

**Borough of Highlands  
Planning Board  
Reorganization/Regular Meeting  
January 14, 2010**

Mr. Stockton called the meeting to order at 7:29 p.m.

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

Mr. Stockton 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. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little, Mr. Roberts,  
Mr. Bentham, Mr. Stockton, Ms. Peterson, Ms. Ruby

**Absent:** Mr. Parla

**Also Present:** Carolyn Cummins, Board Secretary  
Jack Serpico, Esq., Board Attorney  
Robert Keady, P.E., Board Engineer

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**Reorganization:**

Mr. Serpico stated that all newly appointed and reappointed board members were sworn in prior to the meeting.

Mrs. Cummins stated that Mr. Bahrs recently resigned from the Planning Board.

Mr. Mullen offered a motion to appoint Mr. Stockton as temporary acting Chairperson of the Board, seconded by Mr. O'Neil and all were in favor.

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

**BOROUGH OF HIGHLANDS  
PLANNING BOARD RESOLUTION  
DESIGNATING CHAIRPERSON  
FOR THE YEAR 2010**

BE IT RESOLVED by the Borough of Highlands Planning Board that Andrew Stockton be appointed Chairperson of the Planning Board for a term of one (1) year expiring December 31, 2010.

Seconded by Mr. O'Neil and adopted on the following Roll Call Vote:

**ROLL CALL:**

**AYES:** Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little,  
Mr. Roberts, Mr. Bentham, Ms. Peterson, Ms. Ruby, Mr. Stockton

**NAYES:** None

**ABSTAIN:** None

Mr. O'Neil offered the following Resolution be memorialized and moved on its adoption:

**BOROUGH OF HIGHLANDS  
PLANNING BOARD RESOLUTION  
DESIGNATING VICE CHAIRPERSON  
FOR THE YEAR 2010**

BE IT RESOLVED by the Borough of Highlands Planning Board that Roderic Schoellner be appointed Vice Chairperson of the Planning Board for a term of one (1) year expiring December 31, 2010.

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Seconded by Mr. Mullen and adopted on the following Roll Call Vote:

**ROLL CALL:**

**AYES:** Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little,  
Mr. Roberts, Mr. Bentham, Ms. Ruby, Ms. Peterson, Mr. Stockton

**NAYES:** None

**ABSTAIN:** None

Mr. O'Neil offered the following Resolution be memorialized and moved on its adoption:

**BOROUGH OF HIGHLANDS  
PLANNING BOARD RESOLUTION  
APPOINTING BOARD SECRETARY  
FOR THE YEAR 2010**

**BE IT RESOLVED** by the Borough of Highlands Planning Board of the Borough of Highlands that Carolyn Cummins be appointed Secretary of the Planning Board for a term of one (1) year expiring December 31, 2010.

Seconded by Mr. Mullen and adopted on the following Roll Call Vote:

**ROLL CALL:**

**AYES:** Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little,  
Mr. Roberts, Mr. Bentham, Ms. Peterson, Ms. Ruby, Mr. Stockton

**NAYES:** None

**ABSTAIN:** None

Mr. O'Neil offered the following Resolution be memorialized and moved on its adoption:

**BOROUGH OF HIGHLANDS PLANNING BOARD  
RESOLUTION APPOINTING BOARD ATTORNEY  
FOR THE YEAR 2010**

**WHEREAS**, there exists the need for the professional legal services to be provided to the Planning Board of the Borough of Highlands for the calendar year 2010; and

**WHEREAS**, such professional legal services can only be provided by a licensed professional and Jack Serpico, ESQ of the law office of Jack Serpico, Esq., is so recognized;

**WHEREAS**, the determination of value has been placed on file with the resolution with the Board Secretary; and

**WHEREAS**, the Local Public Contract Law N.J.S.A. 40A:11-1 et. seq., requires that notice with respect to contracts for professional services awarded without competitive bids must be publicly advertised; and

**WHEREAS**, the Local Public Contracts Law, NJSA 40A:11-1 et. seq., requires that notice with respect to contract for professional services awarded without competitive bids must state the circulation not more than (10) days after the passage of the Resolution is an official newspaper;

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Borough of Highlands that Jack Serpico, Esq., from the firm of Jack Serpico, Esq., be appointed Planning Board Attorney for the term of one (1) year expiring December 31, 2010. The person appointed is a member of a recognized profession and it is not possible to obtain competitive bids; and

**BE IT FURTHER RESOLVED** that a copy of this Resolution be published in an official newspaper of the Borough within ten (10) days of its passage.

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Seconded by Mr. Schoellner and adopted on the following Roll Call Vote:

**ROLL CALL:**

**AYES:** Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little, Mr. Roberts,  
Mr. Bentham, Ms. Peterson, Ms. Ruby, Mr. Stockton

**NAYES:** None

**ABSTAIN:** None

**Approval of Board Attorney Contract**

Mrs. Cummins stated that both the Attorney's and Engineers contract will be tabled until the next meeting.

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

**RESOLUTION AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN  
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES AND APPOINTING  
PLANNING BOARD ENGINEER**

**WHEREAS**, the Borough of Highlands Planning Board has a need for professional engineering services as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

**WHEREAS**, such professional engineering services can only be provided by licensed professionals and Robert Keady, P.E. of the firm T & M Associates, 11 Tindall Road, Middletown, N.J. 07748 is so recognized; and

**WHEREAS**, the Board Secretary has determined and certified in writing that the value of the contract will exceed \$17,500; and

**WHEREAS**, T&M Associates has completed and submitted a Business Entity Disclosure Certification which certifies that T & M Associates has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year and that the contract will prohibit T & M Associates, Inc. from making any reportable contributions through the term of the contract, and

**WHEREAS**, T & M Associates Inc. has completed and submitted a Political Contribution Disclosure form in accordance with P.L. 2005, c 271; and

**WHEREAS**, the Local Public Contracts Law N.J.S.A. 40A:11-1 et. seq. requires that notice with respect to contracts for professional services awarded without competitive bids must be publicly advertised;

**NOW, THEREFORE, BE IT RESOLVED** by the Borough of the Highlands Planning Board as follows:

1. Robert Keady, P.E. of T & M Associates is hereby retained to provide professional engineering services as described above for a one year term to expire on 12/31/10.
2. The contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a) because it is for services performed by persons authorized by law to practice a recognized profession.
3. A copy of the Resolution as well as the contract shall be placed on file with the Board Secretary of the Borough of Highlands.
4. The Board Secretary is hereby directed to publish notice of this award as required by law.

Seconded by Mr. O'Neil and adopted on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little, Mr. Roberts,

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**Mr. Bentham, Ms. Peterson, Ms. Ruby, Mr. Stockton**

**NAYES:       None**

**ABSTAIN:   None**

Mayor Little offered the following Resolution be memorialized and moved on its adoption:

**RESOLUTION SETTING THE SCHEDULE FOR REGULAR  
MEETINGS OF THE BOROUGH OF HIGHLANDS  
PLANNING BOARD  
FOR THE YEAR 2010**

**BE IT RESOLVED** by the Borough of Highlands Planning Board that the following schedule is hereby designated as the official Regular Meeting Calendar of the Planning Board for the year 2010. The official meeting days shall be the second Thursday of each month unless otherwise noted.

February 25, 2010 (Fourth Thursday)  
March 11, 2010  
April 8, 2010  
May13, 2010  
June 11, 2009  
July 8, 2010  
August 12, 2010  
September 9, 2010  
October 14, 2010  
\*November 10, 2010 (Wednesday)  
December 9, 2010  
January 13, 2011 Regular/Reorganization Meeting

**BE IT FURTHER RESOLVED** that all meetings will be held at the Highlands Municipal Building, Council Chambers, 171 Bay Avenue, Highlands, NJ at 7:30 p.m.

Seconded by Mr. Roberts and adopted on the following Roll Call Vote:

**ROLL CALL**

**AYES:       Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little, Mr. Roberts,  
              Mr. Bentham, Ms. Peterson, Ms. Ruby, Mr. Stockton**

**NAYES:       None**

**ABSTAIN:   None**

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

**BOROUGH OF HIGHLANDS  
PLANNING BOARD RESOLUTION  
DESIGNATING THE OFFICIAL NEWSPAPER  
FOR THE YEAR 2010**

**BE IT RESOLVED** by the Borough of Highlands Planning Board that the **Asbury Park Press and the Two River Times**, are hereby designated as the official Newspaper for the Borough of Highlands Planning Board publications which are required by law for the year 2010.

Seconded by Mr. O'Neil and adopted on the following Roll Call Vote:

**ROLL CALL:**

**AYES:       Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little, Mr. Roberts  
              Mr. Bentham, Ms. Peterson, Ms. Ruby, Mr. Stockton**

**NAYES:       None**

**ABSTAIN:   None**

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**Resolution Amending Professional Legal Services**

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

**RESOLUTION AMENDING  
PROFESSIONAL LEGAL SERVICES  
RESOLUTION**

**WHEREAS**, on July 9, 2009 the Borough of Highlands Planning Board adopted a Resolution for Professional Legal Services awarding a contract to Jack Serpico, Esq., for an amount not to exceed \$4,000.00 for the purpose of providing professional legal services to the Planning Board for the period of July 1, 2010 through December 31, 2010.

**WHEREAS**, due to the amount of professional services needed for the period of July 1, 2009 through December 31, 2010 an increase of \$553.75 is needed.

**WHEREAS**, certification of availability of funds is hereby provided by the Chief Financial Officer:

Planning Board Budget  
Account #1141-3755 - \$553.75

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Stephen Pfeffer, Chief Financial Officer

**NOW, THEREFORE, BE IT RESOLVED** by the Borough of Highlands Planning Board that the Professional Legal Services contract with Jack Serpico, Esq., in the amount of \$4,000 is hereby increased an additional \$553.75 for a total amended contract amount of \$4,553.75 for the period of July 1, 2010 through December 31, 2010.

Seconded by Mr. O'Neil and adopted on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little, Mr. Roberts,  
Ms. Ruby, Ms. Peterson, Mr. Stockton  
**NAYES:** None  
**ABSTAIN:** Mr. Bentham

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

**Present:** Paul Drobbin, Esq., Applicants Attorney  
Armen McOmber, Esq., Objectors Attorney

**Conflict:** Mr. Stockton, Ms. Ruby and Mr. Bentham all stepped down and left the meeting.

Mr. Schoellner chaired the remaining portion of the meeting.

Mr. Serpico then spoke about a possible conflict of interest issue that was raised by Mr. McOmber regarding Board Member Richard O'Neil. He stated that the Board will hear issues raised by Mr. McOmber who is the person raising the issue and then hear a response from Mr. Drobbin. He will then render an opinion to the board between now and the next meeting as to if there is a conflict with regard to Mr. O'Neil.

Mr. McOmber stated that he did raise the issue of a possible conflict of interest involving Mr. O'Neil due to campaign literature that was circulated during his successful run for Borough Council where he certainly appeared to be endorsing this application. He further explained

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possible conflict of interest regarding Mr. O'Neil. He stated that he will be submitting a letter brief to Mr. Serpico regarding this course of action on this issue.

Mr. Drobbin stated that he received fax from Mr. Serpico of the O'Neil campaign flyer and he believes that what Mr. McOmber is referring to is item number three of the post card flyer which says "the Democrats oppose the O'Neil/Nolan vision for the property at Shadow Lawn which could reduce property taxes".

Mr. McOmber agreed that section three of the campaign literature is the section in question.

Mr. Drobbin explained that this is a small town and expressed his objections as to Mr. O'Neil being conflicted out. He stated that the literature does not speak about a specific project. He then referred to legal case law decisions about conflict interests. It is his opinion that there is no conflict.

Mr. McOmber explained that the zoning ordinance and this project are tied up, it's the same developer who proposed the ordinance amendment for this property.

Mr. Serpico requested that both attorneys put their comments in writing and submit them to him.

Mayor Little responded that it's interesting to her that the objector Mrs. Jennings had no complaint when there was another Councilperson sitting here who also referenced the vision issue in his campaign literature. She objects to the introduction of politics into the Planning Board application process.

Mr. Drobbins stated that at the last meeting several exhibits were marked which were Exhibits A-58 through A-74 and several B Exhibits. Based upon the record he wanted confirmation from the board that those exhibits were accepted into evidence. He also addressed the questions of exhibit A-55 from the last meeting. He stated that his records indicate that it was the amended environmental report, which he also wanted to have marked into evidence.

Mr. Schoellner hit the gavel and stated "so moved".

The following exhibits were also marked into evidence this evening:

- A-75: Resubmission letter to Freehold Soil dated 5/29/09;
- A-76: Soil Erosion Sediment Control Plans, Sheets 11, 12 and 14 last revised 5/28/09;
- A-77: Grass Swale Stability Calculations last revised 5/28/09;
- A-78: Latter Truck Turning Template, Sheet 3 of 3 last revised 6/17/09;
- A-79: Report prepared by Mr. Serpico of Maser Consulting pertaining to additional soil borings
- O-2: Dr. Harry Carter Report;
- B-26: Board Member Oath from Mayor Little;
- B-27: Board Member Oath from G. Roberts;
- B-28: T & M Letter to C. Cummins dated January 14, 2010;
- B-29: Melick-Tully Review Letter dated January 13, 2010;
- B-30: Environmental Commission letter dated January 12, 2010.

Mr. McOmber called Dr. Harry Carter up to testify on behalf of Mrs. Jennings, Objector.

Dr. Harry Carter was sworn in and stated the following during his testimony and response to questions from the board:

1. He described his professional and educational background to the board and further described his Master Degree in Public Safety and his Bachelor's Degree in Fire Safety Administration. He also described his background in Fire Department background.

Mr. McOmber requested that the Board qualify Dr. Carter as an expert witness in the field of Municipal Fire Protection.

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Mr. Drobbin then questioned Mr. Carter about his licenses.

Mr. Carter stated:

1. That he was not a licensed engineer, traffic engineer, civil engineer. He is seeking to be qualified as an expert in the field of municipal fire protection. He stated that the areas that he covers, he actually taught

The Board then accepted Dr. Carter as an expert witness.

Mr. Carter continued his testimony and stated the following during testimony and response to questions from the board.

2. He was hired to examine the information that was provided to him and render an opinion on what he was presented regarding the fire safety issues from an operational standpoint.
3. He was presented with the floor plan and the roof plans from Mino & Lasko and he reviewed them. He reviewed the site plans that were provided to him by Maser Consulting and also the turning templates that were provided to him by Master. He conducted a site visit of the property in question and traveled through the community in Highlands.
4. With regard to the design of the turning radius into the Enclave with respect the fire issue, he took no issue with the turning radius that was presented to him because his expertise is not in traffic but he looked at it from a standpoint as a person who has driven large vehicles for over 40-years and that's what lead to his concerns that were put in his report that in order to take a large vehicle and put it into that area you would have to perform the turnoff of highway 36, then the side road. It's all doable if everything clicks right.
5. Hi rise verses low rise fires – the primary issue is limited access because you can only really go in through the ground floor doors, which he further explained. In a high rise structure the manner in which the fire is fought is designated by the placement of the stairways and the standpipe outlets in those stairways.
6. He then referred to the book that was written by Mr. O'Haga who was Chief and Commission of the New York Fire Department and he drew up the local law which many of the Manhattan High Rises were built by.
7. High Rise building fires are very labor intense.
8. He would expect that Highlands would have mutual aide.
9. His review of the plans gave him pause as to where all of the equipment would go, which he further explained.
10. It seems there is potential for grid lock exits. You can't predict the movements of occupants for evacuation.
11. Major fires usually bring in EMS, which would mean more vehicles.
12. Snow could create problem with egress and ingress.
13. You could possibly have deployment snags in getting close to the building.
14. There is difference between Eastpointe and the proposed development.
15. He stated that there is more staging room for Eastpointe and not enough space at proposed.
16. He reviewed fire letter from D. Parker and nothing in this letter changes his opinion.

Mr. McOmber then requested that Exhibit O-2 be marked into evidence.

Mr. Serpico stated that we can bring Dave Parker, Fire Official in to a future meeting to testify.

Mr. Serpico then stated that certifications by absent members be marked as follows:

- B-26: Certification by Mayor Little that she listened to the Dec 10<sup>th</sup> meeting;
- B-27: Certification by Mr. Roberts that he listened to the Dec. 10<sup>th</sup> meeting.

Mr. Carter continued his testimony as follows:

17. There are hi, medium and low ratings of fire.

Mr. Drobbin began his cross examination of Dr. Carter.

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Dr. Carter stated the following during his cross examination:

1. He is not qualified in terms of everything outside of fire protection to give an opinion as to whether the proposed development is too dense. He explained that a given that is x number of space and given the size of the fire equipment that was his point.

The board then took a brief recess at 8:34 p.m.

Mr. Schoellner called the meeting back to order at 8:41 p.m.

**ROLL CALL:**

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

Mr. Drobbin continued his cross examination of Dr. Carter.

Mr. Carter stated the following during his cross examination testimony as follow:

2. He did not do any independent analysis or hire anybody to do an independent analysis as to the truck turning radius of any fire truck, whether existing or one proposed that may be out at the property.
3. No, he didn't do any measurements as to the aspect of this project.
4. He is not aware of the testimony of the applicant's traffic engineer and regular civil engineer.
5. He did look at the truck turning template that was marked into evidence.
6. He spoke about how in the Parker report it was indicated that the Highlands is looking for a newer unit.
7. He didn't have the size number of the fire truck that was used in the truck turning template but as he said in his report that he does not take issue with the template and he has no criticism of it because that would be beyond his scope of qualifications.
8. He stated that he is no longer licensed in RCS, ICSS, HHS sub code and RCS, ICS, AHHS fire once he retire. He also stated that over the course of his fire fighting career the fire code has changed.
9. Fire Code has improved for high structures and based on the required sprinkler system, alarm system and smoke proof stair towers, it has improved over the years.
10. The fact that the building will have an emergency generator power for things that are necessary to continue with life safety features such as exit signage and fire alarm systems and voice activation system. That information was not part of the information that he received but he would be very happy that they are doing that and that they meet the code.
11. He explained that the circumstances of injuries depend on how people react and how the firefighters react. He stated that most towns have mutual aide agreements.
12. He does not know how many firefighters there are in Highlands, that was not what he was tasked to do by the client.
13. He does not take any issue with anything that the Fire Official said in report.
14. No, he has no issue with the July 2, 2009 fire report because it addresses something that wasn't made known to him at the time of his concern.
15. He is not familiar with the July 7<sup>th</sup> Fire Safety Email.
16. No, he doesn't know how many fire hydrants there are on site because it was not on the plans that he was provided to him by Mr. and Mrs. Jennings.
17. No, he did not come to the Borough to review the plans that were on file with the board.
18. No, he does not know where the current staging area is for this area.

Mr. Serpico advised Mr. McOmber that we would have the Fire Official come to a meeting to testify about his report.

Mr. Carter continued and stated the following during his cross examination by Mr. Drobbin:

19. No part of his report should be construed as casting any doubts or aspersions of the capability of your local fire department in this community. That was not and never will be his intent.



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20. On page five of his report it stated “in the manner in which this project is planned for development will create the potential for negative impact upon the ability of the fire service organization in the Highlands” but any negative impact that he referred to can be applied to any community development project.

21. He stated that it’s not uncommon to have a staging area being off site because you don’t want the staging area right near the building.

22. He would be comfortable with the staging area at the adjacent high rise site.

Mr. McOmber redirects Mr. Carter.

Mr. Carter stated the following during redirect:

24. The fact that the building and the project will be built to code does not change his opinion rendered in his report.

25. The number of trucks that Highlands may or may not have does not change his opinion of the design and its faults.

26. I was part of the team that trained fire fighters so he is familiar with how volunteer firefighters are trained in this state. It would shock him if Highland deviated from those standards.

27. The number of fire hydrants on the site does not change his opinion rendered in his report.

28. He did have the opportunity to review the Dave Parker report today. He does believe that that report indicates that a new truck is needed.

Mr. Drobbin cross examines Dr. Carter again.

Mr. Carter stated the following:

29. The truck that was proposed on the truck turning template that he reviewed he does not know if that is the truck that the Highlands Fire Department uses.

Mr. McOmber objected to Mr. Drobbins line of question, so Mr. Drobbin rephrased the question.

Mr. Carter continued and stated the following during cross examination by Mr. Drobbin:

30. The truck that appeared on the template was a newer design and is very similar to a true that the unit he volunteered fire department so the truck on the template was a huge truck.

Mr. Schoellner then asked if there were any questions from the public for Mr. Carter but there were none.

Mr. Schoellner excused the witness.

Mr. Drobbins calls Jeffrey LaSalle up to testify.

Mr. LaSalle was sworn in and stated the following during his testimony:

1. He has heard all of the testimony this evening.

2. He is a licensed Fire Protection Engineer which he further explained his educational and professional background to the board.

3. He is not a volunteer fireman but he sits on the Board of Safety and Fire Prevention with firemen which he further described.

4. He is self employed and has his own fire protection engineer consulting firm.

5. He explained that his firm does fire safety strategic planning, fire protection engineering consulting, code consulting, fire protection systems design, fire alarm design, smoke control systems design, building hazard assessment, building risk assessment and anything with the word fire in it we are involved in.

6. He then described his experience with design. He then described certain projects that he is involved in.

7. He described his background in testifying as a Fire Protection Engineering Expert.

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Mr. McOmber cross examined Mr. LaSalle.

Mr. LaSalle stated the following during his cross examination:

8. He has never been a fire fighter.
9. He has never staged a response to a fire and has no practical experience in deployment.
10. He is a fire protection engineer so he does engineering design for building fire safety systems.

Mr. McOmber stated that he has no objection to qualifying Mr. LaSalle as an expert in fire protection but I don't know if he has any relevant testimony with regard to what his expert said with regard to fire deployment.

Mr. LaSalle stated the following:

11. As a regular course of the work that we do, we coordinate with local fire service officials to make sure that the access is provided where they need it and that the fixed equipment are where they are. So he does have an expertise in terms of coordinating those things but he is not a deployment expert.

Mr. McOmber – his issue is that there is anything here that is relevant to practical operational deployment of firefighting equipment.

Mr. Serpico responded that we don't know until the questions are asked and the answers are given and he lays a foundation for the question. We don't know the degree of this man's expertise in how this site should be laid out. That is relevant to what your client testified to which he further explained.

Mr. Drobbin – I am going to ask that the board accept as a fire prevention engineer in the field that he discussed.

Mr. Serpico – that is fine.

Mr. LaSalle then stated the following during his testimony:

12. He was hired to undertake a review of the site which is proposed as well as the report of Dr. Carter dated December 31, 2009 and also to review the Fire Marshall letters.
13. He met this afternoon with a representative from Maser Consulting and he was provided with the same information that Mr. Carter received that show the fire department vehicle access and sanitation access and represented floor plans. He did drive through the existing site and the Eastpointe site.
14. He then stated that there has been a huge evolution to codes, building codes, fire codes, from the mid 70's until right now. Systems that are common practice to see being installed high rise buildings today were required back in the 70's.
15. A high rise building today and this building that is being proposed, all three buildings would be required to be fully sprinklered. They are required to have a voice evacuation fire alarm system. They are required to have smoke proof stair towers for occupants to evacuate the building without encountering smoke. They are required to have stand pipe which facilitates the fire department response and deployment within the building. He then described how when the fire department would first arrive they would hook up to a fire hydrant, they hook up to the fire department connections on the building which he further explained. He explained that the fixed systems are a lot more advanced than from back in the 70's.
16. With regard the Fire Marshall letters he does not take any issues with them. He reviewed Dr. Carters report and a lot of the comments of his report echo's the Fire Marshal letter of yesterday.
17. He takes no issue with the discussion about the problems associated with fighting fires. He has never been a firefighter but he has worked with them through his career. He agrees that is more complicated by the fact that you have to lug your equipment up the stairs. He then referred back to the fire systems of the building. The systems that are going to be in place are about as good of system that you are going to have in any building.

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18. He then spoke about the existing site and the nightmare that it is because it's all bunched together, densely packed buildings that are not sprinklered. He feels that with the proposed development has a less risk for the fire fighters and the occupants of those buildings than what you have now at the site.

19. The Fire Marshall has the same point that he has which is that there needs to be very active involvement during construction of this project to make sure that the systems are installed, etc. He is an advocate of frequent visits by the local fire official before the buildings are occupied and to be educated where all the systems are and they need to be trained on the equipment.

20. He spoke about fire evacuation drills and training for the firefighters are essential to the success of the operation of the buildings.

21. He has reviewed the site design and he defers to the local official and if they happy then he is happy.

Mr. McOmber then crossed examined Mr. LaSalle.

Mr. LaSalle stated the following during his cross examination testimony:

22. Yes, his opinion with regard to the site design is that really he doesn't have an opinion other than if the Fire Marshal is satisfied than he is satisfied. He did look at the plan that shows the fire department vehicle access into the site and the turning radius and it looked to me that everything was okay. He knows that there was some comment about the turning radius at the entry to the site but he defers to the traffic engineer and to the Fire Official.

23. Yes, his expertise is with respect to fire sprinklers, connection that they are designed pursuant to the code and sometimes you have to go beyond what the code requires, which he further explained.

24. He is not the design engineer of record for this application.

25. The design of the systems has not been done yet.

26. Sprinklers systems can fail.

27. He then described the fire systems features tend to increase the reliability of the systems.

Mr. Schoellner asked if there were any further questions for Mr. LaSalle from the audience but there were none.

The witness was excused.

Mr. Drobbin called Dan Busch up to testify.

1. With regard to a hand delivery of a recent timeframe of January 2010 to Mrs. Cummins under your signature. A letter dated January 8, 2010 which transmitted addendum number two to the soils report dated January 7, 2010 which responds to items number nine and ten of Mr. Schwankert's August 12, 2009 letter. He spoke about how Mr. Schwankert asked for some additional test borings specifically in the area of the north slope, so that is what the basis of the report is.

Mr. Drobbin requested that Exhibit A-79 was then marked into evidence.

Mr. Busch continued his testimony as follows:

2. Yes, A-79 was reviewed by board engineer.

3. There is a letter dated January 14, 2010 from T & M Associates which transmitted a letter from Melick-Tully dated January 13, 2010 signed by Mr. Schwankert which is their third geotechnical review which was a review of the report A-79.

The T & M letter dated January 14, 2010 was marked into evidence as Exhibit B-28 and the Melick-Tully report of the results of the test borings an Exhibit B-29.

Mr. Busch continued his testimony as follows:

4. In the Melick-Tully report marked as exhibit B-29, the test boring results were found to be satisfactory.

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5. He has reviewed the Environmental Commission dated January 12, 2010 and he has consulted with Miss Brinkerhoff's office with regard to the content of this letter.

Exhibit B-30 Highlands Environmental Commission letter was marked.

Mr. Busch continued his testimony as follows:

6. He has been here for every hearing on this matter and heard Ms. Brinkerhoff's testimony with regard to the response to the Environmental Commission letter.

7. He then stated that he tried to achieve response to the Environmental Commission letter. Items two, we will comply with the SCD Plan which may differ from the comments. Item three they would be responsible for costs. With regard to the placement of outdoor equipment, as previously testified to, that equipment would obviously have to comply with the noise requirements. Item five, we agreed to do so, Item six obviously will be complied with. Item seven with regard to jack breaking, they do take some issue with that in that we would not want to prohibit a truck from using the break if needed from a safety standpoint. Item nine clarification, it has to comply with Soil Erosion Control Standards so they would comply. With regard to item number one, he referred to A-54 and explained Mrs. Brinkerhoff's testimony with regard to the application position. He stated that the tank was abandoned in 1995 and Brinkerhoff took samples around the tank which were provided to the board and the results indicate that a discharge from the underground storage tank was not identified. He stated that the tank will come out during construction.

8. He stated that a "No Further Action" letter was issued.

Mr. Mullen questioned soil samples not being taken from under the in ground tank only around it.

Mr. Drobbin stated that he'll talk to the environmental engineer again and come back on February 25 and refer to that. He will also review the transcripts.

Mr. McOmber began his cross examination of Mr. Busch.

Mr. Busch stated the following during his response to questions from Mr. McOmber:

1. Jay braking – he will look into seeing if it could be restricted for only use in emergency.

Mr. Schoellner asked if there were any questions for Mr. Busch from the public.

Hank Stober of Eastpointe questioned the location of the soil samples.

Mr. Busch state that three test boring were done, two in building one and one near steep slopes on Bayside Drive.

Hank Stober stated that he just mailed something to the board with regard to his concerns of slope issues relating to causing damage to Eastpointe.

Mr. Serpico stated that the Secretary will forward his information to the Board Engineer and Board Attorney and not to the Board Members.

There were no further questions from the public.

Mr. Schoellner stated that hearing will be continued at the February 25<sup>th</sup> meeting at 7:00 p.m. and that no further public notice will be given.

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**Communications:**

**ZB Annual Report to Council & Zoning Ordinance O-09-33**

No action was required on the two above communications.

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

The Meeting adjourned at 10:17 p.m.

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**Carolyn Cummins, Board Secretary**