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

David P. Morrisette and	:	SUPERIOR COURT OF NEW JERSEY
Sandra S. Morrisette,	:	LAW DIVISION - WARREN COUNTY
5 Fairview Heights	:	
Phillipsburg, NJ 08865	:	DOCKET NO. WRN-L-000378-24
Plaintiffs,	:	
v.	:	Civil Action
Town of Phillipsburg Town Council, the	:	
governing body of the municipality,	:	
with offices at Municipal Building,	:	
120 Filmore Street,	:	
Phillipsburg, New Jersey 08865,	:	AMENDED COMPLAINT
Defendant.	:	IN LIEU OF PREROGATIVE WRITS

1. This is an action in lieu of prerogative writs to challenge Ordinance 2024-14 (Ordinance), adopted by the Town of Phillipsburg Town Council (Council) to amend its 2013 Redevelopment Plan to change the zoning of certain riverfront parcels. The change in zoning will permit construction of a massive 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 massive waterfront, 320,000 to 420,000 square-foot-truck-served distribution warehouse.

5. On September 11, 2024, the Phillipsburg Town Council adopted on second reading Ordinance 2024-14 (Ordinance), which adopted the “Town of Phillipsburg District 5 Amendment - Riverside Industrial Riverfront Redevelopment Plan (RRP)” to amend the amended redevelopment plan to change the zoning of two particular District 5 riverfront parcels from Riverside Residential to Riverside Industrial to permit industrial uses such as warehouses.

6. Notice of the adoption of Ordinance 2024-14 was published in The Express-Times on September 16, 2024. This complaint challenges this ordinance.

7. The Ordinance was adopted by a 3-2 vote over significant public opposition. Since that vote, two Council members who voted in favor have resigned.

8. The parcels affected are Lots 2.01 and 2.02 in Block 2102. The entire parcel containing Lots 2.01 and 2.02 in Block 2102 with the addition of Lot 1 contains 42.61 acres, according to the acreage reported on the tax map current when the Ordinance 2024-14 was first read. All of these lands were either zoned for residential development or as open space. The previous Revised Riverfront Redevelopment Plan, adopted November 4, 2013, 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.

9. A portion of the Riverfront Development Area adjacent to the parcels rezoned, Block 2102, Lot 1, consists of Green Acres properties. The land is listed on Phillipsburg's Open Space Inventory and may not be diverted to other use without the consent of the New Jersey Department of Environmental Protection. The land is presently not developed and covered in vegetation and is located in what is currently called an Historic Recreational Zone; it extends from Delaware River Park to the northwest and is surrounded on three sides by Lot 2.02 in the redevelopment District. In an earlier attempt to approve a large truck distribution warehouse in Block 2102, the Council unsuccessfully requested that Lot 1 be removed from the Open Space Inventory and used

for redevelopment. On first reading, Ordinance 2024-14 was amended to remove Lot 1 from the parcels to be rezoned for industrial use.

10. Lot 2.01 is located on part of the northern boundary of Lot 1, which is known as Delaware River Park and currently has walking areas, a large cleared area for football and soccer fields, two active dog run areas both on Lot 1, one a smaller dog run and one large dog run used by Phillipsburg and non-Phillipsburg residents. Much of the Lot 1 property is tree covered, but clear for residents to walk. The impact of the rezoning of Ordinance 2024-14 and the adopted amended District 5 redevelopment plan and the projected warehouse development on Delaware River Park and its use as a park by Phillipsburg was not substantively considered.

11. The Council had referred the proposed development to the Land Use Board (LUB) for review of consistency with the Town's Master Plan, pursuant to N.J.S.A. 40A:12A-7d.

12. The Town's most recent Master Plan was completed in 2004.

13. The most recent reexamination report adopted prior to the enactment of Ordinance 2024-14 for the Town of Phillipsburg's Master Plan was completed in 2013 and adopted by the Planning Board on December 23, 2013. N.J.S.A. 40:55D-89 requires that a reexamination report be prepared every ten years. As a matter of law, in the absence of the required reexamination report, the Town's "municipal development regulations" including current zoning ordinances and redevelopment plans are presumed unreasonable and arbitrary and capricious. N.J.S.A. 40:55D-89.1.

14. The LUB commissioned a "Consistency Review Report: Proposed Amendment to the Riverfront Redevelopment Plan," by Van Cleef Engineering Associates, Inc., dated August 7, 2024 (2024 Consistency Report). This Consistency Report was the basis for the LUB counsel's letter to the Council which recommended adoption of Ordinance 2024-14.

15. The 2024 Consistency Report purports to find that Ordinance 2024-14 is consistent with the Master Plan and 2013 Reexamination Report.

16. The 2024 Consistency Report nowhere mentions let alone discusses that the 2004 Master Plan and 2013 Reexamination Report are presumed unreasonable by law, N.J.S.A. 40:55D-89.1. The 2024 Consistency Report never mentions or discusses any reason why the 2004 Master Plan and 2013 Reexamination Report should nonetheless be deemed reasonable in spite of N.J.S.A. 40:44D-89.1.

17. The 2013 Master Plan Reexamination Report states that the properties along Howard Street, which includes Block 2102, Lots 2.01 and 2.02, are specifically to be zoned Riverside Residential, Riverside Commercial and/or Riverside Heritage. Block 2102, Lots 2.01 and 2.02 lie to the south of Howard Street. At the time that the 2013 Master Plan Reexamination Report was written, the properties owned by Peron Construction, Block 2102, Lots 2.01 and 2.02, were zoned Riverside Residential and were therefore in compliance with the 2013 Master Plan Reexamination Report.

18. The 2013 Master Plan Reexamination Report specifically mentions that the properties to the north of Howard Street, which were light industrial at the time of the creation of this report, were to be rezoned to Riverside Residential, Riverside

Commercial and/or Riverside Heritage. These properties remain zoned light industrial.

19. Although the 2024 Consistency Report contains voluminous discussion and attaches voluminous documents, it refers for the fundamental finding of consistency with the 2004 Master Plan and reexamination reports to a February 25, 2021, consistency report also prepared by Van Cleef Engineering Associates (2021 Consistency Report). The 2024 Consistency Report specifically identifies itself as “an update to reflect additional information/considerations.” The 2021 Consistency Report made a finding that the then proposed redevelopment plan amendment was consistent based not on the 2004 Master Plan or reexamination reports, but on the 1998 Master Plan in effect before the 2004 Master Plan.

20. The LUB voted to accept the 2024 Consistency Report as presented for the proposed amendment to the riverfront redevelopment plan on August 22, 2024 at a public hearing. While the 2024 Consistency Report contains a series of recommendations, none of the recommendations were part of the Council’s adoption of Ordinance 2024-14; the Council provided no explanation of this.

21. The LUB hearing on the consistency of Ordinance 2024-14 with the Master Plan did not include any discussion of, or awareness of, the provisions of N.J.S.A. 40:55D-89.1, to the effect that because of the absence of a required reexamination report, all of the Town's development regulations are presumptively unreasonable.

22. The LUB did not prepare a report or recommendation for transmittal to the Town Council. The LUB did not adopt a resolution containing its findings, if any, on the

consistency of Ordinance 2024-14 with the 2004 Master Plan or any reexamination report.

23. The LUB reported to the Council by way of a cursory letter dated August 23, 2024 from its counsel containing no findings or discussion. The letter merely stated that "[t]he Board is of the opinion that an amendment to the Riverfront Redevelopment Plan to designate District No. 5 from Riverside Residential to Riverside Industrial is appropriate and consistent with the Riverfront Redevelopment Plan, the Town's Master Plan and the Town's zoning ordinances."

24. The LUB counsel letter of August 23, 2024 does not contain any findings or facts to support the statement that "an amendment to the Riverfront Redevelopment Plan is appropriate and consistent with the Riverfront Redevelopment Plan, or the Master Plan or the Town's zoning ordinances."

25. The LUB counsel letter of August 23, 2024 does not contain any discussion of or findings concerning the consequences of N.J.S.A. 40:55D-89.1 due to the absence of a required reexamination report. The LUB failed to notify the Council that in the absence of a required reexamination report the Town's development regulations including its zoning ordinances and redevelopment plan are all presumed unreasonable. The LUB failed to notify the Council that in the absence of a required reexamination report the Town's development regulations including the redevelopment plan and any redevelopment plan amendment are all presumed unreasonable.

26. Ordinance 2024-14 does not include any discussion of or findings that the

proposed ordinance is consistent with the 2004 Master Plan or any reexamination report. Ordinance 2024-14 does not mention that in the absence of a required reexamination report, the Town's zoning ordinances and redevelopment plans are presumed unreasonable. Ordinance 2024-14 does not contain any discussion with respect to whether the Town's zoning ordinances and redevelopment plans are reasonable.

27. 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).

28. Various redevelopment plans that included this area have been drafted and adopted over the years.

29. According to the Ordinance 2024-14, the current redevelopment plan is the "Revised Riverfront Redevelopment Plan" adopted by the Council and dated November 2013 (2013 Plan).

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

31. The 2013 Plan designated District 5, which roughly coincides with the area that is legislated by the Ordinance 2024-14, 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.

32. The 2013 Plan set out eleven "Redevelopment Goals and Objectives," none of which are consistent with a 320,000 to 420,000 sq. ft. warehouse.

33. According to the 2021 Consistency Report, the most recent redevelopment plan is dated 2017. The Ordinance 2024-14 does not refer to or purport to amend any redevelopment plan dated in 2017.

34. The 2004 Master Plan is captioned "Master Plan Update."

35. The overarching goal of the 2004 Master Plan is as follows:

Goals & Objectives

The Town has established one principle [sic] goal toward which the municipal government, its private partners, and the people of Phillipsburg should continuous 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 other wise 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 2024 Consistency Report ignores these goals.

36. The 2024 Consistency Report ignores the specific objectives set out in the 2004 Master Plan with respect to responsible development, avoidance of impacts from industrial uses, traffic and safety, environmental protection, parks and recreation, development of the riverfront area for development of river-related activities, and enhancement of Phillipsburg as a tourist destination.

37. The 2024 Consistency Report does not provide explanations for its opinions, and is, therefore, a net opinion.

38. As the warehouse would be constructed in a redevelopment area, the warehouse would likely qualify for significant tax abatements, and this is clearly stated in the District 5 Amendment, 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 . The 2024 Consistency Report ignores this fiscal impact.

39. On January 25, 2025, the Land Use Board approved a “2024 Master Plan Reexamination Report” prepared by Van Cleef (2024 Reexamination Report). The 2024 Reexamination Report does not recommend that the Master Plan for the Site be changed to permit the construction of a warehouse. The 2024 Reexamination Report does not apply to this application because of N.J.S.A. 40:55D-10.5.

Count One - Violations Of Due Process

40. Plaintiffs incorporate their previous allegations as if set forth verbatim.

41. Copies of the complete proposed ordinance were not made available to the public before the Council vote on the first reading of the proposed ordinance. 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

42. Plaintiffs incorporate their previous allegations as if set forth verbatim.

43. Ordinance 2024-14 adopts land use changes that are manifestly inconsistent with the 2004 Master Plan.

44. Ordinance 2024-14 does not explain why the Town should adopt land use changes that are manifestly inconsistent with the 2004 Master Plan.

45. The Ordinance 2024-14 constitutes the equivalent of unlawful spot zoning.

46. The 2024 Consistency Report is a net opinion and riddled with mistakes and errors, and is based on zoning in effect from the 1988 master plan.

47. Ordinance 2024-14 does not contain any discussion of the consequences of N.J.S.A. 40:55D-89.1.

48. The absence of any required reexamination report invalidates all redevelopment plans and amendments as unreasonable.

49. The 2024 Reexamination Report does not apply to Ordinance 2024-14.

Count Three - Inconsistency With Reexamination Report

50. Plaintiffs incorporate their previous allegations as if set forth verbatim.

51. Ordinance 2024-14 adopts land use changes that are manifestly inconsistent with the 2013 Reexamination Report.

52. Ordinance 2024-14 does not explain why the Town should adopt land use changes that are manifestly inconsistent with the 2013 Reexamination Report.

Count Four - Disqualifying Conflicts Of Interest

53. Plaintiffs incorporate their previous allegations as if set forth verbatim.

54. The property in the Riverfront Redevelopment Area is owned by Peron Construction, Inc. The owner of Peron is Michael Perrucci, Esq., a founding and named partner in the law firm of Florio Perrucci Steinhardt Cappelli & Tipton LLC. As of the date of this complaint, the law firm's website states "Mike Perrucci is Co-Founder and Partner of Florio Perrucci Steinhardt Cappelli Tipton & Taylor [sic]. Mike is also the owner of Peron Construction, Inc., a real estate development company" Another partner in that law firm is Hon. Douglas Steinhardt, Esq., a State Senator and Chair of the Warren County Republican Committee.

55. The three members of the Council voting in favor of Ordinance 2024-14, Council President Peter Marino and Council Vice President Meliss Paulus and Council Member Matthew Scerbo, received very material and significant financial support for their election campaigns from the Warren County Republican Committee, chaired by Mr. Steinhardt. In multiple instances, campaign advertisements for these three Council members noted that they were paid for by Mr. Steinhardt, Chair of the Warren County

GOP.

56. The Florio Perrucci firm and Mr. Steinhardt have a pattern and practice of attempting to influence the Phillipsburg Mayor and Council, by, among other things, representing past Council members in civil litigation and DWI prosecutions, speaking directly at Council meetings in favor of Peron's proposals and providing significant financial support for candidates' elections. Peron Construction, Inc., was represented by the Florio Perrucci firm in these proceedings.

57. Council President Marino, Vice President Paulus and Member Scerbo are all disqualified by voting on any Peron proposal because of disqualifying conflicts of interest. Council President Marino, Vice President Paulus and Member Scerbo are all disqualified by voting on any Peron proposal because of disqualifying conflicts of interest in violation of the Local Government Ethics Law. Vice President Paulus and Member Scerbo recently resigned from the Council.

Count Five - Arbitrary And Capricious Lawmaking

58. Plaintiffs incorporate their previous allegations as if set forth verbatim.

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

60. The acts and omissions complained of in this complaint are contrary to law.

WHEREFORE plaintiffs respectfully request that this court find and conclude that Ordinance 2021-14 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 at the following address:

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CERTIFICATION PURSUANT TO R. 4:69-4

I hereby certify that all necessary transcripts of the proceedings before the Town Council and Land Use Board on Ordinance 2024-14 have been ordered.

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 with the exception of: Kormandy v. Town of Phillipsburg Town Council, WRN-L-000248, currently pending in abeyance before this court.

I am aware that if there is a change in the facts stated in this original certification, I have a continuing obligation during the court 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,

/s/ Peter Dickson
Peter Dickson
Attorney for Plaintiffs

Dated: February 7, 2025.