Town and accepted full-time employment with the FYC, Plaintiff did not engage in any degree of salary negotiations other than to say to the FYC Board – pay me the same salary the Town was paying me. In sum, Plaintiff did not actively work to mitigate her damages.

Plaintiff alleges Defendants Fulper, DeGerolamo, and McVey conspired to deprive Plaintiff of her constitutional rights in violation of the NJCRA in retaliation for Plaintiff engaging in protected conduct. The gravamen of Plaintiff's conspiracy claim is the alleged deprivation of her constitutional rights in violation of the NJCRA. It is the alleged deprivation of Plaintiff's constitutional rights that gives her a right of action. As previously discussed, Plaintiff did not have any constitutional right to free speech or political association under the facts and circumstances of this case. Consequently, Plaintiff was not deprived of a liberty interest nor was she constructively discharged. As Counts I through IV of Plaintiff's Complaint must be dismissed on summary judgment, so too must Count V of Plaintiff's Complaint for civil conspiracy.

V. PLAINTIFF'S CLAIMS AGAINST DEFENDANT COUNCIL MEMBERS MUST BE DISMISSED PURSUANT TO THE DOCTRINE OF QUALIFIED IMMUNITY.

The qualified immunity defense "applies to government officials whose 'conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Hart v. City of Jersey City, 308 N.J. Super. 487, 494 (App. Div. 1998) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.ed.2d 396, 410 (1982)). "Courts determine whether a defendant is entitled to qualified immunity by balancing the important policy of compensating individuals for deprivation of their rights against 'the need to protect officials who are required to exercise their discretion and the related public interest in encouraging the vigorous exercise of official authority.'" In re City of Philadelphia Litigation, 49 F.3d 945, 960-61 (3d Cir. 1995) (quoting Harlow, *supra*, 457 U.S. at 807, 102 S.Ct. at 2732).

The resolution of the qualified immunity defense is a legal question "to be determined by the trial judge." Schneider v. Simonini, 163 N.J. 336, 348-49 (2000); Bernstein v. State, 411 N.J. Super. 316, 340 (App. Div. 2010) ("qualified immunity is a question of law to be decided by the court") (citation omitted). The "early disposition of the qualified immunity defenses" on summary

judgment is highly favored. Schneider, *supra*, 163 N.J. at 346-47; *see also* Plummer v. Department of Corrections, 305 N.J. Super. 365, 372 (App. Div. 1997) (observing that “[c]ourts have consistently emphasized the need for qualified immunity questions to be resolved on motions for summary judgment”).

Courts apply a two-part analysis in applying the qualified immunity defense. “First, a court considering qualified immunity must ask whether the alleged facts, taken in the light most favorable to the injured party, ‘show [that] the [government official]’s conduct violated a constitutional right’; second the court must ask whether the right was clearly established ‘in light of the specific context of the case, [and] not as a broad general proposition.’” Zaloga v. Borough of Moosic, 841 F.3d 170, 174 (3d Cir. 2016) (quoting Saucier v. Katz, 533 U.S. 194, 201, 124 S.Ct. 2151, 150 L.Ed.2d 272 (2001)).

Importantly, the constitutional right must be “‘clearly established’ at the time the defendants acted.” In re City of Philadelphia Litigation, *supra*, 49 F.3d at 961 (quotation omitted).

As explained by the Third Circuit:

If the law is not established clearly when an official acts, he is entitled to qualified immunity because he “could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to ‘know’ that the law forbade conduct not previously identified as unlawful.” On the other hand, if the law was established clearly, the official still maintains qualified immunity if he claims “extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard.” In other words, “[d]efendants will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that [the action was lawful]; but if officers of reasonable competence could disagree on this issue, immunity should be recognized.”

Id. at 961-62 (quotations omitted).

In other words, “[s]ummary judgment based on qualified immunity should be granted when ‘the law did not put the [defendant] on notice that his conduct would be clearly unlawful.’” Zaloga, *supra*, 841 F.3d at 174 (quoting Saucier, 533 U.S. at 202).

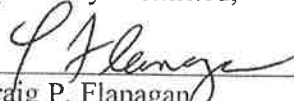
It is respectfully submitted that Plaintiff's claims against the individual Defendants in this matter must be dismissed even if this Court were to find that a material issue of fact in dispute exists concerning whether Plaintiff enjoyed First Amendment protection. Not all government employees enjoy the First Amendment right to free speech and association, and not "every public act inspired by political partisanship is subject to challenge because it has harmful consequences upon an individual." Communications Workers of America, AFL-CIO v. Whitman, 335 N.J. Super. 283, 288 (App. Div. 2000). It is not enough to say that government employees possess the First Amendment right to free speech and political association. See Bernstein, supra, 411 N.J. Super. at 339-40 ("in assessing 'whether [a] right is clearly established[,] the court ought not engage in 'broad, abstract reasoning, but rather, [its decision] should be based upon particularized considerations' in light of the information the [official] possessed at the time") (quotation omitted). "[T]he right must be considered on a more specific level: '[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violated that right.'" In re City of Philadelphia Litigation, 49 F.3d at 961 (quoting Anderson v. Creighton, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987)). None of the individual Defendants are attorneys and none of them have served in public office before their election to Town Council in November 2017. No reasonable person would have known that their decision to reduce Plaintiff's salary under the facts and circumstances of this case would violate a clearly established constitutional right because protection from political retaliation is not a clearly established right in the specific context of this case. Even a good faith disagreement over whether Plaintiff's position enjoyed First Amendment protection from retaliation requires dismissal of Plaintiff's claims against the individual Defendants.

At a minimum, this Court must dismiss Defendants Fulper, DeGerolamo, and McVey from this case. See Waskovich, supra, 2 F.3d 1297 (affirming summary judgment dismissal of plaintiff's "claims against individual defendants in their personal capacities [because they] were barred by the doctrine of qualified immunity").

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court grant Defendants' motion for summary judgment and dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted,



Pádraig P. Flanagan

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC

Pádraig P. Flanagan (ID No. 021531999)

235 Broubalow Way

Phillipsburg, New Jersey 08865

(908) 454-8300

Counsel for Defendants, Town of Phillipsburg,

Robert Fulper, Danielle DeGerolamo, and Frank McVey

KELLY POST-SHEEDY,

Plaintiff,

v.

TOWN OF PHILLIPSBURG, ROBERT
FULPER, DANIELLE DEGEROLAMO,
and FRANK MCVEY,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: WARREN COUNTY
: Docket No.: WRN-L-59-18

:
: *CIVIL ACTION*

:
: **ORDER**

THIS MATTER having been opened to the Court upon the Notice of Motion of Florio Perrucci Steinhardt & Cappelli, LLC, attorneys for Defendants Town of Phillipsburg, Robert Fulper, Danielle DeGerolamo, and Frank McVey, on notice to McDonnell Artigliere, attorneys for Plaintiff, Kelly Post-Sheedy, for summary judgment in favor of Defendants dismissing Plaintiff's Complaint with prejudice, pursuant to Rule 4:46, and the Court having read and considered the papers submitted by counsel and the arguments of counsel, and good cause having been shown, and for the reasons stated on the record,

IT IS on this 10 day of January 10, 2020

ORDERED that Defendants' motion for summary judgment is hereby DENIED;

~~**IT IS FURTHER ORDERED** that Plaintiff's Complaint is dismissed with prejudice, and~~



IT IS FURTHER ORDERED that copy of this Order shall be served upon Plaintiff's counsel within five (5) days from the date Defendants' counsel receives this Order.

/S/ YOLANDA CICCONE, A.J.S.C.
, J.S.C.

SEE STATEMENT OF REASONS ATTACHED

Opposed

Unopposed

Superior Court of New Jersey
Somerset, Hunterdon & Warren Counties

Vicinage 13

YOLANDA CICCONE
ASSIGNMENT JUDGE



SOMERSET COUNTY COURT
HOUSE

P.O. BOX 3000

SOMERVILLE, NEW JERSEY 08876
(908) 231-7069

January 10, 2020

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC

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McDONNELL ARTIGLIERE

John F. McDonnell, Esq.

NJ Attorney ID No.: 000871984

60 Youmans Avenue

Washington, NJ 07882

(908) 689-5885

RE: Post-Sheedy v. Town Of Phillipsburg Et Al

Docket No.: WRN-L-59-18

Dear Counsel,

This letter consists of the Court's Opinion regarding the Defendants' Motion for Summary Judgment.

FACTS AND PARTIES' CONTENTIONS

The Defendants in this matter, Town of Phillipsburg moves for Summary Judgment. The Plaintiff opposes and requests that defendant's motion for Summary Judgment be denied. Currently, this matter is scheduled for trial on January 27, 2020 and the discovery period for this case is over.

The essence of Plaintiff's grievance is that she was the victim of local politics and constructively discharged in retaliation for writing a Facebook post in support of Mayor Ellis and his confidential aide.

In the first and second counts of her Complaint, Plaintiff alleges Defendants are liable under the New Jersey Civil Rights Act for violating her constitutional rights to free speech and political association. In the third and fourth counts of her Complaint, Plaintiff alleges she was deprived of her liberty interest in her reputation and constructively terminated from her employment with the Town. In the fifth count, Plaintiff alleges Defendants conspired amongst themselves to retaliate against her for exercising her First Amendment right to free speech and political association.

Movant seeks Summary Judgment in its favor. At the very least, Movant asks that the Plaintiff's claims against Defendants Fulper, DeGerolamo, and McVey should be dismissed pursuant to the qualified immunity doctrine because the question of whether the Superintendent of Recreation is entitled to First Amendment protection from a vote to reduce her salary under the circumstances of this case is not clearly established, and thus, a reasonable person would not know that the law forbade such action.

Movant's First Amendment Argument:

The movants argues that the First Amendment protects certain public employees to speak as citizens and prohibits public employers from retaliating against low-level employees based on their political affiliation. They argue that the First Amendment does not protect all public employees. Municipal positions such as Superintendent of Recreation do not enjoy First Amendment protection. Plaintiff was not a low-level employee whose responsibilities were technical in nature. Plaintiff was an unclassified at-will employee of the Town and was not entitled to civil service tenure. As Superintendent, Plaintiff reported directly to the Mayor, was involved in policy initiatives such as the Open Space Referendum, participated in budgeting and long-range planning for the Department of Recreation, trained and supervised 43 municipal staff and 12 FYC employees, organized and coordinated Town initiatives with local businesses, created campaigns to generate scholarships, and developed community based partnerships with the Phillipsburg Chamber of Commerce, NORWESCAP, YMCA, and the Municipal Alliance. Further, they aver that Plaintiff's Facebook post constituted nothing more than a personal grievance that was of no interest to the public at large. They further argue that the reason Defendant Fulper voted to reduce Plaintiff's salary was since he could not verify Plaintiff's qualifications for the position of Superintendent because the Mayor's office refused to comply with Council's request for a copy of Plaintiff's resume. Movants argue that no one, including Plaintiff herself, advised Defendant Fulper that the Mayor's office concluded that Plaintiff's position did not require that she take and pass a civil service examination.

Lastly the movant maintains that plaintiff cannot establish that she was constructively terminated or that she is entitled to any damages. They argue that the decision to reduce Plaintiff's salary was not so egregious or intolerable that a reasonable person would have been forced to resign rather than continue employment. All Defendant Fulper said was that he could not conclude Plaintiff was qualified for the position of Superintendent because a copy of her resume was not on file with the Town and because Plaintiff did not take a Civil Service exam. Further, Plaintiff did not mitigate her alleged damages. At first, Plaintiff accepted the FYC's offer to make up the \$17,000.00 reduction in her salary. A week later, Plaintiff resigned her position as Superintendent and accepted a full-time position with the FYC earning a \$50,000.00 annual salary. Plaintiff would have remained whole had she not voluntarily resigned.

Therefore, movants argue that Plaintiff's claims, including her claims of civil conspiracy, should be dismissed with prejudice. At the very least, movant argues Plaintiff's claims against Defendants Fulper, DeGerolamo, and McVey should be dismissed pursuant to the qualified immunity doctrine because the question of whether the Superintendent of Recreation is entitled to First Amendment protection from a vote to reduce her salary under the circumstances of this case is not clearly established, and thus, a reasonable person would not know that the law forbade such action.

Plaintiff opposes this motion. The Plaintiff claims that political affiliation was not a requirement for plaintiff's position. Even if it were a requirement, the mayor possessed the authority to select the particular affiliation needed for plaintiff's position. Further, plaintiff argues that defendants have waived, and are otherwise precluded from asserting, this argument. Plaintiff argues that her speech was constitutionally protected. As to the remaining issues the plaintiff in her opposition argues as follows: A jury could reasonably conclude that plaintiff was constructively discharged; A jury could reasonably conclude that plaintiff was deprived of a liberty interest without due process; A jury could reasonably conclude that the individual defendants engaged in a conspiracy; The plaintiff argues that the individual defendants are not entitled to qualified immunity.

ANALYSIS

The New Jersey Supreme Court in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), held that according to Rule 4:46-2, a court should grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

The Brill Court stated that, "[b]y its plain language, Rule 4:46-2 dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged.'" Id. at 529.

That means, therefore, that "a non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute." A determination whether there exists a

“genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the nonmoving party. Id. at 540.

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Id. at 549 (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). Thus, if the evidence “is so one-sided that one party must prevail as a matter of law . . . the trial court should not hesitate to grant summary judgment.” Id. at 540.

Here the essence of Plaintiff’s grievance is that she was the victim of local politics and constructively discharged in retaliation for writing a Facebook post in support of Mayor Ellis and his confidential aide. In the first and second counts of her Complaint, Plaintiff alleges Defendants are liable under the New Jersey Civil Rights Act for violating her constitutional rights to free speech and political association. In the third and fourth counts of her Complaint, Plaintiff alleges she was deprived of her liberty interest in her reputation and constructively terminated from her employment with the Town. In the fifth count, Plaintiff alleges Defendants conspired amongst themselves to retaliate against her for exercising her First Amendment right to free speech and political association.

Regarding movant’s argument that plaintiff is a policymaker thus her speech is not protected:

The movants here argue that the plaintiff was a policymaker. Therefore, her speech is not protected. Furthermore, the movant argues that the speech in question was merely a personal concern and not political speech. However, this court is not convinced. Defendants assert this argument in conclusory fashion, without supporting case law, that plaintiff possessed no right to free speech because she was a “policymaker”. Defendants assert this broad proposition while conflating plaintiff’s political association and free speech claims. These are separate claims requiring separate analysis. However, defendants cites no authority on point for the broad proposition that policymakers have no free speech rights as a matter of law.

Article I, Paragraph 6 of the New Jersey Constitution provides, in part, that "every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press." Article I, Paragraph 18 provides that "the people have the right to freely assemble together to consult for the common good, to make known their grievances for the representatives, and to petition for redress of grievances." The New Jersey Supreme Court has held that the rights provided in these free speech provisions are "the most substantial in our constitutional scheme." Green Party of New Jersey v. Hartz Mountain Indus., Inc., 164 N.J. 127, 144 (2000); Dendrite Intern. v. Doe No.3, 342 N.J. Super. 134, 149 (App. Div. 2001). Therefore, there is a genuine issue at to this fact.

Our Supreme Court has further stated: "Precedent, text, structure and history all compel the conclusion that the New Jersey Constitution's right of free speech is broader than the right against governmental abridgement of speech found in the First Amendment." New Jersey Coalition Against War in the Middle East v. J.M.B. Realty, 138 N.J. 326, 352 (1994), cert. den. 516, U.S. 812 (1995); Ramos v Flowers, 419 NJ Super 13, 25 (App. Div. 2012); Dendrite, supra., 352 N.J. Super at 149. See also State v. Schmid, 84 N.J. 535,553-557 (1980) (recognizing that the New Jersey Constitution was an "independent source of individual rights" which could "surpass the guarantees of the federal constitution" and that the two free speech provisions of the New Jersey constitution are "more sweeping in scope than the language of the First Amendment."). However, in general, our Courts rely on federal constitutional principles in interpreting the free speech clause of the New Jersey Constitution. Karins v. City of Atlantic City, 152 N.J. 532, 547 (1998).

A public employee has a constitutional right to speak on matters of public concern without fear of retaliation. Rankin v. McPherson, 483 U.S. 378, 383-84 (1987); Karins. supra., 152 NJ at 549. Public employers cannot silence their employees simply because they disapprove of the content of their speech. Id at 384; Baldassare v. New Jersey, 250 F. 3d 188 (3d Cir. 2001); Zarnboni v. Stamler, 847 F. 2d 73, 76-77 (3d Cir. 1988), cert. den. 488 U.S. 899 (1989).

In Ambrose v. Township of Robinson, 303 F. 3d 488, 493 (3d Cir. 2002) the Third Circuit held that when analyzing free speech claims Courts must apply the three step analysis recognized by the Supreme Court in Pickering v. Board of Education, 391 U.S. 563,

568-70 (1968) and Mt. Healthy City School District v. Doyle, 429 U.S. 274, 283-84 (1977); see also Bounds v. Taylor, 2003 U.S. App. LEXIS 20631 (3d Cir.). This analysis is as follows:

First, the plaintiff must show that his conduct was constitutionally protected. Second, he must show that his protected activity was a substantial or motivating factor in the alleged retaliatory action. Finally, the defendant may defeat the plaintiff's case by showing that it would have taken the same action even in the absence of the protected conduct

[Bounds v. Taylor, 2003 U.S. App. LEXIS 20631 (3d Cir.)]

The second and third elements are issues for the jury. McGreevy v Stroup, 413 F. 3d 359, 364 (3rd Cir. 2005); Baldassare v State of NJ, 250 F.3d 188, 195 (3d Cir. 2001); Pro v Donatucci, 81 F.3d 1283, 1288 (3d Cir. 1996). In any event, this court acknowledges that defendants' motion presents no argument regarding the second and third elements. Specifically, defendants assert that plaintiff's speech "did not address matters of public concern but expressed plaintiff's personal grievance concerning her employment." DB at 27-28. Plaintiff argues that this argument is factually and legally incorrect and this court agree. Thus, this issue is not ripe for Summary Judgment.

Regarding movant's argument that no reasonable juror can find that the plaintiff was constructively discharged nor retaliated against:

Movant argues that the plaintiff's salary was not reduced as a result of the plaintiff's Facebook post. They maintain that the reason Defendant Fulper voted to reduce Plaintiff's salary was because he could not verify Plaintiff's qualifications for the position of Superintendent because the Mayor's office refused to comply with Council's request for a copy of Plaintiff's resume. Movants further avers that no one, including Plaintiff herself, advised Defendant Fulper that the Mayor's office concluded that Plaintiff's position did not require that she take and pass a civil service examination.

Movants further argue that the Plaintiff suffered no harm to her reputation. However, the record is replete with evidence to the contrary. For instance, the plaintiff references her testimony, when asked what she recalled "once [defendants} got into office?", plaintiff responded: "My life exploding". Plaintiff Tr., 103:24-106:12. On February 8, 2018, two days after her salary reduction, plaintiff visited her general care physician Dr. Batista, who

diagnosed her with situational anxiety and prescribed her Xanax. Plaintiff Tr., 233:11-235:25.

In Donelson v. DuPont Chambers Works, our Supreme Court held that, New Jersey's Conscientious Employee Protection Act (CEPA), N.J.S.A. §§ 34:19-1 to 34:19-8, specifies that the 'discharge' of an employee for engaging in protected activity is retaliatory action. See, Donelson v. DuPont Chambers Works, 206 N.J. 243, 247 (2011) (citing N.J.S.A. § 34:19-2(e).

The Supreme Court in that case noted that:

A discharge encompasses not just an actual termination from an employment, but a constructive discharge. A constructive discharge occurs when an employer's conduct is so intolerable that a reasonable person would be forced to resign rather than continue to endure it. But the universe of possible retaliatory actions under CEPA is greater than discharge, suspension, and demotion; it includes other adverse employment action taken against an employee in the terms and conditions of employment. § 34:19-2(e). What constitutes an "adverse employment action" must be viewed in light of the broad remedial purpose of CEPA, and the court's charge to liberally construe CEPA to deter workplace reprisals against an employee speaking out against a company's illicit or unethical activities.

[Donelson v. DuPont Chambers Works, 206 N.J. 243, 247 (2011)].

The decision to reduce the plaintiff's salary satisfies the Donelson standard. Nonetheless, the movants argue that the decision to reduce Plaintiff's salary was not so egregious or intolerable that a reasonable person would have been forced to resign rather than continue employment. Further, movants argue that Plaintiff did not mitigate her alleged damages. They reason that at first, Plaintiff accepted the FYC's offer to make up the \$17,000.00 reduction in her salary. A week later, Plaintiff resigned her position as Superintendent and accepted a full-time position with the FYC earning a \$50,000.00 annual salary.

Thus, movants argue that Plaintiff would have remained whole had she not voluntarily resigned. However, this is not persuasive considering the twenty-five percent reduction in salary. Furthermore, whether the salary reduction was so egregious to force a reasonable person in the plaintiff's position to resign, is a question of fact to be decided by the jury. This court is satisfied that reasonable minds can differ in this regard.

CONCLUSION

Therefore, the defendants' motion for Summary Judgment is hereby **DENIED** and this matter will proceed to trial as scheduled on January 27, 2019.

Very Truly Yours

/S/ YOLANDA CICCONE, A.J.S.C.

HON. YOLANDA CICCONE, A.J.S.C.

KELLY POST-SHEEDY

PLAINTIFF

v.

TOWN OF PHILLIPSBURG, ET.AL.

DEFENDANT

Superior Court of New Jersey

Law Division - Civil Part

Somerset County Civil Division

P.O. Box 3000, Somerville, NJ 08876

(908) 332-7700; Ext 13710

CIVIL ACTION

ORDER OF DISPOSITION

DOCKET NO. WRN-L-59-18

It is on this 3rd day of March, 2020, ORDERED that this matter is hereby dismissed/dispensed due to the following:

- 04 Partially Tried
05 Tried to Completion w/ Jury
07 Tried to Completion w/out Jury
08 Default Judgment
09 Summary Judgment
10 Dismissed with Prejudice
11 Dismissed Rule 1:13
12 Dismissed without Prejudice
14 Transfer to Another County
15 Transfer to Another Court
17 Settled by Arbitration/50 Day Dismissal
23 Settled - Not Scheduled for Trial
24 Settled- While Scheduled for Trial
25 Settled - While Scheduled for Arbitration
26 Settled - While Scheduled for other CDR
27 Settled - Friendly Hearing Comp
28 Settled by other CDR
29 Settled by Conference with Judge
45 Inactivated
82 Default Judgment; Proof Hearing Completed
Plaintiff Atty. Failed to Appear; Dismissed by Court
Plaintiff Failed to Appear; Dismissed by Court
Defendant Failed to Appear; Default Entered by Court
Plaintiff and Defendant Failed to Appear; Dismissed by Court
Other (see comments)

It is further ORDERED that the plaintiff/defendant shall serve a copy of the ORDER on the plaintiff/defendant within five (5) days from the above date.

COMMENTS:

[Empty box for comments]

/S/ THOMAS C. MILLER, P.J.Cv.

Thomas C. Miller, P.J.Cv.



Case Summary

Case Number: WRN L-000127-18

Case Caption: Cappello Vs Town Of Phillipsburg Et Al *Yxc*

Court: Civil Part

Venue: Warren

Case Initiation Date: 05/02/2018

Case Type: Civil Rights

Case Status: Closed

Jury Demand: 6 Jurors

Case Track: 3

Judge: Yolanda Ciccone

Team: 1

Original Discovery End Date: 09/19/2019

Current Discovery End Date: 11/01/2019

of DED Extensions: 1

Original Arbitration Date:

Current Arbitration Date:

of Arb Adjournments: 0

Original Trial Date: 01/27/2020

Current Trial Date:

of Trial Date Adjournments: 2

Disposition Date: 03/03/2020

Case Disposition: Settled-While Scheduled For Trial

Statewide Lien:

Plaintiffs

Samuel R Cappello

Party Description: Individual

Attorney Name: John F Mc Donnell

Address Line 1:

Address Line 2:

Attorney Bar ID: 000871984

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: JOHNMC DONNELLESQ@HOTMAIL.COM

Defendants

Robert Fulper

Party Description: Individual

Attorney Name: Padraig Pearse
Flanagan

Address Line 1:

Address Line 2:

Attorney Bar ID: 021531999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: PAT@PPFLAWFIRM.COM

Town Of Phillipsburg

Party Description: Business

Attorney Name: Padraig Pearse
Flanagan

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City:

State: NJ

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Frank Mcvey

Party Description: Individual

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Flanagan

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Danielle Degerolamo

Party Description: Individual

Attorney Name: Padraig Pearse
Flanagan

Address Line 1:

Address Line 2:

Attorney Bar ID: 021531999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: PAT@PPFLAWFIRM.COM

Case Proceeding

Created Date	Scheduled Time	Court Room	Judge Name	Proceeding Description	Motion Type	Proceeding Status	Motion Status
11/01/2018	09:00	HCH1		CASE MANAGEMENT CONFERENCE		COMPLETED	
01/18/2019	10:30	HCH1		CASE MANAGEMENT CONFERENCE		ADJ NO JUDGE	
02/21/2019	02:30	HCH1		CASE MANAGEMENT CONFERENCE		COMPLETED	

**PLAINTIFFS'
EXHIBIT
6A**

04/03/2019	02:00	301		CASE MANAGEMENT CONFERENCE		CANCEL	
04/15/2019	02:00	301		CASE MANAGEMENT CONFERENCE		COMPLETED	
05/10/2019	09:00	04		MOTION HEARING	MOTION TO FILE OR AMEND COMPLAINT	COMPLETED	CM
06/19/2019	02:00	301		CASE MANAGEMENT CONFERENCE		ADJ DSGCN	
09/05/2019	11:00	301		CASE MANAGEMENT CONFERENCE		COMPLETED	
01/09/2020	09:30	HCH1		SETTLEMENT CONFERENCE		NOT SETTLD	
01/10/2020	09:00	301		MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	RSCHED	
01/24/2020	09:00	301		MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	COMPLETED	CM
01/27/2020	09:00	HCH1		TRIAL		ADJ OTRLPRO	
02/10/2020	09:00	HCH1		TRIAL		ADJ CONF & ADJ	

Case Actions

Filed Date	Docket Text	Transaction ID	Entry Date
05/02/2018	Complaint with Jury Demand for WRN-L-000127-18 submitted by MC DONNELL, JOHN F, MC DONNELL ARTIGLIERE on behalf of SAMUEL R CAPPELLO against TOWN OF PHILLIPSBURG, ROBERT FULPER, DANIELLE DEGEROLAMO, FRANK MCVEY	LCV2018764450	05/02/2018
05/02/2018	GENERAL CORRESPONDENCE submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of SAMUEL R CAPPELLO against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO	LCV2018764755	05/02/2018
05/02/2018	CLERK NOTICE: re: GENERAL CORRESPONDENCE [LCV2018764755] -exhibits only submitted-please forward explanation.	LCV2018766490	05/02/2018
05/02/2018	CORRECTED: DEFICIENCY CORRECTION submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of SAMUEL R CAPPELLO against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO	LCV2018766964	05/02/2018
05/02/2018	CORRECTION: re: [LCV2018766964] DEFICIENCY CORRECTION submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of SAMUEL R CAPPELLO against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO Filing Type has been changed to AFFIDAVIT by Case Management Staff	LCV2018771754	05/02/2018
05/03/2018	TRACK ASSIGNMENT Notice submitted by Case Management	LCV2018776555	05/03/2018
06/26/2018	STIPULATION TO EXTEND TIME FOR ANSWER submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against SAMUEL R CAPPELLO	LCV20181116290	06/26/2018
06/26/2018	Answer W/Jury Demand submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against SAMUEL R CAPPELLO	LCV20181116534	06/26/2018
09/27/2018	COURT Notice submitted by Case Management	LCV20181683389	09/27/2018
10/02/2018	MEDIATION Notice submitted by Case Management	LCV20181712787	10/02/2018
10/01/2018	Order To Refer To Mediator Without Stay - GRANTED by Judge PURSEL, JOHN, H	LCV20181714961	10/02/2018
11/08/2018	COURT Notice submitted by Case Management	LCV20181947783	11/08/2018
01/05/2019	COURT Notice submitted by Case Management	LCV201925138	01/05/2019
02/21/2019	Case Management Order-Court Initiated - GRANTED by Judge CICCONE, YOLANDA	LCV2019323682	02/21/2019
02/22/2019	COURT Notice submitted by Case Management	LCV2019326416	02/22/2019
03/21/2019	DELETED - OPPOSITION TO MOTION submitted by CAHILL, KERRY of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against SAMUEL R CAPPELLO	LCV2019508205	03/21/2019
03/21/2019	CLERK NOTICE: re: OPPOSITION TO MOTION [LCV2019508205] -Other: Document inadvertently filed under the wrong docket number. Please DISREGARD	LCV2019508515	03/21/2019
03/21/2019	5-DAY ORDER submitted by CAHILL, KERRY of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against SAMUEL R CAPPELLO	LCV2019508531	03/21/2019
03/21/2019	ORDER TO DELETE submitted by Case Management Staff	LCV2019509972	03/21/2019
03/21/2019	CORRECTION: re: [LCV2019508205] OPPOSITION TO MOTION submitted by CAHILL, KERRY of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against SAMUEL R CAPPELLO on 03/21/2019 has been deleted as ordered by Judge PURSEL, JOHN, H - Order to Delete	LCV2019511381	03/21/2019
03/21/2019	CLERK NOTICE: re: ORDER TO DELETE [LCV2019509972] -PLEASE BE ADVISED THAT THE CASE MANAGEMENT CONFERENCE PREVIOUSLY SCHEDULED FOR 4/3/19 AT 2:00 PM HAS BEEN RESCHEDULED FOR 4/15/19 AT 2:00 PM. THANK YOU.	LCV2019512316	03/21/2019
03/22/2019	COURT Notice submitted by Case Management	LCV2019513320	03/22/2019
04/12/2019	CLERK NOTICE: re: CASE MANAGEMENT ORDER-COURT INITIATED [LCV2019323682] -PLEASE BE AWARE A CASE MANGEMENT CONFERENCE IS SCHEDULED FOR APRIL 15,2019 AT 2:00PM IN SOMERVILLE COURT HOUSE. COURT ROOM 301.THANK YOU.	LCV2019655333	04/12/2019
04/15/2019	Case Management Order-Court Initiated - GRANTED by Judge CICCONE, YOLANDA	LCV2019668489	04/15/2019
04/16/2019	COURT Notice submitted by Case Management	LCV2019671062	04/16/2019

04/24/2019	MOTION TO FILE OR AMEND COMPLAINT submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of SAMUEL R CAPPELLO against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO	LCV2019723002	04/24/2019
05/06/2019	The motion filed on 04/24/2019 will be decided on 05/10/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION TO FILE OR AMEND COMPLAINT [LCV2019723002]	LCV2019795203	05/06/2019
06/05/2019	ORDER TO FILE OR AMEND COMPLAINT-Granted by Judge PURSEL, JOHN, H re: MOTION TO FILE OR AMEND COMPLAINT [LCV2019723002]	LCV2019983036	06/05/2019
06/05/2019	AMENDED COMPLAINT submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of SAMUEL R CAPPELLO against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO	LCV2019983825	06/05/2019
06/11/2019	ADJOURNMENT REQUEST submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against SAMUEL R CAPPELLO	LCV20191023981	06/11/2019
06/11/2019	CLERK NOTICE: re: ADJOURNMENT REQUEST [LCV20191023981] -YOUR REQUEST HAS BEEN GRANTED. THE CASE MANAGEMENT CONFERENCE HAS BEEN ADJOURNED TO SEPTEMBER 5TH AT 11:00 AM. THANK YOU.	LCV20191026011	06/11/2019
06/12/2019	COURT Notice submitted by Case Management	LCV20191027727	06/12/2019
06/13/2019	AMENDED ANSWER submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against SAMUEL R CAPPELLO	LCV20191036838	06/13/2019
07/03/2019	Mediation Not Held-Case Returned To Court submitted by Court	LCV20191162591	07/03/2019
07/15/2019	DISCOVERY END DATE REMINDER Notice submitted by Case Management	LCV20191219270	07/15/2019
09/05/2019	Case Management Order-Court Initiated - GRANTED by Judge CICCONE, YOLANDA	LCV20191587147	09/05/2019
11/15/2019	COURT Notice submitted by Case Management	LCV20192105938	11/15/2019
12/11/2019	MOTION FOR SUMMARY JUDGMENT submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against SAMUEL R CAPPELLO *LINKED FILING*	LCV20192286451	12/11/2019
12/13/2019	The motion filed on 12/11/2019 will be decided on 01/10/2020. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR SUMMARY JUDGMENT [LCV20192286451]	LCV20192301578	12/13/2019
12/18/2019	ADJOURNMENT REQUEST submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of SAMUEL R CAPPELLO against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO	LCV20192331267	12/18/2019
12/27/2019	The motion filed on 12/11/2019 was rescheduled to 01/24/2020. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR SUMMARY JUDGMENT [LCV20192286451]	LCV20192378023	12/27/2019
01/10/2020	COURT Notice submitted by Case Management	LCV202066467	01/10/2020
01/14/2020	BRIEF submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of SAMUEL R CAPPELLO against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO	LCV202094478	01/14/2020
01/17/2020	Oral argument has been granted. Hearing is scheduled on 01/24/2020 with Judge CICCONE, YOLANDA, Court Room 301 . re: MOTION FOR SUMMARY JUDGMENT [LCV20192286451]	LCV2020122178	01/17/2020
01/20/2020	REPLY BRIEF submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLAMO against SAMUEL R CAPPELLO *LINKED FILING*	LCV2020131524	01/20/2020
01/24/2020	ORDER FOR SUMMARY JUDGMENT-Denied by Judge CICCONE, YOLANDA re: MOTION FOR SUMMARY JUDGMENT [LCV20192286451]	LCV2020178017	01/27/2020
01/27/2020	Correspondence submitted by Court	LCV2020182152	01/27/2020
01/29/2020	CLERK NOTICE: re: CORRESPONDENCE [LCV2020182152] -Trial scheduled for February 10, 2020, has been CANCELLED. Notice will be sent advising of new trial date.	LCV2020203996	01/29/2020
03/03/2020	ORDER OF DISMISSAL/CASE SETTLED - GRANTED by Judge THOMAS C. MILLER, P.J., CV.	LCV2020440892	03/03/2020

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SAMUEL R. CAPPELLO,
Plaintiff,

v.

TOWN OF PHILLIPSBURG, ROBERT
FULPER, DANIELLE DEGEROLAMO,
and FRANK MCVEY,
Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY
DOCKET NO.: WRN-L-

Civil Action

COMPLAINT AND DEMAND FOR
TRIAL BY JURY

Plaintiff, Samuel R. Cappello, residing in Phillipsburg, New Jersey, by way of Complaint against defendants, says:

FIRST COUNT

1. Defendant Town of Phillipsburg (“Town”) is a municipality in the County of Warren, State of New Jersey. The Town is governed under the Mayor-Council Plan under the Faulkner Act, N.J.S.A. 40:69A-1 et seq., by a Mayor and five-member Town Council. Members of the Town Council are elected at-large in partisan elections to four-year terms of office on a staggered basis.

2. Stephen R. Ellis, Jr. (“Ellis”), a Democrat, was elected Mayor of the Town in November 2015 and took office on January 1, 2016.

3. At present, and over the last several years, the Town Council has been comprised of five (5) members and has been ruled by a Republican majority with three Republican Council



Members and two Democratic Members. The relationship between Mayor Ellis and the Republican members of the Republican-controlled Town Council have been extremely bitter and strained.

4. In November 2017 defendants Robert Fulper, Danielle DeGerolamo and Frank McVey, Republicans, were voted onto the Town Council replacing three Republican Town Council Members.

5. Defendant Robert Fulper, a Republican, has been Town Council President since January 1, 2018.

6. Defendant Danielle DeGerolamo, a Republican, has been Town Council Vice-President since January 1, 2018.

7. Defendant Frank McVey, a Republican, has been Town Councilman since January 1, 2018.

8. On March 15, 2017 the Mayor, with Town Council approval, changed the full-time Town Business Administrator position to part-time. Shortly thereafter, the part-time Business Administrator was terminated. The position has remained vacant since that time.

9. On February 24, 2017, the Town's part-time Human Resource Clerk, who reported to the Business Administrator, resigned.

10. In March of 2017, the Town Council voted to approve Resolution 2017-2 appointing plaintiff to the position of "Pension and Benefits Certifying Supervisor".

11. Thereafter, the Town Council voted to approve Resolution 2017-44 appointing plaintiff to the position of "Safety and Environmental Officer", in addition to the aforementioned Benefits Certifying Supervisor position.

12. Since in or about February 2017, plaintiff has performed the additional duties of Human Resource Manager and, to some extent, Business Administrator, without additional compensation.

13. In or about March 5, 2017, plaintiff was also given the civil service title of Human Resource Clerk.

14. On or about September 5, 2017 defendant Fulper, who at the time was running for Town Council, publicly addressed the Town Council at a meeting and stated that three proposed Town employee raises, including a raise for plaintiff, should be approved by the Council. However, when the Town Council voted to approve raises in October 2017, the Town Council did not approve a raise or new position title for plaintiff.

15. Democrat Phillipsburg Mayor Ellis appointed Sherry Corcoran ("Corcoran"), a Democrat, on or about March 1, 2016 as his Confidential Secretary. Shortly thereafter, Corcoran's title was changed to Confidential Aide to the Mayor.

16. Defendants Fulper, DeGerolamo and McVey publicly expressed their disapproval of Corcoran's appointment by the Mayor, and particularly, Corcoran's 2017 salary adjustment increasing her pay.

17. Although Corcoran's 2017 salary adjustment was approved by a majority of the members of the Republican controlled Town Council in or about October 2017, defendants Fulper, DeGerolamo and McVey have expressed disapproval of that salary adjustment and, subsequent to their taking office on the Town Council in January 2018, almost immediately began to take action to reduce Corcoran's salary.

18. On or about October 20, 2017 Steve Novak (“Novak”), a writer for the Express-Times Newspaper and lehighvalleylive.com, authored and posted an article regarding the aforementioned salary increase provided to Corcoran, the Confidential Aide to Mayor Ellis.

19. Shortly thereafter, plaintiff forwarded a letter to Novak regarding the aforementioned article about Corcoran’s salary increase.

20. On October 23, 2017 Novak published an article extensively quoting plaintiff’s aforementioned letter to Novak. A copy of that article appeared in the Express-Times Newspaper and is attached as Exhibit “A”.

21. Novak’s October 23, 2017 Express-Times article (Exhibit “A”) contained many statements and opinions of plaintiff supportive of Corcoran and the salary adjustment provided to her. The article also contained various opinions of plaintiff highly critical of the Republican Council members in Phillipsburg and the Republican Party. Plaintiff’s published statements included the following:

I have always considered myself as a middle of the road guy when it came to politics. The person was more important than the party. I came to work for the Town because I wanted to help the people in Phillipsburg in any way that I can, something that I enjoy very much doing. But now that I have been exposed to the malicious lies, confrontation, stalking, taping of phone conversations, and political maneuvering of the inept Republican Party, I know now that the middle of the road is no longer acceptable. These deceitful people that you continue to report about would only ruin all of the unbelievable progress that this administration has made, but you already know that!

22. Plaintiff’s aforementioned letter and published statements to Novak were authored by plaintiff on his own personal time away from work.

23. Plaintiff has made other statements supportive of Democrats Mayor Ellis and Corcoran.

24. In October and again in November 2017, the outgoing Republican controlled Council, refused to approve the budgeted salary for the Human Resource Manager position. Although Plaintiff performed the duties of Human Resource Manager, and some Business Administrator duties, in anticipation of formal approval of the Human Resource Manager Title, plaintiff was never compensated for such duties and has remained in the aforementioned low-level and under compensated titles.

25. Immediately upon taking office in January 2018, defendants Fulper, DeGerolamo and McVey began to request the Town Attorney to issue to plaintiff and Corcoran a series of Rice Notices informing them that the terms and conditions of their employment would be discussed by the Town Council. Defendants' intent was to eliminate plaintiff's job titles and significantly reduce the salaries of plaintiff and Corcoran. By law, a Rice Notice must be timely served on a Town employee in order to allow the Council to discuss the terms and conditions of that employee's employment.

26. During an executive session meeting of the Town Council on January 12, 2017, the Council members discussed plaintiff's job duties. The initial comments early in the meeting by defendant Fulper related to plaintiff's aforementioned published statements and defendnat Fulper questioned whether plaintiff could work with the three new Council Members.

27. A few weeks later, at a Town Council meeting on February 6, 2018, defendant Fulper, as Council President, made a motion in support of a Resolution stripping plaintiff of various duties and, as a result, reducing plaintiff's pay. Defendant Fulper's motion was to remove plaintiff as Pension and Benefits Certifying Supervisor and Safety and Environmental Officer. Pursuant to Fulper's motion, those duties were to be transferred to the Town Clerk, a political supporter of defendants.

28. Defendants DeGerolamo, Fulper and McVey voted in favor of defendant Fulper's aforementioned Resolution stripping plaintiff of various duties and transferring them to the Town Clerk. Further, defendants failed to take any action to compensate plaintiff for performing the duties of Human Resource Manager and partial Business Administrator duties.

29. At the same February 6, 2018 Council meeting, defendants DeGerolamo, Fulper and McVey also voted in favor of a Resolution reducing the pay of Kelly Post-Sheedy ("Post-Sheedy"), Director of Recreation from \$67,000.00 to \$50,000.00. Post-Sheedy had also published various statements and opinions supportive of Democratic Mayor Ellis and Corcoran and critical of defendants.

30. At the February 6, 2018 Town Council meeting, defendants Fulper, DeGerolamo and McVey also successfully passed a Resolution significantly reducing the salary of Corcoran, from \$53,000.00 to \$45,000.00.

31. On or about March 20, 2018 defendants Fulper, DeGerolamo and McVey introduced an amended 2018 Town Budget which eliminated the funding for plaintiff's aforementioned positions and Corcoran's position.

32. Defendants' aforementioned actions resulted in the constructive terminations of plaintiff, Post-Sheedy and Corcoran.

33. Defendants' aforementioned wrongful actions towards plaintiff were motivated by plaintiff's aforementioned statements and his support for Democratic Mayor Ellis and Democrat Corcoran.

34. Plaintiff's constitutionally protected conduct was a motivating factor in defendants' aforementioned retaliation, intimidation and coercion and related wrongful conduct, and in

attempting to interfere with those rights by acts intending to intimidate, silence, coerce and otherwise retaliate against plaintiff because of his constitutionally protected conduct.

35. Defendants' wrongful conduct would chill or silence a person of ordinary firmness from exercising constitutionally protected speech and conduct in the future.

36. The wrongful acts of defendants were pursuant to color of law. Defendants are liable to plaintiff pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. ("NJCRA") for the violation of plaintiff's constitutional rights.

37. The Town is liable pursuant to the New Jersey Constitution and NJCRA for violation of plaintiff's rights as the actions of defendants Fulper, DeGerolamo and McVey, as a majority of the Town Council, constitutes an official policy decision and action of the Town and defendants' conduct by way of official Council vote and Resolution constitutes policy-making activity for which the Town is responsible.

38. Defendants Fulper, DeGerolamo and McVey created, caused, tolerated, condoned, aided and/or participated in the aforementioned unconstitutional actions and violation of the NJCRA and proximately caused plaintiff's injuries.

39. As a result of defendants' wrongful conduct, plaintiff has suffered economic injury, deprivation of constitutional rights, emotional distress and has been otherwise injured.

SECOND COUNT

1. Plaintiff repeats the allegations of the First Count as if set forth at length.

2. Defendants' aforementioned retaliatory and wrongful actions involved political patronage discrimination and violated plaintiff's right to freedom of political association, including his right to not become politically affiliated with defendants or to otherwise support any political candidate or position.

3. Defendants retaliated against plaintiff because of his constitutionally protected conduct in not supporting defendants politically and to otherwise take action against Mayor Ellis and Corcoran for political reasons. Defendants were further motivated by plaintiff's constitutionally protected conduct in supporting the actions of Mayor Ellis and Corcoran and in not otherwise supporting defendants. Defendants also attempted to interfere with plaintiff's rights through intimidation and coercion.

4. Defendants' aforementioned retaliatory, coercive and other wrongful conduct is in violation of Article I, Paragraphs 1 and 18 of the New Jersey Constitution, which violations are made actionable by the NJCRA.

5. As a result of defendants' wrongful conduct, plaintiff has suffered economic injury, emotional distress and has been otherwise injured.

THIRD COUNT

1. Plaintiff repeats the allegations of the First and Second Counts as if set forth at length.

2. The individual defendants agreed between and amongst themselves, conspired and otherwise colluded to retaliate against plaintiff, and aided and abetted the wrongful conduct, because of plaintiff's aforementioned protected conduct and to deprive him of his rights in violation of the New Jersey Constitution and NJCRA.

3. As a result of defendants' wrongful conduct, plaintiff has been injured.

WHEREFORE, plaintiff demands judgment against defendants, individually, jointly and severally, for back pay, front pay, compensatory damages, emotional distress damages, damages for the violation of, and interference with, plaintiff's constitutional rights, punitive damages, attorney's fees and costs, interest and any other relief the Court deems just and appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby requests a trial by jury as to all Counts and Issues.

CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)

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 R. 1:38-7(c).

RULE 4:5-1(c) DESIGNATION OF TRIAL COUNSEL

John F. McDonnell and Leonard J. Artigliere are hereby designated as trial counsel for plaintiff.

RULE 4:5-1(b)(2) CERTIFICATION

I, the undersigned, certify that the matter in controversy is not the subject of any other action or arbitration proceeding and no such action or arbitration proceeding is contemplated. Further, I am not aware, at this time, of any other parties that should be joined in this action.

DATED: May 2, 2018

McDONNELL ARTIGLIERE

By: 
JOHN F. McDONNELL

DATED: May 2, 2018

McDONNELL ARTIGLIERE

By: 
LEONARD J. ARTIGLIERE

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC

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Counsel for Defendants, Town of Phillipsburg,

Robert Fulper, Danielle DeGerolamo, and Frank McVey

SAMUEL CAPPELLO,

Plaintiff,

v.

TOWN OF PHILLIPSBURG, ROBERT
FULPER, DANIELLE DEGEROLAMO,
and FRANK MCVEY,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: WARREN COUNTY
: Docket No.: WRN-L-127-18

: *CIVIL ACTION*

: **ANSWER TO COMPLAINT,**
: **SEPARATE DEFENSES**
: **& JURY DEMAND**

Defendants Town of Phillipsburg (“Town”), Robert Fulper (“Fulper”), Danielle DeGerolamo (“DeGerolamo”), and Frank McVey (“McVey”), (collectively "Defendants"), by and through their attorneys, Florio Perrucci Steinhardt & Cappelli, LLC, in answer to the Complaint of Plaintiff, Samuel Cappello (“Plaintiff”), say:

FIRST COUNT

1. Defendants admit that the Town is a municipality in the County of Warren, State of New Jersey, and that the Town is governed under the Mayor-Council Plan of the Faulkner Act, but neither admit nor deny the remaining allegations of paragraph 1 since same consist of statements or conclusions of law to which no response is required.

2. Defendants admit the allegations of paragraph 2.

3. Defendants deny the allegations of paragraph 3, except to admit that the Town



Council has been comprised of five (5) Council Members and is currently comprised of three (3) Republican Council Members and two (2) Democrat Council Member.

4. Defendants deny the allegations of paragraph 4, except to admit that Fulper, DeGerolamo and McVey were voted onto the Town Council in November 2017.

5. Defendants admit that Fulper has served in the capacity of President of the Town Council since January 1, 2018.

6. Defendants admit that DeGerolamo has served in the capacity of Vice-President of the Town Council since January 1, 2018.

7. Defendants admit that McVey has served in the capacity of Town Council Member since January 1, 2018.

8. Defendants admit the allegations of paragraph 8.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9 and leave Plaintiff to his proofs.

10. Defendants admit that Town Council voted in favor of Resolution 2017-72 in March 2017, which speaks for itself.

11. Defendants admit that Town Council voted in favor of Resolution 2017-44, which speaks for itself.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 12 and leave Plaintiff to his proofs.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 13 and leave Plaintiff to his proofs.

14. Defendants deny the allegations of paragraph 14 as stated.

15. Defendants admit that Ellis appointed Corcoran in the capacity of his Confidential Secretary. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 15 and leave Plaintiff to his proofs.

16. Defendants deny the allegations of paragraph 16, except to admit that Fulper, DeGerolamo, and McVey believed Corcoran's 2017 salary adjustment was unjustifiable and improper.

17. Defendants deny the allegations of paragraph 17 as stated, except to admit that Council Members Fulper, DeGerolamo, and McVey disapproved Corcoran's 2017 salary adjustment, and upon their taking office, took action to reduce Corcoran's salary.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 18 and leave Plaintiff to his proofs.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 19 and leave Plaintiff to his proofs.

20. Defendants neither admit nor deny the allegations of paragraph 20 as it makes no allegations against them and further state that the content of Exhibit "A[.]" being a writing, speaks for itself.

21. Defendants respond that Exhibit A, being a writing, speaks for itself.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 22 and leave Plaintiff to his proofs.

23. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 23 and leave Plaintiff to his proofs.

24. Defendants deny the allegations of paragraph 24.

25. Defendants admit that Rice Notices were to be issued to Plaintiff and Corcoran. Defendants deny Plaintiff's allegation as to Defendants' intent. Defendants neither admit nor deny the remainder of the allegations of paragraph 25 since same consist of statements or conclusions of law to which no response is required.

26. Defendants deny the allegations of paragraph 26 as stated.

27. Defendants admit that Council President Fupler moved a resolution transfer the positions of Certifying Pensions and Benefits Supervisor and Safety and Environmental Officer back to the Town Clerk, but deny the remaining allegations made in paragraph 27.

28. Defendants admit voting in favor of the Resolution, but deny the remaining allegations made in paragraph 28.

29. Defendants admit that Council President Fulper moved a resolution to decrease Post-Sheedy's salary to \$50,0000, but deny the remaining allegations made in paragraph 29.

30. Defendants admit voting in favor of the Resolution, but deny the remaining allegations made in paragraph 30.

31. Defendants admit introducing the amended 2018 Town Budget, but deny the remaining allegations made in paragraph 31.

32. Defendants deny the allegations of paragraph 32.

33. Defendants deny the allegations of paragraph 33.

34. Defendants deny the allegations of paragraph 34.

35. Defendants deny the allegations of paragraph 35.

36. Defendants deny the allegations of paragraph 36.

37. Defendants deny the allegations of paragraph 37.

38. Defendants deny the allegations of paragraph 38.

39. Defendants deny the allegations of paragraph 39.

SECOND COUNT

1. Defendants repeat each and every response contained in the above paragraphs and incorporates same herein as if set forth at length.

2. Defendants deny the allegations of paragraph 2.

3. Defendants deny the allegations of paragraph 3.

4. Defendants deny the allegations of paragraph 4.

5. Defendants deny the allegations of paragraph 5.

THIRD COUNT

1. Defendants repeat each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

2. Defendants deny the allegations of paragraph 2.

3. Defendants deny the allegations of paragraph 3.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding Defendants reasonable attorney's fees, costs of suit and such other and further relief as the Court may deem appropriate.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by the failure to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

Any claims by Plaintiff for emotional or physical injuries are barred by the exclusive remedy provision of the New Jersey Workers' Compensation Act.

THIRD SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

FOURTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTH SEPARATE DEFENSE

Any action taken by the Defendants is protected by an absolute and/or qualified privilege.

SIXTH SEPARATE DEFENSE

Defendants claim all rights, privileges and immunities afforded Defendants under both federal and state law, inclusive of the New Jersey Tort Claims Act.

SEVENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the New Jersey Tort Claims Act.

EIGHTH SEPARATE DEFENSE

Any action, or failure to act, on the part of Defendants was in the nature of the discretionary activity within the meaning of N.J.S.A. 59:2-3 and, accordingly, no liability may be imposed on Defendants.

NINTH SEPARATE DEFENSE

Any and all injuries sustained by Plaintiff are the result of his own negligence and/or misconduct or the actions of third parties or circumstances or situations over which Defendants had no control.

TENTH SEPARATE DEFENSE

Defendant acted at all times in good faith and without malice.

ELEVENTH SEPARATE DEFENSE

Plaintiff's damage claims are barred by the absence of damage.

TWELFTH SEPARATE DEFENSE

Plaintiff's claims for damages are barred, in whole or in part, by Plaintiff's failure to reasonably mitigate damages, if any.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, based on her failure to timely file a prerogative writ action.

FOURTEENTH SEPARATE DEFENSE

Defendants acted at all times for legitimate, non-discriminatory and non-retaliatory reasons.

FIFTEENTH SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim for injunctive relief.

SIXTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by her failure to exhaust her remedies under the grievance provisions of the collective negotiations agreement.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred by reason of his failure to avail himself of all administrative and contractual remedies and/or arbitrations.

EIGHTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part because the complained of actions, to the extent they occurred, were not arbitrary, capricious, irrational, or otherwise improper, but instead, were motivated by legitimate interests.

NINETEENTH SEPARATE DEFENSE

Plaintiff did not sustain any violation of his civil rights pursuant to a governmental policy, practice, or custom.

TWENTIETH SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim for punitive damages against Defendants.

TWENTY-FIRST SEPARATE DEFENSE

Defendants have not committed any violation of Plaintiff's rights under state law.

TWENTY-SECOND SEPARATE DEFENSE

The alleged acts of Defendants do not rise to the level of a constitutional violation, and therefore, Plaintiff did not suffer any infringement of his constitutional rights and/or such constitutional violations are not pled with sufficient particularity to support any claim.

TWENTY-THIRD SEPARATE DEFENSE

The alleged conduct did not violate clearly established statutory and/or constitutional rights of which a reasonable person would have known.

TWENTY-FOURTH SEPARATE DEFENSE

Defendants reserve the right to amend its Answer to insert additional defenses and/or supplement, alter, or change its Answer upon revelation of more definite facts by Plaintiff; upon the completion of further discovery and/or investigation; and/or based upon after acquired evidence.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding Defendants reasonable attorney's fees, costs of suit and such other and further relief as the Court may deem appropriate.

**FLORIO PERRUCCI STEINHARDT &
CAPPELLI, L.L.C.**
Attorneys for Defendants

By: 
Pádraig P. Flanagan
ID No. 021531999

Dated: June 26, 2018

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Pádraig P. Flanagan is designated as trial counsel in this matter.

RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge and information, the matter in controversy is not the subject of any other pending action or arbitration proceeding and no other proceeding is contemplated. At the present, I do not know of any other party who should be joined in this action. This certification is made subject to further investigation and discovery.

**FLORIO PERRUCCI STEINHARDT &
CAPPELLI, L.L.C.**
Attorneys for Defendants

By: 
Pádraig P. Flanagan
ID No. 021531999

Dated: June 26, 2018

SAMUEL CAPPELLO, Plaintiff, v. TOWN OF PHILLIPSBURG, ROBERT FULPER, DANIELLE DEGEROLAMO, and FRANK MCVEY, Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: WARREN COUNTY : Docket No.: WRN-L-127-18 : <i>CIVIL ACTION</i>
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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC

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TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	
A. The Town of Phillipsburg	4
B. Department of Administration	5
C. Responsibilities of the Business Administrator	6
D. Plaintiff's Employment with the Town of Phillipsburg	7
E. Plaintiff's Op-Ed Article in the Express Times	9
F. Three New Members of Town Council Take Office on January 1, 2018	12
LEGAL ARGUMENT	15
I. THE FIRST AND SECOND COUNTS OF PLAINTIFF'S AMENDED COMPLAINT MUST BE DISMISSED BECAUSE THE POSITION OF BUSINESS ADMINISTRATOR IS NOT PROTECTED BY THE FIRST AMENDMENT AND PLAINTIFF'S OP-ED ARTICLE DID NOT ADDRESS A MATTER OF PUBLIC CONCERN.	
A. Plaintiff was not protected by the First Amendment right to free speech and association.	16
B. Plaintiff's Op-Ed Article did not address matters of public concern, but express Plaintiff's personal grievance concerning his employment.	24
C. Defendants did not act to decrease Plaintiff's compensation.	26
II. PLAINTIFF IS NOT ENTITLED TO THE COMPENSATION PRMISED BY MAYOR ELLIS BECAUSE THE MAYOR LACKED AUTHORITY TO DIRECT PLAINTIFF TO PERFORM FUNCTIONS OUTSIDE OF PLAINTIFF'S CIVIL SERVICE JOB CLASSIFICIATION.	27
III. PLAINTIFF'S CLAIM FOR CONSPIRACY MUST BE DISMISSED.	37
CONCLUSION	40

PRELIMINARY STATEMENT

Plaintiff, Samuel Cappello, has been employed with the Town of Phillipsburg since November 2016 as a classified civil servant. Plaintiff is also a member of Local 2928 of the American Federation of State and County Municipal Employees Council. A registered Democrat, Plaintiff has extensive human resources experience in the private sector. Plaintiff had no public administration experience before his employment with the Town.

Mayor Stephen R. Ellis, a Democrat, will complete his four-year term as Mayor on December 31, 2019. During his entire tenure as Mayor, Mayor Ellis had to govern with Town Council controlled by members of the Republican Party. It is not an exaggeration to state that the Mayor's relationship with Town Council has been turbulent for the past two and one-half years. In November 2017, Defendants Robert Fulper, Danielle DeGerolamo, and Frank McVey, all Republican, were elected to replace the outgoing Republican members of Town Council effective January 1, 2018. Among many of the issues the new Republicans campaigned concerned the Mayor's hiring practices and decision to increase the salary of the Mayor's confidential aide by 18 percent. Immediately upon taking office, the three new members of Town Council requested information from the Mayor's office consistent with their promise to investigate the Mayor's hiring practices. Several months later, Council formed an ad hoc committee to investigate the Mayor's hiring practices. Plaintiff's employment with the Town was one of the positions Town Council investigated.

The essence of Plaintiff's grievance is that he was the "pawn" of local politics. In the first and second counts of his Amended Complaint, Plaintiff alleges Defendants are liable under the New Jersey Civil Rights Act for violating his constitutional rights to free speech and political association. According to Plaintiff, Town Council refused to confirm Plaintiff to the position of

Business Administrator because he publicly supported Mayor Ellis. While the First Amendment protects certain public employees to speak as citizens and prohibits public employers from retaliating against low-level employees based on their political affiliation, the First Amendment does not protect all public employees. That is to say not all public employment positions are immune from politics. The appointment of Business Administrator under the mayor-council plan form of government under the Faulkner Act requires the appointment by the mayor with the advice and consent of council, consistent with the concept of divided and shared power. It is through the confirmation process that Council exercises its authority to ensure the proper checks and balances on municipal government to effectuate good public policy. Municipal positions such as Business Administrator do not enjoy First Amendment protection, and therefore, Plaintiff's claim that he was denied the position of Business Administrator because of his association with Mayor Ellis is completely without merit.

Far more troubling is Plaintiff's allegation that the Town and three members of Town Council failed to take any action to compensate Plaintiff for work he performed outside the scope of his job classification. According to Plaintiff, he willingly performed the functions of the Business Administrator outside the scope of his Clerk-1 job classification and claims that he somehow is entitled to annual compensation in the range of \$100,000.00 to \$120,000.00 consistent with discussions Plaintiff had with the Mayor. The investigation of Town Council's Ad Hoc Committee, and discovery in this matter, reveals that Mayor Ellis illegally assigned the duties of Business Administrator to Plaintiff in contravention of New Jersey's Civil Service Act and the Town's Code. Discovery also demonstrates that the Mayor lacked the authority to make any representations to Plaintiff concerning the amount of his compensation for assuming the duties of Business Administrator. Even if he did not know, Plaintiff should have known that the Mayor's

actions were *ultra vires* in light of Plaintiff's claim that he was the de facto Department Head of Administration for the Town and given the fact that Plaintiff was the Town's designated human resource contact with the New Jersey Civil Service Commission.

Plaintiff has always been employed and compensated as a classified civil servant. At no point in time did Counsel take any action to reduce Plaintiff's compensation as a classified civil servant. Plaintiff only has the Mayor and himself to blame for his plight.

For these reasons, and the reasons below, Plaintiff's Amended Complaint should be dismissed in its entirety.

STATEMENT OF FACTS¹

A. The Town of Phillipsburg

The Town of Phillipsburg (“Town”) is a municipality in the County of Warren, New Jersey. The Town is governed under the Mayor-Council form of government under the Faulkner Act, N.J.S.A. 40:69A-31 to -48. (SOF 1) Stephen R. Ellis, Jr., a Democrat, was elected Mayor of the Town in November 2015 and assumed office on January 1, 2016. (SOF 2) During the first two years of the Mayor’s term (2016 to 2017), Town Council was controlled by Republicans Todd Tersigni, Bernie Fey, and Randy Piazza, Jr. (Id.) These men were replaced with Republicans Robert Fulper, Danielle DeGerolamo, and Frank McVey during the last two years of the Mayor’s term (2018 to 2019). Democrat Councilmen Josh Davis and Mark Lutz served on Town Council during the Mayor’s four-year term.² (Id.)

Under the Town Code of Phillipsburg, the “governing body” is defined to be Town Council. (SOF 4) The Mayor is the “chief executive officer of the Town” responsible for enforcing the Town’s Charter and ordinances. (Id.) The Mayor is also responsible for supervising all departments within the Town’s government, but “[a]ll appointments made by the Mayor will be with the advice and consent of the Council,” including the head of each department. (Id.)

“The legislative power of the Town shall be exercised by the Council.” (SOF 5) Council may, by resolution, exercise its power of advice and consent to the actions of the Mayor, as well

¹ The numbers following each of the sentences in the Statement of Facts reflects the citation to the paragraph number set forth in the Statement of Undisputed Material Facts. All other citations not otherwise identified in the Statement of Undisputed Material Facts are supported by the record. Exhibits referenced in the Statement of Undisputed Material Facts and this brief are attached to the Certification of Counsel.

² On November 5, 2019, Mayor Ellis lost his re-election bid to former Town Council Member Todd Tersigni. Mayor Elect Tersigni, a Republican, will assume office on January 1, 2020. Further, Republicans Harry Wyant Jr. and Randy Piazz, Jr. were elected to Town Council, which will be entirely controlled by Republicans effective January 1, 2020.

as conduct legislative inquiries or investigations. (Id.) Town Council is responsible for approving all classified and unclassified positions for the Town. Town Council is also responsible for approving the compensation associated with these positions through the adoption of a salary ordinance. (Id.) Council is empowered to create new position classifications and “to modify any or all of the pay ranges or position classification assignments as set forth in said pay plan at any time.” (Id.)

B. Department of Administration

According to the Town’s Code, “[t]here shall be a Department of Administration, the head of which shall be the Business Administrator appointed by the Mayor with the advice and consent of Council for the same term as the Mayor.” (SOF 6) The Business Administrator is an unclassified position. (Id.) The Business Administrator (“BA”) is “responsible for the efficient and economical administration of the Department and shall have the general functions, powers and duties of a department head pursuant to this chapter.” (Id.) “The salary, appointment and removal of the Business Administrator shall be established by the Council independently of the compensation plan.” (Id.) The BA is not entitled to overtime pay.

“The Mayor may designate himself as acting head of one or more departments, without additional compensation[,]” but “[h]e shall not fill said vacancy in the Department of Administration or Finance.” (SOF 7) Further, the Mayor may “designate the Business Administrator . . . to act as Mayor whenever the Mayor shall be prevented by absence from the municipality, disability or other cause from attending to the duties of his office.” (Id.) The Town has not employed a permanent BA since Mayor Ellis terminated Melisa Elias in or about March 2017. (SOF 8)

C. **Responsibilities of the Business Administrator**

The Business Administrator reports directly to the Mayor and “performs such duties and exercise[s] such powers as are provided by statute, the Charter, this Administrative Code and ordinance.” (SOF 9). In addition, the BA assists in the preparation of the Town’s budget, manages purchasing, and is “responsible for the development and administration of a sound personnel system.” (Id.) Mayor Ellis testified that the Town’s Business Administrator was responsible for the following:

- a. Acts as an agent of the governing body in the administration of municipal affairs, integrating and coordinating activities of the various departments;
- b. Supervises and assists in the preparation of the budget and administers budgetary control;
- c. Advises the local governing body on policy matters;
- d. Supervises administrative matters in the various departments of the municipality;
- e. Monitors actions of the governing body;
- f. Acts as a liaison between the governing body, the municipal attorney, and the municipal engineer;
- g. Explains planning, subdivision regulations and zoning matters to builders, developers and other interested citizens;
- h. Prepares and supervises the preparation of reports and correspondence;
- i. Acts as an administrative officer for the planning board and zoning board of adjustment;
- j. Liaises with other officials and staff in the municipality;
- k. Acts as an administrative consultant to varied boards and departments within the municipality;

l. Receives, distributes or handles questions, comments and problems presented by citizens;

m. Advises the governing body and other municipal officers on public relations matters;

n. Edits and compiles public information releases; and

o. Advises the governing body on personnel and administrative problems.

(SOF 10)

D. Plaintiff's Employment with the Town of Phillipsburg

Plaintiff, Samuel Cappello, is a Democrat. (SOF 3) Plaintiff is currently employed by the Town of Phillipsburg in the classified civil service position of Clerk 1-HR. (Id.) As such, Plaintiff is a member of Local 2928 of American Federation of State, County and Municipal Employees Council (hereinafter "Union"). (Id.) Plaintiff's tortured employment history with the Town follows.

Plaintiff, a former human resources executive with no public administration experience, interviewed with Mayor Ellis for the position of Business Administrator in early 2016 shortly after Mayor Ellis took office. (SOF 11) Approximately four individuals were interviewed for the position. (SOF 12) The position was ultimately awarded to Melisa Elias at an annual salary of \$65,000.00 on a part-time basis with the advice and consent of Town Council. (Id.) According to Mayor Ellis, he anticipated the position would transition into a full-time position once he determined he was comfortable with the work of the part-time appointee. (Id.)

Although Plaintiff was not recommended by the Mayor to the BA position, Plaintiff was able to secure employment with the Town. On November 16, 2016, Mayor Ellis offered Plaintiff a seasonal clerk's position paying \$15.00 per hour to organize the Town's files. (SOF 13) Shortly thereafter, the Mayor gave Plaintiff increased responsibilities. (SOF 14) In early 2017, Town

Council approved a proposal from Mayor Ellis to transfer two civil service titles from the Town Clerk (who functionally supports Town Council) to Plaintiff who was working in the Mayor's Office. The transfer of these two civil service positions, however, did not change the compensation paid to Plaintiff or the Town Clerk. (Id.) Plaintiff also picked-up the responsibilities of a part-time human resources clerk who resigned. (Id.)

Approximately three months later, Mayor Ellis fired Ms. Elias for lack of performance and because she was confrontational with the Mayor. (SOF 15) Mayor Ellis did not immediately recommend Plaintiff's appointment as Business Administrator to Town Council. (SOF 16) The Mayor testified that he did not recommend Plaintiff for the BA position because "it was too chaotic within the office of the mayor and council." (Exhibit E - Ellis Tr. 36:9-18) Mayor Ellis elaborated that he "was convinced that [he] would not get an approval from council." (Exhibit E - Ellis Tr. 37:6-14)

The Mayor did, however, later recommend that Plaintiff be appointed to a new position identified as Human Resources Manager. (SOF 16) According to Plaintiff, it was the Mayor's intention that the position of Human Resources Manager would replace the position of Business Administrator. (SOF 17) In other words, the position of Human Resources Manager would have performed the same exact duties of the Business Administrator and represented nothing more than renaming the position from Business Administrator to Human Resources Manager. (Id.)

During his employment with the Town, Plaintiff assumed the duties and performed work that is normally the responsibility of the Business Administrator, as well as the Confidential Aide to the Mayor following the termination of the Mayor's Confidential Aide. (SOF 22) As such, Plaintiff is required to have knowledge about the Town's personnel policies. (Id.) As a member

of the AFSCME Union, Plaintiff is familiar with the Town and Union's bargaining agreement.

(Id.)

Plaintiff clearly understood that his appointment to the position of BA (or Human Resources Manager) required his political affiliation with Mayor Ellis. Plaintiff explained why he only expected to be working during Mayor Ellis's tenure as follows:

Because at the time, I was being – at the time, I was being put up for the human resource manager position, again, as I mentioned before, which was supposed to be in place of the BA. It would have been an unclassified position reporting directly to the Mayor. And reporting directly to the Mayor, you would have to be reassigned if the Mayor goes out of – if the Mayor is not reelected, then the incoming Mayor decides whether you have a job or not.

(SOF 24)

E. Plaintiff's Op-Ed Article in the Express-Times

On October 3, 2017, Town Council approved an eighteen percent (18%) increase in the salary of the Mayor's Confidential Aide. On that same date, Town Council voted against the addition of Human Resources Manager to the Town's position classification plan. (SOF 25) Plaintiff apparently believes the Republican led Council were going to approve the Human Resource Manager's position, but voted against it because one of the Republican's inadvertently voted in favor of the Confidential Aide's 18% salary increase when that member was supposed to have voted against the increase. (SOF 28)

On October 23, 2017, two weeks before the election for three Republican held seats on Town Council, Plaintiff submitted an editorial opinion via email in response to an Express-Times article titled "Mayor's Aide Gets 18% Raise, Becomes Target In Campaign." (SOF 26) Plaintiff's editorial, available on the Internet, complained that the Express-Times article had been "limited to the political agenda of the Republican party." (Id.) "As an experienced human resources executive," Plaintiff claimed Council's actions "suited the political Republican agenda, to

disparage anyone who does not agree with their malicious views.” (Id.) With respect to Town Council’s 18% salary increase given to the Mayor’s Confidential Aide, Plaintiff lodged the following complaint:

[a]ll of these salaries were approved on Oct. 3 except mine. Why? Because the Republican council members were so stunned by the passing of Corcoran’s salary, even by one of their own, that they needed someone else as a political pawn when put on the spot. These actions are a sham. . . . Tersigni, who was and still is a part of this type of devious behavior, once told me he liked what I was doing and was glad to support me when I was approved by the council as the safety and environmental officer, but not this time because they needed a new political pawn, me. . . .

At the end of the article, Plaintiff is identified as “the human resources manager for the Town of Phillipsburg.” (Id.)

Plaintiff’s publication of his op-ed piece violated the Town’s Communication Media Policy. The Communication Media Policy set forth in the Town’s Personnel Policies and Procedures and Employee Manual, provides, in pertinent part:

No media advertisement, electronic bulletin board posting, or any other communication assessable via the Internet about the Town of Phillipsburg or on behalf of the Town of Phillipsburg, whether through the use of the Town of Phillipsburg’s Communication Media or otherwise, may be issued unless it has first been approved by the Business Administrator. Under no circumstances may information of a confidential, sensitive or otherwise proprietary nature be placed or posted on the Internet or otherwise disclosed to anyone outside the town of Phillipsburg. Such unauthorized communications may result in disciplinary action.

To the extent that employees use social media outside of their employment and in so doing employees identify themselves as Town of Phillipsburg employees, or if they discuss matters related to the Town of Phillipsburg on a social media site, employees must add a disclaimer on the front page, stating that it does not express the views of the Town of Phillipsburg, and the employee is expressing only their personal views. For example: “The views expressed on this website/web log are mine alone and do not necessarily reflect the views of my employer.” Place the disclaimer in a prominent position and repeat it for each posting that is expressing an opinion related to the Town of Phillipsburg or the

town of Phillipsburg's business. Employees must keep in mind that, if they post information on a social media site that is in violation of Town of Phillipsburg policy and/or federal, state or local laws, the disclaimer will not shield them from disciplinary action.

(SOF 29) Specifically, Plaintiff's op-ed piece was available on the internet and was not approved by the Business Administrator. In fact, no one from the Town reviewed or approved Plaintiff's article before Plaintiff emailed it to the Editor of Lehigh Valley Live. (SOF31) Worse, Plaintiff identified himself as the Human Resources Manager, a position that was not approved by Town Council, without qualifying that the views expressed in his op-ed piece were his personal views and not that of the Town. Further, Plaintiff's claim that he wrote his target piece on his own time is dubious. Plaintiff attached his op-ed piece using his Town issued email <scappello@phillipsburg.nj.org>, which he emailed to the Editor of Lehigh Valley Live (affiliated with the Express-Times). (SOF 30)

Plaintiff's self-serving views also placed himself and the Town in a negative light.

Following are just a few of the many responses from residents:

Not sure why a Town employee, a personnel manager no less, would feel compelled to write what is mostly a vividly political rant. Phillipsburg's problems are not based on party affiliation. For decades it's been an Election Day horse race for control of spending taxpayer money, resulting in jobs for pathetic loyalist who would starve if they had to compete in a marketplace beyond Memorial Parkway.

As a public employee and previous executive HR manager, you of all people should be well aware of the inappropriateness of this public statement you have made here and on your employer's facebook page no less!! This is another example of why the Town of Phillipsburg has to adopt a social media, anti-bullying, ethical behavior policy!!! There have been other public employees, yourself included here, and elected officials making statements that are a liability to the Town. My suggestion is when you all are at the League of Municipalities you seek out available information on how to properly conduct yourselves as a public employee/official.

I'm not sure an "experienced human resource executive" should or would have written this letter? Perhaps a disgruntled employee, or someone with a political ax to grind. But not a professional.

Samuel, just two words for you because this letter or editorial or whatever it is is simply a serving whine and by the way, was either of the jobs you received posted on the town website? Advertised? Multiple interviews? As an "experienced" human resource executive, hard to believe you react like a child. So the two words for you -- Grow up.

(SOF 32)

In any event, Plaintiff cannot possibly contend that the 2017 Republican Council Members (Tersigni, Piazza, and Fey) voted against his appointment to the position of Human Resources Manager in retaliation for publishing his op-ed piece inasmuch as Plaintiff's op-ed piece was published 20 days after Council voted against the position of Human Resources Manager. (SOF 27) Indeed, Plaintiff concedes he is not making a claim for damages in the 2016 through 2017 time period. (Id.) Thus, Plaintiff's claim for damages begins to accrue on January 1, 2018.

F. Three New Members of Town Council Take Office on January 1, 2018

Defendants Fulper, DeGerolamo, and McVey were sworn in as members of Council for the Town of Phillipsburg on January 1, 2018. (SOF 33) On February 6, 2018, Council passed a resolution to reduce the Superintendent of Recreation's annual salary from \$67,000.00 to

\$50,000.00³ and the Mayor's Confidential Aide's salary from \$53,000.00 to \$45,000.00.⁴ (SOF 34) At the same meeting, Council removed the civil service titles of Pension and Benefits Certifying Supervisor and Safety and Environmental Officer and transferred these titles back to the Town Clerk. (SOF 35) Importantly, the transfer of these two titles did not impact Plaintiff's compensation or the Town Clerk's compensation. (Id.) The transfer also did not affect Plaintiff's civil service title or his membership in the Union. (Id.)

It was not until July 18, 2018, that the Mayor appointed Plaintiff as the Interim Business Administrator for a period of thirty (30) days. (SOF 36) The Mayor recommended Plaintiff's appointment as the permanent Business Administrator after Plaintiff completed the 30-day maximum as Interim Business Administrator, but the motion died without a vote because Councilman Lutz, a Democrat at the time, did not second Councilman Davis's motion to move the resolution for a vote. (Id.) This was the first time Mayor Ellis recommended Plaintiff for the position of Business Administrator -- more than one year after Ms. Elia was terminated. (Id.) Mayor Ellis again sought Plaintiff's appointment to the position of Business Administrator. The matter was placed on the agenda for Town Council's Meeting of November 7, 2018. (SOF 37) On that date, Town Council voted against Plaintiff's nomination by a vote of 4-1. (Id.) Councilman Lutz, a Democrat, voted against Plaintiff's nomination. (Id.)

Council did not know Plaintiff's actual job duties or what Plaintiff did for the Town after Mayor Ellis employed Plaintiff as a seasonal clerk in November 2016. (SOF 19) When

³ Kelly Post-Sheedy was the Town's former Superintendent of Recreation and is a Plaintiff in another complaint filed against the same Defendants in this matter. In her complaint, Ms. Post-Sheedy alleges, among other things, that Council reduced her salary in retaliation for posting a Facebook post in support of the Mayor and his Confidential Aide.

⁴ See Exhibit C - Town Code § 100-6B ("Counsel reserves the right to modify any or all of the pay ranges or position classification assignments as set forth in said pay plan at any time.")

questioned by Council President Fulper about the open BA position, Mayor Ellis responded that he had assumed the functions of the Business Administrator after Mayor Ellis terminated Melissa Elias in the Spring of 2017.⁵ (Id.) No one has taken any action to reduce Plaintiff's compensation in his position of Clerk-1. (SOF 40) In fact, Plaintiff's compensation has never decreased since he began working for the Town in November 2016. (Id.)

⁵ The Town's Code expressly prohibits the Mayor from acting in the capacity of Business Administrator. See Exhibit C – Town Code § 5-17A.

LEGAL ARGUMENT

The purpose of the summary judgment procedure is to provide a prompt, businesslike and inexpensive means of disposing of a cause of action. Judson v. People's Bank & Trust Co. of Westfield, 17 N.J. 67; Rothman v. Silber, 90 N.J. Super. 22, 33 (App. Div. 1966). Rule 4:46-2 provides that summary judgment shall be granted where the evidence demonstrates there is "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." An issue of fact is genuine only, if considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate interferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." Rule 4:46-2(c).

In 1995, the New Jersey Supreme Court refined the summary judgment standard to converge with the standard employed by the federal courts and the majority of state courts since 1986. The standard has been enunciated in Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995):

[u]nder this new standard, a determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential material presented, when viewed in a light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

Consequently, a motion for summary judgment cannot be defeated merely by pointing to any fact in dispute. Rather, a party opposing summary judgment must raise substantial issues of fact to defeat a motion. The opponent must therefore, raise questions of fact which can lead a rational fact finder to decide in the opponent's favor if a trial were held. Thus, summary judgment should be granted "against a party who fails to make a showing sufficient to establish the existence

of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 533 (citations omitted).

As will be discussed below, Plaintiff does not enjoy First Amendment protection as a matter of law. Town Council as a co-equal branch of municipal government through the process of checks and balances did not exceed its authority in rejecting Plaintiff's appointment to the position of Business Administrator. In an end around, the Mayor improperly altered Plaintiff's civil service position to include tasks belonging to the Business Administrator, directed a two-step increase in Plaintiff's compensation, and purportedly promised Plaintiff annual compensation in the range of \$100,000.00 to \$120,000.00 in violation of the Town Code, New Jersey Civil Service Act, and the Town's bargaining agreement with the Union. As the de facto Human Resources Manager designated by the Mayor as the Town's point of contact with the Civil Service Commission, Plaintiff knew or should have known that his acceptance and performance of tasks belonging to the Business Administrator were *ultra vires*, thereby eviscerating Plaintiff's claimed entitlement to increased compensation.

I. THE FIRST AND SECOND COUNTS OF PLAINTIFF'S COMPLAINT MUST BE DISMISSED BECAUSE THE POSITION OF BUSINESS ADMINISTRATOR IS NOT PROTECTED BY THE FIRST AMENDMENT AND PLAINTIFF'S OP-ED ARTICLE DID NOT ADDRESS A MATTER OF PUBLIC CONCERN.

A. Plaintiff was not protected by the First Amendment right to free speech and association.

Plaintiff asserts violation of the New Jersey Civil Rights Act alleging he was deprived of his First Amendment rights to free speech and political association. The New Jersey Civil Rights Act ("NJ CRA"), N.J.S.A. 10:6-1 et seq., was adopted in 2004 "for the broad purpose of assuring a state law cause of action for violations of state and federal constitutional rights and to fill any gaps in state statutory anti-discrimination protection." Owens v. Feigin, 194 N.J. 607, 611 (2008).

A person may bring an action under the NJCRA in two circumstances: (1) when the person is “deprived of a right, or (2) when his rights are interfered with by threats, intimidation, coercion or force.” Felicioni v. Administrative Office of Courts, 404 N.J. Super. 382, 400 (App. Div. 2008). New Jersey frequently follows federal law with respect to civil rights and employment claims as the NJCRA was modeled after the Federal Civil Rights Act of 1871, 42 U.S.C.A. § 1983. See Tumpson v. Farina, 218 N.J. 450, 474 (2014) (recognizing that the NJCRA was “modeled off of the analogous Federal Civil Rights Act”); Brown v. State, 422 N.J. Super. 406, 424-25 (App. Div. 2015) (observing that “our courts apply § 1983 immunity doctrines to claims arising under the Civil Rights Act . . . “[g]iven their similarity”). Plaintiff’s claims fail because he was not deprived of a right guaranteed by either the federal or state constitutions.

In the First Count of Plaintiff’s Amended Complaint, Plaintiff asserts that Defendants refused to consent to the Mayor’s appointment of Plaintiff to the position of Business Administrator in violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. (“NJCRA”) infringing on Plaintiff’s First Amendment right to free speech. Plaintiff alleges Defendants intended to eliminate his job titles and significantly reduce his salary, and further, “failed to take any action to compensate plaintiff for performing the duties” of Business Administrator. (Amended Complaint ¶ 28) Notwithstanding Plaintiff’s allegations, there is no dispute that Town Council never reduced Plaintiff’s compensation. In the Second Count of his Amended Complaint, Plaintiff alleges that Defendants violated his right to freedom of political association pursuant to Article I, Paragraphs 1 and 18 of the New Jersey Constitution and is actionable by the NJCRA.

“The First Amendment protects a public employee’s right, in certain circumstances, to speak as a citizen addressing matters of public concern.” Garcetti v. Ceballos, 547 U.S. 410, 417 (2006). Matters of “public concern” may include speech about “political, social, or other concern

to the community.” Swartzwelder v. McNeilly, 297 F.3d 228, 235 (3d Cir. 2002) (quotations omitted). Speech may also involve “a matter of public concern if it attempts ‘to bring to light actual or potential wrongdoing or breach of public trust on the part of government officials.’” Baldassare v. New Jersey, 250 F.3d 188, 195 (3d Cir. 2001) (quoting Holder v. City of Allentown, 987 F.2d 188, 195 (3d Cir. 1993)). New Jersey’s Constitution’s “protections are no greater than those under the first amendment of the United States Constitution.” Siss v. County of Passaic, 75 F.Supp.2d 325, 341 (D.N.J. 1999) (citations omitted).

The First Amendment also prohibits public employers from discriminating against “low-level” employees based on their political affiliation. Rutan v. Republican Party, 497 U.S. 62, 64-65 (1990). “A plaintiff who alleges retaliation for political affiliation must show: (1) he was ‘employed at a public agency in a position that does not require political affiliation;’ (2) he was ‘engaged in constitutionally protected conduct;’ and (3) the conduct was a ‘substantial or motivating factor in the government’s employment decision.’” Lapolla v. County of Union, 449 N.J. Super. 288, 298 (App. Div. 2017) (quoting Galli v. N.J. Meadowlands Comm’n, 490 F.3d 265, 271 (3d Cir. 2007)). Claims brought under the New Jersey Constitution are assessed in the same manner. See Fioriglio v. City of Atlantic, 996 F. Supp. 379, 391 (D.N.J. 1998).

Not all positions are immune from politics. Political affiliation can provide a sufficient basis for adverse employment actions in municipal government because a valid public goal “advanced in support of [political] patronage is the need for political loyalty of employees, not to the end that effectiveness and efficiency be insured, but to the end that representative government not be undercut by tactics obstructing the implementation of policies of the new administration, policies presumably sanctioned by the electorate.” Elrod v. Burns, 427 U.S. 347, 367 (1976). Thus, municipal positions that involve policymaking and the need for politically loyal employees

do not enjoy First Amendment protection. See Armour v. County of Beaver, PA, 271 F.3d 417, 436 (3d Cir. 2001) (observing that appellate courts “have repeatedly concluded policymakers’ assistants’ jobs are not protected by the First Amendment”); Dyke v. Otlowski, 154 N.J. Super. 377, 383 (Ch. 1977) (holding that supervisor of senior citizens activities was a policymaking employee such that her discharge by the newly-elected mayor would be sustained as valid despite the mayor’s political motivations); Childress v. City of Orange Township, 2018 WL 1378722, *9 (D.N.J. Mar. 19, 2018) (holding that the position of Assistant City Attorney “was one in which political affiliation or loyalty could be permissibly considered”); Waskovich v. Morgano, 2 F.3d 1292 (3d Cir. 1993) (affirming grant of summary judgment dismissing director of State’s Division of Veteran’s Administrative Services who had responsibility for large budget and number of employees and who provided policy advice to his superiors); Curinga v. City of Clairton, 357 F.3d 305, 307, 309 (3d Cir. 2004) (affirming summary judgment dismissing former municipal manager’s First Amendment action against the city and individual council members who “described his position as ‘run[ning] the day-to-day business operations of the city’” reasoning that “public officials may be able to terminate a policymaking employee on the basis of political affiliation and conduct”).

As the United States Supreme Court acknowledged, “the Governor of a State may appropriately believe that the official duties of various assistants who help him write speeches, explain his views to the press, or communicate with legislature cannot be performed effectively unless those persons share his political beliefs and party commitments.” Branti v. Finkel, 445 U.S. 507, 518 (1980). The New Jersey Supreme Court observed that “Branti stands for the proposition that nontenured governmental attorneys, whose broad public responsibilities are confidential in nature and involve formulating or implementing policy relating to political beliefs, may be

discharged when the effective performance of their duties is compromised because of a difference in political commitment.” Battaglia v. Union County Welfare Bd., 88 N.J. 48, 62 (1981).

Factors that are relevant to this inquiry include “whether the employee has duties that are non-discretionary or non-technical, participates in discussions or other meetings, prepares budgets, possesses the authority to hire and fire other employees, has a high salary, retains power over others, and can speak in the name of policymakers.” Galli v. N.J. Meadowlands Comm’n, 490 F.3d 265, 271 (3d Cir. 2007). The Third Circuit has indicated that “[t]he key factor seems to be not whether the employee was a supervisor or had a great deal of responsibility, but whether she has meaningful input into decision making concerning the nature and scope of a major program.” Ibid. (internal citations omitted). “An employee with responsibilities that are not well defined or are broad in scope more likely functions in a policy making position.” Elrod, supra, 427 U.S. at 368.

In Weisel v. Hooks, Judge Carchman held that the plaintiff, “who served as the ‘Confidential Secretary’” to the Secretary of State, was employed in “an unclassified position . . . [and] ha[d] no protected constitutional rights which preclude her dismissal for ‘political reasons.’” 277 N.J. Super. 78, 80-81 (Ch. Div. 1994). In that case, plaintiff held prior employment positions serving members of the Democratic Party and “was actively engaged in Democratic Party affairs.” Id. at 81. When Governor Whitman assumed office from Governor Florio following her successful election, plaintiff alleged that she was terminated by a Republican appointee because the Republican “was tired of having to explain having a democrat work for me as my assistant” and told the plaintiff that she could not continue her employment “‘because of politics.’” Ibid. Analyzing the job specifications published by the Department of Personnel for the plaintiff’s position, Judge Carchman concluded that “the position of ‘confidential secretary’ to the Secretary

of State (and to the Assistant Secretary of State) confirms that its inherent duties are similar to those of the unprotected ‘confidential’ position of secretary to the mayor.” Id. at 87 (citing Faughender v. City of North Olmsted, Ohio, 927 F.2d 909 (6th Cir. 1991)).

In Busa v. Township of Gloucester, 458 Fed. Appx. 174 (3d Cir. 2012), the Third Circuit Court of Appeals affirmed the district court’s dismissal of the Director of Public Works for the Township of Gloucester’s § 1983 claim alleging he was wrongfully terminated in violation of the First and Fourteenth Amendments. Plaintiff, a Democrat, was appointed Director of Public Works when the Township was controlled by Democrats and continued to serve the Township when a Republican was subsequently elected mayor. Id. at 175. While serving the Republican mayor, the Democrat plaintiff was not active in Democrat functions. Members of the Township’s Democratic Party were not pleased with the plaintiff’s lack of support and failure to attend Democrat events. Ibid. Plaintiff was informed that he would not be reappointed to the position of Director when a Democrat was elected to replace the Republican Mayor. Id. at 175.

The Third Circuit agreed that the plaintiff did not enjoy constitutional protection because the position of Director of Public Works was a policymaking position. Id. at 177. The Court relied on the fact that New Jersey’s Civil Service job description “state[s] that the Director of Public Works ‘plans, organizes, and directs the programs and activities of a comprehensive public works department.’” Ibid. The Court also noted that the plaintiff “reports directly to the Mayor and acts as an advisor to the Mayor on issues of policy with respect to the Township’s public works.” Ibid. Notwithstanding plaintiff’s arguments that New Jersey enacted legislation to professionalize the position by requiring specific training and experience, the Court was satisfied that the Township, Mayor, and Council “demonstrated that the Director of Public Works is a policy-making position

where political affiliation is an appropriate requirement because it involves discretion and decision making with respect to policy issues.” Ibid.

The position of Business Administrator is also a confidential position that does not enjoy federal or state constitutional protection. In Fox v. Township of Jackson, 64 Fed. Appx. 338 (3d Cir. 2003), the former municipal clerk alleged “his contract was not extended because of his political beliefs” following a special election when “the political majority of the Township Committee [shifted] into Democratic control, led by the Mayor.” Id. at 339-40. On appeal from judgment in favor of the Township, the plaintiff challenged the trial court’s ruling to not permit “the proffered testimony of William Santos, a former Township business administrator.” Id. at 341. According to the plaintiff, the former business administrator would have testified that he too “was removed for political reasons.” The Third Circuit rejected the plaintiff’s argument because the business administrator “served in a confidential position” and his appointment was “made under a different set of procedures.” Ibid.

Plaintiff, in this case, complains that he performed duties of the Business Administrator at the direction of the Town’s Mayor, but Town Council refused to consent to the Mayor’s appointment of Mayor to that position. The Position of Business Administrator is an unclassified⁶ policymaking position requiring the utmost confidence of the Town’s Mayor during the Mayor’s term of office. See N.J.S.A. 11A:3-4,-5; N.J.A.C. 4A:4-1.3 (b) (“unclassified” positions, including Department Heads, are not tenured and do not enjoy benefits of the Civil Service Act); N.J.A.C. 4A:3-1.3 (a), (b) (“unclassified” service positions include those having a title that serves “for a fixed term or at the pleasure of the appointing authority).

⁶ “Unclassified” positions (includes Department Heads) are not tenured and do not enjoy benefits of the Civil Service Act. N.J.S.A. 11A:3-4,-5; N.J.A.C. 4A:4-1.3 (b). “Unclassified service positions included those having a title that serves “for a fixed term or at the pleasure of the appointing authority” and includes “no more than 10 municipal department heads.” N.J.A.C. 4A:3-1.3 (a), (b).

The Business Administrator “can function much like a ‘prime minister’ or a ‘chief of staff’ under the mayor.” Albert J. Wolfe, The Faulkner Act: New Jersey’s Optional Municipal Charter Law, February, 1993 at 20. The Town’s Code defined the Business Administrator’s responsibilities to include, among others, the efficient and economical administration of the Town. (SOF 6) Pursuant to the Town’s Code, Plaintiff would have acted as the Director of the Department of Administration reporting directly to the Mayor. In that capacity, the BA is considered the “appointing authority for the Town” as all civil service appointments are “made according to merit and fitness by the Business Administrator.” All of these responsibilities involve confidential policymaking functions serving the Mayor during the Mayor’s term of office. Indeed, the Mayor can designate the BA as the acting Mayor when the Mayor is unable to perform the duties of that office. See Exhibit C – Town Code § 5-21.

“Where, as a matter of law, a person is determined to have occupied a policymaking position, that person’s claims to protection from patronage dismissal under Elrod and Branti are disposable on a motion for summary judgment.” Ness v. Marshall, 660 F.2d 517, 522 (3d Cir. 1981) (concluding that issue of fact regarding mayor’s admission to plaintiff that she was satisfied with plaintiff’s work but dismissing him because of his political affiliation required affirmance of summary judgment dismissing the plaintiff’s claims because the trial correctly concluded that plaintiff occupied a policymaking position); see also Green v. Philadelphia Housing Authority, 105 F.3d 882,885 (3d Cir. 1997) (affirming summary judgment noting that the determination of whether state employee’s activity is protected from retaliatory conduct is an issue of law for the court to decide); Mummau v. Ranck, 687 F.2d 9, 10 (3d Cir. 1982) (3d Cir. 1982) (affirming grant of summary judgment after concluding as a matter of law that assistant district attorney may be dismissed on the basis of his political affiliation).

As a matter of law, the position of Business Administrator does not enjoy First Amendment protection. Accordingly, it is respectfully submitted that this Court must dismiss Plaintiff's Amended Complaint.

B. Plaintiff's Op-Ed Article did not address matters of public concern, but expressed Plaintiff's personal grievance concerning his employment.

Plaintiff did not engage in protected speech when he wrote the October 23, 2017 article referenced in his Amended Complaint. It is true that certain public employees enjoy First Amendment protections if they speak as citizens on matters of public concern. Garcetti v. Ceballos, 547 U.S. 410, 417 (2006). However, the First Amendment "does not empower them to 'constitutionalize the employee grievance.'" Id. at 420 (quoting Connick v. Myers, 461 U.S. 138, 154 (1983)); see also Miller v. Clinton Cty., 544 F.3d 542, 551 (3d Cir. 2008) (if a discrete unit of speech addresses only the employee's own problems, and even if those problems brush against a matter of public concern by virtue of that employee's public employment, then that speech is merely a personal grievance). Speech that raises a private grievance and is not of interest to the public at large is not speech on a matter of public concern. Baldassare, supra, 250 F.3d at 194-95; Bradshaw v. Township of Middletown, 296 F.Supp.2d 526 (D.N.J. 2003) ("speech pertaining to private grievances not of interest to the public at large is not speech on a matter of public concern") (citation omitted); see also Kadetsky v. Egg Harbor Township Bd. of Educ., 164 F.Supp.2d 425, 435 (D.N.J. 2001) (teacher's speech on school policies not of public concern because teacher "was motivated at all times by concern for his personal employment").

Plaintiff published his op-ed piece for his own personal benefit. Plaintiff believed that Town Council was poised to approve his appointment to the position of Human Resources Manager, which Plaintiff understood would be equivalent to the position of Business Administrator. (SOF 17) Plaintiff complained he became a political pawn because much to his

surprise, Town Council did not approve his appointment to the position of Human Resources Manager. (SOF 26) Plaintiff theorized he was denied the position because one of the Republican Council Members voted in favor of Ms. Corcoran's salary increase in error, and thus, had no choice but to vote against Plaintiff's appointment. (SOF 28) Plaintiff's work place gripes and personal opinion as to why his appointment to Human Resources Manager was not approved are not matters of public concern.

Plaintiff cannot establish that his statements deserve protection as his statements were clearly intended to create disharmony, and thereby, impede the proper functioning of the Town's operations. Further, Plaintiff's article violated the Town's policies and procedures. In contravention of the Communication Media Policy set forth in the Town's Personnel Policies and Procedures and Employee Manual, Plaintiff did not obtain proper authorization to publish his article, misrepresented himself as the Human Resources Manager for the Town, and did not expressly disclose that his personal grievance did not represent the views of the Town. (SOF 29-32) This is exactly the type of disharmony the Town's policies are intended to avoid.

Simply stated, Plaintiff's article involved his personal interests and not matters of public concern. Plaintiff's article, viewed in its entirety, was nothing more than a mechanism for airing Plaintiff's personal grievances. That fact was not lost on Town residents who responded to Plaintiff's article. For example, one reader of Plaintiff's article responded: "As a public employee and previous executive HR manager, you of all people should be well aware of the inappropriateness of this public statement you have made here and on your employer's facebook page no less!! This is another example of why the Town of Phillipsburg has to adopt a social media, anti-bullying, ethical behavior policy!!!" (SOF 32) Obviously, the reader was not aware that the Town has implemented a Communication Media Policy. The Communication Media

Policy exists to ensure that municipal employees do not air their private grievances publicly, the result of which, creates public disharmony in the workplace. See Garcetti, *supra*, 547 U.S. at 421-22 (concluding that public employees who make statements pursuant to their “official duties” are not private citizens for purposes of a First Amendment retaliation claim).

C. Defendants did not act to decrease Plaintiff’s compensation.

At the time Mayor Ellis assumed office, the Town Clerk had been designated the non-pay positions of Certifying Supervisor for Pension and Benefits, and Safety and Environmental Officer. (SOF 14) During his term in office, the Mayor removed these two positions from the Town Clerk and caused the positions to be reassigned to Plaintiff with Council’s approval. (*Id.*) In February 2018, Council passed a resolution transferring these two positions back to the Town Clerk. (SOF 35) Importantly, however, these two non-pay positions did not affect Plaintiff’s compensation at all. (*Id.*) Thus, Plaintiff cannot seriously contend that he suffered an adverse employment action based on Council’s decision to transfer these functions from the Mayor’s Office to the Town Clerk, which serves Town Council. If nothing else, Plaintiff had less responsibility while enjoying the same level of compensation he had prior to the change.

According to Plaintiff, the Mayor intended to designate Plaintiff as the Grant Coordinator for the Neighborhood Preservation Program. (SOF 38) Mayor Ellis agreed to remove Plaintiff’s designation in order that Council would approve the Town’s application for the grant. (*Id.*) Plaintiff incorrectly assumed his designation to that position would entitle him to a stipend of up to \$25,000.00. In any event, Plaintiff would not have been entitled to receive any additional compensation even if he was designated the Grant Coordinator. (*Id.*)

For all of these reasons, the First and Second Counts of Plaintiff’s Complaint must be dismissed with prejudice.

II. PLAINTIFF IS NOT ENTITLED TO THE COMPENSATION PROMISED BY MAYOR ELLIS BECAUSE THE MAYOR LACKED AUTHORITY TO DIRECT PLAINTIFF TO PERFORM FUNCTIONS OUTSIDE OF PLAINTIFF'S CIVIL SERVICE JOB CLASSIFICATION.

In his Amended Complaint, Plaintiff alleges that although he “remained in the title HR clerk with pay of approximately \$20.00 per hour, plaintiff has been performing the duties of Human Resource Manager and Business Administrator as no Human Resources Manager or Business Administrator have been hired by the Town to replace those vacant positions.” (Exhibit A - Amended Complaint ¶ 32) Plaintiff improperly blames Town Council for not taking “any action to compensate plaintiff for performing” these duties when he should be blaming Mayor Ellis and himself for his predicament. (Amended Complaint ¶ 28) As will be discussed below, Plaintiff and the Mayor lack an understanding as to the divided and shared authority of the Mayor’s Office and Town Council in the appointment of Department Heads, as well as the impropriety of the Mayor assigning tasks belonging to unclassified department heads to classified civil servants.

According to Plaintiff, Mayor Ellis assigned duties of the Business Administrator to Plaintiff in 2017 even though Mayor Ellis did not recommend Plaintiff’s appointment to that position until August 2018. Plaintiff testified that he did “[w]hatever the Mayor needed done . . . if the Mayor asked Plaintiff to do a job, [he] did the job.” (SOF 18) According to Plaintiff, discussions he had with the Mayor about increased compensation associated with Plaintiff assuming the functions of Business Administrator were in the range of \$100,000.00 to \$120,000.00 annually. (SOF 23)

Plaintiff testified at length about the job functions he performed that were outside his classification as a Clerk-1 civil servant and union employee. According to Plaintiff, he: (i) acted as a member of the Mayor’s team in the administration of municipal affairs; (ii) spoke on behalf of the Mayor when instructed to do so by the Mayor; (iii) acted as a liaison between the Mayor’s

office and the Town Attorney; and (iv) prepared press releases for the Town. (SOF 20) Plaintiff even prepared a political press release on behalf of the Mayor responding to Town Council's press conference concerning investigation of the Mayor's hiring practices by an ad hoc committee formed by Town Council. (SOF 21) Plaintiff's view of the work he performed in the capacity of Business Administrator, however, does not square with the Mayor's perspective of Plaintiff's employment.

According to Mayor Ellis, the Mayor, his Confidential Aide, Sherry Corcoran, the Chief Financial Officer, and Town Attorney performed the majority of Business Administrator's job responsibilities after the Mayor terminated Ms. Elias in the Spring of 2017. (Exhibit E - Ellis Tr. 25:6 to 27:17) The Mayor testified that Plaintiff's role within his administration after the termination of Ms. Elias was limited to more clerical human resource functions. (Ellis Tr. 8:11 to 9:9, 130:8-23) For a brief period of time in the summer of 2018, Plaintiff served as the Interim Business Administrator for a thirty-day period.⁷ It was not until the termination of the Mayor's Confidential Aide in October 2018 that Plaintiff assisted the Mayor in performing some additional duties of the Business Administrator. (Ellis Tr. 27:20 to 28:3) The Mayor testified that he did not recommend Plaintiff for the BA position from the Spring 2017 until after Plaintiff completed his term as Interim Business Administrator in August 2018 because he "was convinced that [he] would not get an approval from council." (Ellis Tr. 37:6-14)

Mayor Ellis admittedly saw himself as the Business Administrator and assumed the responsibilities of that position following the Mayor's termination of Ms. Elias in the Spring of 2017 up to the present date. (Exhibit E - Ellis Tr. 25:6 to 27:17, 63:4-22, 66:11,) According to Mayor Ellis, Plaintiff understood that he would not receive additional compensation for any

⁷ Pursuant to the Town's Code, the Mayor may appoint an individual as the Interim Business Administrator for a period of 30 days without Council's approval. See Exhibit C – Town Code § 5-15.

additional duties he would be performing at the Mayor's request. (Ellis Tr. 60:7-24, 121:20 to 122:25) Even if Plaintiff did in fact perform the functions of the Business Administrator, Plaintiff is not entitled to any additional compensation because the Mayor lacked authority to assign the duties of the Business Administrator to Plaintiff or make any representation to Plaintiff concerning increased compensation for accepting and performing those duties.

The Town is organized under the Faulkner Act's mayor-council plan. N.J.S.A. 40:69A-31. As described by Albert J. Wolfe, Bureau Chief of the Bureau of Municipal Information New Jersey State League of Municipalities:

The mayor-council plan of the Faulkner Act is a "strong mayor" form of government. It is a "presidential" system of government, roughly modeled after the federal and state governments. The mayor-council plan consists of two separate and coequal power centers, each directly elected by the people: the mayor as chief executive, and the council as the municipal legislature. The mayor-council plan makes a virtue of the idea of divided and shared power. Neither mayor nor council has the absolute last word in all instances. The system requires constant consultation between the mayor and the council; sometimes cooperating, sometimes competing and conflicting, always acting as a check and balance on the other. Hopefully out of this sometimes friendly, sometimes hostile influx comes good public policy.

The Faulkner Act: New Jersey's Optional Municipal Charter Law, February, 1993 at 13-14.

Consistent with the idea of divided and shared power, the appointment of municipal department heads in the mayor-council form of government involves a two-step process. The dual process requires first, the appointment by the mayor, and second, the advice and consent of the council to award unclassified, department head positions to potential applicants. See In re Matter of Shain, 92 N.J. 524, 534 (1983) (observing that "under the Mayor-Council form of government the phrase 'governing body' must include both the Mayor and Council"); see also Ruggiero v. Lashway, 2007 WL 633119, *1 (App. Div. March 5, 2007) (holding that "[t]he mayor's appointment of plaintiff without the advice and consent of the council was of no lawful effect"

reasoning that the “appointing authority” in a mayor-council form of government requires the “[a]ppointment by the mayor and confirmation by the council”). In the mayor-council form of government, “the mayor alone is the ‘appointing authority’ for ‘subordinate’ municipal employees.” Hillside Firemen’s Mut. Benevolent Ass’n, Local No. 35 v. Menza, 2013 WL 811471, *8 (App. Div. March 6, 2013). “Where one branch of government has been specifically vested with the authority to act in a prescribed manner, neither of the other branches may usurp that authority.” Ibid. (citations omitted).

As for classified civil servant positions,⁸ Town “council must formally approve the creation of any new position and adopt a position classification plan covering all classified employees of the Town” with adequate budgeted funds for that position. Exhibit C – Town Code § 100-4C. “When a position is newly created for which no appropriate class exists or when the duties of an existing position are sufficiently changed so that an appropriate class exists, the Town Council, after the recommendation of the Business Administrator, shall create a new class and shall cause an appropriate class specification to be written for said class.” Town Code § 100-5B. The position classification plan approved and adopted by the Council is to be filed with the Town Clerk. Town Code § 100-5D. “[T]he compensation of all officers and employees shall be made in such amount and at such rates as shall be prescribed by the position classification and pay plan adopted by the Council.” Town Code § 5-4B. Importantly, “Council reserves the right to modify any and all of the pay ranges or position classification assignments as set forth in said [compensation] pay plan

⁸ The classified (“career”) service includes civil service personnel generally except policy makers such as elected officials and department heads and other groups specifically listed within the unclassified service.” Mastrobattista v. Essex County Park Commission, 46 N.J. 136, 145 (1965); see N.J.A.C. 4A:3-1.1 (a). “[T]he objective of the Civil Service Act is to afford protections to ‘all members of the classified service.’” Id. at 146 (quotation omitted).

at any time.” Town Code § 100-6B. It is against this backdrop that Plaintiff’s claim for increased compensation must be analyzed.

In fulfillment of their campaign promises, the new members of Town Council, Defendants Fulper, DeGerolamo, and McVey initiated an investigation into the Mayor’s hiring practices. Among the issues Town Council investigated was Plaintiff’s employment history with the Town. Council President Fulper’s review of Town records regarding Plaintiff’s employment heightened his concern, which Fulper viewed as very bizarre. More specifically, Council President Fulper informed Mayor Ellis as follows:

This entire issue is a puzzling one as a resolution was proposed in May of 2017 that set a range of the Human Resources Manager at a minimum of \$35,000 to a maximum of \$42,2000 (Ref. R 2017-04). This is the title that Sam is currently utilizing and operating under at the Municipal Building. With that being said the Employee Benefits Clerk is not listed on the Salary Range Ordinance and if, in fact, Sam was tasked with the job of Human Resources Manager . . . how could he be making \$255 over the maximum range originally proposed to Council? Still, he cannot possibly be acting in the capacity of Human Resources Manager because Resolution 2017-190 was voted down by a 3-2 vote at the 10/03/2017 Council Meeting. (Ref. Town Resolution R-2017-190, October 3rd, 2017 Town Council Agenda and Meeting Minutes).

With all of that being stated above, if Cappello is also acting as the Human Resources Manager, he is working outside the scope of his duties set forth by the NJ State Civil Service Commission for the Employee Benefits Clerk (Ref: New Jersey State Civil Service Commission, Employee Benefits Clerk Job Description.) According to Town CFO Robert Merlo, Sam Capello, is hired as a Clerk 1 and not a Human Resources Clerk/Health Benefits Clerk as these positions do not exist.

(Exhibit O at T000737-38; Exhibit P; Fulper Tr. II 186:5-25) A review of the Town records, as well as Plaintiff and Mayor Ellis’s sworn testimony, confirms Council President’s legitimate concern that the Mayor improperly assigned tasks to Plaintiff that were outside the scope of Plaintiff’s duties as a Clerk-1 civil servant.

Town records reflect that Mayor Ellis signed off on several position changes in order to increase Plaintiff’s compensation as an hourly classified, union employee confirming Council’s

concern with respect to the Mayor's hiring practices. (SOF 19) On March 15, 2017, Mayor Ellis signed a Personal Action Form ("PAF") changing Plaintiff's employment status from part time Clerk 1 to part time Clerk 1-HR to fill the vacancy of the HR Clerk I, a former part time permanent employee. (Exhibit F at T000560) Exactly two-months later, Mayor Ellis changed Plaintiff's status from part-time Clerk1-HR to full-time Clerk 1-HR "as the result of Kim Bondaruk's resignation and the termination of the BA." (Exhibit F at T000561) Presumably, this position changed from part-time to full-time to accommodate the duties previously performed by the Business Administrator. Two weeks later, on May 30, 2017, the Mayor signed two separate PAF's. In one PAF, the Mayor changed Plaintiff's status from a Temporary Laborer to Provisional Part-Time Clerk 1 at the step range of 15A. (Exhibit F at T000563) In the second, the Mayor changed Plaintiff's status from Provisional Part-time Clerk 1 to Permanent Part-time Clerk 1. (Exhibit F at T000562) The sequence of changes, from part-time Clerk1-HR – to full-time Clerk 1-HR – to Temporary Laborer – to Provisional Part-Time Clerk 1 – to Permanent Part-Time Clerk 1, makes absolutely no sense.

Later, on October 17, 2017, the Mayor changed Plaintiff's status from permanent Clerk to permanent Health Benefits Clerk and bumped Plaintiff's pay up by two levels from a 15A to a 15C retroactive to January 1, 2017. (Exhibit F at T000564) Contrary to Plaintiff's testimony, the Mayor was not authorized to give Plaintiff a two-step increase. (Exhibit B - Cappello Tr. 202:15 to 204:19) The Town Code only permits the Mayor to provide a two-step increase with the approval of Town Council. See Exhibit C - Town Code § 100-6C(1). Incredibly, Mayor Ellis blames the Town's Chief Financial Officer for Plaintiff's improper two step increase and other unexplainable personnel actions such as how Plaintiff's position changed from a full-time Clerk –

to a permanent part-time clerk within the matter of two weeks. (Exhibit F; Exhibit E - Ellis Tr. 42:20 to 57:8)

In any event, it is clear that the Mayor improperly increased Plaintiff's compensation, presumably to accommodate Plaintiff's acceptance of increased responsibilities related to human resources even though these responsibilities were outside of his civil service job classification. Any changes in Plaintiff's job duties required Council's approval. See Exhibit C - Town Code § 100-4C ("council must formally approve the creation of any new position and adopt a position classification plan covering all classified employees of the Town" with adequate budgeted funds for that position); see also Town Code § 100-4B ("[w]hen a position is newly created for which no appropriate class exists, the Town Council, after the recommendation of the Business Administrator, shall create a new class and shall cause an appropriate class specification to be written for said class"). As will be discussed further below, the Mayor usurped his authority by assigning duties of an unclassified position to a classified civil servant in circumvention of Town Council's authority as a divided, co-equal branch of municipal government which must confirm the Mayor's appointment of department heads. See McKay v. Pryor, 2018 WL 4056036, *8 (App. Div. August 27, 2018) (affirming trial court's rejection of the Mayor's argument that he could unilaterally "create the position of labor counsel and appoint his own attorney" because the Mayor lost confidence in existing Town Council reasoning "to accept plaintiff's position would 'circumvent the Council's power to advise and consent in an impermissible and illogical manner'")⁹.

In Maltese v. Township of North Brunswick, the Appellate Division "examine[d] a challenge to the trial court's application of the doctrine of equitable estoppel to compel a

⁹ See Exhibit Q.

municipality to pay benefits and compensation promised to an employee lawfully appointed by the mayor under circumstances where the mayor lacked the powers to bind the municipality.” 353 N.J. Super. 226, 228-29 (App. Div. 2002). The Township’s former director of public safety brought suit against the Township seeking to enforce the terms of the Township mayor’s oral promise to provide the plaintiff with longevity benefits under the Town’s collective bargaining agreement. The lower court granted plaintiff’s motion for summary judgment awarding plaintiff \$123,216.68 and denied the Township’s summary judgment seeking dismissal of the plaintiff’s complaint. Id. at 229.

The Appellate Division reversed the trial court’s order granting summary judgment in favor of the plaintiff concluding that “[t]he promises and representations of the mayor were *ultra vires*.” Ibid. The Court noted “that ‘the Faulkner Act plainly envisages some separation of functions between Council (the legislative body) and the Mayor (the executive).” Id. at 235 (quotation omitted). In the Township’s form of government, the mayor could appoint officials including department heads with the advice and consent of council, but “the mayor has no authority to set the salary or compensation of any department head.” Id. at 237. The Appellate Division explained that “[t]he mayor possessed the statutory authority to appoint plaintiff but lacked the power to establish his compensation and benefits” noting that only Township’s council “had the power to provide plaintiff with the benefits promised by the mayor.” Id. at 229.

Thus, the Court held “that the focus of the equitable estoppel analysis must be upon the actions taken by the council, not the mayor.” Ibid. Without Council’s ratification, “the Mayor’s representations to plaintiff concerning the applicability of the provisions of the SOA collective bargaining agreement to plaintiff’s employment of Public Safety Director were *ultra vires* and . . . are not binding on the Township.” Id. at 239. Importantly, Council’s ratification “must be by

resolution or ordinance and with full knowledge of all the facts and with the intent to grant plaintiff the benefits promised.” Id. at 247.

In a more recent decision, the Appellate Division was required to consider whether the mayor’s appointment of the defendant to the position of Deputy Business Administrator, in an action brought by council, was unlawful. See City Council of City of Orange Township v. Edwards, 455 N.J. Super. 261 (App. Div. 2018). In that case, the mayor appointed the defendant to the position of Acting Business Administrator for a period not to exceed 90 days, which interim appointment did not require the consent of council. After 90 days, the mayor appointed the defendant “to the full-time position of Business Administrator, which did require the advice and consent of City Council.” Id. at 267. Council “voted against confirmation of defendant to the position.” Ibid. The Mayor did not take any action to appoint anyone else to fill the position. The day following council’s rejection, the mayor appointed the defendant to the position of Deputy Business Administrator at an annual salary of \$105,000.00. Ibid. Council objected to the Mayor’s appointment for numerous reasons, including the fact that the mayor had no authority to appoint a deputy.

Council filed an action requiring the mayor and defendant show cause why the court should not order injunctive relief. Id. at 268. The defendant filed an answer and third-party complaint against the council members in their individual and official capacities. Ibid. Following oral argument, the trial court issued an order, stating, among other things, that “[defendant] shall not perform any of the functions of Business Administrator or Acting Business Administrator . . . unless appointed to those positions through the advice and consent of City Council.” Ibid. “Thereafter, the defendant “left the position of Deputy Business Administrator and the mayor appointed him Chief of Staff” at the same salary. Ibid. Council never approved the defendant’s

salary as Chief of Staff and the defendant continued to perform the duties of Business Administrator. Id. at 269.

Following trial, the trial judge issued “a comprehensive, well-reasoned opinion” holding that “defendant’s appointment to the position of Deputy Business Administrator was *ultra vires*.” Id. at 270. The trial judge found that the mayor and defendant intentionally “circumvent[ed] City Council’s decision to deny confirmation” and rejected the defendant’s contention “that he was entitled to his salary” as a matter of equity because defendant “knew or had the ability to know the requirements of state and local laws.” Id. at 271. Accordingly, the trial judge ordered defendant to disgorge “all salary defendant received serving in the unauthorized position of Deputy Business Administrator.” Ibid.

The Appellate Division affirmed the trial court’s orders holding that “the mayor’s appointment of a deputy was an illegal act” designed to circumvent council “in violation of both state and local law.” Id. at 274. The Appellate Division also rejected the defendant’s position that he should be permitted to “retain his salary based upon the de facto officer doctrine.” Id. at 275. “This doctrine, based on considerations of policy and public convenience, recognizes the validity of actions undertaken by a person who acted in a legally non-existent position.” Id. at 276 (citation omitted). The Court observed that “[i]nherent in a decision to compensate a de facto officer for his services is the tenant that such services were rendered in good faith.” Ibid. The Appellate Division agreed with the trial judge that the defendant did not act in good faith because “the record [was] replete with evidence of defendant’s awareness of his unlawful employment.” Id. at 277.

As previously discussed, Mayor Ellis’s actions in connection with Plaintiff’s employment with the Town were improper in so many ways. If Plaintiff’s account is true, Mayor Ellis effectively filled the position of Business Administrator without Council’s consent with a

classified civil servant who performed tasks that exceeded the responsibilities of a Clerk-1. Council never approved the creation of a new classified position incorporating any of the duties that are typically performed by the BA. Worse, and in violation of the Town's Code and bargaining agreement with AFSME, the Mayor unilaterally authorized a two-step increase in Plaintiff's compensation retroactive to January 1, 2017, several months before Ms. Elias's termination as BA, without Council's approval. In effect, Mayor Ellis did an end-around of the Faulkner Act, The Town Code, and the Town's agreement with the AFSME union to accomplish illegally that which he could not accomplish legally.

Plaintiff does not fare any better. Plaintiff, an experienced Human Resources executive, believed he was fully qualified to perform the duties required of a Business Administrator. Plaintiff claims to have performed the duties of the BA, including all human resource related functions. As early as March 2017, Mayor Ellis designated Plaintiff as the "point of contact for all Human Resources actions within the Town of Phillipsburg" with the New Jersey Civil Service Commission. (SOF 22) Plaintiff testified that he was familiar with the Civil Service Act, the Town's Code, and Town's bargaining agreement with the AFSCME Union. Accordingly, Plaintiff knew or should have known that the Mayor's actions were *ultra vires* and the conditions of his employment with the Town were improper. For these reasons, any claim by Plaintiff that he is entitled to increased compensation should be dismissed as Plaintiff was clearly aware of the circumstances concerning his unlawful employment.

III. PLAINTIFF'S CLAIM FOR CONSPIRACY MUST BE DISMISSED.

The elements of a claim for civil conspiracy are: "(1) a combination of two or more persons; (2) a real agreement or confederation with a common design; [] (3) existence of an unlawful purpose, or of a lawful purpose to be achieved by unlawful means[;]" and (4) special damages.

Board of Ed. of City of Asbury Park v. Hoek, 66 N.J. Super. 231, 241 (App. Div. 1961), rev'd on other grounds, 38 N.J. 213 (1962). In a civil conspiracy, unlike criminal conspiracy, “the conspiracy is not the gravamen of the charge, but merely a matter of aggravation, enabling the plaintiff to recover against all defendants as joint tortfeasors.” Ibid. “The actionable element is the tort which the defendants agreed to perpetuate, and which they actually committed.” Ibid. (citation omitted). Thus, “[a] conspiracy cannot be the subject of a civil action unless something is done which, without the conspiracy, would give a right of action.” Ibid. (citations omitted).

Plaintiff alleges Defendants Fulper, DeGerolamo, and McVey conspired to deprive Plaintiff of his constitutional rights in violation of the NJCRA in retaliation for Plaintiff engaging in protected conduct. The gravamen of Plaintiff’s conspiracy claim is the alleged deprivation of his constitutional rights in violation of the NJCRA. It is the alleged deprivation of Plaintiff’s constitutional rights that gives him a right of action. As previously discussed, Plaintiff did not have any constitutional right to free speech or political association under the facts and circumstances of this case.

Moreover, and for the reasons previously discussed, Plaintiff should not be able to recover additional compensation related to his performing duties of the BA because he did not act in good faith and was complicit in the Mayor’s improper employment practices. See City Council of City of Orange Township, supra, 455 N.J. Super. at 365 (rejecting the Deputy Business Administrator’s claim that he was entitled to increased compensation as a de facto officer reasoning that his “actions in accepting and holding the deputy post were ultra vires in the primary sense negat[ing] any proposition that he was acting in good faith”).

As the First and Second Counts of Plaintiff's Amended Complaint must be dismissed on summary judgment, so too must the Third Count of Plaintiff's Amended Complaint for civil conspiracy.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court grant Defendants' motion for summary judgment and dismiss Plaintiff's Amended Complaint with prejudice.

Respectfully submitted,



Pádraig P. Flanagan

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC

Pádraig P. Flanagan, Esq.
Attorney ID: 021531999
235 Broubalow Way
Phillipsburg, New Jersey 08865
(908) 454-8300

*Counsel for Defendants, Town of Phillipsburg,
Robert Fulper, Danielle DeGerolamo, and Frank McVey*

SAMUEL CAPPELLO,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION: WARREN COUNTY
v.	:	Docket No.: WRN-L-127-18
TOWN OF PHILLIPSBURG, ROBERT	:	
FULPER, DANIELLE	:	ORDER
DEGEROLAMO,	:	
and FRANK MCVEY,	:	
Defendants.	:	

THIS MATTER having been opened to the Court upon the Notice of Motion of Florio Perrucci Steinhardt & Cappelli, LLC, attorneys for Defendants Town of Phillipsburg, Robert Fulper, Danielle DeGerolamo, and Frank McVey, on notice to McDonnell Artigliere, attorneys for Plaintiff, Samuel Cappello, for summary judgment in favor of Defendants dismissing Plaintiff's Amended Complaint with prejudice, pursuant to Rule 4:46, and the Court having read and considered the papers submitted by counsel and the arguments of counsel, and good cause having been shown, and for the reasons stated on the record,

IT IS on this 24 day of January, 2020,

Denied

ORDERED that Defendants' motion for summary judgment is hereby ~~granted~~;

~~IT IS FURTHER ORDERED that Plaintiff's Amended Complaint is dismissed with prejudice; and~~



IT IS FURTHER ORDERED that copy of this Order shall be served upon Plaintiff's counsel within five (5) days from the date Defendants' counsel receives this Order.

Yolanda Ciccone, A.J.S.C.

See statement of reasons attached.

[] Opposed

[] Unopposed

**Superior Court of New Jersey
Somerset, Hunterdon & Warren Counties
Vicinage 13**

**YOLANDA CICCONE
ASSIGNMENT JUDGE**



**SOMERSET COUNTY COURT
HOUSE
P.O. BOX 3000
SOMERVILLE, NEW JERSEY
08876
(908) 231-7069**

January 24, 2020

**Re: CAPPELLO VS TOWN OF PHILLIPSBURG ET AL
MOTION FOR SUMMARY JUDGMENT
DOCKET NO: WRN-L-127-18**

Defendant moves for Summary Judgment and the Plaintiff opposes it. Essentially, the Complaint in this matter alleges that defendants retaliated against plaintiff for his protected speech and political association in violation of the New Jersey Constitution and New Jersey Civil Rights Act, N.J.S.A 10:6-1, et seq. The Complaint alleges that defendants' wrongful actions caused plaintiff's constant fear of termination and substantial economic loss because of defendants' refusal to consent to plaintiff's appointment as Business Administrator. The Complaint also alleges that defendants Fulper, McVey and DeGerolamo engaged in an illegal conspiracy to violate plaintiff's constitutional rights and that the Town is liable for those actions.

By way of background in a January 9, 2018 meeting attended by the Town Attorney, Mayor, Post-Sheedy, plaintiff and Corcoran, the Mayor discussed statements he was hearing about defendants' intent to take adverse action against

his staff. The Town Attorney and Mayor suggested at this meeting that the three employees retain attorneys.

In early 2018 defendants obtained emails from Mayor Ellis' 2015 "transition team" which, among other things, identified contributions to the Mayor's election campaign. These records identify a \$40.00 contribution by plaintiff's wife. According to the plaintiff, within days of assuming office on January 1, 2018, the individual defendants requested the Town Attorney to issue Rice Notices to plaintiff, Corcoran and Post-Sheedy. These notices were issued on January 12, 2018 informing the three employees that employment action might be taken at the Town Council's January 16, 2018 meeting. No other Town employees were so noticed. Although the Council took no action towards them at the January 16, 2018 Council meeting, these three employees were again noticed for the Town Council's next meeting on February 6, 2018.

At the February 6, 2018 Council meeting, the Town Council passed Resolutions reducing Post-Sheedy's salary from \$67,000.00 to \$50,000.00; reducing Corcoran's salary from \$53,000.00 to \$45,000.00; and removing significant duties from plaintiff Cappello.

Shortly thereafter, defendants prepared a proposed Town budget that eliminated funding for plaintiff's and Corcoran's salaries. Because of this lack of funding, Corcoran was thereafter terminated. Because of plaintiff's status as a member of a collective bargaining agreement with the Town, defendants were advised that his pay had to be continued.

To defendants' knowledge, no action of any kind was taken by those agencies relating to those complaints. That is, no interviews were conducted, and no changes made. In August 2018, and again in November 2018, Mayor Ellis sought defendants' consent to plaintiff's appointment to the vacant Business Administrator position. Defendants refused to provide this consent, despite acknowledging plaintiff's qualifications for the position.

Movant argues that the first and second counts of plaintiff's amended complaint must be dismissed because the position of business administration is not protected by the first amendment and plaintiff's op-ed article did not address a matter of public concern. Secondly, movant argues that plaintiff is not entitled to the compensation premised by Mayor Ellis because the mayor lacked authority to direct plaintiff to perform functions outside of plaintiff's civil service job classification. Plaintiff's claim for conspiracy must be dismissed.

Plaintiff in opposition argues, that Defendants submitted no evidence supporting the assertion that political affiliation was a requirement for the business administrator position. They aver that even if it were a requirement, the mayor possessed the authority to select the particular affiliation needed for the position. Further, defendants waived, and are otherwise precluded from asserting, this argument. Secondly plaintiff argues that his speech was constitutionally protected. Plaintiff seeks lost wages caused by defendants' failure to consent to the mayor's appointment of plaintiff to the position of business administrator. Plaintiff is not alleging any other lost wage claim. Lastly, plaintiff argues that a jury could

reasonably conclude that the individual defendants engaged in a conspiracy against the plaintiff.

COURT'S DECISION:

The New Jersey Supreme Court in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), held that according to Rule 4:46-2, a court should grant summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.”

The Brill Court stated that, “[b]y its plain language, Rule 4:46-2 dictates that a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a ‘genuine issue as to any material fact challenged.’” Id. at 529.

That means, therefore, that “a non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute.” A determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the nonmoving party. Id. at 540.

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue

for trial.” Id. at 549 (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). Thus, if the evidence “is so one-sided that one party must prevail as a matter of law . . . the trial court should not hesitate to grant summary judgment.” Id. at 540.

CONCLUSION

Upon reviewing all the papers submitted by parties and hearing oral argument, this court is not convinced that the motion for Summary Judgment should be granted. There are many issues of material facts still in dispute. As such, Defendant’s motion for Summary Judgment is hereby denied. This matter shall proceed for trial as scheduled for February 10, 2010.

Yolanda Ciccone, A.J.S.C.

SAMUEL CAPPELLO

PLAINTIFF

v.

TOWN OF PHILLIPSBURG, ET.AL.

DEFENDANT

Superior Court of New Jersey

Law Division - Civil Part

Somerset County Civil Division

P.O. Box 3000, Somerville, NJ 08876

(908) 332-7700; Ext 13710

CIVIL ACTION

ORDER OF DISPOSITION

DOCKET NO. WRN-L-127-18

It is on this 3rd day of March, 2020, ORDERED that this matter is hereby dismissed/disposed due to the following:

- 04 Partially Tried
05 Tried to Completion w/ Jury
07 Tried to Completion w/out Jury
08 Default Judgment
09 Summary Judgment
10 Dismissed with Prejudice
11 Dismissed Rule 1:13
12 Dismissed without Prejudice
14 Transfer to Another County
15 Transfer to Another Court
17 Settled by Arbitration/50 Day Dismissal
23 Settled - Not Scheduled for Trial
24 Settled- While Scheduled for Trial
25 Settled - While Scheduled for Arbitration
26 Settled - While Scheduled for other CDR
27 Settled - Friendly Hearing Comp
28 Settled by other CDR
29 Settled by Conference with Judge
45 Inactived
82 Default Judgment; Proof Hearing Completed
Plaintiff Atty. Failed to Appear; Dismissed by Court
Plaintiff Failed to Appear; Dismissed by Court
Defendant Failed to Appear; Default Entered by Court
Plaintiff and Defendant Failed to Appear; Dismissed by Court
Other (see comments)

It is further ORDERED that the plaintiff/defendant shall serve a copy of the ORDER on the plaintiff/defendant within five (5) days from the above date.

COMMENTS:

Empty box for comments.

/s/ THOMAS C. MILLER, P.J.Cv.

Thomas C. Miller, P.J.Cv.



Case Summary

Case Number: WRN L-000024-20

Case Caption: Corcoran Vs Phillipsburg Et Al *Fee Shift*

Court: Civil Part

Venue: Warren

Case Initiation Date: 01/16/2020

Case Type: Law Against Discrimination (Lad) Cases

Case Status: Closed

Jury Demand: 12 Jurors

Case Track: 3

Judge: John H Pursel

Team: 1

Original Discovery End Date: 05/21/2021

Current Discovery End Date: 05/21/2021

of DED Extensions: 0

Original Arbitration Date:

Current Arbitration Date:

of Arb Adjournments: 0

Original Trial Date: 10/18/2021

Current Trial Date:

of Trial Date Adjournments: 0

Disposition Date: 07/21/2021

Case Disposition: Dismissed By Court Without Prejudice

Statewide Lien:

Plaintiffs

Sherry L Corcoran

Party Description: Individual

Attorney Name: John F Mc Donnell

Address Line 1:

Address Line 2:

Attorney Bar ID: 000871984

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: JOHNMC DONNELLESQ@HOTMAIL.COM

Defendants

Robert Fulper

Party Description: Individual

Attorney Name: Leslie Anne Parikh

Address Line 1:

Address Line 2:

Attorney Bar ID: 038131999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: LPARIKH@GKLEGAL.COM

Town Of Phillipsburg

Party Description: Municipality

Attorney Name: Leslie Anne Parikh

Address Line 1:

Address Line 2:

Attorney Bar ID: 038131999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: LPARIKH@GKLEGAL.COM

Frank Mcvey

Party Description: Individual

Attorney Name: Leslie Anne Parikh

Address Line 1:

Address Line 2:

Attorney Bar ID: 038131999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: LPARIKH@GKLEGAL.COM

Danielle Degerolano

Party Description: Individual

Attorney Name: Leslie Anne Parikh

Address Line 1:

Address Line 2:

Attorney Bar ID: 038131999

City:

State: NJ

Zip: 00000

Phone:

Attorney Email: LPARIKH@GKLEGAL.COM

Case Proceeding

Created Date	Scheduled Time	Court Room	Judge Name	Proceeding Description	Motion Type	Proceeding Status	Motion Status
03/27/2020	01:30	HCH1		CASE MANAGEMENT CONFERENCE		COMPLETED	
09/09/2021	02:30	REMO T		SETTLEMENT CONFERENCE		STL PRIOR	
10/18/2021	09:00	REMO T		TRIAL		STL PRIOR	

Case Actions

Filed Date	Docket Text	Transaction ID

ALL-STATE LEGAL®

**PLAINTIFFS'
EXHIBIT
7A**

01/16/2020	Complaint with Jury Demand for WRN-L-000024-20 submitted by MC DONNELL, JOHN F, MC DONNELL ARTIGLIERE on behalf of SHERRY L CORCORAN against TOWN OF PHILLIPSBURG, ROBERT FULPER, DANIELLE DEGEROLANO, FRANK MCVEY	LCV2020112579	01/16/2020
01/17/2020	TRACK ASSIGNMENT Notice submitted by Case Management	LCV2020117767	01/17/2020
02/26/2020	Answer W/Jury Demand submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of SHERRY L CORCORAN against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLANO	LCV2020403589	02/26/2020
02/28/2020	COURT Notice submitted by Case Management	LCV2020416089	02/28/2020
03/17/2020	CLERK NOTICE: re: Answer w/Jury Demand [LCV2020403589] -Please be notified that the case management conference scheduled for 3/27/20 at 1:30pm is converted to a telephone conference. Counsels are to create a conference call number and call the chambers at 908-332-7700 ext 13590	LCV2020548391	03/17/2020
05/06/2020	SUBSTITUTE ATTORNEY submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLANO against SHERRY L CORCORAN	LCV2020835743	05/06/2020
05/06/2020	CLERK NOTICE: re: SUBSTITUTE ATTORNEY [LCV2020835743] -Please provide Attorney NJ Bar ID for Susan A. Lawless. Thank you.	LCV2020835993	05/06/2020
05/06/2020	CLERK NOTICE: re: SUBSTITUTE ATTORNEY [LCV2020835743] -Attorney ID of Susan Lawless may be uploaded as a deficiency correction.	LCV2020836025	05/06/2020
05/06/2020	DEFICIENCY CORRECTION submitted by LAWLESS, SUSAN, A of FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR LLC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLANO against SHERRY L CORCORAN	LCV2020836282	05/06/2020
05/28/2020	SUBSTITUTE ATTORNEY submitted by PARIKH, LESLIE, ANNE of GEBHARDT & KIEFER, PC on behalf of ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLANO against SHERRY L CORCORAN	LCV2020957144	05/28/2020
06/09/2020	MEDIATION Notice submitted by Case Management	LCV20201019687	06/09/2020
03/15/2021	DISCOVERY END DATE REMINDER Notice submitted by Case Management	LCV2021554494	03/15/2021
07/17/2021	COURT Notice submitted by Case Management	LCV20211679437	07/17/2021
07/21/2021	STIPULATION OF DISMISSAL submitted by MC DONNELL, JOHN, F of MC DONNELL ARTIGLIERE on behalf of SHERRY L CORCORAN against ROBERT FULPER, TOWN OF PHILLIPSBURG, FRANK MCVEY, DANIELLE DEGEROLANO	LCV20211707375	07/21/2021

McDONNELL ARTIGLIERE
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SHERRY L. CORCORAN,
Plaintiff,

v.

TOWN OF PHILLIPSBURG, ROBERT
FULPER, DANIELLE DEGEROLAMO,
and FRANK MCVEY,
Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY
DOCKET NO.: WRN-L-

Civil Action

COMPLAINT AND DEMAND
FOR TRIAL BY JURY

Plaintiff, Sherry L. Corcoran, residing in Phillipsburg, New Jersey, by way of Complaint against defendants, says:

FIRST COUNT

1. Defendant Town of Phillipsburg (“Town”) is a municipality in the County of Warren, State of New Jersey. The Town is governed under the Mayor-Council Plan of the Faulkner Act, N.J.S.A. 40:69A-1 et seq., by a Mayor and five-member Town Council. Under this form of government, the Mayor “directs and controls” all departments of the Town. The Mayor is separately elected, and members of the Town Council are elected at-large in partisan elections to four-year terms of office on a staggered basis.

2. Stephen R. Ellis, Jr. (“Ellis”), a Democrat, was elected Mayor of the Town in November 2015 and was in office from January 1, 2016 through December 31, 2019.

3. At present, and over the last several years, the Town Council has been comprised of five (5) members and has been ruled by a Republican majority. The relationship between Mayor Ellis and the Republican members of the Republican-controlled Town Council was extremely bitter and strained.

4. In November 2017 defendants Robert Fulper, Danielle DeGerolamo and Frank McVey, Republicans, were voted onto the Town Council replacing three Republican Town Council Members.

5. Defendant Robert Fulper (“Fulper”), a Republican, was Town Council President from January 1, 2018 to December 31, 2019 and remains on the Council to present as Vice-President.

6. Defendant Danielle DeGerolamo (“DeGerolamo”), a Republican, was Town Council Vice-President from January 1, 2018 to December 31, 2019 and remains on the Council.

7. Defendant Frank McVey (“McVey”), a Republican, has been a Councilman since January 1, 2018 and was Town Council Vice President from January 1, 2019 to December 31, 2019.

8. In March 2016 Mayor Ellis hired plaintiff Sherry Corcoran as his Confidential Secretary. The Town Council passed Resolutions in 2017 changing her title to Confidential Aide and increasing her salary to \$53,000.00. Prior to her hiring as the Mayor’s Confidential Secretary, plaintiff was an accomplished professional in the private sector. Plaintiff was more than qualified to fulfill the role of Confidential Aide to the Mayor. Plaintiff took a significant pay cut to join the administration.

9. On November 13, 2016 Samuel Cappello (“Cappello”) was hired by the Mayor as a part-time records analyst at \$15.00 per hour. On February 27, 2017, Cappello was made a provisional part-time clerk at the same pay rate. Thereafter, Cappello became a full-time clerk

“Clerk 1-HR” at \$16.95 per hour and then became “Benefits Clerk 1”, retroactive to January 1, 2017 for \$19.30 per hour. Throughout his employment with the Town, Cappello reported directly to Mayor Ellis. Cappello has been employed in a civil service title and as a member of a collective bargaining unit.

10. On March 15, 2017 the Mayor, with Town Council approval, changed the full-time Town Business Administrator position to part-time. Shortly thereafter, the part-time Business Administrator was terminated. The position has remained vacant since that time.

11. In March of 2017, the Town Council voted to approve Resolution 2017-2 appointing Cappello to the position of “Pension and Benefits Certifying Supervisor”. Thereafter, the Town Council voted to approve Resolution 2017-44 appointing Cappello to the position of “Safety and Environmental Officer”, in addition to the aforementioned Benefits Certifying Supervisor position.

12. On April 18, 2017 Kelly Post-Sheedy (“Post-Sheedy”) was appointed “Recreation Director” by Mayor Ellis, with the consent of the Town Council, by Resolution 2017-95. The Resolution set her salary at \$67,000.00 annually.

13. Plaintiff, Cappello and Post-Sheedy constituted the Mayor’s staff. Due to the absence of a Town Business Administrator, the Mayor and his staff assumed most of the duties of the Business Administrator.

14. While running for Town Council in 2017 defendants Fulper, DeGerolamo and McVey publicly expressed their disapproval of Corcoran’s hiring and her 2017 salary adjustment, with the consent of the Town Council, increasing her pay. During their 2017 election campaign defendants Fulper, DeGerolamo and McVey made many social media posts regarding their displeasure of the raise plaintiff received in 2017 and accused the Mayor of hiring “friends”, including Corcoran. They posted campaign signs around Town that read: “18% Pay Raises Higher Taxes Jobs for

Friends #PBURGPORK”; “No one does Pork like the Phillipsburg Democratic Party! 18% Pay Raises and Jobs for Friends! It pays to be a Phillipsburg Democrat, for everyone else, IT COSTS! END HIGHER TAXES, VOTE REPUBLICAN, ELECT DEGEROLAMO, FULPER, AND MCVEY!”.

15. Although Corcoran’s 2017 salary adjustment was approved by a majority of the members of the Republican controlled Town Council in or about October 2017, defendants Fulper, DeGerolamo and McVey routinely expressed disapproval of that salary adjustment and, subsequent to their taking office on the Town Council in January 2018, immediately began to take action to reduce plaintiff Corcoran’s salary, and as set forth below, to ultimately force her termination of employment. Upon taking office, defendants immediately began to target the Mayor’s staff.

16. On or about October 20, 2017 Steve Novak (“Novak”), a writer for the Express-Times Newspaper and lehighvalleylive.com, authored and posted an article regarding the aforementioned salary adjustment provided to plaintiff Corcoran.

17. Shortly thereafter, Cappello forwarded a letter to Novak responding to Novak’s article about Corcoran’s salary increase. On October 23, 2017 Novak published an article in the Express-Times Newspaper and on lehighvalleylive.com. extensively quoting plaintiff’s aforementioned letter to Novak. The article contained many statements and opinions of plaintiff supportive of The Mayor, Corcoran and the salary adjustment provided to Corcoran. The article also contained various opinions of Cappello critical of the Republican Town Council members and the Republican Party. Cappello’s published statements included the following:

I have always considered myself as a middle of the road guy when it came to politics. The person was more important than the party. I came to work for the Town because I wanted to help the people in Phillipsburg in any way that I can, something that I enjoy very much doing. But now that I have

been exposed to the malicious lies, confrontation, stalking, taping of phone conversations, and political maneuvering of the inept Republican Party, I know now that the middle of the road is no longer acceptable. These deceitful people that you continue to report about would only ruin all of the unbelievable progress that this administration has made, but you already know that!

18. On Sunday, October 20, 2017, Post-Sheedy published a Facebook post which was highly supportive of plaintiff Corcoran and the Mayor and questioned defendants' campaign slogans, among other things. Post-Sheedy's post was linked to lehighvalleylive.com, the online access portal for The Express Times. The Express Times is the most distributed newspaper in Phillipsburg and is the Town's newspaper of record for the Town's "official postings."

19. Shortly after the November 2017 election, Town Councilman Davis had several conversations with defendant DeGerolamo during which DeGerolamo expressed: "It was not a good idea for [Post-Sheedy] to intersperse herself into politics," that she was "not happy" with the "content" of Post-Sheedy's post and "she did not think that plaintiff should be taking sides" in politics in Town.

20. On January 12, 2018 Fulper, as Council President, requested Town Attorney Richard Wenner to issue Rice notices (See Rice v Union Cnty. Reg'l High Sch. Bd. of Ed., 155 NJ Super. 64 (App. Div 1977)) to Post-Sheedy, Corcoran and Cappello. No other employee received a Rice notice at that time.

21. At the Town Council's February 6, 2018 meeting, the defendants passed Resolution 2018-38 reducing Post-Sheedy's salary from \$67,000.00 to \$50,000.00. Resolution 2018-37 reducing plaintiff Corcoran's salary from \$53,000.00 to \$45,000.00; and Resolutions removing various duties previously given (by way of Resolutions in 2017) to Cappello.

22. Since the defendants took office on January 1, 2018, the only employees to receive salary reductions were Post-Sheedy (from \$67,000 to \$50,000) and plaintiff (from \$53,000 to

\$45,000). No other Town employee salaries were reduced at that time or at any time since defendants took office. In fact, the Town Animal Control Officer received a 41% raise in 2018.

23. In or about January 2018 defendants obtained confidential emails from a member of Mayor Ellis' 2017 "transition team" which reflected plaintiff's involvement on the Mayor's transition team in late 2015.

24. On or about March 20, 2018 defendants Fulper, DeGerolamo and McVey introduced an amended 2018 Town Budget which eliminated funding for plaintiff's position and Cappello's position.

25. As a result of the actions of defendants Fuller, DeGerolamo and McVey eliminating the line item for plaintiff Corcoran's position as the Mayor's Confidential Aide, funding for plaintiff Corcoran's salary expired in or about September 2018. As a result, no money existed to continue to pay plaintiff Corcoran's salary.

26. Thereafter, although plaintiff was informed that, due to the above, she could no longer receive a salary, plaintiff Corcoran continued to work without pay and offered to do so as a volunteer.

27. Despite plaintiff's offer to continue to work without pay as a volunteer, she was directed to discontinue appearing for work because, she was told, it would render the Town potentially liable for a "wage and hour" claim. Plaintiff was directed to stop appearing for work and was terminated or constructively discharged on or about October 2018. Defendants refused to pay plaintiff for earned, unused sick and vacation time to which she was entitled.

28. A Republican Mayor replaced Mayor Ellis on January 1, 2020. On or about January 7, 2020, the defendants approved the hiring of a "Confidential Secretary" for the new Republican Mayor.

29. Defendants' aforementioned wrongful actions towards plaintiff were motivated by plaintiff's political affiliation, association and support for Mayor Ellis and as part of a campaign to dismantle the Mayor's staff for political reasons.

30. Defendants' aforementioned retaliatory and wrongful actions involved political patronage discrimination and violated plaintiff's right to freedom of political association, including her right to not become politically affiliated with defendants or to otherwise support any political candidate or position. Defendants' aforementioned retaliatory, coercive and other wrongful conduct is in violation of Article I, Paragraphs 1 and 18 of the New Jersey Constitution, which violations are made actionable by the New Jersey Civil Rights Act, NJSA 10:6-1, et seq. ("NJCRA").

31. Plaintiff's constitutionally protected conduct was a motivating factor in defendants' aforementioned retaliation, intimidation, coercion and related wrongful conduct, and in attempting to interfere with those rights by acts intending to intimidate, silence, coerce and otherwise retaliate against plaintiff because of her constitutionally protected conduct and status.

32. Defendants' wrongful conduct would chill or silence a person of ordinary firmness from exercising constitutionally protected speech and conduct.

33. The wrongful acts of defendants were pursuant to color of law. Defendants are liable to plaintiff pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. ("NJCRA") for the violation of plaintiff's constitutional rights.

34. The Town is liable pursuant to the New Jersey Constitution and NJCRA for violation of plaintiff's rights as the actions of defendants Fulper, DeGerolamo and McVey, as a majority of the Town Council, constituted an official policy decision and action of the Town and defendants'

conduct by way of official Town Council vote, Resolution and action constitutes policy-making activity for which the Town is responsible.

35. Defendants Fulper, DeGerolamo and McVey created, caused, tolerated, condoned, aided and/or participated in the aforementioned unconstitutional actions and violation of the NJCRA and proximately caused plaintiff's injuries.

36. As a result of defendants' wrongful conduct, plaintiff has suffered economic injury, emotional distress and has been otherwise injured.

SECOND COUNT

1. Plaintiff repeats the allegations of the First Count as if set forth at length.

2. The individual defendants agreed between and amongst themselves, conspired and otherwise colluded to retaliate against plaintiff, and aided and abetted the wrongful conduct, because of plaintiff's aforementioned protected conduct and to deprive her of her rights in violation of the New Jersey Constitution and NJCRA.

3. As a result of defendants' wrongful conduct, plaintiff has been injured.

WHEREFORE, plaintiff demands judgment against defendants, individually, jointly and severally, for back pay, front pay, unused sick and vacation time, compensatory damages, emotional distress damages, damages for the violation of, and interference with, plaintiff's constitutional rights, punitive damages, attorney's fees and costs, interest and any other relief the Court deems just and appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby requests a trial by jury as to all Counts and Issues.

CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)

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 R. 1:38-7(c).

RULE 4:5-1(c) DESIGNATION OF TRIAL COUNSEL

John F. McDonnell and Leonard J. Artigliere are hereby designated as trial counsel for plaintiff.

RULE 4:5-1(b)(2) CERTIFICATION

I, the undersigned, certify that the matter in controversy is not the subject of any other action or arbitration proceeding and no such action or arbitration proceeding is contemplated. Further, I am not aware, at this time, of any other parties that should be joined in this action.

McDONNELL ARTIGLIERE

John F. McDonnell

By: _____
JOHN F. McDONNELL

DATED: January 16, 2020

Civil Case Information Statement

Case Details: WARREN | Civil Part Docket# L-000024-20

Case Caption: CORCORAN SHERRY VS TOWN OF PHILLIPSBURG

Case Initiation Date: 01/16/2020

Attorney Name: JOHN F MC DONNELL

Firm Name: MC DONNELL ARTIGLIERE

Address: 60 YOUMANS AVENUE

WASHINGTON NJ 078820000

Phone: 9086895885

Name of Party: PLAINTIFF : Corcoran, Sherry, L

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

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? 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? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? YES

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)

01/16/2020

Dated

/s/ JOHN F MC DONNELL

Signed

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC

Pádraig P. Flanagan, Esq.

Attorney ID: 021531999

235 Broubalow Way

Phillipsburg, New Jersey 08865

(908) 454-8300

Counsel for Defendants, Town of Phillipsburg,

Robert Fulper, Danielle DeGerolamo, and Frank McVey

SHERRY L. CORCORAN,

Plaintiff,

v.

TOWN OF PHILLIPSBURG, ROBERT
FULPER, DANIELLE DEGEROLAMO,
and FRANK MCVEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY
Docket No.: WRN-L-24-20

CIVIL ACTION

**ANSWER TO COMPLAINT,
SEPARATE DEFENSES
& JURY DEMAND**

Defendants Town of Phillipsburg (“Town”), Robert Fulper (“Fulper”), Danielle DeGerolamo (“DeGerolamo”), and Frank McVey (“McVey”), (collectively "Defendants"), by and through their attorneys, Florio Perrucci Steinhardt & Cappelli, LLC, in answer to the Complaint of Plaintiff, Sherry L. Corcoran (“Plaintiff”), say:

FIRST COUNT¹

1. Defendants admit that the Town is a municipality in the County of Warren, State of New Jersey, and that the Town is governed under the Mayor-Council Plan of the Faulkner Act, but neither admit nor deny the remaining allegations of paragraph 1 since same consist of statements or conclusions of law to which no response is required.

2. Admitted.

¹ In answering Plaintiff’s Complaint, Defendants deny any and all allegations contained in all headings or unnumbered paragraphs to the Complaint.



3. Denied.
4. Defendants deny the allegations of paragraph 4, except to admit that Fulper, DeGerolamo and McVey were voted onto the Town Council in November 2017.
5. Defendants admit that Fulper is a Republican and has served in the capacity of President of the Town Council, Vice President of Town Council, and is still a Member of Town Council.
6. Defendants admit that DeGerolamo is a Republican and has served in the capacity of Vice-President of the Town Council and is still a Member of Town Council.
7. Defendants admit that McVey is a Republican and has served in the capacity of Vice-President of the Town Council and is still a Member of Town Council.
8. Defendants admit Mayor Ellis hired Plaintiff as his Confidential Secretary in or about March 2016 and that Council passed a resolution in 2017 changing Plaintiff's title to Confidential Aide and increased her salary to \$53,000. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 8 and leave Plaintiff to her proofs.
9. Admitted.
10. Denied, except to admit that the part-time Business Administrator was terminated and that the Town has not employed a Business Administrator since that time.
11. Admitted.
12. Admitted.
13. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 13 and leave Plaintiff to her proofs.

14. Denied, except to admit that Defendants Fulper, DeGerolamo, and McVey expressed concern about Plaintiff's hiring and disapproved of her salary increase in 2017.

15. Denied, except to admit that Plaintiff's salary was increased in 2017 by a majority of the Members of Town Council that was controlled by Republicans and that Defendants Fulper, DeGerolamo, and McVey expressed their disapproval of same.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 16 and leave Plaintiff to her proofs.

17. The article referenced in paragraph 17, being a writing, speaks for itself.

18. The post referenced in paragraph 18, being a writing, speaks for itself.

Defendants are without knowledge or information to form a belief as to the truth or falsity concerning the Express Times circulation, but admit it is the newspaper of record for the Town's official postings.

19. Denied.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted, except to deny that the emails were "confidential."

24. Denied.

25. Denied, except to admit that Plaintiff's salary expired in or about September 2018 and no money existed to pay Plaintiff's salary.

26. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 26 and leave Plaintiff to her proofs.

27. Defendants deny Plaintiff was constructively discharged and that Defendants refused to pay Plaintiff for earned, unused sick time, and vacation time. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 27 and leave Plaintiff to her proofs.

28. Denied, except to admit that a Republican replaced Mayor Ellis on January 1, 2020.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Defendants neither admit or deny the allegations of paragraph 34 since same consist of statements or conclusions of law to which no response is required. To the extent a response is required, Defendants deny same.

35. Denied.

36. Denied.

SECOND COUNT

1. Defendants repeat each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

2. Denied.

3. Denied.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding Defendants reasonable attorney's fees, costs of suit and such other and further relief as the Court may deem appropriate.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by the failure to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

Any claims by Plaintiff for emotional or physical injuries are barred by the exclusive remedy provision of the New Jersey Workers' Compensation Act.

THIRD SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

FOURTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTH SEPARATE DEFENSE

Any action taken by the Defendants is protected by an absolute and/or qualified privilege.

SIXTH SEPARATE DEFENSE

Defendants claim all rights, privileges and immunities afforded Defendants under both federal and state law, inclusive of the New Jersey Tort Claims Act.

SEVENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the New Jersey Tort Claims Act.

EIGHTH SEPARATE DEFENSE

Any action, or failure to act, on the part of Defendants was in the nature of the discretionary activity within the meaning of N.J.S.A. 59:2-3 and, accordingly, no liability may be imposed on Defendants.

NINTH SEPARATE DEFENSE

Any and all injuries sustained by Plaintiff are the result of her own negligence and/or misconduct or the actions of third parties or circumstances or situations over which Defendants had no control.

TENTH SEPARATE DEFENSE

Defendants acted at all times in good faith and without malice.

ELEVENTH SEPARATE DEFENSE

Plaintiff's damage claims are barred by the absence of damage.

TWELFTH SEPARATE DEFENSE

Plaintiff's claims for damages are barred, in whole or in part, by Plaintiff's failure to reasonably mitigate damages, if any.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, based on her failure to timely file a prerogative writ action.

FOURTEENTH SEPARATE DEFENSE

Defendants acted at all times for legitimate, non-discriminatory and non-retaliatory reasons.

FIFTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by her failure to exhaust her remedies under the grievance provisions of the collective negotiations' agreement.

SIXTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred by reason of her failure to avail herself of all administrative and contractual remedies and/or arbitrations.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part because the complained of actions, to the extent they occurred, were not arbitrary, capricious, irrational, or otherwise improper, but instead, were motivated by legitimate interests.

EIGHTEENTH SEPARATE DEFENSE

Plaintiff did not sustain any violation of her civil rights pursuant to a governmental policy, practice, or custom.

NINETEENTH SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim for punitive damages against Defendants.

TWENTIETH SEPARATE DEFENSE

Defendants have not committed any violation of Plaintiff's rights under state law.

TWENTY-FIRST SEPARATE DEFENSE

The alleged acts of Defendants do not rise to the level of a constitutional violation, and therefore, Plaintiff did not suffer any infringement of her constitutional rights and/or such constitutional violations are not pled with sufficient particularity to support any claim.

TWENTY-SECOND SEPARATE DEFENSE

The alleged conduct did not violate clearly established statutory and/or constitutional rights of which a reasonable person would have known.

TWENTY-THIRD SEPARATE DEFENSE

Defendants reserve the right to amend its Answer to insert additional defenses and/or supplement, alter, or change its Answer upon revelation of more definite facts by Plaintiff; upon the completion of further discovery and/or investigation; and/or based upon after acquired evidence.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding Defendants reasonable attorney's fees, costs of suit and such other and further relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Pádraig P. Flanagan is designated as trial counsel in this matter.

**FLORIO PERRUCCI STEINHARDT &
CAPPELLI, L.L.C.**
Attorneys for Defendants

By:



Pádraig P. Flanagan
ID No. 021531999

Dated: February 26, 2020

RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge and information, the matter in controversy is not the subject of any other pending action or arbitration proceeding and no other proceeding is contemplated. At the present, I do not know of any other party who should be joined in this action. This certification is made subject to further investigation and discovery.

**FLORIO PERRUCCI STEINHARDT &
CAPPELLI, L.L.C.**
Attorneys for Defendants

By:



Pádraig P. Flanagan
ID No. 021531999

Dated: February 26, 2020

Civil Case Information Statement

Case Details: WARREN | Civil Part Docket# L-000024-20

Case Caption: CORCORAN VS PHILLIPSBURG ET AL
FEE SHIFT

Case Initiation Date: 01/16/2020

Attorney Name: PADRAIG PEARSE FLANAGAN

Firm Name: FLORIO PERRUCCI STEINHARDT &
CAPPELLI, LLC

Address: 235 BROUBALOW WAY

PHILLIPSBURG NJ 088651686

Phone: 9084548300

Name of Party: PLAINTIFF : CORCORAN, SHERRY, L

Name of Defendant's Primary Insurance Company
(if known):

Case Type: LAW AGAINST DISCRIMINATION (LAD) CASES

Document Type: Answer

Jury Demand: YES - 6 JURORS

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? 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? YES

If yes, is that relationship: Employer/Employee

Does the statute governing this case provide for payment of fees by the losing party? YES

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)

02/26/2020

Dated

/s/ PADRAIG PEARSE FLANAGAN

Signed

GEBHARDT & KIEFER, P.C.

1318 Route 31
P.O. Box 4001
Clinton, NJ 08809
Tele. (908) 735-5161
Leslie A. Parikh, Esq.
Atty. ID#038131999
lparikh@gklegal.com

Attorney for Defendants, Town of Phillipsburg, Robert Fulper, Danielle DeGerolamo
and Frank McVey

SHERRY L. CORCORAN,

Plaintiff,

vs.

TOWN OF PHILLIPSBURG, ROBERT
FULPER, DANIELLE DEGEROLAMO,
and FRANK MCVEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY


DOCKET NO.: **WRN-L-24-20**

CIVIL ACTION

**STIPULATION OF DISMISSAL
WITHOUT PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED by and between the parties herein, that Plaintiff, SHERRY L. CORCORAN, claims against Defendants, TOWNSHIP OF PHILLIPSBRUG, ROBERT FULPER, DANIELLE DEGEROLAMO AND FRANK MCVEY, be and hereby are dismissed without prejudice and without costs to any party.

MCDONNELL, ARTIGLIERE



John F. McDonnell, Esq.
Attorney for Plaintiff

Dated: July 21, 2021

GEBHARDT & KIEFER, P.C.



Leslie A. Parikh, Esq.
Attorney for Defendants

Dated: July 21, 2021

**SETTLEMENT AGREEMENT
AND GENERAL RELEASE**

The parties to this Settlement Agreement and General Release (the "Agreement") are SHERRY L. CORCORAN (referred to herein as "Releasor") and the TOWN OF PHILLIPSBURG, ROBERT FULPER, DANIELLE DEGEROLAMO, AND FRANK MCVEY (in their individual and/or official capacities), its employees, servants and agents and assigns, insurers and reinsurers and Statewide Insurance Company (collectively referred to herein as "Releasees"). The Agreement is the product of negotiation and compromise between Releasor and Releasee. It is hereby agreed, by and among the parties, as follows:

1) **Subject litigation:** Releasor and Releasee have chosen to enter into this Agreement in order to avoid further proceedings with respect to certain claims Releasor has made against Releasee in the Superior Court of New Jersey, Law Division, Warren County, DOCKET NO. WRN-L-24-20.

2) **Settlement payment:** Subject to Releasor signing this Agreement and returning a signed copy to counsel for Releasee, the Releasor shall be paid a total of Seventy-Eight Thousand Dollars and Zero Cents (\$78,000.00) (the "Settlement Payment").

The Settlement Payment is in full satisfaction of any and all Releasor's claims against Releasees, which include, but are not limited to, compensatory damages, punitive damages and attorneys' fees, costs and disbursements, known or unknown, asserted or unasserted, including, but not limited to, claims for physical injuries associated with emotional distress, pain and suffering, legal or equitable relief, reinstatement, back or front pay, lost benefits, statutory claims, common law claims, contract claims (express, written or implied), and costs of this action.

The Settlement Payment shall be made within thirty (30) days of delivery of the executed Agreement by Releasor and Plaintiff Counsel's W-9. The Releasees will cause to be delivered to counsel for Releasor payment by three (3) separate checks, allocated as follows: (a) From the Town of Phillipsburg on behalf of all defendants, the sum of Twelve Thousand Dollars and Zero Cents (\$12,000.00), less applicable withholdings required by law, payable to Sherry L. Corcoran reported on IRS form W-2; (b) From Insurer on behalf of all defendants, the sum of Thirty Two Thousand Nine Hundred Forty Three Dollars and Zero Cents (\$ 32,943.00), payable to Sherry L. Corcoran reported on IRS form 1099 and (c) From Insurer on behalf of all defendants Thirty Three Thousand Fifty Seven Dollars and Zero Cents (\$33, 057.00) payable to "McDonnell Artigliere," reported on IRS form 1099 This sum will be paid in exchange for Releasor's release of Claims, as cited in this and Paragraph 3, and other promises in this Agreement.

3) **Release of Claims:** In exchange for the promises made by Releasee herein, Releasor, Releasor's heirs, executors, administrators, fiduciaries, successors and/or assigns, agrees to unconditionally and irrevocably give up and release, to the fullest extent permitted by law, all claims, known or unknown, that Releasor has or may have against Releasee as of the date of execution of this Agreement including, but not limited to, those claims:

- a) arising out of Releasor's employment, non-employment or termination of employment;
- b) for wages and benefits including, without limitation, salary, commissions, health and welfare benefits, settlement pay, vacation or sick pay, and bonuses;

- c) for wrongful discharge in violation of express or implied public policy of the United States, the State of New Jersey, or any state, constructive discharge, retaliatory discharge, hostile work environment, breach of contract (whether express or implied), and breach of the implied covenant of good faith and fair dealing;
- d) for employment discrimination or retaliation on the basis of age, race, color, religion, sex, national origin, veteran status, disability and/or handicap, marital status, sexual orientation, or any other characteristic protected by law, and any and all claims in violation of any federal, state or local statute, ordinance, executive order, or common law doctrine including, but not limited to, Claims for discrimination under Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act, as amended; the Americans with Disabilities Act; the Americans with Disabilities Amendments Act of 2008; the Genetic Information Nondiscrimination Act of 2008; the Pregnancy Discrimination Act of 1978; the Employee Retirement and Income Security Act of 1974, and any other applicable federal or state statute relating to employee benefits or pensions; 29 U.S.C. Sec. 1001; the Electronic Communications Privacy Act; the Consolidated Omnibus Budget Reconciliation Act; the Occupational Safety and Health Act; 42 U.S.C. Sec. 1981; the National Labor Relations Act; the Fair Labor Standards Act; the Rehabilitation Act of 1972; the Family and Medical Leave Act; the New Jersey Law Against Discrimination; all New Jersey wage and hour, disability and maternity leave laws; the New Jersey Constitution; the U.S. Constitution; and any other federal, state, foreign, or local laws or regulations prohibiting employment discrimination of any kind;
- e) for breach of contract (express or implied), breach of promise, wrongful discharge, constructive discharge, unfair or unjust dismissal, retaliation, whistleblowing, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, defamation, claims relating to stock or stock options, wrongful denial of benefits, fraud, intentional and negligent misrepresentation, intentional and negligent infliction of emotional distress, negligence, and any intentional torts;
- f) for attorneys' fees and costs.

4) **No admission of liability:** The Parties understand and agree that neither the payment of any sum of money nor the execution of this Agreement by the Parties will constitute or be construed as an admission of any wrongdoing or liability whatsoever by Releasee.

5) **Who is Bound:** Releasor is bound by this Release. Anyone who succeeds to Releasor's rights and responsibilities, such as his heirs or the executor of his estate, is also bound. This Release is made for Releasor's benefit and all who succeed to his rights and responsibilities, such as heirs, the executor or administrator of my estate.

6) **MMSEA Compliance:** For purposes of the Medicare, Medicaid and SCHIP Extension Act of 2007(MMSEA), the following definitions apply:

- a) "CMS" means the Center for Medicare & Medicaid Services within the U.S. Department of Health and Human Services, including any agents, representatives, or contractors of CMS, such as the Coordination of Benefits Contractor ("COBC") or Medicare Secondary Payer Recovery Contractor ("MSPRC").

- b) "Conditional Payments" shall have the meaning ascribed to it under the MSP Statute and implementing regulations.
- c) "MMSEA" means the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173), which, in part, amended the Medicare Secondary Payer statute at 42 U.S.C. § 1395y(b)(7) and (8). This portion of MMSEA is referred to herein as "Section 111 of MMSEA".
- d) "MSP Statute" means the Medicare Secondary Payer ("MSP") statute. 42 U.S.C. § 1395y(b).
- e) "Released Matter" means any released accident, occurrence, injury, illness, disease, loss, claim, demand, or damages that are subject to the Agreement and releases herein.

Releasor represents that she is not enrolled in the Medicare program, was not enrolled in the Medicare program at the time of the Released Matters or anytime thereafter through the date of this Agreement, and has not received Medicare benefits for medical services or items related to, arising from, or in connection with the Released Matters.

Releasor represents and warrants that she has not received any medical services or items related to, arising from, or in connection with the Released Matters.

7) **Other Claims and Liens:** Releasor represents and warrants that no Medicaid payments have been made to or on behalf of Releasor and that no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from or related to any Released Matters. Releasor further agrees that Releasor, and not Releasees, shall be responsible for satisfying all such liens, claims, demands, subrogated interests, or causes of action that may exist or have been asserted or that may in the future exist or be asserted. To the extent that Releasor's representations and warranties herein are inaccurate, not current, or misleading, Releasor agrees to defend, indemnify, and hold harmless Releasees with regard to or from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicaid and/or persons or entities acting on behalf of Medicaid, or any other person or entity, arising from or related to this Agreement, the payment of the amounts set forth in Section 2 above, any Conditional Payments made by Medicaid, or any medical expenses or payments arising from or related to any Released Matters that are subject to this Agreement or the releases set forth herein. The indemnification and hold harmless obligations herein, include, but are not limited to, all damages, fines, penalties, attorneys' fees, costs, interest, expenses, and judgments incurred by or on behalf of Releasees and/or Plaintiff in connection with such claims, liens, demands, subrogated interests, or causes of action.

8) **Indemnification:** To the extent that Plaintiff's representations and warranties related to his Medicare status and receipt of medical services and items related to the Released Matters are inaccurate, not current, or misleading, Plaintiff agrees to defend, indemnify, and hold harmless Releasees with regard to or from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicare and/or persons or entities acting on behalf of Medicare, or any other person or entity, arising from or related to this Agreement, the payment of the amounts set forth in Section 2 above, any Conditional Payments made by Medicare, or any medical expenses or payments arising from or related to any Released Matters that is subject to this Agreement or the releases set forth herein, including but not limited to: (a) all claims and demands for reimbursement of Conditional Payments or for damages based upon

any failure to reimburse Medicare for Conditional Payments; (b) all claims and demands for penalties based upon any failure to report, late reporting, or other noncompliance with or violation of Section 111 of MMSEA that is based in whole or in part upon late, inaccurate, or inadequate information provided to Releasees by Plaintiff or Plaintiff's counsel or upon any failure of Plaintiff or Plaintiff's counsel to provide information; and (c) all Medicaid or Medicare liens. This indemnification obligation includes all damages, fines, penalties, attorneys' fees, costs, interest, expenses, and judgments incurred by or on behalf of Releasees in connection with such claims, demands, liens, subrogated interests, or causes of action.

9) **No tax advice:** Releasor and his counsel acknowledge that they have obtained no advice from the Releasee and that neither the Releasee nor its attorneys have made any representations regarding the tax consequences, if any, to Releasor and his attorney of their receipt of the Settlement Payment as provided for in Paragraph 2. Releasor and his counsel understand that the taxability of the Settlement Payment shall be governed by applicable federal, state, and local tax laws and regulations, and that Releasor and his counsel shall be solely responsible for any taxes, interest and penalties that they might owe with respect to the Settlement Payment as made to them under Paragraph 2. Releasor agrees to hold the Releasees, as defined herein, harmless, and to fully indemnify the Releasees, from any and all liability, obligations, claims or actions, as well as any and all taxes, interest or penalties, if any, owed by them arising out of any claim which may be made by the Internal Revenue Service or any other governmental agency administering applicable state and federal tax laws with respect to the tax treatment of the Settlement Payment.

10) **Entire consideration:** Releasor agrees that the Settlement Payment shall constitute the entire amount of monetary consideration provided to him under this Agreement and she will not seek from the Releasees any further compensation or other consideration for any other claimed obligation, entitlement, damage, cost, or attorneys' fees in connection with the matters encompassed by this Agreement.

11) **No filing or assignment of claims:** Releasor represents and warrants that she has no pending complaints, charges, lawsuits or other legal actions with any court or government agency relating to any claims being released under Paragraphs 2 and 3. Releasor further represents that she has not assigned or transferred, and will not subsequently assign or transfer, to any person not a party to this Agreement, Released Claims or any part of portion thereof.

12) **Enforcement:** In the event either Releasor or Releasee breaches any provision of this Agreement, Releasor and Releasee agree that either may institute an action against the other to specifically enforce any term or terms of this Agreement, in addition to any other legal or equitable relief permitted by law. In the event that any provision of this Agreement is declared illegal or unenforceable by a court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. Moreover, if any such provision is determined to be invalid, illegal or unenforceable and can be made valid, legal or enforceable by modification thereof, then the party for whose benefit the provision exists, may make such modification as necessary to make the provision valid, legal and enforceable.

13) **Modification:** This Agreement may not be modified except upon express written consent of both parties wherein specific reference is made to this Agreement.

14) **Releasor's acknowledgements:** Releasor acknowledges and agrees that Releasor has been given a reasonable period of time to consider the terms of this Agreement. Releasor has reviewed the terms of this Agreement and the effect of signing this Agreement with legal counsel of Releasor's

choosing. Releasor understands and agrees that this Agreement settles, bars and waives any and all claims that Releasor, Releasor's heirs, executors, administrators, fiduciaries, successors and/or assigns has or could possibly have against Released Parties as of the date of the execution of this Agreement.

15) Execution and copies: This Agreement may be signed in one or more counterparts and/or electronic or facsimile signatures shall be deemed originals for purposes of its execution.

16) Governing law: This Agreement shall be governed and conformed in accordance with the laws of the State of New Jersey without regard to its conflict of laws provisions.

17) Jointly drafted: The parties agree that this Agreement was drafted jointly by them and that any ambiguity or uncertainty shall not be construed for or against any party based on attribution of drafting.

18) Effective date: This Agreement will become effective on the day Releasor signs and delivers this Agreement to defense counsel.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Agreement as of the date set forth below:


Dated:

8/19/2020


SHERRY L. CORCORAN, Plaintiff/Releasor

Dated:

August 19, 2020


On behalf of the Town of Phillipsburg, Robert Fulper, Danielle Degerolamo, and Frank McVey

Case Summary

Case Number: WRN L-000159-20
Case Caption: Thompson Vs Fulper Et Al *Fee Shift*
Court: Civil Part **Venue:** Warren **Case Initiation Date:** 05/20/2020
Case Type: Civil Rights **Case Status:** Closed **Jury Demand:** 6 Jurors
Case Track: 3 **Judge:** John H Pursel **Team:** 1
Original Discovery End Date: 11/21/2021 **Current Discovery End Date:** 11/21/2021 **# of DED Extensions:** 0
Original Arbitration Date: **Current Arbitration Date:** **# of Arb Adjournments:** 0
Original Trial Date: **Current Trial Date:** **# of Trial Date Adjournments:** 0
Disposition Date: 04/14/2021 **Case Disposition:** Dismissed By Court With Prejudice **Statewide Lien:**

Plaintiffs

Rick Thompson

Party Description: Individual **Attorney Name:** John F Mc Donnell
Address Line 1: **Address Line 2:** **Attorney Bar ID:** 000871984
City: **State:** NJ **Zip:** 00000 **Phone:**
Attorney Email: JOHNMC DONNELLESQ@HOTMAIL.COM

Defendants

Todd Tersigni

Party Description: Individual **Attorney Name:** Susan A Lawless
Address Line 1: **Address Line 2:** **Attorney Bar ID:** 026301994
City: **State:** NJ **Zip:** 00000 **Phone:**
Attorney Email: SLAWLESS@FLORIALAW.COM

Robert Fulper

Party Description: Individual **Attorney Name:** Susan A Lawless
Address Line 1: **Address Line 2:** **Attorney Bar ID:** 026301994
City: **State:** NJ **Zip:** 00000 **Phone:**
Attorney Email: SLAWLESS@FLORIALAW.COM

Town Of Phillipsburg

Party Description: Municipality **Attorney Name:** Susan A Lawless
Address Line 1: **Address Line 2:** **Attorney Bar ID:** 026301994
City: **State:** NJ **Zip:** 00000 **Phone:**
Attorney Email: SLAWLESS@FLORIALAW.COM

Case Proceeding

Created Date	Scheduled Time	Court Room	Judge Name	Proceeding Description	Motion Type	Proceeding Status	Motion Status
10/09/2020	01:30	REMO T		CASE MANAGEMENT CONFERENCE		COMPLETED	
02/09/2021	09:00	REMO T		CASE MANAGEMENT CONFERENCE		RSCHED	
02/10/2021	03:30	REMO T		CASE MANAGEMENT CONFERENCE		ADJ DSGCN	
02/17/2021	01:30	REMO T		CASE MANAGEMENT CONFERENCE		COMPLETED	
02/17/2021	09:00	REMO T		CASE MANAGEMENT CONFERENCE		RSCHED	

Case Actions

Filed Date	Docket Text	Transaction ID	Entry Date
05/20/2020	Complaint with Jury Demand for WRN-L-000159-20 submitted by MC DONNELL, JOHN F, MC DONNELL ARTIGLIERE on behalf of RICK THOMPSON against ROBERT FULPER, TODD TERSIGNI, TOWN OF PHILLIPSBURG	LCV2020913903	05/20/2020
05/21/2020	TRACK ASSIGNMENT Notice submitted by Case Management	LCV2020916914	05/21/2020

PLAINTIFFS'
EXHIBIT
8A

08/28/2020	Answer W/Jury Demand submitted by LAWLESS, SUSAN, A of FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR LLC on behalf of TODD TERSIGNI, ROBERT FULPER, TOWN OF PHILLIPSBURG against RICK THOMPSON	LCV20201521161	08/28/2020
08/28/2020	STIPULATION TO EXTEND TIME FOR ANSWER submitted by LAWLESS, SUSAN, A of FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR LLC on behalf of TODD TERSIGNI, ROBERT FULPER, TOWN OF PHILLIPSBURG against RICK THOMPSON	LCV20201521265	08/28/2020
09/09/2020	COURT Notice submitted by Case Management	LCV20201579204	09/09/2020
10/02/2020	CLERK NOTICE: re: STIPULATION TO EXTEND TIME FOR ANSWER [LCV20201521265] -Please be reminded that a telephonic case management conference is scheduled before Hon. Kevin M. Shanahan on 10/9/20 at 1:30pm. Counsel are to create a conference call number and when everyone is on call, dial 908-332-7700 ext 13660.	LCV20201750578	10/02/2020
10/12/2020	GENERAL CORRESPONDENCE submitted by LAWLESS, SUSAN, A of FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR LLC on behalf of TODD TERSIGNI, ROBERT FULPER, TOWN OF PHILLIPSBURG against RICK THOMPSON	LCV20201804577	10/12/2020
10/14/2020	CASE MANAGEMENT ORDER-COURT INITIATED - GRANTED by Judge KEVIN M. SHANAHAN, P.J.CV.	LCV20201820947	10/14/2020
10/15/2020	COURT Notice submitted by Case Management	LCV20201829965	10/15/2020
12/08/2020	MEDIATION Notice submitted by Case Management	LCV20202226263	12/08/2020
12/21/2020	GENERAL CORRESPONDENCE submitted by LAWLESS, SUSAN, A of FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR LLC on behalf of TODD TERSIGNI, ROBERT FULPER, TOWN OF PHILLIPSBURG against RICK THOMPSON	LCV20202316811	12/21/2020
01/06/2021	GENERAL CORRESPONDENCE submitted by LAWLESS, SUSAN, A of FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR LLC on behalf of TODD TERSIGNI, ROBERT FULPER, TOWN OF PHILLIPSBURG against RICK THOMPSON	LCV202133014	01/06/2021
01/28/2021	CLERK NOTICE: re: GENERAL CORRESPONDENCE [LCV202133014] -Please be notified that the telephonic case management conference on 2/9/21 before Judge Shanahan is adjourned to 2/10/21 at 3:30pm. Counsel are to create a conference call number and when everyone is on call, dial 908-332-7700 ext 13660 for chamber	LCV2021211046	01/28/2021
01/29/2021	COURT Notice submitted by Case Management	LCV2021216969	01/29/2021
01/29/2021	ADJOURNMENT REQUEST submitted by LAWLESS, SUSAN, A of FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR LLC on behalf of TODD TERSIGNI, ROBERT FULPER, TOWN OF PHILLIPSBURG against RICK THOMPSON	LCV2021227570	01/29/2021
02/01/2021	CLERK NOTICE: re: ADJOURNMENT REQUEST [LCV2021227570] -The conference has been adjourned to 2/17/21 at 9 a.m.	LCV2021234703	02/01/2021
02/02/2021	COURT Notice submitted by Case Management	LCV2021242008	02/02/2021
02/05/2021	CLERK NOTICE: re: ADJOURNMENT REQUEST [LCV2021227570] -Please be notified that the case management conference on 2/17/21 in the above matter is moved from 9am to 1:30pm. Counsel are to create a conference call number and when everyone is on the call dial 908-332-7700 ext 13660 for chambers.	LCV2021274990	02/05/2021
02/06/2021	COURT Notice submitted by Case Management	LCV2021284627	02/06/2021
04/14/2021	STIPULATION OF DISMISSAL submitted by LAWLESS, SUSAN, A of FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR LLC on behalf of TODD TERSIGNI, ROBERT FULPER, TOWN OF PHILLIPSBURG against RICK THOMPSON	LCV2021967381	04/14/2021

McDONNELL ARTIGLIERE
John F. McDonnell, Esq. (ID No. 000871984)
Leonard J. Artigliere, Esq. (ID No. 015431985)
60 Youmans Avenue
Washington, NJ 07882
(908) 689-5885
Attorneys for Plaintiff

RICK THOMPSON,
Plaintiff,

v.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY
DOCKET NO.: WRN-L-

Civil Action

TOWN OF PHILLIPSBURG, ROBERT
FULPER and TODD TERSIGNI,
Defendants.

COMPLAINT AND DEMAND FOR
TRIAL BY JURY

Plaintiff, Rick Thompson, by way of Complaint against Defendants, says:

FIRST COUNT

1. Defendant Town of Phillipsburg (“Town”) is a municipality in the County of Warren, State of New Jersey. The Town is governed by a Mayor and five-member Town Council under the Mayor-Council Plan of the Faulkner Act, N.J.S.A. 40:69A-1 et seq. Members of the Town Council are elected at-large in partisan elections to four-year terms of office on a staggered basis.

2. Under the Town’s form of government, the Mayor “directs and controls” all departments of the Town and possesses the power of appointment, subject to advice and consent of the Town Council. See N.J.S.A. 40:69A-39-40 and Phillipsburg Town Code Chapter 5, Articles 3 and 4.

3. Stephen R. Ellis, Jr. (“Ellis”), a Democrat, was elected Mayor of the Town in November 2015 and took office on January 1, 2016.

4. Ellis served as Town Mayor until January 1, 2020 when he was replaced by Defendant Todd Tersigni, a Republican.

5. At present, and over the last several years, the Town Council has been ruled by a Republican majority.

6. Defendant Robert Fulper, a Republican, has served on the Town Council since January 1, 2018, initially as Council President.

7. The relationship between Mayor Ellis and the Republican members of the Republican-controlled Town Council during Ellis' four years as Mayor were extremely bitter and strained. Commencing in or about January 2018, the Town Council took many actions against the Mayor and the Mayor's staff that were motivated by political animus and free speech retaliation.

8. On or about January 22, 2019, Plaintiff was appointed Superintendent of Recreation at an annual salary of \$50,000 by Mayor Ellis, with the consent of the Town Council. Plaintiff was more than qualified for the position due to his lengthy employment history as a public school teacher, extensive experience as a very successful coach of various sports, and other accomplishments during his lengthy career.

9. Plaintiff was born and raised in the Town, attended Phillipsburg High School and coached and taught at Phillipsburg High School for many years. Plaintiff and Ellis were high school and college wrestling teammates.

10. Plaintiff had a storied high school and collegiate wrestling career. While attending Phillipsburg High School, Plaintiff was a two-time New Jersey State Wrestling Champion and three-time Regional Champion. While attending Slippery Rock University, Plaintiff was ranked #1 in the country in his weight class in 1977.

11. Following his college graduation, Plaintiff commenced a legendary career as a high school wrestling and cross-country coach. Plaintiff became the winningest wrestling coach in Phillipsburg High School history with a career record of 268-54-1. While coaching at Phillipsburg

High School, Plaintiff's wrestling teams were awarded five Star Ledger Trophies as the best team in New Jersey. Plaintiff was named a Star Ledger Top Ten Coach of the 1980's and was a four-time Express Times Coach of the Year (1982, 1986, 1992 and 2004). Plaintiff received the Wilfred Cann award as the New Jersey Coach of the Year in 1988. As a cross-country coach at Phillipsburg High School, Plaintiff's team won the Group 4 State Championship in 2005 and Plaintiff was named the Boys Cross-Country Coach of the Year by the Star Ledger and Express-Times newspapers.

12. Under the Town's form of government, the Mayor directly supervised Plaintiff and members of the Town Council were only authorized to communicate with Plaintiff through the office of the Mayor. During Plaintiff's employment, he reported directly to the Mayor on a regular basis. Mayor Ellis's performance evaluations of Plaintiff were extremely positive.

13. During Plaintiff's employment, Defendant Fulper and certain members of the Town's Recreation Advisory Committee ("RAC") frequently expressed a desire to significantly alter the manner in which the Town's youth athletic teams and programs had been operated for many years.

14. For many years, the Town's youth athletic programs were governed by multiple organizations that were separately organized, operated and controlled. The Town, for many years, supported these separate organizations financially and permitted them to utilize Town fields and facilities. Defendant Fulper and certain members of the RAC sought to eliminate Town support for these separate organizations to allow the Town Recreation Department to control all Town youth athletic teams and programs. This was a matter of significant public interest and disagreement in the Town.

15. On various occasions in 2019, Plaintiff expressed opinions that opposed this plan to eliminate the existing youth athletic organizations. These opinions included, but were not limited to, statements made to, and in the presence of, Defendant Fulper and other RAC representatives.

16. On September 25, 2019, Plaintiff convened a regularly scheduled RAC meeting. During the meeting, Defendant Fulper accused a RAC member of permitting an alleged sexual offender to coach a Town youth athletic event many years ago. Defendant Fulper had on other occasions accused other individuals, including Town officials, Town youth league representatives, Town Police Department employees and representatives of the Warren County Prosecutor's Office, of failing to take action with respect to this alleged sexual offender. At this September 25, 2019 RAC meeting, Plaintiff intervened in this argument between Defendant Fulper and the RAC member. Plaintiff suggested to Defendant Fulper that, while Plaintiff in no way supported this alleged sexual offender, the alleged events Defendant Fulper was raising had occurred seven or eight years previously and the matter should be put to rest for the sake of the Town. In or about May 2017 the Warren County Prosecutor's Office sent a letter to the Town stating that its investigation of this issue concluded there was insufficient evidence to pursue any charges against any member of the Town youth organization. Fulper openly resented Plaintiff's statement and threatened: "I will have you fired from your job."

17. In retaliation for Plaintiff's aforementioned constitutionally-protected opinions and speech, Defendant Fulper falsely accused Plaintiff of physically "threatening" him at the September 25, 2019 RAC meeting. Defendant Fulper falsely and maliciously published and reported this false and defamatory assertion to many other individuals including, but not limited to, Mayor Ellis, members of the Town Council and members of the public. Defendant Fulper

commenced a campaign to terminate Plaintiff's employment and to otherwise retaliate against plaintiff because of Plaintiff's aforementioned protected actions and speech.

18. Mayor Ellis investigated Fulper's allegations against Plaintiff and found them to be without merit.

19. After Defendant Tersigni won the November 2019 Town mayoral election, Defendant Fulper requested or otherwise pressured defendant Tersigni to terminate Plaintiff's employment. Defendant Tersigni had previously informed multiple individuals that he intended to maintain Plaintiff in his position.

20. Shortly after becoming Mayor on January 1, 2020, Defendant Tersigni sent Plaintiff a January 9, 2020 letter advising that he intended to replace Plaintiff as "Director of Recreation".

21. In a February 18, 2020 letter to Plaintiff, Defendant Tersigni advised that he would provide Plaintiff an "opportunity to be heard before me on this matter". Upon receipt of that letter, Plaintiff responded and scheduled a meeting with Defendant Tersigni for February 21, 2020. However, Defendant Tersigni cancelled the meeting. Thereafter, the meeting was rescheduled for March 3, 2020.

22. On March 3, 2020, Plaintiff appeared for the scheduled meeting at Defendant Tersigni's office in the former Freeman Elementary School. While Plaintiff waited outside of Defendant Tersigni's office, Defendants Fulper and Tersigni telephoned the Phillipsburg Police Department and falsely and maliciously reported that Plaintiff was "following" defendant Tersigni, and acting in a "threatening manner", which caused defendant Tersigni "to feel threatened and unsafe" and words of similar content and intent.

23. Members of the Phillipsburg Police Department were summoned to the Mayor's office via radio dispatch to attend to the matter. Police Officers approached Plaintiff while he was seated

in Town Hall and advised Plaintiff of the allegations made against him by defendants. Plaintiff was allowed to leave Town Hall on his own accord.

24. On or about March 3, 2020 and thereafter, Defendant Tersigni made and published false and defamatory statements about the matter to the news media, Town officials and Town citizens causing substantial injury to Plaintiff's reputation and placing Plaintiff in a false light before the public. Various newspaper and internet articles were thereafter published in, among other media outlets, the Express-Times newspaper, lehighvalleylive.com website, and The Warren Reporter repeating and republishing Defendants' false, defamatory and malicious assertions. Copies of those articles are attached as Exhibit A. The article, which appeared on lehighvalleylive.com, indicates that the article was "shared" over 1,000 times. Among the other such false and defamatory published statements were:

- "According to Mayor Todd Tersigni, Thompson behaved in a way that made him feel so unsafe that the Mayor called Police."
- "An emergency radio dispatch summoned officers to town hall for a disturbance."
- "Mayor Tersigni later told lehighvalleylive.com that he was being closely 'followed around' by Thompson."
- "[Tersigni] and Town Clerk Vicki Kleiner said they called Chief Robert Settner to talk to Thompson and that a third party also may have called Police."
- "'I didn't feel safe,' Tersigni said, later adding that he was 'afraid to leave my office.'"

The articles referred to, among other things, the "vote on Thompson's replacement as Head of Municipal Youth Sports and Recreation" and Plaintiff's "termination notice." Defendants' false and malicious assertions spread quickly in the Town and became a matter of public knowledge, causing Plaintiff to be publicly humiliated.

25. A few hours later, on the evening of March 3, 2020, Defendant Tersigni appointed another individual to replace Plaintiff, with the consent of Defendant Fulper and other members of the Town Council. This action resulted in the termination of Plaintiff's employment with the Town.

26. On March 4, 2020, after making the appointment of the plaintiff's successor, Tersigni met with the plaintiff in what was clearly a transparent and ineffectual ruse to masquerade as due process. Tersigini did not address the plaintiff but all communications came from the Town Lawyer. No reason for Plaintiff's termination was provided by Defendants.

27. On or about March 8, 2020, during a podcast produced and hosted by Defendant Fulper know as "The Hour 45", Fulper caused the recording of the aforementioned March 3, 2020 Phillipsburg Police Department radio dispatch to be aired. This dispatch mentioned Plaintiff by name ("Rick Thompson") as the "former Director" who was in Town hall and that three people were "locked in an office". Present on the podcast were three members of the five-member Town Council (including Fulper), constituting a quorum of the Town Council. During the podcast some of the Council members referred to the "hostage situation" in Town hall that week.

28. Plaintiff's statements and opinions set forth in paragraphs 15 and 16 above were protected under Article I, Paragraph 6, of the New Jersey Constitution. This provision guarantees Plaintiff's rights to freely speak, write, and publish his sentiments on all subjects and the right to be free of retaliation for expressive activity, criticism, complaints, and grievances regarding matters of public concern. This provision also guarantees Plaintiff's right to be free from attempts to interfere with those aforementioned rights. Plaintiff's opinions and statements, as set forth above, were matters of public concern.

29. Plaintiff's constitutionally protected speech was a motivating factor in the decision to terminate Plaintiff's employment and in Defendants' aforementioned retaliation, intimidation, coercion, defamation, and related wrongful conduct.

30. Defendants' wrongful conduct would chill or silence a person of ordinary firmness from exercising constitutionally protected conduct in the future.

31. The wrongful acts of Defendants were pursuant to color of law.

32. Defendants are liable to Plaintiff pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. ("NJCRA") for the violation of, and attempted interference with, Plaintiff's constitutional rights.

33. The Town is liable pursuant to the New Jersey Constitution and NJCRA for violation of Plaintiff's rights. The actions of Defendants constituted an official policy, custom or official action of the Town, and the Town Council acquiesced to such policy, custom or official action.

34. The Town acquiesced to the wrongful conduct and failed to discipline, monitor, train and supervise Defendant Fulper. Defendant Fulper previously engaged in retaliation against other Town employees for constitutionally protected speech and political affiliation without any action by the Town to prevent such wrongful conduct in the future.

35. As a result of Defendants' wrongful conduct, Plaintiff has suffered economic injury, deprivation of constitutional rights, severe damage to his reputation, emotional distress, and has been otherwise injured.

SECOND COUNT

1. Plaintiff repeats the allegations of the First Count as if set forth at length.

2. Defendants' aforementioned retaliatory and wrongful actions involved political patronage discrimination and violated Plaintiff's right to freedom of political association, including his right to affiliate with Mayor Ellis.

3. Defendants retaliated against Plaintiff because of his constitutionally protected conduct in not supporting Defendants politically and to otherwise take action against Mayor Ellis and Plaintiff for political reasons. Defendants were further motivated by Plaintiff's constitutionally protected conduct in supporting Mayor Ellis. Defendants also attempted to interfere with Plaintiff's rights through intimidation and coercion.

4. Defendants' aforementioned retaliatory, coercive and other wrongful conduct is in violation of Article I, Paragraphs 1 and 18 of the New Jersey Constitution, which violations are made actionable by the NJCRA.

5. As a result of Defendants' wrongful conduct, Plaintiff has suffered economic injury, reputational injury, emotional distress, and has been otherwise injured.

THIRD COUNT

1. Plaintiff repeats the allegations of the First and Second Counts as if set forth at length.

2. Defendants deprived Plaintiff of a liberty interest in his reputation without due process of law in violation of rights protected by Article I, Paragraph 1 of the New Jersey Constitution. Plaintiff was publicly defamed, stigmatized and humiliated by Defendants at or about the time of the termination of Plaintiff's employment by Defendants.

3. Plaintiff's reputation is a protected liberty interest under the New Jersey Constitution, triggering required due process protections. Defendants deprived Plaintiff of reputational and liberty interests by stigmatizing Plaintiff and damaging his reputation in the course of the

termination of employment without due process. Plaintiff was not provided any required notice or process.

4. Defendants' conduct is in violation of the New Jersey Constitution and NJCRA.
5. As a result of Defendants' wrongful conduct, Plaintiff has been injured.

FOURTH COUNT

1. Plaintiff repeats the allegations of the First, Second and Third Counts as if set forth at length.

2. Defendants are guilty of libel, slander and defamation. Defendants had knowledge of or acted in reckless disregard as to the falsity of the publicized matters set forth above in the First Count.

3. Defendants also placed Plaintiff in a false light before the public and such false light would be highly offensive to a reasonable person. Such false light constituted an invasion of plaintiff's privacy.

4. As a result of Defendants' wrongful conduct, Plaintiff has been injured.

FIFTH COUNT

1. Plaintiff repeats the allegations of the First, Second, Third and Fourth Counts as if set forth at length.

2. The individual defendants agreed between and amongst themselves, conspired and otherwise colluded to retaliate against Plaintiff because of his aforementioned protected conduct and to deprive him of his rights in violation of the New Jersey Constitution and NJCRA.

3. As a result of Defendants' wrongful conduct, Plaintiff has been injured.

WHEREFORE, Plaintiff demands judgment against defendants, individually, jointly and severally, for back pay, front pay, compensatory damages, reputational injury damages, emotional

distress damages, damages for the violation of, and interference with, Plaintiff's constitutional rights, punitive damages, attorney's fees and costs, interest and any other relief the Court deems just and appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby requests a trial by jury as to all Counts and Issues.

CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)

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 R. 1:38-7(c).

RULE 4:5-1(c) DESIGNATION OF TRIAL COUNSEL

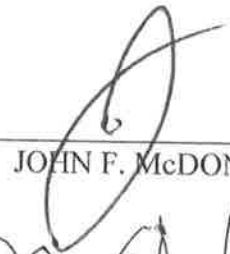
John F. McDonnell and Leonard J. Artigliere are hereby designated as trial counsel for Plaintiff.

RULE 4:5-1(b)(2) CERTIFICATION

I, the undersigned, certify that the matter in controversy is not the subject of any other action or arbitration proceeding and no such action or arbitration proceeding is contemplated. Further, I am not aware, at this time, of any other parties that should be joined in this action.

McDONNELL ARTIGLIERE

DATED: May 20, 2020

By: 
JOHN F. McDONNELL

By: 
LEONARD J. ARTIGLIERE

FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR, LLC

Susan A. Lawless, Esq.
NJ Attorney Id.: 026301994
235 Broubalow Way
Phillipsburg, New Jersey 08865
(908) 878-0136
Email: slawless@floriolaw.com

Counsel for Defendants, Town of Phillipsburg, Robert Fulper and Todd Tersigni

RICK THOMPSON,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: WARREN COUNTY
Plaintiff,	:	Docket No.: WRN-L-159-20
	:	
v.	:	<i>CIVIL ACTION</i>
	:	
TOWN OF PHILLIPSBURG, ROBERT FULPER, and TODD TERSIGNI,	:	ANSWER TO COMPLAINT, SEPARATE DEFENSES & JURY DEMAND
	:	
Defendants.	:	
	:	
	:	
	:	
	:	

Defendants Town of Phillipsburg (“Town”), Robert Fulper (“Fulper”), and Todd Tersigni (“Tersigni”), (collectively "Defendants"), by and through their attorneys, Florio Perrucci Steinhardt Cappelli Tipton & Taylor, LLC, in answer to the Complaint of Plaintiff, Rick Thompson (“Plaintiff”), say:

FIRST COUNT

1. Defendants admit that the Town is a municipality in the County of Warren, State of New Jersey, and that the Town is governed under the Mayor-Council Plan of the Faulkner Act, but neither admit nor deny the remaining allegations of paragraph 1 since same consist of statements or conclusions of law to which no response is required.

2. Defendants admit only that the Town is a municipality in the County of Warren, State of New Jersey, and that the Town is governed under the Mayor-Council Plan of the



Faulkner Act, but neither admit nor deny the remaining allegations of paragraph 2 since same consist of statements or conclusions of law to which no response is required.

3. Admitted.

4. Defendants admit only that its current Mayor, Defendant, Tersigni, began his term on January 1, 2020 and deny the remaining allegations as stated.

5. Defendants admit that the current party affiliation of the members of the Town Council is majority Republican but deny the remaining allegations of paragraph 5.

6. Defendants admit that Fulper is a Republican and has served on the Town Council since January 1, 2018 and has served as President of the Town Council.

7. Denied as stated and as being impertinent, abusive and immaterial pursuant to Rule 4:6-4(b). Plaintiff is left to his proofs.

8. Except to admit that Plaintiff was appointed Superintendent and/or Director of Recreation by former Mayor Stephen Ellis, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 8 and leave Plaintiff to his proofs.

9. Except to admit generally that Plaintiff is publicly well-known in the Town of Phillipsburg, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 9 and leave Plaintiff to his proofs.

10. Except to admit generally that Plaintiff is publicly well-known in the Town of Phillipsburg, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 10 and leave Plaintiff to his proofs.

11. Except to admit generally that Plaintiff is publicly well-known in the Town of Phillipsburg, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 11 and leave Plaintiff to his proofs.

12. Defendants neither admit nor deny the allegations of paragraph 12 characterizing or describing the mechanics of the Town's form of government since same consist of statements or conclusions of law to which no response is required. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 12 and leave Plaintiff to his proofs.

13. Defendant, Fulper, admits generally that he has championed the implementation of certain reforms; Defendants are, however, without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 13 and leave Plaintiff to his proofs.

14. Defendant, Fulper, admits generally that he has championed the implementation of certain reforms; Defendants are, however, without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations made in paragraph 14 and leave Plaintiff to his proofs.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 15 of the Complaint and leave Plaintiff to his proofs.

16. Defendant, Fulper admits that he has repeatedly and publicly raised his vehement support for reforms which would not only preclude any person having a criminal record, especially one that involved sexual misconduct perpetrated against a minor, from participating in

any way with youth recreation leagues but also would make mandatory background searches to identify such persons. The remaining allegations made in paragraph 16 are denied and Plaintiff is left to his proofs.

17. Defendant, Fulper denies the allegations made in paragraph 17. The remaining Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 17 of the Complaint and leave Plaintiff to his proofs.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 18 of the Complaint and leave Plaintiff to his proofs.

19. Denied as stated. Plaintiff is left to his proofs.

20. The letter referenced in paragraph 20, being a writing, speaks for itself.

21. The letter referenced in paragraph 21, being a writing, speaks for itself. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations made in paragraph 21 of the Complaint and leave Plaintiff to his proofs.

22. Except to admit that a lawful request for assistance was made to the local police on the date set forth in the corresponding paragraph of Plaintiff's Complaint, Defendants deny the remaining allegations made in paragraph 22 of the Complaint and leave Plaintiff to his proofs.

23. Except to admit that the police responded to the aforementioned lawful request for assistance, Defendants are without knowledge or information to form a belief as to the truth or falsity of the remaining allegations made in paragraph 23 of the Complaint and leave Plaintiff to his proofs.

24. The articles referenced in paragraph 24 and Exhibit "A" to Plaintiff's Complaint, being writings, speaks for themselves. Defendant, Tersigni denies the remaining allegations made in paragraph 24 of the Complaint and leaves Plaintiff to his proofs.

25. Except to admit that Defendant Tersigni appointed a new Director of Recreation on the date set forth in the corresponding paragraph of Plaintiff's Complaint, through a lawful exercise of his Mayoral authority, the remaining allegations made in paragraph 25 of the Complaint are denied and Plaintiff is left to his proofs.

26. Except to admit that a meeting took place on the date set forth in the corresponding paragraph of Plaintiff's Complaint, Defendant, Tersigni denies the remaining allegations made in paragraph 26. Plaintiff is left to his proofs.

27. Other than to admit that a pod cast occurred on the date set forth in the corresponding paragraph in Plaintiff's Complaint, the remaining allegations made therein are denied as stated. Plaintiff is left to his proofs.

28. The allegations made in paragraph 28 of Plaintiff's Complaint same consist of statements or conclusions of law to which no response is required. Plaintiff is left to his proofs.

29. Denied.

30. Denied.

31. Denied.

32. The allegations made in paragraph 32 of Plaintiff's Complaint same consist of statements or conclusions of law to which no response is required. Plaintiff is left to his proofs.

33. The allegations made in paragraph 33 of Plaintiff's Complaint same consist of statements or conclusions of law to which no response is required. Plaintiff is left to his proofs.

34. The allegations made in paragraph 34 of Plaintiff's Complaint same consist of statements or conclusions of law to which no response is required. Plaintiff is left to his proofs.

35. Denied.

SECOND COUNT

1. Defendants repeat each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

2. Denied.

3. Denied.

4. The allegations made in paragraph 4 of the Second Count of Plaintiff's Complaint consist of statements or conclusions of law to which no response is required. Plaintiff is left to his proofs.

THIRD COUNT

1. Defendants repeat each and every response contained in the above paragraphs and prior Counts and incorporate same herein as if set forth at length.

2. The allegations made in paragraph 2 of the Third Count of Plaintiff's Complaint consist of statements or conclusions of law to which no response is required, though Defendants deny all allegations of wrongdoing. Plaintiff is left to his proofs.

3. The allegations made in paragraph 3 of the Third Count of Plaintiff's Complaint consist of statements or conclusions of law to which no response is required, though Defendants deny all allegations of wrongdoing. Plaintiff is left to his proofs.

4. The allegations made in paragraph 4 of the Third Count of Plaintiff's Complaint consist of statements or conclusions of law to which no response is required, though Defendants deny all allegations of wrongdoing. Plaintiff is left to his proofs.

5. Denied.

FOURTH COUNT

1. Defendants repeat each and every response contained in the above paragraphs and prior Counts and incorporate same herein as if set forth at length.

2. The allegations made in paragraph 2 of the Fourth Count of Plaintiff's Complaint consist of statements or conclusions of law to which no response is required, though Defendants deny all allegations of wrongdoing. Plaintiff is left to his proofs.

3. The allegations made in paragraph 3 of the Fourth Count of Plaintiff's Complaint consist of statements or conclusions of law to which no response is required, though Defendants deny all allegations of wrongdoing. Plaintiff is left to his proofs.

4. Denied.

FIFTH COUNT

1. Defendants repeat each and every response contained in the above paragraphs and prior Counts and incorporate same herein as if set forth at length.

2. The allegations made in paragraph 2 of the Fifth Count of Plaintiff's Complaint consist of statements or conclusions of law to which no response is required, though Defendants deny all allegations of wrongdoing. Plaintiff is left to his proofs.

3. Denied.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding Defendants reasonable attorney's fees, costs of suit and such other and further relief as the Court may deem appropriate.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by the failure to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

Any claims by Plaintiff for emotional or physical injuries are barred by the exclusive remedy provision of the New Jersey Workers' Compensation Act.

THIRD SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

FOURTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTH SEPARATE DEFENSE

Any action taken by the Defendants is protected by an absolute and/or qualified privilege.

SIXTH SEPARATE DEFENSE

Defendants claim all rights, privileges and immunities afforded Defendants under both federal and state law, inclusive of the New Jersey Tort Claims Act.

SEVENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the New Jersey Tort Claims Act.

EIGHTH SEPARATE DEFENSE

Any action, or failure to act, on the part of Defendants was in the nature of the discretionary activity within the meaning of N.J.S.A. 59:2-3 and, accordingly, no liability may be imposed on Defendants.

NINTH SEPARATE DEFENSE

Any and all injuries sustained by Plaintiff are the result of her own negligence and/or misconduct or the actions of third parties or circumstances or situations over which Defendants had no control.

TENTH SEPARATE DEFENSE

Defendants acted at all times in good faith and without malice.

ELEVENTH SEPARATE DEFENSE

Plaintiff's damage claims are barred by the absence of damage.

TWELFTH SEPARATE DEFENSE

Plaintiff's claims for damages are barred, in whole or in part, by Plaintiff's failure to reasonably mitigate damages, if any.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, based on his failure to timely file a prerogative writ action.

FOURTEENTH SEPARATE DEFENSE

Defendants acted at all times for legitimate, non-discriminatory and non-retaliatory and lawful reasons.

FIFTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by her failure to exhaust his remedies under the grievance provisions of the collective negotiations' agreement.

SIXTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred by reason of her failure to avail himself of all administrative and contractual remedies and/or arbitrations.

SEVENTEENTH SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part because the complained of actions, to the extent they occurred, were not arbitrary, capricious, irrational, or otherwise improper, but instead, were motivated by legitimate interests.

EIGHTEENTH SEPARATE DEFENSE

Plaintiff did not sustain any violation of his civil rights pursuant to a governmental policy, practice, or custom.

NINETEENTH SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim for punitive damages against Defendants.

TWENTIETH SEPARATE DEFENSE

Defendants have not committed any violation of Plaintiff's rights under state law.

TWENTY-FIRST SEPARATE DEFENSE

The alleged acts of Defendants do not rise to the level of a constitutional violation, and therefore, Plaintiff did not suffer any infringement of her constitutional rights and/or such constitutional violations are not pled with sufficient particularity to support any claim.

TWENTY-SECOND SEPARATE DEFENSE

The alleged conduct did not violate clearly established statutory and/or constitutional rights of which a reasonable person would have known.

TWENTY-THIRD SEPARATE DEFENSE

The statements actually attributable to any one of the Defendants and upon which Plaintiff's claims of defamation/libel/false light are based are not capable of a defamatory meaning as a matter of law.

TWENTY-FOURTH SEPARATE DEFENSE

Defendants reserve the right to amend its Answer to insert additional defenses and/or supplement, alter, or change its Answer upon revelation of more definite facts by Plaintiff; upon the completion of further discovery and/or investigation; and/or based upon after acquired evidence.

WHEREFORE, Defendants demand judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding Defendants reasonable attorney's fees, costs of suit and such other and further relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, **SUSAN A. LAWLESS** is designated as trial counsel in this matter.

RULE 4:6-1 CERTIFICATION

I hereby certify that the within pleading was served within the time period provided by R. 4:6-1(a), or as extended by Stipulation.

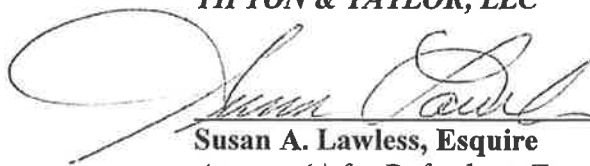
RULE 1:38-7(b) CERTIFICATION

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).

RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge and information, the matter in controversy is not the subject of any other pending action or arbitration proceeding and no other proceeding is contemplated. At the present, I do not know of any other party who should be joined in this action. This certification is made subject to further investigation and discovery.

***FLORIO PERRUCCI STEINHARDT CAPPELLI
TIPTON & TAYLOR, LLC***

A handwritten signature in cursive script, appearing to read "Susan Lawless", is written over a horizontal line.

Susan A. Lawless, Esquire

*Attorney(s) for Defendants Town of Phillipsburg, Robert
Fulper and Todd Tersigni*

Date: August 28, 2020

FLORIO PERRUCCI STEINHARDT CAPPELLI TIPTON & TAYLOR, LLC

Susan A. Lawless, Esq.
NJ Attorney Id.: 026301994
235 Broubalow Way
Phillipsburg, New Jersey 08865
(908) 878-0136
Email: slawless@floriolaw.com


Counsel for Defendants, Town of Phillipsburg, Robert Fulper and Todd Tersigni

RICK THOMPSON,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: WARREN COUNTY
Plaintiff,	:	Docket No.: WRN-L-159-20
	:	
v.	:	<i>CIVIL ACTION</i>
	:	
TOWN OF PHILLIPSBURG, ROBERT	:	CERTIFICATE OF SERVICE
FULPER, and TODD TERSIGNI,	:	
	:	
Defendants.	:	
	:	
	:	
	:	
	:	
	:	

I, Susan A. Lawless, Esquire, hereby certify that on August 28, 2020, DEFENDANTS' ANSWER, SEPARATE DEFENSES, DESIGNATION OF TRIAL COUNSEL and JURY DEMAND was served, via electronic filing, on counsel as follows:

John F. McDonnell, Esquire, johnmcdonnellesq@hotmail.com
McDonnell Artigliere
60 Youmans Avenue
Washington, New Jersey 07882
Attorney(s) for Plaintiff, Rick Thompson

**FLORIO, PERRUCCI, STEINHARDT
CAPPELLI TIPTON & TAYLOR, LLC**

By: 
Susan A. Lawless, Esquire
*Attorney(s) for Defendants Town of
Phillipsburg, Robert Fulper and Todd
Tersigni*

Dated: August 28, 2020

Civil Case Information Statement

Case Details: WARREN | Civil Part Docket# L-000159-20

Case Caption: THOMPSON VS FULPER ET AL *FEE SHIFT*

Case Initiation Date: 05/20/2020

Attorney Name: SUSAN A LAWLESS

Firm Name: FLORIO PERRUCCI STEINHARDT CAPPELLI
TIPTON & TAYLOR LLC

Address: 60 W BROAD ST STE 102
BETHLEHEM PA 18018

Phone: 6106917900

Name of Party: DEFENDANT : TERSIGNI, TODD

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: CIVIL RIGHTS

Document Type: Answer

Jury Demand: YES - 12 JURORS

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: RICK THOMPSON? 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)

08/28/2020

Dated

/s/ SUSAN A LAWLESS

Signed

1-7 pgs.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

WHEREAS, Richard (“Rick”) Thompson (hereinafter referred to as “Thompson” or “Plaintiff”), having filed a complaint against his former employer, Town of Phillipsburg, the Town’s Mayor, Todd Tersigni, and Council Member, Robert Fulper (collectively “Defendants”), in the Superior Court of New Jersey, Law Division, Warren County bearing Docket No. WRN-L-159-2020, asserting claims arising out of and relating to Plaintiff’s employment with the Town (hereinafter the “Litigation”); and

WHEREAS, Thompson and the Defendants (hereinafter jointly referred to as the “parties”) seek to amicably resolve any and all matters in controversy, disputes, causes of action, grievances, claims, contentions and differences between them; and

WHEREAS, the Defendants, including their predecessors, successors, assigns, and representatives, and all of their present and former elected officials, officers, agents, directors, supervisors, attorneys, insurers, reinsurers, employees, and each and every one of them and their heirs, executors, administrators, successors, and assigns, and all persons acting by, through, under or in concert with any of them (hereinafter “Releasees”), believe they acted lawfully and properly at all times and in all respects and specifically deny any and all liability for the claims asserted by Thompson, comply in good faith to its insurance carrier’s desire to avoid the legal fees and expenses that necessarily will result from further litigation; and

WHEREAS, the parties, who have received independent legal advice in this matter, wish to settle the litigation in a manner that will obviate the need for further litigation of the above-mentioned action and will preclude the bringing of any other claim, cause, proceeding or action



against Releasees by providing Thompson with an amount of money that will recompense him for any and all of his respective claims, including his respective costs and attorneys' fees;

NOW, THEREFORE, in consideration of the total gross sum of ONE HUNDRED FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$115,000.00) as damages for Thompson's claims and his attorneys' fees, the parties have reached a full and final compromise and settlement of any and all matters in controversy, and Plaintiff hereby agrees as follows:

1. **RELEASE FROM THOMPSON:** Plaintiff irrevocably and unconditionally releases and forever discharges, for himself, his heirs, beneficiaries, executors, administrators, representatives, successors and assigns, Releasees from any and all manner of action and actions, cause and causes of action, suits, claims, grievances, debts, sums of money, accounts, reckonings, bonds, bills, claims for attorneys' fees, interest, expenses and costs, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands of any nature whatsoever known or unknown, suspected or unsuspected, in law or in equity, civil or criminal, vested or contingent, which Thompson ever had, now has or asserts against Releasees, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date hereof, including, though not by way of limitation, all matters which were asserted or could have been asserted in all actions or claims identified above or any matter arising out of Thompson's employment with the Town of Phillipsburg, and any other state or federal statutory, constitutional, contract or common law claims. This releases all claims, including those of which Thompson is presently not aware and those not mentioned in this Release.

2. **DISMISSAL OF ACTION:** Thompson understands and agrees that this Agreement terminates the above-referenced litigation with prejudice and any and all claims related to the facts giving rise to the litigation.

3. **FEES AND COSTS:** Thompson further understands and agrees that the parties are to bear their own fees and costs and that neither is a prevailing party under any applicable law, statute or regulation.

4. **PAYMENT:** Thompson understands that, in consideration for the promises and agreements set forth herein, the Releasees agree to pay to Thompson the gross amount of ONE HUNDRED FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$115,000.00) payable as follows:

One check made payable to McDonnell Artigliere, in the amount of \$46,285.78 for attorneys' fees and litigation costs; and

One check made payable to Richard Thompson in the amount of \$68,714.22.

The aforementioned payment to Plaintiff shall be paid subject to a Form 1099.

Thompson further understands and agrees that the payment of the monies herein set forth does not constitute an admission of liability or violation of any applicable law, contract provisions, benefit plan, rule nor regulation, as to which Releasees expressly deny any such liability or violation and that the Defendants' have only agreed to resolve the litigation in good faith at the recommendation and decision of its insurance carrier. Payment of the money set forth herein will not be due and owing until thirty (30) days after (a) the executed Settlement Agreement and Release is received by Susan A. Lawless, Esq., from Thompson and (b) the completed and executed W-9 form is received by Susan A. Lawless, Esq.

5. ***INCOME TAXATION:*** Thompson understands and agrees that payment of monies herein set forth is in the nature of compensation for any and all claims including, but not limited to, alleged wages, personal injuries (pain and suffering), emotional distress injuries, and attorneys' fees and costs claimed by him. **Thompson has full and complete responsibility for any taxes, penalties or assessments of any kind, which may become due in connection with payments made under this Agreement for which Defendants did not withhold taxes.**

Thompson understands that certain taxing authorities may, subsequent to this Agreement, characterize payments made under this Agreement in a manner different from that which is intended by the parties and reflected in this Agreement. Thompson agrees to accept full, complete, sole and entire responsibility for any tax liability, interest or penalty that may be assessed against or incurred by the Releasees as a result of not withholding taxes on any monies paid pursuant to this Agreement, and Thompson agrees to indemnify and hold harmless and pay to the Releasees an amount equal to such tax liability, interest or penalty, including Releasees' share of FICA should it be assessed against the Releasees for payments which Defendants' insurance carrier issued a Form 1099.

6. ***MEDICARE REPRESENTATION:*** Thompson represents that he is Medicare eligible, that he is enrolled and that Medicare has not (pursuant to 42 U.S.C. § 1395y(b) and the corresponding regulations) made any conditional payments for medical services or items provided to him and arising from or relating to any claim, accident, occurrence, act, error, omission, bodily injury, disease, loss, or damages that are subject to the settlement and release herein. **Thompson agrees to defend, indemnify, and hold harmless Releasees from any and all claims arising from or relating to Medicare claims.**

7. **SATISFACTION OF LIENS:** Thompson asor agrees to assume responsibility for satisfaction of any and all rights to payment, claims, or liens of any kind that arise from or are related to payments made on his behalf. Releasor further agrees and acknowledges that he will satisfy and indemnify and hold Releasees harmless from any and all liability arising from liens and/or subrogation claims (equitable or otherwise) for all medical payments, medical benefits, income loss benefits, workers' compensation, governmental benefits (including, but not limited to, any payments received from the for the Centers for Medicare & Medicaid Services as referenced in paragraph 6 above), attorneys' and/or tax liens and/or other claims due or claimed to be due under law, state or federal regulations or contract, arising from or relating to those matters described in the Litigation and/or the consideration paid herein as they relate to Thompson. Releasor further agrees to defend, indemnify and hold harmless Releasees against any and all liabilities, costs or expenses, including reasonable attorney's fees and costs (to be paid as incurred) and interest or penalties incurred as a result of any claim or demand asserted by any taxing authority relating to Releasees' payment to Releasor of the agreed-upon settlement amount, including but not limited to the failure of Releasees to withhold taxes or other withholdings from any portion thereof, or Releasor's failure to report income and/or to pay applicable income or other taxes on any portion of the settlement amount.

8. **CONSIDERATION:** Thompson acknowledges that the only consideration for signing this Agreement is as set forth in this Agreement, that the consideration received for executing this Agreement is greater than that ordinarily provided by Releasees under any contract, severance plan, policy or practice; that no other promises of any kind have been made to him by any person or entity whatsoever to cause him sign this Agreement; that he is competent to execute this Agreement; and he has been advised and given the opportunity to consult advisors, legal and

otherwise, of his own choosing; and that he fully understands the meaning and intent of this Agreement. Thompson specifically represents that he has been represented in this matter by the McDonnell Artigliere, P.C. and this Agreement has been explained to him by his counsel.

9. **CHOICE OF LAW AND FORUM:** The Agreement shall in all respects be interpreted, enforced, governed under the substantive and procedural laws of the State of New Jersey, without regard to principles of conflicts of law. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the parties. The parties consent and stipulate to the personal jurisdiction of the State of New Jersey in any subsequent proceeding to enforce this Agreement.

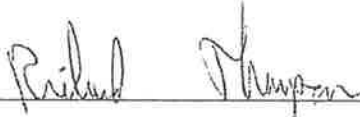
10. **INVALIDITY:** Should any provisions of this Agreement be declared to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be part of this Agreement.

11. **ENTIRE AGREEMENT:** This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements or understandings, written or oral, between the parties hereto pertaining to the subject matter hereto. Thompson represents and acknowledges that in executing this Agreement he does not rely and has not relied upon any representation or statement made by any of the Releasees or by any of the Releasees' agents, representatives or attorneys, with regard to the subject matter or effect of this Agreement or otherwise, other than as specifically stated in this written Agreement. Thompson further declares that in making this Settlement Agreement and General Release he relies entirely upon his own judgment, belief and interests and the advice of his counsel.

12. **NO COERCION:** Thompson acknowledges that he has executed this Agreement after consulting with his attorneys and considering the terms of the Agreement. Thompson further acknowledges that he has read this Agreement in its entirety, understands all of the terms and freely, voluntarily and knowingly, without duress or coercion, assents to all the terms and conditions contained herein.

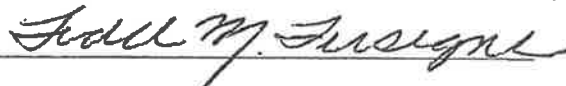
By signing below, Thompson indicates that he has carefully read and understands the terms of this Agreement, that he enters into this Agreement knowingly, voluntarily and of his own free will, and that he understands its terms and significance and intends to abide by its provisions without exception.

Dated: 3/22/21


RICHARD ("RICK") THOMPSON

Dated: 3/24/2021

BY:


TODD M. TERSIGNI, Mayor
Town of Phillipsburg.

McDONNELL ARTIGLIERE
John F. McDonnell, Esq. (ID No. 000871984)
Leonard J. Artigliere, Esq. (ID No. 015431985)
60 Youmans Avenue
Washington, NJ 07882
(908) 689-5885
Attorneys for Plaintiff

RICK THOMPSON,
Plaintiff,

v.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: WARREN COUNTY
DOCKET NO.: WRN-L-159-20

Civil Action

TOWN OF PHILLIPSBURG, ROBERT
FULPER and TODD TERSIGNI,
Defendants.

STIPULATION OF DISMISSAL
WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for Plaintiff, Rick Thompson ("Plaintiff") and Defendants Town of Phillipsburg, Robert Fulper and Todd Tersigni ("Defendants") that all claims identified in Plaintiff's Complaint and between the parties are hereby dismissed with prejudice.

McDONNELL ARTIGLIERE
Attorneys for Plaintiff

John F. McDonnell, Esq.

Dated: March 22, 2021

FLORIO PERRUCCI STEINHARDT
CAPPELLI TIPTON & TAYLOR, LLC
Attorneys for Defendants

Susan A. Lawless, Esq.

Dated: March 31, 2021



Case Summary

Case Number: WRN L-000057-18

Case Caption: Ellis Vs Town Of Phillipsburg Et Al*Jhp Recused*

Court: Civil Part

Venue: Warren

Case Initiation Date: 02/26/2018

Case Type: Tort-Other

Case Status: Disposed

Jury Demand: 6 Jurors

Case Track: 2

Judge: Thomas C Miller

Team: 1

Original Discovery End Date: 04/01/2019

Current Discovery End Date: 04/01/2019

of DED Extensions: 0

Original Arbitration Date:

Current Arbitration Date:

of Arb Adjournments: 0

Original Trial Date: 08/05/2019

Current Trial Date:

of Trial Date Adjournments: 1

Disposition Date: 09/04/2019

Case Disposition: Summary Judgment

Statewide Lien:

Plaintiffs

Stephen R Ellis

Party Description: Individual

Attorney Name: John Marwan Zaiter

Address Line 1: 43 Broad Street

Address Line 2:

Attorney Bar ID: 027112001

City: Washington

State: NJ

Zip: 07882

Phone: (908) 689-0992

Attorney Email: JMZ@BFZ-LEGAL.COM

Defendants

Blaine Fehley

Party Description: Individual

Attorney Name:

Address Line 1: 237 Bohay Street

Address Line 2:

Attorney Bar ID:

City: Phillipsburg

State: NJ

Zip: 08865

Phone:

Attorney Email:

Town Of Phillipsburg

Party Description: Municipality

Attorney Name: Padraig Pearse Flanagan

Address Line 1: 120 Marshall Street

Address Line 2:

Attorney Bar ID: 021531999

City: Phillipsburg

State: NJ

Zip: 08865

Phone:

Attorney Email: PAT@PPFLAWFIRM.COM

Robert Fulper

Party Description: Individual

Attorney Name:

Address Line 1: 941 Mill Street

Address Line 2:

Attorney Bar ID:

City: Phillipsburg

State: NJ

Zip: 08865

Phone: (908) 329-7988

Attorney Email:

Case Proceeding

Created Date	Scheduled Time	Court Room	Judge Name	Proceeding Description	Motion Type	Proceeding Status	Motion Status
03/15/2019	09:00	04		MOTION HEARING	MOTION VACATE DEFAULT/EXTEND TIME ANSWER	RSCHED	
03/15/2019	09:00	04		MOTION HEARING	MOTION VACATE DEFAULT/EXTEND TIME ANSWER	COMPLETED	CM
03/29/2019	09:00	04		MOTION HEARING	MOTION VACATE DEFAULT/EXTEND TIME ANSWER	RSCHED	
05/24/2019	09:00	04		MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	RSCHED	
05/24/2019	09:00	HCH1		MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	COMPLETED	CM
07/18/2019	09:00	HCH1		SETTLEMENT CONFERENCE		ADJ DSGCN	
08/05/2019	09:00	HCH1		TRIAL		ADJ CONF & ADJ	
08/16/2019	09:00	HCH1		MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	RSCHED	

PLAINTIFFS'
EXHIBIT
9A

08/30/2019	09:00	HCH1		MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	RSCHED	
09/03/2019	09:00	HCH1		MOTION HEARING	MOTION FOR SUMMARY JUDGMENT	COMPLETED	CM

Case Actions

Filed Date	Docket Text	Transaction ID	Entry Date
02/26/2018	Complaint with Jury Demand for WRN-L-000057-18 submitted by ZAITER, JOHN MARWAN, BROSCIOUS, FISCHER & ZAITER on behalf of BROSCIOUS FISCHER & ZAITER against TOWN OF PHILLIPSBURG, BLAINE FEHLEY, ROBERT FULPER	LCV2018353773	02/26/2018
02/27/2018	TRACK ASSIGNMENT submitted by Case Management	LCV2018356642	02/27/2018
03/14/2018	AFFIDAVIT OF SERVICE submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against ROBERT FULPER	LCV2018466304	03/14/2018
03/21/2018	AFFIDAVIT OF SERVICE submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against TOWN OF PHILLIPSBURG	LCV2018505669	03/21/2018
04/30/2018	AFFIDAVIT OF SERVICE submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against BLAINE FEHLEY	LCV2018749748	04/30/2018
04/30/2018	REQUEST FOR DEFAULT submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against BLAINE FEHLEY, TOWN OF PHILLIPSBURG, ROBERT FULPER	LCV2018751674	04/30/2018
05/17/2018	STIPULATION OF DISMISSAL submitted by CAHILL, KERRY of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of TOWN OF PHILLIPSBURG against STEPHEN R ELLIS, BLAINE FEHLEY, ROBERT FULPER	LCV2018868752	05/17/2018
05/17/2018	STIPULATION TO EXTEND TIME FOR ANSWER submitted by CAHILL, KERRY of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of TOWN OF PHILLIPSBURG against STEPHEN R ELLIS, BLAINE FEHLEY, ROBERT FULPER	LCV2018868765	05/17/2018
05/17/2018	DEFICIENCY NOTICE: re: STIPULATION OF DISMISSAL [LCV2018868752] -Stipulation filed under wrong document type.	LCV2018869246	05/17/2018
05/18/2018	DEFICIENCY NOTICE: re: STIPULATION TO EXTEND TIME FOR ANSWER [LCV2018868765] -Wrong document description - you filed a stip to vacate default - not extend time to answer	LCV2018874568	05/18/2018
06/15/2018	Answer w/Jury Demand submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of TOWN OF PHILLIPSBURG against STEPHEN R ELLIS, BLAINE FEHLEY, ROBERT FULPER	LCV20181049696	06/15/2018
09/18/2018	MEDIATION Notice submitted by Case Management	LCV20181611174	09/18/2018
09/17/2018	Order To Refer To Mediator Without Stay - GRANTED by Judge PURSEL, JOHN, H	LCV20181620017	09/18/2018
01/21/2019	DISCOVERY END DATE REMINDER Notice submitted by Case Management	LCV2019124654	01/21/2019
02/07/2019	Mediation Unsuccessful submitted by Staff	LCV2019240173	02/07/2019
02/27/2019	Answer,w/Jury Demand uploaded by Case Management Staff submitted by ROBERT FULPER	LCV2019392795	03/04/2019
02/27/2019	Motion Vacate Default/Extend Time Answer uploaded by Case Management Staff submitted by ROBERT FULPER *LINKED FILING*	LCV2019393176	03/04/2019
03/04/2019	The motion filed on 02/27/2019 will be decided on 03/15/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION VACATE DEFAULT/EXTEND TIME ANSWER [LCV2019393176]	LCV2019393210	03/04/2019
03/05/2019	The motion filed on 02/27/2019 was rescheduled to 03/29/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION VACATE DEFAULT/EXTEND TIME ANSWER [LCV2019393176]	LCV2019399762	03/05/2019
03/05/2019	The motion filed on 02/27/2019 was rescheduled to 03/15/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION VACATE DEFAULT/EXTEND TIME ANSWER [LCV2019393176]	LCV2019399777	03/05/2019
03/05/2019	CLERK NOTICE: re: MOTION VACATE DEFAULT/EXTEND TIME ANSWER [LCV2019393176] -Please disregard return date changes - this was done in error and remains 3/15/19.	LCV2019399823	03/05/2019
03/07/2019	OPPOSITION TO MOTION submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against ROBERT FULPER *LINKED FILING*	LCV2019414821	03/07/2019
03/11/2019	Reply Brief uploaded by Case Management Staff submitted by ROBERT FULPER	LCV2019433828	03/11/2019
03/26/2019	ORDER VACATING DEFAULT AND EXTENDING TIME TO ANSWER - GRANTED by Judge	LCV2019535779	03/26/2019
04/26/2019	MOTION FOR SUMMARY JUDGMENT submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of TOWN OF PHILLIPSBURG against STEPHEN R ELLIS, BLAINE FEHLEY, ROBERT FULPER *LINKED FILING*	LCV2019741374	04/26/2019
05/10/2019	The motion filed on 04/26/2019 will be decided on 05/24/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR SUMMARY JUDGMENT [LCV2019741374]	LCV2019828111	05/10/2019
05/15/2019	OPPOSITION TO MOTION submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against TOWN OF PHILLIPSBURG *LINKED FILING*	LCV2019856666	05/15/2019
05/15/2019	REPLY BRIEF submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against TOWN OF PHILLIPSBURG *LINKED FILING*	LCV2019856691	05/15/2019
05/20/2019	REPLY BRIEF submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of TOWN OF PHILLIPSBURG against STEPHEN R ELLIS *LINKED FILING*	LCV2019885993	05/20/2019

05/23/2019	The motion filed on 04/26/2019 was rescheduled to 05/24/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR SUMMARY JUDGMENT [LCV2019741374]	LCV2019907804	05/23/2019
05/23/2019	CLERK NOTICE: re: MOTION FOR SUMMARY JUDGMENT [LCV2019741374] -Please be advised that the pending motion, currently returnable 05.24.2019, has been scheduled for ORAL ARGUMENT at 9:00 AM before the Hon. Thomas C. Miller, P.J.Cv. at the Somerset County Courthouse, Courtroom HCH1, 20 N. Bridge St., Somerville, NJ	LCV2019907853	05/23/2019
05/24/2019	COURT Notice submitted by Case Management	LCV2019916600	05/24/2019
05/24/2019	ORDER FOR SUMMARY JUDGMENT-Denied by Judge MILLER, THOMAS, C re: MOTION FOR SUMMARY JUDGMENT [LCV2019741374]	LCV2019974053	06/04/2019
07/09/2019	ADJOURNMENT REQUEST submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of TOWN OF PHILLIPSBURG against STEPHEN R ELLIS, BLAINE FEHLEY, ROBERT FULPER	LCV20191182658	07/09/2019
07/18/2019	MOTION FOR SUMMARY JUDGMENT submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against BLAINE FEHLEY, TOWN OF PHILLIPSBURG, ROBERT FULPER	LCV20191246640	07/18/2019
07/18/2019	The motion filed on 07/18/2019 will be decided on 08/16/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR SUMMARY JUDGMENT [LCV20191246640]	LCV20191251296	07/18/2019
07/26/2019	Correspondence submitted by Court	LCV20191305309	07/26/2019
07/29/2019	CLERK NOTICE: re: CORRESPONDENCE [LCV20191305309] -All Counsel are instructed by Judge Miller to submit Pre Trial Memos by noon on Wednesday, July 31, 2019 at the latest.	LCV20191310792	07/29/2019
07/31/2019	GENERAL CORRESPONDENCE submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of TOWN OF PHILLIPSBURG against STEPHEN R ELLIS, BLAINE FEHLEY, ROBERT FULPER	LCV20191334022	07/31/2019
08/01/2019	CLERK NOTICE: re: GENERAL CORRESPONDENCE [LCV20191334022] -All parties are instructed to appear before Hon. Michael J. Rogers, J.S.C on Monday, 8/5/19 at 9am.	LCV20191346725	08/01/2019
08/05/2019	CLERK NOTICE: re: GENERAL CORRESPONDENCE [LCV20191334022] -Per Hon. Michael J. Rogers, J.S.C, plaintiff attorney is instructed to file attorney fees submission by 8/15/19 and defense counsel is instructed to submit any response by 8/22/19.	LCV20191364642	08/05/2019
08/05/2019	The motion filed on 07/18/2019 was rescheduled to 08/30/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR SUMMARY JUDGMENT [LCV20191246640]	LCV20191367084	08/05/2019
08/14/2019	CERTIFICATION OF ATTORNEY FEES submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against BLAINE FEHLEY, TOWN OF PHILLIPSBURG, ROBERT FULPER	LCV20191438136	08/14/2019
08/19/2019	CLERK NOTICE: re: CERTIFICATION OF ATTORNEY FEES [LCV20191438136] - Pursuant to Mtn. for Summary Judgment	LCV20191468804	08/19/2019
08/21/2019	OPPOSITION TO MOTION submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of STEPHEN R ELLIS against TOWN OF PHILLIPSBURG	LCV20191488609	08/21/2019
08/30/2019	The motion filed on 07/18/2019 was rescheduled to 09/03/2019. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION FOR SUMMARY JUDGMENT [LCV20191246640]	LCV20191555559	08/30/2019
08/30/2019	CLERK NOTICE: re: MOTION FOR SUMMARY JUDGMENT [LCV20191246640] -Please be advised that the pending motion, currently returnable on 09.03.2019, has been scheduled for ORAL ARGUMENT at 8:30a on 09.03.2019 before the Hon. Thomas C. Miller, P.J.Cv. Parties are required to appear IN-PERSON.	LCV20191555567	08/30/2019
08/30/2019	GENERAL CORRESPONDENCE submitted by FISCHER, THOMAS, PAUL of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against BLAINE FEHLEY, TOWN OF PHILLIPSBURG, ROBERT FULPER	LCV20191556496	08/30/2019
08/30/2019	CLERK NOTICE: re: GENERAL CORRESPONDENCE [LCV20191556496] -Please note that the Motion currently scheduled for September 3, 2019 will be entertained by Judge Miller at 2:00 p.m.	LCV20191561176	08/30/2019
09/04/2019	Correspondence submitted by Court	LCV20191576650	09/04/2019
09/06/2019	5-DAY ORDER submitted by ZAITER, JOHN, MARWAN of BROSCIOUS, FISCHER & ZAITER on behalf of STEPHEN R ELLIS against BLAINE FEHLEY, TOWN OF PHILLIPSBURG, ROBERT FULPER	LCV20191595164	09/06/2019
09/12/2019	GENERAL CORRESPONDENCE submitted by FLANAGAN, PADRAIG, PEARSE of FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC on behalf of TOWN OF PHILLIPSBURG against STEPHEN R ELLIS, BLAINE FEHLEY, ROBERT FULPER	LCV20191637178	09/12/2019
09/12/2019	ORDER TO PAY COUNSEL FEES - GRANTED by Judge THOMAS C. MILLER, P.J., CV. re: 5-DAY ORDER [LCV20191595164]	LCV20191638692	09/12/2019
09/13/2019	ORDER TO PAY COUNSEL FEES - GRANTED by Judge THOMAS C. MILLER, P.J., CV.	LCV20191647631	09/13/2019
09/04/2019	Order For Summary Judgment - DENIED by Judge MILLER, THOMAS, C	LCV20191726058	09/24/2019
09/24/2019	CLERK NOTICE: re: ORDER FOR SUMMARY JUDGMENT [LCV20191726058] -This order was uploaded in error. The summary judgment order was granted, not denied.	LCV20191729678	09/24/2019
09/04/2019	Order For Summary Judgment - GRANTED by Judge MILLER, THOMAS, C	LCV20191729812	09/24/2019

BROSCIOUS, FISCHER & ZAITER

A Professional Corporation

43 Broad Street

Washington, New Jersey 07882

(908) 689-0992

John M. Zaiter, Esq. - ID#027112001

Attorneys for Plaintiff

STEPHEN R. ELLIS,

Plaintiff,

v.

TOWN OF PHILLIPSBURG,

BLAINE FEHLEY, and

ROBERT FULPER,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - WARREN COUNTY**

DOCKET NO.

CIVIL ACTION

COMPLAINT

Plaintiff, Stephen R. Ellis, by and through his Attorneys, Broscius, Fischer & Zaiter, against the Town of Phillipsburg says:

1. Plaintiff is an adult individual and at all relevant times herein was and still is the elected Mayor of the Town of Phillipsburg.
2. The Defendant, Town of Phillipsburg, maintains an address of 120 Marshall Street, Phillipsburg, Warren County, New Jersey, 08865.
3. Defendant Blaine Fehley is an adult individual who resides at 237 Bohay Street, Phillipsburg, New Jersey, 08865.
4. Defendant Robert Fulper is an adult individual who resides at 17 Marshall Street, Phillipsburg, New Jersey, 08865.



5. On or about April 13, 2017, Mayor Ellis was charged by a private Criminal Complaint in Phillipsburg Municipal Court with violations of N.J.S.A. 2C:33-4(C) (Harassment), 2C:12-1(a) (Simple Assault) and 2C:12-3(b) (Terroristic Threats).

6. Upon information and belief Probable Cause was not found for the issuance of the Complaints.

7. Because the Town of Phillipsburg could not hear Plaintiff's case, the matter was transferred to Union Township Municipal Court, 1370 Route 31 North, Annandale, New Jersey, Hunterdon County.

8. The charges stem from events that took place at a Phillipsburg Town Council meeting on or about April 4, 2017.

9. Plaintiff was in attendance at the April 4, 2017 meeting, wherein he advised the Defendant, Blaine Fehley, to stay away from his family.

10. Defendant, Robert Fulper, recorded the events of April 4, 2017 and provided a written statement.

11. Defendant, Robert Fulper, in his statement indicated that Plaintiff "poked" Defendant Fehley in the chest. Defendant Robert Fulper provided his written statement to Defendant Fehley in support of Defendant Fehley's Private Citizen charges filed against Plaintiff.

12. All of the charges filed against the Plaintiff were dismissed by the State.

COUNT I

13. Plaintiff repeats paragraph 1-12 of this Complaint as if set forth at length herein.

14. Plaintiff incurred legal fees in the amount of \$9,275.00 for the charges that were filed with the Phillipsburg Municipal Court.

15. Section 27-4(a) of the Municipal Code for the Town of Phillipsburg, the Town is required to reimburse the Mayor for the cost of defending any criminal actions, including counsel fees and expenses together with costs of appeal, if any.

16. Plaintiff was acting in his official capacity on April 4, 2017 as Mayor of the Town of Phillipsburg.

17. In said capacity the Mayor did not commit any criminal acts, yet criminal charges were brought against him. The charges were ultimately dismissed.

18. Plaintiff has requested reimbursement of his legal fees from the Town pursuant to Town Code Section 27-4(a) on multiple occasions.

19. Despite repeated demands, the Town of Phillipsburg has refused to reimburse the Plaintiff for the costs of defending his criminal action despite being advised by its legal counsel that it is "crystal clear" and that it is a "covered claim" and that the fees should be paid and despite the clear language in its own Code.

WHEREFORE, Plaintiff demands judgment for counsel fees and costs together with counsel fees and costs incurred in attempting to collect the reimbursement and such other relief as the Court deems equitable and just.

COUNT II

BAD FAITH

Stephen Ellis v. Town of Phillipsburg

20. Plaintiff incorporated paragraphs 1-19 of the Complaint as set forth herein at length.

21. Defendant, Town of Phillipsburg, is required to reimburse Plaintiff for the expenses he incurred in defending the charges brought against him and subsequently dismissed.

22. All bills demands and demands for payment have been forwarded to Defendant, Town of Phillipsburg, for payment.

23. Plaintiff has provided Defendant, Town of Phillipsburg, with adequate notice pursuant to his obligations under the Ordinance.

24. Defendant, Town of Phillipsburg, with malice and bad faith refused to and failed to reimburse Plaintiff and disclaimed responsibility, with reckless disregard for the terms of its own Ordinance.

25. As a direct and proximate result Plaintiff has expended and will continue to expend large sums of money for counsel fees and other costs associated with Defendant, Town of Phillipsburg's denial of reimbursement.

WHEREFORE, Plaintiff demands judgment for damages, including but not limited to punitive damages, counsel fees and costs incurred in attempting to collect the reimbursement and such other relief as the Court deems equitable and just.

COUNT III
Stephen Ellis v. Robert Fulper
BREACH OF FIDUCIARY DUTY

26. Plaintiff incorporated paragraphs 1-25 of the Complaint as set forth herein at length.

27. Defendant, Robert Fulper, is a member of the Council for the Town of Phillipsburg.

28. Prior to being elected to that position, Defendant Fulper provided a statement in support of Defendant Fehley's frivolous criminal action.

29. By refusing to recuse himself from the discussion regarding reimbursement of the Plaintiff's counsel fees, Defendant Fulper has violated his fiduciary responsibility to the Town of Phillipsburg and its citizens.

30. Defendant Fulper by engaging in discussions and voting on matters that he was directly involved in has violated the ethical standards listed in Section 53-5 of the Phillipsburg Municipal Code.

31. As a direct and proximate result of these violations, Plaintiff has been damaged and continues to be damaged by incurring large sums of counsel fees and other costs associated with Defendant Fulper's conduct.

WHEREFORE, Plaintiff demands judgment for counsel fees and costs pursuant to Section 27-4(c) of Phillipsburg Municipal Code together with counsel fees and costs incurred in attempting to collect the reimbursement and such other relief as the Court deems equitable and just.

COUNT IV

Stephen Ellis v. Blaine Fehley and Robert Rulper
MALICIOUS PROSECUTION

32. Plaintiff incorporated paragraphs 1-31 of the Complaint as set forth herein at length.

33. Upon information and belief, Defendant, Blaine Fehley, filed criminal charges against Plaintiff at the Town of Phillipsburg's Municipal Court.

34. Defendant, Blaine Fehley, alleged that Plaintiff violated the following Statutes:

- (a) N.J.S.A. 2C:33-4(c);
- (b) N.J.S.A. 2C:12-1(a); and
- (c) N.J.S.A. 2C:12-3(b).

35. Upon information and belief the charges were transferred to the Union Township Municipal Court, in Hunterdon County, New Jersey.

36. All of the charges were dismissed with prejudice, as the charges lacked reasonable and/or probable cause.

37. Upon information and belief Defendant, Blaine Fehley, entered into an Agreement with Defendant Robert Fulper to maliciously prosecute the Defendant.

38. Upon information and belief Defendant Fehley committed the unlawful act of malicious prosecution in furtherance of that agreement.

39. As a direct and proximate cause of Defendants' conduct, Blaine Fehley and/or Defendant Robert Fulper, individually, separately and/or in collusion, Plaintiff has suffered damages including but not limited to legal costs.

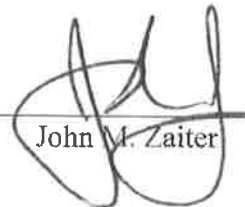
40. Defendant Blaine Fehley and Defendant Robert Fulper acted with malice.

WHEREFORE, Plaintiff demands judgment against Defendant Fulper and Defendant Fehley, individually and/or severally, together with counsel fees, consequential damages, punitive damages and all other relief the court deems equitable and just.

Dated: *2/26/18*

BROSCIOUS, FISCHER & ZAITER
Attorneys for Plaintiff

By



John M. Zaiter

Civil Case Information Statement

Case Details: WARREN | Civil Part Docket# L-000057-18

Case Caption: BROSCIOUS FISCHER & ZAITER VS
TOWN OF PHILLIPSB

Case Initiation Date: 02/26/2018

Attorney Name: JOHN MARWAN ZAITER

Firm Name: BROSCIOUS, FISCHER & ZAITER

Address: 43 BROAD ST
WASHINGTON NJ 07882

Phone:

Name of Party: PLAINTIFF : BROSCIOUS FISCHER &
ZAITER

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: TORT-OTHER

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

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

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? YES

If yes, is that relationship: Business

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:

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)*

02/26/2018
Dated

/s/ JOHN MARWAN ZAITER
Signed

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC

Pádraig P. Flanagan, Esq.

Attorney ID: 021531999

235 Broubalow Way

Phillipsburg, New Jersey 08865

(908) 454-8300

Counsel for Defendant, Town of Phillipsburg

STEPHEN ELLIS,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION: WARREN COUNTY
v.	:	Docket No.: WRN-L-57-18
	:	<i>CIVIL ACTION</i>
TOWN OF PHILLIPSBURG, BLAINE	:	ANSWER TO COMPLAINT,
FEHLEY, and ROBERT FULPER,	:	SEPARATE DEFENSES
Defendants.	:	& JURY DEMAND

Defendant, Town of Phillipsburg (“Town”), by and through its attorneys, Florio Perrucci Steinhardt & Cappelli, LLC, in answer to the Complaint of Plaintiff, Stephen Ellis (“Plaintiff”), say:

1. The Town admits the allegations of paragraph 1.
2. The Town admits the allegations of paragraph 2.
3. The Town is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 3 and leave Plaintiff to his proofs.
4. The Town admits the allegations of paragraph 4.
5. The Town is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 5 and leave Plaintiff to his proofs.
6. The Town is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 6 and leave Plaintiff to his proofs.



7. The Town is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 7 and leave Plaintiff to his proofs.

8. The Town is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 8, except to admit that Plaintiff's counsel communicated same to Town Council, and therefore, leave Plaintiff to his proofs.

9. The Town is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9, except to admit that Plaintiff's counsel asserted same to Town Council, and leave Plaintiff to his proofs.

10. The Town admits the allegations of paragraph 10.

11. The Town admits that the statement, being a writing, speaks for itself. The Town is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 11 and leave Plaintiff to his proofs.

12. The Town is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 12, except to admit that Plaintiff's counsel asserted same to Town Council, and leave Plaintiff to his proofs.

COUNT I

13. The Town repeats each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

14. The Town is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 14 and leave Plaintiff to his proofs.

15. The allegations of paragraph 15 contain conclusions of law to which no response is required. To the extent a response is required, the Town denies Plaintiff's legal interpretation of the Town's Municipal Code.

16. The Town denies the allegations of paragraph 16.

17. The Town denies the allegations of paragraph 17 to the extent that Plaintiff alleges he was acting in his official capacity. The remaining allegations of paragraph 17 contain conclusions of law to which no response is required. To the extent a response to the remaining allegations is required, the Town denies same.

18. The Town denies the allegations of paragraph 18 as stated, except to admit that Plaintiff's request for reimbursement of counsel fees from the Town was presented to Town Council.

19. The Town denies the allegations of Paragraph 19 as stated, expect to admit that the Town Council voted to deny Plaintiff's request for the Town to reimburse his attorneys' fees.

WHEREFORE, the Town demands judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding the Town reasonable attorneys' fees, costs of suit and such other and further relief as the Court may deem appropriate.

COUNT II

20. The Town repeats each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

21. The Town denies the allegations of paragraph 21.

22. The Town denies the allegations of paragraph 22 as stated, except to admit that Plaintiff requested that the Town reimburse his attorneys' fees.

23. The Town denies the allegations of paragraph 23.

24. The Town denies the allegations of paragraph 24.

25. The Town denies the allegations of paragraph 25.

WHEREFORE, the Town demands judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding the Town reasonable attorneys' fees, costs of suit and such other and further relief as the Court may deem appropriate.

COUNT III

26. The Town repeats each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

27. The allegations in Paragraph 27 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

28. The allegations in Paragraph 28 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

29. The allegations in Paragraph 29 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

30. The allegations in Paragraph 30 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

31. The allegations in Paragraph 31 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

WHEREFORE, the Town demands judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding the Town reasonable attorneys' fees, costs of suit and such other and further relief as the Court may deem appropriate.

COUNT IV

32. The Town repeats each and every response contained in the above paragraphs and incorporate same herein as if set forth at length.

33. The allegations in Paragraph 33 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

34. The allegations in Paragraph 34 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

35. The allegations in Paragraph 35 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

36. The allegations in Paragraph 36 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

37. The allegations in Paragraph 37 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

38. The allegations in Paragraph 38 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

39. The allegations in Paragraph 39 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

40. The allegations in Paragraph 40 are not directed against the Town and therefore, no response is required. To the extent any allegations are intended to be directed against the Town, the Town denies same.

WHEREFORE, the Town demands judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding the Town reasonable attorneys' fees, costs of suit and such other and further relief as the Court may deem appropriate.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by the failure to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

THIRD SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FOURTH SEPARATE DEFENSE

Any action taken by the Town is protected by an absolute and/or qualified privilege.

FIFTH SEPARATE DEFENSE

The Town claims all rights, privileges and immunities afforded the Town under both federal and state law, inclusive of the New Jersey Tort Claims Act.

SIXTH SEPARATE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the New Jersey Tort Claims Act.

SEVENTH SEPARATE DEFENSE

Any action, or failure to act, on the part of the Town was in the nature of the discretionary activity within the meaning of N.J.S.A. 59:2-3 and, accordingly, no liability may be imposed on the Town.

EIGHTH SEPARATE DEFENSE

Any and all injuries sustained by Plaintiff are the result of his own negligence and/or misconduct or the actions of third parties or circumstances or situations over which the Town had no control.

NINETH SEPARATE DEFENSE

The Town acted at all times in good faith and without malice.

TENTH SEPARATE DEFENSE

Plaintiff's damage claims are barred by the absence of damage.

ELEVENTH SEPARATE DEFENSE

Plaintiff's claims for damages are barred, in whole or in part, by Plaintiff's failure to reasonably mitigate damages, if any.

TWELVTH SEPARATE DEFESNE

Plaintiff's claims are barred in whole or in part because the complained of actions, to the extent they occurred, were not arbitrary, capricious, irrational, or otherwise improper, but instead, were motivated by legitimate interests.

THIRTEENTH SEPARATE DEFENSE

Plaintiff's Complaint fails to state a claim for punitive damages against the Town.

FOURTEENTH SEPARATE DEFENSE

The Town has not committed any violation of Plaintiff's rights under state law.

FIFTHTEENTH SEPARATE DEFENSE

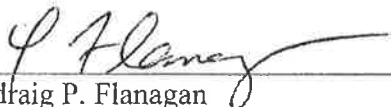
The Town reserves the right to amend its Answer to assert additional defenses and/or supplement, alter, or change its Answer upon revelation of more definite facts by Plaintiff; upon the completion of further discovery and/or investigation; and/or based upon after acquired evidence.

WHEREFORE, the Town demands judgment dismissing Plaintiff's Complaint in its entirety with prejudice and awarding the Town reasonable attorneys' fees, costs of suit and such other and further relief as the Court may deem appropriate.

**FLORIO PERRUCCI STEINHARDT &
CAPPELLI, L.L.C.**
Attorneys for Defendant Town of Phillipsburg

Dated: June 15, 2018

By:


Pádraig P. Flanagan
ID No. 021531999

DEMAND FOR JURY TRIAL

The Town hereby demands a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Pádraig P. Flanagan is designated as trial counsel in this matter.

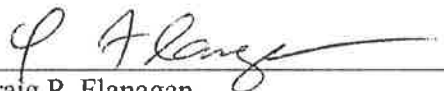
RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge and information, the matter in controversy is not the subject of any other pending action or arbitration proceeding and no other proceeding is contemplated. At the present, I do not know of any other party who should be joined in this action. This certification is made subject to further investigation and discovery.

**FLORIO PERRUCCI STEINHARDT &
CAPPELLI, L.L.C.**

Attorneys for Defendant Town of Phillipsburg

By:



Pádraig P. Flanagan
ID No. 021531999

Dated: June 15, 2018

Civil Case Information Statement

Case Details: WARREN | Civil Part Docket# L-000057-18

Case Caption: ELLIS VS TOWN OF PHILLIPSBURG ET AL

Case Type: TORT-OTHER

Case Initiation Date: 02/26/2018

Document Type: Answer

Attorney Name: PADRAIG PEARSE FLANAGAN

Jury Demand: YES - 6 JURORS

Firm Name: FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC

Hurricane Sandy related? NO

Address: 235 BROUBALOW WAY

Is this a professional malpractice case? NO

PHILLIPSBURG NJ 08865-1686

Related cases pending: NO

Phone:

If yes, list docket numbers:

Name of Party: DEFENDANT : TOWN OF PHILLIPSBURG

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

Name of Defendant's Primary Insurance Company

(if known): None

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? YES

If yes, is that relationship: Business

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:

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)

06/15/2018
Dated

/s/ PADRAIG PEARSE FLANAGAN
Signed

FLORIO PERRUCCI STEINHARDT & CAPPELLI, LLC
Pádraig P. Flanagan, Esq.
Attorney ID: 021531999
235 Broubalow Way
Phillipsburg, New Jersey 08865
(908) 454-8300
Counsel for Defendant, Town of Phillipsburg

STEPHEN ELLIS,	:	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	:	LAW DIVISION: WARREN COUNTY
v.	:	Docket No.: WRN-L-57-18
	:	<i>CIVIL ACTION</i>
	:	
TOWN OF PHILLIPSBURG, BLAINE	:	CERTIFICATION OF
FEHLEY, and ROBERT FULPER,	:	ROBERT FULPER
Defendants.		

I, Robert Fulper, certify as follows:

1. I am currently a member of Council for the Town of Phillipsburg. I took office on January 1, 2018. I submit this Certification in support of the Town of Phillipsburg’s motion for summary judgment seeking dismissal of Plaintiff’s Complaint. The statements set forth in this Certification are based on my personal knowledge.
2. On February 6, 2018, Council voted on a motion to approve the payment of attorneys’ fees Mayor Ellis incurred in defending against a municipal complaint filed by a resident of the Town of Phillipsburg.
3. During discussion on this motion, the Municipal Clerk was questioned if she received notice of the claim within ten (10) days the Mayor was served with the Complaint.
4. The Municipal Clerk responded that she had not received timely notice of the claim consistent with § 27-5 of the Town’s Code. I voted against the motion for that reason.



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



Robert Fulper

Dated: April 24, 2019

SUPERIOR COURT OF NEW JERSEY

SOMERSET, HUNTERDON AND WARREN COUNTIES
VICINAGE 13

Chambers of
THOMAS C. MILLER
Presiding Judge - Civil



Somerset County Superior Court
P.O. Box 3000
Somerville, NJ 08876-1262
(908) 332-7700 Ext. 13590

SUBMITTED VIA ECOURTS

September 4, 2019

John M. Zaiter, Esq.
Broscious, Fischer & Zaiter, PC

Padraig P. Flanagan, Esq.
Florio, Perrucci, Steinhardt & Cappell, LLC

RE: Ellis v. Town of Phillipsburg
Docket No. WRN-L-57-18

Counsel:

I. THE ISSUE PRESENTED

At this stage of the case, the only issue remaining in this case for which the Court is charged with the responsibility to decide is the amount of the legal fees that Mayor Ellis is entitled to recoup or recover from the Town of Phillipsburg for his defense of him in his capacity as Mayor in a matter filed in the Municipal Court.

II. PROCEDURAL HISTORY

Mayor Ellis was served with the Criminal Complaint on or before May 25, 2017 and engaged the law firm of Broscious, Fischer & Zaiter ("Firm") to defend himself. The Criminal Complaint was subsequently dismissed. By letter dated October 5, 2017, the "Firm" mailed Mayor Ellis an invoice for work the "Firm" completed on his behalf from May through October 2017. Mayor Ellis' lawyers instructed the Mayor to "submit this statement to the Town of Phillipsburg for payment." See Certification of Pádraig P. Flanagan ("PPF Cert.") at Exhibit 1, attaching Certification of Victoria L. Kleiner ("Kleiner Cert.") at Exhibit A. According to the Mayor's attorneys, the Mayor was "entitled to reimbursement for these fees from the town pursuant to the Town of Phillipsburg's Municipal Code, Section 27-4." Ibid.

The Municipal Clerk provided the insurance carrier's adjuster with notice of the claim as soon as she received the claim from the Mayor. The adjuster responded as follows: "At this time, the primary



concerns I see include that there was a failure to give timely notice to the insurer; that costs were incurred (legal expenses and possible monetary payment to resident) without the insurer's prior knowledge and consent; and insurer disagreement over the billing rate charged by the defense lawyer." See PPF Cert. at Exhibit 1 attaching Kleiner Cert. at Exhibit B. The insurance carrier ultimately denied coverage.

On February 6, 2018, a majority of Town Council denied a motion to pay the Mayor's attorneys' fees because purportedly the Mayor failed to deliver the Criminal Complaint to the Municipal Clerk within 10 days of the date the Mayor was served with the Criminal Complaint. Thereafter, Mayor Ellis filed a Complaint against the Town, Blaine Fehley, and Robert Fulper in the above-referenced matter.

In his Complaint, Mayor Ellis alleged that Defendant Fehley, a resident of the Town, unlawfully filed a criminal complaint against the Mayor in municipal court on April 13, 2017. Mayor Ellis alleged that Defendant Fulper, also a resident of the Town at the time, conspired with Defendant Fehley to file a malicious complaint by virtue of the fact that Fehley attached a written statement from Fulper to his complaint. Mayor Ellis also alleged that Defendant Fulper, who did not take office as Council President until January 1, 2018, breached his fiduciary duty to the citizens of the Town by failing to recuse himself from voting against the Mayor's request for payment.

On May 24, 2019, this Court entered an order denying the Town's motion for summary judgment to dismiss Plaintiff's Complaint. Subsequently, Mayor Ellis filed for Summary Judgment on the issue of the Town's responsibility to pay his attorneys fees, which motion was based upon the Court's finding in its denial of the Town's Summary Judgment Motion which was referred to and summarized above. Mayor Ellis' Motion was granted. As a result of this Court's ruling, the only issue that effectively remains unresolved is the reasonableness of Plaintiff's attorneys' fees.

III. COURT'S PRIOR DECISION

This Court has previously addressed other issues in this matter in the Court's opinion of May 24, 2019 which it will repeat, in substantial part, in order to provide a background and context to the remaining issues before the Court. Previously, in response to the Town's Motion for Summary Judgment, the Court found as follows:

II. DEFENDANTS' STATEMENT OF UNCONTESTED MATERIAL FACTS¹

On or about April 13, 2017 Plaintiff, Stephen Ellis was charged by private Criminal Complaint in Phillipsburg court with violations of N.J.S.A. 2C:33-4(C) (harrasment); 2C:12-1(a) (simple assault); and 2C:12-3(b) (terroristic threats).

¹ The Defendant's Statement of Uncontested Facts have been copied from the Defendant's submission to the Court.

See Plaintiff's Complaint ¶5. At all relevant times, plaintiff was the Mayor of the town of Phillipsburg. Ibid. at ¶ 1.

Mayor Ellis was served with a Criminal Complaint on or before May 25, 2017. See Certification of Victoria L Kleiner ("Kleiner Cert.") at Exhibit A (the invoice from the Mayor's attorney dated October 5, 2017 reflects that the Mayor consulted with his attorneys about the matter as early as May 25, 2017).

Chapter 27 the Town Code for the Town of Phillipsburg provides for the defense and indemnification of Town employees and officers, including the Mayor, in civil and criminal matters under certain circumstances. Section 27-5 of the Town Code states as follows:

An employee shall not be entitled to defense and indemnification under this chapter, unless within 10 calendar days of the time he or she is served with any summons, complaint, process, notice, demand, or pleading, the employee delivers the original or a copy thereof, to the Clerk for the Town of Phillipsburg, via personal service or certified mail.

Kleiner Cert. at Exhibit D.

On or about October 12, 2017, the Municipal Clerk for the Town received a copy of Mayor Ellis' attorneys letter dated October 5, 2017 attaching the supporting invoice for fees and expenses Mayor Ellis incurred in defending the Criminal Complaint filed by Defendant Blaine Fehley, a resident of the Town. See Kleiner Cert. at ¶ 2. The Clerk received the letter and invoice from the Mayor's Confidential Aide. Ibid. The Mayor's Aide asked the Clerk to submit a claim to the Town's insurance carrier, and if the carrier refused to pay the invoice, the Town would have to pay the Mayor's attorneys' fees. This was the first time the Clerk was notified that Mayor Ellis would seek reimbursement of his attorneys' fees pursuant to Chapter 27 of the Town Code. Ibid.

On February 6, 2018 a majority of the Town Council voted to deny a motion to pay the Mayor's attorneys' fees because the Mayor failed to deliver the Criminal Complaint to the Municipal Clerk within 10 days of the date the Mayor was served with the Criminal Complaint. See Kleiner Cert. at ¶ 3 and Exhibit C; Certification of Robert Fulper at ¶¶ 1-4; Certification of Frank McVey at ¶¶ 1-4; and Certification of Danielle DeGerolamo at ¶¶ 1-4.

III. PLAINTIFF'S STATEMENT OF UNCONTESTED MATERIAL FACTS²

Plaintiff, Stephen Ellis is the Mayor of the Town of Phillipsburg. Around April 13, 2017 Mayor Ellis was charged by a private Criminal Complaint in Phillipsburg Municipal Court. The complaints were later dismissed because of insufficient evidence.

² The Plaintiff's Statement of Uncontested Material Facts have been copied from the Plaintiff's submission to the Court.

The complaint identified the Defendant as Mayor Stephen Ellis, and was addressed to 675 Corliss Ave., Phillipsburg, NJ 08865. (Attached) The complaint stemmed from an incident on April 4, 2017. The incident occurred while Mayor Ellis was on his way to a Town Council meeting with the Town Clerk was in attendance. The incident and later issuance of the complaint was covered in daily newspapers including the Express Times.

At the time, 675 Corliss Ave housed the majority of Phillipsburg municipal services including the Town Clerk. All information documents along with the complaint identified the [sic] Stephen Ellis as Mayor, and listed his address as the municipal building at the time. All documents relating to the summons listed the Mayor's address as 675 Corliss Ave, Phillipsburg NJ 08865. Mayor Ellis was notified of the summons, and called a meeting in the municipal building to inform the town offices of the charges filed against him. The Town Clerk was in attendance at that meeting around April 13, 2017.

Mayor Ellis promptly engaged Broschious, Fisher & Zaiter to defend himself. An invoice and letter dated October 5, 2017 was delivered to the Town Clerk for costs relating to the April 4, 2017 incident.

Town Council recognized Mayor Ellis was eligible for indemnification because he was acting as an employee when the incident occurred. However, on February 6, 2018 the Town Council denied the motion to reimburse the Mayor. According [to] the Meeting Minutes publically available, it was denied because the Mayor did not serve the Criminal Complaint to the Town Clerk. It should be noted Robert Fulper of the Phillipsburg Town Council, who was present during the incident and submitted documentation resulting in the issuance of the summons against Mayor Ellis, voted against reimbursement. The refusal of the town to reimburse the Mayor for legal fees resulted in this present suit.

COURT'S DECISION

B. DID MAYOR ELLIS PROVIDE ADEQUATE NOTICE TO THE TOWN OF PHILLIPSBURG REGARDING THE PRIVATE CRIMINAL COMPLAINT BROUGHT AGAINST HIM IN HIS OFFICIAL CAPACITY?

At issue is whether or not Plaintiff, Mayor Ellis is entitled to reimbursement for the costs of attorney's fees he incurred defending criminal charges brought against him by a resident of the Town of Phillipsburg. The Defendant, Phillipsburg argues that Mayor Ellis is not entitled to reimbursement because the Mayor failed to provide the Town with adequate notice that he was a defendant to a Criminal Complaint and that he would seek indemnification under the Town's Code. In opposition, the Plaintiff, Mayor Ellis argues that the Town of Phillipsburg is required to indemnify him because he was acting in his official capacity, and notice to the Town Clerk was accomplished inside the proper timeframe.

In their Statement of Undisputed Material Facts, the Defendant, Town of Phillipsburg asserts that Mayor Ellis was served with a Criminal Complaint on or before May 25, 2017. The Town states that the Mayor engaged a law firm to defend himself and that the Criminal Complaint was subsequently dismissed. The Town further avers that in a letter dated October 5, 2017, the law firm retained by Mayor Ellis mailed the Mayor an invoice for work the firm completed on his behalf from May through October 2017 and that the Mayor was instructed by his lawyers to “submit the statement to the Town of Phillipsburg for payment.”

In support of its position that the Mayor is not entitled to reimbursement for his legal fees The Town points to section 27-5 of the Town Code which states as follows:

Summons to be delivered immediately. An employee shall not be entitled to defense and indemnification under this chapter, unless within 10 calendar days of the time he or she is served with any summons, complaint, process, notice, demand, or pleading, the employee delivers the original or a copy thereof, to the Clerk for the Town of Phillipsburg, via personal service or certified mail.

Phillipsburg Town Code §27-5

The Defendant asserts that Mayor Ellis did not deliver the Criminal Complaint consistent with the requirements set forth in the Town Code. The Town states that on or about October 12, 2017 the Mayor’s confidential aide he dropped the law firm’s letter and invoice dated October 5, 2017 on the desk of the Town Clerk. At which point the Mayor’s aid asked the Clerk to submit a claim to the Town’s insurance carrier, and instructing the Clerk that if the carrier refused to pay the invoice, the Town would have to pay the Mayor’s attorney fees. The Town certifies that this was the first time that the Clerk was notified that Mayor Ellis would seek reimbursement of his attorneys fees pursuant to Chapter 27 of the Town Code.

In opposition, the Plaintiff, Mayor Ellis argues that the Town of Phillipsburg is required to indemnify him because he was acting and his official capacity, and notice to the Town Clerk was accomplished inside the proper timeframe. Mayor Ellis asserts that notice was effectuated because the Criminal Complaint was addressed to “Mayor Stephen Ellis” and mailed to 675 Corliss Ave., Phillipsburg NJ 08865 which at the time was the address for the Town Clerk’s office. Mayor Ellis points to section 27-4(A) of the Town Code which states as follows:

Criminal Actions. If any criminal action is instituted against any employee based upon an act or omission of an employee arising out of and directly related to the lawful exercise of the employees official duties under color of his or her authority, and that action is dismissed or results in a final disposition in favor of that officer, the town shall reimburse the employee for the cost of defending the actions, including reasonable counsel fees and expenses, together with cost of appeal, if any.”

Phillipsburg Town Code §27-4(A)

The issue to be addressed then is whether the Defendant, Town of Phillipsburg can claim, as a matter of law, that it (and its insurance carrier or insurance fund) did not receive adequate notice so that the Plaintiff would or should be ineligible to recover the legal fees he incurred for his defense of the underlying criminal charges that were brought against him.

In its Motion, Defendant Phillipsburg does not challenge the Mayor's claims to indemnification by way of his status as an employee, nor does it challenge the Plaintiff's assertion that the incident in question arose in relation to the local exercise of the Mayor's official duties under color of his authority. Rather, the Defendant only argues that "the Mayor failed to provide adequate notice that he was a defendant to a criminal complaint and that he would seek indemnification under the Town's Code." Stated differently the Defendant articulates that "Mayor Ellis did not deliver the Criminal Complaint consistent with the requirements set forth in the Town Code."

The underlying issue confronting the Court in the Defendant's instant motion is that of "notice" to the public entity. The law recognizes various forms of notice including public notice, actual notice, constructive notice and implied notice. It is well settled that public entities are held to have actual notice when they have actual knowledge of a condition or should have known of a condition; and further held that public entities have constructive notice where a condition is so obvious in nature that the public entity, in the exercise of due care, should have discovered said condition. The Phillipsburg Town Code requires town employees to provide the entity with "actual notice" of legal proceedings. Specifically, the Town Codes prescribes:

"... within 10 calendar days of the time he or she is served with any summons, complaint, process, notice, demand, or pleading, the employee delivers the original or a copy thereof, to the Clerk for the Town of Phillipsburg, via personal service or certified mail."

Phillipsburg Town Code §27-5

It is reasonable to infer from the express language of § 27-5 that the intention of the provision was to anticipate and mitigate situations where the Town might not receive adequate and or timely notice of legal proceedings relating to the municipality. Such situations include when an employee of the Town is either named in a Criminal Complaint, or is being sued personally, for exercising their official duties under color of their authority and receives personal service at their residential address rather than in their official capacity at their Town address. In such scenarios service would be effectuated beyond the immediate purview of the municipality. These situations are thus mitigated by the Town Code which requires an employee to provide the Town with actual notice of any summons, complaint, process, notice, demand, or pleading within 10 calendar days.

In this matter, the summons in question was issued to Mayor Stephen Ellis and served upon him in his official capacity. The Criminal Complaint was addressed to Mayor Stephen Ellis and it was mailed to and delivered within the immediate

purview of the Town Clerk of Phillipsburg at 675 Corliss Ave, Phillipsburg, NJ 08865 during the time when the majority of Phillipsburg municipal services, including the Town Clerk, were located there. The summons was mailed to the Town on April 13, 2017 (nine days after the incident that gave rise to the underlying Criminal Complaint) after which Mayor Ellis convened a meeting of the Town employees, including the Town Clerk, where he announced that a Complaint had been filed against him in conducting his official duties.

In this case, the Court finds that (1) the criminal charges were made against Mayor Stephen Ellis in his official capacity; (2) that the charges arose from his duties as a public official; and (3) that the circumstances presented demonstrate that the Town Clerk and by extension the Defendant were on (i) actual notice through the delivery of the summons and Criminal Complaint to the Town and (ii) on constructive notice as a result of the April 13, 2017 meeting of the Town employees, including the Town Clerk, convened by Mayor Ellis, where he announced that a Complaint had been filed against him in conducting his official duties.

C. WERE THE ATTORNEYS FEES INCURRED BY MAYOR ELLIS IN THE DEFENSE OF HIS CRIMINAL COMPLAINT REASONABLE?

The Town Code does not state (and the Town does not argue) that Mayor Ellis would not be permitted to select his own counsel to represent him in the underlying criminal matter. In fact, presumably Mayor Ellis would be able to select his own attorney for his defense. It follows then that the purpose of the notice provision in the Town Code is not meant to enable the Township to appoint counsel for the particular local official.

However, it can be reasonably said that the Town and its insurance carrier or insurance fund does have an interest to make sure that the attorney who is hired by the official is willing to work within the accepted or duly adopted rate structure for counsel. In that way, even though the local official is indemnified, the Town may avoid incurring inordinate or unreasonable charges that would not be ordinarily approved for other officials.

In this case, the Court finds that the circumstances presented demonstrate that for the reasons stated above the Town was on notice (actual and constructive) that (1) criminal charges had been made against Mayor Stephen Ellis; and (2) that the charges arose from his duties as a public official. Under those circumstances it can be reasonably expected that Mayor Ellis would make a claim for indemnification. In fact, Phillipsburg's argument that it could "reasonably assume" the opposite – that is that he would not make such a claim – is unreasonable, illogical and simply self-serving.

For those reasons, the Court finds that the Town did receive notice of the Plaintiff's claim for indemnification so that Defendant, Phillipsburg's Motion for Summary Judgment is DENIED.

That being said, the Town and its carrier should have an interest to require that the legal fees incurred by the Mayor are reasonable and "in line" with the fees

charged in other like matters or, if applicable, in accordance with their standard policy.

D. DID A CONFLICT OF INTEREST EXIST WHICH WOULD HAVE DISQUALIFIED MR. FULPER FROM PARTICIPATING IN THE ACTION OF THE COUNCIL TO DENY PAYMENT OF MAYOR ELLIS' ATTORNEYS FEES?

The Town argues that the Court should determine, as a matter of law, that there was either (1) no conflict of interest for Mr. Fulper to participate in the decision to deny the Plaintiff's application for fees; or (2) that even if there was a conflict, it didn't matter as the vote of the Committee would still amount to a denial.

With regards to the issue of whether a conflict existed that would disqualify Mr. Fulper from being able to participate in the matter, Plaintiff has alleged sufficient facts in order to establish that a conflict would exist. At this juncture the Court does not have all of the material facts so that a reasoned analysis can be made. Certainly taking Plaintiff's position in its most favorable light the Court is not able to decide that issue, as a matter of law, in this Motion.

With regards to the consequences of Mr. Fulper's actions, if those actions are determined to be a conflict, Mr. Fulper's participation in the action of the Council that is the basis of this lawsuit would so taint the vote that the only real remedy in such a case would be avoidance of the action in its entirety. Griggs v. Princeton Borough, 33 N.J. 207 (1960) (holding if a conflict of interest is found, that the conflict, and not its actual effect, requires the invalidation of the vote of the municipal body). Randolph v. Brigantine Planning Bd., 405 N.J. Super. 215, 232 (App. Div. 2009) (where a board member participates in a proceeding from which he is found to be disqualified, the proceeding is void in its entirety); Haggerty v. Red Bank Borough, 385 N.J. Super. 501, 517 (App. Div. 2006 (it does not matter if the measure voted on otherwise had a significant number of votes)).

For those reasons, the Court will decline to determine that even if Mr. Fulper is found to be in conflict, that the resolution to deny Mayor Ellis' reimbursement of his counsel fees is denied.

The Court finds that Plaintiff provided timely notice to the Defendant of the Criminal Complaint and is therefore entitled to reimbursement of his reasonable attorney's fees.

IV. COURT'S ANALYSIS

As a result of the Court's prior decision, the only issue remaining in this matter is the determination of the amount of fees to be recouped or reimbursed to the Mayor. The Mayor's counsel, John Zaiter, Esq. of the firm of Broscious Fischer & Zaiter, has provided a Certification of Services (along with supporting Exhibits) which was dated August 14, 2019. The Court has reviewed and analyzed the submission made on behalf of the Mayor's counsel.

A. Town's Position

While the Town acknowledges, based on this Court's prior ruling, that Plaintiff is to be reimbursed reasonable attorneys' fees, the Town objects to the total amount sought for several reasons, including: (1) the hourly rate of \$350.00 for time partners and associates charged for two relatively simple matters is excessive; (2) Plaintiff's claim against Defendant Robert Fulper was frivolous and politically motivated, and Plaintiff's opposition to Fulper's motion to vacate entry of default was equally politically motivated; (3) the parties engaged in little to no discovery; (4) Plaintiff's untimely motion for summary judgment was unnecessary based on this Court's decision to deny the Town's motion for summary judgment; and (5) time appears to have been billed to the wrong matter.

B. Court's Analysis

Mayor Ellis' counsel provided his detailed Certification of Services which appears to contain a description of legal services which he rendered in this matter which his counsel certifies were reasonable and necessary in order to conduct the Mayor's defense in the Municipal Court action as well as services rendered in this action which he was required to bring in order to compel the Town to accept its responsibility for payment. As indicated, the Town has previously refused to acknowledge any responsibility for the payment of fees thereby forcing this Court to decide the issue after filing of competing Motions for Summary Judgment.

The driving principle in awarding attorneys' fees is that the fees must be reasonable. The proper method for determining an award for reasonable attorneys' fees begins by calculating "lodestar," which is the number of hours reasonably expended multiplied by a reasonable hourly rate. Walker v. Giuffre, 209 N.J. 124, 130-31 (2012); Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004); Rendine v. Pantzer, 141 N.J. 292, 334 (1995); see also Rule 4:42-9(b) (stating that application for counsel fees shall be supported by affidavit addressing pertinent factors, including those in Rule of Professional Conduct ("RPC") 1.5(a), and shall include the amount of fees and disbursements sought). RPC 1.5(a) "commands that '[a] lawyer's fee shall be reasonable' in all cases, not just fee-shifting cases," and require courts to consider the following factors:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charges in the locality for similar legal services;
- (4) the amount involved and the results obtained;

- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Furst, supra, 182 N.J. at 21-22.

Courts are “not [to] accept passively” the submissions of counsel and are required to “evaluate carefully and critically the aggregate hours and specific hourly rates advanced by counsel for the prevailing party to support the fee application.” Walker, supra, 209 N.J. at 130-31 (citing Rendine, supra, 141 N.J. at 335). The evaluation of hours expended must focus on “the amount of time *reasonably* expended” rather than merely an acceptance of “the amount of time *actually* expended.” Ibid. Thus, courts may reduce the hours that were expended based on what is “reasonable.” See Furst, supra, 182 N.J. at 22-23.

Courts “may exclude hours from the lodestar calculation if in its view the hours expended exceed ‘those that competent counsel reasonably would have expended to achieve a comparable result,’ in the context of ‘the damage prospectively recoverable, the interests to be vindicated, and the underlying statutory objectives.’” Szczepanski v. Newcomb Medical Ctr., 141 N.J. 346, 355 (1995) (quoting Rendine, supra, 141 N.J. at 336). Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary.” Rendine, 141 N.J. at 335 (quotation omitted); see also Furst, supra, 182 N.J. at 22 (observing that courts “must not include excessive and unnecessary hours spent on the case in calculating the lodestar”).

As such, the Court will analyze the factors that are part of a review of any fee application as well as the objections raised by the Town.

First, the Court will evaluate the various objections raised by the Town.

1. Hourly Rate

The Town objects to the Firm’s hourly rate of \$350.00. The Town argues that had the Mayor provided timely notice of his claim to the Town Clerk, the claim would have been tendered to the Statewide Insurance Fund for the Mayor’s defense. Absent an agreement with the Statewide Insurance Fund, the Town postulates that the Mayor would not have been permitted to engage his own attorney. Indeed, when the claim was presented to Statewide nearly six months after Fehley’s complaint was filed, Statewide communicated its concern “that there was failure to give timely notice to the insurer; that

costs were incurred (legal expenses and possible monetary payment to resident) without the insurer's knowledge and consent; and insurer disagreement over the billing rate charged by the defense lawyer." See PPF Cert. Exhibit 1 attaching Kleiner Cert. at Exhibit B (emphasis added).

The Statewide Insurance Fund has indicated to the Court that it provides insurance defense for the Town of Phillipsburg. See PPF Cert. at ¶ 2. Statewide pays panel counsel an hourly rate of \$125.00 per hour for workers' compensation cases, \$150-\$165 per hour for torts and employment cases, and a maximum of \$235.00 for complex claims. Id. at ¶ 3. Although not specifically identified, the town apparently contends that the applicable "rate" in this case could be \$150-165 per hour, or at a "worst case," \$235 per hour. Thus, the Town asserts that it should not be responsible to pay the entire rate of \$350.00 per hour. The Town also cavalierly contends that the Mayor can certainly afford to pay the difference between the rate the Firm charged and the rate Statewide would have paid to defend the Mayor. In that regard, the Town offers that Mayor Ellis is reported to have said that "he is personally covering his legal fees in the case" filed by a second Phillipsburg resident alleging harassment and disorderly conduct. See PPF Cert. at Exhibit 3.

In sum, the Town does dispute the hourly rate charged by Mr. Zaiter was \$350 per hour and that a reasonable rate for an attorney of Mr. Zaiter's experience warrants such a rate. The Town instead contends that the rates charged for municipal services, or the rate paid by the Insurance Fund on behalf of the Town, is at a much lesser rate. As a result, the Town advocates that Mr. Zaiter's bills should be reduced to an amount commensurate with one of the lower hourly rates that could be applicable for such service.

This Court does acknowledge that it would have been appropriate for the Town to impose its usual and customary hourly rate for attorney services upon Mayor Ellis and his counsel at the inception of this matter. In fact, this Court recognized, in its initial opinion in this matter that, although the Town was required to provide a defense to the Mayor in this instance, that its obligation was not simply to pay any amounts incurred by the Mayor. As a general proposition, the Court believes that it is a legitimate use of its power to advise the Mayor that even though he can choose his own counsel for his defense, that counsel must conform to the Town's "pay scale" for its representation of a Municipal Official, if one is applicable. If Mayor Ellis' counsel was not willing to operate within those parameters, it would not have been unreasonable then for the Town to appoint separate counsel for the Mayor who was willing to conform to their rate structure. It would also have been reasonable to permit Mayor Ellis' counsel to proceed to represent him, but with an agreement that the Town be only responsible for amounts based upon its approved rate. Certainly the Town has the right to contain its costs by setting such reasonable parameters in those ways.

That being said, the Town did not avail itself of that right to set reasonable parameters for charging attorneys fees. Notwithstanding the advice given to the Town by its own attorney, the Town advised Mayor Ellis that he was “on his own.” The upshot of the Town’s decision was that Mayor Ellis was required to hire his own attorney to represent him and to thereby expose himself to personal liability for the fees incurred. In fact, Mayor Ellis did just that. He has incurred and is responsible to pay Mr. Zaiter’s fees. Mr. Zaiter is not obligated to accept any amounts less than the full amount of his fees – which this Court determines to be “reasonable and necessary.” As such, if the Court were to accept the Town’s position and only approve a portion of Mr. Zaiter’s fees, Mayor Ellis would still be liable to pay the difference to Mr. Zaiter. While the Town may believe that it is reasonable for the Court to expose Mayor Ellis to that liability, the Court does not. Under the circumstances, particularly since the Town wrongfully rejected the Mayor’s application for fees over its own Town attorney’s advice, Mayor Ellis should not be forced to incur that liability which could be so easily avoided.

As such, the Court rejects the Town’s argument to reduce Mayor Ellis’ counsel’s hourly rate to conform to Statewide’s rate structure.

C. Hours Billed by Various Attorneys in Mr. Zaiter’s Firm

The Town also avers that according to the Firm’s billing records attached as Exhibit F to the Certification of Counsel, John Zaiter billed 47.50 hours, Michael J. Albanese billed 21.25 hours, and Talia R. Mazza billed 17.75 hours to the collection matter. The Town notes that all attorneys billed at an hourly rate of \$350.00. The Town indicates that a recent search of the firm’s website indicates that Ms. Mazza is an associate who graduated from law school in 2016; Mr. Albanese’s name does not appear on the firm’s website. See PPF Cert. at Exhibit 2. The Town contends that while Mr. Albanese and Ms. Mazza did work that should be pushed down to associates or more junior attorney for tasks such as research, drafting discovery requests, and drafting briefs and pleadings, it urges the Court to find that it is not appropriate to bill at the partner’s hourly rate of \$350.00 for these legal tasks.

The Retainer Agreement entered into between Mayor Ellis and Mr. Zaiter’s firm calls for a blanket hourly rate of \$350 per hour to be charged by attorneys at the firm. The Agreement does not “break down” or differentiate the rates to be charged by different attorneys of different experience levels. Mr. Zaiter indicated at oral argument that his usual rate is actually between \$350-400 but that he agreed to charge only the lower end of the scale for this matter. He also represented that he generally bills his associates at the \$350 hourly rate – which is what Mr. Ellis is contractually bound to pay.

That being said, Mr. Zaiter’s Certification supports and justifies an hourly rate of \$350 per hour for himself. In the Court’s experience, that rate is reasonable.

D. Number of Hours

The Town notes that the Firm billed a total of 26.5 hours to defend the Mayor in the municipal court proceeding (Exhibit D attached to the Certification of Counsel) and 86.5 hours (Exhibit F attached to the Certification of Counsel) to the Mayor's efforts to obtain payment of the \$9,275.00 the Firm charged the Mayor in the municipal court action. The Town points out that the hourly rate the Firm charged the Mayor for its collection work was the same \$350.00 the firm charged the Mayor defending the municipal court action. In its opposition, the Town blanketly objected to all entries that are block-billed because it is extremely difficult to determine the amount of time attorneys spent on any one activity. See Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (attorneys in fee shifting cases are obligated to maintain billing time records in a manner that will enable a reviewing court to identify distinct claims).

The Court has viewed and analyzed Mr. Zaiter's bills, including the "alleged" block billing that is complained about by the Town. It also appears to the Court that the time expended by Mr. Zaiter in each of the component items of service was reasonable under the circumstances. It certainly cannot be said that Mr. Zaiter expended his time and services for any unnecessary services nor did he charge for any inordinate amount of time on any particular line item. Also, although the Town calls the second part of the case a "simple collection" matter, the Court finds that the issues are not as simple as one might expect in a "bank account" type of case.

Despite the Town's complaint, the Court finds the alleged "block billing" to be of minor consequence as it does not impair the Court's review and analysis of the services rendered in order to determine that those services were reasonable and necessary.

E. Application to Reduce Time Associated to Defendant Fulper

The Town argues that "[i]t is truly bizarre that Defendant Fulper is involved in this case." The Town asserts that the Mayor's claim that Fulper breached his fiduciary duty to the citizens of the Town was "frivolous." It argues that while Fulper may have a fiduciary duty to the Town in his capacity as an elected official, Fulper does not owe a fiduciary duty to the Mayor as a confidential relationship does not exist. The Mayor filed the action in his own name for events that transpired in his capacity as the Town's Mayor and he had no standing to pursue a claim for breach of fiduciary duty.

However, the Mayor's claim against Mr. Fulper was not determined by the Court to be frivolous at all. In fact, the Court's ruling was that if the Mayor could successfully argue that Fulper had a conflict of interest, that Mr. Fulper's participation in the proceeding may have tainted the vote so as to render the entire action void. That allegation and the resultant outcome, if successful, are certainly relevant claims in this action.

The Court did not have to reach this issue as a result of other decisions that it made in the case that rendered the issue moot. In any event, the claim was never determined to be frivolous. In fact, the claims brought against Fulper and Fehley were necessary, even if they included both affirmative and defense claims. Those claims were required to be brought in this action, and if they were not, the claims would have been barred under the Doctrine of Issue Preclusion and Entire Controversy.

In the Court's view, the inclusion of the claim against Fulper was necessarily brought in this action so that the Court will not reduce any of the time associated with Defendant Fulper.

F. Regarding the Contention that the Mayor conducted minimal discovery and the Town conducted no discovery

The Town states that it did not serve any discovery in this matter. The Mayor served the Town with limited discovery requests, including 22 interrogatories and 14 document requests. The Town provided sufficient responses and there were no discovery motions filed. See PPF Cert. at Exhibit 4. Counsel billed for 1 hour to “[w]ork on Request for Admissions[,]” but no request for admissions were served. No depositions were taken. Although the deposition of the Town Clerk had been cancelled, the Mayor did not later demand to reschedule the deposition. As such, the Town objects to the total amount of time of 4.75 hours associated with preparing 22 interrogatories and 14 document requests and 1 hour of time allocated to requests for admissions that were never served.

Other than one hour which was billed for Requests for Admissions which were never served, the Court sees no reason to reduce Mr. Zaiter's bill for the reasons outlined above.

Perhaps the Town should be grateful that Mr. Zaiter did not perform unnecessary discovery activities which could create a greater exposure to them. The Town's argument is rejected.

G. Regarding Summary Judgment Motions

On May 23, 2019, the Court issued a trial notice scheduling trial in this matter for August 5, 2019. At the time, The Town's motion for summary judgment was pending with a return date of May 24, 2019. The Town criticizes that rather than cross-move for summary judgment, the Mayor, through counsel, simply filed an opposition to the Town's motion for summary judgment. See PPF Cert. at Exhibit 5. It appears that the Mayor was billed 12.25 hours in preparing and briefing the opposition, plus an additional 5.0 hours to prepare and orally argue the Mayor's opposition which the Court finds to be reasonable and necessary. The Town's motion for summary judgment was ultimately denied, and based on this Court's ruling, the legal issue as to whether the Town was legally obligated to reimburse the Mayor for his attorneys' fees in the municipal action had been effectively decided in the Mayor's favor. Since the Town did not formally indicate that it would “submit” on the issue, however, Mayor Ellis moved for summary judgment in anticipation of the impending trial date.

The Town claims that the only issue remaining was the reasonableness of the attorneys' fees. The Town criticizes that rather than submit an application for fees, the Mayor filed his own motion for summary judgment repeating the same arguments advanced in the Mayor's opposition to the Town's motion. See PPF Cert. at Exhibit 6. The Town also complains that the Mayor's motion for summary judgment did not include a certification from counsel to support the reasonableness of fees. In fact, the Mayor's motion did not include any reference to the amount of time billed in the Mayor's action against the Town. According to counsel's certification submitted in support of this application, 13.25 hours were billed in preparing the Mayor's motion. The Town contends that these hours should not be allowed. The Town argues that not only was the motion unnecessary, it was not filed timely. Pursuant to Rule 4:46-1, "[a]ll motions for summary judgment shall be returnable no later than 30 days before the scheduled trial date" As previously discussed, trial in this matter was scheduled for August 5, 2019.

Although the Town now asserts that in retrospect Mr. Zaieter could have handled the matter differently, the Court disagrees with those assertions. After Summary Judgment was denied to the Town, the matter of liability was yet unresolved. It was, in fact, set for trial. The Town didn't write to Mr. Zaieter or the Court to advise that in its view only the reasonableness of attorneys fees were now in issue. In fact, it was the Court's impression that the Town took the position for Mayor Ellis to prove his case.

The Court finds that the actions taken by the Mayor and his counsel were reasonable and necessary in order to support their position in this matter. The Court will not disallow the fees charged for the Motion filed on the Mayor's behalf.

H. Regarding the Case Management Conference Billing

The Town also objects to the entry of 2.75 hours on July 23, 2019 to "[p]repare for, travel to and attend Case Management Conference." There was no Case Management Conference held on July 23, 2019 in this matter. The Town indicates that it appears that this entry should have been applied to another matter the Firm has representing the Mayor. A recent news article reported that there was a case management conference before Judge Katherine E. Howes matter on July 23, 2019 in a second municipal complaint filed by another Town resident. See PPF Cert. at Exhibit 7.

At oral argument Mr. Zaiter agreed that the particular line item was "misbilled" and should be eliminated. The Court agrees that this entry should be eliminated and the bills reduced accordingly.

I. Analyzing the various factors

The Court will also provide a consideration and an analysis of the various factors under RPC 1.5a in order to determine whether the lawyers fees charged in this case is reasonable. The factors to consider are the following:

a. *the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly*

After an analysis of Mr. Zaiter's bill, it appears that the time and labor required was performed by Mr. Zaiter and members of his Firm. The Court finds that the services performed were reasonable and necessary to perform the necessary service. Mr. Zaiter clearly, in the Court's view, had the skill requisite to perform the legal services properly and did perform them properly.

While the legal questions that were presented certainly had some nuance, the Court does not find them to be novel or particularly difficult, but then again Mr. Zaiter's hourly rate was commensurate and appropriate under the circumstances.

b. *the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer*

In this case, it is likely that if Mr. Zaiter did not take on this client he could have used his time representing other clients for whom he would bill for his services in a like amount.

c. *the fee customarily charged in the locality for similar legal services*

The Court is generally familiar with fees customarily charged in the locality for similar legal services and finds them to be reasonable, customary and necessary. If anything, Mr. Zaiter's fees appear to be at the lower to middle end of the range for fees customarily charged for the amounts involved and the results obtained.

d. *the amount involved and the results obtained*

The Court finds that the amounts involved and the results obtained are reasonable commensurate with the time, effort and skill offered by Mr. Zaiter in this matter.

e. *The time limitations imposed by the client or by the circumstances*

This factor is not particularly applicable to this matter.

f. *The nature and length of the provincial relationship of the client*

The Court is not familiar whether this factor has any bearing on the services charged in this matter.

g. *The experience, reputation and ability of lawyers and lawyers performing services*

Mr. Zaiter has demonstrated that he has the requisite experience, reputation and ability to handle like matters and to charge a reasonable hourly fee which he has done in this case for the services rendered.

h. Whether the fee is fixed or contingent.

In this case, the fee charged by Mr. Zaiter was a “fixed hourly fee arrangement” which, in the Court’s view, was appropriate. A contingent fee would not be appropriate under the circumstances.

For those reasons, the Court will approve Mr. Zaiter’s application for fees, in its entirety except for the reduction by 2.75 hours ($2.75 \times 350 = \$962.50$) for the Case Management Conference that was not related to this matter. The Town will either pay Mr. Zaiter or, if the monies have been paid, to reimburse Mayor Ellis, for \$9,275 for defense of the Municipal Court matter and \$29,667.50 ($\$30,630 - 962.50$) for fees and costs incurred in this matter. The total amount due from the Town is therefore \$38,942.50. Mayor Ellis’ attorney will submit an appropriate form of Order in accordance with this opinion.

Very truly yours,

/S/ THOMAS C. MILLER, P.J.Cv.

THOMAS C. MILLER, P.J.Cv.

TCM/jml

O2021-27

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, NEW JERSEY ADOPTING THE DISTRICT 5 (RIVERSIDE INDUSTRIAL) AMENDMENT - RIVERFRONT REDEVELOPMENT PLAN

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**Redevelopment Law**”), authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment or areas in need of rehabilitation, as such terms are defined in the Act; and

WHEREAS, on September 20, 2004 the Planning Board of the Town of Phillipsburg (the “**Town**”) adopted a Master Plan Update (the “**2004 Master Plan**”) which was designed to give guidance and aid in the process of redefining the direction of development in the Town; and

WHEREAS, the 2004 Master Plan set forth certain specified objectives, including, but not limited to, (1) preserving the remaining natural features [of Phillipsburg]; and (2) increasing public access and use of the Delaware River; and

WHEREAS, one of the recommendations of the 2004 Master Plan was to create a Riverfront Development Plan for the entire length of river frontage, providing for river related businesses, activities and housing and including access plans for trails, view areas and such; and

WHEREAS, one component of the 2004 Master Plan was a Land Use Plan that set forth various land use objectives for the Town, including, but not limited to (1) reducing conflicts between residential and non-residential uses; (2) encouraging the development and expansion of businesses and industries that will generate jobs and provide services for local residents; (3) providing functional, accessible, and cost effective locations within the Town for industrial uses that enhance the economics for the individual uses and the Town as a whole; and (4) encouraging and aiding incompatible non-residential uses whose current location is or will negatively impact the future development/redevelopment of that area to find alternate, more appropriate and functional locations within the Town; and

WHEREAS, another recommendation of the 2004 Master Plan was that the Town should develop a program to encourage poorly located industries to relocate to more favorable locations within the Town; and

WHEREAS, in accordance with the requirements of the Redevelopment Law, the municipal council (“**Town Council**”) of the Town previously determined that the properties identified as Block 2102, Lots 2.01, and 2.02 on the official tax maps of the Town constituted an area in need of redevelopment (the “**Riverfront Redevelopment Area**”) in accordance with the requirements of the Redevelopment Law; and

WHEREAS, in order to effectuate the redevelopment of the Riverfront Redevelopment Area and establish the riverfront districts, including District 5, the Town has previously adopted a redevelopment plan entitled “**Revised Riverfront Redevelopment Plan**” dated November 4, 2013 by Ordinance 2013-19 (the “**Revised RRP**”), pursuant to the authority granted under the Redevelopment Law; and

WHEREAS, the Revised RRP designated Block 2102, Lots 2.01 and 2.02 (the "**Property**") in District 5 as "Riverside Residential," which was to consist primarily of residential buildings, and retail, museum, cultural and office use on the ground floors, and parks and recreational facilities; and

WHEREAS, Peron Construction, LLC (the "**Developer**") was previously designated by the Town as the Redeveloper for the District 5 portion of the Revised RRP and intends to enter a Second Amendment to the Redeveloper Agreement between the Redeveloper and the Town dated May 15, 2014 for the development of one "industrial building" of approximately 400,000 square feet, associated parking, supporting infrastructure and improvements on the property identified on the tax maps of the Town as Block 2102 Lots 1, 2.01, and 2.02; and

WHEREAS, the Town wishes to amend the Revised RRP to change District 5 from Riverside Residential to Riverside Industrial, to permit industrial uses and allow the related amendments to accommodate the aforementioned purposes as specifically set forth in the attached **EXHIBIT A** (the "**District 5 Amendment – RRP**"); and

WHEREAS, the Town has referred the District 5 Amendment – RRP to the Phillipsburg Land Use Board (the "**Land Use Board**") for its review, report and recommendation in accordance with N.J.S.A. 40A:12A-7(e); and

WHEREAS, the Land Use Board, at a duly noticed and constituted public meeting, has reviewed the District 5 Amendment – RRP; and

WHEREAS, following such review the Land Use Board has rendered its report and recommendations to the Borough and recommended the adoption of the District 5 Amendment – RRP pursuant to N.J.S.A. 40A:12A-7(e); and

WHEREAS, the Town Council previously adopted Ordinance 2021-14 which adopted the **District 5 Amendment – RRP** that is attached hereto ("Original Adoption"); and

WHEREAS, there was a lawsuit filed which challenged the validity of the Ordinance 2021-14 and the **District 5 Amendment – RRP** adoption based, among other things, allegations of conflict among the governing body which acted upon Ordinance 2021-14 and inconsistencies between Ordinance 2021-14 and the 2004 Master Plan; and

WHEREAS, the Town desires to rectify any perceived issues with the Original Adoption by introducing an amended **District 5 Amendment – RRP** adoption ordinance and acting upon same; and

WHEREAS, the Town acknowledges that the District 5 Amendment – RRP presents some inconsistencies, and many consistencies, with the 2004 Master Plan; and

WHEREAS, specifically, the Town acknowledges that the designation of the Property as Light Industrial does not provide for "river related businesses, activities and housing" along the entire length of the Delaware River and does not "increase public access and use of the Delaware River;" and

WHEREAS, despite these inconsistencies, an amendment to the Revised RRP is advisable, and permissible pursuant to N.J.S.A. 40A:12A-7d and well-established case law in the State of New Jersey, given significant changed circumstances since the adoption of the 2004 Master Plan and subsequent Revised RRP and that the original intent of the Town was to permit industrial activities in this area; and

WHEREAS, in accordance with the "Consistency Review Report: Proposed Amendment to the Riverfront Redevelopment Plan" by Van Cleef Engineering Associates, Inc. dated February 25, 2021, the amendment is consistent with many goals and recommendations in the 2004 Master Plan in that more suitable riverfront locations are being prioritized for residential development, and the character of the area surrounding the Property is most suitable for industrial uses; and

WHEREAS, since the adoption of the Town's Revised RRP, the Town has struggled to attract the desired residential development that would be appropriate for Block 2101, Lots 2.01 and 2.02 and, consistent with the 2004 Master Plan, the amendment proposes to locate industrial uses in a more favorable location in Town: adjacent to an existing industrial zone and out of sight from residential and downtown uses; and

WHEREAS, originally, zoning for the Property was "Manufacturing" in the 1988 Master Plan and that Plan recommended changing the existing zoning from a Manufacturing Zone to Light Industrial, which was thereafter codified on the zoning map as Light Industrial and remained so designated for many years; and

WHEREAS, for the foregoing reasons, the Property is most suited for a Light Industrial designation, which conforms to the general character of the surrounding properties, and residential development is most suitable along other areas of the Riverfront; and

WHEREAS, the Town wishes to adopt the District 5 Amendment – RRP as recommended by the Land Use Board, attached hereto as **EXHIBIT B** (the "Board Recommendation"); however, the this Ordinance shall nonetheless be referred to the Land Use Board for review anew pursuant to N.J.S.A.40A:12A-7(e).

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF PHILLIPSBURG, IN THE COUNTY OF WARREN, AS FOLLOWS:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The District 5 Amendment – Riverfront Redevelopment Plan is hereby adopted pursuant to the terms of the Redevelopment Law.
3. The zoning district map included in the zoning ordinance of the Town is hereby amended to reference and delineate the District 5 Amendment – Riverfront Redevelopment Plan. The District 5 Amendment – Riverfront Redevelopment Plan shall supersede the applicable development regulations of the Town’s municipal code, as and where indicated.
4. If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of the Ordinance.
5. A copy of the Ordinance and the District 5 Amendment – Riverfront Redevelopment Plan shall be available for public inspection at the office of the Town Clerk during regular business hours.
6. This Ordinance shall take effect in accordance with all applicable laws.
7. Upon this Ordinance becoming final, Ordinance 2021-14 shall be rescinded in its entirety.

(Attestation)

Lorraine Loudenberg,
Acting Town Clerk

SUMMARY OF ACTION

TOWN OF PHILLIPSBURG
TOWN COUNCIL MEETING
TUESDAY, MAY 04, 2021 AGENDA
via ZOOM
7:00 P.M.

Join Zoom Meeting

<https://us02web.zoom.us/j/85968749505?pwd=MlNpdGNDL0NkWFpiSXNldGNsWXArUT09>

Meeting ID: 859 6874 9505

Passcode: Pburg

One tap mobile

+13017158592,,85968749505#,,,,*468749# US (Washington DC)

+13126266799,,85968749505#,,,,*468749# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 646 876 9923 US (New York)

Meeting ID: 859 6874 9505

Passcode: 468749

Find your local number: <https://us02web.zoom.us/j/85968749505?pwd=MlNpdGNDL0NkWFpiSXNldGNsWXArUT09>

1. **CALL TO ORDER** 7:08 PM

2. **OPEN PUBLIC MEETING ACT STATEMENT:**

THIS MEETING IS CALLED PURSUANT TO THE PROVISIONS OF THE OPEN PUBLIC MEETINGS LAW. THIS MEETING OF May 04, 2021 WAS INCLUDED IN A NOTICE SENT TO NEWSPAPERS OF RECORD AND POSTED ON THE BULLETIN BOARD IN THE MUNICIPAL BUILDING AND HAS REMAINED CONTINUOUSLY POSTED AS THE REQUIRED NOTICES UNDER THE STATUTE. IN ADDITION, A COPY OF THIS NOTICE HAS BEEN AVAILABLE TO THE PUBLIC AND IS ON FILE IN THE OFFICE OF THE MUNICIPAL CLERK Read by CVP Fulper

3. **INVOCATION AND FLAG SALUTE** by CVP Fulper

4. **ROLL CALL** - all present



SUMMARY OF ACTION

5. APPROVAL OF MINUTES -

April 20, 2021

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza	X		X			
Councilwoman DeGerolamo		X	X			
Council Vice President Fulper					X	
Council President McVey			X			

6. BILLS LIST -

ROLL CALL

Motion to adopt with addition from VP Fulper Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza		X	X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper	X		X			
Council President McVey			X			

R. Fulper – asked to add a bill for the Stateliner –league (vondor 1175) for \$1,150.00 for league and umpire fees.

7. ANNOUNCEMENTS

8. OLD BUSINESS

R: 2021-102 (tabled on 04-20-2021)

RESOLUTION AUTHORIZING AWARD OF A CONTRACT FOR PROFESSIONAL SERVICES WITH REMINGTON & VERNICK ENGINEERS (RVE) FOR ENGINEERING SERVICES RELATED TO THE REPLACEMENT OF DIGESTER BUILDING BOILER WASTEWATER TREATMENT PLANT

ROLL CALL - UNTABLE

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza			X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper			X			
Council President McVey		X	X			

SUMMARY OF ACTION

ROLL CALL

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza			X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper			X			
Council President McVey		X	X			

Discussion

Councilwoman DeGerolamo asked why originally tabled?

CP McVey noted waiting for Cert of Funds, should have been on last meeting. No further discussion.

R: 2021-64 (tabled on 02-16-2021)

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE TOWN AND AFSCME COUNCIL NO. 73

MOTION TO POSTPONE INDEFINITELY

ROLL CALL

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza			X			
Councilwoman DeGerolamo		X	X			
Council Vice President Fulper			X			
Council President McVey	X		X			

RW - still discussing

New Business

159 Mercer Street – Habitability Hearing

Attorney Wenner state habitability hearing for property commonly known as 159 Mercer Street, Bl:1510, Lot:11 habitability complaint filed. Contains conditions which are unsuitable for human habitation and pose a danger to health, welfare. Concern for safety of residents.

SUMMARY OF ACTION

9. MAYOR'S AND ADMINISTRATIVE OFFICERS

None received at this time.

10. PUBLIC DISCUSSION ON AGENDA ITEMS

11. ORDINANCES – SECOND READING -

O: 2021-12 (First Reading 04.06.2021; Second Reading 05-04-2021)

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, REGARDING 2021 SALARIES FOR UNCLASSIFIED EMPLOYEES

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza		X	X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper			X			
Council President McVey	X		X			

O:2021-13 (First Reading 04-20-2021 – Second Reading 05-04-2021)

CALENDAR YEAR 2021 ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A: 4-45.14)

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza			X			
Councilwoman DeGerolamo		X	X			
Council Vice President Fulper			X			
Council President McVey			X			

SUMMARY OF ACTION

O: 2021-14 (First Reading 04-20-2021 – Second Reading 05-04-2021)

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, NEW JERSEY ADOPTING THE DISTRICT 5 (RIVERSIDE INDUSTRIAL) AMENDMENT - RIVERFRONT REDEVELOPMENT PLAN

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant				X		
Councilman Piazza		X	X			
Councilwoman DeGerolamo				X		
Council Vice President Fulper	X		X			
Council President McVey			X			

12. ORDINANCES — FIRST READING NONE

13. RESOLUTIONS - CONSENT AGENDA **Matters listed on the Consent Agenda Resolution are considered routine and will be enacted by one motion of the Council and one roll call vote. There will be no separate discussion of these items unless a Council member requests an item to be removed for consideration.*

R: 2021-112

GOVERNOR'S COUNCIL ON ALCOHOLISM AND DRUG ABUSE FISCAL GRANT
CYCLE OCTOBER 2020-JUNE 202

R: 2021-113

RESOLUTION TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING THE PURCHASE THROUGH THE ESCNJ COOP TO BEN SHAFFER RECREATION FOR RECREATION EQUIPMENT

SUMMARY OF ACTION

R: 2021-114

RESOLUTION TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING THE PURCHASE THROUGH THE MORRIS COUNTY CO-OP TO BEN SHAFFER RECREATION

R: 2021- 115

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, AUTHORIZING A CHANGE ORDER DECREASE TO NATIONAL WATER MAIN CLEANING CO. IN THE AMOUNT OF \$24,860.25 AND AUTHORIZING FINAL PAYMENT

R: 2021-116

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, AUTHORIZING THE EXECUTION OF AN ELECTRONIC TAX LIEN CERTIFICATE SALE SERVICE AGREEMENT WITH THE TOWN OF PHILLIPSBURG AND REAL AUCTION.COM, LLC

R: 2021-117

A RESOLUTION AWARDDING PURCHASES UNDER NEW JERSEY STATE CONTRACT

R: 2021-118

AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE MORRIS COUNTY COOPERATIVE PRICING COUNCIL TO RENEW MEMBERSHIP THEREIN FOR THE PERIOD OF OCTOBER 1, 2021 THROUGH SEPTEMBER 30, 2026

R: 2021-119

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, AUTHORIZING THE REFUND FOR RESERVATION OF THE PAVILLION

~~**R: 2021-124 DUPLICATE # R 122**~~

~~RESOLUTION APPOINTING BUILDING SUB-CODE OFFICIAL~~

R: 2021-125

SUMMARY OF ACTION

A RESOLUTION TO PROVIDE FOR THE ADOPTION OF EMERGENCY TEMPORARY APPROPRIATIONS FOR 2021 SEWER UTILITY IN ACCORDANCE WITH PROVISIONS OF N.J.S.A. 40A:4-20

R: 2021-126

A RESOLUTION TO PROVIDE FOR THE ADOPTION OF EMERGENCY TEMPORARY APPROPRIATIONS FOR 2021 CURRENT FUND IN ACCORDANCE WITH PROVISIONS OF N.J.S.A. 40A:4-20

R: 2021 -127

A RESOLUTION TO PROVIDE FOR AN ADOPTION OF A TEMPORARY BUDGET FOR DEBT SERVICE FOR THE YEAR 2021 IN ACCORDANCE WITH THE PROVISIONS OF THE LOCAL BUDGET ACT

R: 2021-128

RESOLUTION APPOINTING ACTING CONSTRUCTION AND BUILDING SUB CODE OFFICIAL

R: 2021-129

RESOLUTION APPOINTING ACTING ELECTRICAL SUB CODE OFFICIAL AND ELECTRICAL INSPECTOR

R: 2021-130

RESOLUTION AUTHORIZING PAYOUT OF ACCRUED SICK, VACATION AND COMPENSATORY LEAVE FOR LIEUTENANT WILLIAM VINE

ROLL CALL CONSENT AGENDA

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza		X	X			

SUMMARY OF ACTION

Councilwoman DeGerolamo			X			
Council Vice President Fulper	X		X			
Council President McVey			X			

REMOVED FROM CONSENT AGENDA FOR DISCUSSION AND VOTE

R: 2021-120

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN AND STATE OF NEW JERSEY REAGRDNING THE PHILLIPSBURG FREE PUBLIC LIBRARY

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant				X		
Councilman Piazza	X		X			
Councilwoman DeGerolamo				X		
Council Vice President Fulper			X			
Council President McVey		X	X			

R: 2021-121

RESOLUTION APPOINTING CONSTRUCTION CODE OFFICIAL

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant				X		
Councilman Piazza		X	X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper			X			
Council President McVey	X		X			

CM HW – no because of the money

SUMMARY OF ACTION

R: 2021-122

RESOLUTION APPOINTING BUILDING SUB CODE OFFICIAL

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant				X		
Councilman Piazza		X	X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper	x		X			
Council President McVey			X			

R: 2021-123

RESOLUTION APPOINTING FIRE SUBCODE OFFICIAL AND FIRE INSPECTOR

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant				X		
Councilman Piazza			X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper	X		X			
Council President McVey		X	X			

14. NEW BUSINESS

Habitability Hearing on 159 Mercer Street – Appear back at the May 18, 2021 meeting

15. PUBLIC PETITIONS

16. DISCUSSION

17. COUNCIL OPEN TIME

18. MOTIONS

SUMMARY OF ACTION

Phillipsburg Alliance Church – Heather Allshouse, June 05, 2021 start at Shappell Park ending at Walters Park

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza	X		X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper		X	X			
Council President McVey			X			

19. EXECUTIVE SESSION - NONE

R: 2021-

A RESOLUTION TO PROVIDE FOR AN EXECUTIVE MEETING OF THE TOWN COUNCIL OF THE TOWN OF PHILLIPSBURG FOR THE PURPOSE OF CONSIDERING...

20. ADJOURNMENT

ROLL CALL @ 10:37 PM

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza			X			
Councilwoman DeGerolamo		X	X			
Council Vice President Fulper	X		X			
Council President McVey			X			

SUMMARY OF ACTION

Apprvd. May 04, 2021

TOWN OF PHILLIPSBURG
TOWN COUNCIL MEETING
TUESDAY, April 20, 2021 AGENDA
via ZOOM
7:00 P.M.

Join Zoom Meeting
Topic: Town Council Meeting - April 20, 2021
Time: Apr 20, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/84882703727?pwd=MHR2c0hKVkEvdkk3QmRTRjJNVXM3dz09>

Meeting ID: 848 8270 3727
Passcode: Pburg
One tap mobile
+13126266799,84882703727#,,,,*474130# US (Chicago)
+16468769923,,84882703727#,,,,*474130# US (New York)

Dial by your location
+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
Meeting ID: 848 8270 3727
Passcode: 474130

- 1. **CALL TO ORDER** 7:05 PM Council President McVey
- 2. **OPEN PUBLIC MEETING ACT STATEMENT:** Read by VP Fulper

THIS MEETING IS CALLED PURSUANT TO THE PROVISIONS OF THE OPEN PUBLIC MEETINGS LAW. THIS MEETING OF April 20, 2021 WAS INCLUDED IN A NOTICE SENT TO NEWSPAPERS OF RECORD AND POSTED ON THE BULLETIN BOARD IN THE MUNICIPAL BUILDING AND HAS REMAINED CONTINUOUSLY POSTED AS THE REQUIRED NOTICES UNDER THE STATUTE. IN ADDITION, A COPY OF THIS NOTICE HAS BEEN AVAILABLE TO THE PUBLIC AND IS ON FILE IN THE OFFICE OF THE MUNICIPAL CLERK

- 3. **INVOCATION AND FLAG SALUTE** Led by VP Fulper
Requested a moment of Silence for Officer Belcastro.

- 4. **ROLL CALL**
Council President McVey, VP Fulper, Councilman Piazza, Councilwoman DeGerolamo and Councilman Wyant. Also present, Town Officials, CFO Merlo, BA Benjivenga and Attorney Wenner.

- 5. **APPROVAL OF MINUTES -** March 02, 2021
March 16, 2021



Apprvd. May 04, 2021

Discussion regarding minutes – None

ROLL CALL

March 2

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza	X		X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper		X	X			
Council President McVey			X			

ROLL CALL

March 16

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza		X	X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper			X			
Council President McVey			X			

BILLS LIST - As of April 20, 2021

ROLL CALL

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X		70104	
Councilman Piazza	X		X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper		X	X			
Council President McVey			X			

Discussion

Councilman Wyant noted he would abstain from ck.70104, but yea to all others.

VP Fulper questioned Kanopy, Inc. as it seemed to be a Library expense, wondered why on Town's bills list. Stating is this where it should be.

President McVey asked if BA could speak to this situation and wondered if bills list could be streamlined for the future.

Apprvd. May 04, 2021

BA Benjivenga deferred to CFO Merlo, but noted could better streamline bills list as Library and Land Use have bills approved by their respective Boards -we, TOP cut checks – not statutorily – boards approval.

VP Fulper – asks if the money has already been allocated? Want to be sure Kanopy hasn't been cancelled-not happening.

President McVey – meet with CFO/BA/Auditor best idea going forward. Once accomplished please reach out so he may designate a Councilmember.

Further discussion - None

6. ANNOUNCEMENTS

President McVey - Thanked Public for understanding need to cancel the April 6 TC Mtg. to allow time to heal/mourn the loss of Officer Dominic Belcastro. Gave special thanks to CFO Merlo and BA Benjivenga and all employees who were a part of seeing bills from the 04.06.2021 meeting were paid timely.

He introduced Freeholder Commission Director Kern who announced the County Health Department would be administering Covid Vaccinations in Phillipsburg at ECLC on Wednesday, April 21. He continued by thanking the Council President/Mayor and all who helped put together the transportation and notification. Commish Kern stated he appreciated the time of those who volunteered to have a successful event.

7. OLD BUSINESS

R: 2021 – 34

Tabled 01.19.2021 – pending Bond Ord/C.O.F

R2021-34

A RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, AUTHORIZING THE EXPENDITURE OF NOT TO EXCEED \$262,000.00 FOR ODOR CONTROL SYSTEM FOR DIGESTER TANKS

ROLL CALL Odor Control System for Digesters

Un-table 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza			X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper		X	X			
Council President McVey			X			

Apprvd. May 04, 2021

ROLL CALL**Passed****5-0**

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant		X	X			
Councilman Piazza			X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper	X		X			
Council President McVey			X			

Discussion - None

8. MAYOR'S AND ADMINISTRATIVE OFFICERS

None received from Mayor. Asked Council about committees they are on.

VP Fulper -- noted Recreation and the abundance of upgrades the Parks are looking good. Commended Superintendent DJ Kophazy on his efforts and the bringing in of Revenue -- 5k from the LV Adult Soccer League.

Councilman Piazza stated the beautification program for TOP will be Saturday, April 24, at 8:30 am with the kickoff at 9:00am. Thanked NORWESCAP and Mary Jo Harris for the coordination of the event.

CP McVey stated he and Cnclman Piazza had very positive conference call with Developer interested in presenting ideas to TOP. Not same developer as Stateliner United, but their initial interest has sparked additional developers interested in presenting ideas for Riverfront. Also, Entrepreneur in Town -- expand current footprint. Proud of redevelopment committee, now we are getting the phone calls.

9. PUBLIC DISCUSSION ON AGENDA ITEMS

Theresa Chapman 362 Brainards Rd., Harmony

Asked why Ordinances not attached to Agenda - ? Asked why Agenda not on website by Friday evening before meeting on the following Tuesday?

Deputy Clerk Loudenberry stated the Ordinances are available for the Public to view in the Clerk's Office, noting that the Clerk's Office would be happy to arrange an appointment to view any ordinances as the building is currently closed to the Public.

Cnclman Piazza stated this is only first reading, would be up for 2nd reading and then is opportunity for Public to speak.

T. Chapman -- asked if Agenda would be posted by the Friday before the Tuesday meeting?

Apprvd. May 04, 2021

CP McVey noted her time was up and if she had further questions, he encouraged her to email him directly. He continued that the Agenda can be different regarding changes/amendments that Council President makes as needed prior to meeting.

D. Morrisette – 5 Fairview Hghts., Phillipsburg

Requested Council consider their Vote on Budget – and provide Library with more than the \$550,000 as it is not enough. Noted Library Director Krolak determined they need \$740,000 to function properly. Continued if go with Budget number force employees to furlough. Great online during Pandemic, employees would rather return to work – not sit out furlough.

Asked do not change the Zoning to industrial, bad idea – traffic, warehouse by Canal Path, think twice.

Alison Knabb – 474 James Street

Fully fund the Library – patrons can't browse – not safe enough to staff – want to go inside – peruse collection, please figure out way – need to be open 6 days/week as in the past.

Joe Meyner – 392 South Main Street

Noted attempted to retrieve Agenda from Website 3xs, unable to do so-pattern. Stateliner plan – apartment complex, 90 hotel rooms. RR – Traffic-noise – inadequate parking. Stated you cannot widen a 3 Lane bridge, plain ugly.

Reggie Regrut 390 Heckman St.

Note IR Tract – warehouses, trucks – should not change Zoning to light industrial in the Riverfront/Downtown area. Downtown has potential to be like Lambertville – pause, not right now. Councilmember rather see residential-don't proceed changing to industrial right now.. Happy to hear CP McVey saying developers are calling us.

Mary Jo Harris 9 Oak Ridge Rd., Washington

District 5, light industrial – what area – Planning Board Meeting.

CP McVey – South of Mt. Ponasis.

Angela Knowles – District 5 – 2 lots intersects into District 3 – 1 lot. Part of Delaware River Park – merge into District 5.

Mary Jo asked if this would leave existing parking lot land locked.

A. Knowles – Part of District 3 – I believe intended to be merged with District 5. Merge 1 lot of 3 into 5 and 5 becomes industrial.

MJH – will property be land locked – rezoned light industrial or will there be another entrance/exit (consider it – passive recreation space and not be able to be used?)

R. Piazza – noted things are circulating creating mountain out of mole hill. No plans have been submitted/approved. There will be Public Meeting any Property changes and the Public would know ahead of Time. Noted heard from a Lopatcong resident who was against the asphalt plant

Apprvd. May 04, 2021

and now that it is there is little to no effect on resident. Asked Mary Jo to call him directly as her time to speak was up.

Ed Bullock 344 Warren Street

President of Library Board of Trustees – Budget questioned if supporting the Library 1.4 million to TOP for Covid relief, wants the Library to get some of that money. If not designated, asked for serious consideration.

Bus Adm Benjivenga – American Rescue Plan – have yet to receive guidelines, May 12, but restricts – January 2020 – revenue losses – addresses broad band, infrastructure, sewer, water. Monies to be used 50% this year and 50% next year, not operating expenses.

EB – stated if you want Town to be best reflection of self – need to put money in to Library. Noted Sal Panto did not decapitate Library in Easton – hopes TOP is not being short sighted.

CP McVey noted made statements from a Redevelopment aspect – Library not redevelopment.

Cnclman Piazza – Noted Easton Library slipped to Board of Education by Sal Panto – not same situation.

Fred Stine – Delaware River 925 Canal St., Bristol, PA

Opinion that warehouse near waterfront is a worst case scenario – potential impact detrimental to wildlife, plants. Incumbent on decision makers, residents – think of effect of truck traffic. If traffic is 3-300 must consider worst case scenario in the realm of possibilities.

Cnclman Piazza – Noted when the townhouses were suggested, the Public was anticipating only negatives, said Sewer system would be overwhelmed and collapse adding we will plan thru traffic studies and environmental impact – responsible planning. Noting any changes will come before Public and they can address – all will have voice.

FS – Liked analogy of Lambertville/Phillipsburg.

VP Fulper – Behalf of constituent, Janice Hosbach, 150 Mercer Street

He read her statement as she had computer issues.

Improvements – Redevelopment Riverfront, 2005 Perrucci Townhouses would generate tax revenue.

Concerned about Sewage and then Economy crashed and that was no longer an option. Look to Easton – property values have increased, result – new businesses – owner occupied. No warehouses so close to waterfront – discourages homes/businesses-less appealing. 3 ingress/egress-traffic McKeen/Stockton.

Noted the new warehouses in Lopatcong/Phillipsburg are next to interchange of Rt22 – Howard St. has no such interchange-traffic/congestion – no new businesses. Asked this be put in to record.

RP – egresses – is an issue – separate right of way, might be needed.

Apprvd. May 04, 2021

10. ORDINANCES – SECOND READING -**O: 2021-11 (First Reading 03.16.2021 2nd Reading 04.20.2021)**

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY

O2021-11

OF WARREN, STATE OF NEW JERSEY, AMENDING CHAPTER 67-21, SCHEDULE V, ONE WAY STREETS, OF THE CODE OF THE TOWN OF PHILLIPSBURG IN ORDER TO CHANGE THE DESIGNATION OF A CERTAIN TWO-WAY STREET

ROLL CALL**Passed 5-0**

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant		X	X			
Councilman Piazza			X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper	X		X			
Council President McVey			X			

Discussion

Public

D. Morisette – 5 Fairview Hghts – satisfied

CP McVey stated behind old Hess Station

Discussion

Council – None

O: 2021-02 (First Reading 02.02.2021 2nd Reading 04.20.2021)

AN ORDINANCE OF THE TOWN PHILLIPSBURG, WARREN COUNTY, NEW JERSEY AMENDING AND MODIFYING CHAPTER 535, STORMWATER MANAGEMENT, OF THE CODE OF THE TOWN OF PHILLIPSBURG

ROLL CALL**Passed 5-0**

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza	X		X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper		X	X			
Council President McVey			X			

Apprvd. May 04, 2021

Discussion
Public – None
Council - None

11. ORDINANCES — FIRST READING**O: 2021-12 (First Reading 04.06.2021)**

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, REGARDING 2021 SALARIES FOR UNCLASSIFIED EMPLOYEES

O2021-12
ROLL CALL

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza			X			
Councilwoman DeGerolamo	X		X			
Council Vice President Fulper			X			
Council President McVey		X	X			

Discussion – None**O:2021-13**

CALENDAR YEAR 2021 ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK
(N.J.S.A. 40A: 4-45.14)

ROLL CALL**Passed 5-0**

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza			X			
Councilwoman DeGerolamo		X	X			
Council Vice President Fulper			X			
Council President McVey			X			

Discussion - None**O: 2021-14****Passed 3-2**

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, NEW JERSEY ADOPTING THE DISTRICT 5 (RIVERSIDE INDUSTRIAL) AMENDMENT - RIVERFRONT REDEVELOPMENT PLAN

Apprvd. May 04, 2021

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant				X		
Councilman Piazza		X	X			
Councilwoman DeGerolamo				X		
Council Vice President Fulper	X		X			
Council President McVey			X			

Discussion

Cnclwmn DeG – received very late – a lot of new info, we/Town Council not privy to until after 5pm – haven't seen concept. Heard rumor 500k warehouse, could not confirm. As Redevelopment Authority – understand warehouse attractive along RR-started spawn of cities and schools, continued this is really not along river. State do not want to see Phillipsburg become another Robbinsville-residents park in (3) separate Towns. Town sued Amazon – people could not get through their own Town. I78 Bridge Point Project great – not downtown. Hard to say yes when not informed. Influx of trucks downtown will decimate – lose historic Bldg. – truck this weekend could not get across bridge. Continued, does this for a living, billion dollar buildings, 4 stories or higher, but warehouse not in downtown. Tired of Easton getting great projects and TOP gets junk projects. Opinion, warehouse doesn't belong along river, what belongs there is millennial park – beautiful concept. Single family market place to be people moving out of major city through 2025. Economics part 2 – warehouses were 2 years ago. Did survey 70% came to TOP for affordable housing.

VP Fulper noted not discussing Plan tonight. Simply amended plan for use – any project would have to go to Planning Board first. Disagree warehouse is yesterday – Nike moving to Bethlehem – 250 jobs. Planning Board first – haven't seen concept. Mary Jo Harris – don't want to see landlocked-separate egress. Sat on Planning Board – preferred residential Peron Construction residents didn't want that at the time either. He stated would vote yes/support.

Cnclman Wyant stated not conducive to our Master Plan. No way ever think Council would allow a warehouse – Howard St./downtown area of our Town. Does not rise to our Master Plan.

Cnclman Piazza – remind we already have multiple warehouses, park 35 ft. Municipal Waste. Grew up 50ft when there were more warehouses. Area overgrown, needs to be developed. Note people walking up from river, places to do whatever unseen, not good. Needs to be developed – lighting, people going to work-less criminal element. Currently, too secluded, overgrown. When houses were there, no sewer/water – they were removed and rightly so. Industrial, cleaner more modern warehouse asset, scrap yard there currently, canisters blowing up – actually happened. Yes, area is for this.

RF – Thoroughfare at that time, 6 criteria developer must have to meet. Tonight voting on Zoning change, that is all.

CP McVey – noted his role to lead Council – diverse thoughts/ideas. Tonight nothing more that revised Redevelopment. Added, had an apt. in Robbinsville. This is a mixed use, light industrial. Lambertville only 3,882 population. Town of Phillipsburg once was 19,255 – when industry jobs were available-this Town built on industry. Would like to see Town grow again to 20k-populate empty houses, renew

Apprvd. May 04, 2021

empty businesses. Added, we can do both residential/industrial. Tract of land – 31 acres-can't tell developer what to do with his land. Can't see river from this land. Industrial is what we are.

R: 2021 – 86

GOVERNING BODY CERTIFICATION OF COMPLIANCE WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964"

ROLL CALL

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza		X	X			
Councilwoman DeGerolamo	X		X			
Council Vice President Fulper			X			
Council President McVey			X			

Discussion - None

R: 2021-87

A RESOLUTION TO PROVIDE FOR THE ADOPTION OF EMERGENCY TEMPORARY APPROPRIATIONS FOR 2021 CURRENT FUND IN ACCORDANCE WITH PROVISIONS OF N.J.S.A. 40A:4-20.

ROLL CALL

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza		X	X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper			X			
Council President McVey			X			

Discussion - None

R: 2021-88

A RESOLUTION TO PROVIDE FOR THE ADOPTION OF EMERGENCY TEMPORARY APPROPRIATIONS FOR 2021 SEWER UTILITY IN ACCORDANCE WITH PROVISIONS OF N.J.S.A. 40A:4-20.

ROLL CALL

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza			X			
Councilwoman DeGerolamo		X	X			

Apprvd. May 04, 2021

Council Vice President Fulper			X			
Council President McVey			X			

Discussion - None**R: 2021-89**

RESOLUTION TO ANTICIPATE MISCELLANEOUS REVENUES IN THE 2021 BUDGET USING THE THREE-YEAR AVERAGE OF REALIZED REVENUES FROM THE PRIOR THREE YEARS

ROLL CALL**Passed 5-0**

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza			X			
Councilwoman DeGerolamo		X	X			
Council Vice President Fulper			X			
Council President McVey			X			

R: 2021-90 Council President McVey – read title/introduction Budget Notice
A RESOLUTION ENTITLED MUNICIPAL BUDGET NOTICE

MOTION TO CUT MAYOR/COUNCIL SALARIES – REALLOCATED TO LIBRARY

ROLL CALL**Passed 5-0**

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza		X	X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper			X			
Council President McVey	X		X			

Discussion

DD – Asked if Council can move amounts around?

CP McVey questioned CFO Merlo/BA Benjivenga?

BA deferred to CFO Merlo who stated can make changes prior to voting.

DD – noted recommended moving not on Agenda yet, otherwise good.

RF – yes tonight – would like to find funds to fully fund – doesn't want jobs lost – read letter from Union – 20% cut cannot allocate any of 1.4, just intro – find dollars.

Apprvd. May 04, 2021

CP McVey – suggested Mayor/Council allow salaries back to 2020 levels. Asked easier now or easier prior to intro. Along with RF mentioned would like to help Library, knows the Police are down 3 and DPW is down 3. Adding Inspections teams are down, asked Council if needed further discussion.
 RP – flat now – will this drop levels.

CP McVey – separate discussion 8k. Adding it is the least we can do-show our commitment. Mission for TOP, small stipend. Mayor on board last year, sure he is on board this time. Adding, we found 25k for Library and doing our part as leaders.

CFO Merlo noted the difference 2020-2021 - \$5,180.00 only Mayor/Council.

McVey – 10% across board – with Sewer 8k.

VP Fulper stated would donate entire salary if helps keep jobs.

CFO – can still make changes at Public Hearing – depending what they are – may have to readvertise.

CP McVey asked Council for their different opinions/thoughts.

RP – Inspections?

McVey – look to where Community is heading – had 700 vacant/abandoned properties – now filling up.

DD – Library, other 65k too.

HW – Library

RF - Library

ROLL CALL Adopted R2021-90 as Amended

Passed 5-0

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza			X			
Councilwoman DeGerolamo		X	X			
Council Vice President Fulper	X		X			
Council President McVey			X			

12.

RESOLUTIONS - CONSENT AGENDA **Matters listed on the Consent Agenda Resolution are considered routine and will be enacted by one motion of the Council and one roll call vote. There will be no separate discussion of these items unless a Council member requests an item to be removed for consideration.*

R: 2021-91

A RESOLUTION APPROVING SUBMISSION OF APPLICATION TO STATE OF NEW JERSEY, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

Apprvd. May 04, 2021

R: 2021 - 92

RESOLUTION TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING THE PURCHASE OF POLICE BODY WORN CAMERAS AND MVRs

R: 2021-93

A RESOLUTION APPROVING THE PAYMENT OF SECOND QUARTER 2021 COUNTY TAX AND OPEN SPACE TAX, DUE MAY 15, 2021

R: 2021-94

RESOLUTION TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING THE PURCHASE THROUGH THE MORRIS COUNTY CO-OP TO BEN SHAFFER RECREATION

R: 2021-95

RESOLUTION OF THE TOWN OF PHILLIPSBURG, AWARDED A CONTRACT FOR THE PURCHASE OF REPLACEMENT UV BULBS AT THE WASTEWATER TREATMENT PLANT – BANK 2

R: 2021-96

RESOLUTION FOR THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING AN AGREEMENT FOR THE USE OF FACILITIES BY THE TOWN OF PHILLIPSBURG AND THE PHILLIPSBURG YOUTH SOCCER CLUB

R: 2021- 97

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY TO ISSUE A REFUND FOR AN OVERPAYMENT FOR POLICE THIRD PARTY OVERTIME TO ODYSSEA

R: 2021- 98

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY TO ISSUE A REFUND FOR A SEWER OVERPAYMENT

R: 2021-99

RESOLUTION AUTHORIZING AWARD OF A CONTRACT FOR PROFESSIONAL SERVICES WITH VAN CLEEF ENGINEERING ASSOCIATES FOR ENGINEERING SERVICES REGARDING THE ASSESSMENT AND DEMOLITION OF THE PROPERTY KNOWN AS THE ICE HOUSE, BLOCK 2806, LOT 1

R: 2021-100

RESOLUTION TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING THE EXECUTION OF A DEED OF EASEMENT

Apprvd. May 04, 2021

R: 2021-102

RESOLUTION AUTHORIZING AWARD OF A CONTRACT FOR PROFESSIONAL SERVICES WITH REMINGTON & VERNICK ENGINEERS (RVE) FOR ENGINEERING SERVICES RELATED TO THE REPLACEMENT OF DIGESTER BUILDING BOILER WASTEWATER TREATMENT PLANT

R: 2021-103

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, AUTHORIZING REFUND OF TAX OVER PAYMENT DUE TO TAX APPEALS

R: 2021-104

A RESOLUTION OF THE TOWN OF PHILLIPSBURG COUNTY OF WARREN STATE OF NEW JERSEY RESCINDING RESOLUTION 2021-46 AS IT WAS ADOPTED IN ERROR

R: 2021-105

A RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, FINDING AND DECLARING AN EMERGENCY FOR PURPOSES OF N.J.S.A. 40A:11-6 AND N.J.A.C. 5:34-6.1

R: 2021-106

RESOLUTION TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY APPROVING THE WILL SERVE REQUEST OF THE BOROUGH OF ALPHA FOR BLOCK 98, LOT 1

R: 2021-107

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY APPROVING THE PURCHASE OF MANHOLE COVERS AND CATCH BASINS FOR THE TOWN OF PHILLIPSBURG DEPARTMENT OF PUBLIC WORKS IN THE AMOUNT OF \$14,180.00

R: 2021-108

RESOLUTION TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY FOR REIMBURSEMENT TO BE PAID TO DAVID NEWELL FOR EXPENSES INCURRED TO REMEDIATE SEWAGE BACK-UP AT 186 WASHINGTON STREET

R: 2021-109

A RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH THE NEW JERSEY YOUTH CORPS OF PHILLIPSBURG

R: 2021-110

RESOLUTION AUTHORIZING AWARD OF A CONTRACT FOR PROFESSIONAL SERVICES WITH VAN CLEEF ENGINEERING ASSOCIATES FOR ENGINEERING SERVICES REGARDING THE WARREN STREET PHASE 2 2021 NJDOT TRANSPORTATION TRUST FUND GRANT

Apprvd. May 04, 2021

ROLL CALL**Consent Agenda****Passed 5-0**

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza			X			
Councilwoman DeGerolamo	X		X			
Council Vice President Fulper		X	X			
Council President McVey			X			

Pulled from Consent Agenda**R: 2021-101**

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, AUTHORIZING THE EXECUTION OF A SHARED SERVICE AGREEMENT FOR CONTRACT ADMINISTRATION BY AND BETWEEN THE TOWN OF PHILLIPSBURG AND THE HOUSING AUTHORITY OF THE TOWN OF PHILLIPSBURG

ROLL CALL**Failed to Pass 3-1-1**

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza				X		
Councilwoman DeGerolamo					X	
Council Vice President Fulper				X		
Council President McVey				X		

Discussion

VP Fulper – pull 101

CP McVey – pull 102

VP Fulper – 2021-101 PHA – brought to his attention, out of line comments were made. No apology was forthcoming. Therefore email to T. McGuire – voting no.

CP McVey – tried to reach out to T. McGuire – no response – written concern over remarks. Can't do shared service.

Cnclman Wyant asked if Council would table – did not get a second.

R: 2021-102 (Cert of Funds not available)**Moved to Table****Passed 5-0**

RESOLUTION AUTHORIZING AWARD OF A CONTRACT FOR PROFESSIONAL SERVICES WITH REMINGTON & VERNICK ENGINEERS (RVE) FOR ENGINEERING

Apprvd. May 04, 2021

SERVICES RELATED TO THE REPLACEMENT OF DIGESTER BUILDING BOILER
WASTEWATER TREATMENT PLAN

Discussion**R2021-102 Moved to Table****ROLL CALL****Passed 5-0**

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant			X			
Councilman Piazza			X			
Councilwoman DeGerolamo			X			
Council Vice President Fulper		X	X			
Council President McVey	X		X			

13. NEW BUSINESS

Habitability Hearing on 159 Mercer Street - not heard – moved to next Mtg. 05.04.2021.
Council President noted he initiated the hearing, but after conferring with Counselor Wenner wanted to insure proper Notice. Hoping to hear something from ownership.

14. PUBLIC PETITIONS

D. Morisette 5 Fairview Hghts.

Thanked Council cutting salaries to give Library. Thanked RF for push, asked pass reso denounce attack on Capitol bldg. Questioned Perrucci-partner in Peron Construction, asked if any Councilmember/Town represented by Perrucci,Steinhardt, Florio and Cappelli.

Attorney Wenner noted Councilmembers need not respond to Mr. Morisette as this is not a Q&A it is Public Petition. Continued F,P,S and C has represented Town in JIF, represented as assigned by our Insurance carrier.

Joe Meyner 392 SMS

Bldg. parallel sewers needed – sewer pipes 100 years old. Hopefully infrastructure money will help. Against Union Square – land between – block view/parking wasteland. Improve Delaware River Park first. If you agree write in the name Joe Meyner – will not win, but counted.

VP Fulper gently reminded Mr. Meyner can't Politic – proper decorum.

T. Chapman 362 Brainards Rd.

Questioned if there were a personal connection with Perrucci representing Councilmember personally should the public be made aware? Also noted surprised RF doesn't know – concept plan

Apprvd. May 04, 2021

contains proposal for warehouse. TC permitted uses, change Zone allows 1.1 squ. Ft. chng., Strykers Rd. 511k sq. ft. Phillipsburg Mall all too large.

RP – noted most warehouses 800k is median size, from his own point of reference.

T. Chapman – pt. of reference 110 sq. ft. – thanked Council.

RF – concerns – not in attendance Jan 2021. There during Comm discussions. If it means more jobs and bring us out of Poverty rate. Tired of people from other Towns telling us how to live.

Reggie Regrut

Stated, be kind to DD/HW proud voted No-any other proposals Perrucci, just to satisfy Perrucci's warehouse. Phillipsburg has already satisfied warehouse with IR Tract. Lambertville/New Hope – 1 street Towns-dining entertainment – vision with Riverfront. Reach out to legislators – ask yourself is warehouse downtown the best TOP can do?

John Betz - No

15. DISCUSSION

CP McVey – will be having Council discussions line up in coming weeks.

16. COUNCIL OPEN TIME

HW – Noted can't believe Reggie and I agree. Added he was represented by Steinhardt several years ago.

DD – State 2 things – never repped – no legal problems. 1st Covid shot – severe reaction, but encouraged all to take advantage of making appointments and getting Covid shot.

RP – Apologize faces

RF – earlier – No PHA shared services. What was acceptable in past, no longer. No matter who they are, why should I as elected official-all appointments to every board, thought out carefully.

DD – heartfelt plea, politics.

RF - Ran to make Phillipsburg better for people of TOP – not individuals-not why elected. Not only told how to vote, but never put Politics above people of TOP. Phillipsburg is one Community-divided by rhetoric, Phillipsburg I know is one color. Please consider how actions affect others. Adding we all make mistakes -acknowledge try to make better. Encourage ditch personal Agendas work together.

CP McVey – stated VP Fulper was talking about his personal plights while on Council, accused of bid rigging, DYFS investigated. Did not give jobs to friends nor pad boards. Stayed home from AC League first year, stayed home. Assured residents Council is listening to all ideas, Recreation, Residential and Industrial. Fighting racism. Thanked residents for understanding cancellation of April 6 TC Mtg. to allow time to grieve and lay Officer Belcastro to rest.

Asked Council if wished to pull of any Motion? None – voted on as blocks.

Apprvd. May 04, 2021

17. MOTIONS

Special Events

Bi-State Shad LLC – Phillipsburg Boat Launch - Eric Fistler April 21-26

LV Hispanic Soccer League – Johnny Mancheno- Event Dates May 02,2021 – Oct. 24, 2021

Lehigh Valley Walk for Recovery – Jordan Scott/Battle Borne May 1, 2021 Walter’s Park

River of Life Church – Pastor Bill Slack – Shappell Park August 29, 2021 (Worship Service followed by Community Picnic)

Motion

Councilwoman DeGeralamo moved to accept the motion. It was seconded by Councilman Wyant. **Passed 5-0**

Town of Phillipsburg Fire Department

Chloe L. Honan has applied for active fire duty with the Phillipsburg Fire Department, Lincoln Engine Co. No. 2

Leif R. Pruitt has applied for active fire duty with the Phillipsburg Fire Department, Lincoln Engine Co. No. 2

Juan E. Garcia has applied for active fire duty with the Phillipsburg Fire Department – Warren Chemical Co. No. 1

Motion

Councilwoman DeGerolamo moved to accept the motion. It was seconded by Councilman Wyant. **Passed 5-0**

18. EXECUTIVE SESSION - 2021-111 Town Council Meeting 04.20.2021

R: 2021-64 **Possible action to be taken**

RESOLUTION OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE TOWN AND AFSCME COUNCIL NO. 73

Apprvd. May 04, 2021

CONTRACTUAL MATTERS TO BE DISCUSSED Action may be taken

All State Technologies – Pool
Ingerman Litigation

Attorney Wenner stated Council discussed (3) subjects in Executive Session and asked they entertain a Motion to rescind the award to All State Technologies for the Pool.

ROLL CALL

Councilmembers	First	Second	Yea	Nay	Abstain	Absent
Councilman Wyant	X		X			
Councilman Piazza			X			
Councilwoman DeGerolamo		X	X			
Council Vice President Fulper			X			
Council President McVey			X			

19. ADJOURNMENT

Councilman Piazza moved to adjourn. All ayes – 10:30 pm

Apprvd. May 04, 2021

Subject:RE: OPRA - Request LITIGATION

Date:Tue, 7 Jul 2020 11:11:19 +0000

From:Victoria Kleiner <vkleiner@phillipsburgnj.org>

To:'David Morrisette (davidmorrisetteusa@gmail.com)' <davidmorrisetteusa@gmail.com>

CC:Randy Piazza, Jr. <rpiazzajr@phillipsburgnj.org>

Mr. Morrisette, I apologize I made a typo in the amount for Kelly Post Sheedy, The Insurance Carrier settled in the amount of \$170,000.00 not the Town of Phillipsburg.

Mr. Morrisette,
Corcoran - Lawsuit - still active

The insurance carrier settled with Sam Cappello in the amount of \$122,500.00

The insurance carrier settled with Kelly Post Sheedy in the amount of \$190,000.00

I will consider this OPRA completed.
Thank you, Vicki

Victoria L. Kleiner
Municipal Clerk/Registrar
Town of Phillipsburg
120 Filmore Street
Phillipsburg, NJ 08865
908-454-5500 ext. 309
vkleiner@phillipsburgnj.org

