

***THE COUNCIL OF THE CITY OF HOBOKEN***

**SPECIAL MEETING OF WEDNESDAY JUNE 12, 2013**

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President Cunningham opened the meeting at 7:01 PM. and stated, "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 Meeting Act, and that notice published in the Jersey Journal, City website, 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

The Council President then called for the Salute to the Flag.

The Clerk then called the roll:

**PRESENT:** Council persons Bhalla, Castellano, Giattino, Mason, Mello and President Cunningham

**ABSENT:** ~~Mason~~ (see below), Occhipinti and Russo

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The City Clerk reads the Mayor's letter calling this Special Meeting  
Council President comments and reads the Closed Session resolution below:  
Council President comments that they will go in public portion first since we have a good number of people attending this meeting tonight.

Friday, June 7, 2013

***Via Hand Delivery***

City Clerk James Farina  
94 Washington Street  
Hoboken, New Jersey 07030

Dear City Clerk Farina:

Please be advised that as the Mayor of the City of Hoboken, I hereby call a Special Meeting of the Governing Body for Wednesday, June 12, 2013 to commence at 7:00PM in the City Council Chambers, 94 Washington Street, First Floor, Hoboken, New Jersey, for the following purposes:

- 1. RESOLUTION AUTHORIZING CLOSED SESSION TO DISCUSS MATTERS PURSUANT TO N.J.S.A. 10:4-12(B)(7) AND ATTORNEY CLIENT PRIVILEGE RELATING TO PENDING LITIGATION KNOWN AS CITY OF HOBOKEN V. WATERFRONT CORPORATE CENTER (SJP PROPERTIES) AND TO RECEIVE ADVICE FROM THE CITY'S LEGAL COUNSEL FOR THE MATTER, JOE**

MARAZITI, ESQ.

**2. RESOLUTION AUTHORIZING THE SETTLEMENT OF LITIGATION WHICH PROVIDES FOR A NOISE MITIGATION PLAN FOR CONSTRUCTION OF WATERFRONT CORPORATE CENTER III JV LLC PROJECT (FORMERLY SJP) AND REQUEST FOR A CONSTRUCTION NOISE WAIVER**

**3. CONSIDERATION OF CLAIMS LIST**

**Action may be taken** at this meeting, and **other items may be considered**, if necessary. Please ensure the City Council Members are noticed of this Special Meeting. Also, please publicly notice this Special Meeting as required by the Open Public Meetings Act N.J.S.A. 10:4-6.

Very truly yours,

//s//

Dawn Zimmer  
Mayor

**Received and Filed**

**PUBLIC PORTION**

**Helen Hirsch comments**  
**Leslie Norwood comments**  
**Richard Weinstein comments**  
**Lauren Fowle comments**  
**Lex Blakkley comments**  
**Matt Azzarto comments**  
**Grace Bale comments**  
**Hanny Ahmed comments**  
**Councilman Mello comments**

\*\*\*\*\*JUMP TO CLOSED SESSION\*\*\*\*\*

**CLOSED SESSION**

**Councilwoman Giattino motions and seconded by the Councilman Bhalla to enter into Closed Session**

**To vote to enter into Closed Session:**

**PRESENT:** Council persons Bhalla, Castellano, Giattino, Mello, Mason and President Cunningham

**ABSENT:** Occhipinti, ~~Mason~~ \*\* (See below)\*\* and Russo

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**Special Counsel Joe Maraziti Esq. discusses about resolution #2 to the Governing Body**

**Assistant Corporation Counsel Proko**

**Quentin Wiest**

**Stephen Marks**

**Director Pellegrini**

**Joe Pomante – Boswell Engineer**

**At 7:40 P.M. The Governing Body entered into a closed session.**

**1. RESOLUTION AUTHORIZING CLOSED SESSION TO DISCUSS MATTERS PURSUANT TO N.J.S.A. 10:4-12(b)(7) AND ATTORNEY CLIENT PRIVILEGE RELATING TO PENDING LITIGATION KNOWN AS CITY OF HOBOKEN V. WATERFRONT CORPORATE CENTER (SJP PROPERTIES) AND TO RECEIVE ADVICE FROM THE CITY'S LEGAL COUNSEL FOR THE MATTER, JOE MARAZITI, ESQ.**

**WHEREAS**, the Council of the City of Hoboken is authorized to go into closed executive session for the reasons set forth in the Open Public Meetings Act, including without limitation N.J.S.A. 10:4-12(b)(7), and for matters falling within attorney client privilege (for legal guidance on matters relating to pending litigation); and

**WHEREAS**, the City seeks to obtain a status update and legal guidance on pending litigation and ongoing legal issues relating to SJP Properties' construction at Block B, including but not limited to the matter of City of Hoboken v. Waterfront Corporate Center; and

**WHEREAS**, one of the reasons to go into closed session is to receive advice from legal counsel, which is subject to attorney client privilege and which is offered regarding pending litigation of the type listed herein; and,

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Hoboken that it enter into closed session for the herein said purposes; and,

**BE IT FURTHER RESOLVED** that when the need for confidentiality no longer exists the decisions made therein will be made available to the public.

**\*\*\*\*\*At 7:56 PM Councilwoman Mason has arrived to the meeting \*\*\*\*\***

**\*\* At 8:40 P.M. Special Counsel Joe Maraziti, Esq. has left the table due to no other business during Closed Session \*\***

**Motion by Councilwoman Castellano to come out of closed session duly and seconded by the Councilman Bhalla**

**At 8:40 P.M. The Governing Body has come out of closed session.**

**At 8:42 P.M. The Governing Body came back to the meeting**

**Council President comments and gives an overview to the public of what occurred in Closed Session and has made some suggestions to some changes to the resolution #2**

**Special Corporation Counsel Joe Maraziti, Esq. gives an overview to the public of the changes**

**Councilman Bhalla comments and gives an overview**

**Motion by Councilwoman Castellano to go into closed session duly and seconded by the Councilman Bhalla**

### **CLOSED SESSION**

**Special Counsel Joe Maraziti Esq. gives an update about resolution #2 to the Governing Body**

**Assistant Corporation Counsel Proko**

**Quentin Wiest**

**Stephen Marks**

**Director Pellegrini**

**Joe Pomante – Boswell Engineer**

**At 8:49 P.M. The Governing Body entered into a closed session for 15 minutes to give an update from the Special Counsel**

**\*\* At 9:05 P.M. Special Counsel Joe Maraziti, Esq. has left the table due to no other business during Closed Session \*\***

**Motion by Councilwoman Giattino to come out of closed session duly and seconded by the Councilman Mello**

**At 9:05 P.M. The Governing Body has come out of closed session.**

**At 9:07 P.M. The Governing Body came back to the meeting**

**Council President apologies for going into Closed Session again and asks Special Counsel to give an overview to the public and then go to Public Portion**

**Special Counsel Maraziti gives an overview to the public about what went on in Close Session**

**Councilwoman Giattino comments**

**Councilman Bhalla comments**

**Council President comments**

**Councilman Mello comments**

**Council President comments to go into Public Portion for any questions for Special Counsel**

### **PUBLIC PORTION**

**Ariel Buchere comments**

**Matt Azzarto comments**

**Richard Weinstein comments**

**Eran Pichar comments**

**Joseph Pomante responds to the public**

**Council President comments**

**Councilman Mello comments**

**Richard Weinstein comments**

**Liran Kapoano comments**

**Councilman Mello comments**

**Councilwoman Castellano comments**

**Councilwoman Giattino comments**

**Council President comments**

**Councilman Bhalla comments**

**Councilman Mello comments**

**Council President comments**

**Councilwoman Castellano comments**

**Assistant Corporation Counsel reads the changes on the resolution**

**Councilman Mello comments**

**Councilman Bhalla comments**

**Special Counsel comments**

**Councilman Bhalla comments**

**Christopher Hartwyk comments**

**Councilman Bhalla comments**

**Councilwoman Castellano comments**

**Councilman Mello comments**

**Motion to amend the resolution by Councilwoman Giattino and seconded by Councilman Mello**

**To amend resolution #2.**

**Adopted by the following vote: YEAS: 4 – NAYS: 2 ABSENT: 2 PRESENT:**

**ABSTAIN:**

**YEAS: Council persons Bhalla, Giattino, Mello, and Cunningham**

**NAYS: Castellano and Mason**

**ABSENT: Occhipinti and Russo**

**PRESENT:**

**ABSTAIN:**

**--By Council**

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**2. RESOLUTION AUTHORIZING THE SETTLEMENT OF  
LITIGATION WHICH PROVIDES FOR A NOISE MITIGATION  
PLAN FOR CONSTRUCTION OF WATERFRONT CORPORATE  
CENTER III JV LLC PROJECT (FORMERLY SJP)**

**WHEREAS**, Waterfront Corporate Center III JV LLC (“WCC”) has acquired the rights as Developer/Lessee of a first class office building to be partially occupied by Pearson Education, from SJP, which building is under construction by Pavarini McGovern LLC, under the construction supervision of SJP; and

**WHEREAS**, on April 17, 2013, Langan, construction engineer for the WCC construction project at Block 231.3, Lots 1 & 2, forwarded a letter to Quentin Wiest, Business Administrator, requesting a construction noise waiver in accordance with Hoboken Code § 133-9(C) (“Noise Ordinance”) to perform construction activities on Saturdays between May 2013 and July 2014; and,

**WHEREAS**, a revised Saturday Construction Noise Mitigation Plan (“Noise Mitigation Plan” or “Plan”) was submitted on April 30, 2013, on behalf of WCC; and

**WHEREAS**, the City Council originally scheduled the request for approval of the Noise Mitigation Plan to be considered by the City Council during its May 1, 2013 meeting; and

**WHEREAS**, prior to consideration of the Noise Mitigation Plan by the City Council, WCC withdrew the request and informed the City of its intention to undertake construction activities on Saturdays without the approval of a Noise Mitigation Plan; and

**WHEREAS**, on Saturday May 18, 2013, WCC undertook construction activities at the site in violation of Code § 133-9(C) and without having obtained approval of a Noise Mitigation Plan; and

**WHEREAS**, a Stop Work Order was issued by the City Noise Control Official

to WCC on Saturday May 18, 2013; and

**WHEREAS**, in order to prevent further violation of the Noise Ordinance by WCC by Saturday construction activities, the City filed a Verified Complaint captioned City of Hoboken v. Waterfront Corporate Center III JV LLC, Dkt. No. HUD-L-002438-13, (“Action”) and Order to Show Cause with the Superior Court of New Jersey, Hudson County, seeking, among other things, the issuance of a temporary restraining Order (“TRO”) and permanent injunction prohibiting construction activities at the site on Saturdays without the prior approval of a Noise Mitigation Plan; and

**WHEREAS**, the Court scheduled a return date of May 30, 2013 for oral argument regarding the City’s request for a TRO; and

**WHEREAS**, prior to the May 30, 2013 return date, both WCC and the City submitted extensive briefing with the Court related to the validity and enforcement of the City’s Noise Ordinance; and

**WHEREAS**, prior to the May 30, 2013 return date, the Parties entered into mutual settlement discussions in an attempt to resolve the Litigation; and

**WHEREAS**, in order to fully review and discuss the proposed settlement, the City requested a two-week adjournment of the return date to June 14, 2013; and

**WHEREAS**, WCC objected to the adjournment request without the ability to undertake limited Saturday construction activities, pending either the acceptance of a settlement by the parties or a decision by the Court on the City’s application for a Temporary Restraining Order; and

**WHEREAS**, following argument regarding the adjournment request, the Court issued an Order on May 30, 2013 (“Order”) (marked as Schedule A and attached hereto) granting the two-week adjournment on the condition that certain defined and limited construction activities could take place on Saturdays prior to the resolution of the TRO or settlement, which activities are set forth in the text of the Order and transcript of the hearing; and

**WHEREAS**, the Order further directed the City Council to meet and to consider the settlement proposal; and

**WHEREAS**, the City Council has considered the terms of a proposed Settlement Agreement attached hereto as Schedule B and made a part hereof whereby the Verified Complaint and Action would be dismissed and the parties would release each other from any claims for damages.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Hoboken, that the Council as follows:

- (a) Finds that the acceptance of the Settlement Agreement would be in the best interest of the City and hereby accepts the terms of the Settlement

Agreement, marked as Schedule B attached hereto and authorizes Joseph J. Maraziti, Jr., Esq. Special Counsel, to execute it on behalf of the City of Hoboken.; and,

(b) The City Council in its capacity as redevelopment entity, reserves the right to suspend the Saturday Construction Work during the following events in order to minimize interference with such event and to promote the safety and general and welfare of the community:

Hoboken Pump and Run, June 29, 2013, 12noon to 3 pm  
July Fourth  
Italian Festival, September 5, 2013 to September 8, 2013  
Harvest Festival, October 19, 2013, 11am to 3 pm  
Hoboken Elysianettes 5k Run, October 26, 210am to 1 pm.

In addition, the City Council requests the cooperation of WCC to schedule its construction activities on weekdays to avoid interference with the following weekday events:

Party with a Purpose 5k, July 16, 2013, 7 pm  
Spaghetti Dinner, August 29, 2013 5pm to 8pm  
Italian Festival, September 5<sup>th</sup> and 6<sup>th</sup>

(c.) In the event of a material breach of the terms of this Settlement Agreement either Party may make an appropriate application to the Court for appropriate relief.

**BE IT FURTHER RESOLVED**, this resolution shall be effective immediately upon adoption.

**FAILED by the following vote: YEAS: 0 – NAYS: 6 ABSENT:2 PRESENT:  
ABSTAIN:  
YEAS: Council persons  
NAYS: Bhalla, Castellano, Giattino, Mason, Mello and Cunningham  
ABSENT: Occhipinti and Russo  
PRESENT:  
ABSTAIN:**

**--By Council**

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**Resolution As Amended Resolution #2  
Adopted by the following vote: YEAS: 4 – NAYS: 2 ABSENT:2 PRESENT:  
ABSTAIN:  
YEAS: Council persons Bhalla, Giattino, Mello and Cunningham**

**NAYS: Castellano and Mason**  
**ABSENT: Occhipinti and Russo**  
**PRESENT:**  
**ABSTAIN:**

**--By Council**

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**CLAIMS**

Total for this agenda: **\$1,272,211.76**

**Adopted by the following vote: YEAS: 5 – NAYS: 1 ABSENT: 2 PRESENT:**  
**ABSTAIN:**  
**YEAS: Council persons Bhalla, Castellano, Giattino, Mello and Cunningham**  
**NAYS: Mason**  
**ABSENT: Occhipinti and Russo**  
**PRESENT:**  
**ABSTAIN:**

**--By Council**

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**BA Wiest comments**  
**Council President comments**  
**Special Counsel Maraziti comments**

**At 10:22 PM the Governing Body on a motion by Council duly seconded by the Councilwoman Mason**

**Council President Cunningham then adjourned the meeting at 10:22 PM**

**Resolution authorizing Closed Session relating to attorney-client privilege and the release of confidential memoranda concerning allegations of conflicts of interest.**

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PRESIDENT OF THE COUNCIL

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CITY CLERK