

**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](mailto:mpeck@floriolaw.com)  
Attorneys for Intervenor Peron Construction, Inc.

<p>David P. Morrisette and Sandra S. Morrisette, 5 Fairview Heights, Phillipsburg, NJ 08865</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Town of Phillipsburg Town Council, the governing body of the municipality, with offices at Municipal Building, 120 Filmore Street, Phillipsburg, New Jersey 08865</p> <p style="text-align: center;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: WARREN COUNTY DOCKET NO: WRN-L-378-24</p> <p style="text-align: center;"><b>CIVIL ACTION</b></p> <p style="text-align: center;"><b>NOTICE OF MOTION TO INTERVENE PURSUANT TO <u>R. 4:33</u></b></p>
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TO: Clerk, Superior Court of New Jersey  
P.O. Box 8068  
Trenton, New Jersey 08650

Peter Dickson, Esq.  
23 Route 31 North  
Suite A28  
Pennington, New Jersey 08534

PLEASE TAKE NOTICE that on December 6, 2024 at 9 a.m., or as soon as the court allows, Peron Construction, Inc., by and through undersigned counsel, will apply through a motion to the Superior Court of New Jersey, Law Division, Honorable Kevin M. Shanahan, A.J.S.C., Warren County Courthouse, 413 Second Street, Belvidere, New Jersey 07823 for an Order pursuant to R. 4:33 seeking leave to intervene as a defendant in the above captioned matter.

PLEASE TAKE FURTHER NOTICE that in support of this motion, Peron Construction, Inc. will rely upon the enclosed brief, certification of Michael J. Perrucci, and certification of counsel.

Oral argument is requested only if this motion is opposed.

Dated: November 20, 2024

*/s/ Mark R. Peck*

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Mark R. Peck, Esq.

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I, MICHAEL J. PERRUCCI, of full age, certify as follows:

1. I am the founder and President of Peron Construction, Inc. (“Peron”). As such I am fully familiar with the facts set forth herein.
2. In 2005 Peron purchased 170 Howard Street, Phillipsburg, an approximately 31 acre parcel also known as Lot 2.02 in Block 2102 on Phillipsburg’s Tax Map (“Property”).
3. The Property is located in Phillipsburg’s Industrial (I-2) Zone District and had this zoning designation prior to Peron’s 2005 acquisition.
4. In 2005 at Peron’s request the Town of Phillipsburg deemed a study area designated as the Riverfront Redevelopment Area, which included the Property, an area in need of redevelopment. The Property was placed in District 5 of Phillipsburg’s Riverfront

Redevelopment Plan (RRA-5), which was also adopted in 2005. The RRA-5 designation permitted residential uses as an overlay to the industrial zoning in place for the Property.

5. In 2005 Peron was designated as Redeveloper of the Property.
6. In 2005-2006 Peron obtained all necessary approvals (local, County, State) to construct 449 townhouses on the Property.
7. In 2005 Peron entered into a purchase and sale agreement with Centex Homes for the Property, wherein Centex would construct the 449 townhomes.
8. In 2006 Centex terminated the purchase and sale agreement with Peron.
9. From 2006 through 2017 Peron attempted to sell the Property or enter into a joint venture for the development of the Property, with national and regional builders such as K Hovnanian, Pulte Homes, and Tuskes Homes. This was not successful.
10. In 2018 Peron sought to amend its approval to permit rental garden apartments. Just as with the townhomes concept there was no market interest in the garden apartment concept.
11. As a consequence of the lack of market interest in residential development on the Property in 2021 the Town amended the Redevelopment Plan to permit industrial uses on the Property, thus reverting the Property's zoning to where it had been prior to the 15-year attempt to residentially develop the site.
12. Peron subsequently obtained site plan approval to permit the construction of an industrial building on the Property. This approval has been amended, but an industrial use remains approved on the Property.

13. Plaintiffs have filed the instant lawsuit in an effort to obstruct and block construction of Peron's approved industrial building.
14. The composition of Phillipsburg's Town Council will be changed from that which adopted Ordinance 2024-14. Peron's industrial approval has become a political issue in the Town of Phillipsburg. Peron's intervention into the lawsuit is necessary to protect its interest in the Property as well as its approvals.
15. Plaintiffs' lawsuit was filed October 29, 2024. To my knowledge Phillipsburg has not filed a responsive pleading. No party to this action will be prejudiced by Peron's intervention.

I certify that the above statements made by me are true. I acknowledge that if any of the above statements made by me are willfully false I am subject to punishment.

Dated: 11.19.24

  
MICHAEL J. PERRUCCI

**FLORIO PERRUCCI STEINHARDT  
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[mpeck@floriolaw.com](mailto:mpeck@floriolaw.com)  
Attorneys for Intervenor Peron Construction, Inc.

<p>David P. Morrisette and Sandra S. Morrisette, 5 Fairview Heights, Phillipsburg, NJ 08865</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Town of Phillipsburg Town Council, the governing body of the municipality, with offices at Municipal Building, 120 Filmore Street, Phillipsburg, New Jersey 08865</p> <p style="text-align: center;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: WARREN COUNTY DOCKET NO: WRN-L-378-24</p> <p style="text-align: center;"><b>CIVIL ACTION</b></p> <p style="text-align: center;"><b>CERTIFICATION OF MARK R. PECK, ESQ.</b></p>
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I, MARK R. PECK, of full age, certify as follows:

1. I am an attorney at law in the State of New Jersey and a partner with the law firm of Florio Perrucci Steinhardt Cappelli & Tipton, LLC. I represent Peron Construction, Inc. ("Peron") in connection with the above-captioned matter and as such am fully familiar with the facts set forth herein.
2. Attached hereto as Exhibit A is Peron's proposed Answer, which will be filed should the subject motion be granted.

I certify that the above statements made by me are true. I acknowledge that if any of the above statements made by me are willfully false, I am subject to punishment.

*/s/ Mark R. Peck*

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MARK R. PECK, ESQ.

Dated: November 20, 2024

# EXHIBIT A

**FLORIO PERRUCCI STEINHARDT  
CAPPELLI & TIPTON, LLC**  
**Mark R. Peck, Esq. (Atty ID No. 023121995)**  
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Defendant, Peron Construction, Inc. (“Peron”), says by way of Answer to plaintiffs’, David P. Morrisette and Sandra S. Morrisette, Complaint in Lieu of Prerogative Writs the following:

1. The conclusory nature of this allegation does not warrant a response.
2. Admit.
3. Admit.
4. Admit that a section of Phillipsburg’s website so states.
5. Admit.
6. Admit.
7. Admit that the subject Ordinance was adopted by a 3-2 vote. Denied that there was “significant public opposition”.



8. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
9. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
10. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
11. Denied. The Town Council referred proposed Ordinance 2024-14 to the Phillipsburg Land Use Board for a Master Plan consistency determination.
12. Admit.
13. The allegations of this paragraph contain conclusions of law to which no response is required. Notwithstanding the foregoing, Peron denies the allegations of this paragraph.
14. Admit.
15. Admit.
16. The allegations of this paragraph contain conclusions of law to which no response is required. Notwithstanding the foregoing, Peron denies the allegations of this paragraph.
17. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
18. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
19. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

20. Admit that the Phillipsburg Land Use Board accepted the Consistency Report after an August 22, 2024 public hearing. As to the remainder of this allegation, Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
21. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
22. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
23. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
24. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
25. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
26. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
27. Admit.
28. Admit that a redevelopment plan for the Riverfront Redevelopment Area was adopted, which has subsequently been amended several times.
29. Admit.
30. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

31. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
32. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
33. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
34. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
35. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
36. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
37. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
38. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

Count One – Violations of Due Process

39. Peron repeats and incorporates its prior responses as if set forth at length herein.
40. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs. However, there is no requirement to provide a copy of a proposed ordinance prior to first reading.

Count Two – Inconsistency with Master Plan

41. Peron repeats and incorporates its prior responses as if set forth at length herein.

42. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
43. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
44. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
45. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
46. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
47. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

Count Three – Inconsistency with Reexamination Report

48. Peron repeats and incorporates its prior responses as if set forth at length herein.
49. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.
50. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

Count Four – Disqualifying Conflicts of Interest

51. Peron repeats and incorporates its prior responses as if set forth at length herein.
52. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

53. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

54. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

55. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

Count Five – Arbitrary and Capricious Lawmaking

56. Peron repeats and incorporates its prior responses as if set forth at length herein.

57. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

58. Peron neither admits nor denies the allegations of this paragraph and leaves the Plaintiffs to their proofs.

WHEREFORE, Defendant-Intervenor Peron Construction, Inc. demands judgment against Plaintiffs, dismissing the Complaint with prejudice and awarding attorney's fees and costs to Peron Construction, Inc., and such further relief as this Court may deem just and reasonable.

**AFFIRMATIVE DEFENSES**

1. The Complaint fails to state any cause of action upon which relief can be granted.
2. Plaintiff has failed to exhaust administrative remedies.
3. The Complaint is barred by the applicable Statute of Limitations.
4. Phillipsburg properly followed the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.
5. Phillipsburg properly followed the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

6. Phillipsburg properly followed the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
7. Phillipsburg properly followed the provisions of N.J.S.A. 40:49-2.
8. Phillipsburg's actions were not arbitrary, capricious, or unreasonable.
9. The Complaint violates the Entire Controversy Doctrine.

**RESERVATION OF RIGHTS TO ADD AFFIRMATIVE DEFENSES**

Defendants reserve the right to amend their Answer to Plaintiffs' Complaint to assert such additional affirmative defenses as may become apparent during the continuing course of discovery in this matter.

**DESIGNATION OF TRIAL COUNSEL PURSUANT TO RULE 4:35-4**

Mark R. Peck, Esq. is designated as trial counsel in this matter.

**RULE 4:5-1 CERTIFICATION**

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge and information, the matter in controversy is not the subject of any other pending action or arbitration proceeding and no other proceedings are contemplated. At the present, I do not know of any other party who should be joined in this action. This Certification is made subject to further investigation and discovery.

**RULE 1:38 CERTIFICATION**

I certify that personal identifiers, if any, have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with the Rules of Court.

**FLORIO PERRUCCI STEINHARDT  
CAPPELLI & TIPTON, LLC.**  
Attorneys for Defendant-Intervenor, Peron  
Construction, Inc.

Dated:

\_\_\_\_\_  
Mark R. Peck, Esq.



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](mailto:mpeck@floriolaw.com)

November 20, 2024

Hon. Kevin M. Shanahan, A.J.S.C.  
Warren County Courthouse  
413 Second Street  
Belvidere, New Jersey 07823

**Re: David P. Morrisette, et al v. Town of Phillipsburg  
Docket No. WRN-L-378-24  
Peron Construction, Inc. - Motion to Intervene**

Dear Judge Shanahan:

Kindly accept this letter brief in lieu of a more formal brief in support of Intervenor Peron Construction, Inc's ("Peron") motion to intervene in the above referenced lawsuit pursuant to R. 4:33-1. Plaintiffs, David P. Morrisette and Sandra S. Morrisette, have filed suit against defendant Town of Phillipsburg Town Council ("Phillipsburg") seeking to invalidate Ordinance 2024-14, which amended Phillipsburg's Riverfront Redevelopment Plan to permit industrial uses in District 5 of the Riverfront Redevelopment Area (RRA-5).

As set forth in the Certification of Michael J. Perrucci, dated November 20, 2024 ("Perrucci Cert."), ¶2, Peron owns 170 Howard Street, Phillipsburg (Block 2102, Lot 2.02)("Property"), which is a 31 acre parcel located in RRA-5. Historically the Property has been in an industrial zone, but upon Peron's 2005 purchase of the same, the Property was designated for residential development within a larger redevelopment area. Perrucci Cert., ¶¶3-4. Peron then embarked on a fruitless fifteen-year effort to redevelop the Property with market rate townhomes. Id. at ¶¶6-10. After efforts to residentially redevelop the Property were exhausted, Phillipsburg amended the



Riverfront Redevelopment Plan to permit industrial uses in the RRA-5 District, and thus on the Property. Id. at ¶11. Peron then obtained site plan approval for an industrial building on the Property. Id. at ¶12. Plaintiffs have contemporaneously engaged in litigation since that time - the instant lawsuit seeks to invalidate Ordinance 2024-14, which implements the Riverfront Redevelopment Plan amendment to the RRA-5 District regulations. Id. at ¶13.

Peron's intervention as of right is appropriate under R. 4:33-1, which provides that:

[u]pon 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.

A motion 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). Whether to grant intervention under R. 4:33-1 is not discretionary. Chesterbrooke Limited Partnership v. Planning Board of Township of Chester, 237 N.J. Super. 118, 124 (App.Div. 1989). Rather, if all the Rule's criteria are met, intervention must be approved. Id.

Peron meets the R. 4:33-1 criteria. Peron's application is "timely". Plaintiffs' Complaint was filed October 29, 2024, less than one month before this application. Defendant Phillipsburg has not yet filed any responsive pleadings. Peron's intervention will not adversely affect any schedule or proceedings. As owner of the Property with development approvals thereon, Peron has "an interest relating to the property ... which is the subject of the action". The "disposition of the action" could result in the invalidation of Ordinance 2024-14, which would have a direct impact to Peron's interests and would "as a practical matter impair or impede the ability to protect that interest". Industrial developments in general, including

this industrial development, often generate opposition from elements of the public, as evidenced by this lawsuit. Membership in Phillipsburg’s governing body is not static, and it is not unforeseeable that Phillipsburg could decide to settle this lawsuit in a manner adverse to Peron. Accordingly, it is not at all clear that Peron’s interest would be adequately represented by existing parties. All of these reasons – especially when liberally construed, as the Rule must be – it is clear that Peron satisfies the elements for permissive intervention under R. 4:33-1.

Peron’s intervention is also appropriate under R. 4:33-2, which provides that “[u]pon 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,” and that “[i]n exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Id. The issues raised in this case directly implicate Peron’s interests. Peron is moving for intervention within one month of the initial pleading in this matter. No scheduling order has been entered or case management conference held, which means there is absolutely no delay or undue prejudice that would result from Peron’s intervention at this point. Thus, Peron easily satisfies the “liberal” requirements for intervention under New Jersey law. See, e.g., Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App.Div. 1998) (“We have construed this rule liberally and stated that ‘[t]he test is whether the granting of the motion will unduly delay or prejudice the rights of the original parties’” (quoting Atl. Emplrs Ins. Co. v. Tots & Toddlers Pre-School Day Care Ctr., 239 N.J. Super. 276, 280 (App.Div. 1990))).

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Finally, while Peron has in accordance with R. 4:33 filed a proposed form of answer with this motion, Peron reserves the right to file a motion to dismiss in lieu of an answer if its intervention is granted.

For the foregoing reasons, Intervenor Peron Construction, Inc., respectfully requests that its motion for intervention pursuant to R. 4:33 be granted.

Respectfully submitted,

*/s/ Mark R. Peck*

Mark R. Peck

MRP:te

**FLORIO PERRUCCI STEINHARDT  
CAPPELLI & TIPTON, LLC**  
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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 day of December, 2024 **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 within 10 days of the date of this order and provide a copy of this order to the clerk with its filing.
3. Counsel for Peron shall forward a copy of this Order to all parties of record within five (5) days of receipt.

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KEVIN M. SHANAHAN, A.J.S.C.

**FLORIO PERRUCCI STEINHARDT  
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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 day of December, 2024 **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 within 10 days of the date of this order and provide a copy of this order to the clerk with its filing.
3. Counsel for Peron shall forward a copy of this Order to all parties of record within five (5) days of receipt.

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KEVIN M. SHANAHAN, A.J.S.C.