FLORIO PERRUCCI STEINHARDT CAPPELLI & TIPTON LLC

91 Larry Holmes Dr., Suite 200
Easton, PA 18042

O 610.691.7900
F 610.691.0841

Mark R. Peck, Esq.
Ext. 1019
mpeck@floriolaw.com

April 17, 2025

Hon. Veronica Allende, J.S.C.
Somerset County Courthouse
20 North Bridge Street
Somerville, New Jersey 08876

Re: David P. Morrisette, et al v. Town of Phillipsburg, et al
Docket No. WRN-L-378-24
Reconsideration Motion – Peron Construction, LLC Opposition

Honorable Judge Allende:

Kindly accept this letter in lieu of a more formal brief as defendant-intervenor Peron Construction, LLC's ("Peron") opposition to the reconsideration motion filed by plaintiffs David and Sandra Morrisette. Plaintiffs contend that their motion is brought pursuant to R. 4:42-2(b) as they assert they are seeking reconsideration of an interlocutory order. However, this motion should have been brought pursuant to R. 4:49-2, as the Order Plaintiffs seek to have reconsidered is final as to the issue of whether or not Peron would be permitted to intervene. The issue of Peron's intervention is a separate and discrete matter unrelated to determining whether or not Ordinance 2024-14 is valid, which is purportedly the intent of Plaintiffs' Amended Complaint. Therefore, the 20 day limitation period attached to R. 4:49-2 motions applies. As Plaintiffs filed their motion outside of the 20 day period their motion is time barred.

Should the Court be of the opinion that Plaintiffs' motion should be decided under the R. 4:42-2 standard Plaintiffs' motion still fails. Plaintiffs' present nothing that suggests the subject Order granting intervention should be reconsidered in the interest of justice. Under R. 4:49-2

Plaintiffs' motion fails because Plaintiffs do not show that the Court engaged in arbitrary, capricious decision making nor that the Court's basis for entering the Order was palpably incorrect or irrational.

Finally, it must be noted that the relief sought in Plaintiffs' Amended Complaint is limited to a declaration that Ordinance 2024-14 (improperly pled as Ordinance No. 2021-14) is void. Plaintiffs' argument in this reconsideration motion, as with prior briefs and pleadings, is addressed less to the validity or invalidity of the Ordinance and is more a screed against Peron.

I. Plaintiffs' Motion is Time Barred.

As Plaintiffs' motion is properly a R. 4:49-2 motion, their motion is untimely and the Court is without authority to enlarge the time in which Plaintiffs could have filed their motion. As a consequence Plaintiffs' motion must be dismissed. R. 4:49-2 provides:

> Except as otherwise provided by R. 1:13-1 (clerical errors), a motion for rehearing or reconsideration seeking to alter or amend a judgment or final order **shall be served not later than 20 days after service of the judgment or order** upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or final order sought to be reconsidered and a copy of the court's corresponding written opinion, if any. (**emphasis added**)

The Court entered its Order permitting Peron to intervene in this matter on March 3, 2025 (attached as Exhibit A); the Order was uploaded to eCourts the same day. The Order provides that "service of this Order shall be deemed effectuated upon all parties upon the upload to eCourts". Accordingly Plaintiffs, and all parties, were served March 3, 2025.

Plaintiffs filed the subject motion for reconsideration on April 1, 2025, which is 28 days after service of the subject Order. This is in violation of the 20 day limitation set forth in R. 4:49-

2. See, e.g., Murray v. Comcast Corp., 457 N.J.Super. 464, 469 (App.Div. 2019). R. 1:3-4(c) expressly prohibits enlargement of time in reconsideration motions: "Neither the parties nor the court may, however, enlarge the time specified by … R. 4:49-2 (motion to alter or amend a judgment)". The Murray Court "noted that Rule 1:3-4(c) 'expressly' prohibits 'the parties' and 'the court' from enlarging the time specified by Rule 4:49-2". Murray, supra at 470, citing Hayes v. Turnersville Chrysler Jeep, 453 N.J.Super. 309, 313 (App.Div. 2018).

Plaintiffs will argue that R. 4:49-2 applies only to final orders, and that the Order permitting intervention is not final, but on scrutiny that argument does not have merit. The trial court in the Hayes case "made the following comments with respect to the timeliness of defendant's motion for reconsideration:

> It is noted certainly from the outset that the [c]ourt made its [d]ecision, as I said, in August, and this motion was filed November 23, 2016.[1] So I do find that it is out of time. The Court Rule does provide—that's [Rule] 4:49–2—requires that it be filed within 20 days. I know the argument is advanced by the [d]efendant that it was not a Final Decision. However, it was a Final Decision, certainly as to the issue of arbitration. However, I still think it is important for this [c]ourt to proceed further in the matter and make a determination based on—a legal determination on the other areas that are advanced by the [p]laintiff.

Hayes, supra. The Appellate Division concurred with the trial judge. Much as the Hayes controversy was final as to the issue of arbitration, the subject Order here is final as to the question of Peron's intervention. Under Plaintiffs' theory, the subject Order permitting Peron's intervention could be challenged any time up to entry of final judgment, which clearly does not make sense. Accordingly, because the 20 day limitation on bringing reconsideration motions has been exceeded the Court here lacks subject matter jurisdiction to hear this motion, which accordingly must be dismissed. Murray, supra at 470-471.

II. Plaintiffs do not Meet the Standard for Reconsideration.

Should the Court for some reason be unpersuaded by the argument made in Point I above, Plaintiffs' motion still must be denied. Under either R. 4:42-2 or R. 4:49-2 Plaintiffs do not meet the standard for reconsideration. As an aside, Plaintiffs' reconsideration motion does not address the fact that motions to intervene should be liberally viewed. Atlantic Employers v. Tots & Toddlers, 239 N.J. Super. 276 (App.Div. 1990), certif. den., 122 N.J. 147 (1990). It does not bring any new material information to light nor does it credibly argue that the Court misapplied the law. Instead the motion is just an extended lament of dissatisfaction over the Court permitting Peron's intervention.

Plaintiffs are not Entitled to Reconsideration Per R. 4:42-2:

Plaintiffs' cite the case of Lombardi v. Masso, 207 N.J. 517 (2011) for the "interest of justice" standard attached to R. 4:42-2. Yet Plaintiffs pointedly ignore the Court's clarifying statement that where:

> the judge later sees or hears something that convinces him that a prior ruling is not consonant with the interests of justice, he is not required to sit idly by and permit injustice to prevail. In such an **exceptional** case, the judge is empowered to revisit the prior ruling and right the proverbial ship. That entitlement to change a prior ruling in the interests of justice is what distinguishes an interlocutory order from a final judgment.

Id. at 537 (**emphasis added**). There is nothing presented here that suggests an exceptional case, only that Plaintiffs are dissatisfied with the Court's Order permitting Peron's intervention

Plaintiffs first argue that the Court erred in its treatment of City of Asbury Park v. Asbury Park Towers, 388 N.J.Super. 1 (App.Div. 2006) by noting the existence of the redevelopment agreement between Phillipsburg and Peron. As a preliminary matter, there is nothing remarkable whatsoever to the agreement attached as an exhibit to Plaintiffs' brief. Almost every approved

large scale development – multiple residential units or commercial/industrial projects - has a developer's agreement associated with it; in the case of a redevelopment area the developer's agreement is a redeveloper's agreement, which is the case here. The existence of a developer's or redeveloper's agreement does mean that the municipality and developer are "contractually intertwined" as Plaintiffs suggest.

In any event, Asbury Park is very much distinguishable from the present matter. Asbury Park was a condemnation case where the City and redeveloper were in fact contractually intertwined and the dispute was over the compensation to be paid to the condemnee. The redeveloper sought to low-ball the condemnee whereas the City was inclined to give fair market compensation. That was the sole basis for the redeveloper's attempted intervention – the redeveloper's concern that the City would not get the best price. The circumstances here are far different. This is not a condemnation case where the only issue is the amount of just compensation, where the City as condemning authority and the redeveloper are held to the same standard. Id. at 11. The parties under the agreement between Peron and Phillipsburg do not have reciprocal or contingent obligations, as did the parties in Asbury Park. Here, as repeatedly and properly noted and held, Phillipsburg and Peron have divergent interests, and the history of this matter shows that Phillipsburg has already not adequately represented Peron's interests. Accordingly Asbury Park, despite Plaintiffs' repeated efforts to say otherwise, is inapplicable here

Plaintiffs devote much of the first section of their brief to an irrelevant digression on Peron's performance as redeveloper and the format of the Peron-Phillipsburg agreement. Although Plaintiffs' allegations are baseless, if they are to be pursued this case – which seeks only a determination as to the validity of Ordinance 2024-14 – is not the venue to do it. If Plaintiffs are concerned about Peron's performance as redeveloper or the construction of the redeveloper's

agreement they ought to file a lawsuit on those basis – not use a challenge to the validity of an ordinance as a means to complain about Peron and express their dissatisfaction with land use decisions made, consistently and over a period of years, by Phillipsburg.

Plaintiffs' second argument, regarding Peron being so situated that disposition of the matter may as a practical matter impair or impede the ability to protect that interest, is replete with mischaracterizations and falsehoods. Peron's intervention was not motivated, as Plaintiffs claim, solely because the warehouse proposal had become a political issue. As has been recognized by this Court and by Phillipsburg, Peron and Phillipsburg have divergent interests. Peron's interest is in developing the subject property. Phillipsburg has numerous interests, which could include settling the lawsuit in a manner adverse to Peron. Local political controversies are but one of many concerns and examples of the divergent interests at play. As previously noted, without Peron's involvement it is not inconceivable that Plaintiffs and the Town could resolve the matter in a manner adverse to Peron's ability to achieve any return on its investment in the Property. The disposition of this matter could absolutely impair or impede Peron's ability to defend its interest. It is important to note that R. 4:33-1 only requires that disposition of the matter "may" impair or impede Peron's ability to protect its interest. Peron clearly satisfies this element. Rather than address these obvious and salient facts Plaintiffs instead again complain and cast aspersions at Peron's status and performance as redeveloper, which has nothing to do with the purpose of the subject lawsuit – which is whether or not Ordinance 2024-14 was properly adopted.

Plaintiffs' third argument does not quite address whether or not Peron's interests can or cannot be adequately represented by Phillipsburg and instead continues its screed against Peron and its status and performance as redeveloper, none of which has anything to do with the validity of Ordinance 2024-14. The analysis here ties in with Plaintiffs' second argument – Phillipsburg

and Peron have divergent interests in this case that make it clear Peron's interests will not be properly represented.

Plaintiffs' final argument is that Peron asserting its rights pursuant to R. 4:33-1 causes delay and prejudice to other parties in this action. Plaintiffs neglect to note that Peron filed its original motion to intervene before Phillipsburg had even entered an appearance in the matter. To the extent fees and costs have been expended since on motion practice, that is in large part a consequence of Plaintiffs' opposition to Peron's rightful participation in this case as well as motions it has itself filed. Plaintiffs' tears are of the crocodile variety and should be disregarded.

Plaintiffs have offered nothing of substance to validate its claim that reconsideration should be granted in the interests of justice pursuant to R. 4:42-2(b) and accordingly its motion for reconsideration must be denied.

Plaintiffs are not Entitled to Reconsideration Per R. 4:49-2:

As the Order Plaintiffs seek to have reconsidered is a final order on the matter of intervention R. 4:49-2 accordingly applies. Pursuant to R. 4:49-2, reconsideration of an order or judgment "is a matter within the sound discretion of the Court, to be exercised in the interest of justice". D'Atria v. D'Atria, 242 N.J.Super. 392, 401 (Ch. 1990). Such relief should be granted sparingly.

> A litigant should not seek reconsideration merely because of dissatisfaction with a decision of the Court. Rather, the preferred course to be followed when one is disappointed with a judicial determination is to seek relief by means of either a motion for leave to appeal or, if the Order is final, by a notice of appeal.
>
> Reconsideration should be utilized only for those cases which fall into that narrow corridor in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence. Said another

> way, a litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process. The arbitrary or capricious standard calls for a less searching inquiry than other formulas relating to the scope of review. Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a Court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement. The arbitrary, capricious or unreasonable standard is the least demanding form of judicial review.

D'Atria 242 N.J.Super. at 401. Therefore, to justify reconsideration, Plaintiffs must initially establish that the Court's Order was arbitrary, capricious or unreasonable. Id. Only if Plaintiffs clear that hurdle can they move on to trying to prove that the Court's decision had a palpably incorrect or irrational basis, or that the Court failed to consider probative, competent evidence. Id. The Court's review of the arguments on such a motion should be "sensitive and scrupulous." Id. at 402. See also Cummings v. Bahr, 295 N.J.Super. 374, 384 (App. Div. 1996)(reconsideration denied where movant failed to offer proof of evidence ignored or relevant court decisions disregarded).

Plaintiffs do not argue that the Court failed to consider probative, competent evidence, and therefore the focus of this motion must be whether, first, the Court engaged in arbitrary, capricious conduct, and then, if so, whether the Court's basis for entering the Order was palpably incorrect or irrational. Peron submits that Plaintiffs have not come close to satisfying either of those tests. Following the D'Atria standard there is nothing in the March 3, 2025 Statement of Reasons that would come close to the level of arbitrary, capricious, and/or unreasonable decision making required to justify reconsideration; Plaintiffs' disappointment does not rise to the necessary level. Likewise, the Court engaged in a thorough analysis of Asbury Park and Plaintiffs' arguments on reconsideration are nothing but a rehash of the same failed arguments made before; the agreement between Peron and Phillipsburg is an irrelevancy that does not establish the contractually intertwined relationship that Plaintiff attempts to show.

Conclusion

For the foregoing reasons defendant Peron Construction LLC respectfully requests that the Court deny Plaintiffs' motion for reconsideration.

Respectfully submitted,

/s/ Mark R. Peck

Mark R. Peck

MRP:te
Attachment
cc: Peter Dickson, Esq. (*via eCourts*)
Michael Collins, Esq. (*via eCourts*)
Peron Construction LLC

EXHIBIT A

FLORIO PERRUCCI STEINHARDT CAPPELLI & TIPTON, LLC
Mark R. Peck, Esq. (Atty ID No. 023121995)
91 Larry Holmes Drive, Suite 200
Easton, Pennsylvania 18042
(610) 691-7900
mpeck@floriolaw.com
Attorneys for Intervenor Peron Construction, Inc.

David P. Morrisette and Sandra S. Morrisette, 5 Fairview Heights, Phillipsburg, NJ 08865 Plaintiffs, v. Town of Phillipsburg Town Council, the governing body of the municipality, with offices at Municipal Building, 120 Filmore Street, Phillipsburg, New Jersey 08865 Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: WARREN COUNTY DOCKET NO: WRN-000378-24 **CIVIL ACTION** **ORDER**

This matter having been brought before the Court on the application of Movant Peron Construction, Inc. ("Peron"), through its counsel, Mark R. Peck, Esq., through a motion for intervention pursuant to R. 4:33;

And the court having considered all filed written submissions and having heard and considered the oral arguments of all counsel, if any;

IT IS on this 3rd day of March, 2025, **ORDERED** as follows:

1. Peron's Motion to Intervene as a Defendant is granted.

2. Peron shall respond to the complaint in accordance with R. 4:6 **no later than March 10, 2025** ~~within 10 days of the date of this order~~ and provide a copy of this order to the clerk with its filing.

3. A virtual case management conference will be held in this matter on March 13, 2025, at 9:00 a.m.; and

4. The parties shall meet and confer and provide the court with a proposed case management order no later than noon on March 12, 2025; and

IT IS FURTHER ORDERED that service of this Order shall be deemed effectuated upon all parties upon the upload to eCourts. Pursuant to Rule 1:5-1(a), a movant shall serve a copy of this Order on all parties not served electronically within seven days of the date of this Order.

5. ~~Counsel for Peron shall forward a copy of this Order to all parties of record within five (5) days of receipt.~~

Veronica Allende

Honorable Veronica Allende, J.S.C.

This motion is opposed. Oral argument was held on February 28, 2025. This order is entered for the reasons stated in the letter opinion that accompanies it.

NOT TO BE PUBLISHED WITHOUT

THE APPROVAL OF THE COMMITTEE ON OPINIONS

DAVID P. MORRISETTE, SANDRA S. MORRISETTE, Plaintiff(s), vs. TOWN OF PHILLIPSBURG TOWN COUNCIL, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: WARREN COUNTY DOCKET NO.: WRN-L-378-24 CIVIL ACTION

Argued: February 28, 2025

Decided: March 3, 2025

ALLENDE, J.S.C.

OPINION

Peron Construction, Inc. (Peron) moves this court to be granted leave to intervene in this prerogative writ action, pursuant to Rule 4:33-1. Specifically, Peron argues that its intervention into the lawsuit is necessary to protect its interest in 170 Howard Street, Phillipsburg, also known as Lot 2.02 in Block 2102 on Phillipsburg's Tax Map (the Peron Property or the Property), and to protect its approvals. Plaintiff opposed this motion on the grounds that: (i) Peron cannot meet all four elements for intervention as of right; and (ii) Peron cannot meet the elements for permissive

intervention. Counsel for Peron. filed a reply, arguing that it has met both standards for intervention as-of-right (Rule 4:33-1) and for permissive intervention (Rule 4:33-2). Finally, Defendant filed a correspondence with the court, stating that although it does not object to Peron's proposed intervention, it wrote to clarify a few points raised in the various motion papers as it relates to the Town of Phillipsburg and/or the history of the case. For the reasons set forth in this opinion, Peron's motion to intervene is granted.

I. Procedural History

On October 29, 2024, Plaintiffs David P. Morrisette and Sandra S. Morrisette filed their complaint in lieu of prerogative writs to challenge Ordinance 2024-14 (Ordinance), adopted by Defendant Town of Phillipsburg Town Council, to amend its 2013 Redevelopment Plan to change the zoning of certain riverfront parcels. Plaintiffs further alleged in their complaint that the change in zoning will permit construction of a refrigerated truck distribution warehouse on the last undeveloped portion of its Delaware River waterfront. In its complaint, Plaintiffs allege violations of due process, inconsistencies with the Master Plan, and arbitrary and capricious lawmaking.

On November 20, 2024, Peron filed this present motion to intervene in this matter. On November 26, 2024, Plaintiffs filed an opposition to Peron's motion to intervene. On December 13, 2024, Defendant filed an answer and set forth several affirmative defenses. On December 17, 2024, Peron filed a reply. On January 2, 2025, Defendant filed a correspondence with the court, stating that it does not object to Peron's proposed intervention.

II. Factual Background

a. The Ordinance

Plaintiffs reside at 5 Fairview Heights, Phillipsburg, New Jersey 08865. On September 11, 2024, the Phillipsburg Town Council adopted Ordinance 2O24-14 (Ordinance), which adopted the "Town of Phillipsburg District 5 Amendment - Riverside Industrial Riverfront Redevelopment Plan." This plan amended the previous redevelopment plan to change the zoning of certain District 5 riverfront parcels from Riverside Residential to Riverside Industrial to permit industrial uses. The Plan designated District 5, 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.

The parcels affected in this plan consist of Lots 2.01 and 2.02 in Block 2102. Lot 2.01 is known in the area as having walking areas, a large, cleared area for football and soccer fields, and dog trails. Lot 2.02 consists of 170 Howard Street, Phillipsburg, the Peron Property. 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. The 2013 Master Plan Reexamination Report specifically mentions that the properties to the north of Howard Street, which were zoned "light industrial" at the the report was created, were to be rezoned to Riverside Residential, Riverside Commercial and/or Riverside Heritage. These properties remain zoned "light industrial." Additionally, an LUB counsel letter dated on August 23, 2024, concluded 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." Lastly, a 2024 Consistency Report found that

Ordinance 2024-14 was consistent with the Town's most recent Master Plan and 2013 Reexamination Report. Nonetheless, Plaintiffs filed its complaint on October 29, 2024, to challenge this Ordinance.

b. **Peron Construction, Inc's Purchase and Intended Use of the Property**

In 2005, Peron purchased the Property (170 Howard Street, Phillipsburg, an approximately 31-acre parcel also known as lot 2.02 in Block 2102 on Phillipsburg's Tax Map). The Property is located in Phillipsburg's Industrial (I-2) Zone District and had that zoning designation prior to Peron's 2005 acquisition. In 2005, at Peron's request, the Town of Phillipsburg deemed a study area designated as the Riverfront Redevelopment Area which included the Peron Property, which was an area in need of redevelopment. The Peron Property was placed in District 5 of Phillipsburg's Riverfront Redevelopment Plan, which was also adopted in 2005. This plan designation permitted residential uses as an overlay to the industrial zoning in place for the Property.

From 2005 to 2006, Peron obtained all the necessary approvals to construct townhouses on the Property. In 2005, Peron entered into a purchase and sale agreement with Centex homes for the Property. In 2006, Centex terminated the purchase and sale agreement with Peron. Then, from 2006 through 2017, Peron attempted to sell the Property or enter a joint venture to develop it. This, however, was not successful. In 2018, Peron then sought to amend its approval to permit rental garden apartments. However, this endeavor was unsuccessful as well.

Peron then obtained site plan approval to permit the construction of an industrial building on the Property, specifically, a large distribution warehouse. This approval has been amended, but an industrial use remains approved on the Property. Additionally, Peron's counsel certified

that intervention into this present action is necessary for Peron to protect its interest in the Property and its approvals.

III. Legal Analysis

In support of its motion to intervene, Peron argues that it meets the criteria for intervention as-of-right, pursuant to Rule 4:33-1, because: (i) Peron's application is timely; (ii) Peron's intervention will not adversely affect any schedule or proceedings; and (iii) that a disposition of the action could result in the invalidation of the Ordinance, which would have a direct impact on Peron's interests and therefore impede the ability to protect such interest. Peron also argues that it meets the "liberal" requirements for permissive intervention, pursuant to Rule 4:33-2, because the issues raised in this case directly implicate Peron's interests and there would be no delay or undue prejudice that would result from Peron's intervention at this early stage in the litigation.

In its opposition, although Plaintiffs concede that Peron meets the first two elements of intervention as of right, Plaintiffs argue that Peron fails to meet the third and fourth elements of Rule 4:33-1. Specifically, Plaintiffs contend that Peron fails to meet the third element because it can't show how it can "prevent or inhibit the citizens of Phillipsburg . . . from replacing the incumbent Council members with new members who will oppose the warehouse proposal . . . merely by participating as a party in this matter." Additionally, Plaintiffs argue that Peron fails to meet the fourth element because its interests are not being adequately represented by existing parties, and Peron never attempted to intervene in the two prior challenges to prior amendments to the redevelopment plan. Regarding Peron's permissive intervention, Plaintiffs argue that Peron has offered no reason to believe that its participation would not be "merely cumulative" and

represent "double teaming" the Plaintiffs. Finally, Plaintiffs directly rely on City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1, 12 (App. Div. 2006), in support of their opposition.

In its reply, Peron argues that it does satisfy the third and fourth elements for intervention as of right. Specifically, Peron contends that it has an interest in developing the subject Property to achieve a reasonable return on its investment. Further, Peron argues that without its involvement in this case, it is "not inconceivable that Plaintiffs and the Town could resolve this matter in a manner adverse to Peron's ability to achieve any return on its investment in the Property." Peron states that the fourth element for intervention as of right is met, as Peron's interest in securing a reasonable rate of return on its investment is different from the various interests by the Town. Finally, Peron argues that it also satisfies the criteria for permissive intervention, because at the time of this reply's filing on December 17, 2024, Defendant had yet to submit an answer, so there would be no delay in the litigation process.

Finally, the Town of Phillipsburg filed a correspondence, stating that it does not object to Peron's proposed intervention. Instead, the Town submitted that correspondence to clarify a few different points about the Town or the history of this case as it relates to Plaintiffs' and Peron's previous motions. The Town clarified that it has historically defended its ordinances vigorously. Additionally, the Town stated that its interests include "upholding its ordinances passed by the governing body, mitigating risk, limiting exposure to taxpayers, responding to voters…," thus validating Peron's stance that the Town does not represent Peron's interests.

a. Intervention As of Right

Rule 4:33-1 states the following regarding intervention as of right:

> Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In support of their opposition, Plaintiffs rely on the Appellate Division decision in City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1, 1 (App. Div. 2006). In that case, the City of Asbury and developer, Asbury Partners, LLC, contracted to redevelop the city's waterfront. Id. at 1. According to the parties' agreement, the developer was to acquire "properties necessary for implementation of the redevelopment plan and to bear all costs of the land acquisition process, including the purchase price of parcels." Id. Moreover, after unsuccessful negotiations with Asbury Park Towers for acquisition of the vacant lot, the developer requested that the city acquire the land by eminent domain. Id. Additionally, unsuccessful negotiations with the property owner led to the city filing a condemnation complaint against Asbury Id. The developer then sought to intervene into the matter, claiming that it had a unique and unprotected interest. Id. The city did not object to the intervention. Id. The trial judge denied the developer's motion to intervene as of right and permissively. Id. Although the court found that the developer's "profit-making interest" may differ from the City's obligation to deal with the property owner and pay the fair market value, the court ultimately found that "intervention was inappropriate because of the city's responsibility to the public and because of the legislative mandate that the city, not the redeveloper, act as the condemning authority." Id.

The main issue on appeal in Asbury Park is "whether a private entity that is contractually obligated to pay the amount of a condemnation award is entitled to intervene as a party in the

condemnation action and participate in a plenary manner in the valuation proceedings." Id. The developer argued that the trial court abused its discretion in denying it intervention "since it was the only party that had a direct interest in ensuring that the price of the condemned parcel did not exceed its fair market value because the city had no financial interest in the outcome and could care less how much it paid to take the property." Id. The Appellate Court reasoned that pursuant to the agreement, "in the event of a failed effort by Asbury Partners to acquire the property privately, the City's role would be triggered to prosecute an eminent domain proceeding and the redeveloper would assist with and participate in a coordinated defense." Id. Furthermore, the court analyzed the four criteria necessary for intervention as of right and concluded that the developer failed to meet the fourth prong of Rule 4:33-1: the developer has made no showing that the condemning authority does not adequately represent its interest. Id. Specifically, the court reasoned that:

> Asbury Partners has provided no factual basis to support its speculative and conclusory assertion that the City might not seek to acquire the subject parcel at the best price obtainable within the legal parameters of the fair market value requirements in condemnation proceedings. Id.

Here, pursuant to intervention as of right, pursuant to Rule 4:33-1, Plaintiffs concede that Peron meets the first and second elements, but fails to meet the third and fourth elements, namely that the applicant must (iii) show it is so situated that disposition of the action may as a practical matter impair or impeded the ability to protect that interest; and (iv) demonstrate its interest is not adequately represented by existing parties. Additionally, Plaintiffs argue that Peron, like the redeveloper in Asbury Park, stated that the city might not have the political will to aggressively

pursue the condemnation action. However, the court in Asbury Park determined that the city had "more than adequately" represented the redeveloper's interests. Id.

Here, the court finds that Peron has successfully met the third element of Rule 4:33-1 and that this matter is distinguishable from Asbury Park. Unlike in Asbury Park, here Peron and Defendant do not have a joint agreement regarding the Property. Peron has an interest in developing the Property to achieve a reasonable return on its investment. This can be evidenced by Peron's past attempts, to no avail, first when Centex terminated the purchase and sale agreement with Peron, second, when Peron unsuccessfully attempted to sell the property or enter a joint venture for the development of the property, and finally, when Peron sought to amend its approval to permit rental garden apartments, but there was no market interest in this concept. Peron further argues in its reply that absent Peron's involvement in development of the Property, "it is not inconceivable that Plaintiffs and the Town could resolve the matter in a manner adverse to Peron's ability to achieve any return on its investment in the Property." Ultimately the court finds that the third element is met, as the disposition of this matter could impair or impede Peron's ability to defend its interest in achieving a reasonable return on investment.

Additionally, the court finds that the fourth element of Rule 4:33-1 is met. The court finds that Peron's interests will not be adequately represented by existing parties, more specifically, by the Town. While it has been argued that both Peron and the Town share an interest in affirming the validity of the Ordinance, the Town does not share the same interest in securing a reasonable rate of return on investment as is Peron's priority. The Town also filed a correspondence confirming this argument by stating that "Peron's assertion that the Town does not represent its interests is correct and it is possible that positions taken by the Town throughout the course of

litigation may diverge from the positions advocated by Peron." Furthermore, in its correspondence, the Town describes some of its interests, like upholding its ordinances passed by the governing body, and mitigating risk, but nothing about Peron's reasonable rate of return on investment. Similar to the city in Asbury Park, the Town does not oppose to Peron's request for intervention. However, Plaintiff's reliance on Asbury Park is misguided. Consistent with Peron's argument, the pertinent contract in Asbury Park was the sole basis for the redeveloper's intervention, as the contract stated, "in the event of a failed effort by Asbury Partners to acquire the property privately, the City's role would be triggered to prosecute an eminent domain proceeding and the redeveloper would assist with and participate in a coordinated defense." No such agreement exists here. In fact, both Peron and the Town have made it clear in their submissions to the court that their respective interests diverge from each other. Overall, the court finds that Peron meets the fourth element of intervention as of right. The court finds that Peron can intervene into this matter, pursuant to Rule 4:33-1.

b. Permissive Intervention

Additionally, even if the court held that Peron could not intervene as of right, the court would still allow Peron to permissively intervene, in accordance with R. 4:33-2. That rule provides:

> Upon timely application anyone may be permitted to intervene in an action if the claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a state or federal governmental agency or officer, or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the agency or officer upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider

> whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The court's determination of a permissive intervention motion is subject to the abuse of discretion standard. City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1, 12 (App. Div. 2006). The factors to be considered by the trial court in deciding an application for permissive intervention include promptness of the application, whether or not the granting thereof will result in further undue delay, whether or not the granting thereof will eliminate the probability of subsequent litigation, and the extent to which the grant thereof may further complicate litigation which is already complex. See Grober v. Kahn, 88 N.J. Super. 343 (App. Div. 1965). "[P]laintiffs are obligated to provide notice to their UM/UIM carrier of the institution of suit against the tortfeasor." Zirger v. General Accident Ins. Co., 144 N.J. 327, 340. (1996). "Our Court Rule on permissive intervention, R. 4:33-2, is to be liberally construed by trial courts." Id. at 341.

In Asbury Park, the Appellate Court held that there was no abuse of discretion in the trial court's denial of permissive intervention pursuant to Rule 4:33-2. Id. The court analyzed whether the permissive intervention will "unduly delay or prejudice the adjudication of the rights of the original parties." Id. The court also pointedout that there is a difference between intervening at the appellate level to present arguments on behalf of uniquely interested parties, and intervening at the trial level as an interested party. Id. Overall, the court concluded that:

> affording party status in a condemnation proceeding to an entity that is merely contractually obligated to pay the condemnation award, and has no interest in the land or its components, would fly in the face of the Eminent Domain statute, court rules and case law. Id.

Here, Peron may also successfully intervene into this case by permissive intervention. This court finds that Peron's intervention into the case will not unduly prejudice the adjudication of

the rights of the original parties. Peron filed this present motion on November 20, 2024. Additionally, Defendant's answer was filed on December 13, 2024. On February 28, 2025, Plaintiffs filed an amended complaint. Additionally, the current discovery end date is scheduled for March 8, 2026, and Peron does not request an extension of this discovery period. The court finds that this case is still in the early stages of the litigation process, so adding Peron as an additional party will not unduly prejudice the Plaintiffs, nor Defendant in the proceedings. Therefore, no undue delay would result. Moreover, granting Peron's motion to intervene would eliminate the possibility of separate litigation. Peron also argues in its reply that allowing Peron's intervention will permit all zoning questions relating to the Property to be resolved in one matter. Finally, no party opposed this motion on the grounds that granting Progressive's motion will complicate the litigation.

IV. Conclusion

For these reasons, Peron's motion for intervention is granted pursuant to Rule 4:33-1 and Rule 4:33-2.

An order consistent with this decision accompanies it.