BEFORE THE DISTRICT OF COLUMBIA ZONING COMMISSION

APPLICATION OF THE KAEMPFER COMPANY, INC., FOREST CITY ENTERPRISES, INC., AND BREISLER & REINER, INC., FOR **FIRST-STAGE P.U.D. AND ZONING** **MAP AMENDMENT FOR WATERSIDE MALL** (SQ. 542, LOT 88 & SQ. 499, LOT 60)	: : : : : : : : :	**Case No. 02-38**

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MOTION OF TIBER ISLAND COOPERATIVE HOMES, INC., AND ROY POTTS FOR RECONSIDERATION OF DENIAL OF PARTY STATUS

Movants, Tiber Island Cooperative Homes, Inc., and Roy Potts (hereinafter collectively, the "Tiber Island Cooperative"), by counsel, Michael B. McGovern of Hanson & Molloy, pursuant to Sec. 3022.3 of the Zoning Regulations, respectfully move for reconsideration of the denial on February 13, 2003 of their request to participate as parties in the above proceeding before the Commission as parties in support of the pending Application (but with certain reservations and objections). A copy of the letter request for party status and a summary of the proposed testimony is attached hereto as Exhibit "A". No reason was given by the Chair or the Commission members for the denial except that a case for standing had not been made. Counsel's request to be heard on the request was denied by the Chair.

In support of this Motion and their original request, movants state that they are "parties aggrieved" with standing to participate as parties before the Zoning Commission: Tiber Island Cooperative Homes, Inc., is a residential cooperative containing 389 residential apartment units in four (4) high-rise apartment buildings and a number of smaller town-house-type dwellings across M Street, S.W., within 200 feet of the Waterside Mall project. Further, Roy Potts is a cooperative owner at 429 M Street, S.W., and is likewise affected. The light, air and view of many of the Tiber Island residents will be adversely affected by the P.U.D., if approved without the modifications requested. The 17-year construction of the "Waterfront Mall" project will also affect Tiber Island residents and the value of their residences negatively.

ZONING COMMISSION
District of Columbia
Case 02-38
Exhibit 81

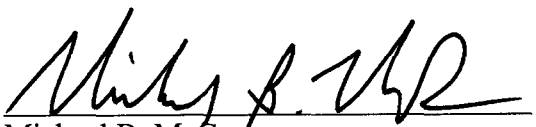
ZONING COMMISSION
District of Columbia
CASE NO.02-38
EXHIBIT NO.81

It has long been recognized that neighboring property owners have standing to object in zoning proceedings. Brawner Building, Inc. v. Shehyn, 143 U.S. App. D.C. 125; 442 F.2d 847 (1971). And neighbors within 200 feet of the proposed project should be able to participate as parties in a zoning hearing. Concerned Citizens of Brentwood v. District of Columbia Board of Zoning Adjustment, 634 A.2d 1234 (D.C. App., 1993)

The 13+ acre parcel known now and for nearly three decades as Waterside Mall has no residents who can seek party status or even testify at the hearing. Tiber Island, Mr. Potts and other residents are most affected by the proposed PUD. Indeed, if Tiber Island and its residents are deemed not to have standing to support or object to the aspects of the pending PUD and Map Amendment, no one does. In fact, that is the situation thus far by the ruling in this case which leaves only ANC-6D as a statutory party. The ANC's cross-examination of witnesses and its testimony are not necessarily what Tiber Island, Roy Potts or other residents would submit.

The denial of party status to Tiber Island and Roy Potts, under the circumstances of this case, is arbitrary and capricious and a denial of movants' rights under the Zoning Act and the District of Columbia Administrative Procedure Act. Applicants, through their counsel, Cynthia Giordano, Esquire, did not object to movants' request for status as parties.

Respectfully submitted,



Michael B. McGovern
Hanson & Molloy
1320 Nineteenth Street, N.W., Suite 300
Washington, DC 20036
202-833-9300

Attorney for Movants Tiber Island
Cooperative Homes, Inc., and Roy Potts

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Reconsideration was telecopied and mailed by first-class mail, postage prepaid, this 18th day of March, 2003, to Cynthia Giordano, Esquire, Arnold & Porter, 555 Twelfth Street, N.W., Washington, DC 20004, attorney for Applicants, and to ANC-6D c/o 400 I Street, S.W., Washington, DC 20024.

Michael B. McGovern

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RECEIVED
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2003 FEB 12 PM 4:54

February 12, 2003

Ms. Carol Mitten, Chair
District of Columbia Zoning Commission
414 4th Street, N.W., Suite 210
Washington, DC 20001

Re: "Waterfront" PUD Application, Z.C, Case No. 02-38

Dear Ms. Mitten:

On behalf of the Tiber Island Cooperative Homes, Inc., and Roy Potts (hereinafter collectively, the "Tiber Island Cooperative"), I respectfully request leave to participate as parties in the above proceeding before the Commission, and make the required statements as follows:

1. The parties names and addresses are as follows:

Tiber Island Cooperative Homes, Inc.
429 N Street, S.W.
Washington, DC 20024

and

Roy Potts
429 N Street, S.W.
Washington, DC 20024.

2. Tiber Island Cooperative requests leave to appear and participate as parties in this case notwithstanding their failure to timely file the statement required by 11 DCMR within fourteen (14) days of the public hearing. The reason for not filing earlier is that written notice of the public hearing in a contested case under Sec. 3015.3 of the Zoning Regulations was not provided to (or at least received by) the Tiber Island Cooperative on behalf of its residents, to the best of its knowledge and belief. Counsel for applicant, Cynthia Giordano, Esquire, has stated that applicant does not object to the Tiber Island Cooperative participating as a party in this contested case.

3. The parties seek to participate as parties in general support of the application, but requesting certain modifications and improvements to the Application as proposed.

Exhibit "A"

4. Legal counsel for the parties hereto will be Michael B. McGovern whose fill name, address and telephone numbers are as follows:

Michael B. McGovern
Hanson & Molloy
1320 Nineteenth Street, N.W.
Suite 300
Washington, DC 20036

202-833-9700 pho
202-833-9700 fax

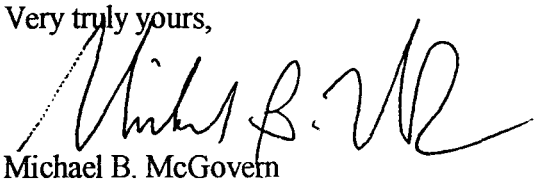
5. The witness for the Tiber Island Cooperative and on his own behalf will be Mr. Roy Potts, a cooperative owner at Tiber Island and a member of the Board. Possibly, other residents affected by the Application will appear with brief statements.

6. Tiber Island Cooperative Homes, Inc., is a residential cooperative containing 389 residential apartment units in four (4) high-rise apartment buildings and a number of smaller town-house-type dwellings across M Street, S.W., within 200 feet of the Waterside Mall project. Mr. Roy Potts is a cooperative owner at 429 M Street, S.W., and is likewise affected. The light, air and view of many of the Tiber Island residents will be adversely affected by the P.U.D. if approved without the modifications requested. A 17 year construction project will affect Tiber Island residents and the value of their residences negatively.

In lieu of a summary of testimony, the proposed testimony of Roy Potts, individually and on behalf of Tiber Island Cooperative Homes, Inc., is attached hereto. Testimony by witnesses for Tiber Island Cooperative should not exceed 15 minutes in duration.

Thank you for your consideration. Please contact me if any additional information is required before tomorrow's hearing.

Very truly yours,



Michael B. McGovern

Attachment

cc: Cynthia Giordano, Esquire

BEFORE THE DISTRICT OF COLUMBIA ZONING COMMISSION

APPLICATION OF THE KAEMPFER COMPANY, INC., FOREST CITY ENTERPRISES, INC., AND BREISLER & REINER, INC., FOR FIRST-STAGE P.U.D. AND ZONING MAP AMENDMENT FOR WATERSIDE MALL (SQ. 542, LOT 88 & SQ. 499, LOT 60)	:	Case No. 02-38

TESTIMONY OF THE TIBER ISLAND COOPERATIVE HOMES, INC., AND ROY POTTS BEFORE THE D.C. ZONING COMMISSION RELATIVE TO THE WATERFRONT DEVELOPMENT - CASE NO. 03-38 0N FEBRUARY 13, 2003

My name is Roy Potts and I appear hear this evening as a member of the Board of Directors of the Tiber Island Cooperative Homes, Inc., and individually. I am joined by Mr. Paul Greenberg, our president, Michael B. McGovern of the law firm of Hanson & Molloy, our counsel, and by several members of our community.

Tiber Island Cooperative Homes is a community of 389 households located in four high-rise apartment buildings and a number of townhouses directly across M Street from the Waterside Mall re-development. We are the largest residential community within 200 feet of the Waterside Mall. We support the redevelopment of the parcel as an element of the District's program to revitalize the Southwest at the waterfront. This is our neighborhood where we live, shop and recreate. We have worked to maintain and improve our award winning property over the thirty years since it sprang from the redevelopment of the area.

While we support the development covered by this PUD, we offer some specific recommendations on how we believe the effort can support our neighborhood and put us in a position of working with you for our common good.

We would improve the plan in the following ways:

- **Fourth Street** – We would re-establish Fourth Street as a vehicular route through the property. This would improve the appearance and ambiance of the property

and would reconnect the neighborhoods north and south of the mall. A reconnected Fourth Street would be more convenient for residents and visitors to make use of than the awkward and circuitous route we now take to get in or out of Southwest.

- **Residential content** – We value the residential character of our neighborhood and would recommend that you support this by increasing the residential content of the plan and moving its implementation forward in the schedule. More home owning residents with a stake in the Southwest neighborhood would make this project more desirable.
- **Building height and setback** – We believe these items are connected in that their combination will control the open feeling along M Street. We believe that the height should be decreased from the proposed 112 feet (plus equipment room) to a more modest frontage on M Street; the setback should be increased from 26 feet to a width that would provide for the Greenway as conceived in the Waterfront Overlay proposal for the Southwest Waterfront. It creates a physical and visual access to the planned development at the waters edge. It could be addressed by the addition of a second exit from the Metro at the west end of the current station. This would give visitors the feeling of having arrived at the waterfront when they emerge from the Metro.
- **Retail content** – We believe that the combination of stores and restaurants is most important and should be substantially increased from the 75,000 square feet in the plan excluding the super market, drug store and bank.
- **Schedule** – We believe that a project calendar that accomplishes the redevelopment in a reasonable, fixed period should be established so that our

neighborhood is not made into an unending construction site.

- **Environment** – The environment of the neighborhood is most important and would be supported by the incorporation of green spaces, cultural elements, community center and a connection to the waterfront. We recognize that providing green space is a difficult task but this is key to making this large project fit more harmoniously with the current residential feel of the neighborhood and a future revitalized waterfront. Green spaces be incorporated into the street sides, around the metro station and maybe even on the roof tops of the planned structures The cultural life of our community is important and we believe that your design should support and incorporate the adjacent library, Arena Stage, and other community institutions.
- **Design** - The project should use materials that are warm and welcoming and would add architectural beauty. We fear a poorly designed and conceived steel and glass box that detracts from our attractive neighborhood.

This is but an outline of our position in support of the Waterfront Mall. We reserve the right to supplement this statement. We are ready to work with the District and the developer to bring this project to fruition.