



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

December 6, 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. - Reply/Opposition - Motion to Intervene/Cross-
Motion to Disqualify**

Dear Judge Shanahan:

This is Peron Construction, Inc's ("Peron") reply brief concerning Plaintiffs' opposition to its motion to intervene, as well as its opposition to Plaintiffs' motion to disqualify the undersigned as well as the Florio Perrucci law firm. Plaintiffs make two arguments: (1) that an alleged conflict exists wherein Peron cannot be represented by counsel of its choice; and (2) that Peron cannot satisfy the third and fourth elements necessary for intervention as of right pursuant to R. 4:33-1. As will be shown below, Plaintiffs' arguments are without merit, and Peron has shown its right to intervene in the above captioned matter.

1. There is No Conflict of Interest.

Plaintiffs allege a conflict of interest exists that disqualifies the Florio Perrucci law firm ("Firm") from representing Peron. Plaintiffs have the facts wrong and misapply the Rules of Professional Conduct ("RPC"). Plaintiffs correctly state that Michael Perrucci is the sole owner of Peron; however, Plaintiffs wrongly state that Mr. Perrucci is a stakeholder in the Firm and from that mistake erroneously claim that a concurrent conflict of interest exists pursuant to RPC 1.7.

Mr. Perrucci has no ownership interest whatsoever in the Firm. See Certification of Michael J. Perrucci, dated December 6, 2024 (“Perrucci Cert.”), ¶¶20-22.

RPC 1.7 states:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;

(2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(3) the representation is not prohibited by law; and

(4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Here, RPC 1.7(a) does not apply because the Firm has no financial interest in the outcome of the lawsuit. There is no common ownership between the Peron entity here and the Firm. The Firm’s representation of Peron is not adverse to any other client. There is no risk that the Firm’s representation of one or more clients will be materially limited by its representation of Peron. Likewise, there is no risk that the representation of any client will be materially limited by any personal interest of Mr. Perrucci or by any lawyer in the Firm. The last time Mr. Perrucci billed a

client as an employee of the firm was 2018. See Perrucci Cert., ¶¶20-22. Mr. Perrucci retired as an active partner effective December 31, 2019; sold his interest in the law firm back to the law firm effective January 1, 2020; and has had no profit interest, zero loss interest, and zero capital interest in the law firm since January 1, 2020. Id.

Even assuming, *arguendo*, that a conflict does result, RPC 1.7(b) would allow Peron to waive the conflict provided: (a) Peron executes a consent form; (b) the Firm can provide diligent and competent representation to Peron; (c) there is no violation of law; and (d) we are not proceeding on behalf of one client against another. Here all four factors are satisfied. Peron would execute such a form and the Firm will diligently and competently represent Peron. There is no violation of the law presented and the Firm's representation of Peron will not pit one client's interests against another. Simply put, there is not any conflict of interest here, concurrent or otherwise.

Plaintiffs rely upon Advisory Committee on Professional Ethics Opinion 743. They state "the only factual differences are that Mr. Perrucci owns all of Peron without any intermediate LLC and the nature of the representation. These differences are immaterial and in all other respects, the opinion and this matter are indistinguishable." This is misguided. The nature of ownership and the nature of the representation go to the heart of whether or not a conflict exists. Plaintiffs thus explicitly acknowledge that the sole authority they cite is not applicable to this matter. As an aside, Plaintiffs also state that in an earlier proceeding Your Honor determined that the Firm's representation of Peron violated RPC 1.10(a). This is confusing as Peron has not been a party to any prior proceeding. Plaintiffs' entire argument on this point is confusing and misguided.

Concerning RPC 1.10(a), this Rule only applies to impute a conflict if the underlying conflict exists. As set forth above, there is no conflict and even were one to be found it would be

technical only, and waivable. RPC 1.10(a) contains a significant carve-out allowing representation to continue where “the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.” Here, assuming for argument’s sake that Mr. Perrucci was a “prohibited lawyer” because of his own conflict between the Firm and Peron, it would not present a “significant risk of materially limiting the representation” because the remaining lawyers in the Firm can waive the conflict, and with Mr. Perrucci not being an owner of the Firm it does not impact the attorneys’ performance or decision-making.

It is axiomatic to our jurisprudence that Peron can choose its own counsel, and it can waive any alleged conflict – although none exists here. “The right of individuals ... to govern and manage their own affairs ... is an implicit guarantee of the New Jersey Constitution.” S.T. v. 1515 Broad Street, LLC, 241 N.J. 257, 274 (2020). Article I, Paragraph 1 of the State Constitution provides that “[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.” The right to “personal liberty” guaranteed in Article I, Paragraph 1 of the State Constitution protects against the government arbitrarily interfering with the right to individual “autonomy.” A.A. v. Att’y Gen., 384 N.J. Super. 67, 109 (App.Div. 2006) (quoting Doe v. Poritz, 142 N.J. 1, 78 (1995)), aff’d 189 N.J. 128 (2007). The right to personal autonomy plays a preeminent role in our constitutional system -- “competent people ordinarily can choose what they want.” See In re M.R., 135 N.J. 155, 166-67 (1994). An individual has the “right to determine how best to pursue her personal and financial affairs” without the interference of an attorney. See S.T.,

241 N.J. at 261 (citing M.R., 135 N.J. at 166). Plaintiffs' argument that the Firm is disqualified from representing Peron is wrong and must be rejected.

2. Peron Satisfies the Elements of R. 4:33-1 for Intervention As-of-Right.

As noted in prior briefs, R. 4:33-1 governs intervention as of right. "To satisfy the rule, a moving party must (1) claim an interest relating to the property or transaction which is the subject of the transaction, (2) show [that the movant] is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, (3) demonstrate that the [movant's] interest is not adequately represented by existing parties, and (4) make a timely application to intervene." N.J. Dept. of Env't Prot. v. Exxon Mobile Corp., 453 N.J.Super. 272, 286 (App.Div. 2018) (alterations in original) (internal quotation marks and citations omitted). R. 4:33-1 "is not discretionary, [so] a court must approve an application for intervention as of right if the four criteria are satisfied." Ibid. (quoting Meehan v. K.D. Partners, L.P., 317 N.J.Super. 563, 568 (App.Div. 1998)). As such, we review a trial court's interpretation of R. 4:33-1 de novo. Id. at 285. However, a court's findings with regard to timeliness under R. 4:33-1 are reviewed for abuse of discretion. Am. Civ. Liberties Union of N.J., Inc. v. Cnty. of Hudson, 352 N.J.Super. 44, 64 (App. Div. 2002).

Plaintiffs concede that Peron has satisfied two of the elements, that the application was timely made and that Peron has an interest relating to the subject of the action. However, Plaintiffs wrongly argue that Peron cannot satisfy the remaining two elements, that the disposition of the action may impair or impede Peron's ability to protect its interest in the Property. Plaintiffs are wrong.

Plaintiffs misrepresent Peron's argument regarding disposition of the matter having the potential to impair or impede its interest in its Property. Peron's satisfaction of this element should

be evident. Peron's interest is in developing the subject Property to achieve a reasonable return on its investment. Peron pursued residential development for fifteen years, without success. See Perrucci Cert., ¶¶4-11. The market dictates industrial development on the Property, which is recognized by both the Town Council and Land Use Board. Perrucci Cert., ¶11. 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 the Rule only requires that disposition of the matter "may" impair or impede Peron's ability to protect its interest. Peron clearly satisfies this element.

The final element is that Peron must show that its interests would not be adequately represented by existing parties, which here is the Phillipsburg Town Council. The history here shows that Peron has every reason to believe that its interests will not be adequately represented. The initial litigation filed, under WRN-248-21, regarding the proposed Ordinance 2021-14 zoning change remains pending, and the Town's defense has been passive. See Perrucci Cert., ¶12. This case has not been ruled on because the Town has not pushed vigorously for resolution, showing that it is not properly representing Peron's interest. Then the Mayor unexpectedly vetoed the remedial Ordinance. Id., ¶13. Then upon the successful readoption of the Ordinance the Town made fatal errors perfecting the same, resulting in its invalidation by the Court. Id., ¶¶15-16. Good cause has been shown supporting the notion that the Town will not adequately represent Peron's interests. Peron's interests and the Town's interests are divergent. While both share an interest in affirming the validity of Ordinance 2024-14, Peron's interest is in securing a reasonable rate of return on its investment. The Town's interests are many, from defending the validity of its ordinances to saving taxpayer money by settling litigation. The Town does not have any interest

in whether or not Peron achieves a reasonable return on its investment. The existence of these divergent interests shows that Peron satisfies the final element of R. 4:33-1.

Plaintiffs rely on the case of City of Asbury Park v. Asbury Park Towers, 388 N.J.Super. 1 (App.Div. 2006) to support its contention that Phillipsburg can adequately represent Peron's interests. Plaintiffs' reliance is misplaced, as Asbury Park is very much distinguishable from the present matter. Asbury Park was a condemnation case where the City and redeveloper were 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. Here, as stated above, 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 is inapplicable here and Peron satisfies the final necessary element for intervention as of right. Peron satisfies all four elements of R. 4:33-1. As R. 4:33-1 is not discretionary, the Court must approve an application for intervention as of right if the elements are satisfied. Exxon Mobil Corp., 453 N.J.Super. at 286. Accordingly Peron must be allowed to intervene as of right.

Although Peron has established its right to intervene, the same reasons show that Peron should also be granted leave to intervene pursuant to R. 4:33-2, which governs permissive intervention. This rule “permits intervention ‘[u]pon timely application ... if the claim or defense and the main action have a question of law or fact in common.’” Ibid. Peron's defense is directly

bound with Plaintiffs' claim. "The decision to grant or deny permissive intervention vests considerable discretion in the trial court[,] ... thus we review the court's determination of a permissive intervention motion under an abuse of discretion standard." Ibid. (alteration in original) (internal quotation marks and citations omitted). This Rule is liberally construed with a view to whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether intervention will eliminate the need for subsequent litigation. Ibid. Here, Phillipsburg has not yet answered Plaintiffs' Complaint, so there will be no delay; allowing Peron's intervention will permit all zoning questions relating to the Property to be resolved in one matter. Therefore, Peron satisfies the R. 4:33-2 criteria and is entitled to permissive intervention as well as intervention as of right.

Conclusion

For the foregoing reasons, and for the reasons set forth in its initial brief, Movant-Intervenor Peron Construction, LLC respectfully requests that the Court deny Plaintiffs' motion to disqualify the Florio Perrucci law firm from representing Peron, and that the Court grant its motion permitting intervention in this case.

Respectfully submitted,

/s/ Mark R. Peck

Mark R. Peck

MRP:te

Enclosure

cc: Peter Dickson, Esq.
Peron Construction, LLC

**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.

<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;">CIVIL ACTION</p> <p style="text-align: center;">CERTIFICATION OF MICHAEL J. PERRUCCI</p>
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I, MICHAEL J. PERRUCCI, of full age, certify as follows:

1. I am the founder and President of Peron Construction, LLC (“Peron”). As such I am fully familiar with the facts set forth herein. Please note that Peron was previously, and erroneously, identified in its moving papers as “Peron Construction, Inc.”.
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”). The Property was previously two lots, with one owned by Peron Construction, LLC (Block 2102, Lot 2) and the other by Peron Construction Phillipsburg LLC (Block 2102, Lot 11). The lots were subsequently subdivided (with a portion conveyed to the railroad) and consolidated into the Property owned by movant Peron.

3. The Property is located in Phillipsburg's Industrial (I-2) Zone District and had this zoning designation prior to Peron's 2005 acquisition. The property is surrounded by industrial uses, including a junkyard and an open gun range. Prior to Peron's acquisition the Property hosted the 100,000 SF Tippet and Wood industrial building.
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 (and Peron Construction Phillipsburg LLC) was designated as Redeveloper of the Property.
6. In 2005-2006 Peron (and Peron Construction Phillipsburg LLC) 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 May 2021 the Town amended the Redevelopment Plan via Ordinance 2021-14 to permit industrial uses on the Property, thus reverting the Property's zoning to the industrial zoning that had been in force for decades prior to the 15-year attempt to residentially develop the site.
12. Plaintiffs, among others, filed suit against Phillipsburg thereafter seeking to invalidate Ordinance 2021-14. This lawsuit remains pending.
13. In December 2021 the Phillipsburg Town Council readopted the Ordinance, which was vetoed by then-Mayor Todd Tersigni. Mayor Tersigni had previously abstained from participating in review of the Ordinance before the Town Planning Board and had not taken any adverse action toward the Ordinance prior to his veto.
14. In January 2022 Peron obtained site plan approval to permit the construction of an industrial building on the Property. This approval has been amended, but the industrial use remains approved on the Property.
15. In October 2022 the Phillipsburg Town Council again re-adopted the Ordinance (Ordinance 2022-30) to restore industrial uses as permitted uses in the RRA-5 District.
16. Plaintiffs again filed suit against Phillipsburg seeking to invalidate Ordinance 2022-30. The Court determined that the Town had improperly published notice of the adoption of Ordinance 2022-30, so the Ordinance was invalidated.
17. Plaintiffs have filed the instant lawsuit in an effort to obstruct and block construction of Peron's approved industrial building.
18. 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. As evidenced by Mayor Tersigni's use of the veto and the Town's failure to properly notice Ordinance 2022-30, there are significant questions as to whether the Town can adequately represent Peron's interests. As further evidence of Peron's need to intervene Phillipsburg has not sought to get a ruling on the original lawsuit, WRN-L-248-21, which was filed June 25, 2021. Peron's intervention into the lawsuit is necessary to protect its interest in the Property as well as its approvals.

19. 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.
20. Plaintiffs allege that because I am named as a partner in the Florio Perrucci law firm that a conflict exists with that firm representing Peron in this matter. Although a founder of the law firm I no longer retain any ownership interest in the Florio Perrucci law firm.
21. Attached hereto as Exhibit A is a Certification dated June 13, 2022 from accountant Michael Petrecca verifying that in 2020 and 2021 I had no interest in the law firm. This remains true to the present.
22. Attached hereto as Exhibit B is a Certification dated June 15, 2022 from firm administrator Charles Braxmeier verifying that I sold my membership and ownership interest in the firm and have not performed any legal work for any client of the firm since June 11, 2018. This remains true to the present.
23. I am the sole owner of Peron. Peron has the right to select counsel of its choosing. No one – Peron, Florio Perrucci, Florio Perrucci clients, or Plaintiffs – will be prejudiced by my choice of counsel, which is the Florio Perrucci law firm.

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.



MICHAEL J. PERRUCCI

Dated:


EXHIBIT A

Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, NJ 08865
(908) 878-0124
stipton@floriolaw.com

STATE OF NEW JERSEY)
)
COUNTY OF Hunterdon) ss.:
)

I, Michael Petrecca, being duly sworn, deposes and says:

1. I am a partner with WISS & Company, LLP ("WISS").
2. WISS prepares the tax returns for the law firm Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC (the "Firm") and for Michael Perrucci, individually.
3. The 2020 and 2021 tax returns of the Firm have been prepared reflecting a zero profits interest, zero loss interest and zero capital interest for Michael Perrucci.



Michael Petrecca
Affiant

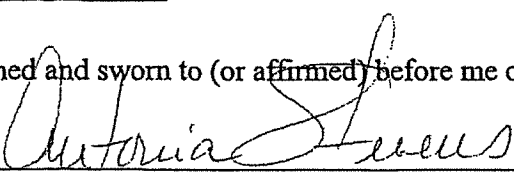
Dated: June 13, 2022

State of New Jersey

County of Somerset

I, Antonia Stevens witnessed, by, Michael Petrecca, the attached affidavit on June 13, 2022.

Signed and sworn to (or affirmed) before me on June 13, 2022 by



[NOTARY PUBLIC]

My commission expires: _____
ANTONIA STEVENS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Oct. 5, 2023

EXHIBIT B

Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, NJ 08865
(908) 878-0124
stipton@floriolaw.com

STATE OF NEW JERSEY)
) ss.:
COUNTY OF _Warren)

I, CHARLES BRAXMEIER, being duly sworn, deposes and says:

1. I am the firm administrator for the law firm Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC (the "Firm").
2. Michael Perrucci was a partner with the Firm until December 31, 2019.
3. Effective January 1, 2020, Michael Perrucci sold his membership and ownership in the Firm back to the Firm.
4. Michael Perrucci has not performed any legal services for any client of the firm since June 11, 2018 and has not been paid by the Firm since December 23, 2020.

Charles Braxmeier
Charles Braxmeier
Affiant

Dated: June 15, 2022

State of New Jersey

County of Warren

I, Jacquelyn M. Baum, witnessed, by, CHARLES BRAXMEIER, the attached affidavit on June 15, 2022.

Signed and sworn to (or affirmed) before me on June 15, 2022 by

Jacquelyn M. Baum
[NOTARY PUBLIC]
My commission expires: March 8, 2026