

MEETING OF MAY 19, 2010

MINUTES OF A MEETING OF THE COUNCIL OF THE CITY OF HOBOKEN, NEW JERSEY, HELD IN THE COUNCIL CHAMBERS, CITY HALL, HOBOKEN, NEW JERSEY, WEDNESDAY, MAY 19, 2010 AT 7:00 PM

President Cunningham opened the meeting at 7:05 p.m. 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 was furnished to The Jersey Journal and 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, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

ABSENT: Giacchi.

PUBLIC HEARING and FINAL VOTE ON ORDINANCES

Second Reading / Public Hearing and Final Vote

AN ORDINANCE OF THE CITY OF HOBOKEN, IN THE COUNTY OF HUDSON, NEW JERSEY, PROVIDING FOR THE CONSTRUCTION OF A PREFABRICATED STEEL BUILDING FOR USE BY THE CITY AS THE ENVIRONMENTAL SERVICES GARAGE AND RELATED EXPENSES AND APPROPRIATING \$1,980,000 THEREFORE, AND PROVIDING FOR THE ISSUANCE OF \$1,885,700 IN BONDS OR NOTES OF THE CITY OF HOBOKEN TO FINANCE THE SAME. **Z-32**
(will be heard for second reading at the June 2, 2010 Council meeting.)

AN ORDINANCE OF THE CITY OF HOBOKEN, IN THE COUNTY OF HUDSON, NEW JERSEY, PROVIDING FOR VARIOUS CAPITAL IMPROVEMENTS AND OTHER RELATED EXPENSES IN AND FOR THE CITY OF HOBOKEN, AND APPROPRIATING \$425,000 OF \$403,750 IN BONDS OR NOTES OF THE CITY OF HOBOKEN TO FINANCE THE SAME. **Z-33**

President Cunningham directed the City Clerk to announce that the Council would consider for final passage the aforesaid ordinance and all persons interested at this time would be

given an opportunity to be heard concerning said ordinance of which the heading was read in full.

No other person present desiring to be heard and no written protests or objections received, Councilman Cunningham asked for a motion to close the hearing.

President Cunningham moved that the hearing be closed.

Motion duly seconded by Councilwoman Marsh.

---Adopted by the following vote: YEAS: 8 - NAYS: 0 – ABSENT - 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: None.

---Absent: Giacchi.

President Cunningham then instructed the City Clerk to call the Final Vote for the above Ordinance.

---Adopted by the following vote: YEAS: 8 - NAYS: 0 – ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham

---Nays: None.

---Absent: Giacchi

ORDINANCE AUTHORIZING THE REVERSION TO A CALENDAR FISCAL YEAR PURSUANT TO N.J.S.A. 40A:4.3.2(b) **Z-38**

President Cunningham directed the City Clerk to announce that the Council would consider for final passage the aforesaid ordinance and all persons interested at this time would be given an opportunity to be heard concerning said ordinance of which the heading was read in full.

The speaker who spoke: Thomas Greene.

No other person present desiring to be heard and no written protests or objections received, President Cunningham asked for a motion to close the hearing.

President Cunningham moved that the hearing be closed.

Motion duly seconded by Councilwoman Marsh.

---Adopted by the following vote: YEAS: 8 - NAYS: 0 – ABSENT - 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: None.

---Absent: Giacchi.

President Cunningham then instructed the City Clerk to call the Final Vote for the above Ordinance.

---Adopted by the following vote: YEAS: 5 - NAYS: 3 – ABSENT: 1

---Yeas: Council persons Bhalla, Lenz, Marsh, Mello, and President Cunningham

---Nays: Castellano, Mason, Russo.

---Absent: Giacchi.

AN ORDINANCE AMENDING THE “ CITIZENS SERVICE ACT” TO PROVIDE FOR DISCLOSURE OF CERTAIN POLITICAL CONTRIBUTIONS MAY BE THOSE SEEKING APPOINTMENT TO MUNICIPAL BOARD AND AGENCIES. **Z-39** (will be heard for second reading at the **June 2, 2010 Council meeting.**)

PETITIONS AND COMMUNICATIONS

10-412B

COMMUNICATION FROM MAYOR ZIMMER REGARDING THE REDEVELOPMENT PROCESS AND THE WESTERN EDGE.

To: Hoboken City Council
From: Dawn Zimmer, Mayor Dawn Zimmer
Subject: Western Edge Redevelopment Plan

In order to clarify the City’s proper role in redevelopment projects, I have asked Community Development Director Brandy Forbes to outline the process and, specifically, the status of the Western Edge Redevelopment Plan.

Too often in the past redevelopment has been based on what developers wanted rather than what was best for our community. Last summer the City Council took an important step to correct these practices by passing an ordinance confirming its role as the redevelopment agency.

Moving forward, we will make redevelopment a very open and public process that ensures we are following the letter of the law. This will enhance the City’s negotiating advantage, make transparency and public input a priority, and give us greater control over the redevelopment process.

I look forward to working with the Council to ensure that redevelopment in Hoboken is based on what is right for our community.

Sincerely,

Mayor Dawn Zimmer

Received and Filed.

10-413

APPLICATIONS FOR MISCELLANEOUS LICENSES

Raffles 1

- Councilman Lenz moved that the licenses be granted.
- Motion duly seconded by Councilwoman Marsh
- Adopted by the following vote: YEAS: 8 - NAYS: 0 –ABSENT - 1
- Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.
- Nays: None.

---Absent: Giacchi.

REPORTS OF CITY OFFICERS

10-414

A report of the Municipal Tax Collector Sharon Curran for taxes collected for the month of April 2010 - \$13,485,891.21. (Abatement Totals - \$963,014.00)

---Received and filed.

RESOLUTIONS

Presented and Read

10-415

---By Councilman Mello

RESOLUTION PERMITTING THE ESTABLISHMENT OF NINETY (90) DAY TEMPORARY CAR SHARING PARKING ZONES AT VARIOUS ON-STREET LOCATIONS THROUGHOUT THE CITY OF HOBOKEN FOR THE PURPOSE OF INITIATING THE CITY-WIDE CAR SHARING PROGRAM ENTITLED " HOBOKEN CORNER CARS"

WHEREAS, the location of car sharing vehicles in Hoboken has been demonstrated to reduce the number of vehicles parked on-street; and

WHEREAS, the City Council recently awarded a contract to a vendor to manage a city-wide car sharing program; and,

WHEREAS, preliminary placement of car-sharing vehicles on-street in temporary car-sharing parking zones would allow the Department of Transportation and Parking to identify the ideal locations for car sharing vehicles; and,

WHEREAS, the Department of Transportation and Parking would coordinate and seek approval from individual ward council persons where car sharing parking zones are planned prior to placement of car-sharing vehicles; and,

WHEREAS, upon demonstration that temporary car-sharing zones are functioning effectively the Department of Transportation and Parking would seek City Council approval for an ordinance permanently establishing car-sharing zones upon the City' s streets.

NOW THEREFORE, BE IT RESOLVED, that:

1. A maximum of fifty (50) temporary car-sharing parking zones be established at various on-street locations throughout the City of Hoboken.
2. The temporary car-sharing zones shall be established for a maximum of ninety (90) days, after which time the Department of Transportation and Parking shall provide the City Council with the identified ideal permanent locations for the car-sharing vehicles and seek approval of the City Council to establish those cites permanently by ordinance.

3. The purpose of this resolution shall be to initiate the city-wide car sharing program, which shall, from this point forward, be entitled “ Hoboken Corner Cars.”

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be provided to Mayor Dawn Zimmer to take any actions necessary to complete and realize the intent and purpose of this resolution.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

The speaker who spoke: Rozzano Trotman.

---Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 7 - NAYS: 1 – ABSENT - 1

---Yeas: Council persons Bhalla, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: Castellano.

---Absent: Giacchi.

10-416

---By Councilwoman Marsh

RESOLUTION AFFIRMING GRANT OF USE VARIANCE BY ZONING BOARD OF ADJUSTMENT ON DEVELOPMENT APPLICATION OF 226 PARK REALTY, LLC AND APPEAL OF DANIEL TUMPSON.

WHEREAS, an application variance relief incidental to Minor Site Plan approval was granted to 226 Park Realty, LLC ("Applicant") on October 20, 2009 (memorialized December 15, 2009) by the Hoboken Zoning Board of Adjustment, in connection with proposed improvements to property commonly known as 226 Park Avenue, more particularly described as Block 165, Lot 23, on the tax map of the City of Hoboken, County of Hudson, State of New Jersey (the "Property"); and

WHEREAS, Daniel Tumpson filed a timely appeal to the City Council pursuant to N.J.S.A. 40:55D-17 and Hoboken Code Section 44-34, of the grant of the (d)(5) and (d)(6) “ use” variances [N.J.S.A. 40:55D-70(d)(5) and N.J.S.A. 40:55D-70 (d)(6)];, and

WHEREAS, a *de novo* review by the City Council was conducted on April 20, 2010, based upon the record established before the Zoning Board in public hearings on August 18, 2009 and October 20, 2009, and,

WHEREAS, for purposes of this appeal to the City Council, the appellate authority of the City Council was limited to:

1. Relief from **Section 196-14E(6)(a)** of the Zoning Ordinance, where the maximum number of stories is three (3) stories, and the Applicant proposed four (4) stories; and

2. Relief from **Section 196-14E(8)** of the Zoning Ordinance, where the maximum dwelling units are 3.8 dwelling units, and the Applicant proposed four dwelling units; and

3. Relief from **Section 196-14E(6)(a)** of the Zoning Ordinance, where, if both adjacent buildings are lower than the maximum permitted, then the building may match the higher of lower building (which is 34 feet above base flood elevation), and the Applicant proposed a building of 40 feet above base flood elevation (the Applicant originally requesting height of 43 feet above base flood elevation but amending its request to 40 at the hearing on October 20th); and

WHEREAS, at the *de novo* review on April 20, 2010 oral argument was presented by Applicant's attorney, Douglas F. Doyle, Esq., of DeCotiis, Fitzpatrick & Cole, LLP, Daniel Tumpson, pro se, and Douglas M. Bern, Esq., of Kaufman, Bern, Deutsch & Liebman, LLP, the Zoning Board attorney; and

WHEREAS, the record included the following documents in evidence:

- Exhibit A-1** - Board-mounted photographs of aerial view of neighborhood and each adjacent building;
- Exhibit A-2** - Survey elevation of Caulfield & Associates;
- Exhibit A-3** - Schematic drawing;
- Exhibit A-5** - Photographs of adjacent properties;
- Exhibit O-1** - Nine photographs of existing conditions;
- Exhibit O-2** - Four photographs of the site; and

WHEREAS, on April 20, 2010 the City Council approved the development application of 226 Park Realty, LLC and intends by this Resolution to memorialize its findings, conclusions and conditions with respect to the application;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hoboken that the following facts and conclusions of law are hereby made and determined:

1. Applicant is the developer of property commonly known as 226 Park Avenue, Hoboken, New Jersey, and more particularly described as Block 165, Lot 23 on the Tax Map of the City of Hoboken (the "Property"). The Property is located within the "R-1" Residential Zone District pursuant to the Zoning Ordinance of the City of Hoboken. Applicant intends to construct a four-story, four-unit residential structure with rear balconies (the "Project") on an existing vacant site, which previously accommodated a dilapidated two-story residential structure and shed at the rear of the Property.

2. The Property is located on the western side of Park Avenue between Second and Third Streets, on a lot of 2,500 square feet. The adjacent building to the north is improved with a three-story mixed-use building, with a commercial unit on the first floor and residences on the upper floors. The property to the south is improved with a three-story residential structure.

3. The subject application is supported by the following documents:

- **Application for Minor Site Plan Approval dated March 3, 2009.**
- **Site Plan and Architectural Drawings prepared by James Mc Neight dated September 9, 2008, last revised June 8, 2009.**
- **Survey of the Property prepared by Caulfield Associates, dated June 2, 2008.**
- **Planning and Zoning Analysis prepared by Community Housing & Planning Associates, dated August 14, 2008, last revised March 3, 2009.**

4. At the hearings before the Hoboken Zoning Board of Adjustment on August 18, 2009 and October 20, 2009, Applicant through counsel, Stephen R. Spector, Esq., presented testimony by: architect James Mc Neight, Applicant's Planner, David Spatz, and Anthony Sabia, a general contractor, and principal of the Applicant. At the hearing on October 20, 2009, objectors Paul Pizzuti, Jodie Fink, and Cassie Warrington, through their counsel, George Pappas, Esq., and testimony was also provided by objectors' planner, Richard Lapinski. Objectors Cassie Warrington and Jodie Fink also testified on October 20, 2009.

August 18, 2009 Hearing

5. At the hearing on August 18, 2009, Mr. Mc Neight testified that the proposed building is a common building type for a 2,500 square foot piece of land. He stated that the second through fourth floors are the same layout, and there is an interior stairway providing for a three-bedroom layout. There is also a ten-foot balcony in the back of each unit (floors one through four) containing the exterior stairs.

6. Mr. Mc Neight further testified that the rear yard would contain a ten foot deck, with 30 feet having a planted area and a six-foot wooden fence and three sides demarcating the lot

and landscaped grass. He stated that the construction would not cause any increase in flow of stormwater.

7. Mr. Mc Neight offered the opinion that the building is in character with the rest of the block, emphasizing that the two adjacent buildings would have a zero front yard setback.

8. Anthony Sabia, the contractor and a principal of the Applicant, testified that he measured the adjoining building at 228 Park Avenue, which was 32 feet, 1 inch in height measured from sidewalk to roof, and 33 feet, 9 inches in height measured from sidewalk to cornice. He also measured the building to the stoop instead of to the sidewalk. He stated that with respect to adjoining 224 Park Avenue, from the sidewalk to the roofline, the proposed building is 30 feet, 8 inches, and, measured to the cornice, it is 31 feet, 4 inches. The Board discussed that measuring to the sidewalk would have added another six inches to the permitted height, so the Applicant actually used a measurement that was not as favorable to him.

October 20, 2009 Hearing

9. At the October 20th hearing, David Spatz, Applicant's planner, described the variances requested. He stated that in connection with the "d(6)" variance for height, Applicant could rely upon *Grasso v. Borough of Spring Lake Heights*, 375 N.J. Super. 41 (App. Div. 2004), as "special reasons" are satisfied if a taller structure than what is permitted is still consistent with the surrounding neighborhood.

10. Mr. Spatz opined that the proposed building is compatible with the residential uses in the vicinity. He testified that the western side of Park Avenue between Second and Third Streets is developed with three-family, four-family and five-family homes. He added that there are five-story buildings located further north, and several buildings to the south are four stories, even though the adjacent buildings are three stories in height.

11. Mr. Spatz testified that with respect to the "d(5)" density variance, the proposed building is also consistent with the surrounding buildings. He added that to the south, the three-unit buildings would provide densities of 55 units per acre, while the proposed site would have a density of 69 units per acre. He stated that to the north, on Lots 21, 20 and 19, there are densities of 103 units per acres, 165 units per acre and 348 units per acres, which are significantly lower than the densities of the buildings closest to the site.

12. Mr. Spatz stated that no parking is required, so there is no effect on the existing curb cut or the neighborhood, and drainage can be handled at the site. He opined that the site can support four units.

13. Mr. Spatz offered several purposes of zoning to justify the "use" variances, more particularly: (i) N.J.S.A. 40:55D-2(e), as there is an establishment of appropriate population densities and concentrations that contribute to the well-being of persons, neighborhoods, communities and regions, and (ii) N.J.S.A. 40:55D-2(i), as the Project promotes a desirable visual environment through creative development techniques and good civic design and arrangement.

14. Mr. Spatz added that pursuant to *Burbridge v. Mine Hill Township*, 117 N.J. 376 (1990), special reasons are met through the promotion of the general welfare and the provision of desirable visual environment, as the building that was on the site was removed, and was in poor condition. Mr. Spatz also stated that pursuant to *Home Builders of South Jersey, Inc. v. Township of Berlin*, 81 N.J. 127, 145 (1979), special reasons are met through the preservation of neighborhood character and conservation of neighborhood values. He stated that the four-unit building is in character with the existing neighborhood, which is residentially developed.

15. Mr. Spatz opined that there are no substantial detriments to the public good or substantial impairments to the Hoboken Master plan or zoning ordinance, which is a required finding by this body under N.J.S.A. 40:55D-70(d).

16. In response to cross-examination by Mr. Pappas, Mr. Spatz explained the method of determining height which was based upon heights of the adjacent buildings, as the new building did not occupy more than 50 feet of frontage, and the heights of the adjacent buildings were lower than the maximum permitted.

17. In its determination, the Zoning Board noted that the judgment of Hon. Maurice J. Gallipoli, J.S.C. dated January 2, 2009, with respect to 259 Second Street, precludes rounding up in calculating density (so a d(5) density was required for 3.8 units when 4 units is permitted).

18. In response to a question from a Zoning Board member, Mr. Mc Neight replied that the cornice could be removed so that the height of the building would be 40 feet instead of 43 feet.

19. Cassie Warrington, who resides in Apartment 3L, 230 Park Avenue, expressed concern that her sunlight would be blocked. On cross-examination, Ms. Warrington stated that the windows are now partially obstructed by the building at 228 Park Avenue, including the building's chimney at 228 Park Avenue. Jodie Fink, who resides in 230 Park Avenue #4L, testified that a main feature which attracted her to the apartment was its three windows, and with the proposed four stories at 226 Park Avenue, she would be losing her view and the light and air would be diminished. She also acknowledged that the chimney of 228 Park Avenue blocks some sun and light.

20. Objectors' expert planning witness, Richard Lapinski, offered the opinion that the site would not be able to accommodate the fourth unit. He concluded that there is no justification for increasing either the number of stories or the height of the building. He noted that while the amount of interference would be subjective, a four-story building at the site would have some impact on adjoining property. He acknowledged that the amount of light restricted was not measured and he had no study confirming blocking views from the adjoining properties.

21. Additional testimony was taken from Daniel Tumpson, appellant herein, of 230 Park Avenue. He stated that if the subject height variance were granted, a proposed building at 228 Park Avenue would be able to match the lower of the two buildings next to it pursuant to Section 196-14E(6)(a), and one would be the new height of the building at 226 Park Avenue. He noted that if that were to happen, the owner of 228 Park Avenue would then be able to block the third floor windows in 230 Park Avenue, creating harm to the inhabitants.

22. The City Council disagrees on this fundamental point. The subject ordinance (hereinafter "Infill Ordinance"), reads as follows:

§ 196-14E(6) Building height.

(a) R-1 District: Principal buildings, a maximum of three (3) stories but in no event more than forty (40) feet above base flood elevation, whichever is less.

[1]

[2] Where a new building occupies no more than fifty (50) feet of frontage between two (2) existing adjacent principal buildings whose height (as measured in feet) is lower than the maximum permitted for the district, the new structure may match the height of the higher of the two (2) buildings. Where the adjacent buildings are higher than the maximum permitted for the district, the new structure may match the lower of the two (2) buildings. Final height in such a case includes any front parapet.

Accordingly, a new, infill construction on 228 Park Avenue could be as high as forty (40) feet as of right, which would have the same effect of blocking in whole or in part the window views from 230 Park Avenue. And, the addition of a fourth floor or story at 228 Park Avenue would still require a "d(6)" use variance from the Zoning Board.

1. The City Council approaches its *de novo* review of the record established before the Zoning Board fully cognizant that it is reaching its own conclusions based on the record created before the Board. It is not evaluating the decision-making of the Board or reviewing that decision based upon any presumption favoring the Board's decision.
 - Further, the City Council is aware that the burden of proof remains with the Applicant and not with appellant Tumpson.

- Thus, the City Council is focused on categorical “use” variances in the subject development application, as follows:
- Relief from **Section 196-14E(6)(a)** of the Zoning Ordinance, where the maximum number of stories is three (3) stories, and the Applicant proposed four (4) stories; and
- Relief from **Section 196-14E(8)** of the Zoning Ordinance, where the maximum dwelling units are 3.8 dwelling units, and the Applicant proposed four dwelling units; and
- Relief from **Section 196-14E(6)(a)** of the Zoning Ordinance, where, if both adjacent buildings are lower than the maximum permitted, then the building may match the higher of lower building (which is 34 feet above base flood elevation), and the Applicant proposed a building of 40 feet above base flood elevation (the Applicant originally requesting height of 43 feet above base flood elevation but amending its request to 40 at the hearing on October 20th);
- Predicated upon the report and the testimony of the Applicant’s planner, Mr. Spath, the City Council concludes that:
 - a. The Project promotes the general welfare and provides a desirable visual environment. The proposal provides for the replacement of a building in poor condition (now demolished) with new construction that continues the very positive trend of upgrading housing in the neighborhood while preserving the “streetscape”. New construction during these very difficult economic times is a testament to the vitality of Hoboken and is to be encouraged, so long as it is compatible with the existing neighborhood development.
 - b. The proposed four unit residential use is permitted in the “R-1” zone. Multi-family buildings are located on either side of the subject site. The proposed development is compatible with the residential uses in the vicinity. It does not overwhelm adjoining properties. The Project will not result in any loss of parking or any additional curb cuts.
 - c. The Infill Ordinance is intended to preserve three-story residential construction where there is a consistency of three-story structures. That is not the case here.

23. With regard to the height “d(6)” variance the Superior Court has held in *Grasso v. Spring Lake Heights*, that the benefit of harmonious, consistent styles of houses could outweigh any aesthetic detriment arising out of an “excessive” height structure. Thus, “special reasons” could exist if it is demonstrated that a taller structure other than that permitted by ordinance would be consistent with the surrounding neighborhood. Here, the western side of Park Avenue, between Second and Third Streets is developed with a mixture of three, four and five-story buildings. While the buildings on either side of the site are three stories, three buildings to the north are five stories high and several buildings to the south are four stories in height, in addition to a six story multi-family building. Therefore, the proposed four-floor building, with height of 40 feet above grade, is characteristic of the neighborhood.

24. The historical “down-zoning” to three stories in the R-1 Zone was to preserve the integrity of three-story residential blocks. This block does not possess that integrity of design and thus the height variances are justified. Further, as stated by one Council member, the Infill Ordinance was also intended to preserve older buildings, acknowledging the aesthetics and

architectural value of brownstones of a certain height and scale. The subject block has lost, to a certain extent, that opportunity because of new construction.

25. In connection with the “ d(5)” variance for density, *Grubbs v. Slothower*, 389 N.J. Super. 377, 389-390 (App. Div. 2007), held that a successful applicant must show that despite the proposed increase in density the project would promote one or more purposes of zoning or is consistent with the overall goals of the Municipal Land Use Law. An applicant can demonstrate that the site will accommodate the problems associated with a proposed use with a greater density than permitted by ordinance. In this matter, the similar residential building to the south has a density of 55 units per acre and the proposed four-unit Project would provide a density of 69 units per acre. The building directly to the north contains two units and a commercial space in a mixed use building. Further to the north are multi-family buildings up to the corner of Third Street, with buildings providing densities of 183 dwelling units per acre (Lot 21), 165 dwelling unit per acre (Lot 20), and 348 dwelling unit pr acre (Lot 19). Accordingly, the Project’ s four dwelling units would be characteristic of densities in the surrounding neighborhood. In sum, the Council finds that additional “ special reasons” do exist for the “ d(5)” and “ d(6)” variance relief requested by the Applicant; specifically that the height and densities of the proposed building will be in keeping with neighboring structures.

26. With regard to the negative criteria for “ d” variances, generally they are not granted unless they can be granted (1) without **substantial** detriment to the public good, and (2) without **substantially** impairing the intent and purpose of the zone plan and ordinance. *Medici v. BPR Co.*, 107 N.J. 1, 1, 3, 23-24 (1987). The detriment or impairment must truly be “ substantial”, as the granting of any variance will have an impact to some degree. *Medici*, 107 N.J. 1, 23-4 (1987).

27. Based upon the reports and testimony of the Applicant’ s planner, the Board finds that the variances may be granted without substantial detriment to the public good because:

a. The Project will not have a substantial detriment to the public good by permitting a building that is slightly taller and of greater density than permitted, because other neighboring buildings on Park Avenue have similar housing and densities that are consistent with the proposed development.

b. The Project is in character with the surrounding residential land uses and is compatible with the existing neighborhood development.

c. The Applicant is only seeking two bulk variances: one in connection with the lot coverage for the deck and the other for minimum front yard, which is similar to existing residential development in the neighborhood.

d. The Applicant is not proposing any parking at the site (nor is it required), so the curb cut will not be affected.

e. The proposed multi-family residential use is permitted in the R-1 Residential Zone, and the proposed development is compatible with the residential uses in the vicinity and continues the trend toward new multi-family residential development in the city, including the adaptive reuse of existing structures.

f. The Project implements recommendations of the Hoboken Master Plan, Recommendation No. “ 1” because it promotes compatibility in design and orientation between new and existing development.

28. In sum, the Applicant has demonstrated, and the City Council finds, that the negative criteria are satisfied in that granting the “d(5)” and “d(6)” variances will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The Council finds that the deviations from the provisions of the zoning ordinance are not individually or cumulatively so substantial as to substantially impair the intent and purpose of the zone plan or zoning ordinance. The Council further finds that benefits of the Project substantially outweigh any possible detriment which might result from the deviations, and the granting of the variances pursuant to N.J.S.A. 40-55D-70(d) are appropriate.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hoboken that the within development application be granted subject to the conditions imposed by the Zoning Board of Adjustment in its memorializing resolution of December 15, 2009, and with the following additional conditions:

- The parapet/cornice shall be removed, resulting in a height of 40 feet above base flood elevation.
- The rear balcony shall be reduced to a depth of seven feet and a width reduced by two feet on either side (which results in lot coverage of 5.88% for the balcony).
-

Speakers on the above resolution: Mo DeGennaro, Dan Tumpson, Mary Ondrejka, Cheryl Fallick.

---Motion duly seconded by President Cunningham.

---Adopted by the following vote: YEAS: 5 - NAYS: 0 – ABSTAIN - 3 ABSENT: 1

---Yeas: Council persons Castellano, Lenz, Marsh, Mello, and President Cunningham.

---Nays: None.

---Abstain: Bhalla, Mello, Russo.

---Absent: Giacchi, Mason.

10-417

---By Councilwoman Mello

A RESOLUTION APPROVING PARTICIPATION WITH THE NEW JERSEY DIVISION OF HIGHWAY TRAFFIC SAFETY for the Click it or Ticket Mobilization OF MAY 24 THROUGH JUNE 6 2010

WHEREAS, the City of Hoboken is interested in participating with the N.J. Division of Highway Traffic Safety and supporting their **Click It or Ticket Seat Belt Campaign**, and

WHEREAS, there were 586 motor vehicle fatalities in New Jersey in 2009, and

WHEREAS, a large percentage of the motor vehicle occupants killed in traffic crashes were not wearing a seat belt, and

WHEREAS, use of a safety belt remains the most effective way to avoid death or serious injury in a motor vehicle crash, and

WHEREAS, the Division of Highway Traffic Safety estimates that 135,000 lives have been saved by safety belt usage nationally between 1975-2000, and

WHEREAS, the State of New Jersey will participate in the nationwide Click It or Ticket Safety Belt Mobilization from May 24 - June 6 2010 in an effort to raise awareness and increase safety belt usage through a combination of enforcement and education, and

WHEREAS, the Division of Highway Traffic Safety has set a goal of increasing the safety belt usage rate in the state from the current level of 92.67% to 100%, and

WHEREAS, a further increase in safety belt usage in New Jersey will save lives on our roadways;

NOW, THEREFORE, BE IT RESOLVED, by the **Hoboken City Council** that;

1) The Mayor or his designee is authorized to execute the above reference program, and all other documents to fulfill the intent of the program.

2) As a matter of public policy, the **City of Hoboken** wishes to participate to the fullest extent possible with the **Click It or Ticket Safety Belt Mobilization** both locally and nationally from May 24 - June 6 2010 and pledges to increase awareness of the mobilization and the benefits of safety belt use.

--Motion duly seconded by Councilwoman Marsh

--Adopted by the following vote: YEAS: 8 - NAYS: 0- ABSENT: 1

--Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

--Nays: None.

--Absent: Giacchi.

10-418

--By Councilman Bhalla

**RESOLUTION AUTHORIZING THE CITY COUNCIL TO APPROVE COUNCIL CALENDAR
FOR JULY 2010 THROUGH JUNE 2011**

RESOLVED, that the following dates and times listed below are adopted as the official meeting dates of the Hoboken City Council for July 2010 through June 2011, and be it further

RESOLVED, that in accordance with N.J.S.A. 10:4-8(d) and 10:4-18 (Open Public Meetings Act), within seven (7) days of passage of this Resolution, the City Clerk shall (a) prominently post this Resolution in at least one location at City Hall reserved for similar announcements; (b) mail, telephone, telegram or hand deliver this Resolution to all of the official newspapers of the City of Hoboken; and (c) maintain a copy of this Resolution in the Office of the City Clerk; and, be it further

RESOLVED, that this Resolution be advertised in two of the City's official newspapers within (7) days of passage.

***CITY COUNCIL MEETINGS, COUNCIL CHAMBERS,
CITY HALL, HOBOKEN, NJ***

NOTICE OF DATES AND TIMES FOR JULY 2010 THROUGH JUNE 2011

Wednesday, July 14, 2010	7 PM	Wednesday, January 5, 2011	7PM
		Wednesday, January 19, 2011	7PM
Wednesday, August 11, 2010	7 PM	Wednesday, February 2, 2011	7PM
		Wednesday, February 16, 2011	7PM
Wednesday, September 1, 2010	7 PM	Wednesday, March 2, 2011	7PM
Wednesday, September 15, 2010	7 PM	Wednesday, March 16, 2011	7PM
Wednesday, October 6, 2010	7 PM	Wednesday, April 6, 2011	7PM
Wednesday, October 20, 2010	7 PM	Wednesday, April 20, 2011	7PM
Wednesday, November 3, 2010	7 PM	Wednesday, May 4, 2011	7PM
Monday, November 15, 2010*	7 PM	Wednesday, May 18, 2011	7PM
Wednesday, December 1, 2010	7 PM	Wednesday, June 1, 2011	7PM
Wednesday, December 15, 2010	7 PM	Wednesday, June 15, 2011	7PM

* Moved due to N.J. League of Municipalities Convention

All information pertaining to the Council agenda may be obtained from the City Clerk, during regular business hours, prior to each Council meeting and also, on the City's website – <http://www.hobokennj.org>.

The speakers who spoke: Helen Hirsch.

---Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 8 - NAYS: 0– ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: None.

---Absent: Giacchi.

10-419

---By Councilman Bhalla

RESOLUTION AUTHORIZING THE LOCATION OF THE UPTOWN FARMERS' MARKET ON THURSDAYS DURING THE MONTHS OF JUNE, JULY, AUGUST, SEPTEMBER AND OCTOBER

WHEREAS, the Quality of Life Coalition of Hoboken and the City of Hoboken is sponsoring a farmers' market along the east side of Hudson Street between 13th and 14th Streets; and

WHEREAS, a sponsor, manager, vendors and their liability coverage will be determined and submitted prior to the Market's opening day, the Uptown Farmers' Market will take place every Thursday, beginning June 3, 2010 and every Thursday thereafter ending no earlier than Thursday October 28, 2010; and

WHEREAS, the City of Hoboken request that the Council of the City of Hoboken suspend parking rules on that section of the east side of Hudson Street between 13th and 14th Streets so that the farmers can park their trucks to unload and sell their goods.

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

1. The above recitals are incorporated herein as though fully set forth at length.
2. The Council hereby authorizes the Mayor or his designee to execute any and all documents and take any and all actions necessary to complete and receive the intent and purpose of this resolution.
3. The Police Division shall enforce this regulation.
4. A certified copy of this resolution is provided to Mayor Dawn Zimmer, Director Jennifer Maier, Police Chief Anthony Falco, Fire Chief Richard Bloom, Superintendent Joseph Bucino, Central Garage Supervisor William DeAngelo, and Ian Sacs, P.E., Director, Parking Utility.

This Resolution is effective immediately.

The speakers who spoke: John Branciforte, Scott Siegel.

Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 8 - NAYS: 0- ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: None.

---Absent: Giacchi.

10-420

---By Councilman Lenz

GOVERNING BODY CERTIFICATION OF THE ANNUAL AUDIT

WHEREAS, N.J.S.A. 40A:5-4 requires the governing body of every local unit to have made an annual audit of its books, accounts and financial transactions, and

WHEREAS, the Annual Report of Audit for the year SFY 2009 has been filed by a Registered Municipal Accountant with the Hoboken City Clerk, James Farina pursuant to N.J.S.A. 40A:5-6, and a copy has been received by each member of the governing body; and,

WHEREAS, R.S. 52:27BB-34 authorizes the Local Finance Board of the State of New Jersey to prescribe reports pertaining to the local fiscal affairs; and,

WHEREAS, the Local Finance Board has promulgated N.J.A.C. 5:30-6.5, a regulation requiring that the governing body of each municipality shall by resolution certify to the Local Finance Board of the State of New Jersey that all members of the governing body have reviewed, as a minimum, the sections of the annual audit entitled “ Comments and Recommendations, and,

WHEREAS, the members of the governing body have personally reviewed as a minimum the Annual Report of Audit, and specifically the sections of the Annual Audit entitled “ Comments and Recommendations, as evidenced by the group affidavit form of the governing body attached hereto; and,

WHEREAS, such resolution of certification shall be adopted by the Governing Body no later than forty-five days after the receipt of the annual audit, pursuant to N.J.A.C. 5:30-6.5; and,

WHEREAS, all members of the governing body have received and have familiarized themselves with, at least, the minimum requirements of the Local Finance Board of the State of New Jersey, as stated aforesaid and have subscribed to the affidavit, as provided by the Local Finance Board, and

WHEREAS, failure to comply with the regulations of the Local Finance Board of the State of New Jersey may subject the members of the local governing body to the penalty provisions of R.S. 52:27BB-52, to wit:

R.S. 52:27BB-52: A local officer or member of a local governing body who, after a date fixed for compliance, fails or refuses to obey an order of the director (Director of Local Government Services), under the provisions of this Article, shall be guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both, in addition shall forfeit his office.

NOW, THEREFORE BE IT RESOLVED, That the Hoboken City Council of the City of Hoboken, hereby states that it has complied with N.J.A.C. 5:30-6.5 and does hereby submit a certified copy of this resolution and the required affidavit to said Board to show evidence of said compliance.

Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 8 - NAYS: 0- ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: None.

---Absent: Giacchi.

10-421

---By Councilman Lenz

RESOLUTION AUTHORIZING THE REFUND OF TAX OVERPAYMENTS

WHEREAS, an overpayment of taxes has been made on property listed below: and

WHEREAS, Sharon Curran, Collector of Revenue recommends that refunds be made; now, therefore, be it-

RESOLVED, that a warrant be drawn on the City Treasurer made payable to the appearing on the attached list totaling **\$33,600.65**

<u>NAME</u>	<u>BL/LT/UNIT</u>	<u>PROPERTY</u>	<u>QTR/YEAR</u>	<u>AMOUNT</u>
PASCALE, SUSAN 700 FIRST ST UNIT 2B HOBOKEN, NJ 07030	25/1/C002B	700 FIRST ST	1/10	\$ 1,504.67
JERZ, MICHAEL L 904 JEFFERSON ST #2F HOBOKEN, NJ 07030	95/25/C002	900-912 JEFFERSON ST	1/10	\$ 2,632.92

LEE, STEVEN & ALLISON 619 WILLOW AVE #2L HOBOKEN, NJ 07030	168/8.1/C1-2L	619-621 WILLOW AVE	1/10	\$ 1,028.25
SCHWARTZ, MATTHEW & TONYA 1119 GARDEN ST HOBOKEN, NJ 07030	249/12/	89-91 WILLOW AVE	1/10	\$ 358.12
WELLS FARGO BANK, NA WELLS FARGO HOME MTGE 1 HOME CAMPUS MAC X2302-04D DES MOINES, IA 50328	22/1/C0400	89-91 WILLOW AVE	2/10	\$ 3,593.09
WELLS FARGO BANK, NA WELLS FARGO HOME MTGE 1 HOME CAMPUS MAC X2302-04D DES MOINES, IA 50328	37/18/CF2FN	232 MONROE ST	2/10	\$ 1,136.28
WELLS FARGO BANK, NA WELLS FARGO HOME MTGE 1 HOME CAMPUS MAC X2302-04D DES MOINES, IA 50328	59/12/C004C	418-422 JEFFERSON ST	2/10	\$1,686.60
WELLS FARGO BANK, NA WELLS FARGO HOME MTGE 1 HOME CAMPUS MAC X2302-04D DES MOINES, IA 50328	74/31/C0003	604-606 MONROE ST	2/10	\$ 1,658.34
WELLS FARGO BANK, NA WELLS FARGO HOME MTGE 1 HOME CAMPUS MAC X2302-04D DES MOINES, IA 50328	82/11/C0208	721-733 MONROE ST	2/10	\$ 1,389.32
WELLS FARGO BANK, NA WELLS FARGO HOME MTGE 1 HOME CAMPUS MAC X2302-04D DES MOINES, IA 50328	86/1/C0P01	800-830 JACKSON ST	2/10	\$12.28
WELLS FARGO BANK, NA WELLS FARGO HOME MTGE 1 HOME CAMPUS MAC X2302-04D DES MOINES, IA 50328	89/12/C0P14	501 NINTH ST	2/10	\$122.84

WELLS FARGO BANK, NA 91/1.2/CP061	812 GRAND ST 2/10		\$122.84
WELLS FARGO HOME MTGE			
1 HOME CAMPUS			
MAC X2302-04D			
DES MOINES, IA 50328			
WELLS FARGO BANK, NA 95/1/C0P34	901-909 MADISON ST	2/10	\$170.74
WELLS FARGO HOME MTGE			
1 HOME CAMPUS			
MAC X2302-04D			
DES MOINES, IA 50328			
WELLS FARGO BANK, NA 114/1/C0506	1300 GRAND ST	2/10	\$122.84
WELLS FARGO HOME MTGE			
1 HOME CAMPUS			
MAC X2302-04D			
DES MOINES, IA 50328			
WELLS FARGO BANK, NA 156/5/CC-4C	1118 CLINTON/ 1117 GRAND	2/10	\$1,676.77
WELLS FARGO HOME MTGE			
1 HOME CAMPUS			
MAC X2302-04D			
DES MOINES, IA 50328			
WELLS FARGO BANK, NA 156/5/CCP22	1118 CLINTON	2/10	\$190.39
WELLS FARGO HOME MTGE			
1 HOME CAMPUS			
MAC X2302-04D			
DES MOINES, IA 50328			
WELLS FARGO BANK, NA 162/10.1/C0007	1030-1032 WILLOW AVE	2/10	\$ 1,315.62
WELLS FARGO HOME MTGE			
1 HOME CAMPUS			
MAC X2302-04D			
DES MOINES, IA 50328			
WELLS FARGO BANK, NA 170/21	838 PARK AVE	2/10	\$ 2,895.12
WELLS FARGO HOME MTGE			
1 HOME CAMPUS			
MAC X2302-04D			
DES MOINES, IA 50328			
WELLS FARGO BANK, NA 176/7.1/C02-A	209-215 FIRST ST/ 99 PARK	2/10	\$ 2,849.22
WELLS FARGO HOME MTGE			
1 HOME CAMPUS			
MAC X2302-04D			
DES MOINES, IA 50328			
WELLS FARGO BANK, NA 207/1.2/	110 EIGHTH ST	2/10	\$ 2,456.81
WELLS FARGO HOME MTGE			
1 HOME CAMPUS			
MAC X2302-04D			

DES MOINES, IA 50328

WELLS FARGO BANK, NA 245/14/C00B1 1300 HUDSON ST 2/10 \$ 1,486.37
WELLS FARGO HOME MTGE
1 HOME CAMPUS
MAC X2302-04D
DES MOINES, IA 50328

WELLS FARGO BANK, NA 261.03/1/C0405 1125 MAXWELL LANE 2/10 \$ 2,036.69
WELLS FARGO HOME MTGE
1 HOME CAMPUS
MAC X2302-04D
DES MOINES, IA 50328

WELLS FARGO BANK, NA 261.03/1/C0823 1125 MAXWELL LANE 2/10 \$132.65
WELLS FARGO HOME MTGE
1 HOME CAMPUS
MAC X2302-04D
DES MOINES, IA 50328

WELLS FARGO BANK, NA 261.03/1/CP222 1125 MAXWELL LANE 2/10 \$122.84
WELLS FARGO HOME MTGE
1 HOME CAMPUS
MAC X2302-04D
DES MOINES, IA 50328

WELLS FARGO BANK, NA 261.03/1/CP323 1125 MAXWELL LANE 2/10 \$122.84
WELLS FARGO HOME MTGE
1 HOME CAMPUS
MAC X2302-04D
DES MOINES, IA 50328

WELLS FARGO BANK, NA 261.04/1/C0315 1125 MAXWELL LANE 2/10 \$2,776.20
WELLS FARGO HOME MTGE
1 HOME CAMPUS
MAC X2302-04D
DES MOINES, IA 50328

Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 8 - NAYS: 0- ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: None.

---Absent: Giacchi.

Councilman Bhalla has left the table at 8:45 P.M.

Councilman Bhalla has returned to the table at 8:48 P.M.

10-421A

---By Councilman Russo

RESOLUTION OF THE CITY COUNCIL ADOPTING MINUTES OF REGULAR MEETINGS. (January 6 & 20th, February 3 & 17th 2010)

Resolved, that filed minutes for the Hoboken City Council adopting minutes of regular meetings.

Motion duly seconded by Councilwoman Castellano

---Adopted by the following vote: YEAS: 7 - NAYS: 1- ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: Mason

---Absent: Giacchi.

10-422

---By Councilman Lenz

**Inserting a Special Item of Revenue into the SFY 2010 Municipal Budget
CLEAN COMMUNITY GRANT 2010**

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the Budget of any county or municipality when such item shall have been made available By law and the amount thereof was not determined at the time of the adoption of the Budget, and

WHEREAS, said Director may also approve the insertion of an item of Appropriation for an equal amount, and

WHEREAS, the City of Hoboken has received notice of an award of \$58,198.35 from State of New Jersey Department of Environmental Protection wishes to amend its SFY 2010 Budget to include this amount as revenue.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hoboken, in the County of Hudson, State of New Jersey, hereby requests the Director Of the Division of Local Government Services to approve the insertion of an item of Revenue in the budget of the year SFY 2010 in the sum of.....\$58,198.35

This is now available as revenue from:

Miscellaneous Revenues:

- Special Items of General Revenue Anticipated
- With Prior Written Consent of the Director of the
- Division of Local Government Services:
- State and Federal Revenues Off-set with
- Appropriations:
- Clean Community Grant

NOW, THEREFORE, BE IT RESOLVED that the like sum of: \$58,198.35 Be and the same is hereby appropriated under the caption of:

General Appropriations:

- (a) Operations Excluded from CAPS

State and Federal Programs Off-Set by
Revenues:
Clean Community Grant
Other Expenses

NOW, THEREFORE, BE IT RESOLVED, that the City Clerk forward two certified copies of this resolution to the Director of Local Government Services for approval.

Motion duly seconded by Councilwoman Marsh
---Adopted by the following vote: YEAS: 7 - NAYS: 0- ABSENT: 2
---Yeas: Council persons Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.
---Nays: None.
---Absent: Bhalla, Giacchi.

10-423
---By Councilman Lenz

Inserting a Special Item of Revenue into the SFY 2010 Municipal Budget
ENERGY EFFICIENT & CONSERVATION BLOCK GRANT

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the Budget of any county or municipality when such item shall have been made available By law and the amount thereof was not determined at the time of the adoption of the Budget, and

WHEREAS, said Director may also approve the insertion of an item of Appropriation for an equal amount, and

WHEREAS, the City of Hoboken has received notice of an award of \$161,000.00 from U S Department of Energy wishes to amend its SFY 2010 Budget to include this amount as revenue.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hoboken, in the County of Hudson, State of New Jersey, hereby requests the Director Of the Division of Local Government Services to approve the insertion of an item of Revenue in the budget of the year SFY 2010 in the sum of.....\$161,000.00
This is now available as revenue from:

Miscellaneous Revenues:
Special Items of General Revenue Anticipated
With Prior Written Consent of the Director of the
Division of Local Government Services:
State and Federal Revenues Off-set with
Appropriations:
Energy Efficient Block Grant O/E

NOW, THEREFORE, BE IT RESOLVED that the like sum of: \$161,000.00
Be and the same is hereby appropriated under the caption of:
General Appropriations:

- (a) Operations Excluded from CAPS
 - State and Federal Programs Off-Set by Revenues:
 - Energy Efficient Block Grant
 - Other Expenses

NOW, THEREFORE, BE IT RESOLVED, that the City Clerk forward two certified copies of this resolution to the Director of Local Government Services for approval.

Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 8 - NAYS: 0- ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: None.

---Absent: Giacchi.

10-424

---By Councilman Lenz

THIS RESOLUTION AUTHORIZES THE ADMINISTRATION TO REIMBURSE RETIRED CITY EMPLOYEES FOR THEIR MEDICARE PART B EXPENSES.

WHEREAS, the existing labor agreements with the six (6) bargaining units of the City require the reimbursement of Medicare Part B expenses for retired prior employees, and

WHEREAS, the attached list(s) of 190 prior employees have submitted their Medicare Part B expenses to the City,

NOW THEREFORE BE IT RESOLVED that;

- A. The Administration is herewith authorized to refund \$232,362.70 in Medicare Part B expenses to the individuals as shown on the attached list(s)
- B. This resolution shall take effect immediately upon passage.

Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 8 - NAYS: 0- ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: None.

---Absent: Giacchi.

10-425

---By Councilman Lenz

RESOLUTION AUTHORIZING A CONTRACT WITH MICHAEL B. KATES, ESQ. AS CORPORATION COUNSEL FOR THE CITY OF HOBOKEN

WHEREAS, Michael B. Kates, Esq., a senior partner of Kates Nussman Rapone Ellis & Farhi, LLP of Hackensack, NJ (the “ Law Firm”), was appointed by Hoboken Mayor Dawn Zimmer as Corporation Counsel, effective December 7, 2009, and has served in that capacity to date; and

WHEREAS, it is now deemed necessary and appropriate to present Mr. Kates’ contract to the City Council for approval, not because his appointment by the Mayor is subject to Council’ s advice and consent (it is not, pursuant to Hoboken Code § 54-32), but because cumulative payments have exceeded a threshold of \$29,000 (three installments of \$8,625 paid to date); and

WHEREAS, Hoboken Code §54-32 permits Corporation Counsel to maintain a private law practice, which is contemplated by this Agreement, provided that the appointment as Corporation Counsel shall be given priority over private practice at all times without exception; and

WHEREAS, Mr. Kates will be required to abide by the “ pay-to-play” requirements of the Hoboken Public Contracting Reform Ordinance, #DR-154 (codified as §20A-11 et seq. of the Code of the City of Hoboken); and

WHEREAS, said service is a professional service as defined by N.J.S.A. 40A:11-2(b) and as such, is exempt from public bidding requirements pursuant to N.J.S.A. 40A:11-5; and

WHEREAS, funds are available for this purpose;

NOW THEREFORE, BE IT RESOLVED that appended professional services contract be authorized in the amount One Hundred Three Thousand Five Hundred (\$103,500.00) Dollars for the services of Michael B. Kates, Esq. of Kates Nussman Rapone Ellis & Farhi, LLP, as Corporation Counsel for the City of Hoboken, retroactive to December 7, 2009; and,

BE IT FURTHER RESOLVED the City Clerk shall publish this resolution as required by law and keep a copy of the resulting contract on file in accordance with N.J.S.A. 40A:11-1 et seq.

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be provided to Mayor Dawn Zimmer for action in accordance therewith and to take any other actions necessary to complete and realize the intent and purpose of this resolution.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

The speakers who spoke: Helen Hirsch, Tim Occhipinti, Lane Bajardi.

Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 7- NAYS: 1– ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mello, Russo and President Cunningham.

---Nays: Mason

---Absent: Giacchi.

10-426

---By Councilman Lenz

RESOLUTION APPOINTING MARK A. TABAKIN OF WEINER & LESNIAK, LLP AS SPECIAL LEGAL COUNSEL FOR GENERAL EMPLOYMENT MATTERS

WHEREAS, the City of Hoboken requires the services of Special Legal Counsel to handle general employment matters involving the City of Hoboken; and,

WHEREAS, the City of Hoboken has reviewed the qualifications of Mark A. Tabakin of the law firm Weiner & Lesniak, LLP, and has determined that this attorney and the supporting staff at his law firm can provide these services for the City of Hoboken in an efficient manner; and,

WHEREAS, this type of work constitutes a professional service as defined by N.J.S.A. 40A:11-2(b) and as such, is exempt from public bidding requirements pursuant to N.J.S.A. 40A:11-5; and,

WHEREAS, Mark A. Tabakin's proposal was submitted and reviewed in compliance with Hoboken Ordinance #DR-154 (codified as §20A-1 et seq. of the Code of the City of Hoboken), which requires competitive negotiation for Professional Service contracts; and,

WHEREAS, funds for this agreement are available for this purpose.

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Hoboken does hereby authorize a contract between the City of Hoboken and Mark A. Tabakin to provide legal services on general employment matters (excluding collective bargaining negotiations) on an as-needed basis; and

BE IT FURTHER RESOLVED, by the Council of the City of Hoboken in the County of Hudson that:

1. A contract for Special Counsel for the City of Hoboken shall be prepared and executed with the following vendor:

Mark A. Tabakin, Esq.

Weiner & Lesniak, LLP
629 Parsippany Road
P.O. Box 438
Parsippany, New Jersey 07054

Such individual shall be paid at an hourly rate not to exceed one hundred fifty dollars (\$150.00), with a total amount not to exceed twenty five thousand dollars (\$25,000.00).

2. This agreement shall be effective 1 June 2010 and terminate 31 May 2011.
3. The Mayor is hereby authorized to execute a contract with Mark A. Tabakin, Esq. for professional legal services on behalf of the City of Hoboken and to take any other actions necessary to complete and realize the intent and purpose of this resolution.

4. The City Clerk shall publish notice of this resolution in one newspaper authorized by law to publish the City's legal advertisements as required by N.J.S.A. 40A:11-5(1)(a) and shall keep a copy of the resulting contract on file in accordance with N.J.S.A. 40A:11-1 et seq.
5. This resolution shall take effect immediately.

The speakers who spoke: Mary Ondrejka.

Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 7- NAYS: 1- ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mello, Russo and President Cunningham.

---Nays: Mason

---Absent: Giacchi.

10-427

---By Councilman Lenz

Inserting a Special Item of Revenue into the SFY 2010 Municipal Budget - CLEAN COMMUNITY GRANT 2009 AMENDED

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the Budget of any county or municipality when such item shall have been made available By law and the amount thereof was not determined at the time of the adoption of the Budget, and

WHEREAS, said Director may also approve the insertion of an item of Appropriation for an equal amount, and

WHEREAS, the City of Hoboken has received notice of an award of \$12,083.47 from State of New Jersey Department of Environmental Protection wishes to amend its SFY 2010 Budget to include this amount as revenue.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hoboken, in the County of Hudson, State of New Jersey, hereby requests the Director Of the Division of Local Government Services to approve the insertion of an item of Revenue in the budget of the year SFY 2010 in the sum of.....\$12,083.47

This is now available as revenue from:

Miscellaneous Revenues:

- Special Items of General Revenue Anticipated
- With Prior Written Consent of the Director of the
- Division of Local Government Services:
- State and Federal Revenues Off-set with
- Appropriations:
- Clean Community Grant

NOW, THEREFORE, BE IT RESOLVED that the like sum of: \$12,083.47 Be and the same is hereby appropriated under the caption of:
General Appropriations:

- (a) Operations Excluded from CAPS
 - State and Federal Programs Off-Set by Revenues:
 - Clean Community Grant
 - Other Expenses

NOW, THEREFORE, BE IT RESOLVED, that the City Clerk forward two certified copies of this resolution to the Director of Local Government Services for approval.

Motion duly seconded by Councilwoman Marsh
 ---Adopted by the following vote: YEAS: 7 - NAYS: 0- ABSENT: 2
 ---Yeas: Council persons Bhalla, Castellano, Marsh, Mason, Mello, Russo and President Cunningham.
 ---Nays: None.
 ---Absent: Giacchi, Lenz.

10-428
 ---By Councilman Lenz

Inserting a Special Item of Revenue into the SFY 2010 Municipal Budget
FIRE DEPARTMENT SAFER GRANT

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the Budget of any county or municipality when such item shall have been made available By law and the amount thereof was not determined at the time of the adoption of the Budget, and

WHEREAS, said Director may also approve the insertion of an item of Appropriation for an equal amount, and

WHEREAS, the City of Hoboken has received notice of an award of \$399,008.40 from U S Department of Homeland Security wishes to amend its SFY 2010 Budget to include this amount as revenue.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hoboken, in the County of Hudson, State of New Jersey, hereby requests the Director Of the Division of Local Government Services to approve the insertion of an item of Revenue in the budget of the year SFY 2010 in the sum of.....\$399,008.40

This is now available as revenue from:
 Miscellaneous Revenues:
 Special Items of General Revenue Anticipated
 With Prior Written Consent of the Director of the
 Division of Local Government Services:
 State and Federal Revenues Off-set with
 Appropriations:
 Fire Department S/W

NOW, THEREFORE, BE IT RESOLVED that the like sum of: \$399,008.40 Be and the same is hereby appropriated under the caption of:

General Appropriations:

(a) Operations Excluded from CAPS

State and Federal Programs Off-Set by

Revenues:

Fire Department

Salary & Wages

NOW, THEREFORE, BE IT RESOLVED, that the City Clerk forward two certified copies of this resolution to the Director of Local Government Services for approval.

Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 8 - NAYS: 0- ABSENT: 1

---Yeas: Council persons Bhalla, Castellano, Lenz, Marsh, Mason, Mello, Russo and President Cunningham.

---Nays: None.

---Absent: Giacchi.

Councilman Lenz has returned to the table at 9:34 PM

10-429

---By Councilman Lenz

RESOLUTION AUTHORIZING A CONTRACT WITH KATES NUSSMAN RAPONE ELLIS & FARHI, LLP AS SPECIAL COUNSEL FOR THE CITY OF HOBOKEN

WHEREAS, Michael B. Kates, Esq., a senior partner of Kates Nussman Rapone Ellis & Farhi (the “ Law Firm”), was appointed by Hoboken Mayor Dawn Zimmer as Corporation Counsel, effective December 7, 2009, and has served in that capacity to date; and

WHEREAS, Hoboken Code §54-33.B empowers the Corporation Counsel “to institute an action when instructed to do so by the Mayor or the Council or upon the complaint of any other person when, in the Corporation Counsel's judgment, the public interest requires that the same should be prosecuted”; and Hoboken Code §54-33.D to “bring an appeal in any action in which judgment shall have been given against the city, except by direction of the Mayor”; and

WHEREAS, Mayor Zimmer and Mr. Kates have conducted an evaluation of the office of Corporation Counsel, more particularly the demands put on that office by the business of the City, its Administration and the City Council; the overwhelming incidence of suits against the City; demands for public records by an informed public, local press, a multiplicity of “bloggers” and other interested parties; the targeting of real properties for development/redevelopment; the need to oversee the land use boards and the planning process to accommodate the City’ s needs for preservation of housing stock and housing opportunities, to accommodate growth on an acceptable scale so that the City’ s superstructure can tolerate additional population densities; coordination of county, state, regional and federal intergovernmental relations; and managing the reasonable expectations of stakes holders in all aspects of City life, including the municipal hospital, the regional rail transportation corridor, the waterfront, the regional sewer authority, and localized parking and transportation modes; and

WHEREAS, it is the opinion of the contracting parties, and with the concurrence of the Business Administrator, that a second attorney is necessary to cover the depth and breadth of the legal responsibilities of the City on a daily basis, both full-time and “overtime”, which the Law Firm is willing to provide; and

WHEREAS, the Law Firm will be required to abide by the “pay-to-play” requirements of the Hoboken Public Contracting Reform Ordinance, #DR-154 (codified as §20A-11 et seq. of the Code of the City of Hoboken); and

WHEREAS, said service is a professional service as defined by N.J.S.A. 40A:11-2(b) and as such, is exempt from public bidding requirements pursuant to N.J.S.A. 40A:11-5; and

WHEREAS, funds are available for this purpose;

NOW THEREFORE, BE IT RESOLVED that appended professional services contract be authorized in the amount Seventy-Five Thousand (\$75,000.00) Dollars, plus a blended litigation rate of \$150.00 for litigation services set forth in the appended Agreement and not to exceed Fifty Thousand (\$50,000) Dollars; and,

BE IT FURTHER RESOLVED the City Clerk shall publish this resolution as required by law and keep a copy of the resulting contract on file in accordance with N.J.S.A. 40A:11-1 et seq.

BE IT FURTHER RESOLVED that a certified copy of this resolution shall be provided to Mayor Dawn Zimmer for action in accordance therewith and to take any other actions necessary to complete and realize the intent and purpose of this resolution.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

The speakers who spoke: Mary Ondrejka, Lane Bajardi.

Motion duly seconded by Councilwoman Marsh

---Adopted by the following vote: YEAS: 5 - NAYS: 3– ABSENT: 1

---Yeas: Council persons Bhalla, Lenz, Marsh, Mello, and President Cunningham.

---Nays: Castellano, Mason, Russo.

---Absent: Giacchi.

ORDINANCES

Introduction and First Reading

NEW BUSINESS

Councilman Mello has left the table at 11:27 P.M.

Councilwoman Castellano has left the table at 11:31 P.M.

Councilman Mello has returned to the table at 11:31 P.M.

Councilwoman Castellano has returned to the table at 11:35 P.M.

Councilman Russo has returned to the table at 11:35 P.M.

Councilman Mello has left the table at 11:36 P.M.

Councilman Mello has returned to the table at 11:37 P.M.

Councilwoman Mason – what’s going on with Maxwell Pl. we almost reached an agreement a year ago, we wouldn’t be in litigation. We need a resolution on when this is going to occur

Director Forbes – we will be meeting and discussing about this on the 2nd week of June for Block A. Meeting with Toll Brothers on Block E and the operations agreement and narrowed it down to a few issues.

Council President – Suggests that Councilman Giaachi to host a meeting.

Councilwoman Mason – requests resumes through the Business Administrator. She is requesting the clerk’s office to have them

Corporation Counsel – the resumes were submitted under confidential agreements. Your request is that you agreed to not disclose publicly unless they are willing to release their names public.

Councilman Lenz – responds to Councilwoman Mason on publicizing and not making a commitment.

Corporation Counsel – I can accommodate to you as long as you abide by the rules.

Councilwoman Mason – give us the stuff B.A. resumes, Maxwell Pl., Rent Control, and etc. Why was #16 removed off the agenda?

Council President – you asked for 20 min. before the meeting.

Corporation Counsel – the governing body have the power to adopt an ethic code. I sent it out last night via E-mail. The short answer is “no”, the local governments ethics law has given the municipality whether to opt for a local board, then it’s the local board that you create that develops into the Code of Ethics....must be approved by the Local State.....absent of the local board, then its the State. I believe failure to appoint an ethics board means you nullify the ordinance.

Councilman Russo – I am not sure if I got it

Councilwoman Mason – my resolution does not change the code...

Councilman Russo – what the direction that we (Admin. & Transparency Committee) want to go in...

Councilwoman Mason – reinstate the rules and procedures of the Council not a Code Change.

Councilman Russo – question on the city website that reads City Announcements and it is password protected and expects an answer

Director Sacs – new components & contents that are being tested

Councilman Mello – acknowledges the Governor coming into town and thank the public for coming.

Councilman Bhalla – address the Municipal Garage and responded to every email. Wish the members of the public was here, express now...would not want the garage in “my backyard.” We’re all advocates of open space. They are not mutually exclusive

Council Lenz – agree with a lot of what was said by the public. Some of the attacks got a little above the top. I am a stronger believer for the west side.

The RFP is one more step we can take.

Councilwoman Mason – what is it a RFP going to do or if we believe is best? There are a number of options..shared services.....

Council President – I’m tired and it has been a tough evening....on behalf of Councilman Giaachi there will be presentations at the Boys & Girls club at 10:00 AM about a project they would like to discuss and Project Play at Church Sq. Park at 1:00 P.M.

All regular business concluded the following members of the public spoke at the “Public Portion” of the meeting: Richard Tremitedi, Raymond Smith, Scott Siegel, Mo DeGennaro, Allison Fradenburg, Darren Sasso, Jeffery Goldberg, Helen Hirsch, Elizabeth Adams,

Margaret O'Brien, Perry Belfiore, Mark Woronka, Mark McCormick, Amanda McCormick, Tony Soares, Tim Occhipinti, Dennis Peiffer, Sharon Peiffer, Jake Stuver, Mary Ondrejka, Jason Rhodes, Charles Crevickshank, Jeffrey Missimer, Lane Bajardi, Stephan Charania, Deno Bogdanos, John Wetz, Curtis Crystal, Father Vincent Fortunato, Hanny Amed, Anthony Falabella.

Councilman Russo has left the table at 11:25 P.M.

At this time, 12:04 a.m., on a motion by Council President Cunningham; duly seconded by Councilman and voted on unanimously, the City Council entered into closed (executive) session.

Councilwoman Mason and Councilman Russo left the closed session at 12:05A.M.

Councilman Russo has returned to closed session at 12:06 A.M.

Councilwoman Mason has returned to closed session at 12:07 A.M.

10-430

RESOLUTION AUTHORIZING CLOSED SESSION RELATING TO ATTORNEY-CLIENT PRIVILEGE CONTRACTUAL OBLIGATIONS CONCERNING THE POTENTIAL SALE AND PURCHASE OF THE CITY GARAGE AND POTENTIAL LITIGATION

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, pursuant to N.J.S.A. 10:4-12(5) and (7); and,

WHEREAS, one of these reasons is to receive advice from legal counsel relating to the sale and purchase of the City Garage; and,

WHEREAS, the Council has determined that it is necessary to go into closed executive session for the foregoing purpose;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Hoboken that it enter into closed session for said purpose; 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 this time, 10:38 p.m., on a motion by Council President Cunningham duly seconded by Councilman Russo and voted on unanimously, the City Council came out of closed (executive) session.

President Cunningham then adjourned the meeting at 10:45 p.m.

PRESIDENT OF THE COUNCIL

CITY CLERK