

## FBW'S STATEMENT OF INTEREST

The Fund for Better Waterfront ("FBW") is a New Jersey 501(c)(3) nonprofit organization, with its principal office located at Neumann Leathers Building, 300 Observer Highway in Hoboken. FBW currently has approximately 200 active supporters, and since its early years (approximately 25 years ago), FBW and its supporters have been engaged specifically in advocacy to enhance the public's access to the Hudson River within the City of Hoboken.

FBW was a party in the trial court decision now on appeal in City of Hoboken v. Shipyard Associates, L.P., Docket No.-004637-14. It sought intervention in that matter because it had been intimately involved in the public planning processes related to Shipyard's development of an 1160-residential unit planned unit development on the Hudson River Waterfront (in 1996-1997), which included recreation improvements on Hoboken's North Pier. In accord with its longstanding advocacy for a continuous, public waterfront park, FBW desired to support the City of Hoboken's efforts to enforce Shipyard's 1997 agreement with the City to rebuild the North Pier as open space, including tennis courts, a tennis pavilion and a public walkway.

Indeed, FBW's involvement with Shipyard's development at the site pre-dated 1996. In 1994, the Coalition for a Better Waterfront ("CBW"), (which included FBW) successfully sued the

Hoboken Planning Board, the City of Hoboken Planning Board, City of Hoboken, and Shipyard with respect to its original application to build large supermarket at Shipyard's property on the Hudson River waterfront. (Docket No. HUD-L-7651-94). On April 27, 1995, Judge Gallipoli decided in favor of the plaintiffs rendering the Planning Board's variances null and void. Again, in 1995-1996, CBW challenged zoning amendments adopted by the City of Hoboken that it contended were designed to accommodate the Shipyard Project (Docket No. HUD-L-8453-95). In a decision dated July 9, 1998, Judge Seymour Margulies ruled in favor of the defendants; a decision that was upheld by the Appellate Division. Also in 1998, CBW, represented by the Rutgers Environmental Law Clinic, challenged a waterfront permit granted to Shipyard by the New Jersey Department of Environmental Protection. This appeal was decided on Oct. 20, 1998 in favor of Shipyard. Finally, in 2000, FBW challenged Shipyard's application before the Hoboken Planning Board for a North Pier townhouse development on Block 264.1, Lot 1 and Block 264.2, Lot 1. This was a proposed addition to the approved 1160-unit planned unit development noted in the previous paragraph. After, FBW sent a letter to the Planning Board listing numerous violations with the State's Residential Site Improvement Standards, Shipyard withdrew its application.

Now, looking forward, post-1996, FBW has continued its advocacy regarding Shipyard's development proposals for its waterfront property before the Hoboken and Hudson County planning boards. With respect to Shipyard's application before the Hudson County Planning Board, FBW participated in the hearings that occurred and presented its position that any development ultimately permitted must ensure public access to waterfront areas, recreational facilities and open space as set forth in the Hudson County Master Plan. Specifically, FBW's Executive Director spoke at the Board's initial public hearing on the application, dated January 18, 2012 (HTSa325-328); a Hoboken resident, who identified herself as a member of FBW presented testimony at the second hearing on February 22, 2012 (HTSa377-381); and FBW's counsel, Eastern Environmental Law Center, appeared before the Board at the public hearing held on March 21, 2012, at which time the Board memorialized its resolution denying Shipyard's application. (HTSa572-574).

This appeal, Shipyard Associates, L.P., v. Hudson County Planning Board and Hudson County Bd. of Freeholders, A-4763-14T3, (where FBW participated in the predicate county planning board action) involves the application of the relevant automatic approval statute and reversal of the planning board's denial of Shipyard's application, despite the fact that the County Planning Board held two hearings, rendered its decision within a

relatively short time framework after Shipyard's application was deemed complete and secured Shipyard's consent to the additional time needed to hold the second hearing. Moreover, in its decision on the merits of Shipyard's application, the trial court in effect reprimanded the Planning Board for heeding the numerous concerns expressed by Hoboken residents, including FBW. Residents, including those represented by counsel for the Appellant Hudson Tea Buildings Condominium Association, created a record replete with concerns regarding the cumulative impact the proposed project would have on traffic and pedestrian safety on the county road, and the lack of clarity in the application with respect to whether Shipyard was creating a street or a pedestrian walkway; a record that supports the Board's denial of Shipyard's application. Accordingly, this appeal raises legal issues of significant public importance, and Hoboken residents have a strong interest in being heard by the Appellate Division.

Because of FBW's expertise and previous involvement in the planning processes governing development of the Hoboken waterfront generally and the Shipyard projects more specifically, FBW is able to assist the court in resolving whether the trial court appropriately applied the automatic approval statute under the circumstances presented in this case, and gave the County Planning Board the deference it was due.

## PRELIMINARY STATEMENT

### PROCEDURAL HISTORY

FBW restates and incorporates the procedural history of this litigation as set forth in Appellant's Brief on Behalf of the Hudson Tea Buildings Condominium Association, Inc. ("HTS") (HTSb6-7).

### STATEMENT OF FACTS

FBW restates and incorporates the facts pertaining to the Hudson County Planning Board's ("CPB") handling of this matter as set forth in Appellant's Brief on Behalf of HTS (HTSb13-18;23-25). In particular, FBW would like to highlight that in this matter (i) the Hoboken Planning Board ("HPB") had yet to hold a hearing on this matter and was still trying to resolve whether variances were required and whether the local application was in fact complete when the CPB rendered its decision; and (ii) Shipyard was heard within six-days from the date on which its application was deemed complete, January 12, 2012. Shipyard then consented to a second hearing date of February 22, 2012, without mentioning the issue of the need to secure the consent of the Hoboken Planning Board. (HTSa335). Shipyard participated in that second hearing, and did not raise the "lack of HPB consent" until March 21, 2012, at which time

the CPB memorialized its February denial of the application. (HTSa570-572).

(iii) Additional facts indicate that the CPB processed this application on a timely basis and with no undue delay: Shipyard filed its initial application on August 25, 2011. (HTSa1-98). In a letter dated October 14, 2011, CPB's Engineer notified Shipyard that its application was in "technically incomplete"; on November 7, 2011, CPB's Principal Planner notified Shipyard that the application was now complete. (HTSa98-103). Two days later, Shipyard requested that its application "be carried until the December 21, 2011 meeting of the [CPB]." (HTSa104). In that letter, it mentioned that it had requested confirmation of consent from the HPB. Id. At the CPB's November 14, 2011 meeting CPB dismissed Shipyard's application without prejudice "because the required municipal approval to carry the application could not be obtained prior to [this] meeting." (HTSa193). Shipyard re-filed its application on December 9, 2011 (HTSa105), which was deemed complete on January 12, 2012, and submitted, on January 16, 2012 an "Updated Traffic Assessment," (HTSa229), two days before the CPB public hearing was held.

#### STATUTORY FRAMEWORK

This appeal involves the trial courts grant of automatic approval of a site application filed with the CPB, as an

alternative holding to its conclusion that the CPB and the Board of Freeholders acted arbitrarily and capriciously. It strictly applied the relevant provisions of the County Planning Act, N.J.S.A. 40:27-1 et seq., although the CPB issued its decision months before the local agency took any action on the same application.

A county planning board's review of site plans for land development is limited to sites abutting county roads or affecting county drainage facilities. N.J.S.A. 40:27-6.6. The purpose of its review is limited to "assuring a safe and efficient road system" and its review and approval process must conform to standards and procedures adopted by its governing body. Id. In accord with N.J.S.A. 40:27-6.7, a municipal agency or individual with authority "to approve a site plan or issue a permit" is required to "defer action on any application requiring county approval" until the applicant has submitted its application to the county planning board. However, such local agency does not have to wait for that board to take action on the application before it holds a hearing and renders a decision. Indeed, municipal planning boards are authorized to condition any approval that they grant upon the receipt of a favorable report by the county planning board on that development application or "approval by the county planning board by its failure to report thereon within the required time

period." N.J.S.A. 40:55D-61. Typically, the county planning board has 30 days to act from receipt of the site application (understood to mean 30 days from receipt of a completed application), or with the "agreement of the municipal approving authority, with approval of the applicant," 60 days. N.J.S.A. 40:27-6.3.

Any person aggrieved by the action of the county planning board with respect to a site plan application may file an appeal with the relevant board of freeholder within 10 days of receipt of notice of said decision. The board then must consider such appeal within 45 days from the date of its filing; and render a decision within 30 days from the hearing date. N.J.S.A. 40:27-6.9.

#### LEGAL ARGUMENT

Prerogative writ decision-standard of review

I. UNDER THE CIRCUMSTANCES, AUTOMATIC APPROVAL WAS INAPPROPRIATE AS A MATTER OF LAW.

(as it had previously done when it had requested that its application be carried to a new hearing date, HTSa104)

II. THE TRIAL COURT DID NOT AFFORD THE COUNTY PLANNING BOARD THE DEFERENCE IT DESERVED AND WRONGFULLY BELITTLED THE TESTIMONY PRESENTED BY THE PUBLIC UNDER OATH.

III. THE BOARD OF FREEHOLDERS DID CONDUCT A *DE NOVO* REVIEW, AND ITS DECISION MUST BE REINSTATED.

Letters 892 on ward regarding issue before Rodriguez remand.

Remand hearing -HTSa 1100 onward