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September 14, 2012

Superior Court of New Jersey
Hudson County, Law Division
Brennan Court House
583 Newark Avenue, 4th Floor
Jersey City, NJ 07306

Re: *City of Hoboken v. Shipyard Associates, L.P.*
Docket No. HUD-L-1238-12
Our File No. 5693-5

Dear Presiding Judge:

Please accept this letter brief in lieu of a more formal memorandum in support of intervention in the above referenced matter by the Fund for a Better Waterfront (“FBW”), a non-profit organization dedicated to securing a public waterfront park along New Jersey’s Hudson River.

BACKGROUND

On March 7, 2012, the City of Hoboken (“Hoboken”) filed suit against Shipyard Associates, L.P. (“Shipyard”) seeking a declaration that Shipyard is in breach of a 1997 Developers Agreement requiring specific improvements to property along Hoboken’s waterfront. Shipyard had previously sought and received approval in 1997 from the Hoboken Planning Board for a mixed use development requiring the construction, among other improvements, of

various open space, recreational use and street components. Shipyard is the owner of the subject property and has developed much of the approved project.

Yet, Shipyard has now refused to construct the various open space, recreational and street improvements in breach of the 1997 Planning Board approvals and its 1997 Developers Agreement with the City of Hoboken. Hoboken seeks to enforce the 1997 Developers Agreement by way of the instant action. FBW seeks permissive intervention pursuant to New Jersey Court Rule 4:33-2. A Complaint in Intervention accompanies this Motion.

APPLICATION TO INTERVENE

FBW seeks permission to intervene. Its right to do so is governed by Rule 4:33-2 (permissive intervention), which states:

“Upon timely application anyone may be permitted to intervene in an action if the claim or defense in the main action has a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a state or federal governmental agency or officer, or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the agency or officer upon timely application may be permitted to intervene in the action. In exercising its discretion, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”

Concurrently, FBW seeks to file the attached Complaint in Intervention on the return date of this Motion.

The Court’s determination of a permissive intervention motion is subject to the abuse of discretion standard. Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1 (App. Div. 2006). The factors to be considered by the Court in deciding a motion for permissive intervention include:

1. promptness of the application;
2. whether or not the granting of the application will result in further undue delay;
3. whether or not the granting of the application will eliminate the probability of subsequent litigation; and
4. the extent to which the grant of the application may further complicate litigation which is already complex. **Grober v. Kahn**, 88 N.J. Super. 343 (App. Div. 1965).

Public interest in the litigation is also an appropriate factor for the Court to consider.

Evesham Tp. Bd. of Adj. v. Evesham Township, 86 N.J. 295 (1981).

The FBW has since 1990 been dedicated to advancing the development of a waterfront park along the Hudson River designed and constructed in a fashion that is unquestionably open and accessible to general public. FBW has been the leader in various public initiatives aimed at achieving this goal. Indeed, FBW has aggressively litigated in the public interest, when necessary, to insure that development along the Hudson River is sensitive to the public's need to view and interact with the waterfront.

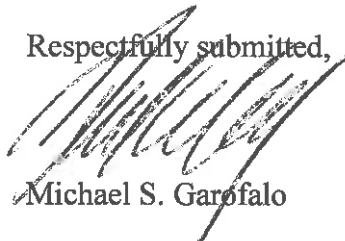
Here, a developer who contracted to provide amenities consistent with a public access waterfront seeks to unilaterally breach that contract without consulting the party in interest, the City of Hoboken. The Governing Body of Hoboken has taken the requisite steps, this lawsuit, to insure that the contract is honored. However, FBW has a twenty plus year history of advocacy in the City of Hoboken that has successfully insured a world class river waterfront for its citizens. The Court should honor this legacy of public interest work and grant intervention to FBW in this matter.

FBW satisfies the four prong test for granting intervention. FBW has promptly sought intervention. Indeed, the instant action will without doubt be consolidated with pending actions challenging the decisions of the Hoboken and Hudson County Planning Boards which denied Shipyard the right to unilaterally abandon its development plans. Seeking intervention prior to consolidation and pretrial scheduling in no way delays this or the other pending litigation.

Granting intervention now will serve to eliminate further public interest litigation because one may rest assured that all parties in interest will have a voice if FBW participates...namely the citizens of Hoboken and others who wish to use the river waterfront. Lastly, this matter and the actions challenging the Planning Board decisions are not complex. Respectfully, all matters are standard land use prerogative writ actions that the Court is well familiar with. This would be so even if when FBW is permitted to participate as a named party.

For the foregoing reasons, the Fund for a Better Waterfront respectfully requests that the Court grant permissive intervention in the public interest.

Respectfully submitted,



Michael S. Garofalo

MSG:mdc

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