SUPREME COURT OF NEW JERSEY
Docket No. 079967

CITY OF HOBOKEN, et al. Plaintiffs/Appellants, -vs.- SHIPYARD ASSOCIATES,L.P., Defendant/Respondent.	ON PETITION FOR CERTIFICATION CHALLENGING THE FINAL ORDER OF THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-004637-14
SHIPYARD ASSOCIATES,L.P., Plaintiff/Respondent, -vs.- HOBOKEN PLANNING BOARD, et al. Defendants/Appellants.	Docket No. A-004504-13 Docket No. A-004763-14 CIVIL ACTION Sat below:
SHIPYARD ASSOCIATES,L.P., Plaintiff/Appellant, -vs.- HUDSON COUNTY PLANNING BD.,et al., Defendants/Appellants.	Hon. Susan L. Reisner Hon Garry S. Rothstadt Hon. Thomas W. Sumners, Jr.

BRIEF IN SUPPORT OF PETITION FOR CERTIFICATION
On behalf of FUND FOR A BETTER WATERFRONT

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Date: October 25, 2017

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The Fund for Better Waterfront ("FBW") is a New Jersey 501(c)(3) nonprofit organization, that has been engaged for the past 25 years 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 in City of Hoboken v. Shipyard Associates, L.P., Docket No. L-004637-14, which was affirmed on appeal in A-4637-14T3 ("Developer's Agreement case"). It also secured amicus status in Shipyard Associates, L.P., v. Hoboken Planning Board, A-4504-14T3 (February 3, 2016)("Hoboken Planning Bd. case") and Shipyard Associates, L.P., v. Hudson County Planning Board, et al., A-4763-14T3 (February 10, 2016)("County Planning Bd. case").

On September 6, 2017 FBW filed an amended Notice of Petition for Certification, which had initially been filed as a joint application with Appellant/Petitioner, Hudson Tea Buildings Condominium Association, Inc. on August 21, 2017. On September 1, 2017, FBW made a joint submission in support of its Petition, which focused solely on the Developer's Agreement case, and on September 28, 2017, it filed an amicus brief in the Hoboken Planning Bd. case (which was the subject of a Notice of Petition filed by the Hoboken Planning Board and the City of Hoboken, respectively). Pursuant to the court's instructions, FBW has withdrawn its signature from its joint submission, and

is resubmitting its amicus brief as its sole Brief in Support of its Petition for Certification in Sup. Ct. Docket No. 079967.

STATEMENT OF THE CASE

This matter constitutes a three-part saga in which the public stands bewildered as to how the courts have granted Shipyard's approval of its amended application to build the Monarch Project on a development site that since at least 1997 has been understood by the public to be slated for development exclusively as open and recreational space; a site that is now off-limits to residential development pursuant to Hoboken's two flood-related ordinances. FBW has been involved in development controversies in Hoboken for well over two decades. It has seen numerous developers remain unresponsive to its concerns as well as concerns of other public objectors; however, it has never seen a developer refuse to cooperate with City officials and the Planning Bd. in the way Shipyard has acted in this case. Had Shipyard been more cooperative and respectful of the Developer's Agreement and the accepted rules governing the operation of the Planning Bd., it is clear that this controversial development would have played out differently, even if Shipyard had continued to pursue its desire to build residential towers on the Northern Pier.

The bottom line is that there are **no changed circumstances warranting release of Shipyard from its commitment** to build

tennis courts, as set forth in Phase VII of the Developer's Agreement. Given that reality, Shipyard refused to seek Hoboken's consent to file an amended application, let alone negotiate with Hoboken over the issue as required by the Developer's Agreement. Similarly, Shipyard refused to seek permission from the Hoboken Planning Bd. to file an amended application or submit any documentation establishing changed circumstances, and instead, kept insisting that it could file its amended site plan "as of right," as if the Developer's Agreement simply did not exist. And lastly, once it persuaded the Planning Bd. to deem its amended application complete by default pursuant to N.J.S.A. 55D-10.3 (because Planning Bd. staff had responded several days outside of the 45 days during which it was required to respond), it apparently did not feel the need to cooperate with the Planning Bd. when the Board kept telling Shipyard that it needed to file an application for certain variances in order for its application to be in fact complete under Hoboken's Ord. §196-26B.

Faced with Shipyard's intransigence, Hoboken sought to enforce the Developer's Agreement in court, and the Hoboken Planning Bd. denied the amended application without prejudice, pending the outcome of the City's lawsuit. However, once Judge Arre decided not to enforce the Developer's Agreement, because he thought that the Planning Bd. should determine changed

circumstances in the first instance (not the court), there was no matter pending before the Planning Board. Rather than waiting for the outcome of that legal action, Shipyard had already filed for automatic approval, and was on its way to securing approval of its amended application without ever having to satisfy its burden of establishing changed circumstances.

QUESTIONS PRESENTED

1. Did the trial and appellate courts misapply Toll Brothers when they failed to enforce the Developer's Agreement, where Shipyard had received all the benefits envisioned by its Planned Unit Development approvals and refused to present changed circumstances justifying its decision to back out of its remaining commitment to the Planning Bd., City and community?

2. Did the trial and appellate courts misapply Amerada Hess Corp. when they failed to apply a Manalapan exception to the Planning Bd.'s determination that it lacked jurisdiction?

3. Did the trial court fail to properly apply Hoboken's flood prevention ordinances in accord with N.J.S.A. 40:55D-10.5 at the time it reviewed the Planning Bd.'s decision regarding Shipyard's amended development application (a matter not discussed by the Appellate Court)?

4. Did the lower courts fail to give the County Planning Bd.'s and Freeholder's respective Resolutions the deference due as a matter of law? See Scully-Bozarth Post #1817 of Veterans of

Foreign Wars v. Planning Bd. of Burlington, 362 N.J. Super. 296, 313-34 (App. Div.), cert. denied, 178 N.J. 34 (2003)(deference due to resolution, which "must rise or fall on its own merits.")

ERRORS COMPLAINED OF

In support of its petition for certification, FBW will focus on two errors made by the trial court, and affirmed by the Appellate Division, in the Hoboken Planning Bd. case. Such errors are (1) misapplication of the lessons and holding of Amerada Hess Corp. v. Burlington County Planning Bd., 195 N.J. 616 (2008) (hereinafter "Amerada Hess Corp.") by converting a reasonable determination by the Planning Bd. and its counsel that it lacked jurisdiction to hear the amended application into a cynical "failure to hold a hearing." (HTSa1144). The Board's decision to **deny** the application without prejudice due to its expressed lack of jurisdiction constitutes requisite action under N.J.S.A. 40:55D-61, and does not support a judicial grant of default approval; if the Bd. was mistaken about its lack of jurisdiction - a Manalapan exception, -- the remedy was remand, not approval. In addition, despite the Planning Bd.'s October 13, 2011, resolution deeming Shipyard's amended site plan application complete (HTSa1454), the record was replete with letters from the Bd.'s Planning and Engineer Consultants indicating that the application was indeed "not complete," and that variances were required and calculations and other check-

list items needed to revised. Because an incomplete application is not entitled to any consideration on the merits, the public interest weighs against default approval.

Second, the trial court's dismissal and Appellate Division's perfunctory consideration of Hoboken's, and the Planning Bd.'s assertion that the Monarch Project, as set forth in its application, posed serious risks to the public's safety cannot be countenanced. The Supreme Court in Amerada Hess Corp. never contemplated the application of the default approval statutes under such circumstances. Whether this application falls within the limited "public health and welfare" exception, as advocated by Hoboken, or the MLUL's "health and public safety" exception to the time of submission rule, argued by the Planning Bd., is less important than the fact that under either legal theory, the Monarch Project should not have been approved on its merits.

REASONS WHY CERTIFICATION SHOULD BE ALLOWED

I. AS A MATTER OF LAW, DEFAULT APPROVAL IS NOT AN APPROPRIATE REMEDY WHEN THE LOCAL PLANNING BOARD DENIES AN APPLICATION FOR LACK OF JURISDICTION IN A TIMELY MANNER.

In the present case, the trial court granted default of Shipyard's amended preliminary application for an amended preliminary and final site plan application for one component, Block G, of a previously approved PUD (Ja1864-1881), despite the Planning Bd.'s reasonable determination that it did not have

jurisdiction to hear the amended application on its merits. The Appellate Division affirmed this decision with little or no discussion on the issue. Specifically, the trial court stated:

> By raising the jurisdiction issue --- which is more appropriate for determination as to the completeness of an application --- and ignoring a statutory requirement [N.J.S.A. 40:55D-22] to hear the matter, the practical effect of a request for a temporary withdrawal, a dismissal, or a denial without prejudice, is that the Planning Board has granted itself an extension of time.
> (HTSa1455)

Based on an erroneous assumption that the Board's jurisdiction is related to the completeness of the application, and that questions of jurisdiction can be waived (or determined at a hearing on the merits), the trial court then proceeded to conclude that to allow the Planning Bd. "to deny a complete application to await judicial clarification" of its jurisdiction over Shipyard's amended application would be no different than permitting it "to contrive determinations that 'end-run around' the strict application of the statutory timetable, in direct contravention to the Amerada Hess decision." (HTSa1457).

This decision is wrong as a matter of settled law, and clearly raises an issue of public importance (that was treated dismissively by the Appellate Division in a footnote). Cf. Allied Realty, Ltd. v. Borough of Saddle River, 221 N.J. Super. 407 (App. Div. 1987), certif. denied, 110 N.J. 304 (1988) (where Appellate Division reversed planning board's conclusion that *res*

judicata barred review of second application, but held that its denial was reasonable and precluded application of default approval statute). The question of the completeness of an application is not tied to the jurisdiction of the Planning Board.[1] And, where a board's expressed lack of jurisdiction is reasonable and without bad faith, even if ultimately proved to be wrong, there is no legal or factual justification for default approval. See Tanenbaum v. Wall Bd. of Adjustment, 407 N.J. Super. 371 (App. Div. 2009)(where court affirmed planning board's decision that it did not have jurisdiction to determine density variance, even though it was responsible for approving development in Mt. Laurel zones). If the board is mistaken about its lack of jurisdiction, the remedy is remand, not approval. Tanenbaum at 461 (citing TWC Realty v. Zoning Bd. of Adjust., 315 N.J. Super. 205, 224-225 (Law Div. 1998), aff'd o.b. 321 N.J. Super. 216 (App. Div. 1999)). See Manalapan Holding Co. v. Planning Bd. of Twp. of Hamilton, 92 N.J. 466, 480

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[1] Eastampton Center, LLC v. Planning Bd. of the Twp. of Eastampton, 354 N.J. Super. 171 (App. Div. 2002) where planning board's inaction stemmed from its belief that the application was incomplete, the trial judge's grant of automatic approval reversed) with Cicchine v. Township of Woodbridge, 413 N.J. Super. 393, 403 (Law Div. 2010)(holding that a board is "divested of jurisdiction" to modify a prior action that is the subject of an appeal, absent a remand despite the fact that the board accepted and processed a second, amended application for minor subdivision and bulk variances; automatic approval denied).

(1983)("reasonable misapprehension" as to legal question is an exception to automatic approval).

In its January 23, 2014 decision, the trial court characterized the Planning Bd.'s justification for denying (without prejudice) Shipyard's amended application without first holding a hearing on the merits as stemming from three concerns. (HTSa1446). The first two asserted that the Board did not have jurisdiction to hear the amended application, and the third, concerning "variances," raised an issue of completeness and proper notice. <u>See</u> <u>also</u> Ja238-248 (Hob. Pl. Bd. Res., dated August 7, 2012). The two jurisdictional concerns were intimately related to the question of whether Hoboken and the Planning Bd. could enforce the 1997 Developers Agreement (Ja43-70); that is, whether Shipyard had a right to amend its previously approved preliminary and final site plan for Block G without securing Hoboken's consent nor satisfying its burden of proving changed circumstances - both issues, then before Judge Arre in the trial court. The Planning Bd., a party to the Agreement made a determination that it (i) could not proceed without the consent of the City "as documented in a written Amendment to the Agreement that has been signed by all parties" (Ja240), and (ii) could not proceed when the enforceability of the Developer's Agreement and the question of whether Shipyard was permitted to file an amended site plan application was

before the Superior Court. (Ja241-242). The first basis - lack of consent to amend - places this matter within the ambit of Allied Realty, Ltd. v. Borough of Saddle River, 221 N.J. Super. at 407 (where board denied on the basis of *res judicata* without a hearing on the merits); and the second basis - pending litigation on application for same property - renders the holding in Cicchine v. Township of Woodbridge, 413 N.J. Super. at 403 (where planning board "divested of jurisdiction" to hear an amended application while the merits of the initial application were being litigated in the Superior Court, absent a remand) applicable as well. Seen through the lens of either precedent, the Planning Bd.'s denial of Shipyard's amended application does not constitute "inaction" for purposes of N.J.S.A. 40:55d-61, and default approval does not apply.

Not only did the trial and appellate courts err when they found that the Board's decision not to hold a hearing on the merits triggered N.J.S.A. 40:55d-61, but the trial court also erred when it insisted on applying N.J.S.A. 40:55D-22(a) to the facts herein without properly analyzing the intent of such provision. The Appellate Court remained silent on the issue. Pursuant to N.J.S.A. 40:55D-22(a) (Conditional Approvals), a municipal board is required to process a development application in accordance with the MLUL, "in the event . . . [that such] development is barred or prevented, directly or indirectly, by a

legal action instituted by any State agency, political subdivision or other party to protect the public health and welfare . . . .." And, if such application satisfies municipal development regulations it should be approved "conditioned on removal of such legal barrier to development." Id.

It is puzzling to FBW, how the lower courts could deem Hoboken's litigation against Shipyard to be the type of "legal action" intended to be covered by this provision. N.J.S.A. 40:55D-22(a) must be read together with subsection 22(b), which requires municipal boards to condition their approvals on additional agency action, such as permitting decisions, rather than wait for such agency action to occur. Accordingly, it is reasonable to conclude that subsection 22(a) also concerns such agency action; it just makes clear that if litigation is pending regarding such permits or approvals, the municipal board must nonetheless proceed. Hoboken's lawsuit to compel Shipyard to complete its PUD in accord with its initial 1997 approvals, prevent Shipyard from submitting an amended development application for Block G, and prevent the Planning Bd. from processing the amended application without Hoboken's consent is thus not the type of legal action contemplated by N.J.S.A. 40:55D-22(a). Hoboken's legal action challenged the Planning Bd.'s jurisdiction to decide the amended application on the merits; it did not seek to resolve "health and welfare" issues

related to the application of regulations or laws outside the scope of the Planning Board. The trial court seemed to ignore this distinction, and continued to insist that the Planning Bd.'s jurisdictional justifications for denial were spurious and adopted in bad faith. The Appellate Court implicitly agreed.

The conclusion that the Planning Bd.'s denial for lack of jurisdiction was not reasonable and was undertaken solely for purposes of delay is undermined by Judge Arre's opinion in A-004637-14T3. In his June 21, 2013 decision, Judge Arre held that it was not the court's role to determine, in the first instance, whether Shipyard had met its burden to establish sufficient change in circumstances to avoid an order compelling it to perform in accord with the terms of the Developer's Agreement; he noted, "that the proper determination as to whether changed circumstances exist . . . rests with the Planning Board." (Ja1501:T49-18 to 50-6). In this way, Judge Arre held that Shipyard was entitled to a hearing on changed circumstances before the Planning Bd., not a hearing on the merits of its amended application. He did not state or imply that absent changed circumstances, Shipyard would be entitled to proceed with its amended application without Hoboken's consent, nor that the Planning Bd. would be required to hold a hearing on the merits of that application if it found that Shipyard had not met its burden of proving changed circumstances. In other

words, he did not decide that the Planning Bd.'s denial of jurisdiction over the amended application was meritless, unreasonable or even wrong; he simply held that the Planning Bd. had to provide Shipyard with the opportunity to establish changed circumstances before the 1997 Resolution and the Developer's Agreement could be given preclusive effect. Cf. Allied Realty, Ltd. v. Borough of Saddle River, 221 N.J. Super. at 407 (holding that *res judicata* did not necessarily bar review of the application and the planning board had to provide applicant with an opportunity to demonstrate a change in circumstances).

Because circumstances similar to those in Allied Realty, Ltd. exist in this case, the Planning Bd.'s denial on the basis of lack of jurisdiction must also be deemed reasonable, even if not correct with respect for the need for Hoboken's consent. As the Appellate Court stated in Allied Realty, Ltd.,

> We, nevertheless, point out that the Board was of the view that it had rendered a final determination on Allied's application and the matter had concluded. Our careful reading of the record convinces us that the Board's belief in that respect was entirely reasonable under the circumstances.
> (Id. at 418-41)

Despite the Appellate Court's further conclusion that the board's "entirely reasonable" belief regarding the reviewability of the application was mistaken, it declined to apply the automatic approval statute. Instead, the court "remanded for

further proceedings consistent with [its] opinion. Id. at 420. See also Manalapan Holding Co. v. Planning Bd. of the Twp. of Hamilton, supra, 92 N.J. at 480 (holding that failure to timely act on an application is excusable when the board is "operating under an understandable misconception of law.").

Similarly, once Judge Arre's decision was rendered and there was no litigation regarding the enforceability of the Developer's Agreement with respect to Block G pending in the Superior Court, the trial court in the Hoboken Planning Bd. case should have remanded the matter to the Planning Bd. with directions to Shipyard to refile its amended application, this time with proof that changed circumstances justified abdication of its commitment to Hoboken and the public. Application of automatic approval to the facts of this case simply does not advance the legislative purpose behind the default approval statute - *i.e.*, to avoid deliberate delay; rather, "the remedy of automatic approval under the circumstances here disproportionately weighs against the public interest." Allied Realty, Ltd., supra, 221 N.J. Super. at 419-420.[2]

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[2] Amicus FBW refers this Court to the discussion in its Appellate Brief concerning the *de facto* incompleteness of Shipyard's application due to its refusal to submit variance applications requested by the Planning Bd. staff. The question raised by an application deemed complete by default, but which remains incomplete by the time a hearing is scheduled also raises an issue of public importance that the Appellate Division did not

II. THE LOWER COURTS FAILED, AS A MATTER OF LAW, TO APPROPRIATELY APPLY THE TIME OF DECISION RULE TO SHIPYARD'S APPLICATION.

In 2010, the N.J. Legislature enacted N.J.S.A. 40:55D-10.5 adopting the "time of application rule" whereby "those development regulations which are in effect on the date of submission of an application for development" govern the review of both "that application . . . and any decision" made with respect to that application. Id. See Dunbar Homes, Inc. v. Zoning Bd. of Adjustment of Franklin, 448 N.J. Super. 583, 586 (App. Div. 2017)(time of decision rule meant that land use decisions were based on ordinances existing at time application or appeal of application was being decided); Jai Sai Ram, LLC v. Zoning Bd. of the Borough of S. Toms River, 446 N.J. Super. 338, 343-344 (App. Div.), cert. denied 228 N.J. 69 (2016) (discussing the legislative intent behind N.J.S.A. 40:55D-10.5). The Legislature made an exception to this rule, however; it explicitly stated that "[a]ny provisions of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application. . .." Id. (emphasis added). In other words, the Legislature balanced the equities involved --- i.e., municipality's zoning interests

address except by reference in a footnote (although the panel questioned FBW at length about the issue).

against the developer's interest in protection against a change in use requirements --- and determined that when health and public safety ordinances are involved, the "time of decision rule" serves a beneficial purpose and thus applies; not the "time of application rule."

Notwithstanding this legislative decision, the trial court held that the time of decision rule was "not applicable to this case." (Ja1772); it reached its decision not by denying that Z-263 (Ja1792-1808) and Z-264 (Ja1810-1815), Hoboken's Flood Damage Prevention, Open Space and Recreation Ordinances, enacted on December 20, 2013 and January 8, 2014, respectively, constituted "health and public safety" ordinances. See Terner v. Spyco, Inc., 226 N.J. Super. 532, 543 (App. Div. 1988) (flood control ordinances primarily designed to protect safety). Rather, the trial court determined that the time of decision rule applied to the Planning Board's default approval of the application in July 2012 (when the Board allegedly failed to act by not holding a hearing); not when the court determined, in February 2014 (and again in May 2014), that the default statues actually applied to Shipyard's application for development. (Ja1773). This holding, affirmed by the Appellate panel without any discussion, seriously misunderstands the application of the time of decision principle in the context of land use matters

and raises a significant legal issue begging for this Court's resolution.

Prior to the 2010 amendment to the MLUL, effective May 5, 2011 enacting N.J.S.A. 40:55D-10.5, New Jersey courts generally applied the "time of decision" rule to zoning matters holding that the zoning ordinance in effect at the time of a judicial decision controls. See Kruvant v. Mayor and Council of Cedar Grove Twp., 82 N.J. 435, 440 (1980) (stating that under the time-of-decision rule, an appellate court may apply the statute and/or ordinance in effect at the time of its decision, "at least when the legislature intended that its modification be retroactive to pending cases."). In Kruvant, the N.J. Supreme Court explained that in the context of land use matters, the time of decision rule means that the zoning ordinance in effect **at the time the case is ultimately decided by a court** is the ordinance that is controlling. Kruvant v. Mayor and Council of Cedar Grove Twp., supra., 82 N.J. at 442 (citations omitted). This general principle, however, was not applied when a court found that a developer's rights had vested under either N.J.S.A. 40:55D-49(a) (preliminary site approval) or N.J.S.A. 55D:52-52(a) (final site approval). See e.g., S.T.C. Corp. v. Planning Bd. of Hillsborough, 194 N.J. Super. 333, 336 (App. Div. 1984)(holding that upon preliminary site approval, an applicant's statutory rights vest for a 3-year period thus

protecting against a change in use requirements).[3] But since the enactment of N.J.S.A. 40:55D-10.5, the importance of "vested" development rights has diminished. This is the case, because the language of N.J.S.A. 40:55D-10.5 ("Notwithstanding any provision of law to the contrary . . . ") suggests that such provision overrides the vested rights that attach to development approvals under sections 46 and 52, by imposing the rule that ordinances in effect at the time an application is submitted always prevail (regardless of when a court reviews the validity of a particular board decision), except in the case of health and safety ordinances. See Cox & Konig, supra, §19-3.5 at 402.

Applying N.J.S.A. 40:55D-10.5's explicit exception for health and safety ordinances through the prism of this Court's statement of the time of decision rule in Kruvant, it is apparent that the trial court and the Appellate Division should have applied Z-263, a zoning ordinance designed to mitigate potential flood hazards (as well as Z-264 which is not governed by the MLUL but was adopted pursuant to Hoboken's general police powers) to the Monarch project. In the context of the language

[3] It should be noted that according to the specific language of N.J.S.A. 40:55D-49(a) and N.J.S.A. 40:55D-52(a), read together, "holders of site plan approval were never protected against [zoning] amendments related to health and safety." Cox & Koenig, New Jersey Zoning and Land Use Administration §19-3.5 at 410 (GANN, 2015).

and intent of N.J.S.A. 40:55D-10.5, this is the only outcome that makes sense as a matter of law as well as public policy.

For example, let us create an analogous situation by picturing a train in motion, and a conductor who, after the train has left the station, is faced with new track rules that could impact the proper operation of his train. He stops to decide what to do in consultation with his supervisor, but they then decide to continue forward because the supervisor determines that the conductor was implicitly given approval by inaction to operate his train before the new track rules went into effect. The new rules, however, were explicitly put in place to protect passengers and the public against significant health and safety risks. At the time the supervisor decides that the conductor was previously given approval by inaction (or default), the supervisor should be compelled to consider the new rules, as a matter of public policy. Otherwise, courts and municipal agencies would never be able to stop a train wreck in the making, even if they are aware of new public safety rules at the time they make their decision.

With this analogy in mind, it is safe to say that the trial court and Appellate panel erred as a matter of law and policy when they failed to apply the time of decision rule to this matter, and failed to take into consideration Z-263 and Z-264, the prevailing ordinances at the time they respectively granted

and affirmed Shipyard's request for automatic approval. Had the lower courts followed the Legislature's directive on this issue, they would have denied Shipyard's application to construct the Monarch Project on Hoboken's waterfront because, at the time of their respective decisions, residential construction on the Northern Pier, among other restrictions, was prohibited.

CONCLUSION

For all the foregoing reasons, this Court should grant FBW's petition for certification. The upshot of this three-part saga is that Shipyard at best, is entitled to a hearing on changed circumstances. Default approval is simply not appropriate, and the Appellate Court's decision in all three matters should be reversed. This matter should be remanded to the Planning Bd. for a hearing on whether Shipyard may file an amended application for Block G, let alone an application for residential construction. Furthermore, FBW and the residents of Hoboken deserve an opportunity to participate in such a hearing, since the future of a significant portion of the waterfront and the safety of their City is at stake.

Respectfully submitted,

NEW JERSEY APPLESEED PILC

Dated: October 24, 2017

Renée Steinhagen, Esq.
On behalf of Petitioner FBW