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

		: SUPERIOR COURT OF NEW JERSEY
David P. Morrisette and	:	: LAW DIVISION - WARREN COUNTY
Sandra S. Morrisette,	:	
5 Fairview Heights	:	: DOCKET NO. WRN-L-
Phillipsburg, NJ 08865	:	
	:	
Plaintiffs,	:	
	:	Civil Action
v.	:	
Town of Phillipsburg Town Council,	:	
the governing body of the municipality,	:	
with offices at Municipal Building,	:	
120 Filmore Street,	:	
Phillipsburg, New Jersey 08865,	:	
	:	COMPLAINT
<u>Defendant.</u>	:	IN LIEU OF PREROGATIVE WRITS

1. This is an action in lieu of prerogative writs to challenge Ordinance 2022-30, adopted by the Council of the Town of Phillipsburg to amend its 2013 Redevelopment Plan to change the zoning of certain riverfront parcels. The change in zoning will permit construction of a 360,000+ Sq. Ft. refrigerated truck distribution warehouse on the last undeveloped portion of its Delaware River waterfront. This amendment is in violation of the Town's Master Plan and Reexamination reports and constitutes arbitrary and capricious decisionmaking. The vote to approve this Ordinance was compromised by disqualifying conflicts of interest.

2. Plaintiffs David P. Morrisette and Sandra S. Morrisette are adults residing at 5 Fairview Heights, Phillipsburg, New Jersey 08865.

3. Defendant Town of Phillipsburg is a municipality organized under the laws of New Jersey, in Warren County, with its address at 120 Fillmore Street, Phillipsburg, NJ 08865.

4. On its home page on its website, this is how Phillipsburg describes itself:

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.

[<http://www.phillipsburgnj.org>]

This self-description is utterly incompatible with a waterfront, 360,000+ sq. ft. truck-served refrigerated warehouse.

5. On November 1, 2022, the Phillipsburg Council adopted on second reading Ordinance 2022-30 (Ordinance), which amended the 2013 Redevelopment Plan to change the zoning for certain riverfront parcels (Riverfront Development Area) from HD to LI and other changes.

Notice of the adoption of Ordinance 2022-30 was published on November 11, 2022. This complaint challenges this ordinance.

6. The Ordinance was adopted by a 3-1 vote, with one member, Harry Wyant, recusing himself because he owns property within 200 feet of the affected area.

7. All of these affected lands were either zoned for residential development or as open

space. The previous Revised Riverfront Redevelopment Plan, adopted November 4, 2013, would have permitted retail, office uses, museums, and cultural and educational facilities on the first floor of residential mid-rise buildings to serve the residential areas of the parcel.

8. The Riverfront Redevelopment Area was designated as an "area in need of redevelopment" in 2005, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. ("LRHL"). Various redevelopment plans that included this area have been drafted and adopted over the years.

9. The current redevelopment plan is the "Revised Riverfront Redevelopment Plan" adopted by the Council and dated November 2013 (2013 Plan).

10. The 2013 Plan designated three districts for this area. District 3 was "Recreational/Heritage," to be primarily parks and recreational facilities.

11. The 2013 Plan designated District 5, which roughly coincides with the area that is legislated by the Ordinance, as "Riverside Residential," to consist primarily of residential buildings, and retail, museum, cultural and office use on the ground floors, and parks and recreational facilities.

12. The 2013 Plan set out eleven "Redevelopment Goals and Objectives," none of which is consistent with a 360,000+ sq. ft. refrigerated warehouse.

13. The overarching goal of the 2004 Master Plan is:

#### Goals & Objectives

The Town has established one principle goal toward which the municipal government, its private partners, and the people of Phillipsburg should continuously aim. The goal is:

To maintain the Town of Phillipsburg as a proud community where people and families of all ages and incomes can live and travel safely, have clean and well kept neighborhoods, have a variety of above average housing opportunities and have accessibility to needed businesses and professional services. The community should preserve its history, protect its natural

resources, provide recreation for all ages, and maintain a mixture of land uses that will offer a stable tax base.

To guide Phillipsburg toward this goal, specific objectives have been established in each of the elements that follow, pertaining to that particular issue. With these objectives are further recommendations for specific actions designed to begin or continue implementation of the objectives.

Conservation Plan, Objectives,

1. Protect critical environment features and areas not otherwise regulated.
2. Preserve the remaining natural features
3. Increase public access and use of the Delaware River ....

Recommendations:

...

3. 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.

The Ordinance violates these goals.

14. The Ordinance provides that the consistency review pursuant to N.J.S.A. 40A:12A-7e is to be conducted after the adoption of the ordinance, in violation of that law's requirements of pre-adoption review.

15. Construction of a 360,000+ sq. ft. refrigerated warehouse will dramatically increase truck traffic on the narrow and congested streets in the area around the Riverview Redevelopment Area, in direct contravention to the Master Plan and its objective of "eliminat[ing] truck-dependent uses from areas with no or limited access to the major highway network." The Ordinance requires the development of a rail interconnection with the Belvidere & Delaware River Railway, but there is no support in the record that this interconnection is physically or legally obtainable, or would accomplish anything in the way of reducing truck traffic. The development of a railway interconnection is not consistent with the Master Plan or redevelopment plans.

16. Construction of a 360,000+ sq. ft. refrigerated warehouse will end all possibility of developing the Riverfront Redevelopment Area into the last remaining riverfront park and recreation area, in direct contravention of the Master Plan.

17. As the warehouse would be constructed in a redevelopment area, the warehouse would likely qualify for significant tax abatements, thereby depriving the Town of tax revenues, in contravention of the Master Plan. The Town would consider entering into a Payment In Lieu Of Taxes agreement with the developer, thereby depriving the schools and county of significant tax revenues, in contravention of the Master Plan.

Count One -- Violations Of Due Process

18. Plaintiffs incorporate their previous allegations.

19. Copies of the complete proposed ordinance were not made available to the public before the final vote. Therefore members of the public were denied the due process opportunity to know what the Council was voting on.

Count Two -- Inconsistency With Master Plan

20. Plaintiffs incorporate their previous allegations.

21. Ordinance 2022-30 adopts land use changes that are manifestly inconsistent with the 2004 Master Plan.

22. Ordinance 2022-30 does not explain why the Town should adopt land use changes that are manifestly inconsistent with the 2004 Master Plan.

23. The Ordinance unlawfully provides for Master Plan consistency after the adoption of the Ordinance.

Count Three -- Unlawful Spot Zoning

24. Plaintiffs incorporate their previous allegations.

25. The Ordinance constitutes the equivalent of unlawful spot zoning.

Count Four -- Conflicts

26. Plaintiffs incorporate their previous allegations.

27. The properties are owned by Peron Construction, Inc. The principal in Peron Construction, Inc., is Michael J, Perucci, Esq., a partner in the law firm of Florio Perucci Steinhardt Cappelli Tipton & Taylor LLC, which has offices in Phillipsburg. On the law firm website, Mr. Perucci is identified as the "owner" of Peron Construction, Inc.

28. Peron Construction, Inc., has been represented in these proceedings by Mark Peck, Esq., a lawyer in the Florio Perrucci law firm, in violation of ethical rules and opinions.

29. Council member Harry Wyant did not participate in the vote to adopt Ordinance 2022-30 because he owns property within 200 feet of the affected properties.

30. Another Council member, Randy Piazza, Jr., was disqualified from voting pursuant to case law, the Local Government Ethics Law, and also N.J.S.A. 40A:9-22.5d, because, among other disqualifying conflicts, his parents own property within 200 feet of the affected properties.

Count Five -- Arbitrary And Capricious Lawmaking

31. Plaintiffs incorporate their previous allegations.

32. The acts and omissions complained of in this complaint are arbitrary and capricious.

WHEREFORE plaintiffs respectfully request that this court find and conclude that Ordinance 2022-30 is void and award them their costs of suit.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c), plaintiff designates the following as trial counsel:

Peter Dickson  
Potter and Dickson,  
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email: rwppddl@cs.com and dicksonpd@cs.com

CERTIFICATION PURSUANT TO R. 4:69-4

Plaintiffs hereby certify that they will obtain transcripts of the public hearings of the Town Council on Ordinance 2022-30.

CERTIFICATION OF NO OTHER ACTIONS PURSUANT TO R. 4:5-1

I hereby certify that the action subject of the complaint is not the subject of any other action now pending or of any known about to be brought except as to the pending action in lieu of prerogative writs entitled, Kormandy v. Town of Phillipsburg Town Council, Superior Court, Civil Action, Docket No. WRN-L-000248-21. I am aware that if there is a change in the facts stated in this original certification, I have a continuing obligation during the course of this litigation to file and serve on all other parties and with the court an amended certification.

CERTIFICATION OF NO OTHER PARTIES TO JOIN PURSUANT  
TO R. 4:28 OR R. 4:29-1(b)

I hereby certify that there are no other parties who should be joined in this proceeding at this time. I am aware that if there is a change in the facts stated in this original certification, I have a continuing obligation during the course of this litigation to join other parties and to file and serve on all other parties and with the court an amended certification.

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 Rule 1:38-7(b).

Respectfully submitted,  
POTTER AND DICKSON  
/s/ Peter Dickson  
Peter Dickson  
Attorneys for Plaintiffs

Dated: December 23, 2022





# Civil Case Information Statement

## Case Details: WARREN | Civil Part Docket# L-000341-22

**Case Caption:** MORRISSETTE DAVID VS TOWN OF PHILLIPSBURG

**Case Initiation Date:** 12/23/2022

**Attorney Name:** PETER D DICKSON

**Firm Name:** POTTER & DICKSON

**Address:** 194 NASSAU STREET

PRINCETON NJ 08542

**Phone:** 6099219555

**Name of Party:** PLAINTIFF : Morrisette, David, P

**Name of Defendant's Primary Insurance Company**  
(if known): None

**Case Type:** ACTIONS IN LIEU OF PREROGATIVE WRITS

**Document Type:** Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** YES

**If yes, list docket numbers:** WRN-L-248-21

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

**Does this case involve claims related to COVID-19?** NO

**Are sexual abuse claims alleged by: David P Morrisette?** NO

**Are sexual abuse claims alleged by: Sandra S Morrisette?** NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

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

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

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

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

12/23/2022  
Dated

/s/ PETER D DICKSON  
Signed

