Frederick W. Alworth, Esq. (045811988)
Charles S. Korschun, Esq. (331282020)
Michael A. Conforti, Esq. (247422018)
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102-5310
(973) 596-4500
Attorneys for Plaintiffs
Just Block 112, LLC and *Hoboken Western Edge, LLC*

JUST BLOCK 112, LLC and HOBOKEN WESTERN EDGE, LLC,

Plaintiffs,

v.

THE CITY OF HOBOKEN; RAVINDER BHALLA, MAYOR OF THE CITY OF HOBOKEN; THE CITY COUNCIL OF THE CITY OF HOBOKEN; THE PLANNING BOARD OF THE CITY OF HOBOKEN; and THE CITY OF UNION CITY,

Defendants.

CITY OF UNION CITY; UCMH TERRA HEIGHTS, LLC; and JOHN DOES 1 AND 2,

Third-Party Plaintiffs,

v.

THE CITY OF HOBOKEN; THE CITY COUNCIL OF THE CITY OF HOBOKEN; JENNIFER GIATTINO; in her official capacity as Council Member for the City of Hoboken; RUBEN RAMOS, in his official capacity as Council Member for the City of Hoboken; MICHAEL DEFUSCO, in his official capacity as Council Member for the City of Hoboken; and JOHN DOES 4 TO 9,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY | LAW DIVISION

DOCKET NO.: HUD-L-4207-21
Civil Action

Motion Returnable: February 28, 2025

Oral Argument Requested

NOTICE OF MOTION

TO: Steven Menaker, Esq.
Michele L. DeLuca, Esq.
CHASAN LAMPARELLO MALLON & CAPPUZZO, PC
300 Lighting Way, Suite 200
Secaucus, New Jersey 07094
Attorneys for Defendant/Third-Party Plaintiff
City of Union City

John J. Lamb, Esq.
Arthur M. Neiss, Esq.
BEATTIE PADOVANO, LLC
200 Market Street, Suite 401
Montvale, New Jersey 07645
Attorneys for Third-Party Plaintiff
UCMH Terra Heights, LLC

PLEASE TAKE NOTICE that on February 28, 2025, at 9:00 a.m., or as soon thereafter as counsel may be heard, Plaintiffs Just Block 112, LLC ("JB112") and Hoboken Western Edge, LLC ("HWE and with JB112, "Plaintiffs"); Defendants the City of Hoboken, the City Council of the City of Hoboken, Ravinder Bhalla, Mayor of Hoboken (the "Hoboken Defendants"); individual defendants Jennifer Giattino, Ruben Ramos, and Michael Defusco (the "Councilmember Defendants"); and Intervenor-Plaintiffs American Legion Hoboken Post 107 and Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken ("Intervenor-Plaintiffs") (collectively, the "Moving Parties"), shall move before the Honorable Joseph A. Turula, P.J.Cv., Superior Court of New Jersey, Hudson County, Law Division, located at William J. Brennan Courthouse, 583 Newark Avenue, Jersey City, New Jersey, 07306 for an Order Granting Plaintiffs' Motion for Summary Judgment ("Motion") pursuant to Rule 4:46-2.

PLEASE TAKE FURTHER NOTICE that the Motion is made pursuant to R. 1:6-2 and R. 1:6-3 and that the Court, in its discretion, may enter the proposed form of Order submitted herewith if you do not object in writing to both the Clerk of the Court and the moving party ten (10) days prior to the return date of the Motion.

PLEASE TAKE FURTHER NOTICE that the moving party shall be permitted to submit a reply to any opposition no later than four (4) days prior to the return date of the Motion.

PLEASE TAKE FURTHER NOTICE that the moving party shall rely upon the accompanying Brief, the Statement of Undisputed Material Facts, and the Certification of Charles S. Korschun, as well as all other pleadings on file in this matter.

PLEASE TAKE FURTHERE NOTICE that the undersigned shall promptly advise the Court if the Motion is withdrawn or the matter settles.

PLEASE TAKE FURTHER NOTICE that the discovery end date in this matter was October 23, 2023.

PLEASE TAKE FURTHER NOTICE that a trial date has not yet been set.

PLEASE TAKE FURTHER NOTICE that a pretrial conference date has not yet been set.

PLEASE TAKE FURTHER NOTICE that Plaintiffs request oral argument if timely opposition to the Motion is filed and served.

Dated: January 31, 2025

By: */s/ Charles S. Korschun*

Fredrick W. Alworth
Charles S. Korschun
Michael A. Conforti
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Plaintiffs Just Block 112, LLC and *Hoboken Western Edge, LLC*

By: */s/ Jessica C.M. Almeida*

Jessica C.M. Almeida
Grant W. McGuire
MCMANIMON SCOTLAND & BAUMANN, LLC
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068
(973) 622-1800

Attorneys for Defendants City of Hoboken, City Council of the City of Hoboken, and *Ravinder Bhalla, Mayor of the City of Hoboken*

By: */s/ Kevin J. Coakley*
Kevin J. Coakley
Nicole B. Dory
Connell Foley LLP
56 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500
Attorneys for Hoboken Western Edge, LLC

By: */s/ Edward J. Buzak*

Edward J. Buzak

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
331 Broadway, Suite A
Point Pleasant Beach, NJ 08742
(732) 612-3100

Attorneys for Defendants Jennifer Giattino, Ruben Ramos, and *Michael DeFusco*

By: */s/ Craig A. Domalewski*

Craig A. Domalewski, Esq.
DUGHI HEWIT & DOMALEWSKI, P.C.
340 North Avenue East
Cranford, New Jersey 07016
(908) 272-0200

Attorneys for Intervenor-Plaintiffs American Legion Hoboken Post 107 and *Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken*

Frederick W. Alworth, Esq. (045811988)
Charles S. Korschun, Esq. (331282020)
Michael A. Conforti, Esq. (247422018)
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102-5310
(973) 596-4500
Attorneys for Plaintiffs
Just Block 112, LLC and *Hoboken Western Edge, LLC*

JUST BLOCK 112, LLC and HOBOKEN WESTERN EDGE, LLC,

Plaintiffs,

v.

THE CITY OF HOBOKEN; RAVINDER BHALLA, MAYOR OF THE CITY OF HOBOKEN; THE CITY COUNCIL OF THE CITY OF HOBOKEN; THE PLANNING BOARD OF THE CITY OF HOBOKEN; and THE CITY OF UNION CITY,

Defendants.

CITY OF UNION CITY; UCMH TERRA HEIGHTS, LLC; and JOHN DOES 1 AND 2,

Third-Party Plaintiffs,

v.

THE CITY OF HOBOKEN; THE CITY COUNCIL OF THE CITY OF HOBOKEN; JENNIFER GIATTINO; in her official capacity as Council Member for the City of Hoboken; RUBEN RAMOS, in his official capacity as Council Member for the City of Hoboken; MICHAEL DEFUSCO, in his official capacity as Council Member for the City of Hoboken; and JOHN DOES 4 TO 9,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY | LAW DIVISION

DOCKET NO.: HUD-L-4207-21
Civil Action

ORDER GRANTING PLAINTIFFS', HOBOKEN DEFENDANTS', COUNCILMEMBER DEFENDANTS', AND INTERVENOR PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DISMISSING THE AMENDED THIRD-PARTY COMPLAINT WITH PREJUDICE

THIS MATTER having come before the Court upon the Motion of Plaintiffs Just Block 112, LLC ("JB112") and Hoboken Western Edge, LLC ("HWE and with JB112, "Plaintiffs"); Defendants the City of Hoboken, the City Council of the City of Hoboken, Ravinder Bhalla, Mayor of Hoboken (the "Hoboken Defendants"); individual defendants Jennifer Giattino, Ruben Ramos, and Michael Defusco (the "Councilmember Defendants"); and Intervenor-Plaintiffs American Legion Hoboken Post 107 and Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken ("Intervenor-Plaintiffs"), by and through their attorneys, for entry of an Order Granting Plaintiffs' Motion for Summary Judgment pursuant to Rule 4:46-2 and dismissing the Amended Third-Party Complaint with prejudice; and the Court having received and reviewed the papers of the parties, and heard oral argument from the parties; and for good cause shown:

IT IS on this _____ day of _____, 2025 **ORDERED** as follows:

(1) Plaintiffs' Motion for Summary Judgment is hereby GRANTED.

(2) The Amended Third-Party Complaint filed by Third-Party Plaintiffs City of Union City, UCMH Terra Heights, LLC, and John Does 1 and 2 is hereby dismissed in its entirety as to all counts, with prejudice.

(3) This Order has been uploaded by the Court to the eCourts case jacket.

_____
Hon. Joseph A. Turula, P.J.Cv.

OPPOSED _____

UNOPPOSED _____

JUST BLOCK 112, LLC and HOBOKEN WESTERN EDGE, LLC, Plaintiffs, v. THE CITY OF HOBOKEN; RAVINDER BHALLA, MAYOR OF THE CITY OF HOBOKEN; THE CITY COUNCIL OF THE CITY OF HOBOKEN; THE PLANNING BOARD OF THE CITY OF HOBOKEN; and THE CITY OF UNION CITY, Defendants.	SUPERIOR COURT OF NEW JERSEY HUDSON COUNTY | LAW DIVISION DOCKET NO.: HUD-L-4207-21 Civil Action Motion Returnable: February 28, 2025 ***Oral Argument Requested***
CITY OF UNION CITY; UCMH TERRA HEIGHTS, LLC; and JOHN DOES 1 AND 2, Third-Party Plaintiffs, v. THE CITY OF HOBOKEN; THE CITY COUNCIL OF THE CITY OF HOBOKEN; JENNIFER GIATTINO; in her official capacity as Council Member for the City of Hoboken; RUBEN RAMOS, in his official capacity as Council Member for the City of Hoboken; MICHAEL DEFUSCO, in his official capacity as Council Member for the City of Hoboken; and JOHN DOES 4 TO 9, Third-Party Defendants.	**PLAINTIFFS', HOBOKEN DEFENDANTS', COUNCILMEMBER DEFENDANTS', AND INTERVENOR PLAINTIFFS' JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Fredrick W. Alworth
Charles S. Korschun
Michael A. Conforti
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500
Attorneys for Just Block 112, LLC and *Hoboken Western Edge, LLC*

Jessica CM Almeida
Grant W. McGuire
MCMANIMON SCOTLAND & BAUMANN, LLC
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068
(973) 622-1800
Attorneys for City of Hoboken, City Council of City of Hoboken, and *Hoboken Mayor Ravinder Bhalla*

Kevin J. Coakley
Nicole B. Dory
CONNELL FOLEY LLP
56 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500
Attorneys for Hoboken Western Edge, LLC

Craig A. Domalewski
DUGHI HEWIT & DOMALEWSKI, P.C.
340 North Avenue East
Cranford, New Jersey 07016
(908) 272-0200
Attorneys for American Legion Hoboken Post 107 and *Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken*

Edward J. Buzak
SURENIAN, EDWARDS, BUZAK & NOLAN LLC
311 Broadway, Suite A
Point Pleasant Beach, New Jersey 08742
(732) 612-3100
Attorneys for Third-Party Defendants Jennifer Giattino, Ruben Ramos, and *Michael Defusco*

Dated: January 31, 2025

Pursuant to New Jersey Court Rule 4:46-2(a), Plaintiffs Just Block 112, LLC ("JB112") and Hoboken Western Edge, LLC ("HWE and with JB112, "Plaintiffs"); Defendants the City of Hoboken, the City Council of the City of Hoboken, Ravinder Bhalla, Mayor of Hoboken (the "Hoboken Defendants"); individual defendants Jennifer Giattino, Ruben Ramos, and Michael Defusco (the "Councilmember Defendants");[1] and Intervenor-Plaintiffs American Legion Hoboken Post 107 and Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken ("Intervenor-Plaintiffs") (collectively, the "Moving Parties") respectfully submit the following Statement of Undisputed Material Facts ("SUMF") in support of their Motion for Summary Judgment. The SUMF is supported by appropriate citations to pleadings, certifications, and other admissible evidence as to which Plaintiffs contend there are no genuine issues in dispute. To the extent that Moving Parties rely upon allegations in the Amended Third-Party Complaint of Third-Party Plaintiffs City of Union City ("Union City"), UCMH Terra Heights, LLC ("UCMH"),

[1] Councilmember Giattino passed away on November 5, 2024.

and John Does 1 and 2, Plaintiffs assume the facts set forth therein are true for purposes of this motion only and expressly reserve the right to contest their validity in subsequent proceedings, including trial, if necessary. All Exhibits to this SUMF are annexed to the Certification of Charles S. Korschun ("Korschun Cert."), filed herewith.

The Western Edge Redevelopment Area & Plan

1. The Western Edge Redevelopment Area ("Redevelopment Area") is located in northwest Hoboken and comprises approximately 11.15 acres, consisting of four separate "Subareas" (the Lower Monroe Street Subarea, the Upper Monroe Street Subarea, the Madison Street Subarea, and the Jefferson Street Subarea). Korschun Cert. Ex. 1.

2. The Planning Board recommended the original Western Edge Redevelopment Plan ("Redevelopment Plan") on July 7, 2015, and the City Council adopted the Redevelopment Plan by ordinance on August 5, 2015. Korschun Cert. Ex. 1 at JBHWE00000001.

3. Following its initial adoption on August 5, 2015, the Redevelopment Plan was amended by the City Council on December 19, 2018, on September 18, 2019, on April 1, 2020, on July 3, 2020, on October 21, 2020, on December 15, 2021, and on January 19, 2022. See https://www.hobokennj.gov/resources/western-edge-redevelopment-plan.

4. On February 22, 2017, by resolution, the City Council of the City of Hoboken ("City Council") authorized Hoboken's entry into an Interim Cost and Conditional Designation Agreement conditionally designating Plaintiff JB112 as the Redeveloper of the Jefferson Street Subarea, more commonly known as 1300 Jefferson Street, located at Block 112, Lot 1 ("Block 112"). Korschun Cert. Ex. 2.

5. On December 20, 2017, by resolution, the City Council authorized Hoboken's entry into an Interim Cost and Conditional Designation Agreement conditionally designating Plaintiff

HWE as the Redeveloper of the Madison Street Subarea, more commonly known as 1200-1330 Madison Street, located at Block 112, Lot 1 ("Block 106"). See Korschun Cert. Ex. 3 at JBHWE00000187.

6. JB112 owns and is the designated redeveloper for Block 112. See Korschun Cert. Ex. 2.

7. HWE owns and is the designated redeveloper for Block 106. See Korschun Cert. Ex. 3.

8. JB112 and the City of Hoboken ("Hoboken") entered into a redevelopment agreement for Block 112, consistent with the Redevelopment Plan, the operative version of which is the Amended and Restated Redevelopment Agreement for Block 112, dated August 10, 2020, and most recently amended January 13, 2021 (the "Block 112 Agreement"). Korschun Cert. Exs. 14 & 15. The Block 112 Agreement references commitments to affordable housing for military veterans by the Intervenor-Plaintiffs. Provision of facilities for the Hoboken Legion is tied to the Block 112 Project through separate agreements between JB112 and the Hoboken Legion. See Intervenor-Plaintiffs Complaint in Lieu of Prerogative Writs and for Other Relief in Intervention ¶¶ 4-7, 49-62. Trans ID: LCV20226174521356.

9. HWE and the City of Hoboken entered into a redevelopment agreement for Block 106, consistent with the Redevelopment Plan, the operative version of which is the Redevelopment Agreement for Block 106, dated October 21, 2020. Korschun Cert. Ex. 16.

10. On June 8, 2020, Union City's mayor, Brian P. Stack ("Mayor Stack"), sent a letter to Hoboken's mayor, Ravinder Bhalla ("Mayor Bhalla"), entitled "Ordinance Amending The Redevelopment Plan For The Western Edge Redevelopment Area Pertaining To The Jefferson Street Sub-Area (B-255), 1300 Jefferson Street, Hoboken. Korschun Cert. Ex. 17.

11. On September 14, 2021, the Planning Board adopted a Resolution of Denial of JB112's Block 112 site plan application. Korschun Cert. Ex. 18. On December 14, 2021, the Planning Board adopted a Resolution of Denial of HWE's Block 106 site plan application. Korschun Cert. Ex. 19. (collectively, the "Resolutions of Denial"). The Resolutions of Denial noted Union City's objections but did not cite these objections as part of their basis for denying the applications. Korsch Cert. Exs. 18 and 19.

The Pleadings

12. Plaintiffs commenced this action on October 29, 2021 by way of a Complaint in Lieu of Prerogative Writs and for Other Relief. Trans ID: LCV20212529884.

13. Plaintiffs amended their Complaint on January 4, 2022 by way of an Amended Complaint in Lieu of Prerogative Writs and for Other Relief ("Amended Complaint"). Trans ID: LCV202228911.

14. Plaintiffs' Amended Complaint includes sixteen (16) causes of action against Defendants the City of Hoboken ("Hoboken"); Ravinder Bhalla, Mayor of the City of Hoboken ("Mayor Bhalla"); the City Council of the City of Hoboken ("City Council" and, together with Hoboken and Mayor Bhalla, the "Hoboken Defendants"); the Planning Board of the City of Hoboken ("Planning Board"); and the City of Union City ("Union City"). Id.

15. Plaintiffs brought their causes of action in response to, *inter alia*, the Planning Board's denial of Plaintiffs' site plan applications vis-à-vis Blocks 112 and 106 and Union City's tortious interference with Plaintiffs' contracts related thereto.

16. Union City responded to the Amended Complaint on February 10, 2022 with an Answer and with a Third-Party Complaint against Hoboken, the City Council, and John Does 1 to 9. Trans ID: LCV2022607365.

17. Union City's Third-Party Complaint was joined by three (3) new parties, Third-Party Plaintiffs 400 Palisades Development LLC ("400 Palisades"), UCMH Terra Heights, LLC ("UCMH"), and UCLC Terra Heights, LLC ("UCLC") (together, the "Third-Party LLCs"), in addition to the fictitious parties John Does 1 and 2. Id.

18. Plaintiffs filed a Motion to Dismiss the Third-Party Complaint on March 31, 2022. The Court denied the Motion to Dismiss without prejudice on July 8, 2022. In its oral decision on July 8, 2022, the Court cited lack of standing for the Motion to Dismiss and that limited discovery was required on the "Conflict of Interest" allegations as the reasons for the denial. The Court did not rule on statute of limitations issues or other arguments on whether the remaining counts in the Third-Party Complaint failed to state a claim. See Transcript of July 8, 202 Hearing on Plaintiffs' Motion to Dismiss the Third-Party Compl., Korsch Cert. Ex. 23.

19. On July 8, 2022, the Court granted Intervenor-Plaintiffs' motion to intervene, adding American Legion Hoboken Post 107 and Hoboken World War Veterans Holding Corp d/b/a Veterans Center of Hoboken as Intervenor-Plaintiffs in this action. Trans ID: LCV20226174521356.

20. On December 9, 2022, Plaintiffs filed a Motion for Partial Summary Judgment on their claims in lieu of prerogative writs challenging the Resolutions of Denial. After briefing and argument on the issue, on April 4, 2023 the Court entered an Order of Remand directing approval of the site plan applications. Trans ID: LCV20231241897. The Planning Board then held public hearings and approved the site plan applications for Block 112 and Block 106 in resolutions adopted on May 4, 2023 and published May 9, 2023. See Korschun Cert. Ex. 24.

21. On October 20, 2023, in response to Plaintiffs' Motion to Compel Discovery, the Court granted the Third-Party LLCs "leave of the Court to voluntarily dismiss themselves without

prejudice, with the condition that they comply with Plaintiff's [sic] discovery requests within 30 days…" Trans ID: LCV 20233191001.

22. On December 15, 2023, with leave of Court, Union City (and John Does 1 and 2) filed an Amended Third-Party Complaint. See Trans ID: LCV20233654425, attached to the Korschun Cert. as Ex. 4. In its oral decision granting Union City's Motion for Leave to Amend over the objections of Plaintiffs and the Hoboken Defendants, the Court expanded upon its July 8, 2022 decision on the Motion to Dismiss to clarify its decision that Union City had pleaded a prima facie claim for Conflict of Interest. The Court did not rule on statute of limitations issues or other arguments on whether the remaining counts in the Amended Third-Party Complaint failed to state a claim and were futile. See Transcript of December 15, 2023 Hearing on Union City Motion for Leave to Amend Third-Party Complaint, Korschun Cert. Ex. 20.

23. Union City filed the Amended Third-Party Complaint on December 15, 2023. The Amended Third-Party Complaint removed the Third-Party LLCs as Third-Party Plaintiffs. See Korschun Cert. Ex. 4 at 1.

24. The Amended Third-Party Complaint added as Third-Party Defendants three (3) Hoboken City Council members in their official capacities as councilmembers for Hoboken: Jennifer Giattino; Ruben Ramos; and Michael DeFusco (the "Councilmember Defendants"). See Korschun Cert. Ex. 4 at 1.

25. The Amended Third-Party Complaint included twelve (12) causes of action. See generally Korschun Cert. Ex. 4.

26. Union City added some limited additional details to its "Conflict of Interest" allegations (vis-à-vis its initial Third-Party Complaint), reflecting what Plaintiffs had already confirmed in their responses to Union City's Requests for Admission. See Korschun Cert. Ex. 22.

27. All twelve causes of action seek the following relief:

- "Declaring that adoption of the Ordinances was arbitrary, capricious and unreasonable and contrary to governing law and the lawful rights of the Third-Party Plaintiffs";
- "Declaring that the Ordinances are defective, voidable as a matter of law, *ultra vires*, and therefore void *ab initio* and/or otherwise invalid and unenforceable"; and
- "Declaring that adoption of the Ordinances to be void and of no force and effect thereby negating any affirmative acts taken by any municipal agency, board, professional, employee or representative which were or may be issued based upon the Ordinances." See generally Korschun Cert. Ex. 4.

28. The "Ordinances" addressed in the Amended Third-Party Complaint that the Amended Third-Party Complaint seeks to invalidate are Ordinance B-255 and Ordinance B-291. See Korschun Cert. Ex. 4 at 12.

29. Ordinance B-255 primarily modified the building standards for the Jefferson Street Subarea, i.e., Block 112. See Korschun Cert. Ex. 5.

30. Plaintiff JB112 is the sole owner/redeveloper of the Jefferson Street Subarea / Block 112. See Korschun Cert. Ex. 2.

31. Ordinance B-291 primarily modified building standards for the Madison Street Subarea, i.e., Block 106. See Korschun Cert. Ex. 6.

32. Plaintiff HWE is the sole owner/redeveloper of the Madison Street Subarea / Block 106. See Korschun Cert. Ex. 3 at JBHWE00000181.

33. Each of the Amended Third-Party Complaint's twelve causes of action seek to

invalidate Ordinances B-255 and B-291, which Ordinances directly impact Plaintiffs' use of their properties. See generally Korschun Cert. Ex. 4.

34. Overall, the Amended Third-Party Complaint seeks to void the Ordinances based on alleged statutory violations and an alleged conflict of interest that existed between Plaintiffs and the Councilmember Defendants. See generally Korschun Cert. Ex. 4; see also Trans ID: LCV20242589386 ¶ 57.

35. At the April 12, 2024 hearing on the Councilmember Defendants' motion to dismiss the Amended Third-Party Complaint, the Court stated, *inter alia*, that: "[I]f there is no conflict then the third party claim will not proceed and any impediments to the approvals that were given to the developers to build their buildings should now be eliminated." Korschun Cert. Ex. 21.

The Settlement

36. On September 4, 2024, the City Council unanimously adopted Resolution 24-743 (Resolution of the City of Hoboken Authorizing the Execution of Settlement Agreements with Hoboken Western Edge, LLC; Just Block 112, LLC; American Legion Hoboken Post 107, and Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken). Korschun Cert. Ex. 7.

37. The Councilmember Defendants (who Union City had alleged to be conflicted) took no part with respect to Resolution 24-743. See Korschun Cert. Ex. 7 at Packet Pages 420-21.

38. Defendant (Councilmember) DeFusco is no longer a member of the Hoboken City Council, and was not a member of the Hoboken City Council on September 4, 2024. See https://www.hobokennj.gov/departments/city-council.

39. Defendants (Councilmembers) Giattino and Ramos were not present for and did not participate in any closed or open session, City Council deliberations, hearings, or the vote

regarding Resolution 24-743. See Korschun Cert. Ex. 7 at Packet Pages 420-21.

40. Following adoption of Resolution 24-743, Plaintiffs (JB112 and HWE), the Hoboken Defendants (Hoboken, the City Council, and Mayor Bhalla), the Planning Board, and Plaintiff-Intervenors (the "Settlement Parties") entered into two settlement agreements (the "Settlement"). See Korschun Cert. Exs. 8 & 9.

41. On September 19, 2024, JB112, the Hoboken Defendants, the Planning Board, and Plaintiff-Intervenors fully executed the "Partial Settlement Agreement between the City of Hoboken, Mayor Ravinder Bhalla, the City Council of the City of Hoboken, the Planning Board of the City of Hoboken, American Legion Hoboken Post 107, Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken, and Just Block 112, LLC." Korschun Cert. Ex. 8.

42. On September 19, 2024, HWE, the Hoboken Defendants, the Planning Board, and Plaintiff-Intervenors fully executed the "Partial Settlement Agreement between the City of Hoboken, Mayor Ravinder Bhalla, the City Council of the City of Hoboken, the Planning Board of the City of Hoboken, American Legion Hoboken Post 107, Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken, and Hoboken Western Edge, LLC." Korschun Cert. Ex. 9.

43. Among other things, the Settlement contemplates further superseding amendments to the Redevelopment Plan. See Korschun Cert. Ex. 8 § 4(b) & Ex. 9 § 4(a).

44. On October 11, 2024, the Settlement Parties submitted the Settlement to the Court to be "So Ordered" pursuant to the Settlement Parties' joint Stipulation and Consent Order Confirming Settlement. Trans ID: LCV20242625845.

45. On January 16 2025, the Court "So Ordered" the Settlement Parties' joint

Stipulation and Consent Order Confirming Settlement. Trans ID: LCV2025127347.

46. On January 27, 2025, the Court granted UCMH's application to be reinstated to the third-party action (i.e., as a party to the Amended Third-Party Complaint). Trans ID: LCV2025192474.

The Amended-Third Party Complaint's Challenged Ordinances Are Now Superseded

47. On October 9, 2024, the City Council introduced Ordinance B-715, to amend the Redevelopment Plan, and adopted Resolution 24-877 to refer proposed Ordinance B-715 to the Planning Board for review and recommendation regarding its consistency with the Hoboken Master Plan. See Korschun Cert. Ex. 10.

48. The Councilmember Defendants (who Union City previously alleged to be conflicted) took no part with respect to Resolution 24-877. See Korschun Cert. Ex. 10 at Vote Record.

49. On October 17, 2024, the Planning Board held a public meeting and found that the proposed Ordinance Amending the Redevelopment Plan, Ordinance B-715, "is generally consistent with the 2018 Re-Examination Report & 2018 Land Use Element and is designed to effectuate the purpose of the same." Korschun Cert. Ex. 11.

50. At the conclusion of the October 17, 2024 public hearing, the Planning Board voted to recommend to the City Council that it adopt Ordinance B-715. Korschun Cert. Ex. 12 at Roll Call.

51. On October 23, 2024, the City Council held a public hearing and adopted Ordinance B-715. Korschun Cert. Ex. 13 at Page 24 (Results of Vote).

52. The (allegedly previously conflicted) Councilmember Defendants took no part with respect to adoption of Ordinance B-715, including in deliberations, hearings, or the vote on the

Ordinance. See Korschun Cert. Ex. 13 at Page 24 (Results of Vote).

53. Ordinance B-715 states, among other things, that:

- "upon passage of this Ordinance, the provisions hereof shall amend and supersede the Redevelopment Plan";
- "The Western Edge Redevelopment Plan…is hereby amended to reflect the superseding zone set forth in the Redevelopment Plan";
- "The Amended Redevelopment Plan shall amend and supersede the Redevelopment Plan adopted by the City Council on August 5, 2015 and applicable provisions of the Zoning Ordinance of the City of Hoboken"; and
- "All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed." Korschun Cert. Ex. 13.

54. Ordinance B-715 amended the Redevelopment Plan and superseded Ordinances B-255 and B-291.

55. Thus, the Ordinances that the Amended Third-Party Complaint seeks to invalidate are now superseded by Ordinance B-715.

Respectfully submitted,

Dated: January 31, 2025

By: */s/ Charles S. Korschun*

Fredrick W. Alworth
Charles S. Korschun
Michael A. Conforti
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Plaintiffs Just Block 112, LLC and *Hoboken Western Edge, LLC*

By: */s/ Jessica C.M. Almeida*

Jessica C.M. Almeida
Grant W. McGuire
MCMANIMON SCOTLAND & BAUMANN, LLC
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068
(973) 622-1800

Attorneys for Defendants City of Hoboken, City Council of the City of Hoboken, and

Ravinder Bhalla, Mayor of the City of Hoboken

By: */s/ Kevin J. Coakley*
Kevin J. Coakley
Nicole B. Dory
Connell Foley LLP
56 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500

Attorneys for Hoboken Western Edge, LLC

By: */s/ Edward J. Buzak*

Edward J. Buzak
SURENIAN, EDWARDS, BUZAK & NOLAN LLC
331 Broadway, Suite A
Point Pleasant Beach, NJ 08742
(732) 612-3100

Attorneys for Defendants Jennifer Giattino, Ruben Ramos, and *Michael DeFusco*

By: */s/ Craig A. Domalewski*

Craig A. Domalewski, Esq.
DUGHI HEWIT & DOMALEWSKI, P.C.
340 North Avenue East
Cranford, New Jersey 07016
(908) 272-0200

Attorneys for Intervenor-Plaintiffs American Legion Hoboken Post 107 and *Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken*

JUST BLOCK 112, LLC and HOBOKEN WESTERN EDGE, LLC, Plaintiffs, v. THE CITY OF HOBOKEN; RAVINDER BHALLA, MAYOR OF THE CITY OF HOBOKEN; THE CITY COUNCIL OF THE CITY OF HOBOKEN; THE PLANNING BOARD OF THE CITY OF HOBOKEN; and THE CITY OF UNION CITY, Defendants.	SUPERIOR COURT OF NEW JERSEY HUDSON COUNTY | LAW DIVISION DOCKET NO.: HUD-L-4207-21 Civil Action Motion Returnable: February 28, 2025 ***Oral Argument Requested***
CITY OF UNION CITY; UCMH TERRA HEIGHTS, LLC; and JOHN DOES 1 AND 2, Third-Party Plaintiffs, v. THE CITY OF HOBOKEN; THE CITY COUNCIL OF THE CITY OF HOBOKEN; JENNIFER GIATTINO; in her official capacity as Council Member for the City of Hoboken; RUBEN RAMOS, in his official capacity as Council Member for the City of Hoboken; MICHAEL DEFUSCO, in his official capacity as Council Member for the City of Hoboken; and JOHN DOES 4 TO 9, Third-Party Defendants.	**JOINT MEMORANDUM OF LAW OF PLAINTIFFS, HOBOKEN DEFENDANTS, COUNCILMEMBER DEFENDANTS, AND INTERVENOR PLAINTIFFS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Fredrick W. Alworth
Charles S. Korschun
Michael A. Conforti
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Just Block 112, LLC and *Hoboken Western Edge, LLC*

Jessica CM Almeida
Grant W. McGuire
MCMANIMON SCOTLAND & BAUMANN, LLC
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068
(973) 622-1800

Attorneys for City of Hoboken, City Council of City of Hoboken, and *Hoboken Mayor Ravinder Bhalla*

Kevin J. Coakley
Nicole B. Dory
CONNELL FOLEY LLP
56 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500

Attorneys for Hoboken Western Edge, LLC

Craig A. Domalewski
DUGHI HEWIT & DOMALEWSKI, P.C.
340 North Avenue East
Cranford, New Jersey 07016
(908) 272-0200

Attorneys for American Legion Hoboken Post 107 and *Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken*

Edward J. Buzak
SURENIAN, EDWARDS, BUZAK & NOLAN LLC
311 Broadway, Suite A
Point Pleasant Beach, New Jersey 08742
(732) 612-3100

Attorneys for Third-Party Defendants Jennifer Giattino, Ruben Ramos, and *Michael Defusco*

Dated: January 31, 2025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS AND PROCEDURAL HISTORY 4

I. The Western Edge Redevelopment Area & Plan 4

II. Union City Opposes Project Heights 5

III. The Amended "Third-Party Complaint" 6

IV. Planning Board Approvals and Settlement 9

A. Plaintiffs' Existing Site Plan Approvals are Remanded and Approved 9

B. B-715 Amends the Redevelopment Plan as a Superseding Ordinance 11

LEGAL ARGUMENT 12

POINT ONE: CHALLENGES TO LEGISLATION MUST BE ADJUDICATED BASED ON THE VERSION OF THE LAW IN EFFECT AT THE TIME OF DECISION 13

POINT TWO: THE CLAIMS IN THE AMENDED THIRD-PARTY COMPLAINT DO NOT APPLY TO THE SUPERSEDING LEGISLATION 16

I. The Claims Are All Pretexts to a "Right to a View" That Does Not Exist 17

II. Each Specific Cause of Action Is Inapplicable to New Legislation 19

A. "Conflict of Interest" 20

B. Causes of Action Specific to Procedural Technicalities 22

C. Other Counts Remain Futile on the Face of the Pleadings 22

POINT THREE: SEPARATE NEW LAWSUITS AGAINST THE SUPERSEDING LEGISLATION DO NOT OVERCOME MOOTNESS OF THE OLD CLAIMS 23

CONCLUSION 25

TABLE OF AUTHORITIES

Page(s)

Cases

Bracey v. City of Long Branch,
73 N.J. Super. 91 (Law Div. 1962) 15, 16, 20, 21

Brill v. Guardian Life Ins. Co. of Am.,
142 N.J. 520 (1995) 12

Bubis v. Kassin,
323 N.J. Super. 601 (App. Div. 1999) 18

Campbell v. Borough of North Plainfield,
404 N.J. Super. 337 (App. Div. 2008) 14

In re Cherry Hill,
217 N.J. Super. 140 (App. Div. 1987) 13

City of Union City et al. v. City of Hoboken et al.,
Docket No. HUD-L-3714-24 11

City of Union City et al. v. City of Hoboken et al.,
HUD-L-000448-23 17

Crowe v. De Gioia,
90 N.J. 126 (1982) 24

Frank A. Greek & Sons, Inc. v. Twp. of S. Brunswick,
257 N.J. Super. 94 (App. Div. 1992) 14

Global Landfill Agreement Grp. v. 280 Dev. Corp.,
992 F. Supp. 692 (D. N.J. 1998) 12

Harwood v. Tompkins,
24 N.J.L. 425 (1854) 18

Jai Sai Ram, LLC v. Planning/Zoning Bd. of Boro. of S. Toms River,
446 N.J. Super. 338 (App. Div. 2016) 14

Palisades Cliffs Protection Alliance, Inc. v. City of Hoboken et al.,
Docket No. HUD-L-3969-24 11

Riggs v. Long Beach Twp.,
101 N.J. 515 (1986) 13, 14, 15, 22

In re Riverview Dev., LLC Waterfront Dev. Permit,
411 N.J. Super. 409 (App. Div. 2010), certif. denied 202 N.J. 347 (2010) 17, 18

Robbins v. Jersey City,
23 N.J. 229 (1957) 12

S&L Assocs., Inc. v. Twp. of Washington,
35 N.J. 224 (1961) ..... *passim*

In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County,
244 N.J. Super. 426 (App. Div. 1990) 18

Statutes

N.J.S.A. 40:55D-10.5.....14

N.J.S.A. 40:55D-16.....22

Open Public Meetings Act 21

Palisades Cliffs Protection Act 6

Other Authorities

https://njleg.state.nj.us/bill-search/2024/S273/bill-text?f=S0500&n=273_I1 .....6, 9

Rules

Rule 4:46.....1

Rule 4:46-2(c) 12

Plaintiffs Just Block 112, LLC ("JB112") and Hoboken Western Edge, LLC ("HWE and with JB112, "Plaintiffs"); Defendants the City of Hoboken, the City Council of the City of Hoboken, Ravinder Bhalla, Mayor of Hoboken (the "Hoboken Defendants"); individual defendants Jennifer Giattino, Ruben Ramos, and Michael Defusco (the "Councilmember Defendants");[1] and Intervenor-Plaintiffs American Legion Hoboken Post 107 and Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken ("Intervenor-Plaintiffs") (collectively, the "Moving Parties") respectfully submit this memorandum of law in support of their motion for summary judgment to dismiss the Amended Third-Party Complaint of Third-Party Plaintiffs City of Union City, UCMH Terra Heights, LLC ("UCMH"),[2] and John Does 1 and 2 (collectively, "Third-Party Plaintiffs" or "Union City") with prejudice pursuant to Rule 4:46.

PRELIMINARY STATEMENT

Union City's Amended-Third Party Complaint is now moot. The Amended Third-Party Complaint seeks to void Hoboken Ordinances B-255 and B-291 (collectively, the "2020 Ordinances"), which amended portions of the Hoboken Western Edge Redevelopment Plan (the "Redevelopment Plan"). In particular, Union City has alleged conflicts of interest by the Councilmember Defendants who voted on the 2020 Ordinances. Hoboken recently adopted separate, superseding legislation to further amend the Redevelopment Plan without participation of the Councilmember Defendants. The previous claims against the 2020 Ordinance therefore

[1] Councilmember Giattino tragically passed away on November 5, 2024. The Amended Third-Party Complaint has not been amended to reflect her passing.

[2] UCMH had been voluntarily dismissed from the action at the time that the Amended Third-Party Complaint was filed, but has requested to join in that pleading in connection with its motion for reinstatement into the action, which was granted on January 27, 2025. UCMH is referenced collectively with "Union City" for ease of reading.

cannot be applied to the current law in effect now governing the Redevelopment Plan and must be dismissed.

A new amending ordinance—B-715 (adopted October 23, 2024)—has been passed as a result of the September 19, 2024 settlement between Plaintiffs, the Hoboken Defendants, the Planning Board, and Intervenor-Plaintiffs (the "Settlement"). Hoboken authorized the Settlement and passed Ordinance B-715 consistent with all requirements under applicable law, and without any participation of the Councilmember Defendants previously alleged by Union City to have conflicts of interest. This is plainly dispositive of Union City's claims under the clear precedent of S&L Associates, Inc. v. Township of Washington and subsequent decisions holding that an alleged claim of conflict of interest is moot when those alleged to have conflicts do not participate in amending the legislation at issue. 35 N.J. 224, 227 (1961). In addition to the amended specifications codified in B-715, the Settlement—which has been confirmed in this action by a consent stipulation ordered by the Court—incentivizes Hoboken to pass additional superseding legislation and to authorize additional superseding agreements with Plaintiffs, all of which assure that the old legislation at which Union City's claims are directed is irrelevant for the following reasons.

First, the law is clear that the adoption of new superseding legislation with amendments that resolve contested issues—including in the context of any alleged conflicts of interest or alleged notice deficiencies—eliminates the need for further proceedings on the dispute. Courts apply the "law in effect" / "time-of-decision" rule when adjudicating a challenge to an ordinance, which directs that the Court evaluates only aspects of **the current ordinance** in effect at the time of the Court's decision. B-715 completely supersedes the previous version of the Redevelopment

Plan and is the operative legislation, and the Settlement likewise guarantees the 2020 Ordinances are obsolete for the purpose of legal challenges.

Second, None of Union City's causes of action regarding old ordinances apply to the passage or content of the current Redevelopment Plan. Union City has long searched for legal claims as pretext for its true objective to dictate building heights in its neighbor municipality so it may preserve views overlooking Hoboken toward the New York skyline—an unfounded "right" that has been unambiguously confirmed not to exist. Irrespective of the existence of Union City's purported right, the causes of action actually asserted by Union City that challenge the 2020 Ordinances—particularly the "Conflicts of Interest" allegation—cannot be applied to challenge the current version of the Redevelopment Plan Ordinance adopted in 2024 and are therefore moot.

Third, new lawsuits filed by Union City and its allies also do not support delaying or denying the effects of the superseding legislation, but instead further demonstrate that previous claims against the old 2020 Ordinances are moot. Union City has acknowledged that claims against the **new** superseding legislation must be made in the **new** lawsuits, and has reinforced this admission by commencing separate actions challenging both the Settlement and B-715. The new lawsuits strain even further to find some legal basis to afford Union City the authority to dictate the details of redevelopment projects approved in Hoboken, and their claims are completely without merit. But irrespective of such **new** claims, Union City's **old** claims in this litigation, which challenge only **old** ordinances, are moot and must be dismissed. In the alternative, at minimum, and to preserve judicial resources, the Court should extend its stay of all claims against the old ordinances pending confirmation that the Settlement or any other superseding legislation are final and unappealable.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[3]

As set forth herein, Union City's objections to the Block 112 and Block 106 redevelopment projects have been coordinated and multifaceted, and are designed to cause delay and interfere with governmental approvals for the projects. Objections raised by Union City as claims in this action have been rendered moot by superseding legislation and do not merit further drain of resources on the parties or the Court.

I. The Western Edge Redevelopment Area & Plan

The Western Edge Redevelopment Area ("Redevelopment Area") is located in northwest Hoboken and comprises four separate "Subareas," two of which are relevant to this litigation: the Jefferson Street Subarea and the Madison Street Subarea. SUMF ¶ 1. The Planning Board recommended the original Western Edge Redevelopment Plan ("Redevelopment Plan") on July 7, 2015, and the City Council adopted the Redevelopment Plan by ordinance on August 5, 2015. SUMF ¶ 2. The City Council has since amended the Redevelopment Plan via superseding ordinance several times, and did so again most recently on October 23, 2024 via the adoption of Ordinance B-715. SUMF ¶¶ 3, 51.

On February 22, 2017, Hoboken designated JB112 as the redeveloper of the Jefferson Street Subarea, also known as "Block 112." SUMF ¶ 4. On December 20, 2017, Hoboken designated HWE as the redeveloper of the Madison Street Subarea, also known as "Block 106." SUMF ¶ 5. Plaintiffs and Hoboken have also entered into redevelopment agreements for the respective sites, consistent with the Redevelopment Plan, the operative versions of which are the Amended and Restated Redevelopment Agreement for Block 112 dated August 10, 2020, and most recently amended January 13, 2021, and the Redevelopment Agreement for Block 106 dated

[3] The Moving Parties incorporate herein their Statement of Undisputed Material Facts ("SUMF").

October 21, 2020. SUMF ¶¶ 8-9. JB112 also has a separate agreement with Intervenor-Plaintiffs by which JB112 will provide facilities for Intervenor-Plaintiffs tied to its construction on the Block 112 project. SUMF ¶¶ 8

II. Union City Opposes Project Heights

Union City has vocally opposed the Block 112 and Block 106 projects since at least March 2020, when Ordinance B-255 was introduced. Union City's mayor, Brian P. Stack, objected to the 2020 Ordinances and publicly stated that he had informed Hoboken's mayor, Mayor Ravinder Bhalla, that Union City intended to commence litigation challenging Ordinance B-255. Union City strategically elected not to file suit within the forty-five (45) day legal deadline to file an action to challenge the adoption of the 2020 Ordinances. Instead, on June 8, 2020, forty-nine days after B-255 was published, Mayor Stack wrote to Mayor Bhalla and confirmed Union City had decided not to file a complaint in lieu of prerogative writs that it had prepared. SUMF ¶ 10; Trans ID: LCV20221313359 (March 31, 2022 Mot. to Dismiss) at I(A). In the June 8, 2020 letter, Mayor Stack specifically acknowledged Union City's awareness of the forty-five day legal deadline to commence an action to challenge the 2020 Ordinances, but expressed his unsupported belief that the period "may be enlarged if there is reliance upon a promise made and that promise is not fulfilled." Id. Following a settlement between Fair Share Housing Center, Inc., JB112, and the City of Hoboken, the Redevelopment Plan was amended again on July 29, 2020 by a new superseding ordinance, B-285, which was again not appealed by Union City. See Korschun Cert. Ex. 4 (Amended Third Party Compl.) ¶¶ 97-100.

Although both Plaintiffs and Hoboken attempted to demonstrate to Union City that the heights in the 2020 Ordinances did not materially impact views from Union City, Union City continued to voice opposition (but again strategically did not file any legal claim) when new redevelopment agreements containing the same heights were executed between Plaintiffs and

Hoboken. Instead, Union City strategically waited from February of 2020 until Plaintiffs' submission of their applications for site plan approval to the Planning Board to even begin register any legal objection. See Trans ID: LCV20221313359 (March 31, 2022 Mot. to Dismiss) at I(A).

When Plaintiffs submitted applications to the Planning Board for site plan approval of the projects, Union City appeared as an objector at the Planning Board hearings. Union City submitted various correspondence and expert materials to the Planning Board, making the meritless arguments that Plaintiffs' applications for development should be denied based on obstruction of views in Union City. Id. at 7. In its correspondence to the Planning Board, Union City again threatened to file a lawsuit against Hoboken to challenge the 2020 Ordinances, this time erroneously claiming such a lawsuit would "deprive the [Planning] Board of jurisdiction to hear the Application[s] pending the resolution of the litigation." Id. at 9. The Planning Board thereafter denied both of Plaintiffs' applications for development by Resolutions adopted on September 14, 2021 and December 14, 2021, respectively (the "Resolutions of Denial"), but the Board did not cite Union City's objections to height as a basis for the denials. See SUMF ¶ 11; Korschun Cert. Exs. 18-19. Throughout and during these objections, Mayor Stack, in his role as a state senator, introduced and scheduled public hearings on certain legislation known as the Palisades Cliffs Protection Act, which sought to prevent the building heights permitted in the Redevelopment Plan through State legislation, which was ultimately never enacted.[4]

III. The Amended "Third-Party Complaint"

Plaintiffs commenced this action by filing a Complaint and Amended Complaint on October 29, 2021 and January 4, 2022, respectively. SUMF ¶¶12-13. In addition to asserting claims in lieu of prerogative writs challenging the Planning Board's Resolutions of Denial, the

[4] See https://njleg.state.nj.us/bill-search/2024/S273/bill-text?f=S0500&n=273_I1.

Amended Complaint also asserted claims against Hoboken arising out of alleged breaches of the Redevelopment Agreements with Plaintiffs, and against Union City for tortious interference with those agreements and related economic advantages. See Trans ID: LCV202228911 (Plaintiffs' Jan. 4, 2022 Am. Compl.).

Together with its Answer to the Amended Complaint filed on February 10, 2022, Union City also filed a Third-Party Complaint against Hoboken and the City Council (and fictitious John Doe parties). SUMF ¶ 16. Union City's Third-Party Complaint added, as Third-Party Plaintiffs, 400 Palisades Development LLC ("400 Palisades"); UCMH; and UCLC Terra Heights, LLC ("UCLC") (together, the "Third-Party LLCs"). SUMF ¶ 17. The Third-Party Complaint included twelve (12) causes of action, each of which belatedly sought to void the 2020 Ordinances, B-255 and B-291. See Trans ID: LCV2022607365 (Feb. 10, 2022 Third-Party Compl.).

On March 31, 2022, Plaintiffs timely filed a Motion to Dismiss the Third-Party Complaint of Union City and Third-Party LLCs, which was denied without prejudice on July 8, 2022. Trans ID: LCV20222580751. When denying the Motion to Dismiss, the Court did not address each count in the Third-Party Complaint, but cited Plaintiffs' potential lack of standing and the Court's finding that limited discovery was required on the "Conflict of Interest" count. SUMF ¶ 18. At the same time, the Court also granted Intervenor-Plaintiffs' motion to intervene and accepted their Intervenor Complaint, which asserts claims stemming from the inability of Plaintiffs to construct affordable housing units for homeless military veterans as a result of, *inter alia*, Union City's tortious interference with Plaintiffs' contracts to do so. SUMF ¶ 19.

Later, when ruling on Union City's Motion for Leave to Amend the Third-Party Complaint on December 15, 2023, the Court expanded upon its July 8, 2022 decision, further ruling Union City's proposed Amended Third-Party Complaint pleaded a prima facie case for "Conflict of

Interest." SUMF ¶ 22. The Court did not, however, address arguments regarding other counts alleged by Union City and the Third-Party LLCs as part of that ruling, including whether counts other than the "Conflict of Interest" count were time-barred. SUMF ¶ 22.

Union City then filed an Amended Third-Party Complaint (dropping the Third-Party LLCs as parties) on December 15, 2023 over Plaintiffs' and the Hoboken Defendants' objections.[5] SUMF ¶ 23. The Amended Third-Party Complaint addressed Count 12 (Conflict of Interest), to which Union City added Councilmember Defendants as Third-Party Defendants. SUMF ¶ 24. Union City added some limited additional details to its "Conflict of Interest" allegations, reflecting what Plaintiffs had already confirmed in their responses to Union City's Requests for Admission. SUMF ¶ 26. The Amended Third-Party Complaint otherwise largely remained unchanged from the original version and includes the same causes of action. See SUMF ¶ 26.

All twelve causes of action seek the following relief:

- "Declaring that adoption of the Ordinances [B-255 and B-291] was arbitrary, capricious and unreasonable and contrary to governing law and the lawful rights of the Third-Party Plaintiffs";
- "Declaring that the Ordinances [B-255 and B-291] are defective, voidable as a matter of law, *ultra vires*, and therefore void *ab initio* and/or otherwise invalid and unenforceable"; and
- "Declaring that adoption of the Ordinances [B-255 and B-291] to be void and of no force and effect thereby negating any affirmative acts taken by any municipal

[5] The Third-Party LLCs were granted leave to voluntarily dismiss themselves from the action on October 20, 2023. Only UCMH sought reinstatement and to join in the Amended Third-Party Complaint.

agency, board, professional, employee or representative which were or may be issued based upon the Ordinances." SUMF ¶ 27.

The "Ordinances" referred to in the Amended Third-Party Complaint that the pleading seeks to invalidate are Ordinance B-255 and Ordinance B-291. SUMF ¶ 28. These ordinances include increases to permitted heights for buildings in Block 112 and Block 106, respectively. SUMF ¶¶ 29-32.

IV. Planning Board Approvals and Settlement

Through the course of the litigation, the Moving Parties have resolved the claims among them, first through the Hoboken Planning Board's approval on remand of the site plan applications at issue in Plaintiffs' complaint in lieu of prerogative writs, and then through the Settlement, which resolved the remaining claims alleged by Plaintiffs against the Hoboken Defendants.

A. Plaintiffs' Existing Site Plan Approvals are Remanded and Approved

Plaintiffs' claims in lieu of prerogative writs challenging the Planning Board's denials were briefed and decided prior to discovery on the remaining claims in the action, resulting in the Court entering an Order of Remand on April 4, 2023. Trans ID: LCV20231241897. Pursuant to the Order of Remand, the Planning Board held public hearings and approved site plan applications for both Block 112 and Block 106 by Resolutions adopted on May 4, 2023 and published May 9, 2023. The deadline for any party to appeal these approvals passed on June 23, 2023, without any additional challenge being filed, and the site plan approvals granted by the May 4, 2023 Resolutions are final and unappealable.

A. The Settlement

A resolution to authorize Hoboken's agreement to the Settlement (Resolution 24-743, the "Settlement Resolution") was introduced and debated at the August 21, 2024 Council meeting. See SUMF ¶ 36. In response to comments by counsel for Union City and UCMH, a vote on the

Settlement Resolution was tabled and was not considered until the following Council meeting.[6] On September 4, 2024, the City Council adopted the Settlement Resolution. SUMF ¶ 36. The Councilmember Defendants did not take part in authorizing the Settlement. SUMF ¶ 37. Mr. Defusco is no longer a member of the Hoboken City Council; and Defendant Councilmembers Giattino and Ramos were not present for and did not participate in any closed or open session, City Council deliberations, hearings, or the vote regarding the Settlement Resolution. SUMF ¶¶ 38-39.

As a result of the Settlement Resolution, Plaintiffs (JB112 and HWE), the Hoboken Defendants (Hoboken, the City Council, and Mayor Bhalla), the Planning Board, and Intervenor-Plaintiffs (collectively, the "Settlement Parties") fully executed the Settlements as of September 19, 2024. SUMF ¶ 40. The Settlement includes two separate agreements: an agreement for Block 112 between JB112, the Hoboken Defendants, the Planning Board, and Intervenor-Plaintiffs and an agreement for Block 106 between HWE, the Hoboken Defendants, the Planning Board, and Intervenor-Plaintiffs. SUMF ¶¶ 41-42.

Among its terms, the Settlement contemplates further superseding amendments to the Redevelopment Plan. SUMF ¶ 43. For example, Section 4 of each of the Settlement contemplates an "Amended Project," developed and approved "in good faith," in an "Amendment of Redevelopment Agreement," and, to achieve these ends, that the Redevelopment Plan will be amended "to comply with the terms of the Settlement." Korschun Cert. Ex. 8 § 4(a)-(c). The Settlement also provides that the parties will negotiate amended redevelopment agreements that reflect the Settlement terms.

[6] See Plaintiffs' Motion to Enforce Litigants Rights, Trans ID: LCV20242487005 at Pg. 5 of 8 ("The comments by representatives for Union City and Third-Party LLCs contributed to a boisterous proceeding that led to the Council voting to table the settlement agreement resolutions.").

On October 11, 2024, the Settlement Parties jointly submitted the Settlement to the Court to be judicially confirmed pursuant to the Settlement Parties' Stipulation and Consent Order Confirming Settlement. SUMF ¶ 44. On January 16, 2025, the Court "So Ordered" the stipulation, and thus judicially approved the Settlement. SUMF ¶ 45.

B. B-715 Amends the Redevelopment Plan as a Superseding Ordinance

In furtherance of the Settlement, on October 9, 2024, the City Council introduced Ordinance B-715 to propose an amendment to the Redevelopment Plan. Once again, as with the adoption of the Settlement Resolution, the Councilmember Defendants took no part in the deliberations or vote with respect to Ordinance B-715. SUMF ¶¶ 47-48. The Councilmember Defendants did not participate or vote when the City Council adopted Resolution 24-877 to refer proposed Ordinance B-715 to the Planning Board for review and recommendation regarding its consistency with the Hoboken Master Plan. SUMF ¶ 48. On October 17, 2024, the Planning Board held a public meeting and found that the proposed Ordinance B-715 "is generally consistent with the 2018 Re-Examination Report & 2018 Land Use Element and is designed to effectuate the purpose of the same." SUMF ¶ 49. At the conclusion of the October 17, 2024 public hearing, the Planning Board voted to recommend to the City Council that it adopt Ordinance B-715. SUMF ¶ 50. On October 23, 2024, the City Council held a public hearing and adopted Ordinance B-715 (together with the Settlement, the "Superseding Legislation"). SUMF ¶ 51. The Councilmember Defendants again did not participate at the October 23 hearing and did not vote on the successful adoption of B-715. SUMF ¶ 52.

The sole amendment to the Redevelopment Plan in Ordinance B-715 was to increase the permitted building height for Block 106 from the height permitted in the 2020 Ordinances, consistent with the Settlement. Ordinance B-715 states that "the provisions hereof shall amend and **supersede** the Redevelopment Plan"; that the Redevelopment Plan "is hereby amended to

reflect the **superseding** zone set forth in the Redevelopment Plan"; and that Ordinance B-715 "shall amend and **supersede** the Redevelopment Plan adopted by the City Council on August 5, 2015." SUMF ¶ 53 (emphases added).

The City of Union City and a collective including UCMH called the "Palisades Cliffs Protection Alliance, Inc." ("PCPA") have filed separate actions in lieu of prerogative writs challenging the Settlement Resolution and Ordinance B-715. See City of Union City et al. v. City of Hoboken et al., Docket No. HUD-L-3714-24, and Palisades Cliffs Protection Alliance, Inc. v. City of Hoboken et al., Docket No. HUD-L-3969-24 (challenging the Settlement Resolution); and City of Union City et al. v. City of Hoboken et al.; see also Docket No. HUD-L-4445-24, and Docket No. HUD-L-4474-24 (challenging Ordinance B-715). Initial conferences have not yet taken place in those actions.

LEGAL ARGUMENT

Rule 4:46-2(c) provides that summary judgment shall be granted where the evidence before the Court "show[s] that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995); R. 4:46-2(c). The court is obligated "to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 540. When the evidence is so one-sided that a party must prevail as a matter of law, a trial court should not hesitate to grant summary judgment. Id.

Further, the New Jersey Supreme Court has emphasized the importance of summary judgment "not only to save antagonists the expense of protracted litigation but also to reserve judicial manpower and facilities to cases which meritoriously command attention." Id. at 542;

Robbins v. Jersey City, 23 N.J. 229, 240-41 (1957). "The [very] purpose of summary judgment is to eliminate a trial where it is unnecessary and would only cause delay and expense to the court and litigants." Global Landfill Agreement Grp. v. 280 Dev. Corp., 992 F. Supp. 692, 694 (D. N.J. 1998) (citing Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976)).

Here, there are no issues of material fact disputed between the parties—the motion involves only questions of law in interpreting the effects of new municipal legislation based upon the undisputed procedural record, and not on facts obtained in discovery. Under the clear precedent of S&L Assocs. and other decisions, the Court need only confirm (1) the operative legislation that now governs challenges to the Redevelopment Plan; (2) the inapplicability of Union City's previous claims to the current operative legislation; and (3) the inability of Union City's most recent claims to overcome the mootness of Union City's old claims. Accordingly, this matter is ripe for the Court's review and resolution in favor of the Moving Parties.

POINT ONE

CHALLENGES TO LEGISLATION MUST BE ADJUDICATED BASED ON THE VERSION OF THE LAW IN EFFECT AT THE TIME OF DECISION

The issue before the Court is simple: the Amended Third-Party Complaint applies only to the 2020 Ordinances and does not apply to the Superseding Legislation adopted in 2024. Based upon the maxim referred to as both the "law in effect rule" or the "time of decision rule," when ordinances have been amended, only claims based on issues with how current versions of legislation was passed, or with the provisions remaining in the current legislation, can be sustained. Union City's "Conflict of Interest" claim and other claims apply only to old versions of legislation. All of these claims are therefore irrelevant and must be dismissed as moot.

The New Jersey Supreme Court has long established and consistently upheld that "the status of **the law in effect** at the time of the disposition of a cause by an appellate court governs…"

S&L Assocs., Inc. v. Twp. of Washington, 35 N.J. 224, 227 (1961) (emphasis added). This is also referred to as the "time-of-decision" rule, which provides that a reviewing court **must** "apply the statute in effect at the time of its decision. . ." Riggs v. Long Beach Twp., 101 N.J. 515, 521 (1986); see also In re Cherry Hill, 217 N.J. Super. 140 (App. Div. 1987) ("conflict was eliminated by the enactment of [new chapter]," which "governs this appeal" as "prospective in operation"). Pursuant to this well-established doctrine, challenges that apply only to superseded legislation (such as those advanced by Union City in their Amended Third-Party Complaint) must be dismissed with prejudice.[7]

Alleged procedural deficiencies and alleged conflicts of interest both apply to specific circumstances under which legislation is passed, and both therefore do not carry forward to new legislation unless repeated. It is commonplace for municipalities to cure alleged deficiencies with legislation that occurred during the passage of an ordinance by adopting superseding legislation. For example, in Riggs, the New Jersey Supreme Court noted that where a law is challenged on a "technical ground," the municipality can simply "cur[e] the technical infirmity and render[] the…issue moot." 101 N.J. at 522-24 (adding "if the intervening law merely corrects a technical flaw… **further lower court proceedings are pointless**") (emphasis added). Similarly, in Campbell v. Borough of North Plainfield, the court held that should "the adoption of Ordinance No. 06-01 constitute a complete reenactment anew of Ordinance No. 05-22 … it would supersede and replace Ordinance No. 05-22, and … its substantive provisions would control." 404 N.J. Super. 337, 348-49 (App. Div. 2008); see also Jai Sai Ram, LLC v. Planning/Zoning Bd. of Boro. of S. Toms River, 446 N.J. Super. 338, 345 (App. Div. 2016) (determining appeal moot because

[7] Also cf. N.J.S.A. 40:55D-10.5 (requiring specific statutory authority to overcome "time-in-effect" rule when deciding applications submitted before regulatory authorities).

amended ordinance permitted a challenged use); Frank A. Greek & Sons, Inc. v. Twp. of S. Brunswick, 257 N.J. Super. 94, 107 (App. Div. 1992) ("[P]rocedural deficiencies can be cured by appropriate action by the municipal governing body.").

The same principle applies to alleged conflicts of interest among members of the body voting on legislation, if allegedly conflicted members are no longer involved when the ordinance is passed again. In S&L Associates, the plaintiff argued that both statutory deficiencies and a conflict of interest rendered the challenged legislation invalid. 35 N.J. 224 at 225. Before the Court ruled, however, the municipality adopted a superseding/amendatory ordinance, and did so without the involvement of the allegedly conflicted members. Id. at 226-27. The Court made clear that "the problem to be resolved by this court is the validity of the **presently existing ordinance** rather than of the superseded original." Id. at 227 (emphasis added) ("[W]e will consider plaintiff's arguments as though directed at the new ordinance"). Because previous members of the planning board that had approved the prior version of the ordinance were no longer on the board when the ordinance was approved again, the Court found that "the potential conflicting interests…problem has been rendered moot by their resignation from the planning board prior to municipal action on the new ordinance." 35 N.J. at 227; see also Bracey v. City of Long Branch, 73 N.J. Super. 91, 102 (Law Div. 1962) ("[T]he conflict-of-interest defect held to exist here may be easily remedied").

Here, the Settlement approved and so-ordered by the Court provides for superseding ordinances and amendments to the existing Redevelopment Plan. Ordinance B-715 has already put the first piece of additional superseding legislation into effect and expressly states that its "provisions shall amend and supersede the Redevelopment Plan." See Korschun Cert. Ex. 13. Accordingly, even if the Court were to rule on the validity of the 2020 Ordinances, it would not

impact the projects at issue, because those ordinances have been replaced. Further litigation regarding prior iterations of the ordinances and resolutions surrounding the Redevelopment Plan, and of agreements related thereto, is therefore "pointless." Riggs, 101 N.J. at 524. None of the alleged issues described in the Third-Party Complaint can apply to the Settlement or to B-715, as detailed further below.

POINT TWO

THE CLAIMS IN THE AMENDED THIRD-PARTY COMPLAINT DO NOT APPLY TO THE SUPERSEDING LEGISLATION

When an ordinance has been superseded by new legislation while a challenge to said legislation is pending, the Court may apply the claims to the new version of the legislation (such as an amended ordinance) where applicable. S&L Assocs., 35 N.J. at 227. Here, however, none of the causes of action asserted in the Amended Third-Party Complaint can apply to the superseding legislation. Union City's causes of action have necessarily been tied to alleged procedural technicalities or conflicts of interest at the time of passage of the 2020 Legislation, which are all circumstances that (even if they existed) can be, and have now been, easily corrected in later amendments. Bracey, 73 N.J. Super. at 102.

Crucially, Union City is not able to assert viable causes of action against the **substance** of the amended Redevelopment Plan's provisions, because the key substantive right that Union City seeks to assert—the right to enforce height restrictions to protect unobstructed views over Hoboken—does not actually exist. All other attempts to assert substantive challenges to the terms of the Redevelopment Plan are futile on their face and have long been discarded as realistic avenues by which the projects could be blocked. See Korschun Cert. Ex. 21 at 25:1-17 (Turula, J.: "[I]f there is no conflict then the third party claim will not proceed and any impediments to the approvals that were given to the developers to build their buildings should now be eliminated."). Absent

even a bare prima facie claim for conflict of interest, which can no longer be asserted in the absence of participation by the Councilmember Defendants, there is no remaining cause of action that is not moot.

I. The Claims Are All Pretexts to a "Right to a View" That Does Not Exist

When evaluating whether Union City's claims are applicable to the Superseding Legislation in effect, it is necessary to acknowledge that none of these claims would grant Union City the right it truly, but indirectly, seeks to assert: protection of its own viewsheds of the Manhattan skyline at the expense of development in Hoboken. In the absence of such a right, Union City is left to resort to an assortment of technical objections that, even assuming any merit, have been cured in the Superseding Legislation. Given that even the pretextual objections Union City asserted as obstacles to blocking its views can no longer apply, the disconnect between Union City's true goals and the claims asserted to block or frustrate the Projects has become even more stark.[8]

New Jersey Courts have expressly held that "[a]s a **well-settled matter of law**, 'in the absence of a restrictive covenant, a property owner has **no right to an unobstructed view** across a neighbor's property. In re Riverview Dev., LLC Waterfront Dev. Permit, 411 N.J. Super. 409 (App. Div. 2010) (emphasis added), certif. denied 202 N.J. 347 (2010) (quoting Bubis v. Kassin, 323 N.J. Super. 601, 616, 733 (App. Div. 1999). The Riverview Development decision addressed whether the potential loss of views of Manhattan from Bergen Ridge, a community situated

[8] As but one indication that Union City's claims are based on its attempt to block all development in front of the Palisades rather than on any specific grievance related to Blocks 112 and 106 (included protecting against purported "conflicts"), Union City and its allies have also sued to stop construction on a separate lot to be developed by a different owner, based on distinct alleged causes of action that do not involve alleged conflicts of interest or the other deficiencies alleged regarding Blocks 112 and 106. See City of Union City et al. v. City of Hoboken et al., HUD-L-000448-23.

(similarly to Union City) on the Palisades Cliffs, constituted a substantive right that would entitle objectors to a hearing denied by the Office of Administrative Law ("OAL"). While the Court was sympathetic to the impact from loss of scenic views, it affirmed that the objecting residents "have no property right to prevent any party—whether it be a private or public developer—from building a zoning-compliant structure that will block their vistas of the Hudson River or of New York City." Id. at 435. Granting such a right in the absence of an enforceable easement would necessarily privilege one group over another and create impossible-to-define exceptions; the potential that negative impacts may be felt from the siting of a new building "result from the unavoidable interrelatedness of living in a world surrounded by other persons and by other things." Id.

Riverview Development cited to an extensive precedent of cases holding the same principle. This unambiguous, black letter principle can be sourced in New Jersey all the way back to at least Harwood v. Tompkins, decided in ***1854***. See Harwood, 24 N.J.L. 425, 427 (1854) ("[A]n action does not lie for obstructing a view, unless an express covenant not to obstruct can be shown."). In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, also addressed whether appellants objecting to proposed construction that would "obscure the scenic view of the Hudson River and New York City skyline" possessed a substantive right to protect these views, where after construction the views' "panoramic beauty will be substantially lost" other than to the new residents living in the new building. 244 N.J. Super. 426, 428 (App. Div. 1990). The Court rejected the appellants' claim to a formal OAL hearing because they possessed no protectable property interest or right to the views in question. Id.

Likewise, in Bubis v. Kassin, the Court examined the existence of restrictive covenants on beachfront property, but in finding the existence of certain restrictions unrelated to viewsheds,

specifically denied the plaintiffs' claims regarding an "unobstructed view" of the ocean absent additional restrictive covenants or easements granting such a view. 323 N.J. Super. at 616. This absence of a protected "right to a view" is consistent with precedent across jurisdictions.

Since Riverview Development, no decision has held otherwise. Yet Union City has nevertheless asserted whatever other claims it could in order to maintain a litigation cloud over the projects, to frustrate their approvals and financing in order to achieve the same goal. In the absence of a substantive right that would apply to any version of the Redevelopment Plan, many of these claims have involved technicalities regarding notice and other circumstances by which the legislation in question has been passed. However, particularly now that the Moving Parties are now all in agreement over how the projects should proceed, any claims asserted by Union City must actually be directly applicable to the **current law**, not challenges to the process for adoption of the 2020 Ordinances, previously asserted as a backdoor substitute for the objections to the additional heights that the 2020 Ordinances permitted.

II. Each Specific Cause of Action Is Inapplicable to New Legislation[9]

As a result of being unable to allege the substantive right to restrict height specifications in the Redevelopment Plan that Union City actually seeks, none of the claims in the Amended Third-Party Complaint carry over to apply to the Superseding Legislation currently in effect. Rather, the allegations about the procedures of the 2020 Ordinances either no longer apply based on the separate process for authorizing B-715 and the Settlement, or they were never viable claims in the first place, but instead remained technically active while Union City pursued its search to locate a

[9] The Moving Parties maintain their denials to all of the counts alleged by Union City, even when applied to the 2020 Ordinances or other ordinances and resolutions previously in effect regarding the Projects. However, the superseding legislation provides that the parties and the Court need not waste their time further litigating the merits of these claims.

"conflict of interest" tied to the 2020 Ordinances. The inapplicability of the "Conflict of Interest" claim itself is now particularly clear given that the Councilmember Defendants who are alleged in the Amended Third-Party Complaint to have conflicts did not participate in the passage of the Superseding Legislation to any extent.

Although the Court has not specifically ruled, when denying JB112 and HWE's Motion to Dismiss and granting leave for Union City to file the Amended Third-Party Complaint, on arguments regarding counts alleged by Union City other than the Conflict of Interest claim, the Court and parties have generally acknowledged that a ruling on Union City's "Conflict of Interest" cause of action will be dispositive of its attempt to block redevelopment of Blocks 112 and 106. See Korschun Cert. Ex. 21 at 25:1-17 (Turula, J.: "[I]f there is no conflict then the third party claim will not proceed…"). As a threshold matter, all of these claims were clearly filed well outside of the applicable limitations period, and are not subject to the same exception that may be applied to a Conflict of Interest claim. See Trans ID: LCV20221313369 (Plaintiffs' Mar. 31, 2022 Mot. to Dismiss) at 12-23. Many of the claims also plainly apply only to procedural allegations regarding the 2020 Ordinances and are irrelevant to the process used to pass the operative Superseding Legislation. The remaining counts, moreover, continue to fail to state a claim on the face of the pleadings, on their merits in addition to being untimely, and may likewise be properly disposed of now.

A. "Conflict of Interest"

Union City's "Conflict of Interest" count, which Union City has long treated as the focus of its remaining challenges to the projects, is clearly a moot claim as a result of the new legislation. Simply put, the Amended Third-Party Complaint alleges that the Amended Redevelopment Plan should be voided based on thinly alleged conflicts between the Councilmember Defendants and Plaintiffs, but none of the Councilmember Defendants participated in adopting the Settlement or

Ordinance B-715, which expressly supersedes prior amendments. This is precisely the scenario covered in both S&L Associates and Bracey, where any allegedly conflicted members similarly did not participate in updated deliberations and voting when considering a new version of the challenged ordinance.

The conflict allegations in the Amended Third-Party Complaint are now futile, particularly given that Ordinance B-715 addresses precisely the details in the Redevelopment Plan—increased building heights—which Union City alleges had been driven by favoritism among allegedly conflicted councilmembers. Specifically, while Union City alleges that previous increases in height in the 2020 Ordinances would not have been passed absent supported from conflicted members, Ordinance B-715 solely involves additional increases to permitted height, ratified only by councilmembers who are not alleged to be conflicted in Union City's allegations. See Korschun Cert. Ex. 13.

Having previously been permitted broad, invasive, time-consuming, and costly discovery to explore potential conflicts between Plaintiffs and the Hoboken City Council, Union City now desperately seeks to hold onto the allegation of a conflict, even in the complete absence of allegedly conflicted councilmembers. Union City now argues that alleged conflicts among the Councilmember Defendants tainted not only votes on the 2020 Ordinances, but all subsequent iterations of the Redevelopment Plan forever after. See Union City October 1, 2024 Letter to the Court, Trans ID: LCV20242528054 ("October 1 UC Letter") at Pg. 2 of 5 (arguing that even any "new" developments would continue to remain "tainted by the conflict that existed at the time the documents were originally adopted"). This theory is completely unsupported by law or the facts pleaded in the Amended Third-Party Complaint—even if taken as true—which are not nearly sufficient even to demonstrate a conflict among the Councilmember Defendants named by Union

City in the first place, and is directly contrary to the precedent of S&L Associates and Bracey. Clearly, Union City cannot assert that any future development by Plaintiffs of their own property, or any legislation by Hoboken to facilitate improvement of these lots within its borders, must be forever banned no matter who participates in the authorizing legislation.

B. Causes of Action Specific to Procedural Technicalities

Other counts alleged by Union City involve procedural issues, such as allegedly defective notice, that are specific to the meetings held and votes taken on the 2020 Ordinances, but have no applicability to the enactment of the Settlement or Ordinance B-715. Such procedural counts include Count 1 (Violation of the Open Public Meetings Act), Count 2 (Defective Public Notice), Count 3 (Defective Notice to Union City, Count 4 (Arbitrary, Capricious and Unreasonable Governmental Action), and Count 7 (Violation of N.J.S.A. 40:55D-16). These are precisely the "technicalities" that courts have found to be routinely cured by amending the legislation, because the alleged facts are inherently inapplicable to the process for authorizing the new legislation. See, e.g., Riggs; Frank A. Greek & Sons.

C. Other Counts Remain Futile on the Face of the Pleadings

The remaining Counts (5, 6, 8, 9, 10, and 11) attack elements of the 2020 Ordinances that remain present in the operative legislation but never stated a viable claim upon which relief could be granted in the first place. The Court set aside these Counts when permitting discovery to proceed on Union City's "conflict" claim, but has not yet ruled on arguments as to whether they may be sustained as a matter of law (either based on the limitations period or on their merits). The Moving Parties rely on and incorporate the arguments in Plaintiffs' Memorandum of Law ("MOL") and Reply in Support of Plaintiffs' Motion to Dismiss filed on March 31, 2022 regarding these arguments, Trans ID: LCV20221313359 (MOL) & Trans ID: LCV20222478916 (Reply). See MOL at II(B)(1) (Count V – Impairment of Master Plan); MOL at II(B)(2), Reply at IV(C)

(Count 6 – Spot Zoning); MOL at II(B)(3), Reply at IV(A) (Count 8 – Givebacks); MOL at II(C) (Counts 9-11 – Amendments Contrary to Alleged Union City Agreements with Hoboken).

POINT THREE

SEPARATE NEW LAWSUITS AGAINST THE SUPERSEDING LEGISLATION DO NOT OVERCOME MOOTNESS OF THE OLD CLAIMS

The inapplicability of the Amended Third-Party Complaint to the new, operative legislation regarding the Amended Redevelopment Plan is demonstrated even further by the fact that Union City and its allies have initiated entirely new actions in lieu of prerogative writs to challenge both Ordinance B-715 and the Settlement. See Docket Nos. HUD-L-3714-24; HUD-L-3969-24; HUD-L-4445-24; HUD-L-4474-24. Like the Amended Third-Party Complaint in this action, these new actions assert claims that apply to the circumstances of Hoboken adopting the specific legislation at issue, in this case the Settlement Resolution and Ordinance B-715. It does not make logical sense that new actions would be required to oppose the Superseding Legislation, but that claims asserting similar legal arguments against the different facts pertaining to the old legislation would carry over to apply to the new Superseding Legislation as well. Such a duplication of claims would be plainly contrary to judicial economy and could even lead to inconsistent results. Instead, the Amended Third-Party Complaint no longer applies to the operative Superseding Legislation and must be dismissed with prejudice.

Further, even if Union City succeeds in finding a technicality that would undo B-715 or other legislation adopted pursuant to the terms of the Settlement, the Settlement provides that any such errors must be corrected for the parties to obtain the benefits of the Settlement. Such provisions do not, contrary to Union City's objections, "rubber stamp" new legislation. (October 1 UC Letter at Pg. 3 of 5.) On the contrary, the Settlement specifically states that all legal requirements for new legislation must be followed, including incorporation of comments from the

public. Korschun Cert. Exs. 8 & 9. As an example, Ordinance B-715 proceeded through multiple public hearings and a consistency review by the Planning Board, all of which heard objections from Union City. See SUMF ¶¶ 47-55. The Settlement instead incentivizes that Hoboken effect passage of legislation pursuant to the defined specifications, but does not mandate passage. Still, the Settlement has been judicially ordered to be enforced in this action, and the Moving Parties can logically be expected to act in a manner which would further completion of the goals of the Settlement, as is common when municipalities settle litigation involving the terms of their ordinances.

The prerogative writ claims which have been filed against passage of the Settlement and B-715 also lack sufficient probability of success, on their face, to stay the effects of the Superseding Legislation. Most of the claims repeat the same arguments which have been trotted out against the 2020 Ordinances, without any basis in fact or law. For example, Union City argues again that "Promissory Estoppel" based on Mayor Bhalla's assurances to Mayor Stack can invalidate rights granted according to duly passed ordinances and written agreements. Docket No. HUD-L-3714-24. Some alleged causes of action are so free of substance that they are clearly intended only to create the illusion of a mountain of new "counts" that should prevent the ordinary application of the Superseding Legislation. See, e.g. Docket No. HUD-3969-24; Docket No. HUD-L-4474-24 (Including vague counts such as "Other Procedural Defects and Irregularities" and "Right to Amend"). The burden should not fall to the Moving Parties to argue that these claims filed in separate actions have no effect on the disposition of claims in this action, if the present action's claims would otherwise be dismissed as moot were the Superseding Legislation not threatened with appeal. Rather, Union City and its allies must present more than boilerplate challenges to legislation if they seek to stay the effects of the Settlement and superseding

ordinances. See, e.g. Crowe v. De Gioia, 90 N.J. 126 (1982) (requiring "reasonable probability of ultimate success on the merits" to obtain preliminary relief based on undecided claims).

In the alternative, if the Court determines mootness first requires elimination of the small chance the Superseding Legislation will be overturned by claims in lieu of prerogative writs, then this action should continue to be stayed pending the outcome of any timely filed prerogative writ challenges.[10] Just as the Court has stayed discovery pending the outcome of this motion given the potential for a dispositive outcome which would obviate such discovery, if the Court agrees that the Amended Third-Party Complaint would be moot and dismissed provided that prerogative writ challenges against the existing Superseding Legislation are defeated, then at minimum the stay should continue, and resolution of such claims should be expedited.

CONCLUSION

Based upon the foregoing, the Moving Parties respectfully request that summary judgment be entered in their favor and that, as a result, the Amended Third-Party Complaint be dismissed with prejudice. In the alternative, the Moving Parties respectfully request that this action continue to be stayed pending expedited resolution of existing actions in lieu of prerogative writs filed against the Settlement and Ordinance B-715, and that the Amended Third-Party Complaint be dismissed with prejudice upon resolution of those actions in favor of the defendants in those actions.

[10] At a conference on December 20, 2024, the Court instructed "So if I grant the motion for summary judgment, the discovery isn't needed…I'm not going to have people spend money on discovery if the case may or may not be here yet." See Korschun Cert. Ex. 25.

Respectfully submitted,

Dated: January 31, 2025

By: */s/ Charles S. Korschun*
Fredrick W. Alworth
Charles S. Korschun
Michael A. Conforti
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Plaintiffs Just Block 112, LLC and *Hoboken Western Edge, LLC*

By: */s/ Jessica C.M. Almeida*
Jessica C.M. Almeida
Grant W. McGuire
MCMANIMON SCOTLAND & BAUMANN, LLC
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068
(973) 622-1800

Attorneys for Defendants City of Hoboken, City Council of the City of Hoboken, and *Ravinder Bhalla, Mayor of the City of Hoboken*

By: */s/ Kevin J. Coakley*
Kevin J. Coakley
Nicole B. Dory
Connell Foley LLP
56 Livingston Avenue
Roseland, New Jersey 07068
(973) 535-0500
Attorneys for Hoboken Western Edge, LLC

By: */s/ Edward J. Buzak*
Edward J. Buzak
SURENIAN, EDWARDS, BUZAK & NOLAN LLC
331 Broadway, Suite A
Point Pleasant Beach, NJ 08742
(732) 612-3100

Attorneys for Defendants Jennifer Giattino, Ruben Ramos, and *Michael DeFusco*

By: */s/ Craig A. Domalewski*
Craig A. Domalewski, Esq.
DUGHI HEWIT & DOMALEWSKI, P.C.
340 North Avenue East
Cranford, New Jersey 07016
(908) 272-0200

Attorneys for Intervenor-Plaintiffs American Legion Hoboken Post 107 and *Hoboken World War Veterans Holding Corp. d/b/a Veterans Center of Hoboken*