

**UNITED STATES DISTRICT COURT**  
DISTRICT OF NEW JERSEY

**SHIPYARD ASSOCIATES, L.P.,**  
*Plaintiff*

V.

**SUMMONS IN A CIVIL CASE**

**CITY OF HOBOKEN,**  
*Defendant*

CASE NUMBER: 2:14-CV-01145-CCC-MF

RECEIVED  
2014 FEB 26 PM 1:36  
CITY CLERK  
HOBOKEN, NJ 07030

TO: *(Name and address of Defendant):*

CITY OF HOBOKEN  
c/o James J. Farina, Clerk  
City Hall  
Newark & Washington Streets  
Hoboken, New Jersey

**RECEIVED**

FEB 26 2014

**OFFICE OF CORPORATION COUNSEL  
HOBOKEN, N.J. 07030**

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kevin J. Coakley, Esq.  
Connell Foley LLP  
85 Livingston Avenue  
Roseland, NJ 07068  
(973) 535-0500

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

**WILLIAM T. WALSH**

CLERK

**MURTUZA AKBARI**

(By) DEPUTY CLERK



ISSUED ON 2014-02-25 09:02:36.0, Clerk  
USDC NJD

**RETURN OF SERVICE**

Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE
NAME OF SERVER <i>(PRINT)</i>	TITLE

*Check one box below to indicate appropriate method of service*

- Served personally upon the defendant. Place where served: \_\_\_\_\_  
\_\_\_\_\_
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
- Name of person with whom the summons and complaint were left: \_\_\_\_\_
- Returned unexecuted: \_\_\_\_\_  
\_\_\_\_\_
- Other (specify) : \_\_\_\_\_  
\_\_\_\_\_

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL
--------	----------	-------

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_ Date \_\_\_\_\_ *Signature of Server* \_\_\_\_\_

\_\_\_\_\_  
*Address of Server*

**CIVIL COVER SHEET**

The JS44 Civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September 1974 is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

**(a) PLAINTIFFS**

**Shipyards Associates, L.P.**

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: Hudson**  
EXCEPT IN U.S. PLAINTIFF CASES

**DEFENDANTS**

**City of Hoboken**

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT: **Hudson**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS (FIRST NAME, ADDRESS, AND TELEPHONE NUMBER)**

**Kevin J. Coakley**  
**Connell Foley LLP**  
**86 Livingston Avenue**  
**Roseland, NJ 07068-1766**  
**Tel.: (873) 636-0600**  
**Fax: (873) 636-9217**

**ATTORNEYS (IF KNOWN)**

**II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)**

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)**

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)**  
**Civil Rights Action for violation of constitutional rights and pursuant to 42 U.S.C. § 1983, and for violations of New Jersey State law**

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicate Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY - Medical Malpractice</b> <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage - Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 460 Commercial/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitution of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 560 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations <input type="checkbox"/> 730 Labor/Management Reporting & Disclosure Act <input type="checkbox"/> 740 Family Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	

**VI. ORIGIN**

(PLACE AN X IN ONE BOX ONLY)

1. Original Proceeding  2. Removed from State Court  3. Remanded from Appellate Division  4. Reinstated or Reopened  5. Transferred from another district (specify)  6. Multidistrict Litigation  7. Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

Check YES only if demanded in complaint.  
**JURY DEMAND**  YES  NO

**VIII. RELATED CASE(S)** (See Instructions)

**IF ANY:** 1. *Shipyards Associates, L.P. v. City of Hoboken*, Docket No. HUD-L-566-14; and  
2. *Shipyards Associates, L.P. v. Hoboken Planning Board*, Docket No. HUD-L-4157-12; *City of Hoboken v. Shipyards Associates, L.P.*, Docket No. HUD-L-1238-12 (consolidated with Docket Nos. 4157-12 and HUD-L-3278-12).

DATE

SIGNATURE OF ATTORNEY OF RECORD:

February 21, 2014

s/Kevin J. Coakley

UNITED STATES DISTRICT COURT

Kevin J. Coakley, Esq.

Kevin J. Coakley  
Connell Foley LLP  
85 Livingston Avenue  
Roseland, NJ 07068  
Tel: (973) 535-0500  
Fax: (973) 535-9217  
Attorneys for Plaintiff  
Shipyard Associates, L.P.

RECEIVED  
2014 FEB 26 PM 1:37  
CITY OF HOBOKEN  
HOBOKEN, NJ 07030

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

SHIPYARD ASSOCIATES, L.P.,

Plaintiff,

vs.

CITY OF HOBOKEN,

Defendant.

Civil Action No.

***ELECTRONICALLY FILED***

**COMPLAINT**

Plaintiff Shipyard Associates, L.P. ("Shipyard" or "Plaintiff") by way of Complaint against defendant City of Hoboken ("Hoboken" or "Defendant") hereby alleges as follows:

**THE PARTIES**

1. Shipyard is a limited partnership with offices at 50 Washington Street, Hoboken, New Jersey 07030.

2. Hoboken is a municipal corporation organized under the laws of the State of New Jersey with its principal place of business located at Newark and Washington Streets, Hoboken, Hudson County, New Jersey.

**JURISDICTION AND VENUE**

3. This action arises under the federal law, 42 U.S.C. § 1983, and for violations of New Jersey State law.

4. This Court has original jurisdiction over claims arising under the Constitution, laws and treaties of the United States pursuant to 42 U.S.C. § 1983.

5. This is a Civil Action over which the United States District Court has original jurisdiction pursuant to 28 U.S.C. §1331 (federal question jurisdiction).

6. This court is one of proper venue because all parties either have a principal place of business or are authorized to do business in the State of New Jersey.

### **BACKGROUND**

#### **Ordinances Z-263 and Z-264**

7. On or about December 18, 2013, Hoboken's City Council approved Ordinance Z-263, entitled An Ordinance Amending Chapter section 104 (Flood Damage Prevention), and Ordinance Z-264, entitled An Ordinance Amending Chapter 196 (Zoning) Addressing Community Health, Safety and General Welfare Through Flood Hazard Mitigation Measures and Development (collectively "Ordinances Z-263 and Z-264"), copies of which are attached hereto as Exhibits A and B, respectively.

8. Between January 7, 2014 and January 16, 2014 newspaper notices were published of the adoption of Ordinances Z-263 and Z-264.

9. Ordinances Z-263 and Z-264 affect the use and development of properties located in "coastal high hazard areas" and on piers and platforms that extend into the Hudson River that are designated on "Preliminary Work Maps" released by the Federal Emergency Management Agency.

10. The "Preliminary Work Maps" released by the Federal Emergency Management Agency are not final and will not become final until after a public comment and appeal process, which could lead to modification.

11. Shipyard is the owner of property located along the Hoboken waterfront, including property located on piers and platforms that extend into the Hudson River.

12. Shipyard is also the developer of real property located on a platform that extends into the Hudson River proposed as a residential development known as “the Monarch at Shipyard,” located at Block 264.2, Lot 1 in Hoboken, New Jersey as shown on the Tax Assessment Map of the City of Hoboken (“Property”).

13. The Property is shown on “Preliminary Work Maps” released by the Federal Emergency Management Agency.

14. The Property is located in the I-1W Subdistrict Zone pursuant to Hoboken’s Zoning Map.

15. Residential uses, among various other uses, are a permitted use in the I-1W Subdistrict Zone pursuant to Hoboken’s Zoning Ordinance.

16. Ordinances Z-263 and Z-264 prohibit construction on properties that are located on piers and platforms that project into the Hudson River.

17. Specifically, Ordinances Z-263 and Z-264 state that “All construction shall be landward of the mean high tide...”

18. Ordinance Z-264 also states, “no new construction or substantial improvement of existing structures shall be permitted on piers or platforms projecting into or over the Hudson River...”

#### The Shipyard PUD

19. In the 1990’s Hoboken enacted an ordinance allowing 10 acre or larger properties in the I-1W Subdistrict Zone the right to seek approval to construct a planned unit development (“PUD”).

20. A PUD is a permitted use in the I-1W Subdistrict Zone pursuant to Hoboken's ordinances.

21. In 1996 Shipyard applied to the Hoboken Planning Board for site plan and subdivision approval for the Shipyard Planned Unit Development ("Shipyard PUD").

22. On January 7, 1997 the Hoboken Planning Board adopted a resolution that granted site plan and subdivision approval to Shipyard for the Shipyard PUD, creating seven (7) Development Blocks.

23. Residential uses, among various other uses, are a permitted use in PUDs in the I-1W Subdistrict Zone and are approved as part of the Shipyard PUD.

24. The Property is known as Development Block G of the Shipyard PUD.

#### The Project

25. Shipyard filed an application with the Hoboken Planning Board ("Planning Board") for site plan approval on August 25, 2011 ("Application") to construct a residential building on the Property with two, eleven (11) story towers (later reduced to ten (10) stories) and associated parking ("Project").

26. The Application was deemed complete on October 13, 2011.

27. In response to review letters from the Board's professionals, Shipyard's site plans were revised and resubmitted to the Board on December 9, 2011.

28. Shipyard's Application was first placed on the Board's agenda for the February 7, 2012 hearing.

29. In response to review letters from the Board's professionals, Shipyard's site plans were thereafter revised and resubmitted to the Planning Board.

30. The Application as amended required no variances and was fully compliant with Hoboken's Ordinances.

31. Prior to submittal of the Application and subsequent thereto, the Planning Board and Hoboken orchestrated numerous actions to oppose the Application and the Project, including but not limited to, (1) raising objections and opposing the Application as well as the approvals that Shipyard received from the New Jersey Department of Environmental Protection ("NJDEP") for the Project, (2) creating conflicts of interest among Planning Board members and the Planning Board Engineer, which resulted in recusal of the Planning Board Engineer and delayed the Application, (3) Hoboken opposing the Project in statements made to the press and the public by elected officials, and (4) the Planning Board requesting numerous adjournments of the Application.

32. The United States Army Corps of Engineers approved a Nationwide Permit dated September 12, 2011 for the Project. The NJDEP approved a Waterfront Development Permit dated December 2, 2011 for the Project.

33. While the Application was pending, Hoboken, in conjunction with others, filed an appeal challenging the Waterfront Development Permit that NJDEP approved for the Project.

34. Concurrent with its Application before the Planning Board, Shipyard was required to defend itself against Hoboken's appeal challenging the Waterfront Development Permit that NJDEP approved for the Project that was frivolous and meritless and was a tactic that was part of Hoboken's overall strategy to illegally delay the Application.

35. While the Application was pending, Hoboken also filed a complaint asserting claims against Shipyard in an attempt to prohibit Shipyard from obtaining approval of the Application ("Hoboken's Lawsuit").



36. Concurrent with its Application before the Planning Board, Shipyard was required to defend itself against Hoboken's Lawsuit that was frivolous and meritless and was a tactic that was part of Hoboken's overall strategy to illegally delay the Application.

37. Hoboken's Lawsuit was dismissed with prejudice by order of the Honorable Patrick J. Arre, J.S.C. dated June 27, 2013, which is attached hereto as Exhibit C.

38. While the Application was pending, Hoboken also filed a notice with the NJDEP alleging claims pursuant to the Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq. ("ERA"). Hoboken's ERA Notice constituted an improper use of the ERA and the Court system and was another attempt by Hoboken to prohibit or delay the Project.

39. Concurrent with its Application before the Planning Board, Shipyard was required to defend itself against Hoboken's threat of filing an ERA action that was frivolous and meritless and was a tactic that was part of Hoboken's overall strategy to illegally delay the Application.

40. Hoboken's ERA Notice was subsequently found to be without merit and was denied by the NJDEP by letter of Lawrence J. Baier, Chief of NJDEP's Bureau of Coastal and Land Use Compliance and Enforcement, dated March 4, 2013.

41. While the Application was pending, the Planning Board's Planner also erroneously claimed that certain bulk variances were required for the Application and, as a result, the Planning Board's attorney erroneously stated that the Planning Board did not have jurisdiction over the Application. However, Shipyard determined that the Application as submitted required no variances and was fully compliant with Hoboken's Ordinances.

42. While the Application was pending, the Planning Board's attorney, upon request of counsel for Hoboken, repeatedly requested that Shipyard voluntarily withdraw the Application in light of Hoboken's Lawsuit that was then pending.

43. The Planning Board's attorney also advised Shipyard that it would dismiss or deny the Application due to Hoboken's Lawsuit.

44. Despite Shipyard's repeated explanations to the Planning Board's attorney that the Planning Board's proposed action was unprecedented and without any legal authority and, as a result, Shipyard would seek automatic approval of the Application if the Planning Board did not hear the Application on the merits, at a meeting held on July 10, 2012 the Planning Board failed to act on Shipyard's Application, Shipyard was not permitted to present the Application and the Planning Board denied the Application due to Hoboken's Lawsuit.

45. As a result of the Planning Board's unlawful actions, Shipyard subsequently filed a lawsuit to challenge the Planning Board's unlawful denial of the Application ("Shipyard's Lawsuit").

46. While Shipyard's Lawsuit was pending, Hoboken adopted Ordinances Z-263 and Z-264, which is a tactic that is part of Hoboken's overall strategy to illegally delay the Project.

47. Hoboken's elected officials have made statements suggesting that Ordinances Z-263 and Z-264 were adopted to block developments such as the Project.

48. Shipyard's Lawsuit, seeking automatic approval of the Application, was granted by Order of the Honorable Nesle A. Rodriguez, J.S.C. dated February 4, 2014, which is attached hereto as Exhibit D.

**COUNT I**  
**(Arbitrary and Capricious)**

49. Plaintiff repeats, reasserts and incorporates by reference the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

50. Given the character and nature of the I-1W Subdistrict Zone in which Shipyard's property, including the Property, is located, the use and development restrictions in Ordinances Z-263 and Z-264 are arbitrary, capricious and unreasonable.

51. Ordinances Z-263 and Z-264 are arbitrary, capricious and unreasonable because they create use and development restrictions that are inconsistent with, and more burdensome than, State and Federal regulations.

52. Ordinances Z-263 and Z-264 are arbitrary, capricious and unreasonable because they create use and development restrictions based, in part, upon fluvial flooding that is not applicable to tidal water bodies such as the Hudson River, which abuts the Property.

WHEREFORE, Plaintiff demands judgment granting the following relief:

- a. Declaring Ordinances Z-263 and Z-264 to be null and void;
- b. Ordering Hoboken to issue necessary municipal permits for the Project;
- c. Awarding Plaintiff pre-and post-judgment interest;
- d. Awarding Plaintiff attorneys' fees, costs and expenses; and
- e. Awarding Plaintiff any such other relief as the Court deems just and equitable.

**COUNT II**  
**(Preemption and *Ultra Vires*)**

53. Plaintiff repeats, reasserts and incorporates by reference the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

54. Ordinances Z-263 and Z-264 create use and development restrictions that are inconsistent with State and Federal regulations, and are therefore preempted.

55. Ordinances Z-263 and Z-264 exceed the delegated powers of Hoboken granted pursuant to the Municipal Land Use Law and other statutes and are therefore *ultra vires* and unenforceable.

WHEREFORE, Plaintiff demands judgment granting the following relief:

- a. Declaring Ordinances Z-263 and Z-264 to be null and void;
- b. Ordering Hoboken to issue necessary municipal permits for the Project;
- c. Awarding Plaintiff pre-and post-judgment interest;
- d. Awarding Plaintiff attorneys' fees, costs and expenses; and
- e. Awarding Plaintiff any such other relief as the Court deems just and equitable.

**COUNT III  
(Spot Zoning)**

56. Plaintiff repeats, reasserts and incorporates by reference the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

57. Ordinances Z-263 and Z-264 prohibit residential uses, among others, on Plaintiff's properties that are located on piers and platforms that project into the Hudson River, including the proposed residential use for the Project.

58. Residential uses, among others, are permitted uses in PUDs in the I-1W Subdistrict Zone and were approved as part of the Shipyard PUD.

59. Hoboken adopted Ordinances Z-263 and Z-264 to illegally delay and oppose the Project and further Hoboken's desired public use of Development Block G.

60. Ordinances Z-263 and Z-264 constitute illegal spot zoning, or reverse spot zoning, in violation of the Municipal Land Use Law.

WHEREFORE, Plaintiff demands judgment granting the following relief:

- a. Declaring Ordinances Z-263 and Z-264 to be null and void;
- b. Ordering Hoboken to issue necessary municipal permits for the Project;
- c. Awarding Plaintiff pre-and post-judgment interest;
- d. Awarding Plaintiff attorneys' fees, costs and expenses; and

- e. Awarding Plaintiff any such other relief as the Court deems just and equitable.

**COUNT IV**  
**(Time of Application)**

61. Plaintiff repeats, reasserts and incorporates by reference the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

62. Pursuant to Municipal Land Use Law, N.J.S.A. 40:55D-10.5, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development.

63. Pursuant to N.J.S.A. 40:55D-10.5, any provisions of an ordinance that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development.

64. Ordinances Z-263 and Z-264 amend Hoboken's ordinances to create use and development restrictions that prohibit the proposed residential use for the Project.

65. Ordinances Z-263 and Z-264 were not in effect on August 25, 2011 when Shipyard submitted the Application. Ordinances Z-263 and Z-264 were adopted subsequent to the date Shipyard submitted the Application.

66. Pursuant to N.J.S.A. 40:55D-10.5, Ordinances Z-263 and Z-264 are inapplicable to the Application.

WHEREFORE, Plaintiff demands judgment granting the following relief:

- a. Declaring that, pursuant to N.J.S.A. 40:55D-10.5, Ordinances Z-263 and Z-264 are inapplicable to the Application;
- b. Ordering Hoboken to issue necessary municipal permits for the Project;
- c. Awarding Plaintiff pre-and post-judgment interest;

- d. Awarding Plaintiff attorneys' fees, costs and expenses; and
- e. Awarding Plaintiff any such other relief as the Court deems just and equitable.

**COUNT V  
(Taking of Property)**

67. Plaintiff repeats, reasserts and incorporates by reference the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

68. Plaintiff has maintained the Property and paid all real estate taxes due and owing on the Property.

69. The Property, if utilized for the Project, for which it is aptly suited, would have a significant economic value.

70. As a result of Hoboken's adoption of Ordinances Z-263 and Z-264, the Property remains an unimproved parcel which cannot be further developed or improved as proposed for the Project.

71. Ordinances Z-263 and Z-264 do not contain any variance procedure to permit Plaintiff to develop the Property as proposed for the Project or as any other viable economic use and provide that the only permitted uses of the Property are limited to "Functionally Dependent Uses, open space and outdoor passive and active recreational uses."

72. Plaintiff has a reasonable investment-backed expectation to develop the Property.

73. Hoboken's adoption of Ordinances Z-263 and Z-264 has denied Plaintiff its reasonable investment-backed expectations, has destroyed the economic value of the Property, and has permanently deprived Plaintiff of all viable economic use of the Property.

74. In prohibiting any economically viable use of the Property, Hoboken has violated Article I, Paragraph 20 and Article IV, Section 6, Paragraph 3 of the New Jersey Constitution and

the Fifth Amendment to the United States Constitution by taking the Property for public use without just compensation.

75. As a direct and proximate result of Hoboken's conduct, Plaintiff has been deprived of its constitutional rights under the Federal Civil Rights Act, 42 U.S.C.A. 1983 and, the deprivation of its constitutionally protected rights has been accomplished under color of state law.

WHEREFORE, Plaintiff demands judgment granting the following relief:

- a. Declaring Ordinances Z-263 and Z-264 applicable to the Property to be null and void;
- b. Ordering Hoboken to issue necessary municipal permits for the Project;
- c. Awarding damages to the Plaintiffs for the temporary confiscation of the Property;
- d. Awarding damages to Plaintiff for the inverse condemnation of all or part of the Property;
- e. Awarding money damages, including compensatory and consequential damages, and punitive damages;
- f. Awarding Plaintiff pre-and post-judgment interest;
- g. Awarding Plaintiff attorneys' fees, costs and expenses; and
- h. Awarding Plaintiff any such other relief as the Court deems just and equitable.

**COUNT VI  
(Violation of Substantive Due Process)**

76. Plaintiff repeats, reasserts and incorporates by reference the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

77. Plaintiff is entitled to the economically viable use of the Property as proposed for the Project.





**DESIGNATION OF TRIAL COUNSEL**

Plaintiff hereby designates Kevin J. Coakley, Esq. as trial counsel.

CONNELL FOLEY LLP  
Attorneys for Plaintiff  
Shipyard Associates, L.P.

Dated: February 21, 2014

By:           s/Kevin J. Coakley            
          Kevin J. Coakley

**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

I hereby certify that the matter in controversy is not the subject of any other action pending in this or any other court, with the exception of Shipyard Associates, L.P. v. City of Hoboken, Docket No. HUD-L-566-14; Shipyard Associates, L.P. v. Hoboken Planning Board, Docket No. HUD-L-4157-12; City of Hoboken v. Shipyard Associates, L.P., Docket No. HUD-L-1238-12 (consolidated with Docket Nos. 4157-12 and HUD-L-3278-12).

CONNELL FOLEY LLP  
Attorneys for Plaintiff  
Shipyard Associates, L.P.

Dated: February 21, 2014

By:           s/Kevin J. Coakley            
          Kevin J. Coakley

**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 201.1**

I hereby certify that the above-captioned matter is not eligible for compulsory arbitration pursuant to Local Civil Rule 201.1 as plaintiffs seek damages in excess of \$150,000.

CONNELL FOLEY LLP  
Attorneys for Plaintiff  
Shipyard Associates, L.P.

Dated: February 21, 2014

By:           s/Kevin J. Coakley            
          Kevin J. Coakley

**EXHIBIT A**

Sponsored by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

City of Hoboken  
Ordinance No.: \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER §104 (FLOOD DAMAGE PREVENTION) TO REFLECT  
UPDATES RECOMMENDED BY THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION'S LATEST REVISED MODEL ORDINANCE**

**WHEREAS**, the State of New Jersey Department of Environmental Protection ("NJDEP") recently released an updated "Flood Damage Prevention" model ordinance; and

**WHEREAS**, the City of Hoboken, Mayor and Council, wish the local ordinance to remain current and consistent with the State's recommendations; and

**WHEREAS**, adoption of the new Advisory Base Flood Elevations ("ABFEs") and employment of stricter mitigation actions will ensure new and substantially altered structures are stronger, safer and less vulnerable to future flooding; and

**WHEREAS**, according to the NJDEP, it is well documented that flooding causes major social disruptions due to the need to relocate flood victims and provide emergency services to affected residents, which necessarily diverts emergency personnel from other essential tasks; and

**WHEREAS**, according to the National Flood Insurance Program ("NFIP"), from 1978 to June 30, 2013, New Jersey's total flood insurance claims paid equaled \$5,276,080,845 – the third highest in the nation; and

**WHEREAS**, according to the NFIP, Hoboken has more flood insurance policies in force than any other municipality in Hudson County, with liability to the NFIP of \$1,922,187,500; and

**WHEREAS**, according to the NFIP, Hoboken's property owners pay flood insurance premiums totaling \$5,984,720, which is the highest in Hudson County;

**WHEREAS**, the National Flood Insurance Program's most recent Flood Insurance Rate Map ("FIRM") for Hudson County, effective August 16, 2006, showed the existing piers and platforms on the Hoboken waterfront to be located within Zone AE, which zone FEMA defines as an area subject to inundation by the 1-percent-annual-chance flood event; and

**WHEREAS**, before Hurricane Sandy, the Federal Emergency Management Agency ("FEMA") had begun a coastal study to update FIRMs for portions of New Jersey in order to better reflect coastal flood risk; and

**WHEREAS**, after Hurricane Sandy, FEMA released ABFE maps based on FEMA's partially completed flood study in order to help in rebuilding and recovery efforts; and

**WHEREAS**, the most recent ABFE maps for Hudson County, effective February 22, 2013, show the existing piers and platforms on the Hoboken waterfront to be located within Advisory Flood Hazard Zone V, which zone is defined by FEMA as an area subject to high velocity wave action (a 3-foot breaking wave) from the 1% annual chance coastal flood; and

**WHEREAS**, the most recent Preliminary Work Maps released by FEMA show the existing piers and platforms on the Hoboken waterfront to be located within Zone V; and

**WHEREAS**, the NJDEP issued an Emergency Rule on January 24, 2013 to adopt emergency amendments to the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13); and

**WHEREAS**, pursuant to 44 C.F.R. § 60.3 (e):

“When the Federal Insurance Administrator has provided a notice of final base flood elevations within Zones A1–30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating Zones V1–30, VE, and/or V, the community shall... (3) [p]rovide that all new construction within Zones V1–30, VE, and V on the community's FIRM is located landward of the reach of mean high tide.”

**WHEREAS**, Princeton Hydro, LLC and RCQuinn Consulting, Inc. have prepared and submitted to the City of Hoboken a report titled “Flood Hazard Risk and Compliance Concerning Development on Piers and Platforms, City of Hoboken, Hudson County, NJ,” dated October 2013; and

**WHEREAS**, adoption of the following methods of reducing flood losses will result in lower flood insurance rates for the residents and property owners of the City of Hoboken; and

**WHEREAS**, implementation of such mitigation actions are important to insure the health, safety and the general welfare of the community as a whole.

**NOW THEREFORE**, be it ordained by the City Council of the City of Hoboken, County of Hudson, State of New Jersey, as follows:

## **SECTION ONE: AMENDMENT**

**Chapter 104, FLOOD DAMAGE PREVENTION**, of the Code of the City of Hoboken is hereby amended as follows; deletions to the current ordinance are noted in ~~strikethrough~~, additions to the current ordinance are noted in underline.

### **Chapter 104. FLOOD DAMAGE PREVENTION**

#### **Article I. Statutory Authorization, Findings of Fact, Purpose and Objectives**

##### **§ 104-1. Statutory authorization.**

The Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Hoboken, of Hudson County, New Jersey does ordain as follows.

##### **§ 104-2. Findings of fact.**

A. The flood hazard areas of the City of Hoboken are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

##### **§ 104-3. Statement of purpose.**

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

A. To protect human life and health;

B. To minimize expenditure of public money for costly flood control projects;

- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To insure that potential buyers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

#### **§ 104-4. Methods of reducing flood losses.**

In order to accomplish its purposes, this chapter includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- D. Controlling filling, grading, dredging, and other development which may increase flood damage; and
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

## **Article II. Definitions**

### **§ 104-5. Word usage; definitions.**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

#### **ADVISORY BASE FLOOD ELEVATION (ABFE)**

The elevation shown on a community's Advisory Flood Hazard Map that indicates the advisory Stillwater elevation plus wave effect (ABFE = SWEL + wave effect) resulting from a flood that has a 1% or greater chance of being equaled or exceeded in any given year.

#### **ADVISORY FLOOD HAZARD AREA (AFHA)**

The land in the floodplain within a community subject to flooding from the 1% annual chance event depicted on the Advisory Flood Hazard Map.

#### **ADVISORY FLOOD HAZARD MAP**

The official map on which the Federal Emergency Management Administration has delineated the areas of advisory flood hazards applicable to the community.

#### **APPEAL**

A request for a review of the ~~Construction Official~~ Floodplain Administrator's interpretation of any provision of this chapter or a request for a variance.

#### **AREA OF SHALLOW FLOODING**

A designated AO or AH, or VO zone on a community's Flood Insurance Rate Map with a 1% or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not

exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD**

The land in the flood plain within a community subject to a 1% or greater chance of flooding in any given year.

**BASE FLOOD**

The flood having a 1% chance of being equaled or exceeded in any given year.

**BASEMENT**

Any area of the building having its floor subgrade (below ground level) on all sides.

**BREAKAWAY WALL**

A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

**COASTAL A**

The portion of the special flood hazard area (SFHA) starting from a Velocity (V) Zone and extending up to the landward limit of the moderate wave action delineation. Where no V Zone is mapped the Coastal A Zone is the portion between the shore and the landward limit of the moderate wave action delineation. Coastal A Zones may be subject to wave effects, velocity flows, erosion, scour, or a combinations of these forces.

**COASTAL HIGH HAZARD AREAS**

An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources also know as V-Zones.

**DEVELOPMENT**

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within an area of special flood hazard.

**DIGITAL FLOOD INSURANCE RATE MAP (DFIRM)**

The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**ELEVATED BUILDING**

A non-basement building (i) built in the case of a building in an Area of Special Flood Hazard, to have the top of the elevated floor or, in the case of a building in a Coastal High-Hazard Area, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an Area of Special Flood Hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In Areas of Coast High-Hazard "elevated buildings" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.

**EROSION**

The process of the gradual wearing away of land masses.

**FLOOD INSURANCE RATE MAP (FIRM)**

The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)**

The official report provided in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map and the water surface elevation of the base flood.

**FLOOD or FLOODING**

A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters; and/or
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

**FLOODPLAIN MANAGEMENT REGULATIONS**

Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOODWAY**

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

**FREEBOARD**

An open area, measured in feet as set forth in § 104-16.F, between the bottom of the lowest horizontal member and the base flood elevation (or ABFE). Freeboard is a margin of safety added to account for sea level rise, waves, debris, miscalculations, lack of data, or other environmental changes.

**FUNCTIONALLY DEPENDENT USE**

A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE**

The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE**

Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) By an approved state program as determined by the Secretary of the Interior; or
  - (2) Directly by the Secretary of the Interior in states without approved programs.

**LIMIT OF MODERATE WAVE ACTION (LIMWA)**

Inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the V Zone and the LIMWA will be similar to, but less severe than those in the V Zone.



#### **LOWEST FLOOR**

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements.

#### **MANUFACTURED HOME**

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreation vehicle."

#### **~~MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION~~**

~~A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.~~

#### **NEW CONSTRUCTION**

Structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community and includes any subsequent improvements to such structures.

#### **~~NEW MANUFACTURED HOME PARK OR SUBDIVISION~~**

~~A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the flood plain management regulations adopted by the municipality.~~

#### **~~RECREATIONAL VEHICLE~~**

~~A vehicle which is [i] built on a single chassis; [ii] 400 square feet or less when measured at the longest horizontal projections; [iii] designed to be self-propelled or permanently towable by a light duty truck; and [iv] designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.~~

#### **START OF CONSTRUCTION**

For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348) includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading and filling nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

#### **STRUCTURE**

A walled and roofed building, a manufactured home, or a gas or liquid storage tank, that is principally above ground.

#### **SUBSTANTIAL DAMAGE**

Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

### **SUBSTANTIAL IMPROVEMENT**

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

### **VARIANCE**

A grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

### **ZONES**

Flood zones are geographic areas that FEMA has defined according to varying levels of flood risk. These zones are depicted on a community's Flood Insurance Rate Map (FIRM) and Advisory Maps. These zones are defined as follows:

- A – Areas subject to inundation by the 1-percent-annual-chance flood event. Because detailed analyses are not performed for such areas; no depths of base flood elevations are shown within these zones.
- AE – The base floodplain where base flood elevations are provided.
- D – Areas with possible but undetermined flood hazards usually outside of the boundary of the .02-percent-annual-chance flood area.
- V – Coastal high hazard areas subject to inundation by the 1-percent-annual-chance flood event with additional hazards associated with high-velocity wave action.
- VE – Coastal high hazard areas where base flood elevations are provided.
- X – Area of moderate flood hazard, usually the area between the limits of the 100-year (1%) and 500-year (.02%) flood.

Where used in this ordinance, "A" shall include AE, "V" shall include VE, and vice versa.

### **Article III. General Provisions**

#### **§ 104-6. Lands to which this chapter applies.**

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Hoboken, Hudson County, New Jersey.

#### **§ 104-7. Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard for the City of Hoboken, Community No. 340222, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

- A. A scientific and engineering report "Flood Insurance Study, Hudson County, New Jersey (All Jurisdictions)" dated August 16, 2006.
- B. Flood Insurance Rate Map for Hudson County, New Jersey (All Jurisdictions) as shown on Index and panel numbers 0043, 0044, 0106, 0107; whose effective date is August 16, 2006.
- C. Advisory Base Flood Elevations and Advisory Flood Hazard Maps whose effective date is February 22, 2013. These documents shall take precedence over previous panels and FIS in construction and development regulations only. Where the Special Flood Hazard Area (SFHA) and the Advisory Flood Hazard Area (AFHA) maps conflict or overlap, whichever imposes the more stringent requirement shall prevail.

The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and maps are on file at the office of the ~~Construction Official~~ Floodplain Administrator at City Hall, 94 Washington Street, Hoboken, NJ 07030.

**§ 104-8. Penalties for noncompliance.**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined ~~not more than \$500~~ \$2,000 or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Hoboken from taking such other lawful action as is necessary to prevent or remedy any violation.

**§ 104-9. Abrogation and greater restrictions.**

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**§ 104-10. Interpretation.**

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

**§ 104-11. Warning and disclaimer of liability.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

This chapter shall not create liability on the part of the City of Hoboken, any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

**Article IV. Administration**

**§ 104-12. Establishment of development permit.**

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in § 104-7. Application for a development permit shall be made on forms furnished by the ~~Construction Official~~ Floodplain Administrator and may include, but not be limited to; plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed.
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 104-17B; and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

**§ 104-13. Designation of the local administrator.**

The ~~Construction Official~~Floodplain Administrator is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

**§ 104-14. Duties and responsibilities of the administrator.**

Duties of the ~~Construction Official~~Floodplain Administrator shall include, but not be limited to:

A. Permit review.

- (1) Review all development permits to determine that the permit requirements of this chapter have been satisfied.
- (2) Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- (3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of section § 104-18 are met.
- (4) Review all development permits in the coastal high hazard area of the area of special flood hazard to determine if the proposed development alters the natural coastline so as to increase potential flood damage.
- (5) Review plans for walls to be used to enclose space below the base flood level in accordance with sections § 104-17 and 104-19.

B. Use of other base flood and floodway data. When base flood elevation and floodway data has not been provided in accordance with § 104-7, Basis for establishing the areas of special flood hazard, the ~~Construction Official~~Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer § 104-17A, Specific standards, residential, construction, and § 104-17B, Specific standards, nonresidential construction.

C. Information to be obtained and maintained.

- (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures:
  - (a) Verify and record the actual elevation (in relation to mean sea level); and
  - (b) Maintain the floodproofing certifications required in § 104-12C.
- (3) Maintain for public inspection all records pertaining to the provisions of this chapter.

D. Alteration of watercourses.

- (1) Notify adjacent communities and the New Jersey Department of Environmental Protection, Dam Safety and Flood Control section and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.

E. Interpretation of ~~firm~~FIRM boundaries. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 104-15.

**§ 104-15. Variance procedure.**

A. Appeal board.

(1) The ~~Construction Board of Appeals~~Planning Board as established by the City of Hoboken shall hear and decide appeals and requests for variances from the requirements of this chapter.

(2) The ~~Construction Board of Appeals~~Planning Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the ~~Construction Official~~Floodplain Administrator in the enforcement or administration of this chapter.

(3) Those aggrieved by the decision of the ~~Construction Board of Appeals~~Planning Board, or any taxpayer, may appeal such decision to Superior Court of New Jersey, N.J.S.A. 52:22D-127, et seq.

(4) In passing upon such applications, the ~~Construction Board of Appeals~~Planning Board, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- (a) The danger that materials may be swept onto other lands to the injury of others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;
- (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Upon consideration of the factors of § **104-15A(4)** and the purposes of this chapter, the ~~Construction Board of Appeals~~Planning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(6) The ~~Construction Official~~Floodplain Administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

B. Conditions for variances.

(1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot ~~or lots of 1/2 acre~~10,000 square feet or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in § **104-15A(4)(a)** through **(k)** have been fully considered. As the lot size increases beyond ~~the 1/2 acre~~10,000 square feet, the technical justification required for issuing the variance increases.

(2) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's

continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in § 104-4A(4), or conflict with existing local laws or ordinances.

(6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

#### **Article V. Provisions for Flood Hazard Reduction**

##### **§ 104-16. General standards.**

In all areas of special flood hazards, including X-Zones, the following standards are required:

###### **A. Anchoring.**

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) All manufactured homes, temporary and accessory structures, decks and patios shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

###### **B. Construction materials and methods.**

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

###### **C. Utilities.**

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(2) New and replacement sanitary sewage systems and waste lines shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into floodwaters either by elevation or by installation of check valves and backflow preventers;

(3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and

(4) For all new construction and substantial improvements, Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or

located so as to prevent water from entering or accumulating within the components during conditions of flooding.

**D. Subdivision and new development proposals.**

- (1) All subdivision proposals and other proposed new development shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals and other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals and other proposed new development shall have adequate drainage provided to reduce exposure to flood damage; and
- (4) Base flood elevation data shall be provided for subdivision proposals and any other proposed new development which contain at least 50 lots or five acres (whichever is less).

**E. Enclosure openings.**

~~All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.~~

**E. Freeboard.**

All new construction and substantially improved residential and non-residential structures located in an area of special flood hazard shall have the lowest floor elevated to the base flood elevation or advisory base flood elevation, whichever is applicable, plus freeboard as specified in Table 1 below. Enclosed areas that are used solely for parking, building access, or storage are not the lowest floor and shall be allowed below the BFE / ABFE provided the enclosed areas meet the requirement set forth in § 104-16.E above. For all zones within the City of Hoboken, freeboard shall be measured from the bottom of the lowest horizontal structural member.

<b>FREEBOARD REQUIREMENTS FOR AREAS OF SPECIAL FLOOD HAZARD</b>				
<b>Building Type</b>	<b>Zones</b>			
	<b>X</b>	<b>A</b>	<b>Coastal A</b>	<b>V</b>
Residential structures	+1'	+1'	+1'	+2'
Building and other structures with school or day-care facilities; and other non-residential structures not itemized below	+1'	+1'	+2'	+2'
Essential facilities including, but not limited to: fire, rescue, ambulance, and police stations and emergency vehicle garages; buildings designated as emergency shelters; other facilities required for emergency response; hospitals and other health care facilities having surgery or emergency treatment facilities; power generating stations and other public utility facilities	+1'	+2'	+2'	+3'
Buildings and other facilities that manufacture, process, handle, store, use, or dispose of hazardous materials	+1'	+2'	+2'	+3'
Temporary structures	n/a	+1'	+2'	n/a

**F. Fill.**

Fill shall not be used to elevate structures or for structural support.

**§ 104-17. Specific standards.**

In all areas of special flood hazards, including all A-Zones and areas subject to moderate wave action, where base flood elevation data have been provided as set forth in § 104-7, Basis for establishing the areas of special flood hazard or in § 104-14B, Use of other base flood data, the following standards are required:

A. Residential construction.

(1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, together with the attendant utilities and sanitary facilities, elevated to or above the base flood elevation or advisory base flood elevation, whichever is more restrictive, plus Freeboard; or

(2) Require within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified) or at or above the advisory base flood elevation, whichever is more restrictive, plus Freeboard. And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(3) Fully enclosed areas, above grade but below the lowest floor are usable only for parking of vehicles (where permitted), building access and/or storage and not for human habitation. Fully enclosed areas subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect and must meet or exceed the following minimum criteria: (i) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; (ii) the bottom of all openings shall be no higher than one foot above grade; and (iii) openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Non-residential and Mixed Use construction.

~~(4) In an Area of Special Flood Hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure, or any mixed-use structure where residential uses exist above commercial uses on lower floors, shall either have the lowest floor, including basement, together with the attendant utilities and sanitary facilities: either,~~

~~(1) Elevated to or above the level of the base flood elevation or advisory base flood elevation, whichever is more restrictive, plus Freeboard; or together with the attendant utilities and sanitary facilities, shall;~~

~~(2) Be required within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified) or at or above the advisory base flood elevation, whichever is more restrictive, plus Freeboard. And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures; or~~

~~(3) Be floodproofed so that below the base flood levelevation or advisory base flood elevation (whichever is more restrictive), plus Freeboard the structure is watertight with walls substantially impermeable to the passage of water;~~

~~(4) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and~~

~~(5) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official Administrator as set forth in §104-14C(2).~~



(6) In areas of moderate wave action where floodproofing is not feasible or desirable fully enclosed areas below the lowest floor used for non-residential uses, parking, building access or storage shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect and must meet or exceed the following minimum criteria: (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. (ii) The bottom of all openings shall be no higher than one foot above grade. (iii) Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters; and

(7) Only Flood Damage-Resistant Materials, so classified by the National Flood Insurance Program (NFIP) shall be used. Areas shall be constructed to withstand direct and prolonged contact with floodwaters without sustaining significant damage.

**C. Manufactured homes:**

(1) Manufactured homes shall be anchored in accordance with § 104-16A(2).

(2) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation.

**§ 104-18. Floodways.**

Located within areas of special flood hazard established in section § 104-7 may be areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibited encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. If section § 104-18.A is satisfied, all new construction and substantial improvements must comply with Article V Provisions for Flood Hazard Reduction.

C. In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than two-tenths of a foot at any point.

**§ 104-19. Coastal high hazard area.**

Coastal high hazard areas (V Zones) are located within the areas of special flood hazard established in § 104-7. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash: therefore, the following provisions shall apply:

**A. Location of Structures**

(1) All construction shall be landward of the mean high tide established and updated from time to time by the appropriate governmental agency with jurisdiction over same. Functionally Dependent Uses, open space and outdoor passive and active recreational uses may be permitted seaward of the mean high tide, provided that such use creates no additional threat to public safety and complies with the applicable requirements of this chapter.

**B. Construction methods**

(1) Elevation. All new construction and substantial improvements shall be elevated on piling or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the piling or columns) is elevated to or above the base flood elevation or advisory base flood elevation, whichever is more restrictive, plus Freeboard.

**(2) Structural support**

(a) All new construction and substantial improvements shall be securely anchored on piling or columns.

(b) The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values each of which shall have a 1% chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

(3) Certification. A registered professional engineer or architect shall develop or review the structural design specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for compliance with the provisions of sections § 104-19.B (1) and (2) (a) and (b).

C. Space below the lowest floor

(1) Floodproofing methods shall not be used in the V-Zone for space below the lowest floor.

(2) Only Flood Damage-Resistant Materials, so classified by the National Flood Insurance Program (NFIP) shall be used in construction of areas below the lowest floor. Areas shall be constructed to withstand direct and prolonged contact with floodwaters without sustaining significant damage.

(3) Any alteration, repair, reconstruction or improvement to a structure started after the enactment of this ordinance shall not enclose the space below the lowest floor unless breakaway walls, or other screening intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Breakaway walls shall be designed for a safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading of 20 points per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(a) Breakaway wall collapse shall result from a water load less than that which would occur during the base floor; and

(b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water load acting simultaneously on all building components (structural and non-structural). Water loading values shall be those associated with the base flood. Wind loading values shall be those required by applicable State and local building standards.

(c) Where breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access, or storage and not for human habitation.

(d) Prior to construction, plans for any breakaway wall must be submitted to the Floodplain Administrator for approval.

**SECTION TWO: REPEAL OF INCONSISTENT PROVISIONS**

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

**SECTION THREE: SEVERABILITY**

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION FOUR: EFFECTIVE DATE**

This Ordinance shall take effect upon passage and publication as provided by law.

**SECTION FIVE: CODIFICATION**

This ordinance shall be a part of the Code of the City of Hoboken as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Code.

The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Hoboken in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

**Date of Introduction: November 6, 2013**

Approved:

Approved as to Legal Form:

\_\_\_\_\_  
 Quentin Wiest, Business Administrator

\_\_\_\_\_  
 Mellissa Longo, Corporation Counsel

RECORD OF COUNCIL VOTE ON 1 <sup>ST</sup> READING				
Councilperson	Yea	Nay	Abstain	No Vote
Councilman Bhalla				
Councilwoman Castellano				
Councilwoman Giattino				
Councilwoman Mason				
Councilman Mello				
Councilman Occhipinti				
Councilman Russo				
President Cunningham				

RECORD OF COUNCIL VOTE ON 2 <sup>ND</sup> READING				
Councilperson	Yea	Nay	Abstain	No Vote
Councilman Bhalla				
Councilwoman Castellano				
Councilwoman Giattino				
Councilwoman Mason				
Councilman Mello				
Councilman Occhipinti				
Councilman Russo				
President Cunningham				

**EXHIBIT B**

②

1st reading  
11-6-13

Sponsored by:

Seconded by:

City of Hoboken  
Ordinance No.:

7-269

**AN ORDINANCE AMENDING CHAPTER §196 (ZONING) ADDRESSING COMMUNITY HEALTH, SAFETY AND GENERAL WELFARE THROUGH FLOOD HAZARD MITIGATION MEASURES AND DEVELOPMENT LIMITATIONS**

**WHEREAS**, according to the State of New Jersey Department of Environmental Protection, it is well documented that flooding causes major social disruptions due to the need to relocate flood victims and provide emergency services to affected residents, which necessarily diverts emergency personnel from other essential tasks; and

**WHEREAS**, according to the National Flood Insurance Program ("NFIP"), from 1978 to June 30, 2013, New Jersey's total flood insurance claims paid equaled \$5,276,080,845 – the third highest in the nation; and

**WHEREAS**, according to the NFIP, Hoboken has more flood insurance policies in force than any other municipality in Hudson County, with liability to the NFIP of \$1,922,187,500; and

**WHEREAS**, according to the NFIP, Hoboken's property owners pay flood insurance premiums totaling \$5,984,720, which is the highest in Hudson County;

**WHEREAS**, the National Flood Insurance Program's most recent Flood Insurance Rate Map ("FIRM") for Hudson County, effective August 16, 2006, showed the existing piers and platforms on the Hoboken waterfront to be located within Zone AE, which zone FEMA defines as an area subject to inundation by the 1-percent-annual-chance flood event; and

**WHEREAS**, before Hurricane Sandy, the Federal Emergency Management Agency ("FEMA") had begun a coastal study to update FIRMs for portions of New Jersey in order to better reflect coastal flood risk; and

**WHEREAS**, after Hurricane Sandy, FEMA released Advisory Base Flood Elevation ("ABFE") maps based on FEMA's partially completed flood study in order to help in rebuilding and recovery efforts; and

**WHEREAS**, the most recent ABFE maps for Hudson County, effective February 22, 2013, show the existing piers and platforms on the Hoboken waterfront to be located within Advisory Flood Hazard Zone V, which zone is defined by FEMA as an area subject to high velocity wave action (a 3-foot breaking wave) from the 1% annual chance coastal flood; and

**WHEREAS**, the most recent Preliminary Work Maps released by FEMA show the existing piers and platforms on the Hoboken waterfront to be located within Zone V; and

**WHEREAS**, the NJDEP issued an Emergency Rule on January 24, 2013 to adopt emergency amendments to the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13; and

**WHEREAS**, pursuant to 44 C.F.R. § 60.3 (e) (3):

"When the Federal Insurance Administrator has provided a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating Zones V1-30, VE, and/or V, the community shall...[p]rovide that all new construction within Zones V1-30, VE, and V on the community's FIRM is located landward of the reach of mean high tide."

**WHEREAS**, New Jersey Senate Bill No. 2680, introduced April 15, 2013, would have required the New Jersey Department of Environmental Protection to approve development projects on piers in "coastal high

hazard areas" – which areas include V Zones – in certain municipalities along the Hudson River, which adopted an ordinance that allows for such development; and

WHEREAS, on August 19, 2013, Governor Christie vetoed New Jersey Senate Bill No. 2680 "[b]ecause this bill has the potential to jeopardize National Flood Insurance Program eligibility for impacted municipalities"; and

WHEREAS, Princeton Hydro, LLC and RQuinn Consulting, Inc. have prepared and submitted to the City of Hoboken a report titled "Flood Hazard Risk and Compliance Concerning Development on Piers and Platforms, City of Hoboken, Hudson County, NJ," dated October 2013; and

WHEREAS, the City of Hoboken, Mayor and Council, wish to assure the health, safety and general welfare of its residents.

NOW THEREFORE, be it ordained by the City Council of the City of Hoboken, County of Hudson, State of New Jersey, as follows:

### **SECTION ONE AMENDMENT**

Chapter 196, Zoning, of the Code of the City of Hoboken is hereby amended as follows; deletions to the current ordinance are noted in ~~strike through~~, additions to the current ordinance are noted in underline.

#### **CHAPTER 196. ZONING**

##### **ARTICLE I**

##### **Title; Purpose; Interpretation**

##### **§ 196-101. Title.**

*[No change]*

##### **§ 196-102 Purpose and Intent.**

The purpose of this chapter is to promote the health, safety, comfort and general welfare of the City of Hoboken and its people; advance the fundamental elements of the City's Master Plan; advance the purposes of the Municipal Land Use Law set forth in N.J.S.A. 40:55D-2; and ensure that all land development in the city meets the applicable requirements of federal, state and local laws. In order to fulfill this purpose, it is the intent of this chapter to provide regulations that are consistent with the Master Plan, that implement the Land Use Plan set fourth therein, and that advance the general concepts and recommendations of the Plan, as follows:

- A. Encourage sustainability through focused economic development; flood risk management; environmentally sensitive and energy efficient design; conservation of natural resources; and diversification of uses, building types and affordability.
- B. Provide adequate light, air and convenience of access; through the regulation of bulk, height, massing, scale, and density.
- C. Promote physical and visual connections between the waterfront and the rest of the City; and between the Fallsades and City
- D. Enhance Hoboken historic character through the protection of buildings and districts of historic significance, while also encouraging design innovation in adaptive reuse and new construction.
- E. Maintain an appropriate mix of land uses in each zone district.
- F. Promote the provision of public spaces, parks, open space and greenery.
- G. Balance circulation and parking needs with those of pedestrians, cyclists, and transit users.
- H. Promote Hoboken's unique transportation resources to drive economic growth.
- I. Coordinate development policies and objectives with Hudson County, neighboring municipalities, agencies and institutions.

§ 196-103. Interpretation of Provisions.

§ 196-103.1. Interpretation.

[No change]

§ 196-103.2. Effect on Outstanding Permits, Approvals and Variances.

[No change]

§ 196-103.3. General Restrictions.

Except as otherwise provided in this chapter:

- A. No building or structure or part thereof, and no lot or land, or part thereof, shall hereafter be used except in conformity with the regulations of this chapter.
- B. No building or structure or part thereof shall hereafter be erected, structurally altered, enlarged or rebuilt except in conformity with the regulations of this chapter.
- C. No building shall be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be designed, used or intended to be used, for any purpose or in any manner other than as specified among the uses hereinafter listed as permitted in the zone in which such building or land is located.
- D. No building shall be erected, reconstructed or structurally altered to exceed in height the limit hereinafter designated for the zone in which such building is located.
- E. No building shall be erected, no existing buildings shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot area and building location requirements.
- F. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other buildings, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.
- G. No off-street parking facility or loading berth provided to meet the minimum off-street parking or loading requirements for one use or structure shall be considered as provided off-street parking or loading for a use or structure on any other lot.
- H. No land in a residential zone shall be used to fulfill open space, parking or similar requirements for uses in nonresidential zones. No driveway access shall be allowed through a residential zone to service a use in a nonresidential zone.
- I. All construction shall be landward of the mean high tide established and updated from time to time by the appropriate governmental agency with jurisdiction over same, and no new construction or substantial improvement of existing structures shall be permitted on piers or platforms projecting into or over the Hudson River or Weehawken Cove. However, new construction or substantial improvement of Functionally Dependent Uses, open space and outdoor passive and active recreational uses is permitted seaward of the mean high tide and on piers or platforms, provided that such new construction or substantial improvement creates no additional threats to public safety and complies with the applicable requirements of Chapter 104 of the Municipal Code of the City of Hoboken.

A "Functionally Dependent Uses" is that which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

For purposes of this provision, "substantial improvement" shall mean any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement.

This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions;  
or
- (2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**§196-103.4. Nonconforming Uses, Structures and Lots.**

- A. Continuation. A use, building or structure, lawfully in existence at the effective date of this chapter, which shall be made nonconforming at the passage of this chapter or any applicable amendment thereto, may be continued, except as otherwise provided in this Article. Any nonconforming use, building, structure or lot may change ownership and continue to function as the same nonconforming use, building, structure or lot, provided that all other conditions of this Article are met.
- B. Maintenance and repairs. Maintenance and repair work may be made to a nonconforming use, structure or lot, provided that the maintenance work does not change the use, expand the building or the functional use of the building, increase the area of a lot used for a nonconforming purpose or increase the nonconformity in any manner. No alterations may be made which would increase the number of dwelling units.
- C. Residential improvements. A building containing a nonconforming residential use or a nonconforming building containing a residential use may be altered in any way to improve interior livability, provided that no alterations may be made which would increase the number of dwelling units.
- D. Reconstruction. No existing nonconforming building or premises devoted to a nonconforming use shall be enlarged, extended, reconstructed, substituted or structurally altered, except when changed to a conforming building or use, or when required to do so by law, except as follows:
  - (1) Any nonconforming use or structure sustaining damage by fire, flood, casualty or act of God constituting less than ~~75-50~~ percent of the building's ~~total market value before the damage occurred~~ may be repaired and used as before, provided that the floor area of such use, building or structure shall not exceed the floor area or building volume which existed prior to such damage. All repairs shall be completed within one year after damages occur or such use or structure shall not be restored, except as a conforming use or structure.
  - (2) In the event that ~~the cost to repair damage is determined to be have destroyed more than 75-50 percent or more of a building's true market value, that building shall only be reconstructed as a conforming use or structure.~~ ~~The Board of Adjustment may authorize variances for rebuilding only after the provisions for flood hazard prevention have been met, if the rebuilding would not constitute an enlargement of the use and if the rebuilding would provide better aesthetics, higher setbacks or assist in alleviating characteristics, such as noise, glare, odor or traffic generation which interferes with the health, safety and welfare of the area.~~
  - (3) In the event that the owner and Building Inspector are unable to agree on the extent of damage, a determination will be made by a group of three people consisting of the Building Inspector, the owner or a professional architect or engineer acting as a representative of the owner, and an independent professional engineer or architect.
  - (4) The fee of the independent engineer or architect shall be agreed to and paid in equal portions by the City and the owner of the building in question.
- E. Termination. A nonconforming use shall be considered terminated subject to the following:
  - (1) Abandonment. A nonconforming use shall be considered abandoned and may not be revived if:
    - (a) The use is terminated by the owner;



- (b) The owner fails to maintain the structure, or structure and land in combination, to a standard of habitability consistent with the nonconforming use; or
  - (c) The property otherwise meets the criteria to be deemed abandoned subject to N.J.S.A. 55:19-78 et seq.
- (2) Conversion to permitted use. Any nonconforming use or structure which has been changed to a permitted use shall not be revived as a nonconforming use, except by variance.

**§ 196-103.5. Relief.**

*[No change]*

**§ 196-103.6. Amendments.**

*[No change]*

**§ 196-103.7. Areas of Redevelopment or Rehabilitation.**

*[No change]*

**§ 196-103.8. Consistency.**

*[No change]*

**§ 196-103.9. Repeal.**

*[No change]*

**§ 196-103.10. Validity.**

*[No change]*

**SECTION TWO: REPEAL OF INCONSISTENT PROVISIONS**

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

**SECTION THREE: SEVERABILITY**

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION FOUR: EFFECTIVE DATE**

This Ordinance shall take effect upon passage and publication as provided by law.

**SECTION FIVE: CODIFICATION**

This ordinance shall be a part of the Code of the City of Hoboken as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Code.

The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Hoboken in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repeals of existing provisions not intended to be repealed.

Date of Introduction: November 6, 2013.

Approved:

  
 Quentin Wiest, Business Administrator

Approved as to Legal Form:

  
 Mellissa Longo, Corporation Counsel

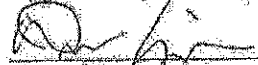
RECORD OF COUNCIL VOTE ON 1 <sup>ST</sup> READING				
Councilperson	Yea	Nay	Abstain	No Vote
Councilman Bhalla	✓			
Councilwoman Castellano	✓			
Councilwoman Gattino	✓			
Councilwoman Mason	✓			
Councilman Mello	✓			
Councilman Occhipinti	✓			
Councilman Russo				✓
President Cunningham	✓			

RECORD OF COUNCIL VOTE ON 2 <sup>ND</sup> READING				
Councilperson	Yea	Nay	Abstain	No Vote
Councilman Bhalla	✓			
Councilwoman Castellano	✓			
Councilwoman Gattino	✓			
Councilwoman Mason	✓			
Councilman Mello	✓			
Councilman Occhipinti	✓			
Councilman Russo	✓			
President Cunningham				

I do hereby certify that the foregoing is a true and correct copy of an ordinance duly adopted by the City Council of the City of Hoboken, in the County of Hudson on this 15<sup>th</sup> day of December, 2013

  
 James Farina, City Clerk

Approved by the Mayor of the City of Hoboken on the 21<sup>st</sup> day of Dec., 2013.

  
 Dawn Zimmer, Mayor

~~or~~

Vetoed by the Mayor for the following reasons:

---

---

---

---

**EXHIBIT C**

**FILED**

**JUN 27 2013**

**PATRICK J. ARRE, JSC**

CONNELL FOLEY LLP  
85 Livingston Avenue  
Roseland, New Jersey 07068  
(973) 535-0500  
Attorneys for Defendant  
Shipyard Associates, L.P.

<p>CITY OF HOBOKEN, a municipal corporation of the State of New Jersey,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>SHIPYARD ASSOCIATES, L.P.,</p> <p style="text-align: center;">Defendant.</p>
<p>SHIPYARD ASSOCIATES, L.P.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>HUDSON COUNTY PLANNING BOARD and HUDSON COUNTY BOARD OF FREEHOLDERS,</p> <p style="text-align: center;">Defendants.</p>
<p>SHIPYARD ASSOCIATES, L.P.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>HOBOKEN PLANNING BOARD,</p> <p style="text-align: center;">Defendant.</p>

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUDSON COUNTY  
DOCKET NO. HUD-L-1238-12

*Consolidated with:*

DOCKET NO. HUD-L-3278-12  
DOCKET NO. HUD-L-4157-12

CIVIL ACTION

**ORDER**

The above matter having been opened to the Court upon Motion by Connell Foley LLP, attorneys for Shipyard Associates, L.P., for an Order entering summary judgment and upon Motion by Maraziti, Falcon & Healey, attorneys for the City of Hoboken, the Galvin Law Firm, attorneys for the Hoboken Planning Board, and Stark & Stark, attorneys for Intervenor, Hudson Tea Building Condominium Association, Inc. for an Order entering summary judgment; and the

Court having considered the moving papers and arguments of counsel; and for the reasons stated on the record on June 21, 2013;

It is on this 27<sup>th</sup> day of June, 2013,

ORDERED that Shipyard Associates, L.P.'s motion for entry of judgment dismissing the complaint of plaintiff the City of Hoboken in Docket No. HUD-L-1238-12 with prejudice is hereby granted; and it is further

ORDERED that Shipyard Associates, L.P.'s motion for entry of judgment dismissing the complaint of third party intervenor the Fund for a Better Waterfront's complaint in Docket No. HUD-L-1238-12 with prejudice is hereby granted; and it is further

ORDERED that Shipyard Associates, L.P.'s motion for entry of judgment dismissing the complaint of third party intervenor the Hudson Tea Building Condominium Association's complaint in Docket No. HUD-L-1238-12 with prejudice is hereby granted; and it is further

ORDERED that Shipyard Associates, L.P.'s motion for entry of judgment granting the First Count of its counterclaim for declaratory judgment against plaintiff the City of Hoboken in Docket No. HUD-L-1238-12 is hereby granted; and it is further

ORDERED that Shipyard Associates, L.P.'s motion for entry of judgment granting the Second Count of its counterclaim for breach of the duty of good faith and fair dealing against plaintiff the City of Hoboken in Docket No. HUD-L-1238-12 is hereby denied; and it is further

ORDERED that plaintiff the City of Hoboken's motion for entry of partial judgment dismissing Shipyard Associates, L.P.'s counterclaim for breach of the duty of good faith and fair dealing against plaintiff the City of Hoboken in Docket No. HUD-L-1238-12 with prejudice is hereby granted; and it is further

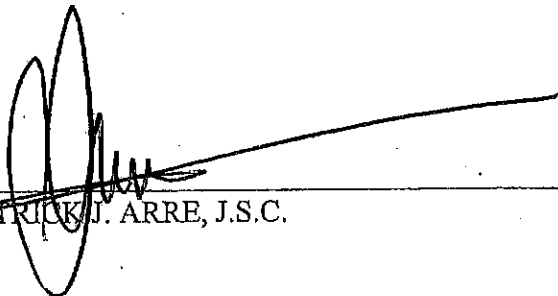
ORDERED that Shipyard Associates, L.P.'s motion for entry of judgment dismissing the counterclaims of defendant Hoboken Planning Board against plaintiff Shipyard Associates, L.P. in Docket No. HUD-L-4157-12 with prejudice is hereby granted; and it is further

ORDERED that Shipyard Associates, L.P.'s motion for entry of judgment dismissing the counterclaims of third party intervenor the Hudson Tea Building Condominium Association against plaintiff Shipyard Associates, L.P. in Docket No. HUD-L-4157-12 with prejudice is hereby granted; and it is further

ORDERED that defendant Hoboken Planning Board's motion for entry of judgment dismissing Shipyard Associates, L.P.'s claims against defendant Hoboken Planning Board in Docket No. HUD-L-4157-12 is denied without prejudice; and it is further

ORDERED that the next case management judge shall establish a briefing schedule for Shipyard Associates, L.P.'s prerogative writ action against the Hoboken Planning Board in Docket No. HUD-L-4157-12 and establish a trial schedule for Shipyard Associates, L.P.'s prerogative writ action against the Hudson County Planning Board and the Hudson County Board of Freeholders in Docket No. HUD-L-3278-12; and it is further

ORDERED that a copy of this Order be served upon all counsel within seven days after receipt of this Order from the Court.

  
~~PATRICK J. ARRE, J.S.C.~~

☆: This matter will be addressed  
at the prerogative writ trial.

Reasons set forth on the record on 6/21/13

**EXHIBIT D**



**FILED**

FEB 04 2014

NESLE A. RODRIGUEZ, J.S.C.

Kevin J. Coakley 279791972  
Nicole B. Dory 027262006  
Connell Foley LLP  
85 Livingston Avenue  
Roseland, NJ 07068  
(973) 535-0500  
Attorneys for Plaintiff  
Shipyard Associates, L.P.

SHIPYARD ASSOCIATES, L.P.,  
Plaintiff,

vs.

HOBOKEN PLANNING BOARD,  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUDSON COUNTY  
DOCKET NO. HUD-L-4157-12

*Consolidated with:*  
DOCKET NO. HUD-L-1238-12  
DOCKET NO. HUD-L-3278-12

Civil Action

ORDER

The above matter having been opened to the Court by Connell Foley LLP, attorneys for Shipyard Associates, L.P., on notice to the Galvin Law Firm, attorneys for the Hoboken Planning Board, and Stark & Stark, attorneys for intervenor the Hudson Tea Buildings Condominium Association, Inc., and the Court having considered the moving papers and arguments of counsel; and for the reasons stated in the Court's Opinion dated January 23, 2014;

It is on this 4<sup>th</sup> day of February, 2014,

**ORDERED** that Shipyard Associates, L.P.'s request for automatic approval of its application for amended site plan approval initially submitted to the Hoboken Planning Board on August 25, 2011 and last revised by submittal dated May 23, 2012 with respect to real property

known as Block 264.2, Lot 1 as shown on the Tax Assessment Map of the City of Hoboken, is  
**GRANTED**; and it is further

ORDERED that a copy of this Order be served upon all counsel within seven days after  
receipt of this Order from the Court.



---

NESLE A. RODRIGUEZ, J.S.C.