

**KING MOENCH & COLLINS, LLP**

Michael L. Collins, Esq. (068092013)

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(732) 546-3670

*Attorneys for Defendant*

DAVID P. MORRISSETTE and SANDRA S.  
MORRISSETTE,

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-000341-22

Civil Action

**NOTICE OF CROSS-MOTION FOR  
SUMMARY JUDGMENT**

To: Honorable Kevin Shanahan, A.J.S.C.  
Superior Court of New Jersey  
Somerset County Vicinage  
20 North Bridge Street  
Somerville, NJ 08876

Peter D. Dickson  
Potter and Dickson  
194 Nassau Street, Suite 31  
Princeton, NJ 08542  
*Attorney for Plaintiffs, David P. Morrisette and Sandra S. Morrisette*

**PLEASE TAKE NOTICE** that at 9:00 a.m. on August 25, 2023, or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendant shall apply to the Superior Court of New Jersey, Somerset County Vicinage, 20 North Bridge Street, Somerville, NJ 08876, for an Order granting Defendant's Cross-Motion for Summary Judgment.

**PLEASE TAKE FUTURE NOTICE** that the undersigned will rely upon the attached Letter Brief, Proposed Order, and Response to Plaintiff's Statement of Undisputed Material Facts in support of this Motion.

**PLEASE TAKE FURTHER NOTICE** that oral argument is requested if timely opposition is received pursuant to Rule 1:6-2.

Discovery End Date: 6/19/2024

Arbitration Date: none

Trial Date: none

A Proposed form of Order is annexed hereto.

**KING MOENCH & COLLINS, LLP**  
*Attorneys for Defendant*

By: /s/ Michael L. Collins  
MICHAEL L. COLLINS

Dated: August 16, 2023

**KING MOENCH & COLLINS, LLP**

Michael L. Collins, Esq. (068092013)

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*Attorneys for Defendant*

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MORRISSETTE,

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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-000341-22

Civil Action

**PROPOSED ORDER**

THIS MATTER having come before the Court on the application of King, Moench & Collins LLP, Attorneys for Defendant Town of Phillipsburg Town Council, for an Order granting Defendant's Cross-Motion for Summary Judgment and the Court having considered the moving papers and papers filed in opposition thereto; and for good cause having been shown; and for the reasons set forth on the record on the return date of this application,

IT IS ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 2023

**ORDERED** that Defendant's Cross- Motion for Summary Judgment is Granted;  
and it is

**FURTHER ORDERED** that Plaintiffs' Motion for Summary Judgment is  
denied; and it is

**FURTHER ORDERED** that a copy of this Order shall be served upon all counsel of record via e-courts.

---

Hon. Kevin M. Shanahan, A.J.S.C.

Per R. 1:6(a)

\_\_\_\_\_ Opposed

\_\_\_\_\_ Unopposed

**KING MOENCH & COLLINS, LLP**

Michael L. Collins, Esq. (068092013)

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(732) 546-3670

*Attorneys for Defendant*

DAVID P. MORRISSETTE and SANDRA S.  
MORRISSETTE,

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-000341-22

Civil Action

**DEFENDANT'S REPLY TO  
PLAINTIFF'S STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

I, Michael L. Collins, hereby certify as follows:

1. I am an attorney-at-law of the State of New Jersey. I am a partner in the law firm of King, Moench & Collins, LLP, attorneys for Defendant, Town of Phillipsburg Town Council in the above-captioned matter.
2. I am fully familiar with the facts of this case.
3. I submit the following as a reply to Plaintiffs' Statement of Undisputed Material Facts:

**REPLY TO PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS  
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

1. Admitted for purposes of compliance with Rule 4:46-2.
2. Admitted for purposes of compliance with Rule 4:46-2.

3. Admitted for purposes of compliance with Rule 4:46-2.
4. Objection – Plaintiffs’ statement is not supported by a record citation as required by Rule 4:46-2(a).
5. Admitted for purposes of compliance with Rule 4:46-2.
6. Admitted for purposes of compliance with Rule 4:46-2.
7. Admitted for purposes of compliance with Rule 4:46-2.
8. Objection – Plaintiffs’ statements are not sufficiently supported by the exhibit as required by Rule 4:46-2(b). The exhibit appends a land use board resolution, which does not speak to the “intent and purpose” of an ordinance that would be adopted by the separate governing body.
9. Admitted for purposes of compliance with Rule 4:46-2.
10. Admitted for purposes of compliance with Rule 4:46-2.
11. Admitted for purposes of compliance with Rule 4:46-2 except to the extent that the redevelopment plan has been amended from time to time, including in an amendment that remains the subject of prerogative writ litigation under Docket No. WRN-L-248-21.
12. Admitted for purposes of compliance with Rule 4:46-2 that District 3 is designated as “Recreational/Heritage.” The remaining allegations are objected to as they are not sufficiently supported by the exhibit as required by Rule 4:46-2(b). The appended 2013 Plan designates six districts and the Recreational/Heritage district descriptions speak for themselves.
13. Admitted for purposes of compliance with Rule 4:46-2.
14. Objection – Plaintiffs’ statements are not sufficiently supported by the exhibit as required by Rule 4:46-2(b).
15. Admitted for purposes of compliance with Rule 4:46-2.
16. Admitted for purposes of compliance with Rule 4:46-2.
17. Objection – Plaintiffs fail to provide a citation to the record as required by Rule 4:46-2(a).
18. Denied. Phillipsburg completed a 2013 master plan reexamination report. A true copy of the cover to this report is attached as **Exhibit A** to this Certification.

19. Objection – Plaintiffs fail to provide a citation to the record as required by Rule 4:46-2(a).
20. Objection – Plaintiffs fail to provide a citation to the record as required by Rule 4:46-2(a).
21. Objection – Plaintiffs fail to provide a citation to the record as required by Rule 4:46-2(a).
22. Admitted for purposes of compliance with Rule 4:46-2.
23. Admitted for purposes of compliance with Rule 4:46-2.
24. Admitted for purposes of compliance with Rule 4:46-2.
25. Admitted for purposes of compliance with Rule 4:46-2.
26. Admitted for purposes of compliance with Rule 4:46-2.
27. Admitted for purposes of compliance with Rule 4:46-2.
28. Admitted for purposes of compliance with Rule 4:46-2.
29. Objection – Plaintiffs’ statements are not sufficiently supported by the exhibit as required by Rule 4:46-2(b). For instance, the exhibit contains no mention of the word “Republican.”
30. Admitted for purposes of compliance with Rule 4:46-2.
31. Objection – Plaintiffs’ statements are not sufficiently supported by the exhibit as required by Rule 4:46-2(b).

### **COUNTERSTATEMENT OF MATERIAL FACTS**

1. The 560 and 562 South Main Street properties are neither a component of the Redevelopment Area addressed in the Ordinance, nor are they within two hundred (200) feet of same. (Exhs. 1, 2, 6 to Pf. Br.).
2. The 560 and 562 South Main Street Properties are at least 1,000 feet from the Redevelopment Area. (Exh. 6 to Pf. Br.).
3. Michael Perrucci was no longer a partner of the Florio Firm (as defined in Defendant’s brief) as of January 1, 2020. See letter and certification submitted to the Court in Docket No. WRN-L-341-22 attached hereto as **Exhibit B** and incorporated by reference.

4. Michael Perrucci did not perform any legal services for any client of the Florio Firm since June 11, 2018. See letter and certification submitted to the Court in Docket No. WRN-L-341-22 attached hereto as **Exhibit B** and incorporated by reference.
5. Michael Perrucci has lacked an ownership interest in the Florio Firm since May 2021. See letter and certification submitted to the Court in Docket No. WRN-L-341-22 attached hereto as **Exhibit B** and incorporated by reference.

I hereby certify that the forgoing 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.

**KING MOENCH & COLLINS, LLP**  
*Attorneys for Defendant*

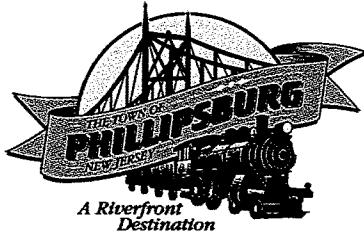
By: /s/ Michael L. Collins  
MICHAEL L. COLLINS

Dated: August 16, 2023



## **EXHIBIT A**

**COPY**



**Town of Phillipsburg**  
Warren County, New Jersey

## **2013 MASTER PLAN REEXAMINATION REPORT**

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**Adopted by the Phillipsburg Planning Board on December 23, 2013**

**Phillipsburg Planning Board**

WILLIAM DUFFY, *Chairperson*  
JAMES SHELLY, *Vice Chairperson*  
JOHN PENROSE, *Secretary*  
HARRY WYANT, *Mayor*  
RANDY PIAZZA, SR, *Councilman*  
ROBERT FULPER  
BRIAN OTTO  
BERNARD ROONEY

Bruce Jones, Esq., *Planning Board Attorney*  
Stan Schrek, PE, *Town Engineer*  
David Maski, PP, AICP, *Town Planner*  
Elisa DiMarsico, *Recording Secretary*

*Prepared by:*



1128 Route 31  
Lebanon, NJ 0833

The original of this report was signed and sealed in  
accordance with N.J.S.A. 45:14A-12.

---

David K. Maski, PP, AICP  
License Number 02354

(3988.004)

## **EXHIBIT B**

# KING MOENCH & COLLINS

A Limited Liability Partnership†

ATTORNEYS AT LAW

51 GIBRALTAR DRIVE – SUITE 2F  
MORRIS PLAINS, NEW JERSEY 07950-1254

973-998-6860

Facsimile: 973-998-6863

**RED BANK OFFICE**

365 BROAD STREET, SUITE 4R  
RED BANK, NEW JERSEY 07701

732-546-3670

PETER J. KING<sup>◊</sup>  
PKing@kingmoench.com  
MATTHEW C. MOENCH\*  
MMoench@kingmoench.com  
MICHAEL L. COLLINS\*  
MCollins@kingmoench.com

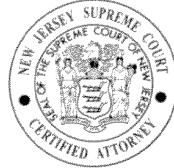
NAKICHA T. JOSEPH  
NJoseph@kingmoench.com

**Of Counsel**

ROMAN B. HIRNIAK  
RHirniak@kingmoench.com

<sup>◊</sup> Certified by the Supreme Court of New Jersey as  
a Municipal Court Attorney

\* Member of the Bar of New York



## **VIA E-COURTS**

July 8, 2022

Hon. Kevin M. Shanahan, J.S.C.  
Somerset County Courthouse  
20 North Bridge Street, 3<sup>rd</sup> Floor  
Somerville, NJ 08876

**RE: Kormandy v. Town of Phillipsburg Town Council**  
**Docket No. WRN-L-248-21**

Dear Judge Shanahan:

This office represents Defendant Town of Phillipsburg Town Council (“Phillipsburg”) in the above-captioned matter.

On June 30, 2022, both counsels to this litigation received the attached letter from Seth R. Tipton, Esq. of the law firm of Florio, Perrucci, Steinhardt, Capelli, Tipton & Taylor LLC (the “Firm”). The letter was written to “respond on behalf of th[e] Firm with respect to the alleged potential conflicts of interest” in this litigation. The letter appends two certifications, and relying upon them, asserts as follows:

Because Mr. Perrucci had no ownership interest in the Firm at the time of the town council vote in May 2021 and performed no legal services during the relevant time periods, a vote by a council member in favor of the project here would not benefit the Firm, and therefore not give rise to any conflict of interest.

Phillipsburg writes the Court to advise about the letter that it and Plaintiff’s counsel received from the Firm – as the enclosed contentions appear directly relevant and perhaps contradictory to the legal claims asserted by Plaintiffs in their trial brief and reply brief.

Hon. Kevin M. Shanahan, J.S.C.

July 8, 2022

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Based upon the foregoing, Phillipsburg respectfully requests that a pre-trial conference be scheduled to address the foregoing disclosure that was made by the Florio Firm as well as any other pre-trial considerations. Phillipsburg additionally requests the scheduling of a prerogative writ trial date so that this litigation may be adjudicated by this Court to completion.

I thank the Court in advance for its courtesies.

Very truly yours,



MICHAEL L. COLLINS

Attachment



STEINHARDT  
CAPPELLI  
TIPTON &  
TAYLOR LLC

60 West Broad St., Suite 201  
Bethlehem, PA 18018

o 610.691.7900  
F 610.691.0841

**Seth R. Tipton** | Partner

610.691.7900 x 1039  
[Stipton@floriolaw.com](mailto:Stipton@floriolaw.com)

June 30, 2022

Via Email & Fedex

Peter D. Dickson, Esq.  
Potter & Dickson  
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Princeton, NJ 08542  
[Rwppddl@cs.com](mailto:Rwppddl@cs.com)  
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Via Email & Fedex

Michael Collins, Esq.  
King Moench Hirniak Mehta & Collins LLP  
51 Gibraltar Drive, Suite 2F  
Morris Plains, NJ 07950  
[mlc@kmhmlawfirm.com](mailto:mlc@kmhmlawfirm.com)

Re: Kormandy et al. v. Town of Phillipsburg Town Council  
Docket No. WRN-L-248-21

To whom it may concern,

It has come to my Firm's attention that there are several allegations regarding an alleged conflict of interest relating to facts underlying the above-referenced litigation (the "Litigation"). After reviewing the Complaint in Lieu of Prerogative Writs dated June 25, 2021 (the "Complaint") and the following briefs that are available on the Court's docket, it appears that Plaintiffs allege that certain council members of the Defendant Town of Phillipsburg Town Council may have had a conflict of interest in voting on Ordinance 2021-14 (adopted May 4, 2021) because those council members may have been represented by this Firm at some earlier date. The purpose of this correspondence is to respond on behalf of this Firm with respect to the alleged potential conflicts of interest.

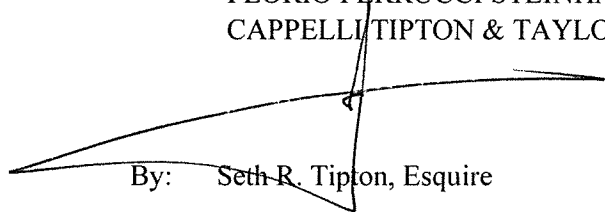
I have enclosed an affidavit from the Firm's administrator, Charles Braxmeier, and from Mr. Petrecca, the Firm's accountant. As set forth in these affidavits, Mr. Perrucci (i) retired as an active partner in the firm effective December 31, 2019; (ii) sold his ownership interest in the Firm back to the Firm effective January 1, 2020; (iii) had no profit interest, zero loss interest and zero capital interest in the Firm during 2020 and 2021; and (iv) has not performed any legal services for which a client was billed since June 11, 2018. Mr. Perrucci had no ownership interest in the Firm nearly six months later in May 2021, when this matter came before the Town Council for a vote.

Because Mr. Perrucci had no ownership interest in the Firm at the time of the town council vote in May 2021 and performed no legal services during the relevant time periods, a vote by a council member in favor of the project here would not benefit the Firm, and therefore not give rise to any conflict of interest.

Please don't hesitate to contact me with any questions.

Very truly yours,

FLORIO PERRUCCI STEINHARDT  
CAPPELLI TIPTON & TAYLOR, LLC

A handwritten signature in black ink, appearing to read 'Seth R. Tipton', is written over the printed name. The signature is a single, fluid stroke that loops back to the start.

By: Seth R. Tipton, Esquire

Enclosures



Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC  
235 Broubalow Way  
Phillipsburg, NJ 08865  
(908) 878-0124  
stipton@floriolaw.com

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF WARREN )

I, CHARLES BRAXMEIER, being duly sworn, deposes and says:

1. I am the firm administrator for the law firm Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC (the "Firm").
2. Michael Perrucci was a partner with the Firm until December 31, 2019.
3. Michael Perrucci has not performed any legal services for any client of the firm since June 11, 2018.

Charles Braxmeier  
Charles Braxmeier  
Affiant

Dated: June 30, 2022

State of New Jersey

County of Warren

I, Carola A. Munro, witnessed, by, CHARLES BRAXMEIER, the attached affidavit on June 30, 2022.

Signed and sworn to (or affirmed) before me on June 30, 2022 by

Carola A. Munro  
[NOTARY PUBLIC]  
My commission expires: 11/01/23

CAROL A. MUNRO  
A Notary Public of New Jersey  
My Commission Expires 11/01/2023

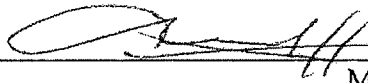


Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC  
235 Broubalow Way  
Phillipsburg, NJ 08865  
(908) 878-0124  
stipton@floriolaw.com

STATE OF NEW JERSEY )  
 )  
COUNTY OF Hunterdon ) ss.:  
 )

I, Michael Petrecca, being duly sworn, deposes and says:

1. I am a partner with WISS & Company, LLP (“WISS”).
2. WISS prepares the tax returns for the law firm Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC (the “Firm”) and for Michael Perrucci, individually.
3. The 2020 and 2021 tax returns of the Firm have been prepared reflecting a zero profits interest, zero loss interest and zero capital interest for Michael Perrucci.

  
\_\_\_\_\_  
Michael Petrecca  
Affiant

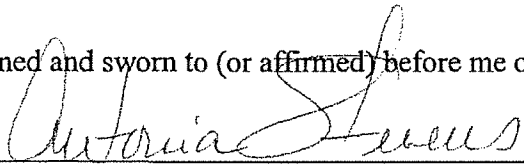
Dated: June 13, 2022

State of New Jersey

County of Somerset

I, Antonia Stevens witnessed, by, Michael Petrecca, the attached affidavit on June 13, 2022.

Signed and sworn to (or affirmed) before me on June 13, 2022 by

  
\_\_\_\_\_

[NOTARY PUBLIC]

My commission expires: \_\_\_\_\_  
**ANTONIA STEVENS**  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 5, 2023

**KMC** | KING, MOENCH  
& COLLINS LLP

ATTORNEYS AT LAW

PETER J. KING ◊  
MATTHEW C. MOENCH \*  
MICHAEL L. COLLINS \*

ROMAN B. HIRNIAK ^  
KRISHNA R. JHAVERI \*+  
TIFFANY TAGARELLI

RYAN WINDELS

◊ Certified by the Supreme Court of New Jersey  
as a Municipal Court Attorney  
\* Also Member of the New York Bar  
+ Also Member of the Arizona Bar  
^ Of Counsel

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[www.kingmoench.com](http://www.kingmoench.com)

A limited liability partnership of Peter J. King, LLC, Moench Law,  
LLC & Collins Law, LLC

August 16, 2023

**VIA E-COURTS**

Hon. Kevin M. Shanahan, A.J.S.C.  
Superior Court of New Jersey, Somerset County Vicinage  
20 North Bridge Street  
Somerville, NJ 08876

**RE: Morrisette v. Town of Phillipsburg  
Docket No. WRN-L-341-22**

Dear Judge Shanahan:

As you know, this office represents Defendant Town of Phillipsburg (“Phillipsburg”) in the above-captioned litigation. Please accept this letter in opposition to Plaintiffs’ motion for summary judgment and in support of Phillipsburg’s cross-motion for summary judgment.<sup>1</sup>

As a threshold issue, Plaintiffs limited their summary judgment filing to the legal issue of alleged “disqualifying conflicts taint[ing] the vote on this ordinance,” (Pf. Br. at 1), in accordance with the parties’ January 5, 2023 case management conference with the Court, which should be

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<sup>1</sup> On May 16, 2023, the Hon. Robert A. Ballard, J.S.C. held a case management conference. Judge Ballard directed the parties to upload a proposed order setting a prerogative writ trial date, which the undersigned did on May 18, 2023. On May 22, 2023, Your Honor denied this order due to the trial moratorium. In response, on May 25, 2023, the undersigned wrote the court, with the consent of our adversary, requesting to file cross-motions for summary judgment in lieu of a prerogative writ trial. The Court entered a text order on June 5, 2023 directing the instant cross-motions for summary judgment be filed.

Hon. Kevin M. Shanahan, A.J.S.C.

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construed as a motion for *partial* summary judgment. Plaintiffs write that their briefing is limited to Count Five (Pf. Br. at 1). But based upon our review of the Complaint, it appears that they intended to reference relevant portions of Count Four, specifically Paragraph 30, which alleges that Councilman Piazza was conflicted because of his parents' residence within 200 feet of the "affected properties." Phillipsburg now cross-moves for summary judgment on this issue.

### **PRELIMINARY STATEMENT**

This prerogative writ trial is limited to one discrete legal issue: Is a governing body member conflicted from voting on a redevelopment plan ordinance, if his parents do not live within 200 feet of the subject redevelopment plan area, but happen to live within 200 feet of a separate parcel that was a component of a previous site plan application before a separate land use board that also involved property in the redevelopment area?

Plaintiffs correctly note that our courts have established a 200-foot radius for determining if a governing body or land use board member is conflicted from acting on the zoning matter before him or her. But this doctrine does not establish a conflict because that is not the case here.

In this case, Councilman Piazza voted upon a redevelopment plan ordinance. It is uncontested that Councilman Piazza does not own any property within the 200-foot zone himself. Furthermore, his parents do not own any property within 200 feet of the redevelopment area addressed within the ordinance. He did not take any actions involving the "radius" that would constitute a conflict. Plaintiffs' allegations must be rejected on that basis alone, not to mention how Plaintiffs' attempt to impute one board's actions to another to manufacture a conflict of interest is unworkable and would require local elected officials to scrutinize the action of other bodies for unrelated actions to determine if they can vote on a matter.

Hon. Kevin M. Shanahan, A.J.S.C.

August 16, 2023

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Besides this legal argument that is properly before the Court under the case management order, Plaintiffs attempt to assert new conflicts of interest arguments surrounding a Councilman's candidacy for mayor – and related inuendo – that is not pled in the complaint. These portions of Plaintiffs' brief should be rejected for that reason alone. Even if considered, the subject allegations all arise from allegations after the subject vote, and are not actionable, so they cannot possibly establish a conflict of interest as a matter of law.

### **PROCEDURAL HISTORY AND STATEMENT OF FACTS<sup>2</sup>**

On November 1, 2022, Phillipsburg's Town Council adopted Ordinance 2022-30 (the "Ordinance"), titled "An Ordinance of the Town of Phillipsburg, County of Warren, New Jersey Adopting the District 5 (Riverside Industrial) Amendment – Riverfront Redevelopment Plan." (Exh. 1 to Pf. Br.). The Ordinance was adopted by a 3-1 vote, with Councilmembers Kennedy, Marino, and Piazza voting yes, Council Vice President Lee voting no, and Councilmember Wyant recused. (T51:2-12)<sup>3</sup>. The Ordinance adopted revisions to a redevelopment plan governing Block 2102, Lots 1, 2.01 and 2.02 (the "Redevelopment Area"). (Exh. 1 to Pf. Br.).

Plaintiffs bring the instant prerogative writ action challenging the validity of the adopted ordinance. They allege that Councilmember Piazza was conflicted from voting on the ordinance because Councilmember Piazza's parents, Randy and Susan Piazza Sr., own a residence at 309 Mercer Street. (Pf. Br. at 9).

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<sup>2</sup> The procedural history and statement of facts are combined to allow for a concise recitation of the relevant facts.

<sup>3</sup> Reference is made to the transcript of the November 1, 2022 Council meeting appended to Plaintiff's trial brief.

Hon. Kevin M. Shanahan, A.J.S.C.

August 16, 2023

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Plaintiffs' conflict allegations are premised upon the 309 Mercer Street residence being located across the street and within two hundred (200) feet of Block 2015, Lots 1 and 3, commonly known as 560 and 562 South Main Street (the "South Main Properties"). (Pf. Br. at 9-10 (citing Exhs. 8, 9 to Pf. Br.)). However, the South Main Properties are neither a component of the Redevelopment Area addressed in the Ordinance, nor are they within two hundred (200) feet of same. (See Exhs. 1, 2, 6 to Pf. Br.). Moreover, Plaintiffs' own exhibits appear to demonstrate that the South Main Properties are at least 1,000 feet from the Redevelopment Area. (See Exh. 6a to Pf. Br. (review of two sites using applicable 1" to 1,500' scale)).

Because the South Main Properties are not related to the Ordinance or Redevelopment Area in any way, Plaintiffs attempt to shoehorn a legal argument derived from an action by the Town of Phillipsburg Land Use Board ("LUB"). Plaintiffs reference the LUB's Resolution 2022-12 ("LUB Approval"), which was adopted on September 22, 2022 and granted conventional/final major site plan approval to Peron Construction, LLC relative to both Block 2102, Lot 2.02 within the Redevelopment Area and South Main Properties. This argument is spurious as the LUB is a separate legal entity, Phillipsburg's governing body never voted upon the LUB Approval, and the LUB Approval is not under review in this matter.

### **LEGAL ARGUMENT**

**A: COUNCILMAN PIAZZA WAS NOT CONFLICTED FROM VOTING ON A REDEVELOPMENT PLAN ORDINANCE IN WHICH HIS PARENTS DO NOT LIVE WITHIN 200 FEET OF THE REDEVELOPMENT AREA.**

In the 2015 case of Grabowsky v. Township of Montclair, 221 N.J. 536, 543-44 (2015), our Supreme Court evaluated conflicts-of-interest by governing body members in adopting a redevelopment plan ordinance. The objector plaintiffs alleged that certain governing body

Hon. Kevin M. Shanahan, A.J.S.C.

August 16, 2023

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members were conflicted because of their affiliation with a church that “own[ed] property within 200 feet of a site that is the subject of [the] zoning application.” Id. at 541. Our Supreme Court determined that “the 200-foot radius defined by the MLUL . . . provide[s] a reliable measure of an organization's interest in a zoning application.” Id. at 559. Consistent with same, the Court held that governing body members may have a conflict by virtue of their church’s ownership of property within 200 feet of the zone that was acted upon. Ibid. Our leading treatise on land use explains that, in Grabowsky, “the Court derived a ‘200 feet’ rule to determine whether or not the members of the governing body had a disqualifying conflict of interest . . . based solely on the proximity of their property *to the property affected by the redevelopment plan ordinance.*” Cox & Koenig, *New Jersey Zoning and Land Use Administration*, § 5-1.4 at 69 (2023) (emphasis added).

Plaintiffs have cited numerous prior cases that, in accord with Grabowsky, have applied a firm 200-foot conflict standard to zoning and land use matters. *See* Care of Tenafly v. Tenafly, 307 N.J. Super. 362 (App. Div. 1988); Barrett v. Union Tp. Committee, 230 N.J. Super. 195 (App. Div. 1989); McNamara v. Borough of Saddle River, 64 N.J. Super. 426 (App. Div. 1960). In each of these cases, the 200-foot standard is applied to the zone that was at issue before the subject body. None of the cases involved speculative conflicts based upon approvals by entirely different bodies, as Plaintiffs seek.

In contrast to a conflict that arises from properties that are actually within a 200-foot radius, in Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy, 349 N.J. Super. 418 (App Div. 2002), the Appellate Division found that mere *proximity* to a redevelopment area – as is arguably the case here – was insufficient to establish a conflict. The plaintiff objectors claimed that “certain members of the Perth Amboy City Council stood to benefit from the manner in which the lines of

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the proposed redevelopment area were drawn” by generally alleging “the mayor and the mayor’s father also owned property *in close proximity with* the redevelopment area.” Id. at 425 (emphasis added). The Law Division found that the plaintiff was unable to establish a conflict of interest on these facts and the Appellate Division affirmed, writing that the “plaintiff failed to establish a prima facie case of a vitiating conflict of interest” for the reasons set forth below. Id. at 425-26.

Plaintiffs allege that Councilman Piazza was conflicted based upon the location of his parents’ house and an alleged potential benefit arising from the improvements contained in the LUB Approval. These conflict claims fail because the Ordinance adopted revisions to the zoning for the Redevelopment Area, and the Redevelopment Area was not located within 200 feet of Piazza’s parents’ home. The inquiry ends there. The case law establishes that a 200-foot radius standard is the appropriate “measure” for determining a governing body member’s potential conflict of interest as to zoning that they vote upon. Plaintiffs impermissibly seek to expand and twist this measure.

Plaintiffs can at best allege that Councilman Piazza’s parents live in proximity to the Redevelopment Area. The record appears to indicate that the subject property may be within approximately 1000 feet of the redevelopment area, which would be five times the distance required to establish a conflict. The conflict argument fails as a matter of law because proximity is insufficient.

Because the case law is fatal to their claims, Plaintiffs attempt to impute the properties contained within the LUB Approval into the Ordinance. But this is entirely groundless. The Ordinance, on its face, makes zoning changes to Block 2102, Lots 1, 2.01, and 2.02. The Ordinance does not involve any actions whatsoever concerning properties that are located within 200 feet of



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Councilman Piazza's parents home, as would be necessary to create a legal conflict as a matter of law.

Plaintiffs anticipate this opposition – because it is self-evident – and claim that Councilman Piazza had a *per se* conflict under the Local Government Ethics Law and aforementioned case law. (Pf. Br. at 15). However, the case law establishes the 200-foot standard as to zoning that an elected official is voting upon, and Plaintiffs have not cited any case law to impute one governmental entity's actions to another for conflict purposes. The Local Government Ethics Law prevents elected officials from “act[ing] in [an] official capacity” when in conflict. N.J.S.A. 40A:9-22.5(d). In this case, Councilman Piazza did not act in an official capacity in any relation to the South Main Properties, plain and simple. Along these lines, Plaintiffs' further speculative argument that Councilman Piazza's parents benefit from the proposed improvements contained within the LUB Approval also fail, because they were not a component of the action Councilman Piazza voted upon.

Plaintiffs also argue that the Ordinance was “specifically intended” to address the applicant's properties in the LUB Application, which included a proposed demolition of the South Main Properties. (Pf. Br. at 15, 17). But Plaintiffs fail to promote any authority that would make the alleged subjective motive of Peron in obtaining separate approvals from both the LUB and the governing body as actionable and subject to an imputation of conflicts. Plaintiffs' overall argument would require this Court to impute the actions of an entirely separate legal entity upon the subject entity, yet they cite no case law to support this inventive proposition, because it is invalid. This argument is particularly specious considering a planning board is an “autonomous body” that is “independent of the governing body.” Baptist Home of South Jersey v. Riverton, 201 N.J. Super.

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226, 233 (App. Div. 1983); Lehrhaupt v. Flynn, 140 N.J. Super. 250, 268 (App. Div. 1976) (citation omitted). Plaintiffs' actions would force every New Jersey elected official into a conflict-of-interest analysis beyond the four corners of the ordinance or resolution that they are acting upon, and require them to speculate about the effect that their action may have in relation to potential actions by other public bodies. This is an unworkable proposition and cannot possibly be the law.

For these reasons, Plaintiffs fail to state a valid conflict-of-interest claim and the Ordinance should be affirmed.

**B: PLAINTIFFS' ALLEGATIONS CONCERNING PUBLIC COMMENTS DO NOT ESTABLISH A CONFLICT-OF-INTEREST.**

Plaintiffs allege that Councilman Piazza was conflicted because his father spoke in favor of the Ordinance. This argument was not contained in the Complaint and should be rejected on that basis alone. Even if it is evaluated, the claim is based upon a distinguishable case, and the substance of the Councilman's father's comments had no relation to the South Main Properties.

Plaintiffs' public comment conflict argument is based upon Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563 (App. Div. 1998), but the case does not present any binding precedent supporting Plaintiffs' proposition. In that case, the Law Division initially voided a planning board approval, finding it was an "improper conflict of interest for a member of the Board to deliberate in a matter where that member's father was a witness in the hearings." Id. at 565. On appeal, the objector and applicant purportedly "settled" the matter, and the trial judge signed a consent order vacating the voided action and reinstating the site plan approval. Ibid. Another party sought to intervene, which the Law Division judge denied. Ibid. The Appellate Division reversed, concluding the intervener was allowed to enter the matter and challenge the appropriateness of the settlement. Id. Thus, the Appellate Division never evaluated the propriety of the Law Division

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judge's voiding of an action due to the public comment that was made, and the Law Division judge ultimately vacated that determination anyhow.

At the November 1, 2022 Council meeting, Mr. Piazza commented on the Ordinance that members of the public were "jumping the gun" about what "th[e] place may look like." 3T20:11-14. He voiced his support for regaining "industry" and having "people back" and a "building back" working. 3T21:8-14. At all times, Mr. Piazza was referencing the properties within the Redevelopment Area, and his comments had no relation to the South Main Properties.

The case proffered by Plaintiffs is unavailing when applied to these facts. From a substantive standpoint, there is a stark difference between testimony by a "witness" before a land use board, as in Meehan, and public comment before a governing body, as in the instant case. Under the Municipal Land Use Law, land use boards must take the "testimony of all witnesses relating to an application for development . . . under oath or affirmation . . . and the right of cross-examination shall be permitted." N.J.S.A. 40:55D-10(d). This is consistent with the fact that land use boards are "discretionary governmental administrative agencies that exercise quasi-judicial functions." In re Convery, 166 N.J. 298, 306 (2001). In contrast, a municipal governing body sits as a policy-making body and merely holds a public hearing prior to an ordinance adoption. N.J.S.A. 40:49-2(c). The public hearing provides "all persons interested . . . an opportunity to be heard." N.J.S.A. 40:49-2(b). It is not under oath and there is no right of cross-examination.

Plaintiffs' argument fails because it seeks to create a false equivalency between sworn testimony before a quasi-judicial body and a statutory public comment period before a policy-making governing body. Plaintiffs do not cite any other authority to support the novel legal claim that a public comment by a family member, regarding a property to which they lack any legal

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conflict, renders a governing body member conflicted from acting upon a policy determination in their discretion.

Plaintiffs' arguments concerning the public comments by Douglas Steinhardt on October 4, 2022 are even more specious, as they simply allege a conflict based upon Steinhardt's participation in public comment and a vague claim about "his political office and power over [Piazza's] political fortunes." Such "speculative" allegations must be rejected as a matter of law, as our Supreme Court has held that "ethics rules must be applied with caution" because "[l]ocal governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official." Grabowsky, 221 N.J. at 554 (quoting Wyzykowski v. Rizas, 132 N.J. 509, 523 (1993)).

For these reasons, Plaintiffs' allegations of conflict arising from public comments must be rejected and the Ordinance should be affirmed.

**C: PLAINTIFFS' ALLEGATIONS ARISING FROM THE COUNCILMAN'S ANNOUNCED POLITICAL CANDIDACY SUBSEQUENT TO THE SUBJECT VOTE MUST BE REJECTED.**

In another Hail Mary attempt and claim that is not contained in the Complaint, Plaintiffs make allegations arising from Councilman Piazza's participation in the political process and announcement that he is a candidate for Mayor of Phillipsburg. (Pf. Br. at 18). This legal argument is based upon the following claims that Plaintiffs attempt to insert into the trial record:

- On December 12, 2022, Councilman Piazza expressed his support for Doug Steinhardt to fill the vacant State Senate seat in District 23.
- On January 4, 2023, Councilman Piazza announced his candidacy for Mayor of Phillipsburg and subsequently obtained the support of the Warren County Republican

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Committee. Plaintiffs allege he can expect to receive financial support from same, as he purportedly did in 2019.

[(Pf. Br. at 18, 19, 20)].

Plaintiffs' arguments fail because they are based upon purported actions that took place *after* November 1, 2022, the date the Ordinance was adopted. A governing body member cannot be declared in conflict based upon things that occur in the future. Accepting Plaintiffs' position would require each elected official to be a prognosticator and predict political developments that may occur after they vote on something. This cannot possibly be the law.

Plaintiffs' only allegations predating the Ordinance adoption involve Councilman Piazza's 2019 campaign donations, and how a "majority" of them are from the Warren County Republican Committee. But this claim fails to link such donations to a conflict in the Ordinance under review. The LGEL at N.J.S.A. 40A:9-22.5 prohibits a governing body member from "solicit[ing] or accept[ing] any . . . political contribution . . . upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties." However, the statute then contains a safe harbor concerning political contributions, providing it "shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the local government officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties." Ibid. Plaintiffs do not make any allegations that the donations they place at issue exceed this safe harbor, because they cannot. The Councilman's mere

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receipt of campaign contributions from a county political party does not render him conflicted in any way.

Lastly, just like Plaintiffs tried to shoehorn the South Main Properties into the Redevelopment Area, they now try to shoehorn redeveloper Michael Perrucci into claims about the Warren County Republican Organization and its Chairman Douglas Steinhardt. They write that “Mr. Perruci’s name [(sic)] partner [at the Florio Firm] Mr. Steinhardt is Chairman of the Warren County Republican Committee.” (Pf. Br. at 18). But the Florio Firm previously provided a letter and certification, which was filed with this Court on July 8, 2022 under Docket No. WRN-L-248-21<sup>4</sup>, explaining that Perrucci has lacked an ownership interest in the Florio Firm since May 2021. (See Exhibit B to Statement of Undisputed Material Facts). As such, there is no shared ownership in a common business between Perrucci and Steinhardt to even link them in the first instance for purposes of a conflict-of-interest analysis concerning a November 1, 2022 action. As discussed in the previous section, our Supreme Court has held that it is impermissible for a court to find “speculative” conflicts, which is exactly what Plaintiffs seek. Grabowsky, 221 N.J. at 554.

For these reasons, Plaintiffs’ political conflict arguments must be rejected and the Ordinance should be affirmed.

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<sup>4</sup> This is a parallel prerogative writ action that was brought by some of the same plaintiffs in this action.

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**CONCLUSION**

For these reasons, Plaintiffs' request for prerogative writ relief invalidating the Ordinance should be rejected.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'mfc', with a long horizontal flourish extending to the right.

MICHAEL L. COLLINS

Cc: All Counsel of Record (via e-courts)

