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April 22, 2025

The Honorable Veronica Allende
Judge of the Superior Court
Somerset County Courthouse
20 North Bridge Street, Floor 1
Somerville NJ 08876-1262

Re: Morrisette v. Town of Phillipsburg Town Council,
Docket No. WRN-L-000378-24
Letter Brief in Reply to Opposition by Peron Construction, LLC
to the Motion for Reconsideration

Dear Judge Allende:

This firm represents the plaintiffs in this matter. Please accept this letter brief in lieu of a more formal brief in reply to the opposition by Peron Construction, LLC (Peron) in opposition to our support of the plaintiffs' motion for reconsideration of the court's grant of intervention to Peron. There are essentially three arguments, all of them without any merit.

1. Our motion to reconsider was made pursuant to R. 4:42-2(b), as discussed in detail in Lombardi v. Mason, 207 N.J. 517, 534-535 (2011), authorizing reconsideration of any interlocutory order in the interests of

justice. Citing not a single authority in support, Peron argues that a motion granting intervention is a final judgment and can only be reconsidered under R. 4:49-2. This argument borders on the frivolous. The plain text of R. 4:42-2 (b) proves that an order granting intervention is interlocutory: "any order ... which adjudicates fewer than all claims to all parties shall not terminate the action as to any of the claims, and it shall be subject to revision at any time before entry of final judgment... ." Peron refers to cases involving orders compelling or denying arbitration, but the rules specifically allow such orders to be treated as final for purposes of appeal. R. 2:2-3(b)(8). The court will also note that the same rule allows appeals from an order denying interventions, but not an order granting intervention. R. 2:2-3(b)(9). We need not address this any further.

2. Plaintiffs substantially relied on the opinion in City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1 (App. Div. 2006), which denied intervention as of right and permissive intervention to a redeveloper in a condemnation case. This court's statement of reasons (Statement) emphasized that unlike the redeveloper in Asbury Park, this redeveloper was not "intertwined" with the municipality through a redeveloper

agreement. Our motion to reconsider addressed this, with apologies because no party brought the Peron-Phillipsburg redeveloper agreement to the court's attention. Peron's response is absurd.

Peron denies that it is "intertwined" through its redeveloper agreement, and that there are no "reciprocal or contingent" obligations. A brief review of the current agreement (attached to our motion for reconsideration) shows that this is as wrong as it can get; the whole purpose of a redeveloper agreement is to enter into "reciprocal and contingent" obligations, and that is precisely what the Local Redevelopment And Housing Law requires. See, e.g., N.J.S.A. 40A:12A-7 (contents of redevelopment plan); -8 (implementation of redevelopment plan; -9 (obligations of redeveloper). See also N.J.S.A. 40A:12A-2a, "Legislative Findings," providing in relevant part "conditions of deterioration .. and improper, or lack of proper development which result from forces which are amenable to correction and amelioration by concerted effort of responsible public bodies, and without this public effort are not likely to be corrected or ameliorated by private effort."

The absurdity of Peron's claim is that over the course of at least

sixteen years, it did not fulfill its most basic obligation: to develop the site according to the Master Plan and redevelopment agreements. As our motion proved by reference to Peron's own certifications and agreements, Peron purchased the property, Peron persuaded the Town to designate the area as in need of redevelopment pursuant to the LRHL, Peron persuaded the Town to designate Peron as the redeveloper, Peron persuaded the Town to try to include protected Green Acres property, and has tried to flip the property contrary to the LRHL. Now, after sixteen years of futility, Peron asks the Town to permit it to construct an obnoxious large truck distribution warehouse.

We again note that the LHRL can no longer be used to designate an area in need of redevelopment simply because it is undeveloped. Gallenthin v. Pauslboro, 191 N.J. 344, 370-371 (2007); see also Malanga v. Twp. of West Orange, 253 N.J. 291, 323 (2023)(designation of area in need of redevelopment must show proof of "current problem" that is causing "actual detriment" to the community.) In Bor. of Glassboro v. Grossman, 457 N.J. Super. 416, 436, 438-439 (2019), the court held that a municipality may not

"stockpile" property for later redevelopment in a redevelopment area.¹ The essence of the LHRL is to redevelop, through the instrumentality of a private redeveloper who is granted extraordinary privileges, a designated area in accordance with the Master Plan and a redeployment plan, not try to flip the property for profit, or fail to complete the redevelopment in a reasonable time. Peron argues that the proper forum for these types of observations is in a separate lawsuit. But they are very properly before this court, because the Town's continually accommodating Peron's non-performance instead of undertaking a meaningful search for a redeveloper who can actually redevelop the site is the absolute essence of arbitrary and capricious decisionmaking.

3. Peron now claims that its intervention is not due to the fact of its warehouse proposals becoming serious political issues. But that's the sole reason given in its original motion to intervene. Its intervention is primarily to try to hold a veto power over the Town's decisionmaking and secondarily

¹ A 2019 law permits municipalities to “bank” land, but only if a strict statutory scheme is implemented. N.J.S.A. 40A:12A-75, et seq. The law does nothing to alter the obligations of private redevelopers to effectuate construction in accordance with the Master Plan, the redevelopment plan and redevelopment agreement.

in clogging this docket with motions practice.

The redevelopment agreements provide that the Town and Peron share very important interests: the proper development of the site according to the Master Plan and redevelopment plans. Peron is merely the instrumentality of the Town, not some independent entity entitled to profit at the public's expense. Their interests will diverge if and only if Peron fails to fulfill that responsibility.

Conclusion

For the reasons given in our motion and this reply, plaintiffs respectfully request that the court reconsider its ruling and now deny Peron intervention in this matter.

Respectfully submitted,

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/s/ Peter Dickson

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