

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

Mr. Schoellner called the meeting to order at 7:48 p.m.

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

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

ROLL CALL:

Present: Mr. Mullen, Mr. Schoellner, Mr. Parla, Mr. Roberts, Ms. Peterson

Absent: Mr. O'Neil, Mayor Little, Mr. Stockton

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

**PB#2009-1 Highlander Dev. Group
Block 105.107 Lot 1.01
Approval of Resolution**

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

Mr. McOmber stated that he received a draft copy of the Resolution and also draft with comments from Mr. Drobbin and the Board Engineer. He wanted to confirm that the Resolution would not be adopted this evening and that we were here to discuss the Resolution.

Mr. Serpico – that's, my understanding.

Mr. McOmber then objected to the draft resolution that was distributed to the public.

Mr. Serpico requested all drafts be collected from the public and they were.
He explained that we will be using the T & M Draft Resolution as the base resolution for discussion this evening.

1st Draft, August 23, 2010 T & M Comments

Re: PB#2009-1

**RESOLUTION APPROVING THE CONDITIONAL USE, PRELIMINARY SITE PLAN AND
VARIANCE APPLICATION OF HIGHLANDER DEVELOPMENT GROUP, LLC, FOR BLOCK 105.107, LOT 1.1**

WHEREAS, the applicant Highlander Development Group, LLC, (hereinafter referred to as the "applicant") is the owner of the real property known as Block 105.107, Lot 1 on the Highlands Borough Tax Map, which property is located at the intersection of Route 36, Ocean Avenue and Laurel Drive, Highlands, New Jersey and is located in the MH Mobile Home Residence Zone; and

WHEREAS, the applicant has filed an application with the Planning Board of the Borough of Highlands, (hereinafter referred to as the "Board"), seeking approval for preliminary site plan, conditional use and variance(s) for the above mentioned property. The applicant proposes to construct three (3) high rise residential buildings on the site containing 282 condominium units; a swimming pool; clubhouse; multi-story parking garages and additional site improvements, all as set forth in the application and plans, maps, diagrams and reports and testimony submitted to the Board in support of the application.

All of the foregoing has been submitted to the Board as evidence in support of the application at the public hearings conducted by the Board commencing on April 9, 2009, and concluded on August 3, 2010, and is incorporated herein in full by reference thereto; and

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

WHEREAS, the variances requested from Chapter 21, Section 84.B of the Zoning Ordinance are as follows:

1. Where slopes exceed 35% there shall be no disturbance of the area within 15 feet of the top of the slope and 10 feet of the toe of the slope. The applicant proposes to **disturb the interior slopes in excess of 35% for the purposes of constructing Building 3 and portions of the driveway.**

2. There shall be no disturbance of structures within 25 feet of the top of slope or 15 feet from the toe of slope. The applicant is proposing to remove numerous structures within these areas. 3. A small portion of the exterior slopes (0.8 acres) will be disturbed to install a retaining wall, to the west; to install utilities, to the south; and minor transitional grading, to the north.

WHEREAS, all jurisdictional requirements have been met and proper notice has been given pursuant to the Municipal Land Use Act and Borough ordinances, and the Board has jurisdiction to consider this application; and

WHEREAS, the applicant called numerous witnesses to testify in support of the application, which witnesses introduced numerous documents, maps and charts in support of the application; and

WHEREAS, the witnesses called on behalf of the applicant; their credentials and area of expertise are as follows:

Daniel W. Busch, a licensed Professional Engineer in the State of New Jersey from the firm of Maser Consulting. Mr. Busch is the overall engineering project manager and prepared the site plans for the project.

James J. Serpico, a licensed Professional Engineer and Planner in the State of New Jersey from the firm of Maser Consulting. Mr. Serpico was the geotechnical engineer for the project.

John Jahr, a licensed Professional Engineer in the State of New Jersey from the firm of Maser Consulting. Mr. Jahr was the traffic consultant or engineer for the project.

Laura Brinkerhoff, from the environmental firm of Brinkerhoff Environmental Services, Inc., was called to testify on the environmental impact and issues related to the project and site. Her firm is certified by the State of New Jersey, Department of Environmental Protection.

David J. Minno, a licensed Architect in the State of New Jersey, was called to testify on the architectural plans prepared by him for the structures proposed at the site.

Jeffrey La Salla, a licensed fire protection engineer was called to testify on the fire protection systems proposed for the structures and the site.

Paul Phillips, a licensed Planner in the State of New Jersey was called to testify on the planning and zoning issues related to the application including testimony in support of the variances (previously characterized as waivers); and

WHEREAS, there were no objections made by the objector's Counsel to the credentials and expertise of the above mentioned witnesses and the Board accepted all of them as expert witnesses in the fields listed above; and

WHEREAS, Mrs. Pauline Jennings, opposed the application and was represented throughout the proceedings by the law firm of McOmber and McOmber. Harry R. Carter, a Ph. D. a fire protection consultant, was called to testify on behalf of the objector; and

WHEREAS, the law firm of Greenbaum, Rowe, Smith & Davis, LLP, made an appearance on behalf of the East Pointe Condominium Association and placed their concerns on the record; and

WHEREAS, there were comments and testimony by witnesses called on behalf of the Board as well as reports issued by these witnesses, which reports are listed in Exhibit 1, annexed hereto and made a part hereof. The witnesses called on behalf of the Board; their credentials and areas of expertise are as follows:

Robert R. Keady, Jr., a licensed Professional Engineer and Certified Municipal Engineer in the State of New Jersey from the firm of T & M Associates. Mr. Keady is the Board Engineer.

Robert E. Schwankert, a licensed Professional Engineer in the State of New Jersey from the firm of Mellick-Tully & Associates, P.C. Mr. Schwankert was the geotechnical engineer retained by the Board through T & M Associates for this project.

David Parker, Fire Marshal of the Borough of Highlands. Mr. Parker testified on the fire related issues of the project and submitted reports on those issues which reports are listed in Exhibit 1 annexed hereto and made a part hereof.

Stephen Szulecki, Chairman of the Environmental Commission of the Borough of Highlands. Mr. Szulecki testified on the findings and recommendations of the Highlands Environmental Commission and

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

submitted a report containing those findings and recommendations which report is listed in Exhibit 1, annexed hereto and made a part hereof; and

WHEREAS, there were no objections to the credentials and areas of expertise of the above mentioned Board witnesses; and

WHEREAS, the public and legal Counsel were given the opportunity to cross examine all of the witnesses called in connection with this application; and

WHEREAS, the public was given the opportunity to give testimony and comment on the application and submit evidence in support of their position to the Board; and

WHEREAS, the Board accepted into evidence the attached list of exhibits, which list contains the exhibits of the applicant, objector, East Pointe Condominium Association, members of the public and the Board, all of which are incorporated herein by reference thereto; and

WHEREAS, the Board held numerous hearings on this application and analyzed all of the evidence and testimony submitted in connection with this application. Many of the witnesses were recalled to give additional testimony and submit additional documentation requested by the Board and/or its technical staff; and

WHEREAS, the Board after considering the evidence and testimony presented by the applicant, objector, East Pointe Condominium Association and interested citizens, has made the following findings of facts and conclusions based thereon:

1. The property is located in the MH Mobile Home Residence Zone.
2. The use requested by the applicant is a conditionally permitted use in the aforementioned zone pursuant to Section 21-97J of the Borough Zoning And Land Use Regulations.
3. The applicant has met all of the specific requirements of the conditional use as set forth in Section 21-97J of the Ordinance. (Mr. Mullen)
4. The applicant originally applied for design waivers from the requirements of the Steep Slope Ordinance because at the time the application was filed the Steep Slope Ordinance was set forth in Article XI of the Zoning And Land Use Regulations of the Borough. Article XI contains the Design Standards of the Regulations. While the application was pending before the Board the Borough adopted Ordinance #0-09-33 in December 2009, which moved the Steep Slope and Slump Block ordinance or regulations to Article XIV, of the Zoning section of the Regulations. The relocation of the applicable regulations into the Zoning section of the Ordinances changed the nature of the relief from a design waiver(s) to a variance(s).
5. Subsequent to the aforementioned amendments to the Land Use Regulations by the governing body the Board on the advice of Counsel applied the "time of decision rule" to the relief requested thereby necessitating variances in this matter.
6. Counsel for the applicant has objected to the application of the aforementioned rule and has reserved his client's rights on this issue in the event an appeal is filed in this matter.
7. The Board accepts as fact, the testimony of the applicant's planner, Paul Phillips that the variances requested are necessitated by the topographical conditions of the site, thereby meeting the requirements of N.J.S. 40:55D-70.c.(1)(b). The actual topographical conditions of the site are set forth in numerous documents submitted into evidence and the Board has first hand knowledge of those conditions because they were present when the Board conducted a site visit.
8. The Board finds from the testimony of Mr. Phillips as well as the evidence in the record and the site visit that due to the existing slope conditions any development of this property will require disturbance of the slopes thereby necessitating a variance.
9. The Board further accepts as fact that the slopes being disturbed are man made in nature and that they are not critical to the stability of the site and their removal will not have any negative impact on the neighboring properties. The Board finds that once the top layer of the slope is removed the remaining layer will be stable.
10. The Board finds based on the testimony of Mr. Phillips that this applicant will suffer a hardship, as term is defined in the MLUL if the variances requested are not granted.

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

11. The Board further finds that based on the testimony of Mr. Phillips that the granting of the variances will not have any negative impact on the zoning ordinances and the Master Plan of the Borough.
12. The Board accepts the conclusions made by the Board geotechnical engineer that the applicant's geotechnical engineer, James Serpico, has adequately addressed all of the geotechnical issues associated with the project. Further, that the applicant will take all necessary steps to continue to address all of the geotechnical issues during the development and construction phases of the project.
13. The Board is satisfied from the testimony of the environmental consultant, Laura Brinkerhoff that the environmental issues have been and will continue to be addressed in the future. Furthermore, the Board hereinafter will impose conditions that will insure that the applicant will continue to monitor and address any and all environmental issues related to this project and the site.
14. The Board finds from the testimony of Jeffrey LaSalla and David Parker that the project has been designed to have adequate fire prevention and fire fighting capabilities. Additionally, the applicant will be required to comply with most of the recommendations of the Borough Fire Marshal, David Parker, which are set forth hereafter.
15. The Board accepts the testimony of the project architect, David Minno and the exhibits and plans prepared by him for this project.
16. The Board accepts the testimony of the applicant's traffic engineer, John Jahr, that the traffic circulation pattern will adequately meet the needs of the project and that there will not be any substantial negative impact on the surrounding roadways; and

WHEREAS, the Board has determined based on the testimony in the record that the variances requested by the applicant can be granted without any substantial detriment to the public good and without substantially impairing the intent and purposes of the zone plan and zoning ordinance of the Borough. Furthermore, the Board has determined that the applicant has complied with the specific requirements of the applicable conditional use section(s) of the Ordinance, and, that the applicant has substantially complied with the applicable requirements of the Borough site plan ordinance (preliminary site plan), subject to the applicant complying with Board imposed conditions hereinafter set forth; and

WHEREAS, this resolution shall memorialize the Board's action taken to approve the application with conditions at its meeting held on August 3, 2010;

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Highlands that the application for a conditional use, preliminary site plan and variance(s) approval by Highlands Landing Corporation for Block 105.107, Lot 1.1 is hereby approved contingent upon the following conditions being met;

1. All testimony, evidence and representations made by the applicant and its witnesses are incorporated herein.
2. Taxes, fees and escrow accounts shall be current.
3. The applicant shall post guarantees, performance bond and inspections fees as determined by the Board engineer and proof of insurance coverage for all activities and potential liabilities at the site in amounts approved by the Borough. **Any reference to insurance should be omitted.**
4. The applicant shall enter into a developer's agreement with the Borough.
5. The applicant shall pay for all on-tract and its share of off-tract improvements related to this project as determined by the Board engineer.
6. The applicant shall comply with all comments and conditions set forth in the board engineer's letters dated March 9, 2009, June 5, 2009, July 2, 2009, August 12, 2009, October 2, 2009, November 5, 2009, December 8, 2009, and January 14, 2010 and Melick-Tully letters dated June 8, 2009, July 2, 2009, August 12, 2009, January 13, 2010, and May 10, 2010. .
7. The applicant shall install a soil erosion fence at a distance of 15 feet from the north ridge line of the site for duration of the construction of this project or as shown on the plan entitled "Soil Erosion and Sediment Control Plan", dated November 18, 2008, last revised May 28, 2009. The type and strength of the fence shall be determined by the Board engineer. (Mr. Mullen)
8. **I need direction from the Bd. regarding the comments by Mr. Mullen on page 2, bottom paragraph of his commentary.**

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

9. The applicant shall submit a landscaping plan to the Board for its review and approval.
(Essence of Mr. Mullen's comments at the bottom of pg 3 of his commentary)
10. The applicant shall be responsible for trash and recyclable pick-up at the site.
11. All equipment installed on the rooftop of any structure at the site shall be adequately screened and said screening shall be approved by this Board or its designee.
12. The applicant shall comply with the recommendations of the Borough Fire Marshall, David Parker that are contained in the reports issued for this project with the exception of the recommendation that suggests that the applicant purchase a new fire truck for the Borough. The reports are dated July 2, 2009, January 13, 2010 and May 3, 2010.
13. The applicant shall work with the Borough Fire Marshal in establishing the type, quantity and location of all fire hydrants to be installed at the site.
14. The applicant shall permit continuous reasonable access to the site by personnel from NJDEP and Exxon in order to install and monitor wells and other necessary equipment at the site in order to mitigate the flow of contaminants through the site towards Bayside Drive.
15. The applicant shall immediately remove the 2,000 gallon underground fuel storage tank located on the site as recommended by the Borough Environmental Commission. Thereafter the applicant shall provide the Borough with documentation that the tank was removed in accordance with all applicable laws, that the area around the tank is free from contaminants, and a Letter of No Further Action shall be provided.
16. The applicant will not be permitted to drive any pilings into the site at any time.
17. The applicant must comply with the provisions of Section 21-65.25 of the Borough Zoning Ordinance that regulates the removal and/or protection of trees at the site.
18. The condominium Master Deed and/or By-laws shall provide that the condominium shall be required to maintain all of the improvements made to the site at its own cost and expense. By way of example and not by way of limitation such improvements include interior roadways, sanitary and drainage sewers and facilities and street lights.
19. The applicant shall be required to maintain the driveway to the property during the construction of the project.
20. The applicant shall be required to maintain a setback of ____ feet from the slopes (and property line ?) for all construction equipment during the construction of the project.
21. Compliance with Environmental Commission recommendations ? Set forth in the Commission's letter dated January 12, 2010.
22. The applicant shall obtain additional groundwater samples at the onset of construction in order to verify contaminant levels identified in prior samples..
23. Offsite sanitary sewer evaluation and improvements (if necessary) to ensure adequate capacity.
24. The applicant shall implement a geotechnical monitoring program at the site during all phases of construction. The details of said program shall be reviewed and approved by the Board's Geotechnical Engineer.
25. The cost of all monitoring, inspections and personnel required to oversee this project shall be paid for by the applicant. No expense shall be assessed to the Borough for this project unless paid for by the applicant.
26. The applicant shall submit amended plans showing the following items to the Board and/or its designee for its review and approval:
 - a. New curbs and sidewalks along the north side of Ocean Boulevard up to the intersection of Linden Avenue.
 - b. In addition to the landscaping plan referred to in number 8 above, the applicant shall submit plans showing terracing and landscaping in the areas of the retaining walls to the Board for its review and approval.
 - c. Submission of a plan showing a permanent decorative security fence along the north ridge line to the Board for its review and approval. The fence should be installed upon the completion of the first tower.
 - d. Underground utilities.
 - e. Submission of a plan showing a guardrail along the private entry drive into Eastpointe and the main entry point of this project in the area of the new retaining walls.
 - f. Submission of a plan showing a turning radius entry into this site from Ocean Boulevard as approved by the Borough Fire Marshal and the Board Engineer.
 - g. Submission of a lighting plan for the site and the exterior of the buildings at the site.

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

- h. Submission of a plan showing the location and details of an oil/water separator in all of the garage floor drainage systems; a ventilation system and sub-slab vapor mitigation system in all of the garages.
 - i. Submission of a construction slope monitoring plan to the Board's Geotechnical Engineer for his review and approval of the location and type of all permanent and temporary seismic devices; the method of monitoring the site including the criteria for failure.
 - j. Submission of a plan showing a bus stop and waiting area for schoolchildren at the entry point into the site along Ocean Avenue.
 - k. Submission of a plan showing the access to the front of the residential structures to be used by fire department personnel in order to connect Borough fire equipment to the building systems to the Borough Fire Marshal and the Board for their review and approval.
 - l. Submission of a plan showing textured crosswalks.
 - m. Submission of a plan showing that a lined swale is to be constructed to direct most of the site runoff away from the slope.
 - n. Submission of a plan prepared by the applicant's geotechnical engineer indicating the details of all "stockpiling" of material on the site during the construction of the project.
 - o. Submission of a plan showing the pedestrian access to the site as described by the applicant's project engineer, Daniel Busch at the hearing of the Board held on August 3, 2010.
 - p. Submission of a plan or documentation addressing any other comments raised by the Board or its professionals.
27. The applicant shall obtain all approvals necessary for the project from all county, state and federal agencies that have jurisdiction over the project and supply copies thereof to the Board and the Board Engineer. In the event any outside agency approves the project with any changes, amendments and/or adds or detracts any of the conditions of this approval the applicant must submit those approvals to this Board for its review and approval.
28. The applicant shall pay all of the applicable fees associated with the project such as sewer connection fees.
29. This approval is subject to the approval of the project by the Atlantic Highlands, Highlands Regional Sewerage Authority and any conditions imposed on the applicant by said Authority and the Borough, as well as any other agencies that will supply utilities to this project.
30. The applicant shall comply with the requirements of Chapter 21, Section 89.4 of the Borough Zoning Land Use Regulations which section governs the relocation rights of the residents of the existing mobile home park.

Mr. McOmber explained that the resolution is important because from the resolution is going to come the developer's agreement that the Borough Attorney will prepare. He also spoke about how important it will be for the Resolution, developer's agreements and Resolution Reports to be all together so the person in charge of overseeing the project has everything.

Mr. Serpico – I am going to attach the reports to the Resolution. He also explained that he will do his best to make sure that the transition from the Board to the Borough will be a smooth one. We will make sure that the Resolution has all incorporation the exhibits.

Mr. Serpico - below the first two paragraphs of the Resolution, he thinks that we are covered with the exception of the design waiver. We put the detail in regarding the steep slope

Mr. Drobbin spoke about them putting in detail regarding the steep slope variances that were requested or waivers.

Mr. Serpico stated that there was a request for a design waiver along the curbing, the curbing along this road. We have had some commentary from the board regarding what was the actual outcome and how we are going to approach that sidewalk situation. He believes that the Applicant made representations at the last meeting that perhaps we can revisit that. That is

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

something that we may be coming back into address on final site plan depending on how DOT receives the request, if that's the case, then he can put language in there that will address that issue that way.

Mr. Drobbin – it was the alternative. If the NJDOT doesn't permit the sidewalks on the exterior of the property on Ocean Blvd, that would require design waiver. If DOT did not permit the sidewalks on the exterior of the property on Ocean Blvd, that that would require a design waiver from the board, and that's actually where DOT has been requesting that they approve the sidewalk on Ocean Blvd and he believes that's what the board voted on here.

Mr. Mullen – I think they are asking for a design waiver now.

Mr. Serpico – no, he is saying that if they don't give it to him, then they have the design waiver.

Discussions continued regarding the waiver for the curbing.

Mr. Serpico explained that if DOT says no to the sidewalks then the Board will give them a waiver. He can word the resolution to say this.

Mr. Mullen – in the third whereas on page one, he thinks that there are three sections of our steep slope ordinance that are at play here. There are three separate sections that we are addressing in our variance. One is there shall be no steep slope disturbances to these remote areas in excess of 35%. Number two, in addition there shall be no disturbance in areas within 15 feet of the top of the slope and no disturbance of areas within 10 feet of the toe of the slope or any structures located within 15 feet of the slope. In item three, in the adjacent areas indicated as slump block in the Borough's Master Plan the board may require further study. He thinks that this is what this case was about, further study of this area in order to satisfy the board.

Mr. Serpico stated that he looked at the transcript and he characterized them as two variances at the last meeting.

Mr. Drobbin stated that there is no design waiver or variances requested for slump block because that was the case that he put on.

Mr. Mullen yes, we did require the information and they did provide it and he wants that to be clear in the Resolution. So it's clear that all three of those things were addressed. He thinks that section 84.b and ordinance is one two and three, then the design waiver should be item four under the third "whereas".

Mr. McOmber suggested that since the Greenbaum firm placed their concerns on the record by reading a letter from said law firm requesting that the applicant provide a policy of liability insurance in favor of East Pointe Condo's.

Mr. Serpico – we accepted that letter into evidence and he was going to bring that up later on. He was going to suggest that he say in the resolution that they read a position letter into the record.

Mr. McOmber – yes, thank you.

Mr. Serpico, page two of the T & M Resolution on the top "whereas". Mr. Drobbin added into what he said "as set forth on the exhibits of this matter", which he has no problem with.

Mr. Drobbin – if you want you can attach the exhibit list.

Mr. Serpico – yes, we can make the exhibit list the first attachment to the resolution.

Mr. Serpico – continuing on the second page there was some commentary by Mr. Drobbin in his resolution with regard to John Jahr. He has no problem putting in the resolution that Mr. Jahr is a Traffic Engineer and that he does work for Maser Consulting and that he has 25-years of experience and that he has a Bachelors of Science in Civil Engineering from Rutgers. Likewise,

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

Ms. Brinkerhoff, he can add in that she is a certified professional geologist and a licensed state site remediation professional and that she is certified by the State of New Jersey. He has no problem putting in those comments. The next comment was on Jeffrey LaSalle needs to correct the spelling of his last name in the resolution. Further down after Mr. Phillips at the end of his notation he left out the word “design” in the last sentence of his line. Down below in the reference to Pauline Jennings, the profession of Dr. Carter needs to describe him as a fire protection and rescue expert. There was a suggestion by Mr. Drobbin that another “whereas” be added after the Greenbaum whereas. It was suggested that “Whereas, there were “X” amount of public hearings and a site visit attended by members of the board, the applicant, the objector and the public. The next paragraph, he will clean up to reference the list of exhibits in the resolution. He will clean up to make the first exhibit reference the list of exhibits.

Page three, he added Jr. to Robert Keady. He will correct the spelling of the name of Mr. Szulecki and he will correct exhibit reference. On the Fourth “whereas” on page three, where it says accepted into evidence the attached list of exhibits. Mr. Drobbin added “attached” after exhibits but “attached is already there so he will remove that. Under the last “whereas” on page three item three he will remove (Mr. Mullen) from that item.

Page four, the ordinance number O-09-33 and date of December 2009 has been added in. Number 6, Mr. Drobbin wants it to read” Counsel for the applicant has objected to the application of the Time of Decision Rule and has reserved his client’s right on this issue”. Item 10, Mr. Drobbin requested that it state “The Board finds based on the testimony of Mr. Phillips that this applicant will suffer a hardship, as that term is defined in the Municipal Land Use Law “(MLUL) if the variances requested are not granted. The board finds granting the requested variances are appropriate and reasonable”.

Mr. Mullen – going back to item 9, he has suggested that “the majority” of the slopes being disturbed were manmade, not all of them. So it should be changed to “majority”.

Mr. Serpico – ok, item ten can be corrected as previously stated.

Mr. McOmber – item 12, the last sentence to an outsider would not make sense so he suggested that we define what you are talking about.

Mr. Serpico – okay, but that’s where I need the input of my engineer.

Mr. Keady - there are a number of issues, there are the issues related to the 2000 gallon under storage tank which there is language in the resolution on that later on. There is also, I guess , the issue of the existing environmental issue coming from the Exxon site and anything that might be related to that. So I think that these are the two issues that are being referred to in item 12.

Mr. Serpico – rather than shooting from the hip, he will give the board engineer further opportunity to think about this and further clarify it for him.

Mr. Keady – there are two different issues in item 12 and they should be split so maybe make another item to split those issues apart for environmental and geotechnical.

Mr. McOmber – let’s talk about the construction phases of the project. He remembered there was some discussion about if you are digging a 50 foot hole and it’s raining. What happens and he does not remember the answer of what would be done. So he suggested adding something in the resolution about these types of things.

Mr. Serpico – we are going to have to allow our engineer to deal with things.

Mr. McOmber – then can you add to that “ to the reasonable satisfaction of the Borough Engineer”. He wants to make sure that the Borough Engineer has the necessary tools to enforce generalized statements.

Mr. Serpico – we can have Mr. Keady take a look at this and then he can tell me what language he thinks in necessary for him to do the job.

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

Mr. Keady – in his mind environmental is related to the underground tank and the Exxon issue. The geotechnical is stability and slope related.

Mr. McOmber – item 13, it states that furthermore, the board hereinafter will impose conditions. He requested that it be changed to state “The board will impose conditions as set forth below”.

Mr. Serpico – item 14, there is a correction for Mr. LaSalle’s last name. He also spoke about the Fire Officials claim that that in item 14, it states that “the applicant will be required to comply with most of the recommendations of the Borough Fire Marshal, David Parker, which are set forth hereinafter”. He felt that this was too vague. Mr. Serpico stated it would be vague if he didn’t say “hereinafter” and the conditions are listed in the resolution. He will clean it up to not read “most of”.

Mr. Serpico – a new section 17, Mr. Drobbin requested this be added. The board accepts the testimony of the site engineer, Daniel Busch and his office and the exhibits and plans prepared by him for this project. No problem.

Further down on page 5, under the Now, Therefore Be It Resolved, where the board grants, he will have to change that because in addition to the conditional use and preliminary site plan and variances, there is the design waiver issues of the curbing that has to be addressed. He has to address the waiver being granted if in fact NJDOT says no to the sidewalk. He also has to correct the name of the applicant in this paragraph.

Conditions of approval, number one and two are standard.

Condition three, he put in a reference to insurance coverage’s and that was a mistake. The Planning Board can’t impose insurance requirements.

Mr. McOmber feels that the board has the right to ask that the property indemnify and hold harmless the board and its professionals.

Mr. Serpico – that’s a distinct issue from the insurance provision and he did not look into that. He looked into it more from the perspective of Eastpointe Condo’s claiming that they wanted a hundred million dollar insurance policy. He would have to read the law and think about it and then inform the board about the hold harmless.

Mr. McOmber – condition three, Mr. Drobbins draft inserts the word “reasonably” for bond and inspections fees as determined by board engineer. He believes that by inserting the word reasonably that he is building a lawsuit and the gage is Statutory.

Mr. Drobbin, said he didn’t have a problem saying” as per MLUL”, that’s fine.

Mr. Keady – performance bonds and inspection fees are a condition of final approval.

Mr. Mullen questioned the on tract and off tract improvements and what they are that the applicant is going to contribute to.

Mr. Drobbin – I can go back to condition four, that’s also a part of final approval, the developer’s agreement.

Mr. Mullen questioned the on tract and off tract improvements not being listed in the resolution.

Mr. Serpico – typically he relies on the engineer telling him what is necessarily related to this.

Mr. Keady – I believe it’s covered in here. We talked about the curbing and sidewalk along Ocean Blvd, there is a provision that talks about any improvements to the sanitary sewer as deemed necessary to provide the capacity. So that would be a potential off tract improvement that would be required.

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

Mr. Serpico asked the Borough Engineer to come up with a list of improvements and then we can get it to the applicant and then he will put the appropriate language in the resolution.

Mr. Serpico – with regard to Mr. Drobbins change for condition five to add, “pursuant to the testimony in this matter”. He does not agree with adding this language in.

Mr. Serpico – condition six, there are a number of differences that we are going to have to talk about with regard to the Drobbin changes to this condition. The Board Engineer will have to go through this list and advise him of outcome of review.

Mr. Keady explained that the Resolution Compliance review process and how there will be additional correspondences after adoption of the Resolution that will address the items. He does not object to a statement that the applicant will provide additional information, plan revision, something towards that aspect.

Discussions continued about resolution compliance language in the resolution.

Mr. Drobbin – when the final plan is presented to the board that will have all of the information. He explained that the board engineer has to review and approve the final plans and conditions of approval.

Mr. Serpico – all of condition six will change as a result of Mr. Keady going back to his office, taking all the letters that are referenced in the resolution and seeing how it works. He will tell him what to put in the resolution.

Mr. Serpico then stated that his goal by the next meeting is to have a final form of the resolution tweaked with perhaps some minor language ready for review and adoption. He hopes to have the resolution to the board a week before the meeting.

Mr. Serpico – onto condition number seven, Mr. Keady filled in the need information. Item eight, he asked for the board comments.

Mr. Mullen – he feels that this is clarification in his mind of the relief that we are granting with regard to our steep slope. It’s his belief that the Board really should consider not granting that relief on the northeast slope, North Slope. He wants the steep slope setbacks to include structures for construction.

Mr. Serpico explained that the board voted and he reviewed the transcripts and there were no exceptions, unless the board members want to correct him.

There was no correction from the board.

Mr. Serpico, number nine – does the board want the engineer to approve the landscaping revisions or does the board want to see it first.

The Board decided to leave it up to the Board Engineer.

Mr. Serpico – item ten trash pick up

Mr. Mullen – it falls back on the municipality. The applicant has to operate this thing in the future and the applicant or its successor and if there is any other language to make it more binding, he would make it.

Mr. Serpico – he can add that it applies to the applicant or any successor.

Mr. Serpico – item eleven

Mr. McOmber objected to certain language in item eleven.

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

Mr. Serpico – I can, again, strike the comment down to pursuant to the requirements of the MLUL.

Mr. Mullen spoke about his intent to have the Architect anticipate in screening any possible future towers on the roofs.

Mr. Serpico – they would need site plan approval at the very least and perhaps a use variance. Obviously now, if there is HVAC stuff up there it has to be screened.

Mr. Serpico – item twelve, he will clean it up to be consistent with the comment that we made before about all but the one fire truck item.

Discussion took place regarding item twelve.

Mr. Serpico – what we will do is run this by the Fire Marshall and ask him to make sense of this and then he will let us know.

Mr. Serpico – item thirteen was fine, he will work with Fire Marshall.

Mr. Serpico – item fourteen

Mr. Mullen – I think that what we are trying to do is permit reasonable access to the site by personnel from Exxon and NJDEP in order to investigate the flow of contaminants to the site.

Mr. Drobbin – yeah, that's fine. There is a site access agreement in place.

Discussion continued regarding site access agreement.

Mr. Serpico – what we will do with fourteen is add in that, pursuant to the terms of the access agreement dated such and such.

Mr. McOmber – maybe the applicant can give the board attorney the first page of the agreement, because it's probably among DEP, Exxon and the Applicant.

Mr. Serpico – sure, fine. We can do that and he will take a look at it.

Mr. Serpico – the next item is fifteen the applicant takes issue with this.

Mr. Drobbin – the tank can't be removed without disturbing present utilities for existing tenants. The Board wanted additional soil samples taken once the tank came out and we agreed to do that. It's just a matter of when we take the tank out.

Mr. Schoellner called for a ten minute recess at 9:41 p.m.

Mr. Schoellner called the meeting back to order at 9:53 p.m.

ROLL CALL:

Present: Mr. Mullen, Mr. Schoellner, Mr. Parla, Mr. Roberts, Ms. Peterson,

Absent: Mr. O'Neil, Mayor Little, Mr. Stockton, Ms. Ruby

Mr. Serpico – I believe we left off on the 2,000 gallon tank.

Mr. Drobbin referred to Ms. Brinkerhoff testimony regarding this item.

Discussions continued regarding the tank.

Mr. Serpico – so the current condition on this matter is still up in the air.

Mr. Schoellner – is there any way of drilling a hole in the tank to get to the bottom?

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

Mr. Drobbin – we will look into possibly drilling and see if it's feasible.

Mr. Serpico – he will communicate with the Environmental Commission and we can come to a resolution.

Mr. Mullen volunteered to speak with the Environmental Commission.

Mr. Drobbin – we will put in abeyance until we get the answers to these questions. He suggested that we discuss this next time.

Mr. Serpico – next item sixteen relates to the applicant will not be permitted to drive any pilings into the site at any time.

Mr. Keady explained that you can vibrate the piles into the ground or you can hit them with a hammer to drive them into the ground. So there are two methods which he further explained but at some point they will have to be direct driven with a hammer.

Mr. Drobbins written changes for this item will have to be reviewed by Mr. Schwankert.

Mr. Serpico – the next change is in number twenty the setbacks.

Mr. Keady – we need to verify what number was used in the evidentiary.

Mr. Serpico, item twenty one, a portion has to deal with the tank removal which we will deal with later. Second comment which was number four comment referenced in the report was fine. Number seven referred to the jake breaking, they are saying they won't use it unless it's needed for safety. So with the exception of the 2,000 gallon tank the rest of the Environmental Conditions seem to be in order.

Mr. Serpico – item twenty two, with regard to the applicant obtaining additional soil samples. He will have to defer to the Board Engineer for this item.

Mr. Keady – we will have to go back and review the transcripts. His recollection was that he changed this from soil to groundwater levels through the outside contamination coming into the site. Need to verify the transcript.

Mr. Serpico – so we will have to go back to the transcript for this one.
Item twenty three – not sure that this is a MLUL matter.

Mr. Drobbin – no this is more specific. We have to spell out specifically what the monitoring program is.

Mr. Keady – in his revision, he is deferring this to the Geotechnical Engineer because this is really their department. We are talking geotechnical and monitoring of the soil, so this is Board Geotechnical Engineer, Mr. Schwankert.

Mr. McOmber – can we go back to Mr. Serpico's twenty three regarding offsite sanitary sewer.

Mr. Serpico – this was put in by Mr. Keady because it wasn't in his original draft.

Mr. Serpico – item twenty five pertaining to the applicant shall submit amended plans.

Mr. McOmber what about item twenty four no cost to the Borough for monitoring or inspections.
Mr. Drobbin crossed that out.

Mr. Serpico explained that for those items in this will be at the expense will be made to the borough.

Mr. Drobbin recommended that it say nothing shall be charged to the Borough unless paid for by the Applicant.

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

Mr. Serpico – okay.

Mr. Serpico back to amended plans on item twenty six a through o of the T& M Resolution.

Mr. Keady explained that here we are listing fifteen to sixteen items but there might have been items somewhere else in the resolution that are not listed here so he wants to make sure that they are including in this so “as contained below or listed elsewhere”.

Mr. Mullen questioned subsection “e” he feels that there may be a need for a guardrail on that upper drive where they are doing the tiebacks for the retaining wall. That may be if necessary.

Mr. Serpico – got it. Know Letter H, the applicant is not saying that they don’t want to do it, they are just saying that it’s to be submitted at the time the application for final. Does that work for us?

Mr. Keady – that would be fine.

Mr. Serpico – i, will be changed to Board’s Geotechnical Engineer. Going to section “j” bus stop.

Mr. Mullen – I was just concerned that there wasn’t a sidewalk there that some provisions be made.

Mr. Drobbin – then maybe we say that there is no sidewalk then we provide a plan by the final.

Mr. Serpico – okay.

Discussions continued on the review of the resolution.

Mr. Serpico – item “m”, that’s a technical issue.

Mr. Keady – he will verify with transcript and then put in the number of swales.

Mr. Serpico – item “o”
ok with the statement that the applicant has put in.

Mr. McOmber – are these submissions for final?

Mr. Serpico – he will go over this with Mr. Keady and he will ask him what is needed now and what is needed for final. Item twenty nine, it’s clear that it’s a conditional of final approval. The relocation assistance plan, the applicant must submit a plan and then we have to verify that it works.

Mr. Mullen questioned item twenty seven the fees.

Mr. Serpico – I will just put “as associated with the project period”.

Mr. Serpico okay we are finished with the review of the Resolution.

Approval of Minutes:

Mr. Parla requested the following changes be made to the August 3, 2010 Planning Board Minutes:

Correction on page two – add the word environmental and no jack hammering.

Mr. Parla offered a motion to approve the minutes with the changes, seconded by Mr. Mullen and all eligible members were in favor.

**Borough of Highlands
Planning Board
Regular Meeting
September 9, 2010**

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

The Meeting adjourned at 10:39 P.M.

Carolyn Cummins, Board Secretary