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Attorneys for Plaintiffs,
Brenda Kormandy and Garis Kormandy,
Janice Hosbach, and David P. Morrisette
and Sandra S. Morrisette

Brenda Kormandy and Garis Kormandy,
301 Mercer Street,
Phillipsburg, NJ 08865
and
Janice Hosbach,
150 Mercer Street,
Phillipsburg, NJ 08865
and
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

:
: Civil Action

: DOCKET NO. WRN-L-_____

:
: COMPLAINT
: IN LIEU OF PREROGATIVE WRITS

This is an action in lieu of prerogative writs to challenge Ordinance 2021-14 adopted by the Council of Phillipsburg to amend its redevelopment plan to permit construction of a 510,000+ Sq. Ft. warehouse on the last undeveloped portion of its Delaware River

waterfront. This amendment is in violation of the Town's Master Plan and Reexamination reports and constitutes arbitrary and capricious decisionmaking. The vote to approve this Ordinance was affected by conflicts of interest.

1. Plaintiffs Brenda Kormandy and Garis Kormandy are adults residing at 301 Mercer Street, Phillipsburg, NJ 08865.

2. Plaintiff Janice Hosbach is an adult residing at 150 Mercer Street, Phillipsburg, New Jersey 08865.

3. Plaintiffs David P. Morrisette and Sandra S. Morrisette are adults residing at 5 Fairview Heights, Phillipsburg, New Jersey 08865.

4. Defendant Town of Phillipsburg is a municipality organized under the laws of New Jersey, in Warren County, with its address at 120 Fillmore Street, Phillipsburg, NJ 08865.

5. On its home page on its website, this is how Phillipsburg describes itself:

Welcome To Phillipsburg, New Jersey

Located on the Delaware River, in a beautiful setting of rolling hills, woodlands, and flowing waters, Phillipsburg, New Jersey offers the best of all worlds. Here, you can escape from crowded, impersonal developments, and find the joys of living in a close-knit community of families and friends, as you enjoy all the advantages of urban living as well as rural atmosphere - from a quaint downtown waterfront shopping district, to a choice of nearby airports.

Just 30 minutes from the Pocono Mountains, and midway between Philadelphia and New York City, Phillipsburg is an historic town with an exciting future. It's a place where the beauty, culture, tourism and recreational activities are enhanced with a growing base of small and mid-size businesses.

[<http://www.phillipsburgnj.org/>]

This self-description is utterly incompatible with a waterfront, 510,000+ Sq. Ft. truck-served

warehouse.

6. On May 4, 2021, the Phillipsburg Council adopted on second reading Ordinance 2021-14 (Ordinance), which amended the 2013 Redevelopment Plan to change the zoning for certain riverfront parcels (Riverfront Development Area) from HD to LI. Notice of the adoption of Ordinance 2021-14 was published on May 13, 2021. This complaint challenges this ordinance.

7. The Ordinance was adopted by a 3-2 vote.

8. The parcels affected are Lots 1, 2.01, and 2.02 in Block 2102. The entire parcel containing Lots 1, 2.01, and 2.02 in block 2102 contains 42.61 acres, according to the acreage reported on the tax map current when the Ordinance 2021-14 was enacted. All of these lands were either zoned for residential development or as open space. The previous Revised Riverfront Redevelopment Plan, adopted November 4, 2013, would have permitted retail, office uses, museums, and cultural and educational facilities on the first floor of residential mid-rise buildings to serve the residential areas of the parcel.

9. A portion of the Riverfront Development Area, Block 2102, Lot 1, consists of Green Acres properties. The land is listed on Phillipsburg's Open Space Inventory and may not be diverted to other use without the consent of the New Jersey Department of Environmental Protection. The land is presently not developed and covered in vegetation and is located in what is currently called an Historic Recreational Zone; it extends from Delaware River Park to the northwest and is surrounded on three sides by Lot 2.02 in the redevelopment District 5. Lot 2.01 is located on part of the southern boundary of Lot 1.

10. The Ordinance incorporates the Green Acres properties into the Redevelopment District 3 and merges District 3, labeled Recreational/Heritage, into District 5, which is labeled Riverside Residential, and changes the use of the merged property to Riverside Industrial, to permit industrial uses, in violation of Green Acres rules and regulations..

11. The Planning Board commissioned a “Consistency Review Report: Proposed Amendment to the Riverfront Redevelopment Plan,” by Van Cleef Engineering Associates, Inc. dated February 25, 2021 (Consistency Report). This Consistency Report was the basis for the Planning Board report to the Council, and the adoption of Ordinance 2021-14.

12. The Riverfront Redevelopment Area was designated as an “area in need of redevelopment” in 2005, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (“LRHL”). Various redevelopment plans that included this area have been drafted and adopted over the years.

13. According to the Ordinance, the current redevelopment plan is the “Revised Riverfront Redevelopment Plan” adopted by the Council and dated November 2013 (2013 Plan).

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

15. The 2013 Plan designated District 5, which roughly coincides with the area that is legislated by the Ordinance, 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.

16. The 2013 Plan designated District 6, to the east of the area that is legislated by the Ordinance, as Riverside Commercial, somewhat consistent with the then-current uses.

17. The 2013 Plan set out eleven “Redevelopment Goals and Objectives,” none of which are consistent with a 510,000 sq. ft. warehouse.

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

19. According to the Consistency Report, the reason for the amendment to the redevelopment plan is that the owner of the properties in District 5 intends to construct a warehouse industrial building of approximately 510,000 square feet situated parallel to Howard Street with approximately 382 parking spaces on the northeast side and approximately 45 trailer parking spaces on the north side and 64 trailer parking spaces on the south side. Loading bays and docks would likely be located on the south side of the building, and three constructed paved ingress and egress from Howard Street and paved access to McKeen Street would be constructed. A concept plan incorporating these elements was shared with the Town. The concept plan also contemplates a large “above ground stormwater retention basin to the rear of the building, along the waterfront.”

20. According to the Consistency Report and the Ordinance, the town is applying to the New Jersey Department Of Environmental Protection to remove Block 2102, Lot 1, from Green Acres.

21. The most recent Master Plan is dated 2004, although it is captioned “Master Plan

Update.”

22. The overarching goal of the 2004 Master Plan is:

Goals & Objectives

The Town has established one principle goal toward which the municipal government, its private partners, and the people of Phillipsburg should continuous aim. The goal is:

To maintain the Town of Phillipsburg as a proud community where people and families of all ages and incomes can live and travel safely, have clean and well kept neighborhoods, have a variety of above average housing opportunities and have accessibility to needed businesses and professional services. The community should preserve its history, protect it natural resources, provide recreation for all ages, and maintain a mixture of land uses that will offer a stable tax base.

To guide Phillipsburg toward this goal, specific objectives have been established in each of the elements that follow, pertaining to that particular issue. With these objectives are further recommendations for specific actions designed to begin or continue implementation of the objectives.

Conservation Plan, Objectives,

- 1. Protect critical environment features and areas not other wise regulated.*
- 2. Preserve the remaining natural features*
- 3. Increase public access and use of the Delaware River....*

Recommendations:

- 3. Create a Riverfront Development Plan for the entire length of river frontage, providing for river related businesses, activities and housing and including access plans for trails, view areas and such.*

The Consistency Report ignores these goals.

23. The Consistency Report ignores the specific objectives set out in the 2004 Master Plan with respect to responsible development, avoidance of impacts from industrial uses,

traffic and safety, environmental protection, parks and recreation, development of the riverfront area for development of river-related activities, and enhancement of Phillipsburg as a tourist destination.

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

25. Construction of a 510,000 sq. ft warehouse with 382 parking spaces on the northeast side and approximately 109 trailer parking spaces will dramatically increase truck traffic on the narrow and congested streets in the area around the Riverview Redevelopment Area, in direct contravention to the Master Plan and its objective of “eliminat[ing] truck-dependent uses from areas with no or limited access to the major highway network.”

26. Construction of a 510,000 sq. ft warehouse with 382 parking spaces on the northeast side and approximately 109 trailer parking spaces, which represents a dramatic increase in impervious area, together with construction of a large “above ground stormwater retention basin to the rear of the building, along the waterfront,” will violate DEP stormwater management rules, in direct contravention to the Master Plan.

27. Construction of a 510,000 sq. ft warehouse with 382 parking spaces on the northeast side and approximately 109 trailer parking spaces will end all possibility of developing the Riverfront Redevelopment Area into the last remaining riverfront park and recreation area, in direct contravention of the Master Plan.

28. Removal of Block 2102, Lot 1, from Green Acres is inconsistent with the Master

Plan.

29. As the warehouse would be constructed in a redevelopment area, the warehouse would likely qualify for significant tax abatements, thereby depriving the Town of tax revenues, in contravention of the Master Plan. The Town would consider entering into a Payment In Lieu Of Taxes agreement with the developer, thereby depriving the schools and county of significant tax revenues, in contravention of the Master Plan..

Count One – Violations Of Due Process

30. Copies of the complete proposed ordinance were not made available to the public before the final vote. Therefore members of the public were denied the due process opportunity to know what the Council was voting on.

Count Two – Inconsistency With Master Plan

31. Plaintiffs incorporate their previous allegations.

32. Ordinance 2021-14 adopts land use changes that are manifestly inconsistent with the 2004 Master Plan.

33. Ordinance 2021-14 does not explain why the Town should adopt land use changes that are manifestly inconsistent with the 2004 Master Plan.

34. The Ordinance constitutes the equivalent of unlawful spot zoning.

Count Three – Conflict Of Interest

35. Plaintiffs incorporate their previous allegations.

36. Apart from the Green Acres properties in the Waterfront Redevelopment Area, the properties are owned by Peron Construction, Inc. The principal in Peron Construction,

Inc., is Michael J, Perucci, Esq., a partner in the law firm of Florio Perucci Steinhardt Cappelli Tipton & Taylor LLC, which has offices in Phillipsburg. On the law firm website, Mr. Perucci is identified as the “owner” of Peron Construction, Inc.

37. Plaintiffs are informed and believe that one or more of the Phillipsburg Town Council have been represented by lawyers in the Florio Perucci Steinhardt Cappelli Tipton & Taylor LLC law firm.

38. When a member of the public questioned whether one or more of the Phillipsburg Town Council have been represented by lawyers in the Florio Perucci Steinhardt Cappelli Tipton & Taylor LLC law firm, the Council refused to answer that question.

39. Any member of the Phillipsburg Town Council who had been represented by lawyers in the Florio Perucci Steinhardt Cappelli Tipton & Taylor LLC law firm was required by law to recuse himself or herself, to avoid an unlawful conflict of interest.

Count Four – Arbitrary And Capricious Lawmaking

40. Plaintiffs incorporate their previous allegations.

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

WHEREFORE plaintiffs respectfully request that this court find and conclude that Ordinance 2021-14 is void and award them their costs of suit.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1(c), plaintiff designates the following as trial counsel:

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CERTIFICATION PURSUANT TO R. 4:69-4

I hereby certify that I will obtain transcripts of the public hearings of the Town Council on Ordinance 2021-14.

CERTIFICATION OF NO OTHER ACTIONS PURSUANT TO R. 4:5-1

I hereby certify that the action subject of the complaint is not the subject of any other action now pending or of any known about to be brought. I am aware that if there is a change in the facts stated in this original certification, I have a continuing obligation during the court of this litigation to file and serve on all other parties and with the court an amended certification.

**CERTIFICATION OF NO OTHER PARTIES TO JOIN
PURSUANT TO R. 4:28 OR R. 4:29-1(b)**

I hereby certify that there are no other parties who should be joined in this proceeding at this time. I am aware that if there is a change in the facts stated in this original certification, I have a continuing obligation during the course of this litigation to join other parties and to file and serve on all other parties and with the court an amended certification.

CERTIFICATION OF COMPLIANCE WITH R. 1:38-7(c)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Respectfully submitted,
POTTER AND DICKSON
/s/ Peter Dickson
Peter Dickson
Attorneys for Plaintiffs

Dated: June 25, 2021.