

**Borough of Highlands  
Planning Board  
Regular Meeting  
September 10, 2009**

Mr. Manrodt called the meeting to order at 7:15 P.M.

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

Mr. Manrodt made 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. O'Neil, Mr. Bahrs, Mr. Schoellner,  
Mr. Francy, Mr. Parla, Ms. Peterson, Mr. Roberts**

**Absent: Mayor Little, Mr. Stockton**

**Also Present: Carolyn Cummins, Board Secretary  
Jack Serpico, Esq., Board Attorney  
Joseph Venezia, P.E. Board Engineer  
Robert Keady, P.E., Board Engineer  
Robert Schwankert, P.E. of Melick-Tully & Associates**

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**Approval of Minutes**

Mr. Parla offered a motion to approve the August 13, 2009 Planning Board Meeting Minutes, seconded by Mr. Mullen and approved on the following roll call vote:

**ROLL CALL:**

**AYES: Mr. Mullen, Mr. Francy, Mr. Parla, Ms. Peterson, Mr. Roberts**

**NAYES: None**

**ABSTAIN: None**

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**PB#2008-3 Lin Fang  
Block 64 Lot 24, 214 Bay Avenue**

Mr. Venezia stated that the applicant's engineer indicated that the original plan was denied by the Monmouth County Planning Board. The County is now ready to approve their plan with certain modifications to the trash layout. They need to change the trash enclosure to just having garbage cans there and they need to increase the frequency of pickups. He then asked the board for permission to review this matter and have it be handled by the Board Engineer administratively rather than having the applicant appear back before the board.

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The Board had a brief discussion on this matter.

Mr. Venezia explained that the garbage would be picked up at the street rather than on site and that the main issues were the trash vehicle, refuse vehicles backing up and they were able to satisfy that and the County approval should be forth coming.

Mr. Manrodt asks for a motion to authorize the Board Engineer to work with applicant

Motion moved by Mr. Mullen, seconded Mr. Francy and approved 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, Mr. Roberts

**NAYES:** None

**ABSTAIN:** None

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**PB# 2009-1 Highlander Dev. Group**

**Block 105.107 Lot 1.01**

**Unfinished public hearing**

**Present:** Paul Drobbin, Applicant's Attorney  
James Serpico Applicant's Geotechnical Engineer  
Mr. McOmber, Objector's attorney representing Pauline Jennings  
Certified Shorthand reporter for applicant

**Conflicts** Mr. Manrodt and Mr. Bahrs both step down

The following exhibits were marked into evidence this evening:

- B-5: Certification by Mr. Schoellner that he listened to the PB 8/13/09 Meeting tape.
- B-6: Certification by Richard O'Neil that he listened to the 8/13/09 Meeting tape.
- B-7: Certification of Mayor Little that she listened to the 7/9/09 Meeting tape.
- B-8: Certification of Janet Peterson that she listened to the 7/9/09 meeting tape.
- B-9: Additional certification by Richard O'Neil that he listened to the 6/11/09 meeting.
- B-10: Certification by Richard O'Neil that he listened to the 7/9/09 meeting.
- B-11: Additional certification by Mayor Little that she listened to the 5/14/09 meeting.
- B-12: Certification from Mr. Francy that he listed to Meeting Tape.
- A-47: Maser Letter to T & M Associates dated 7/29/09.
- A-48: Letter from Groundwater & Environmental Services, Inc. RE:  
Notification of Investigation of Exxon Property on Route 36.

Mr. Drobbin requested that Exhibits A-4, A-46 and A-47 that were previously identified be marked into evidence at this time. There were no objections to this request so the exhibits were moved into evidence.

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Mr. Mullen asked Mr. Drobbin about the status of looking into the Environmental Commission request.

Mr. Drobbin stated the he expects the applicant's Environmental Engineer to be here at the next meeting.

Mr. Francy stated that he is in receipt of a letter/notice (undated) from the State about the ongoing investigations from Groundwater Environmental Services on behalf of Exxon.

Mr. Mullen stated that as part of this application there will be a relocation plan.

Mr. Drobbin stated that a relocation plan for the current tenants is due to you with our application for final approval pursuant to your statute. So that's when we have to deliver the relocation plan. We have to put a plan into place, and when we come for final approval, we have to deliver that relocation.

Mr. Mullen stated that we need to create standards for review.

Mr. Drobbin stated that there will be a legal analysis of a relocation plan that comports with the State.

Mr. Serpico stated that notice will have to be given so that people that are affected can comment on report and that the Board may have to hire an expert Attorney to represent the Board for the relocation plan.

Mr. Mullen stated that cross examination of Mr. James Serpico Geotechnical engineer for the applicant will continue at this time.

Mr. McOmber stated that he would defer the remainder of his cross examination in to order allow the public to ask questions at this time but he is not waiving the right to finish.

Mr. Mullen asked the public if they had any questions for Mr. Serpico, Applicants Engineer.

Tony Morogiello of 1 Scenic Drive asked questions regarding slump blocking and vibrations affects.

Mr. James Serpico stated that no pile driving is permitted. They will not have a pile impact hammer that hard hitting sound. He then spoke about the road's original failure being nearly vertical. It would have been more prudent to move the road at that time. He then spoke about the construction staging plans which will have slope monitoring. Safety, he is ethically responsible, so he is foremost public safety orientated. He explained that the geometry of the East Pointe section of slope is so much steeper than the geometry of this property which is 90 feet lower. He doesn't believe that vibration is an issue at all. He stated that they have done the studies, the geology under the site is consistent, it's firm, it's strong enough. Our buildings are deeper into

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the ground than East Pointe is. At no point in time even with the failure did they condemn East Pointe. The slope is infinitely steeper than where we are now.

Jim Bongiovanni of 1 Scenic Drive asked questions of Mr. Serpico about construction phases.

Mr. Serpico stated that the buildings can be built independently.

Mr. Stober of 1 Scenic Drive questioned if Mr. Serpico studied the access road to Eastpointe because it has a steep slope at the top.

Mr. Serpico explained that Eastpointe is well over, pretty far away from where their construction is, both from plan and elevation. That slope over there is not anywhere near being touched. No soil work or geometric evaluation of that section of road was done; it's off an area that they are not going anywhere near. He explained that some of these steeper slopes have actually been the result of past construction. They committed in testimony here that this construction will not negatively impact the surrounding and East Pointe. They have testified to that, that this construction has no negative impact. He spoke about safety factors ratings as being One is stable, less than one by definition means the slope is moving, and that was testified to, that would mean that the driving forces exceeded so at 1.15 you have 15 percent more strength than you do at one. First they calibrated and forced the slopes to be 1.0 -- they then modeled the soils in an angled fashion downward so that the slope circles spend more time going through weaker soils than the stronger underlying cohesive soils. There's an experienced comfort with it, especially with the water table being modeled that high, that is a tremendous impact on slopes. 1.15 is an actual calculation. He stated that the north slope, it wasn't in any proximity to East Pointe; it was just the north slope. 1.15 was the critical failure for the critical slope. He explained how they purposely reduced the strength parameters so that they would be more conservative.

Mr. Serpico spoke about the Monmouth County 2008 Draft Hazard Mitigation Report. The Minard Report says the same thing, as long as you do a subsurface, you do your due diligence, -- they probably adopted the recommendations and critical areas of that Minard report. He explained the slope stabilities that you have now, that the buildings don't go near it, they don't impact the load on the existing site. He explained that your slope stability are no worse off or better unless they were allowed to grade the swale than they are right now. He stated that 16 stories buildings aren't necessarily a negative. It's where you put them and how you put them, and they are far enough.

Board member questions Mr. Serpico Re: Tow of the slope, from Bayside Drive up the hill.

Mr. Serpico stated that he thought the town owns that property. He believes that you can't go there because the ordinance.

Board Member - it's a design waiver.

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Mr. Serpico replied that could someone willing want to spend enough money to construct something there, the answer is yes. While it can be engineered, it would probably be uneconomical to do. No one would do it. He continued as follows: Right now, that land will never be developed at the tow and everything below Bayside Drive -- When we talk about tow, the tow of the northern slope in relationship to this project is developed, be it paved road, houses, more paved roads. They anticipate that there would be no change in that, because anyone who would want to would definitely have to evaluate whether -- It would effect, like I said the same answer that, simply that the slopes may go if you do that, but the buildings are set far back, so disturbance of someone digging stupidly causes a small little erosion or a slide -- these buildings are so far and so deep, it would have to be put back, yes.

Mr. Stober questioned a 1.15 safety factor.

Mr. Serpico stated that he is not concerned with a 1.15 safety factor. He stated that Mr. Schwankert's comments on final sets of plans was discussed and readily agreed to by us that a final plan will have notes, requirements for the contractors to submit on how we are going to monitor the slope in particular, how we are going to stage the constructions. We've generated stage construction sets of drawings to prove that the site can be built.

Joe Nicosia of 1 Scenic Drive questioned steel sheathing and how it would be put into the ground.

Mr. Serpico explained.

Pat Nicosia of 1 Scenic Drive questioned safety concerns of Eastpointe and wanted to know who is going to oversee the construction.

Mr. Serpico explained that the Borough Engineer and Building Department will oversee the project. He stated that every floor will have inspections.

Patricia Nicosia stated that she wants safety and financial security for Eastpointe Condos.

Mr. Serpico, Board Attorney explained that the Board received a letter from Attorney Smith representing East Pointe Association. The letter indicated that they wish to appear before the Board to have protection for Eastpointe. They will discuss this when its appropriate time for Eastpointe Attorney to come and appear.

Mr. Francy comments on Mrs. Nicosia questions regarding monitoring the project. He stated that we don't have the staff and that the Borough will have to adapt to what they think will need to be done for this.

Pat Nicosia asked if the Borough could hire an Inspector at the applicant's expense.

Mr. Francy stated that we would need to make that a condition.

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Mr. Serpico, Board Attorney explained the Performance Bond Process.

Joe Nicosia of 1 Scenic Drive questioned 12,000 truckloads of soil removal of the site and stated that he is concerned that Eastpointe's driveway may get damaged during this process.

Mr. Serpico explained that they will have a flagman at the curb. He stated that it's well defined in the construction staging plan.

Mr. Stober of 1 Scenic Drive questioned the Board Attorney about having the Board and the public go and do a site inspection.

Mr. Serpico, Board Attorney stated that if the Board desires this that it would have to be a controlled process.

Pat Nicosia questioned construction length of time.

Mr. Serpico stated that he did not know.

Tony Margello of 1 Scenic Drive questioned who the owner of the development group was.

Mr. Serpico stated that he can't answer that.

The Chairman explained that Mr. Serpico is the soils engineer.

The Chairman allows Mr. McOmber to continue his cross examination of Mr. Serpico.

Mr. Serpico stated the following during cross examination by Mr. McOmber:

1. He spoke about compacting the fill and stated that there has to be some vibration which has been addressed.
2. Preliminary soil stays until it goes to construction. He will bind a final report before end of board process. He explained that his report is always going to remain preliminary until you go to construction. Draft means one thing, preliminary from soils it stays that way, -- the only time you really ever take the word preliminary off is when someone really makes us take it off, but really our industry uses the word preliminary until you go to final, when you actually start digging. We will never use the word final, it's always going to be a living document, so it's always labeled preliminary -- we as an industry tend not to use the word final.
3. Re: Roadway leading up to East Pointe (A-13) retaining wall. There is an existing slope there that will be held with a retaining wall. I don't know how high 12 to 15 feet high when done, during construction it's a lot higher, raise excavation during construction We would just design to it, if it changed due to this process, during final construction there will be plans submitted and that height would be established then.

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The grading, the highest point is directly across this building and that's 20 feet, and it tapers off downward and downward. Tie backs go under the roadway and the property line is actually on the other side of the roadway, they do go on to it. By the time they start going under Scenic Drive they are at least 30 to 50 feet below grade.

4. Scenic Drive roadway doesn't change. I'm putting in a wall a brace wall to facilitate construction of building 1 and a portion of that wall, (inaudible) stay in place afterwards and at the end you will see the highest point 20 foot exposed and then tapered but you are only going to see that from the enclave site not the East Pointe site. Tiebacks will be under the road.
5. If contractor exceeds the vibration level it will be known due to seismic monitoring. He explained how the seismic monitoring points will change during construction phases. He stated that there are temporary monitors and permanent monitors.
6. He then described how vibration monitoring works and its part of the monitoring plan that has to be put on paper and reviewed and approved by the Board Engineer.
7. The issue is that usually upfront there's a lot of monitoring probably hourly, and then as time and experience with the site goes and reporting distances itself. You may have more reporting for building 1 and 2 and none for building 3, just because it's not near a slope.

Mr. Schwankert advised monitoring points will be a fluid program, vibration source may change over time, so monitoring points maybe established as constructions moves from one area to another. It's a constantly evolving program, resetting your seismograph location. It's in the Contractors best interest to put them in.

Mr. Serpico stated the following during Mr. McOmbers continued cross examination:

8. He spoke about the uniqueness of this site and that it's a coastal plan deposit and its rare to have slopes on coastal planes.
9. They modeled in our slope stability to be conservative. It hasn't been designed yet, but it would not exceed 8,000 lbs because he modeled 8,000 you can't go over, it may be 4,000.
10. Re: loads on floors, weight of the building, and weight of the garage, its 72 million pounds. He stated that the building weighs less than the soil being removed. That's true but that's not addressing the 8,000 pounds. 72 million pounds converted backwards would be less than the 8,000 pounds that he modeled weighs 186 million pounds in the same area. So if the soil only weighed 145 the building only weighs 72 million, that's why I'm saying the 8,000 pounds while used in my analysis is conservative, I just don't know what the final bearing capacity is.
11. Page one of his report - building 1 and 2 It's 25 to 30 feet on the eastern slope, but the northern slope is at least, it's not closer than 70 feet. Building 3 is set back 25 to 30 feet from the edge of the existing cleared areas at the top of the slope. Building 3 is not near the eastern or the northern slopes, so there's confusion in the way I say slope because there is slopes on the site, but the northern slope, the steepest slope, the eastern slope the one near (inaudible) building 3 is not anywhere near.
12. Tiebacks, into the road going to East Pointe. Needed adjacent to Ocean Blvd.

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13. He answered questions about Exhibit A-47. He spoke about excavating and tie backs.
14. He stated that with regard to fill, he would take it out and steel from building two if he needs more material for building one, which he further explained.
15. The decision to bench or to reinforce the wall is a contractor decision.
16. He then spoke about during removal of material he is not worried about vertical rain filling up the hole in the kind of sands that we have here, which he further explained.
17. He then explained that there is a 50 foot gap between the bottom of the slabs and the encountered ground. He then further described how far down it was that he encountered water. He spoke about the water table and water seepage.

Mr. Schwankert explained excavation of the big hole. He said but if you look at the building, the water that gets in that excavation may infiltrate downward. You wouldn't want to keep that open on a long term basis and direct water into it because that's one of the reasons you were talking about not infiltrating water under the surface. But for the duration of the construction in this somewhat limited footprint the volumes of water aren't relatively insignificant. He further explained that there is such a substantial distance to the water table and there is lots of sand, storm water will enter, some of the water will infiltrate downward. You wouldn't want to do it on a long term basis but it's not a big footprint, it's not massive amount of water.

The Board took a brief recess at 9:43 p.m.

Mr. Mullen called the Meeting back to order at 9:56 p.m.

**ROLL CALL:**

**Present:**       **Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mr. Francy, Mr. Parla,  
Ms. Peterson, Mr. Roberts**

**Absent:**       **Mr. Manrodt, Mr. Bahrs, Mayor Little, Mr. Stockton,**

Mr. McOmber continued his cross examination and Mr. Serpico stated the following during cross examination as follows:

18. He did not encounter ground water at any place on the site that would be higher or greater in elevation than the bottom of the foundation of the three buildings.

19. Section 8.2 of his report speaks about test borings 106 and 107 encountering water levels at a depth ranging from 3 to 5 feet below grade. He stated that they are located on Bayside Drive which is about 160 feet lower.

20. He stated that this site is a coastal plain deposit.

21. Page 9 on his report subparagraph 9.12 with regard to toe of the slope area at the basis of the north releases is stable. He then showed Mr. McOmber the area that the report speaks about.

22. They are not removing trees on the slope of the ground other than where they lower behind building one and two. He then described the location of the lowering of the slope.



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23. He spoke about recent new boring findings. He explained that they did find a slight petroleum odor in building one which means nothing from an geotechnical engineering point of view. He then spoke about how far down it was located below the water table.

Mr. Schwankert - I visited the site shortly after and observed it and he showed me the soil sample that he had indicated that they had smelled it. I stuck my nose in it shortly thereafter, I couldn't smell it.

Mr. McOmber continues cross examination of Mr. Serpico. Mr. Serpico continues as follows:

24. Section 9 of report - mixing of site soils. He figures a bulldozer will just push it. They will be bringing in soil from off site, just for the low permeability material and whatever extra topsoil will be needed.

25. Section 11 of his report. He will not modify his statement that there will be no damage to Eastpointe because that's a requirement from the legal department of our insurance carrier I have to put that language in.

26. He does not envision that the buildings will be surrounded by French drains but the buildings aren't final but there would be no reason to have them.

27. With regard to his May 28<sup>th</sup> report also known as Exhibit A-15. He responded to questioning of the retaining wall and stated that at this area the retaining wall is 19-feet. Under Design Summary of his report there are a number of entries that say "Ok" which means that they exceed the stress levels.

28. With regard to designing foundations, he has designed a building using 8,000 pounds per square foot. Foundations yes, they have even done higher.

29. He explained that he used 8,000 which will be more than what the building will exert. Whether it is 3500 pounds per square foot or 6500 it won't be more than 8,000.

30. One of the reasons that the construction is Geotechnically sound is the weight of the soil being removed is heavier than that what is being added to it. He had other reasons to feel that the site is geotechnical suitable.

31. The location of the buildings was decided through an iterative process which he briefly explained.

Mr. McOmber ends his cross examination. (10:18p.m.)

Mr. Drobbin stated that the report that was referred to during cross was not Exhibit A-15. He then recommended that it marked into evidence as a new exhibit A-48. There were no objections so it was marked.

Mr. McOmber questioned Mr. Schwankert.

Mr. Schwankert, stated that he is satisfied with witness's testimony as accurate. We have yet to see the final results of the supplemental work but we see no cause for any changing in our comments or concerns. He explained that he and T & M will do all they can to control process that all items are addressed during construction of this site.

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Mr. Mullen stated that given the sensitive nature of the northern slope and that flat land between the ridge and that slope, would it make sense to limit the contractor's construction methods in order to secure that site.

Mr. Serpico – stated that he thinks the approach of let the contractors figure out how they want to do it, as long as it's not unstable, which he further explained the need for flexibility.

Mr. Schwankert, I do agree -- he is trying to maintain as much flexibility. He explained that monitoring will control issues. Mr. Schwankert stated that there can be no stock piling of material, can put some sort of setback if board wishes. He stated that he will come up with excavation limits if the board so desires that.

Mr. Serpico stated that they are not touching the slope. By taking the material back away from it, you are actually taking some of the horizontal stress off it, but yes, it is a disturbance area.

Mr. McOmber requested that recommendations be made to the board with regard to contractor methods.

Mr. Mullen – our consultant has reviewed the application and has made some certain modifications and suggestions which are to the benefit of the borough. He was just bringing up this one point because it became evident to him that there was a possibility that they could do this extensive cutting.

Discussion continued between the board and Mr. Serpico and Mr. McOmber with regard to concerns of the slope during construction and cutting.

Mr. Mullen stated that setting a setback may be a reasonable thing to do.

Mr. Schwankert stated that he will look into a setback.

The Board then discussed doing a site walk and a majority of the board was in favor of this.

Mr. Serpico, Board Attorney stated that he would look into public notice requirements and process of doing a site visit.

Mr. Francy stated that he wanted to see the limit of disturbance relative to the top of slope and seeing testing the thesis' that the tree removal is as de minimus as stated.

Discussion on setting up a site visit will continue in more detail at the next meeting

Mr. Drobbin then requested that Exhibits A-37, test boring location plan and A-38 color rendering slope profile section BB not a replica of previous exhibit be marked into evidence.

There was no objection to the marking of those exhibits.

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Mr. Parla offered a motion to carry this application to the October 8, 2009 Meeting at 7:00 p.m., seconded by Mr. Francy and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. O'Neil, Mullen, Mr. Schoellner, Mr. Francy, Mr. Parla, Mr.  
Ms. Peterson, Mr. Roberts  
**Nayes:** None  
**Abstain:** None

Mr. Mullen advised the public that this hearing will continue at the October 8<sup>th</sup> meeting at 7:00 p.m. and that no further public notice will be given.

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Motion to adjourn by Mr. Parla seconded by Mr. O'Neil and all were in favor.

The meeting adjourned at 10:50 p.m.

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**CAROLYN CUMMINS, BOARD SECRETARY**

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