HOBOKEN PLANNING BOARD
CITY OF HOBOKEN
REGULAR MEETING

In the matter of: TRANSCRIPT
BOARD AGENDA ITEMS: OF
Call to Order; Open Public PROCEEDINGS
Meetings Act; Roll Call;
Resolutions; Other Business.

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Tuesday, July 10, 2012
Wallace School Gymnasium
1100 Willow Avenue
Hoboken, New Jersey
commencing at 7:08 p.m.

BOARD MEMBERS PRESENT:
KEITH FURMAN, CHAIRMAN
DANIEL WEAVER, VICE CHAIRMAN
FRANK MAGALETTA, MAYORAL DESIGNEE
ANN GRAHAM, COMMISSIONER
BRANDY FORBES, COMMISSIONER
GARY HOLTZMAN, COMMISSIONER
RAMI PINCHEVSKY, COMMISSIONER
GILL MOSSERI, ALT. #1
DEMETRI SARANTITIS, ALT. #2

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APPEARANCES:

RONALD C. MORGAN, ESQUIRE
Attorney for the Board

ALSO PRESENT:

EILEEN BANYRA,
Board Planner

PAUL CRAY,
Consulting Engineer

MARITZA EMANUELLI,
Acting Board Secretary
CHAIRMAN FURMAN: Good evening, everybody. Welcome to the Hoboken Planning Board meeting. I'm going to ask people, before we get started, to silence your cell phones.

I would like to advise all those present, that notice of this meeting has been provided to the public in accordance with the provisions of the Open Public Meetings Act and that those were published in The Jersey Journal and the city Web site.

Copies were provided in The Hoboken Reporter, The Record, the Newark Star Ledger and also placed on the bulletin board in the lobby of City Hall.

Please stand for the Pledge.

(All rise to Salute the Flag.)

CHAIRMAN FURMAN: Before we get started, I'd like to thank the Hoboken School District, the Board of Education, and Tim Calligy for allowing us to use this space today.

Our -- we're going to jump right into our agenda, which was starting with some resolutions as part of board business.

COMMISSIONER HOLTZMAN: Mr. Chairman, I'd like to make a motion to appoint Maritiza
Emanuelli as our acting board secretary.

A MEMBER OF THE AUDIENCE: It's hard to hear. Maybe if you stand. It's very hard to hear.

CHAIRMAN FURMAN: We'll try to speak up.

Go ahead.

COMMISSIONER HOLTZMAN: Mr. Chairman, I'd like to make a motion to appoint Maritza Emanuelli as our acting board --

CHAIRMAN FURMAN: -- acting board secretary.

COMMISSIONER MAGALETTA: Second.

CHAIRMAN FURMAN: Call the roll.

BOARD SECRETARY: Frank Magaletta.

COMMISSIONER MAGALETTA: Yes.

BOARD SECRETARY: Ann Graham.

COMMISSIONER GRAHAM: Yes.

BOARD SECRETARY: Brandy Forbes.

COMMISSIONER FORBES: Yes.

BOARD SECRETARY: Gary Holtzman.

COMMISSIONER HOLTZMAN: Yes.

BOARD SECRETARY: Daniel Weaver.

COMMISSIONER WEAVER: Aye.

BOARD SECRETARY: Keith Furman.

COMMISSIONER FURMAN: Yes.

BOARD SECRETARY: Rami Pinchevsky.
COMMISSIONER PINCHEVSKY: Yes.

BOARD SECRETARY: Gill Mosseri.

COMMISSIONER MOSSERI: Yes.

BOARD SECRETARY: Demetri Sarantitis.

COMMISSIONER SARANTITIS: Yes.

CHAIRMAN FURMAN: Actually, before we go any further, I need to take attendance. Can you go ahead and take attendance for the board.

BOARD SECRETARY: Chairman Keith Furman.

CHAIRMAN FURMAN: Present.

BOARD SECRETARY: Mayor Designee Frank Magaletta.

COMMISSIONER MAGALETTA: Here.

BOARD SECRETARY: Commissioner Brandy Forbes.

COMMISSIONER FORBES: Yes.

BOARD SECRETARY: Commissioner Ann Graham.

COMMISSIONER GRAHAM: Yes.

BOARD SECRETARY: Commissioner Gary Holtzman.

COMMISSIONER HOLTZMAN: Yes.

BOARD SECRETARY: Commissioner Daniel Weaver.

COMMISSIONER WEAVER: Here.
BOARD SECRETARY: Commissioner Carol Marsh.
Commercial Nadia Mian.
Commissioner Rami Pinchevsky.
COMMISSIONER PINCHEVSKY: Here.
BOARD SECRETARY: Alternate Gill Mosseri.
COMMISSIONER MOSSERI: Yes.
BOARD SECRETARY: And Alternate Demetri Sarantitis.
COMMISSIONER SARANTITIS: Here.
CHAIRMAN FURMAN: The first resolution -- the next resolution on our agenda is a resolution to extend the professional service agreement with our board attorney, Parker McCay.
Can I get a motion?
COMMISSIONER WEAVER: Motion.
COMMISSIONER GRAHAM: I have a question first, please. It was my understanding, when we gave Mr. Morgan the contract, that we would evaluate his services. Has there been an evaluation? Has there been an evaluation done of his services for the last six months?
CHAIRMAN FURMAN: There has not been a formal evaluation.
COMMISSIONER GRAHAM: Then I'll have to abstain. I'm not saying I'm against, I thought that we had agreed that there would be an evaluation after six months.

CHAIRMAN FURMAN: Can I get a second for that motion?

COMMISSIONER FORBES: Second.

CHAIRMAN FURMAN: Go ahead and call the roll.

BOARD SECRETARY: Mayor Designee Frank Magaletta.

COMMISSIONER MAGALETTA: Yes.

BOARD SECRETARY: Commissioner Ann Graham.

COMMISSIONER GRAHAM: Abstain.

BOARD SECRETARY: Commissioner Brandy Forbes.

COMMISSIONER FORBES: Yes.

BOARD SECRETARY: Commissioner Gary Holtzman.

COMMISSIONER HOLTZMAN: Yes.

BOARD SECRETARY: Commissioner Daniel Weaver.

COMMISSIONER WEAVER: Yes.

BOARD SECRETARY: Commissioner Carol
Chairman Keith Furman. 

COMMISSIONER PINCHEVSKY: Yes.

BOARD SECRETARY: Chairman Keith Furman.

CHAIRMAN FURMAN: Yes.

BOARD SECRETARY: Alternate Gill Mosseri.

COMMISSIONER MOSSEY: Yes.

BOARD SECRETARY: Alternate Demetri Sarantitis.

COMMISSIONER SARANTITIS: Yes.

CHAIRMAN FURMAN: The next resolution on our agenda pertains to 800 Jackson Street, an application heard at our last meeting. Can I get a motion?

COMMISSIONER WEAVER: Motion.

COMMISSIONER HOLTZMAN: Second.

MR. MORGAN: Mr. Chairman, before you call the roll on that, my review of my notes reflects that seven members voted in favor of the motion and one voted to vote negatively. Only the members that voted in favor can vote on the resolution.

COMMISSIONER HOLTZMAN: Correct.

CHAIRMAN FURMAN: Okay. Call the vote.

BOARD SECRETARY: Mayor Designee Frank
Magaletta.

COMMISSIONER MAGALETTA: Yes.

BOARD SECRETARY: Commissioner Brandy Forbes.

COMMISSIONER FORBES: Yes.

BOARD SECRETARY: Commissioner Ann Graham.

COMMISSIONER GRAHAM: Yes.

BOARD SECRETARY: Commissioner Gary Holtzman.

COMMISSIONER HOLTZMAN: Yes.

BOARD SECRETARY: Commissioner Daniel Weaver.

COMMISSIONER WEAVER: Yes.

BOARD SECRETARY: Alternate Gill Mosseri.

COMMISSIONER MOSSERI: Yes.

BOARD SECRETARY: Alternate Demetri Sarantitis.

COMMISSIONER SARANTITIS: Yes.

(Whereupon, a recess is taken.)

CHAIRMAN FURMAN: I'm going to resume the meeting briefly to read something into the record.

I have a memo from the mayor's office
that she asked me to read into the record. You guys
all have a copy of this, so I will read it and then
just add some additional things that I got after the
fact. I'll give the stenographer a copy.

Memo states: "Dear Planning Board
Members, as the Mayor of the City of Hoboken I am
writing to inform you that on June 20th the City
Council took action to initiate the rehabilitation of
the Southwest area under the Local Redevelopment and
Housing Law.

Attached for your convenience is a copy
of the resolution that was adopted by the City
Council last Wednesday.

As you may be aware the next step is for
the City Council, as the redevelopment agency of the
City, to undertake a redevelopment plan for Southwest
area. This redevelopment plan will establish the
appropriate uses, bulk standards, and general zoning
for that area. As you may know, this has been a very
long process for the Southwest neighborhood, but with
this step by the City Council, the City now has the
ability to address many longstanding zoning issues,
flooding issues, and community needs.

As part of this planning process the
City, including my Administration and City Council,
will be working directly with the property owners of the community to develop a plan that is appropriate for the needs of this area.

Given the recent nature of the City Council's actions, I wanted you to formally be aware of the status in the Southwest area.

Thank you and best regards, Mayor Dawn Zimmer.

In addition to that, the only other thing that was related to me later on in the day, she wanted to make it clear that the recommendations that the planning board had are acknowledged and she will make sure that those are adhered to and she thanks the board for their action.

So, with that, we're going to go into closed session.

(Closed session.)

(Open session.)

CHAIRMAN FURMAN: Does anybody have any other business for the board?

MR. MORGAN: Is there anything on the site plan review committee agenda from last week? So there's no need for the meeting? I think we carried that one T-Mobile thing that's been hanging around for two years.
CHAIRMAN FURMAN: Right. We'll find out about the schedule for the next meeting and let everybody know.

COMMISSIONER PINCHEVSKY: Make a motion to close.

COMMISSIONER HOLTZMAN: Second.

CHAIRMAN FURMAN: All those in favor?

(Whereupon, a voice vote is taken.)

(Whereupon, the proceedings concluded at 7:48 p.m.)
CERTIFICATE

I, JOANNE M. OPPERMANN, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby state that the foregoing is a true and accurate transcript of my stenographic notes of the within proceedings, to the best of my ability.

__________________________
JOANNE M. OPPERMANN, C.C.R.
License No. XI01435
In the matter of: 1501 SHIPYARD LANE (Monarch @ Shipyard) Applicant: Shipyard Associates, LP
Amended Preliminary (overall project) & Amended Final Site: Plan for Block G

Tuesday, July 10, 2012
Wallace School Gymnasium
1100 Willow Avenue
Hoboken, New Jersey

BOARD MEMBERS PRESENT:
KEITH FURMAN, CHAIRMAN (Recused)
DANIEL WEAVER, VICE CHAIRMAN/ACTING CHAIR
FRANK MAGALETTA, MAYORAL DESIGNEE (Recused)
ANN GRAHAM, COMMISSIONER
BRANDY FORBES, COMMISSIONER (Recused)
GARY HOLTZMAN, COMMISSIONER
RAMI PINCHEVSKY, COMMISSIONER
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APPEARANCES:

RONALD C. MORGAN, ESQUIRE
Attorney for the Board

CONNELL FOLEY, LLP
BY: KEVIN J. COAKLEY, ESQUIRE
Attorneys for the Applicant

ALSO PRESENT:

EILEEN BANYRA,
Board Planner

PAUL CRAY,
Consulting Engineer

MARITZA EMANUELLI,
Acting Board Secretary
CHAIRMAN FURMAN: And now we're going to move on to the hearings portion of the evening. Before we get started on this application, there are some board members that will be recusing themselves. I'd like them to identify themselves.

COMMISSIONER MAGALETTA: Frank Magaletta. As the mayor's designee, I recuse myself on this hearing on the Shipyard project.

COMMISSIONER FORBES: And Brandy Forbes, I recuse myself from the hearing on the Shipyard.

CHAIRMAN FURMAN: And I will also be recusing myself. Keith Furman, I'll be recusing myself from this application and turn over this portion of the meeting to the vice chair, Mr. Weaver.

(Whereupon, a discussion is held off the record.)

ACTING CHAIR WEAVER: At this point in the evening, the Commissioners will listen to the board solicitor. I believe he has some information that he would like to convey to the board members before we commence the hearing.

MR. MORGAN: I'm going to stand up and hope you can hear me.

We have a very, very, unusual situation
with regard to the Shipyard application, and I
acknowledge that public hearing notices have gone out
tonight for a hearing. But I want to explain the
situation, for the record, so everyone understands
the position and the legal advice that I'm going to
provide the planning board.

A MEMBER OF THE AUDIENCE: Can you speak
louder?

MR. MORGAN: I'll try.

A MEMBER OF THE AUDIENCE: Can't hear
you at all.

MR. MORGAN: The Shipyard application is
the first PUD in Hoboken's history, and it was
approved in 1997 and there were various development
blocks in the project that had received preliminary
approval. One of the development blocks, Development
Block G, which is the subject of the application that
is before the board this evening, was earmarked and
approved for three regulation tennis courts, a tennis
pavilion, 44 service parking spaces. It was not
approved for construction of residential buildings on
the property.

COMMISSIONER GRAHAM: Ron, you're going
to have to talk louder. Now it's hard for us to hear
back here.
MR. MORGAN: In January of 1997, the developer subsequently entered into a tri-party developer's agreement with the city, the planning board, and itself. And that agreement requires that the project be constructed strictly in accordance with the 1997 approvals. And it indicates that if the agreement is to be amended, that it has to be amended by the signed written consent of all parties.

The project, you're all familiar with it, has been built for the most part, but Block G has not been built, the tennis courts have not been installed, the tennis pavilions have not been installed, neither have the surface parking.

Without first going to the city or the planning board to seek a written amendment to the developer's agreement, the applicant filed the pending application with the board, which originally proposed two 11-story towers in lieu of these recreational amenities. The plans have subsequently been revised to two 10-story towers with a connecting lobby.

The city filed suit, in March of this year, to strictly enforce the terms of the developer's agreement and require the construction of the recreational amenities in lieu of the two
10-story towers that are now being proposed.

Shipyard -- oh, and the city also asked for declaratory judgment relief declaring that that agreement still remains in full force and effect and is enforceable.

In response to the city's complaints, Shipyard filed their answer and also filed a counterclaim where it also asked for a declaratory judgment relief asking the court to interpret and apply the developer's agreement and is asking for the court to determine whether the planning board has to take jurisdiction over this application, at this point, until the dispute over the enforceability of the developer's agreement is resolved.

In response to the counterclaim that was filed, the city filed their answer to the counterclaim that Shipyard filed and said, hey, wait a minute, you're asserting this, you've not named the planning board as a party and they're an indispensable party under Court Rule 428-1, because they're a signatory and they also have to agree to this.

The bottom line of this is that the enforceability and applicability of the developer's agreement lies at the bottom of this whole thing. It
is my opinion, that it is entirely premature for the board to deliberate and take action on the merits of an application to put two 10-story towers until a court resolves the applicability and enforceability of the underlying developer's agreement.

Moreover, there are certain issues that have arisen, concerning the need for variances, during the course of review of the application, both the original plans and the revised plans, by the board's professionals.

The planning board's planning consultant has applied a definition of "development block" to this application, that requires streets to be delineated around all four sides of the block, which is exactly the position that she took with the "Maxwell House" application in 2002. Apparently the applicant and his planning consultants disagree with our planner's interpretation. And she's also pointed out, called out, several other variances which are in dispute.

In lieu of going to the zoning board of adjustment, which has exclusive jurisdiction to interpret zoning ordinances and zoning maps, the applicant is just taking the position that they don't need variance relief and therefore notice of that has
not been provided in the notices that were sent to
the public and published in the newspaper.

So that's another issue that is open and
in dispute. But is sort of secondary, because to me
the fundamental issue here is the court has got to
resolve the developer's agreement before the planning
board takes action on this application.

What I'm recommending to the board --
what I originally recommended to the board, is that
the application be dismissed without prejudice.
However, the applicant, through its attorney, is
taking the position that that would enable the
applicant to apply to the court for automatic
development approval because the board has to take
formal action on an application.

There's three courses of action that a
board can take on an application that's been filed:
it can approve an application; it can approve it with
conditions; or it can deny it. Because of the
applicant's position on the automatic approval issue,
I'm changing my recommendation to the board, that it
dismiss the application without prejudice, to having
the application denied tonight without prejudice.

(Applause.)

Now, I want to make sure that you
understand, this is without prejudice. If the court should uphold Shipyard's ability here to apply for these -- for the residential use of the property, they would be free to come back before the board, but we're not there yet. I mean there's a lot of things the judge is going to have to decide.

Now, I understand that many of you, through your attorneys, have advised me that you feel that you are third-party beneficiaries of the agreement. You may have relied on that area being open space and recreation. That may very well be true, I'm not here to determine that.

I've also been told that there may be those that may want to intervene in the litigation and be heard before the court on the third-party beneficiary issue. That doesn't involve me either, but I just wanted to let you know that that has come to my attention.

Board Members, do you have any questions, on the recommendations that I'm giving you tonight, that you need answers to? This is a very unusual circumstance, but I think we are faced with a very unusual set of facts here.

ACTING CHAIR WEAVER: I would like to ask the Commissioners if there's a --
MR. COAKLEY: Excuse me.

COMMISSIONER HOLTZMAN: Hang on one second.

MR. COAKLEY: I want to understand. Do I get a right to be heard?

MR. MORGAN: If the board adopts the motion that I'm recommending it adopt, there's no public hearing tonight and no one will be heard.

MR. COAKLEY: I want the record to reflect that Shipyard is here, ready to proceed. We have all of our experts and we're ready to present this case.

And I have substantial objections to what Mr. Morgan just said. I dispute all of it. We have put that in writing already to him in two letters and we're prepared to proceed with this case. We think this is an unprecedented and totally erroneous --

A MEMBER OF THE AUDIENCE: Build the tennis courts.

A MEMBER OF THE AUDIENCE: We want tennis courts, we want tennis courts, we want tennis courts.

MR. MORGAN: There's no hearing at this point.
A MEMBER OF THE AUDIENCE: Sit down.

ACTING CHAIR WEAVER: This is a motion on the part --

COMMISSIONER GRAHAM: I move to deny, without prejudice, the application of Shipyard.

MR. MORGAN: Ann, I think you should say, based upon the recommendation of our solicitor.

COMMISSIONER GRAHAM: Based on the recommendation of our planning board attorney.

COMMISSIONER HOLTZMAN: I second it.

COMMISSIONER WEAVER: Will you please call the roll.

BOARD SECRETARY: Mayor Designee Frank Magaletta.

ACTING CHAIR WEAVER: He's recused himself.

BOARD SECRETARY: Commissioner Ann Graham.

COMMISSIONER GRAHAM: Yes.

BOARD SECRETARY: Commissioner Gary Holtzman.

COMMISSIONER HOLTZMAN: Yes.

BOARD SECRETARY: Commissioner Daniel Weaver.

COMMISSIONER WEAVER: Yes.
BOARD SECRETARY: Commissioner Rami Pinchevsky.

COMMISSIONER PINCHEVSKY: Yes.

BOARD SECRETARY: Chairman Keith Furman.

ACTING CHAIR WEAVER: He's recused himself.

BOARD SECRETARY: Gill Mosseri.

COMMISSIONER MOSSERI: Yes.

BOARD SECRETARY: And Alternate Demetri Sarantitis.

COMMISSIONER SARANTITIS: Yes.

ACTING CHAIR WEAVER: At this point, those members that have recused themselves are welcome to return. We will then continue the planning board agenda, which unfortunately will mean we'll be going into closed session, to discuss some litigation which we have against us, so we'll need to clear the room.

(Applause.)

(Whereupon, a recess was taken.)

(Whereupon, the proceedings are adjourned.)
CERTIFICATE

I, JOANNE M. OPPERMANN, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby state that the foregoing is a true and accurate transcript of my stenographic notes of the within proceedings, to the best of my ability.

__________________________

JOANNE M. OPPERMANN, C.C.R.

License No. XI01435