

**Borough of Highlands
Planning Board
Regular Meeting
October 8, 2009**

Mr. Manrodt called the meeting to order at 7:17 p.m.

Mr. Manrodt asked all to stand for the Pledge of Allegiance.

Mr. Manrodt read the following statement: As per requirement of P.L. 1975, Chapter 231. Notice is hereby given that this is a Regular Meeting of the Borough of Highlands Planning Board and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Manrodt, Mr. Mullen, Mr. Bahrs, Mr. Schoellner, Mr. Francy,
Mr. Parla, Ms. Peterson, Mr. Roberts

Late Arrival : Mr. O'Neil arrived at 7:35 p.m.
Mayor Little arrived at 7:31 p.m.

Absent: Mr. Stockton

Also Present: Carolyn Cummins, Board Secretary
Jack Serpico, Esq., Board Attorney
Joseph Venezia, P.E. Board Engineer

**Review of Ordinance O-09-23
Flood Damage Prevention Ordinance**

The Planning Board reviewed Ordinance O-09-23.

Mr. Mullen stated that we should make recommendation to be consistent with the Municipal Land Use Act with regard to jurisdiction.

Mr. Serpico explained that the Planning Board can't grant variances unless it is in conjunction with a site plan or subdivision application. The Zoning Board should be included in jurisdiction appeal provisions in proposed ordinance.

The Board had a discussion with regard to Ordinance O-09-23.

Mr. Manrodt asked if there were any questions or comments from the public but there were none.

Mr. Serpico read the following Resolution for approval:

Mr. Mullen offered the following Resolution and moved on its adoption:

**RESOLUTION
BOROUGH OF HIGHLANDS PLANNING BOARD**

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WHEREAS, the Mayor and Council of the Borough of Highlands authorized the Planning Board by resolution to undertake a review of proposed Borough Ordinance O—09-23, which Ordinance will amend Ordinance O-99-11, which is set forth in the Borough Zoning Ordinance at Chapter 21-109 et seq.; and

WHEREAS, the Municipal Land Use Act, NJSA 40:55D-26 & 64, requires that the Planning Board prepare and transmit a report back to the Governing Body; and

WHEREAS, said statute does further require that the report of the Planning Board shall include an identification of any provision or provisions set forth in the proposed ordinance amendment which is or are inconsistent with the Borough Master Plan and contain recommendations concerning those inconsistencies and any other matters as the Board deems appropriate; and

WHEREAS, the Board conducted a review of the proposed amendment on October 8, 2009; and

WHEREAS, the Board received comments from Board members, the Board Engineer and Attorney and various members of the public.

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Highlands that it hereby respectfully recommends that prior to the adoption of the above mentioned Ordinance, the Mayor and Council review section 21-123 of the proposed Ordinance which is entitled “Variance Procedure” in conjunction with the powers granted to a Planning Board pursuant to the Municipal Land Use Act, NJSA 40:55D-1 et seq. and especially sections 25, 26, 60 and 70. The Board also requests that the Mayor and Council review the applicability of section 17 of the Act which governs the type of matters that may be appealed to the governing body from a municipal agency; and

BE IT FURTHER RESOLVED that the Board hereby directs its Secretary to transmit this resolution to the Clerk of the Borough of Highlands pursuant to the Statute first mentioned above forthwith for consideration by the Mayor and Council of the Borough of Highlands.

Seconded by Mr. Schoellner and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Manrodt, Mr. Mullen, Mr. O’Neil, Mr. Bahrs, Mr. Schoellner,
Mr. Francy, Mr. Parla, Ms Peterson

NAYES: None

ABSTAIN: None

**PB#2009-1 Highlander Dev. Group, LLC
Block 105.107 Lot 1.01
Unfinished Public Hearing**

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Mayor Little arrived to the meeting.

Mr. Serpico stated that he wanted to clarify that Mr. Francy's Affidavit of listening to the meeting tape was marked as Exhibit 12.

Mrs. Cummins read the names of the eligible Board Members as follows: Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mr. Francy, Mr. Parla, Ms. Peterson, Mr. Roberts and Mayor Little who signed her Affidavit at the table.

Present: **Mr. Drobbin, Esq., Applicants Attorney**
 Laura Brinkerhoff
 Mr. McOmber, filling in for Attorney for objector P. Jennings

Conflicts: **Mr. Manrodt, Mr. Bahrs**

Mr. Mullen stated that a member of the Highlands Environmental Commission is present in the audience this evening.

Mr. O'Neil arrived to the meeting.

The following documents were marked into evidence this evening:

B-13: Mayor Little's Affidavit dated October 8, 2009;
B-14: T & M Letter dated 10/2/09;
A-49: 64 Laurel Drive Remedial Investigation Report dated 9/10/09;
A-50: 69 Laurel Drive Remedial Investigation Report dated 9/10/09;
A-51: 103 Laurel Drive Remedial Investigation Report dated 9/10/09;
A-52: Memo dated 10/8/09 from Brinkerhoff to D. Busch.
A-53: Site Investigation Report for 200 Laurel Drive dated 9/17/09;
A-54: Brinkerhoff Response letter to D. Busch dated 9/24/09;
A-55: Environmental Assessment.

Laura Brinkerhoff was sworn in and stated the following during her testimony and response to questions from the board:

1. She stated that she is employed by Brinkerhoff Environmental Services which is owned and managed by her. She explained her professional background in environmental services.
2. She is very familiar with the subject property and she has overseen all of her company's environmental work that was done on this site.
3. She then stated that she is licensed in the State of New Jersey by the DEP as a Sub-Surface Evaluator and she holds a Water Treatment N-2 License and she has a Clean Up Star Certification at the NJDEP. She has a degree in Geology and Geophysics and over the past 25-

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years she has taken courses in hydrology and stratigraphy. She continued to describe her professional and educational background to the board. She is here tonight as her clients Environmental Consultant Expert.

There were no objections to her being accepted as a qualified Environmental Expert.

4. She was asked to review the environmental conditions at the site and to inform the client of any limitations that they saw to the development and to also give her expert opinion on what it would take to remedy the existing conditions.

5. She prepared a Preliminary Assessment which is the first step to investigate a potentially contaminated site. This involved collecting a lot of similar type information as is collected for a phase one evaluation site assessment. So they did a lot of historic file reviews, gathered all of the information available at the municipal, county, state and federal agencies that was pertinent to this site and surrounding sites. She also inspected the site to look at any existing problems.

6. They looked for any potential areas of environmental concern which she further explained.

7. The information that she obtained from the State of New Jersey were the files all of the open case numbers that existed at the Highlander site itself and also the files that exist on the surrounding properties which included the seep area and the Scenic Exxon Station.

8. She began her work for the developer in December of 2008.

9. She did review a letter from the NJDEP dated January 21, 2009 which was called the "Unknown Source Investigation Report Regarding Bayside Drive Seep Site" and this was prepared directly by the NJDEP. In that letter they concluded that the former Scenic Exxon station was the source of petroleum contamination that was identified in the seep area.

10. In 2007 she did an investigation at the seep area at which time they collected samples of the contaminated material at the seep and sent it for laboratory analysis which learned that the contamination in the seep was of gasoline compounds. So as long ago as 2007 they had identified gasoline as what was emanating from the seep site. The DEP has copies of that report and included it in their review of the entire seep and did use that as part of their documents to conclude that the two were interconnected and she agrees with that conclusion.

11. In her investigation she learned there were four DEP cases numbers and one closed out in 1991 which was for 81 Laurel Drive, which she further explained. As of now the other three cases have been closed out.

12. Exhibit A-49, A-50, A-51 were all marked into evidence and prepared under her supervision.

13. She explained what a NJDEP "No Further Action Letter" is and that it is issued when they are satisfied that all of the documents are submitted in the proper order and with all of the property information to conclude that there is no further environmental work that needs to be done to clean up a site and they issue a "No Further Action Letter" which states that nothing more needs to be done. So that is the sought after piece of information to close out a case.

14. Her office submitted a request for "No Further Action" letters for all three properties of the site which are represented by Exhibits A-49, A-50 and A-51. Her firm recently received those letters.

15. Exhibit A-52 was marked into evidence which encloses the "No Further Action" letter for 64 Laurel and 103 Laurel Drive and 69 Laurel Drive there is a note from the NJDEP that a "No Further Action" letter issued by the DEP in 1991 for 81 Laurel Drive.

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16. With regard to 200 Laurel Drive they conducted an investigation, they are aware of the tank at 200 Laurel Drive. They conducted an investigation of that tank and it was reported that it was a 2,025 #2 heating oil tank. It had been registered as a regulated tank incorrectly. She then described her investigation of that tank and stated that there was no indication of contamination over the residential cleanup standards. There is no open DEP case number for the tank at 200 Laurel Drive. Exhibit A-53 was then marked into evidence.

17. She explained that the gasoline that is coming out of the seep hole is emanating from the Exxon Station.

18. During her environmental investigation of the Enclave site they concluded that there was never any gasoline stored in tank or used their and that there was no reason that a discharge would have occurred there. There was really no reason to investigate the contamination any further than to obtain the "No Further Action" letter.

19. They did review the Scenic Exxon files that GES prepared to determine the nature of contamination on the Scenic Exxon site and to look at what impact, if any, it would have on the site. There is substantial soil contamination at the Scenic Exxon site as a result of leaking gas tanks and the soil contamination is vertical in nature. The recent drilling that they have done on that site traces the contamination of the soil down to the ground water table. So it appears that the source of the contamination of the ground water is traveling downhill from the Scenic Exxon station. So it's her opinion that it's traveling somewhere under the subject property.

20. They did not conduct a groundwater investigation of the subject site because we did not feel that it was necessary. They do believe as the State has indicated that the contamination originates on the Scenic Exxon site, hits the groundwater which is at a depth of 100 plus feet below grade, then travels downhill to where it seeps out at the seep site.

21. They installed three vapor test wells, one in each footprint of the proposed buildings on the site. They installed the vapor wells to 45-feet deep and then collected samples on two different occasions from the wells to determine whether there were gasoline vapors which were emanating from beneath the Highlander site that would affect the soil in the area of the proposed development. The sampling results came back at levels that are below, the gasoline compounds are below the actual levels for soil vapors in New Jersey. However, they still found hints of B-tax compounds, hints of contamination that were below levels.

22. She then explained how the vapor levels get to 45 feet.

23. Her recommendation out of an abundance of caution and not a requirement is just a suggestion to the Architect that they look and evaluate the parking area and look at the Sub-slab vapor mitigation system to be built as part of the structure, which she further described.

24. The DEP has requested the Exxon to submit a remedial action plan, which give the cleanup plan and the GES is working on that.

25. It is her recommendation as an abundance of caution that the Architects designing the building evaluate it and look at what the air flow coming through the parking area and evaluate and look at what the air flow coming through the parking garage and how that could potential effect it and do they need to design it.

26. She explained that with regard to the Exxon site the State will require them to fully delineate the vertical and horizontal extent of ground water contamination and get a comfort level of how it's migrating and where it's going. She stated that the Exxon sites main concern will be the source area and cleaning up the area where the gross contamination is on the Exxon

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property and the contamination that's migrated off of that site will probably be dealt with through a natural attenuation monitoring program. The soil contamination on the Exxon is the source, the problem and the State will want that problem removed and that's where the greatest ground water contamination is. What's moved off site will probably never be actively cleaned up, it will simply be monitored. Once they remove the source the lower levels of contaminants that have already migrated off will be just monitored to watch them dissipate with time and they call that natural attenuation.

27. She believes that there has been an access agreement worked out for GES to access the subject site to do additional borings.

28. She is familiar with the May 2009 Highland Environmental Commission letter. She has reviewed the areas of inquiring that pertain to her expertise. She developed a response to those areas of inquiry and that has been filed with this board which is then marked as Exhibit A-54.

29. She then reviewed Exhibit A-54 and described it. She stated that she is familiar with the Phase One Environmental Site Report. She stated that the condition on the Exxon property will not have an impact on the proposed development. They do not believe that there will be any active treatment of ground water or removal of soil required in any way on the Highlander site. She does not believe that there is any soil contamination that will be encountered on the Highlander site within the project areas even within the project depth of 60 feet or greater. The only possible environmental conditions that may come up are the vapors and we have recommended as a precautionary measure the vapor mitigation system. She continued to explain her response to the Environmental Commissions May 2009 letter.

30. She then commented on the T & M Letter dated 10/2/09 which was marked as Exhibit B-14. She commented on item B-1 and stated that spills already received "No Further Action" letters on, there are no active spills. Item B-2, she is familiar with the transformer and utility pole they did not find any evidence of a leaking transformer. Item B-4, the reference to the underground or above ground storage tanks can be added to be identified on the report. Item B-5, in general prior to demolition of structure a certificate of asbestos free is usually required and can be provided prior to demolition. Item C-1, if during the course of construction the applicant finds odors resulting from the Exxon site are present they will be required to notify the DEP and conform to their regulations. Item D, referred to the reports of the Remedial Investigations, it's clear that there is nothing further that has to be done on this site. Section E, she prepared a site investigation report for 200 Laurel Drive she discussed this with the DEP and they do not intend to review reports where there is contamination below residential standards on unregulated tanks. If we sent the report to them nothing would get done because it's not their process.

The tank will be removed as part of the construction and when its removed and if found to be problematic it would be reported and dealt with.

Joe Venezia – we have no objections.

31. It is possible to develop the site without any environmental impacts as we know now there is no soil contamination in the project area that would impact the project. Any of the groundwater contamination is far below the project depth, it's at a 100 to 120 feet deep. The only possible mitigating condition is vapors coming from that groundwater that could potentially impact the site. However, the way that the project is being designed with the three levels of parking and the extensive slab that as a precautionary measure designing some type of system

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that would mitigate the vapors would make sense. This is a practice that is being done on many sites in New York and Jersey City.

Mr. Drobbin requested that exhibits A-49, A-50, A-51, A-52, A-53 and A-54 be marked into evidence. There were no objections.

Mr. McOmber requested a brief recess.

The Board took a break at 9:08 p.m. and returned at 9:20 p.m.

Mr. Mullen called the meeting back to order at 9:20 p.m.

ROLL CALL:

Present: Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little, Mr. Franczy,
Mr. Parla., Ms. Peterson, Mr. Roberts

Absent: Mr. Manrodt, Mr. Bahrs, Mr. Stockton

Steve Szulecki of the Highlands Environmental Commission cross examined Ms. Brinkerhoff.

Ms. Brinkerhoff stated the following during her cross examination by Mr. Szulecki:

1. She explained the regulations with the underground 2,000 storage tank. They installed the borings well below the tank the invert of the tank, which she further explained. They do not anticipate based on the samples of the borings that were installed. If we see a problem at the time that its removed it will immediately be reported to the State and handled as an open case.
2. The tank was opened and backfilled and recovered and actually the condition of the tank when they observed it was quite good. She is not clear if permits were taken out for the abandonment of the tank in 1995. She could look into this if necessary.
3. When the tank is removed they would have a clear picture of any discharge.
4. She spoke about the vapors and the elevations difference between the subject site and the Exxon site.
5. She described the three sample locations that she did.
6. She stated that Exxon is preparing an access agreement to be approved by the applicant and NJDEP. They are also proposing four wells be located along the roadway.
7. The GES data collected on the Exxon site is right where the source of the contamination area is. The vapor levels at that area will be extremely high. As you know the subject site is higher in elevation than that of the Exxon site. Seventy five feet below the Exxon site is approximately one hundred feet or greater below the subject site.
8. She then stated that what was found in the borings is that the contamination in the ground water is significantly lower than the contamination at the Exxon site and thus the vapor levels are going to be substantially lower. She stated that she believes that the data that they collected was accurate and was done to the sampling protocol. They may collect samples again before the project begins to verify the data.

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9. We know that the ground water is at 100 to 120 feet deep. We know their (Exxon) levels of dissolved phase gasoline in the groundwater at that depth. They (Exxon) are simply trying to put well points to figure out what its precise horizontal and vertical location is.

10. She spoke about the Exxon station and how they will have to remove the grossly contaminated soil from the source area. The groundwater at the seep is seventy five feet deep and she explained that the radius of influence of that treatment system is perhaps at 100 yards at the most outside of the Exxon station.

Mr. Szulecki stated that he is finished with questioning Ms. Brinkerhoff.

Dan Busch, P.E. previously sworn in spoke about future samplings that will occur on the site within the buildings footprints.

Ms. Brinkerhoff stated the following during her cross examination by Mr. McOmber son:

1. She investigated the seep area back in 2007. A member of her firm went to the site and took samples of what was coming out of the seep area which she believes was engaged by the Borough of Highlands. Her company issued a report to the Borough of Highlands of the investigations. She recollects that there were B-tex compounds gasoline related compounds that were detected but she does not have that report in front of her. They were convinced that based on the levels they were convinced that it was from a gasoline discharge. With the type of test that they did it would be hard to say that there was no kerosene coming from the seep area. It is possible that that there is some contamination that is coming out of the seep area that is not specific to gasoline. It is possible that there is other source of contaminations.

2. They installed one well per footprint and they conducted two vapor tests in each wells. She stated that one boring location per building is okay because ground water is so deep, which she further explained. She stated that the fact that they had three wells in the base of each one of those footprints and got very consistent data from all three points let us to believe that the data that we are receiving was consistent across the site area.

3. She believes that air monitoring in general is accurate as ground water testing.

4. She farms out samples to a lab and she feels that they are reliable.

Mr. Drobbin objected to question of cross contamination of air samples.

5. Yes she has seen cross contamination of air samples.

6. She recommends that the Architect consider some type of sub-slab vapor mitigation system but she does not see that in her report.

7. The design of a vapor mitigation system would be best done prior to construction.

8. A vapor mitigation system would be done as precautionary and the DEP could still be involved as precautionary system. They would concur with the DEP to see if they wanted to be involved.

9. She then further described the function of a mitigation system. There are special firms that design the mitigation systems and she would recommend the retaining of such a firm.

10. The plume of contamination on the Exxon site has not been delineated. The volume of the contamination is all unknown.

11. She has not done any groundwater investigation on the subject site.

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12. The DEP may permit Natural Attenuation to be the remedy of the contamination which could take five to twenty years. She then explained that once the source area is mitigated and the contamination is removed then there is not an ongoing continuing source that is discharging into the groundwater. So you would anticipate once that is corrected that the groundwater would start cleaning up. It is her understanding that the DEP has this planned for the site based on speaking with the DEP Case Manager.

13. At this time it is not her understanding that they intend to put any test wells on the Highlander Development site.

14. Any groundwater testing of the subject site is going to be something that Exxon Mobile would engage in and only if ordered by the DEP. Part of the access agreement, it's her understanding that part of the access agreement provides that Highlander would agree with Exxon and the DEP on where the locations will be and that samples that are collected from the wells will be split samples where Highlander will have the right to take their own samples so that the information can be independently verified.

15. Soil borings she did area within two feet of the underground storage tank. She used P.I.D. Machine to screen the soil which she further explained. There was some petroleum odor readings and they were below the residential standards. She did not see evidence of a leak of the tank and when they remove they will know if there is a leak.

Mr. Mullen asked if there were any questions from the public for Ms. Brinkerhoff.

Hank Stober of 1 Scenic Drive questioned if contamination could cause a fire explosion and if contamination could go up hill.

Ms. Brinkerhoff stated that there is no hazard to fire with regard to the vapor. She stated that generally the contamination would not migrate up hill.

Hank Stober questioned her testing's of the site and the method of the Serpico tests.

Ms. Brinkerhoff explained testing.

Ms. Brinkerhoff stated that she did not analyze Mr. Serpico's samples.

John Nicosia of 1 Scenic Drive questioned the gases and the vapors.

Ms. Brinkerhoff explained the level of gases as being at such a low level but that they are paying attention to them as a precautionary measure.

Unidentified Woman of Eastpointe questioned why not take samples for contamination.

Ms. Brinkerhoff stated that the DEP is requiring the Exxon contractor to do samples.

Ms. Brinkerhoff stated that if the tank gets removed and there is a hole or a leak then it gets a DEP Case Number assigned to it and it would have to go through a cleanup process. She stated

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that its not required that she be there for the removal but she imagines that it would be required by the client for us to oversee this.

There were no further questions from the public for Ms. Brinkerhoff.

Mr. Serpico spoke about the guidelines for conducting a site visit. It was determined that only four board members would attend the site visit on November 12, 2009 at 3PM.

Mr. Stober expressed his desire to having the locations that are going to be disturbed identified and he wants to know the impact to Eastpointe.

Mr. Serpico stated that the public can attend the site visit along with four board members and himself and the board engineer and the objector's attorney and the applicant's professionals.

Mr. Busch stated that he will mark the limit of clearing.

The four board members attending the site visit are Mr. Francy, Mr. Mullen, Mr. Schoellner, Mr. Parla.

Mr. Mullen informed the public that there will be a site visit on November 12, 2009 at 3 PM and the continuation of this hearing would be on November 12th at 7:30 P.M. and that no further public notice would be given.

Mr. O'Neil offered a motion to adjourn the meeting, seconded by Mr. Parla and all were in favor.

The Meeting adjourned at 10:50 P.M.

CAROLYN CUMMINS, BOARD SECRETARY