

**Borough of Highlands  
Planning Board  
Regular Meeting  
August 3, 2010**

Mr. Schoellner called the meeting to order at 7:35pm.

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 a Regular Meeting of the Borough of Highlands Planning Board and all requirements have been met. Notice has been transmitted to the Two River Times and the Asbury Park Press. Notice has been posted on the public bulletin board.

**ROLL CALL:**

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

**Absent:** Mr. Stockton, Ms. Ruby

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

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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

The following documents were marked into evidence:

**B-41: Affidavit from Mayor Little that she listened to July 8<sup>th</sup> Meeting tape.  
A-90: Proposed sidewalk access plan from Linden Ave.**

Mr. Serpico stated that the staircase is the last issue and that the public portion was closed.

Mr. Drobbin stated that the applicants engineer Dan Busch investigated producing a staircase out to the street. The only viable staircase that could be built would require another variance and so Mr. Busch will testify.

Dan Busch, P.E. of Maser Consulting was sworn in and stated the following:

1. He was here for previous hearing and at that meeting it was requested that he look into a walkway to Linden Avenue so he prepared Exhibit A-90.
2. A-90 is a Sidewalk Access Plan.
3. He looked at opportunities to bring access to pedestrians.
4. A-90 was the more viable stairway option which he further described.
5. Ocean Blvd is under NJDOT jurisdiction and a sidewalk was not well received.
6. The access from Linden and Route 36 is through existing tree area. It is an area of steep slope.
7. The sidewalk from Linden through property he described and stated that it would require a variance from steep slope ordinance.
8. The applicant is willing to investigate and could notice for additional variances at final site plan approval.

Mr. McOmber then cross examined Dan Busch.

Mr. Busch stated the following during cross examination:

1. The intersection of Ocean and Route 36 from a Planners point of view he has not investigated. He did this based on the board's request.

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Mr. McOmber had no further questions.

Mr. Mullen question Mr. Busch about if he thought of adding sidewalks to utility easement. He asked if the idea of combining the two paths of utilities and sidewalk would alleviate the need for a variance.

Mr. Busch – the proposed A-90 can be done if a variance is granted.

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

There were no question and so the public portion was closed.

Mr. McOmber stated that he had no need to add to closing comments.

Mr. Drobbin stated that he had no further comments but requested that Exhibit A-90 be marked into evidence and there were no objections.

The Board then began deliberations on this application.

Mr. Serpico gave directions to the board members.

Jim Parla stated that both Attorneys did a great job and he agreed with both summations. His concerns are for the safety of residents and future residents of the Enclave and the environmental issues as brought up by the 1974 Minard report. Those environmental concerns were addressed by the applicant's engineer and board's geotechnical engineer on August 13, 2009, Jack Serpico, P.E. He testified that the hill would be more stable after construction and that this project can be built without detriment. He endorses the vapor mitigation system. There was no expert to contradict anything. The site visit on November 12<sup>th</sup> helped him understand how the swales to be constructed would improve surface runoff from the hill. On safety issues, he noted no pile driving on the site would be done, so no detriment to Eastpointe. Also, no heavy equipment will be allowed next to steep slope. He is disappointed that the Eastpointe Attorney read a letter which was written before any expert testimony was given and put it into the record almost one year later. The most impactful testimony was of Chief David Parker's confidence in fighting a fire. Variance on finger area for slope based on testimony this is not a natural slope, it's manmade. He would approve the application subject to outside agency approvals.

Mr. Serpico explained that he did not allow the Eastpointe letter to come in when it was first received.

Janet Peterson stated that she was impressed with comprehensiveness of 18 months of hearings. Impact, she is still concerned with some of the impact. Traffic impact also concerns her which she expressed. Construction staging, there isn't a timing, the amount of time this staging would take place. There was no testimony of what would be done to protect the town residents. She has concerns that the project would be a partially completed project. Contamination, she wants to see a vapor system and wants NJDEP on site to do investigation prior to construction. She wants a full-time field supervision on this project. The slope stability was done to current standards but to read a paragraph in report that the conditions may be different, no warranty provided gives her doubts. We cannot take the chance so she will vote against project.

George Roberts stated that safety is main concern. He was shocked that the buildings would be lighter than soil. Fire Chief stated that they could fight a fire at project since there is already a high rise building on the hill. He feels that the proposed project is good and would vote yes.

Peter Mullen agrees with Mr. McOmber that this use isn't consistent with the master plan. However, he does not feel it's the issue that is before the board. The Governing Body made this a permitted use so the application meets all conditions except steep slope as would any development on this site. Conditional uses, there were never any studies made for this and we won't know impact of studies on schools, tax base and public works. With regard to the variances, where slopes exceed 35% there shall be no disturbance. There are conditions peculiar to this site which create a hardship for this or any development. The slopes surrounding this property vary in potential impact on the borough and the surrounding residents. The north and

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east slopes are critical slopes. The south facing slope facing Ocean Blvd is less critical. This site is like a two tier wedding cake with slopes in excess of 35% surrounding the top layer after that top layer is removed there is no longer an issue in terms of steep slope and it becomes a relatively flat, man-made area surrounding it. He believes that the removal of the top layer has no impact on the neighboring properties and once gone, the remaining site will remain stable. The lower layer of the case especially that portion below the north/east ridgeline has extremely sensitive steep slopes of historic instability. Failure of these areas would have a dramatic effect on the neighboring properties and the Borough. With the exception of the removal and stabilization of two existing structures along this ridgeline that slope should remain undisturbed. As the applicant has indicated they are not disturbing. The remaining steep slope disturbance grades 35% or more is limited to a cut through Ocean Blvd for service utilities and would be part of any application for this site and it also occurs in an area where this is already a cut for a driveway going in from Ocean Blvd. The next part of that ordinance is "no disturbance within 15 feet of the top of the slope and no structures within 25 feet of the top of the slope". He believes our steep slope ordinance clearly doesn't anticipate structures in excess of 35 feet. Our highest building in the borough is allowed to be 35 feet. We set a distance of 25 feet thinking it was a 35 foot building. Obviously the distance from a steep slope for a 16-story building would need further. He does not believe that this board should grant relief from this provision of our steep slope ordinance with regard to the north and the east ridge lines. He does not believe that we should allow any disturbance within the 15 feet. He believes that after the removal of the two existing structures and the stabilization of the slope in the area of demolition an extra strong soil erosion fence should be permanently installed 15-feet from the north ridge for the full duration of the construction. It is important for them to be able to get in there and grade this area because they are not allowing water to go over the ridge. They are directing all of the water to go around the property and back to a drainage system. This may not give the contractor all flexibility of construction techniques which he would desire but it would give the ridge protection called for by our ordinance. He is not convinced that the applicant has demonstrated that one needs to disturb all of that land with the exception of the two demolished buildings in order to promote the required drainage. Testimony with regard to the construction of the foundations indicated a desire to give the contractor some flexibility in his selection of construction systems. One methodology indicated, cut and banked terracing, which would extend north from the northeast building to this north ridge. He feels strongly that the board should limit the disturbance along this north area and hold firm on our 25 foot setback area. The last part of our ordinance in developments adjacent to slump blocks, further study, soils and technical reports, special construction techniques or limitations, as required to address the sites stability. He feels that the applicant through his Geotechnical Engineer has made a substantial investigation of this site pre and post construction. The Board has retained its own geotechnical engineer to review these studies and gave him confidence that properly phased, monitored and inspected construction can proceed at this site without endangering public health, safety and general welfare. He has a list of items that should be made as conditions if approved. The distribution of units is critical the presentation to the board. He believes that there should be substantial tall plantings along the garage structure of the northern most buildings as they emerge from the ground. A strongly worded condition regarding the requirement for private trash pickup and hauling should be a condition. He suggested that the Architect provide integral rooftop architectural screening. The site engineer addressed the stairs and he strongly believes that new curbs and sidewalks along the north side of the road on Ocean Blvd are critical to this development. Consideration should be given to the introduction of planting terraces for retaining walls within the site greater than 8 feet tall. A decorative security fence should be placed along the north ridge. All utilities should be underground. Fire hydrants should be supported by Borough Official. Soil Erosion, during construction things change and he thinks as factors on the site change he thinks that the borough and their representative need to be made aware of the changes. Provide certification of sewer capacity. Provide guardrail along the private entry to Eastpointe as well as the main entry to this site in the area of the new retaining walls. Confirm turning radius with Borough Fire Official. Provide financial assistance to the Borough to permit the hiring of sufficiently trained, or outside consultants to provide oversight and monitoring services in connection with the construction. Seismic monitoring for the duration of the work. Comply with conditions as set forth by Mr. Schwankert. Limit the use of heavy equipment. Providing continues access for the placement and monitoring of wells and other devices for NJDEP, Exxon and their consultants, in an effort to mitigate the flow of contaminations through the site to Bayside Drive. Immediately remove the abandoned underground 2000 fuel oil storage tanks and provide further soil testing. Provide the soil vapor mitigation system. He does believe that the Board can grant variances from our

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steep slope ordinance without substantial detriment to the public good. Fire Safety issues, the ability of our local fire company to provide fire protection services to the new development is critical to the safety of its residents and the borough's fire fighting personnel. Hi-rise buildings, unlike most other buildings types in Highlands, the critical fire systems are incorporated into the construction. There are many, many fire systems within the building that assist the fire fighters and protect the building including sprinklers, fire standpipe system with hose outlets at every floor, smoke detection systems throughout the building and garage, tied into a central alarm system, and has stair pressurization system to allow safe vertical travel in emergency situations. He doesn't think that access around the entire building is critical importance. Those systems are in place for appropriate fire fighting. Access to the front of the structure is critical for the operation of the fire department. The applicant has worked with and has demonstrated a willingness to continue to work with Borough Fire Official to improve the access. The final arrangement must be satisfactory to the Borough Fire Official. The cost of training (in evacuation and fire fighting) for the emergency response team, which would respond to a fire situation to this site, seems to him to be directly attributable to this development and, to some degree, the residents of Eastpointe. He feels that the cost of training falls substantially to the applicant. He does not feel the same way about the fire truck because everybody in town benefits from it. There were several items that were in Dave Parker's letter that were important and most of them the applicant has agreed to comply with. Lastly, there appears to be a capacity problem with the Regional Sewerage Authority which may affect the development of this project. He also understands that there may be some infiltration problems with the transmission systems between the borough and the other regional sewerage authority facilities. If there was some way for the applicant to participate in any remedial work required on those transmission systems, prior to commencing construction, this would be a benefit to the town and ultimately his development.

Mr. O'Neil – let me start by thanking everyone here tonight and all those who have been involved in the process of this application before this Planning Board. Let me also thank everyone who enabled this meeting date to be moved to tonight. As most of you know, my eldest son, Matthew, is presently serving with the 82<sup>nd</sup> Airborne outside Kandahar, Afghanistan. My family and I are anxiously awaiting his return to America later this month and plan to be on the runway when he touches when he touches down. The previous meeting date would have been in conflict with his arrival. So thank you. With that aside, I must say that this application has been the most in depth that I have ever been part of. The testimony, the exhibits, the cross examinations, the professional, etc., have all been first class. The geotechnical information, the test boring information and the willingness of the applicant to provide additional information, i.e. such as site visits and addition Exxon and DEP access to the site borings, shows me a desire to provide total transparency to the application. Mr. Serpico, Mr. Bush and the Maser team provided first rate engineering and consulting work. The town's team of T & M Associates, Melic Tolly and Fire Official/Fire Chief David Parker have provided this Board, in my opinion, with all the incite, analysis and rendering of a huge amount of information into an understandable assortment of facts. From these meetings and my conversations with the professionals involved, I believe this project can safely be built. I believe that by the approach taken to set these structures into the site rather than atop of the site, this is a correct way to go forth. I also believe the new technology and equipment of today that is readily available will make this project safe in its construction and safe in its life span. Great care was given to keep the structure away from the steep hillside to the north and east, and by maintaining a safe distance for a disturbance barrier I don't think a problem will arise there. As far as fire protection, I believe that a properly designed, installed and maintained fire sprinkler system will greatly reduce the hazard of a fire to engulf a single unit, no less a whole floor. As far as the design waiver being changed to a variance, I myself believe that both were insignificant at best. Being that those slopes inside the park, in my mind, were manmade terraces that in the early years were built to enable more trailers to be installed. I myself, from listening to the testimony, listening to meeting CD's and speaking with board members and professional people in the trades, believe that the applicant has far exceeded his burden of proof. Also from sitting at these meetings, I have witnessed very few people of the surrounding area or from the town in general voicing any opposition to this project. Most people here over the past 18 months have shown more of a concern over what is being proposed than an outright objection to the project itself. As a town official, I will state for the record that I will ensure the town's oversight, inspection, communication to the public and strict adherence to the terms and conditions of this project if approved as long as I am able. Having been a part of this application, listening to the CD's and

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attending the board meetings and considering all of the information I see no reason to deny this application.

Mayor Little – she too has been very impressed with the presentation by the applicant, with the presentation by the professionals hired by the applicant who gave testimony. She was equally impressed with their responses on cross examination. She is great full to the opponent for coming forward. Many of the questions that were raised were addressed and she does think that it benefited the applicant to vent those questions here in this forum. She thinks that it benefited the board to hear those questions and those responses, to get a clear understanding of what we are getting into with such a project. She is most impressed with the participation of the members of this board. She thinks that every member sitting here has spent countless hours, not only listening to the testimony side by side but she does believe strongly that every member of this board goes home at night thinking about this until the next meeting and she is proud to be a part of a group that is dedicated to the Borough. But rather than restate the things that she agrees with, she will start by saying that she listened intently to the deliberations of each of the members that went before her. She agrees with the issues that have been raised by each of them. With regard to the geotechnical, that was her biggest concern. Environmental, was second to that and she is convinced by the testimony that she has heard that geotechnical will not be an issue and that we will have a more stable situation when we are finished then what we have now. She is not a proponent of high-rises generally, it is very hard for her to drive by Eastpointe Condos and then tell these people “no”. She does not believe that the contamination that is flowing through the slope right now is going to be worsened by this project. She think that we will get closer to mitigating that via the construction process. In that way she does feel that the application would benefit the community. With regard to traffic impact, she has an opposite opinion. She is a proponent of economic development in Highlands. Not to change Highlands but to give it a more self sustaining economy. She thinks that we have three very viable entrances into this town and she thinks that where this is a traffic back up on one place, people will use the other s and it will benefit our business district. Obviously we are going to have to be careful about the monitoring of the traffic flows but she has full confidence with our Police Department. She believes that the water and sewer are independent authorities that monitor that and she believes that construction will not be permitted until there is approval from those entities. With regard to construction staging, she too does believe that the borough has the responsibility to monitor that on behalf of the residents of the Borough and she trusts our governing to do that. She does support the vapor system and monitoring. She does view any disclaimers with regard to actual conditions to be legally required. She would promote full-time field operation management or field observation to be a condition. With regard to Mr. Mullen’s recommendations, she supports the aesthetic concerns relative to plantings. She likes the idea of private trash disposal; however she would defer to legal opinion as to if that can be imposed. She likes the idea of the security fence that is decorative in nature. She trusts our fire official’s assessment as to whether they can fight a fire in this location. She would like the utilities to be required to be placed underground. She does support seismic monitoring during construction. In general she would recommend the approval of this project.

Mr. Schoellner stated that the applicant did a fine job with their professionals and he finds that some of Mr. Mullen’s comments should be addressed. In his opinion this should be approved.

Mr. Parla offered a motion to approve the application, seconded by Mr. O’Neil.

Mr. Serpico then stated that they cannot give all of the conditions tonight but that he and the engineer will work on the resolution together. He stated that the motion should be amended to approval of preliminary site plan, not final. He did give some or the conditions as follows:

1. Address any outstanding conditions of the Geotechnical conditions of our expert.
2. We have to consider the Brinkerhoff Report to see if there are any recommendations there.
3. Any conditions discussed tonight.
4. Mr. Parker’s recommendations minus the fire truck purchase.
5. T & M Associates recommendations.
6. Installation of the Vapor System.
7. Geotechnical, Environmental, Fire Safety and General Engineer conditions.

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8. Performance Bond and Inspection Fees (including costs for inspections to hire appropriate officials for the borough).
9. Outside Agency Approvals.
10. Relocation Assistance Compliance.
11. Developers Agreement.
12. Sidewalk on Ocean Blvd.
13. Fencing.
14. Guard Rails on driveway
15. Underground utilities.
16. Private Trash
17. If any outside agency approval alters or amends the plan then the applicant must come back for amended approval.

Mr. Mullen requested that the applicant be required to update the plan documents to include all conditions.

Mr. Keady stated that we can have them prepare shop drawings and vapor rotation.

Mr. Mullen and Mr. Roberts wanted sidewalks.

Mr. Parla offered an amended motion to approve preliminary site plan and variance approval for steep slope variances and design waiver if NJDOT does not permit the sidewalk along the north side of Ocean Blvd for the full length of the property subject to the conditions as discussed, seconded by Mr. O'Neil and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES:** Ms. Peterson

**ABSTAIN:** None

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**Approval of Minutes:**

Mr. O'Neil offered a motion to approve the July 8, 2010, seconded by Mr. Mullen and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES:** None

**ABSTAIN:** None

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

The Meeting adjourned at 9:01 p.m.

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**CAROLYN CUMMINS, BOARD SECRETARY**