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October 17, 2012

Honorable Barry P. Sarkisian, J.S.C.
Hudson County Superior Court
Brennan Courthouse
583 Newark Avenue
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 Judge Sarkisian:

Please accept this letter brief in lieu of a more formal memorandum in reply to the brief submitted in the above referenced matter by Shipyard Associates, L.P. ("Shipyard"). Before the Court is a Motion to Intervene in the instant matter filed by the Fund for a Better Waterfront ("FBW"), pursuant to Rule 4:33-2.

In its brief, Shipyard asserts that FBW does not have standing to intervene in this matter. Shipyard's legal opinion is at odds with a line of New Jersey decisions in the following cases:

- **Home Builders League of So. Jersey, Inc. v. Tp. of Berlin**, 81 NJ 127 (1979)

The Supreme Court grants intervention to various non-profits and the public advocate's office in matters challenging a zoning ordinance adopted by the defendant municipality. The Supreme Court stated:

"Thus, plaintiffs must show a sufficient stake in the outcome of the proceedings and that their position is adverse to that of defendants. These prerequisites are inherently fluid and "in cases involving substantial public interest... 'but slight public interest, added to and harmonizing with the public interest' is sufficient to give standing. In addition, in zoning matters the Legislature has seen fit to express that public interest by defining an "interested party" as "any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under this act..." Id. at 132.

- **Ocean Cablevision Associates v. Hovbilt, Inc.**, 210 NJ Super. 626 (Law Div. 1986).

The Court grants a motion to intervene to the New Jersey Cable Television Association in action challenging a condominium community's decision to deny cable access to the plaintiff. The Court stated:

"Clearly, the Association's interest or claim has a question of law in common with the existing action. Moreover, intervention is properly allowed where, as here, an important public issue is presented to the court." Id. at 633.

- **Civ. Liberties v. County of Hudson**, 352 NJ Super. 44 (App. Div. 2002)

The Court grants intervention under Rules 4:33-1 and 4:33-2 holding that:

"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." Id. at 70.

The Court emphasized that Rule 4:33-2 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. Id.

FBW is a long established, well-funded, extremely engaged non-profit organization dedicated to the preservation of Hoboken's Waterfront. FBW's 20 plus year history of advocacy on behalf of the Hoboken Waterfront is beyond question. As such, FBW has more than a sufficient stake in the outcome of the instant proceedings and its position as safeguard of the Hoboken Waterfront is clearly adverse to that of Shipyard. Preservation of the Waterfront is a matter of substantial public interest.

Additionally, this action derives from land use matters governed by the Municipal Land Use Law. FBW is without doubt an interested party as that term is defined in the MLUL. In fact, FBW has been granted interested party status with counsel in a number of Hoboken land use matters which compromised the public's interest in the Hoboken Waterfront. Indeed, FBW's mission is to protect the use and enjoyment of the property herein at issue for the general public.

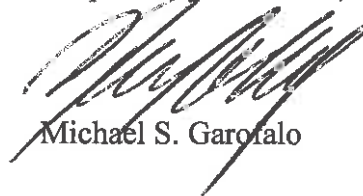
FBW's interest and claim has a question of law in common with the existing action. In fact, FBW's interest and claim is identical to that of plaintiff; namely, enforcement of the 1997 Developer's Agreement. Again, the "meat" of the Agreement represents matters of important public interest.

FBW's Motion for Intervention comes before any oral argument on any of the matters now pending regarding the Shipyard project (**Shipyard Associates, L.P. v. Hudson County Planning Board and Hudson County Board of Chosen Freeholders**, Docket No. HUD-L-3278-12; and **Shipyard Associates, LP v. Hoboken Planning Board**, Docket No. HUD-L-4157-12). Likely, the matters will be consolidated for final disposition. Nowhere in Rule 4:33 is there a deadline for filing a Motion for Intervention.

Therefore, intervention will not cause any delay at all or complicate the matter. Said another way, the matter is in its infancy, having not yet been presented to the Court, other than by way of pleadings.

For the foregoing reasons, the Court is respectfully requested to acknowledge FBW's standing in this matter and grant its Motion for Intervention.

Respectfully submitted,



Michael S. Garofalo

MSG:mdc

VIA FEDERAL EXPRESS

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October 17, 2012

Page 4

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