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July 9, 2012

**VIA ELECTRONIC and REGULAR MAIL**

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**Re: Planning Board of the City of Hoboken  
Shipyard Associates, L.P. Amended Site Plan/Final Site Plan Application  
Block 264.2, Lot 1**

Dear Mr. Morgan,

Thank you for your courtesy in forwarding us a copy on July 6, 2012 of Mr. Coakley's (attorney for Shipyard Associates, L.P. ("Shipyard")) letter to you, dated June 28, 2012, regarding the above-referenced matter. We note that although Mr. Coakley's June 28 letter was in direct response to my letter to you, dated June 21, 2012, Mr. Coakley (doubtlessly inadvertently) did not provide us with a copy of his June 28 letter. Indeed, had you not forwarded us Mr. Coakley's response letter, we would have remained unaware that any response to our letter had been issued on behalf of Shipyard Associates, L.P. ("Shipyard").

We have received and reviewed a copy of your letter to Mr. Coakley, dated June 29, 2012, wherein you state your intention to recommend to the Planning Board of the City of Hoboken ("Planning Board") that the above-referenced application be dismissed without prejudice during the pendency of the litigation between the City of Hoboken ("Hoboken") and Shipyard (the "Litigation," as described in my letter to you, dated June 21, 2012). Please be advised that on behalf of the City of Hoboken, we concur with your anticipated recommendation.

As you observed in your June 29, 2012 letter, Toll Bros., Inc. v. Bd. of Chosen Freeholders of Burlington, 194 N.J. 223 (2008) is critically inapposite to the present

circumstances. We note that Toll Bros. addressed the question of whether a developer's agreement barred the plaintiff-developer in that case from applying, based on a demonstration of changed circumstances, for modification of that developer's pro-rata share of off-tract improvement costs. Id. at 229. In Toll Bros., the scope of the original project had "radically" downsized, and the developer therefor "immediately" sought to reduce the developer's share of off-site roadway improvements. Id. at 254. In contrast, Shipyard is not seeking to modify its pro-rata share of off-site improvement costs in order to off-set any significant down-sizing of the original project, which was approved by the Planning Board in 1997. Rather, having completed the residential and commercial/retail components of the original project, Shipyard is now asking the Planning Board for permission to abandon an uncompleted component of the original project; i.e., tennis courts, a tennis pavilion, parking spaces and waterfront access improvements, all of which were to be provided by Shipyard on the portion of the original project site commonly known as the North Pier. The construction of these on-site recreational and waterfront access improvements would obviously inure to the benefit of the Hoboken public, including those members of the public who reside nearby and also within the residential component of the original project.

Accordingly, and for the reasons stated in my June 21, 2012 letter, Hoboken respectfully maintains its request that the Planning Board dismiss Shipyard's application pending resolution of the Litigation.

Respectfully submitted,



Joseph J. Maraziti, Jr.

- c: Mayor Zimmer, City of Hoboken (via electronic and regular mail)  
Melissa Longo, Esq., Interim Corporation Counsel, City of Hoboken  
(via electronic and regular mail)  
Brandy A. Forbes, AICP, PP, Community Development Director, City of Hoboken  
(via electronic and regular mail)  
Kevin J. Coakley, Esq., Counsel to Shipyard Associates, L.P.  
(via electronic and regular mail)