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SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY, LAW DIVISION
DOCKET NO. PAS-L-1001-20

JOHN A. DEMETRIUS,
Proposed-intervenor / Plaintiff/ Plaintiff,

CIVIL ACTION

RICHARD A. BRUMMEL,
Plaintiff, Pro se

**AFFIDAVIT IN SUPPORT OF MOTION
TO INTERVENE**

Vs.

TOWNSHIP OF WAYNE, MAYOR AND
COUNCIL OF THE TOWNSHIP OF WAYNE,
CHAIRMAN AND ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF
WAYNE WAYNE, GRACE UNITED
PRESBYTERIAN CHURCH OF WAYNE,
Defendants.

STATE OF NEW JERSEY: COUNTY OF PASSAIC:

John A. Demetrius, 39 Weinmanns Blvd., Wayne, N.J., 07470, having been duly sworn, does affirm under penalty of perjury the following is true to the best of his knowledge except what is stated upon information and belief, and such he believes to be true:

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Exhibits

Exhibit 1 -- Photo dated May 13, 2020 of Proposed intervenor / Plaintiff outside his home dated May 13, 2020

Exhibit 2 -- Satellite view of Proposed intervenor / Plaintiff property and distance measure to subdivision

Exhibit 3 -- Photo of Proposed intervenor / Plaintiff on his property with forest in behind him, dated May 13, 2020

Exhibit 4 -- Satellite view of Grace-Preakness Forest, area measurement-thereof, and approximate location of subdivision.

Exhibit 5 -- Proposed complaint

Exhibit 6 -- Case cited: *Shoemaker v. Bd. of Appeals for Anne Arundel Cnty.*, No. 722, at *12 (Md. Ct. Spec. App. Feb. 22, 2017)

Preliminary Remarks

1. Proposed-intervenor / Plaintiff John A. Demetrius (“Proposed-intervenor / Plaintiff”) respectfully seeks the Court's consent to intervene in the matter *Brummel v. Township of Wayne et al.*, Docket # PAS-L-1001-20, because Proposed-intervenor / Plaintiff is a resident of the Township, whose house is located on the periphery of the forest-mass at issue, and his interests are implicated in the lawsuit and in the plan to destroy the roughly three-acre core of the forest for a subdivision, and furthermore his personal participation is essential to protect his interests, pursuant to the Rules of the Court governing intervention.
2. Proposed-intervenor / Plaintiff makes this application pursuant to N.J. Court Rules, 1969, (“the Court Rules”) R. 4:33-1 (intervention as-of-right) and R. 4:33-2 (permissive intervention).
3. Proposed-intervenor / Plaintiff's interests are implicated because he ethically values as a matter of environmental health the intact forest in his own neighborhood; he benefits aesthetically and emotionally from the intact forest in that from his property, he sees and enjoys seeing the intact forest; he and his wife interact with, and he enjoys, and is concerned for the welfare of the wildlife that lives and/or forages in the intact forest; and he derives general environmental benefits from the intact forest, such a clean air, and hydrologic services, among other things.
4. Proposed-intervenor / Plaintiff also has general interest in preserving open-space in the Township of Wayne, and as an over-fifty-year resident and former appointed public official, he opposes the trend of excessive real-estate development that has negatively affected the Township in recent decades.

Facts Related To Proposed-intervenor / Plaintiff

5. Proposed-intervenor / Plaintiff is eighty-eight year old, and is a Certified Public Accountant by profession.
6. With his wife, he has since 1964 owned the house at 39 Weinmanns Blvd, Wayne, NJ 07470 (“the Property”), a period of about fifty-six years. *See*, Exhibit 1, Photo dated May 13, 2020 of Proposed intervenor / Plaintiff outside his home dated May 13, 2020.
7. The Property is located at the corner of Helene Court, a five-house cul-de-sac that partially abuts the forest-mass at issue. *See*, Exhibit 2, Satellite view of Proposed intervenor / Plaintiff property and distance measure to subdivision¹.
8. The Property is located approximately two-hundred-and-thirty yards from the center of the proposed subdivision area², as measured by the Google mapping analysis service “www.daftlogic.com”. *See*, Exhibit 2.
9. The backyard and side-yard of the Property are within the cul-de-sac, and thereby the Property and Proposed-intervenor / Plaintiff enjoys a direct view of the overall forest-mass at issue. *See*, Exhibit 3, photo of Proposed intervenor / Plaintiff on his property with forest in behind him, dated May 13, 2020.
10. On various occasions during his residency, Proposed-intervenor / Plaintiff has walked in the forest to locate one of his dogs, to picnic, and to visit a neighbor via a shortcut through the

¹Distances and areas of the satellite photos were taken from the website daftlogic.com and the URL's used are annotated on the photos themselves.

²The subdivision area has been identified in technical terms in this case in the exhibits of the opposition letters to the preliminary injunction by the Township “Opposition to OTSC”), Exhibit D; and the Zoning Board of Adjustment (“Opposition to Show Cause”), Exhibits 1-3. Proposed-intervenor / Plaintiff Demetrius is not aware of any precise delineation of the subdivision outline on the record.

woods.

11. Knowing the forest is there, intact and open -- not occupied by homes on half-acre lots, as proposed -- is thus a 'given' of Proposed-intervenor's residency, and enhances his enjoyment of his neighborhood.
12. The overall forest-mass occupies about seven and one-half acres and has been dubbed "the Grace-Preakness Forest" by its environmental defenders (see, accompanying proposed verified complaint, ¶ 19).
13. The roughly three-acre area approved for subdivision by Defendant Church (see accompanying verified complaint, Exhibit 7, Minutes of Zoning Board of Adjustment) forms the central core of the forest: *See*, Exhibit 4, Satellite view of Grace-Preakness Forest, area measurement-thereof, and approximate location of subdivision.
14. Proposed-intervenor / Plaintiff moved from Brooklyn, N.Y. to his Property in Wayne Township in 1964 , when the general area was substantially open-space, farms, and nurseries, and woodlands were abundant in close vicinity.
15. Proposed-intervenor / Plaintiff values natural open-space from his background as a Boy Scout, an assistant Scoutmaster, and an avid camper as a young man.
16. Proposed-intervenor / Plaintiff was a public official in Wayne Township, as the chairman of the Rent Levelling Board³, a regulatory agency for housing.
17. But notwithstanding his personal relationships with the political structure, Proposed-intervenor / Plaintiff has long been dissatisfied with the excessive pace of real estate

³See, e.g, *Wayne Tenants Council v. Mayor of Wayne* 180 N.J. Super. 128 (N.J. Super. 1981). The Board was in operation from roughly 1972, *ibid*, at 131.

development and destruction of open space in Wayne Township.

18. Proposed-intervenor / Plaintiff thus hopes to help draw a line against the excesses in his own neighborhood with the present case, as it affects both himself and the public in general.
19. Proposed-intervenor / Plaintiff Demetrius fully embraces the critique of the improper practices by the Township as set forth in Plaintiff Brummel's verified complaint, and with Plaintiff Brummel's consent has adopted the verified complaint as his own.
20. Inasmuch as Proposed-intervenor / Plaintiff did not receive direct notice of the proposed subdivision from the Zoning Board of Adjustment or the applicant, Proposed-intervenor / Plaintiff was not aware of the administrative proceedings until the first recent newspaper article appeared (verified complaint Exhibit 1A).
21. But had he been made aware, Proposed-intervenor / Plaintiff would likely have attended the meetings and supported the neighbors abutting the subdivision area in order to protect the forest from development.

Goals Of Intervention

22. Proposed-intervenor / Plaintiff seeks to intervene as a Plaintiff in order to assist and buttress the efforts of the present Plaintiff, Richard A. Brummel ("Plaintiff Brummel"), and thereby to defend Proposed-intervenor / Plaintiff's own interests, as well as the public interest.
23. Proposed-intervenor / Plaintiff is concerned his interests cannot be adequately defended because as a resident of a different municipality, Plaintiff Brummel has been alleged by Defendants to lack "skin in the game" (see, e.g. Church letter brief in opposition to the preliminary injunction, p. 5).

24. Furthermore, Defendants have challenged Plaintiff Brummel's standing under the N.J. Environmental Rights Act due to an alleged technical 'notice-violation' (see, Plaintiff Brummel's legal brief on standing, pp. 4 ff.).

Changes to verified complaint

25. In order to minimize any disruption of the pending case, and not prejudicing the Defendants in any way, Proposed-intervenor / Plaintiff Demetrius has adopted the current verified complaint with Plaintiff Brummel's consent, with various technical modifications as listed below.

26. The proposed complaint is attached hereto as Exhibit 5.

27. The changes relate to: (a) the name of the party making the allegation, whether Plaintiff Brummel or Proposed-intervenor / Plaintiff / Plaintiff Demetrius; (b) the insertion of the phrase "upon information and belief" for some factual allegation -- which have all been left intact -- which Plaintiff Brummel has communicated to Proposed-intervenor / Plaintiff / Plaintiff by sworn affidavit; (c) certain changes in phrasing of times which were based on the filing of the 'original' verified complaint on March 20, 2020.

28. Thus, the changes to the verified complaint of which the Court and the Defendants should be aware are as follows:

29. (A) Proposed-intervenor / Plaintiff Demetrius has made various allegations upon information and belief, as the statement at the outset of the verified complaint makes clear. Proposed-intervenor / Plaintiff has formed the information and belief (a) based on his own knowledge, (b) based on the exhibits in the original verified complaint which he examined,

and (c) based upon an affidavit from Plaintiff Brummel to address first-hand allegations by Plaintiff Brummel of which Proposed-intervenor / Plaintiff Demetrius otherwise has no independent knowledge;

30. (B) Proposed-intervenor / Plaintiff Demetrius has entered his personal information as a Party;

31. (C) Where certain allegations of fact or law were made in the original as by “Plaintiff”, they have been specified in the verified complaint as either Plaintiff Brummel or Proposed-intervenor / Plaintiff / Plaintiff Demetrius;

32. (D) Paragraph numbers and page numbers have changed because of the addition of Proposed-intervenor / Plaintiff Demetrius's information under “Parties”;

33. (E) Exhibits have been added to substantiate claims by Proposed-intervenor / Plaintiff Demetrius, and they follow the original Exhibits and are numbers “Supplementary Exhibits A1-A4”;

34. (F) Upon information and belief no editing or grammatical or substantive changes have been made to the verified complaint;

35. (G) In one or two places, where the verified complaint stated that something has not occurred 'to the present date' or words to that effect, the wording has been modified to indicate the date in question is the date that the verified complaint was signed, on March 20, 2020;

36. (H) The phrase “upon information and belief” has been added to numerous factual allegations that were originally made by Plaintiff Brummel and which Proposed-intervenor / Plaintiff has adopted based on Plaintiff Brummel's sworn affidavit as to their veracity provided to Proposed-intervenor / Plaintiff;

37. (I) With respect to Count 4, the original verified complaint stated that the challenge to the subdivision vote was timely, but the proposed verified complaint was modified to leave the question open pending determination of the date of any publication of the memorialization vote;
38. (J) Four "Supplementary Exhibits" which document relevant facts related to Proposed-intervenor / Plaintiff / Plaintiff , as referenced exclusively in the section "Parties", have been added at the end of the Exhibits.

Argument

39. N.J. Court Rules, 1969, R. 4:33-1 and R. 4:33-2, establish intervention as of right and by discretion, respectively.
40. Proposed-intervenor / Plaintiff meets the requirements of both provisions, because he is a near neighbor who will be affected by the destruction of a significant forest near his home, whose interests may not otherwise be protected, and his intervention does not prejudice the Defendants nor add to the complexity of the case, nor delay it unduly.

Intervention As of Right

41. The Court Rules provide for intervention as of right conditioned on four conditions, which the Courts have interpreted as follows:

"...R. 4:33-1 establishes the four criteria for determining intervention as of right:

The applicant must (1) claim "*an interest relating to the property or transaction which is the subject of the transaction,*" (2) show he is "*so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest,*" (3) demonstrate that the "applicant's interest" is *not adequately represented* by existing parties," and (4) make a "*timely*" application

to Intervene. [Chesterbrooke Ltd. Partnership v. Planning Bd., 237 N.J. Super. 118, 124, 567 A.2d 221 (App.Div.), certif. denied, 118 N.J. 234, 570 A.2d 984 (1989).]

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." Atlantic Employers Ins. Co. v. Tots Toddlers Pre-School Day Care Ctr., 239 N.J. Super. 276, 280, 571 A.2d 300 (App.Div.), certif. denied, 122 N.J. 147, 584 A.2d 218 (1990). As the rule is not discretionary, a court must approve an application for intervention as of right if the four criteria are satisfied. Chesterbrooke, *supra.*, 237 N.J. Super. at 124, 567 A.2d 221."

Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (N.J. Super. 1998), emphasis added

42. The Courts have repeatedly stated that the rules should be applied "liberally", *Meehan*, *ibid.*, for both intervention as a right and permissive intervention.

Proposed-intervenor / Plaintiff Has A Clear Interest In Preserving The Forest

43. As a near-neighbor of the proposed subdivision, the Proposed-intervenor / Plaintiff has an interest well-recognized and sustained by the Courts:

"...[N]on-parties owning property neighboring a potential subdivision do have an interest sufficient to satisfy the first criterion."

Meehan, ibid., at 569

44. Further:

"To emphasize this point, we quoted the Law Division fudge approvingly: "it is in fact common for neighboring property owners in these zoning or subdivision matters to participate in prerogative writ trials,' and 'I always, always, always grant a neighboring property owner the right to intervene if he or she seeks to do so in timely fashion.'" *ibid.* at 124, 567 A.2d 221."

Meehan, ibid. at 569 n. 5

45. As documented *supra*, Proposed-intervenor / Plaintiff Demetrius can see from his house

the trees that make up the forest; he has walked in the forest; he has interacted with wildlife that uses the forest as habitat; he continually appreciates the presence of the intact forest in view; and he enjoys the fresh air and quiet that the nearby forest provides.

46. While Proposed-intervenor / Plaintiff's property does not directly abut the proposed subdivision, Proposed-intervenor / Plaintiff is affected as a "neighbor" (*Meehan, ibid.*) in that Proposed-intervenor / Plaintiff is an essential core of the seven-acre forest, which he sees daily, uses, enjoys, as described, and whose wildlife he values and interacts with will be fragmented and damaged by the subdivision.

47. Proposed-intervenor / Plaintiff's enjoyment of the forest is not only tangible but intangible, in that he appreciates knowing that an intact, wildlife-rich forest is nearby, a short distance from his yard.

48. Should the core be removed from the forest, the character of the forest and its ability to sustain wildlife will unquestionably be diminished.

49. State law recognizes that intact forests are a valuable resource, as much as raw acreage is, and by implication cutting the heart out of the Grace-Preakness Forest will destroy its inherent ecological integrity, thus:

"...[T]he New Jersey Highlands contains other exceptional natural resources such as clean air, *contiguous forest lands*, wetlands, pristine watersheds, and habitat for fauna and flora"

N.J. Stat. § 13:20-2 emphasis added

50. Similarly:

"The OPZ is encouraging the Petitioner to cluster the development north of the power lines. We agree that the public's interest is best served by this cluster. *The clustering provides a contiguous forest area in the southern portion of the site for recreation and a forest conservation easement, which is a benefit to the*

community, the environment and the forest dwelling species. The clustering would also reduce the impervious coverage from the development and reduce stormwater runoff.”

Shoemaker v. Bd. of Appeals for Anne Arundel Cnty., No. 722, at *12 (Md. Ct. Spec. App. Feb. 22, 2017) (See, Exhibit 6)

'Public Interest' Elevates Standing Claims

51. Additionally, because of the substantial 'public interest' element of the issues raised, the Courts have held that 'standing' -- in other words interest in the matter -- should be judged in a very broad sense, thus:

“Thus, the Court has "consistently held that in cases of great public interest, any 'slight additional private interest' will be sufficient to afford standing." Ibid., (citations omitted). "[A] plaintiffs particular interest in the litigation in certain circumstances need not be the sole determinant. That interest may be accorded proportionately less significance where it coincides with a strong public interest." N.J. State Chamber of Commerce, supra, 82 N.J. at 68, 411 A.2d 168 (citing Elizabeth Fed. Sav. Loan Assn. v. Howell, 24 N.J. 488 , 499, 132 A.2d 779 (1957)). In Al Walker, Inc., supra, 23 N.J. at 662, 130 A.2d 372 , the Court quoted with approval from Hudson Bergen County Retail Liquor Stores, Ass'n. v. Bd. of Comm'rs of Hoboken, 135 N.J.L. 502 , 510, 52 A.2d 668 (E A 1947), that "it takes but slight private interest, added to and harmonizing with the public interest to support standing to sue." See also Ridgewood Educ. Ass'n, supra, 284 N.J.Super. at 432-33, 665 A.2d 776.”

People for Open Government v. Roberts, 397 N.J. Super. 502, 510 (N.J. Super. 2008), emphasis added (where the Appellate Division sustained standing for a group of citizens who had helped pass legislation that they alleged was not being enforced)

52. Thus however the concept of “neighbor” (*Meehan, ibid.*) is interpreted to reflect the interests of Proposed-intervenor / Plaintiff in the forest and the proposed subdivision, the general interests of Proposed-intervenor / Plaintiff as a near neighbor are clear and compelling.

53. Furthermore the 'public interest' element of the action compels the Court to give special weight to the 'standing' of the Proposed-intervenor / Plaintiff even if it is only “but slight private interest”, *People for Open Government, ibid.*

Representation of Interests

54. The Court in *Meehan* combined the second and third criteria of R. 4:33-1: (1) Whether the current litigant *adequately represented* the interests of the proposed-intervenor, and (2) Whether the interests of the proposed-intervenor *would be affected* by the outcome of the action colored by any deficiency in representation. Thus:

“...[O]nce the planning board decided not to appeal the developer's plan approval, the board ceased to adequately represent the intervenors' interests and left them "so situated that [the] `disposition of the action' would impair their ability to protect their interest.””

Meehan, ibid. at 569

55. In the present case, the potential 'prejudice' to Proposed-intervenor / Plaintiff Demetrius arises not from unwillingness of Plaintiff Brummel to pursue the case, but instead from the possibility that Plaintiff may be denied standing in the case⁴.

56. Furthermore, and in any case, Plaintiff Brummel is potentially a less compelling representative of the community interests than a neighbor of the forest would be⁵.

57. At this juncture in the case, Defendants have challenged Plaintiff Brummel's 'standing'.

58. Plaintiff Brummel has himself acknowledged -- and defended -- the issue of his having

⁴Defendant Church raised the argument that Plaintiff Brummel failed to timely file 'notice' as required to avail himself of 'standing' under the N.J. Environmental Rights Act, as he did. The matter is being briefed and argued before the Court and has not yet been resolved.

⁵During the hearing of April 30th, upon information and belief, the Judge expressed some sympathy to the argument that Plaintiff Brummel lacked “skin in the game”, to use a phrase in Defendants' papers, *supra*.

omitted thirty-days' advance 'notice' as required except in the case of an emergency under the N.J. Environmental Rights Act, N.J.S. 2A:35A-1 et seq. (see, Plaintiff's legal brief on standing).

59. Said Plaintiff Brummel:

“...[T]he Act excuses the absence of advance notice 'if the plaintiff in an action...can show that immediate and irreparable damage will probably result,' NJERA Section 2A:35A-11, and this action has been gradually recognized by this Court as deserving of emergent consideration as defined by Act.

Repeated statements by the counsel for the Church, and other accumulating evidence, has shown that Plaintiff's repeatedly stated concerns of the 'probability' of imminent danger to the forest were -- and are -- indeed reasonable readings of the facts known.”

Plaintiff's legal brief on standing, p. 6

60. Upon information and belief, that issue of standing is thus currently before the Court as part of the order to show cause on the proposed preliminary injunction, and will possibly arise in the future by way of motion to dismiss or otherwise.

61. Even if Plaintiff is not separated from the case by the challenge to his standing, the Court may harbor a sympathy to the Defendants' repeated refrain that Plaintiff lacks “skin in the game” (*supra*) and thus Plaintiff may be handicapped in his credibility before the Court.

62. At this moment the issue is hypothetical, but Proposed-intervenor / Plaintiff believes that with the preliminary injunction at stake now is the ripe time to intervene instead of risking the preliminary injunction will be denied due to the standing issue and work can begin before the motion to intervene is heard or decided.

63. To repeat, if Proposed-intervenor / Plaintiff were to delay this motion until the Court decided on the preliminary injunction with only Plaintiff Brummel as the Plaintiff, there might

not be time for Proposed-intervenor / Plaintiff to intervene before the forest were cleared in the event of a negative outcome for Plaintiff Brummel.

Timeliness

64. The final criterion for intervention as of right is timeliness.
65. In the context of appeals and settlements, the Courts have held that even where a Proposed-intervenor / Plaintiff waited until the *entire* case had been heard, the intervention was timely for the purposes of challenging a settlement at the point the consent order was entered.
66. The Court held that the Court must weigh intervention subject to the *progress* of the case:

“...[W]e held that the motion judge erred by finding intervenors' application untimely. Rather, *a motion judge must consider "the purpose of the intervention motion in relation to the stage of the action when the motion is made."* Ibid. Therefore, we articulated the applicable standard to evaluate timeliness as follows: "[w]hen an intervenor seeks intervention 'after the final judgment' and only 'for the purpose of appealing,' the critical inquiry is simply 'whether in view of all the circumstances the intervenor acted promptly after the entry of final judgment.'”

Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 569 (N.J. Super. 1998), emphasis added
67. In the present case, virtually nothing significant has occurred yet in the case, as the Court is strictly at the preliminary stage of determining whether to issue a preliminary injunction. No formal decisions have been taken by the Court, upon information and belief, except to deny an *ex parte* temporary restraining order at the outset of the case.
68. Inasmuch as the current preliminary “stage” of the case (*Meehan, ibid.*) is focused on the question of standing, the time is indeed ripe for Proposed-intervenor / Plaintiff to assert his interests and assert the justness of the case to proceed -- on the merits -- inasmuch as he has

standing as a near neighbor.

69. Indeed if Proposed-intervenor / Plaintiff does not assert his standing now, there may be no further opportunity to do so, because the forest may be decimated if the preliminary injunction is denied to Plaintiff Brummel.

'Public Interest' Element Supports Intervention

70. It is worthwhile to note again in this context that in addition to the Courts having endorsed treating the rule “liberally” in approving intervention (*Meehan, ibid.*, at 568), the Courts have also leaned toward granting 'standing' when matters of public interest are implicated, as they are in this matter:

“Thus, the Court has consistently held that in cases of great public interest, any slight additional private interest will be sufficient to afford standing.”

People for Open Government v. Roberts, ibid., citations and internal quotations omitted

71. The present case is primarily dedicated to preserving the small forest for the community and at the same time imposing broad measures to reform land-use stewardship in this Township, and thus this case is overwhelmingly a matter “of great public interest” (*People for Open Government, ibid.*) and should consequently be accorded a strong presumption of standing by this Court.

72. Thus for the reasons stated, Proposed-intervenor / Plaintiff Demetrius should be granted intervention by right: (1) Proposed-intervenor / Plaintiff Demetrius has the requisite interest in the nearby forest area he can see and enjoy from his home; (2) the current Plaintiff may not have the requisite standing or the same persuasive characteristics as a local resident and thus

(3) the interests of Proposed-intervenor / Plaintiff Demetrius may be prejudiced by the outcome of the case as prosecuted without his presence and (4) the intervention is timely, as it is occurring at the very outset of the case and it is occurring at a time the case is hinging on whether a local interest is at play -- which with Proposed-intervenor / Plaintiff Demetrius it will be.

Permissive Intervention Is Justified as Well

73. This Court also has a firm basis to grant 'permissive' intervention, as well.
74. The Courts have held rules for 'permissive' intervention are that there is a common interest in the matter, intervention will not prejudice or delay the case, and permitting intervention will or will not lead to further litigation. Further, the rules are to be applied “liberally” with an eye toward granting such permission, thus:

“...Rule 4:33-2 (emphasis added) permits intervention '[u]pon timely application ... if the claim or defense and the main action have a question of law or fact in common.' *The rule must be 'liberally construed ... with a view to whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties[.]'* ACLU, 352 N.J. Super. at 70, 799 A.2d 629, 'and whether intervention will eliminate the need for subsequent litigation.' *Zirger v. Gen. Accident Ins. Co.*, 144 N.J. 327, 341, 676 A.2d 1065 (1996) (citation omitted). The decision to grant or deny permissive intervention 'vests considerable discretion in the trial court[.]' *Evesham Township Zoning Board of Adjustment v. Evesham Township Council*, 86 N.J. 295, 299, 430 A.2d 922 (1981)....”

N.J. Dep't of Env'tl. Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 286 (N.J. Super. 2018), emphasis added

75. Similarly, the Court held:

“We note also that '[w]here intervention of right is not allowed, one may obtain permissive intervention under R. 4:33-2.' *Atlantic Employers*, *supra*, 239 N.J. Super. at 280. The rule permits intervention at the trial court's discretion if the applicant's 'claim or defense and the main action have a *question of law or fact in*

common.' R. 4:33-2.

The factors to be considered by the trial court, *which should ordinarily be liberal* in its grant of the motion, are *the 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*.

[Pressler, Current N.J. Court Rules, comment on R. 4:33-2 (2002) (citation omitted).]

'R. 4:33-2 is to be liberally construed by trial courts with a view to whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties.' Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 341 (1996) (citations omitted)."

American Civil Liberties Union of New Jersey, Inc. v. County of Hudson, 352 N.J. Super. 44, 70 (N.J. Super. 2002) emphasis added

76. On the basic facts and circumstances, clearly the Proposed-intervenor / Plaintiff's "claim or defense and the main action have a question of law or fact in common," *American Civil Liberties Union, ibid.* at 70.
77. Specifically, Proposed-intervenor / Plaintiff as a neighbor of the forest has a profound interest, as noted *supra*, in protecting the forest intact, (a) for his own enjoyment, (b) for the community environmental values he supports, and (c) for the principles of open-space conservation as public-policy in his own Township which he supports.
78. To that end Proposed-intervenor / Plaintiff has adopted the arguments put forth by Plaintiff Brummel in the verified complaint and thus has a "claim or defense [and] a question of law or fact in common" with Plaintiff Brummel, and with the action as originally filed.

Timeliness

79. The Courts have evaluated “promptness” (*American Civil Liberties Union of New Jersey, ibid.*) in terms of both the calendar and the progress of the case:

“...[W]ith regard to whether the United States made a timely application to intervene, we note that plaintiffs filed their complaint on January 22, 2002, and the government's application was heard on February 27, 2002. This was only one day after the original defendants had filed their answers, and before any appearances or rulings occurred in the case. Thus, the circumstances of the government's motion are markedly different from those in *Clarke, supra*, 101 N.J. Super. at 411, for example, where the application to intervene was made after judgment had been entered.”

American Civil Liberties Union of New Jersey, ibid., at 69

80. In that case, intervenor United States *was permitted* to intervene, after applying about thirty-five days after the commencement of the case, and even after answers had been filed:

“Because the United States fully satisfied all four prongs of the R. 4:33-1 test, it was entitled to intervene in this litigation as a matter of right.”

American Civil Liberties Union of New Jersey, ibid., at 70

81. In the present matter, Proposed-intervenor / Plaintiff is making this motion in a time-period comparable to that described in *American Civil Liberties Union of New Jersey, ibid.*: Proposed-intervenor / Plaintiff is making this motion upon information and belief within some forty days of the action having been served on the Defendants (on April 1, 2020), and some fifty days after the action was filed with the Court (March 20, 2020)⁶.

82. Upon information and belief no answers have been required to be filed by any briefing schedule, although the Defendant Church filed an answer even before it filed a letter-brief in

⁶The papers were not served on the Defendants until Plaintiff had exhausted his efforts to obtain ex parte relief, a period of about ten days.

response to the order to show cause.

83. During the fifty days this case has been pending, no other concrete action has been taken by the Court or the parties on the main case.
84. The entire process until now has addressed the ancillary question of injunctive relief, and even on that question there has been no final action.
85. The Court has only conducted a single roughly two-hour hearing on the preliminary injunction, which was inconclusive.
86. A follow-up hearing, to address the 'surprise' arguments raised by the Defendant Church on standing, is scheduled for Tuesday, May 12th, the day after this motion is expected to be filed and served.
87. There has been no discovery -- if such is even anticipated, nor have there even been briefing schedules created.
88. Thus from the standpoint of timeliness, the case is fresh and new, and according to the precedent from it* *American Civil Liberties Union of New Jersey, supra*, the intervention should be held timely.

No Undue Delay By Intervention

89. In terms of “undue delay”, in *American Civil Liberties Union of New Jersey, ibid.*, at 70, the United States' intervention was found not to cause undue delay notwithstanding a small weeks-long period the case might be set back:

“The delay engendered by the grant of intervenor status to the United States — *at most, eighteen days* — *did not so materially prejudice plaintiffs' position* in the litigation as to be dispositive in the light of the quality of the interest asserted by the United States.”

American Civil Liberties Union of New Jersey, ibid., at 70 emphasis added

90. The only 'delay' that might be caused to the present case is the time to determine this motion and the presumed (requested) brief delay for the hearing on the preliminary injunction to permit Proposed-intervenor / Plaintiff to participate.
91. On the other hand, if the Defendants would consent to the intervention -- which is a reasonable action, given the facts -- then there should be only a minimal delay in the Court's consideration of this motion, and the rescheduling of the hearing on the preliminary injunction.
92. Thus Defendants are actually in control of a large part of the 'delay' they might suffer, inasmuch as they will or will not contest Proposed-intervenor / Plaintiff's application to intervene.
93. Inasmuch as the granting of intervention is potentially so critical to this case, in order to repair the issue of 'standing', the delay of even a week is comparable to the eighteen- day delay in *American Civil Liberties Union, ibid.* which was held not to be an undue delay.
94. Thus given the benefits to the search for justice in this case, the delay cannot be held unreasonable.

No Additional Complexity

95. A further test stated in *American Civil Liberties Union of New Jersey* is whether the intervention will add complexity to an already complex case.
96. This case cannot be seen as a 'complex' case when measured against contract cases, financial cases, or even typical medical malpractice or personal injury cases.

97. The case hinges on clear language in Township ordinances, brief actions in public forums that are completely on the record, budgetary documents, and the like.
98. The case does not even delve into the environmental or engineering merits of the development at issue.
99. This case is overwhelmingly about simple statutory interpretation, and determining the propriety of official acts that occurred in the open. Whatever evidence is relevant is overwhelmingly on the public record.
100. Thus the addition of another Plaintiff does not “further *complicate litigation which is already complex*” (*American Civil Liberties Union of New Jersey, ibid.*, emphasis added) because the litigation is not complex, and the addition of Proposed-intervenor / Plaintiff Demetrius does not add significant complication in any event.
101. There are unquestionably issues the Court must determine as to the extent to which Proposed-intervenor / Plaintiff qualifies.
102. But the level of complexity cannot be said to rise to a level that outweighs the value of seeing the case judged on its merits, especially when taken in the context of the holdings that Rule on permissive intervention should be “liberally construed” (*American Civil Liberties Union of New Jersey, ibid.*), and that only a “*slight additional private interest*” should be required to find 'standing' in a case with important public interest considerations (*People for Open Government, ibid.*, emphasis added).

Affect On Subsequent Litigation

103. The final hurdle to permissive intervention is “whether or not the granting thereof will

eliminate the probability of subsequent litigation” (*American Civil Liberties Union of New Jersey, ibid.*).

104. Proposed-intervenor / Plaintiff cannot prognosticate how this intervention would or would not affect further litigation, except to say that in the event the Court denies the relief, Proposed-intervenor is likely to appeal, and perhaps if Plaintiff Brummel is denied standing such an appeal would not have otherwise occurred.

105. It is not entirely clear such “litigation” is what the decisions had in mind, however.

106. Such hypotheticals cannot reasonably form the basis for denying an intervention that is otherwise justified, and will promote the proper airing and determining of important public and private issues, to wit: the future of land-use management and environmental protection in the Township.

107. In any event there may have been appeals taken by Plaintiff Brummel, and whether an appeal constitutes “litigation” in the context of the Rule is not clear.

108. Furthermore it does not appear that given the circumstances and the issues there is further additional litigation to be anticipated in any event, aside from appeals.

No Prejudice to Defendants

109. With respect to “prejudice” to the Defendants (*American Civil Liberties Union of New Jersey, ibid.*, at 70), inasmuch as the Proposed-intervenor / Plaintiff has with Plaintiff Brummel's consent adopted Plaintiff Brummel's verified complaint and arguments effectively verbatim, the only new 'burden' on the Defendants will be to familiarize themselves with the Proposed-intervenor / Plaintiff's assertion of standing in several new paragraphs in the

“Parties” section of the verified complaint, and with this motion.

110. Such standard legal fare cannot be reasonably argued to prejudice Defendants.
111. Similarly, if Defendants assert they are 'prejudiced' because they have additional challenges in the matter -- which issues with Plaintiff's 'standing' might have alleviated -- the Courts have held that the 'normal burdens of litigation' do not constitute 'prejudice':

“We also addressed the developer's contention that the neighbor's intervention would force it to engage in a lengthy appeal process, causing meaningful, practical and extensive delay. *After conceding that the developer's contention was true, we noted that it was also "legally irrelevant" as such delay "is inherent in any successful post-judgment application for intervention solely for the purpose of appealing the judgment" and "cannot alone form the prejudice necessary to defeat the application."* *ibid.* at 125-26, 567 A.2d 221.”

Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 569-70 (N.J. Super. 1998), emphasis added

112. There is no such prejudice as should cause this application to be denied. On the contrary the application will allow the matter -- which raises important issues of public-policy and public-interest -- to be adjudicated on the merits, as the Courts routinely endorse in this State.

Liberal Interpretation

113. In each of the three decisions cited, the Court determined that intervention was to be granted based on a reading of the Rule liberally:

“We have construed this rule [R. 4:33-1] *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.””

Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (N.J. Super. 1998), emphasis added

114. Further,

“...[T]he trial court ... should ordinarily be *liberal* in its grant of the motion [under R. 4:33-2]”

American Civil Liberties Union of New Jersey, ibid. at 70, emphasis added

115. Further,

“The rule must be *liberally* construed with a view to whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties...”

N.J. Dep't of Env'tl. Prot. , *ibid.*, 286, emphasis added, citations and internal quotations omitted

116. In this matter, the Proposed-intervenor / Plaintiff is a resident whose property borders the forest of which the subdivision is part, the motion to intervene is being filed at the very outset of the case, and the Proposed-intervenor / Plaintiff will add an important local presence to the case.

117. As such the rules of liberal application clearly favor granting the application.

Conclusions

118. Proposed-intervenor, a fifty-year resident of the forest-neighborhood will add to this matter the local authority and standing that have formed the most important challenge to the case.

119. Proposed-intervenor / Plaintiff daily sees and enjoys the seven-acre forest of which the proposed subdivision will destroy the core.

120. His interest is both in seeing the forest preserved, and in seeing the public misfeasance identified in Plaintiff Brummel's verified complaint addressed by the Courts.

121. The Courts in this State have consistently held that matters of public interest deserve to be heard on the merits, as noted, *supra*, in *People for Open Government, ibid.*, 510:

“Thus, the Court has consistently held that in cases of great public interest, any slight additional private interest will be sufficient to afford standing.”

People for Open Government, ibid., citations and internal quotations omitted

122. Proposed-intervenor has fully argued the various conditions requisite to the grant of either intervention as of right or by permission: the common interests Proposed-intervenor has that may not be adequately represented if Plaintiff Brummel is denied standing, or even if his 'credibility' before the Court is downgraded by his non-resident status; the timeliness of the application where the case is in its very preliminary stages, with only a single inconclusive hearing having been held on a preliminary injunction.
123. Furthermore, Proposed-intervenor has shown that there is no “prejudice” to the present litigants inasmuch as no new issues are being raised -- except Proposed-intervenor's right to intervene -- and any additional burdens are routine and accepted elements of jurisprudence.
124. Proposed-intervenor has also noted that if he is not afforded intervention at this juncture, while the preliminary injunction is still before the Court, he may not have another chance to protect his interests in the forest because work on clearing might begin prior to his being able to file this application.
125. As an eighty-eight year old semi-retired professional, Proposed-intervenor has the interest, time and commitment to stand up for what many in the community think and feel: We need to preserve open-space in Wayne before it's all gone.
126. The facts, the law, and common sense dictate that Proposed-intervenor should be allowed to intervene to assure that the important -- and in some cases shocking -- issues raised in this action are fully aired, prosecuted, and rectified by this Court.
127. Wherefore:

128. Proposed-intervenor / Plaintiff respectfully requests this Court issue an Order:
129. (1) GRANTING Plaintiff status to Proposed-intervenor / Plaintiff ;
130. (2) DIRECTING the Clerk of the Court to accept Proposed-intervenor / Plaintiff's verified complaint upon proper compliance and payment of fees;
131. (3) POSTPONING a hearing on a preliminary injunction until Proposed-intervenor / Plaintiff can be added;
132. (4) ENJOINING the Defendant Church or its successors, agents, or other parties from undertaking any work to damage or alter the subject forest until the preliminary injunction has been determined;
133. (5) ENJOINING the Township Defendants from issuing any permits or finalizing any subdivision approval that would allow the subject forest to be damaged or altered prior to the determination of the preliminary injunction; and
134. (6) Such other and further relief as to the Court seems just and proper.

Dated: May 15, 2020
Wayne, N.J.

JOHN A. DEMETRIUS,
Proposed-intervenor / Plaintiff, *Pro se*

Subscribed and sworn to before me this 15th day of May, 2020,

NOTARY PUBLIC