

**Borough of Highlands
Planning Board
Regular Meeting
July 8, 2010**

Mr. Stockton called the meeting to order at 7:05 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 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, Mr. Parla, Mr. Roberts,
Ms. Peterson, Mr. Stockton

Absent: Mayor Little, Ms. Ruby

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

Approval of Resolution:

Mr. Stockton read the title of the following Resolutions for approval:

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

**RESOLUTION AMENDING
PROFESSIONAL LEGAL SERVICES
RESOLUTION**

WHEREAS, on March 11, 2010 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 January 1, 2010 through June 30, 2010.

WHEREAS, due to the amount of professional services needed for the period of January 1, 2010 through June 30, 2010 an increase of \$538.75 is needed.

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

Planning Board Budget
Account #1141-3755 - \$538.75

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 \$4,000.00 is hereby increased an additional \$538.75 for a total amended contract amount of \$4,538.75 for the period of January 1, 2010 through June 30, 2010.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

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**RESOLUTION
BOROUGH OF HIGHLANDS PLANNING BOARD
AUTHORIZING PROFESSIONAL LEGAL SERVICES FOR THE PERIOD OF
JULY 1, 2010 THROUGH DECEMBER 31, 2010**

WHEREAS, the Borough of Highlands Planning Board has a need for Professional Legal Services; and

WHEREAS, such Professional Legal Services can only be provided by a Licensed Professional; and

WHEREAS, the Borough of Highlands Planning Board memorialized a Resolution on January 14, 2010 appointing Jack Serpico, Esq., from the firm of Jack Serpico, Esq., as Planning Board Attorney for a one (1) year term expiring December 31, 2010.

WHEREAS, this contract is to be awarded for an amount not to exceed \$4,000.00 for legal services provided to the Borough of Highlands Planning Board for the period of July 1, 2010 through December 31, 2010; and

WHEREAS, certification of availability of funds is hereby provided by the Chief Financial Officer contingent upon the Governing Body of the Borough of Highlands adopting the SFY 2011 Municipal Budget/

Planning Board Budget
Account #1141-3755 - \$4,000.00
July 1, 2010 – December 31, 2010

Stephen Pfeffer, CFO

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 be publicly advertised.

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

1. That Jack Serpico, Esq., from the firm of Jack Serpico, Esq., is hereby retained to provide Professional Legal Services as described above for an amount not to exceed \$4,000.00 for the period of July 1, 2010 through December 31, 2010.
2. This contract is awarded without competitive bidding as a "Professional Services" in accordance with the Local Public Contracts Law, NJSA 40A:11-5(1)(a)(i) because it is for services performed by persons authorized by law to practice a recognized profession.
3. A copy of this Resolution shall be placed on file with the Planning Board Secretary.
4. The Borough of Highlands Planning Board Secretary is hereby directed to publish notice of this award as required by law.

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

ROLL CALL:

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

NAYES: None

ABSTAIN: None

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

**Borough of Highlands
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RESOLUTION
BOROUGH OF HIGHLANDS PLANNING BOARD
AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN CONTRACT FOR
PROFESSIONAL ENGINEERING SERVICES
FOR THE PERIOD OF JULY 1, 2010 THROUGH DECEMBER 31, 2010**

WHEREAS, the Borough of Highlands Planning Board has a need for Professional Engineering Services; and

WHEREAS, such Professional Engineering services can only be provided by a licensed professional; and

WHEREAS, the Borough of Highlands Planning Board memorialized a Resolution on January 14, 2010 appointing Robert Keady, P.E. of T & M Associates as Planning Board Engineers for a (1) one year term expiring December 31, 2010; 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 from making any reportable contributions through the term of the contract; and

WHEREAS, T & M Associates has completed and submitted a Political Contribution Disclosure Form in accordance with P.L. 2005, c271; and

WHEREAS, this contract is to be awarded for an amount not to exceed \$2,200.00 for Professional Engineering Services provided to the Borough of Highlands Planning Board for the period of July 1, 2010 through December 31, 2010; and

WHEREAS, certification of availability of funds is hereby provided by the Chief Financial Officer contingent upon the Governing Body of the Borough of Highlands adopting the SFY 2011 Municipal Budget.

Planning Board Budget
Account #1141-3757 = \$2,200.00
July 1, 2010 – December 31, 2010

Stephen Pfeffer, Chief Financial Officer

WHEREAS, the Local Public Contracts Law, NJSA40A:11-1 et. Seq. requires that notice with respect to contract for Professional Services awarded without competitive bids must be publicly advertised.

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

1. That both Robert Keady, P.E. of T & M Associates is hereby retained to provide Professional Engineering Services as described above for an amount not to exceed \$2,200 for the period of July 1, 2010 through December 31, 2010.
2. This contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, NJSA 40A:11-5(1)(a)(i) because it is for services performed by persons authorized by law to practice a recognized profession.

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3. A copy of this Resolution shall be placed on file with the Planning Board Secretary.
4. The Borough of Highlands Planning Board Secretary is hereby directed to publish notice of this award as required by law.

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

ROLL CALL:

AYES: Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mr. Parla, Mr. Roberts,
Ms. Peterson, Mr. Stockton
NAYES: None
ABSTAIN: None

**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 stepped down for this hearing

Mr. Serpico reviewed the list of exhibits from the last hearing.

Mr. Drobbin requested that Exhibits A-82-A-88 be moved into evidence; there were no objections.

Mr. Serpico requested the following be marked into evidence:

B-40: Affidavit from Mayor Little that she listened to the 5/13/10 Meeting Tapes.

Mr. Drobbin then stated that all of the "A" exhibits except for A-89 have been marked into evidence. B-1 through B-38 and B-40 have been marked into evidence B-39 is the only one not marked into evidence. O-1 and O-2 have been marked into evidence, O-3 has not been marked into evidence.

Mr. Serpico – tonight we need to deal with Mr. Stober's letter (O-3) and the Melick-Tully Letter (B-39).

Henry Stober of 1 Scenic Drive, Unit 404, Highlands, NJ was sworn in.

Mr. Stober stated that following during his testimony and response to questions from the board:

1. He submitted a letter which was marked as Exhibit O-3. He and Mr. Lee authorized the letter known as Exhibit O-3.
2. He explained that with respect to Attorneys summation at the last meeting. The reason that Eastpointe Residents missed the summation was due to a miscommunication and not due to lack of interest.

Mr. Drobbin stated that there isn't really an issue because Mr. Stober stated that he has listened to the audio copy of the last meeting and the Chairman at the last meeting established what the ground rules were and others were here and they understood what was going on. He does not see a need to do anything as a result of what Mr. Stober said about his misunderstanding.

Brief discussion continued about Mr. Stober's issue regards to the misunderstanding about the last meeting.

Mr. Drobbin – the bottom line is that each of the residents had their opportunity to say what they wanted to say.

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Mr. Stober – yes, true they did.

Mr. Stober continued his testimony as follows:

3. He explained the reason why he wrote his letter (Exhibit O-3). He and Dr. Lee had questions as to the geotech presentation specifically how good the factor of safety numbers is. You have a number that has three significant figures, 1.15 that represents the number that the Board Members are looking at in the documents. What is the plus or minus of that safety factor number? What is the uncertainty with respect to that number? All of these things are related to how that number was derived. That number was derived from measurements that were made. Each of those measurements has their own uncertainty, which he further explained.

4. The uncertainty prompted an internet and library research related to steep slope stability, uncertainty, Morgan Stern, Slope W and Mount Mitchell. The articles that are quoted in his letter were intended to inform the board members of what they felt were missing from the geotechnical presentation. In other words, the uncertainty associated with the data that was being presented.

5. This letter was intended to give you some questions about something that we came across in the literature that is a current way of assessing slope stability.

6. Dr. Lee is a Physicist and Computer Expert and he is a Pharmaceutical Chemist.

7. He feels that he asked questions during the hearing process but never received answers.

8. He stated that there is no indication of what the uncertainty is in the Serpico reports.

Mr. Drobbin began cross examination of Mr. Stober.

Mr. Stober stated the following during cross examination from Mr. Drobbin:

1. He put together the letter known as Exhibit O-3 and Dr. Lee reviewed it.

2. Dr. Lee nor he are Geotechnical Experts.

3. He did not author the articles that were attached to his letter.

4. They did not do any analysis, they just provided the articles with respect to numbers.

5. His intent, he saw articles that support Serpico's approach but he can't say he reviewed those articles.

6. He read about five articles and they dealt with uncertainty.

7. He reviewed no articles that support what Serpico says because what he saw from the literature that was a technique that was used and this technique was coming to the floor.

8. The literature puts emphasis on risk analysis.

9. "Slope W" which is the software that Mr. Serpico uses. The literature seems to be putting emphasis on probabilistic methods when it comes to risk analysis.

10. He does know that the Board hired its own Geotechnical Expert and that he generally agrees with the applicants Geotechnical Engineer.

11. Dr. Lee read the these articles and others.

12. The letter (O-3) is a letter of his opinion.

Mr. Drobbin requested that Exhibit not be moved into evidence, it's an opinion letter from a person that is not an expert.

Mr. McOmber stated that he does pretend to be an expert so he does not think that it needs to be stricken.

Mr. Serpico asked if there were any members of the public who had a question for Mr. Stober.

There were no questions from the public; therefore Mr. Stober stepped down.

James Serpico, Jr. P.E. was sworn in.

Mr. Serpico, Board Attorney stated that there is no relation between himself and James Serpico.

James Serpico stated the following during his testimony and response to questions from the board:

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1. He provided two evenings of testimony on this application.
2. He authorized a number of reports on the Enclave at Mr. Mitchell.
3. He has been involved in the planning process.
4. Yes, he has seen Exhibit O-3 the Stober Letter and the attached articles. He is familiar with those articles.
5. He stated that he prepared a response letter dated 4/20/10 (A-89) to the Stober letter.
6. He stated that the gist of the Stober letter suggests uncertainty wasn't addressed. This is not true, which he described in detail. He gave an lengthy explanation of the method of safety calculations. He stated that probabilistic methods are used and there are only four parameters that can be adjusted which are the unit weight of the soil how much the soil weighs per cubic foot, the sheer strength of the clay, friction angle, water table. So in our approach we reduced the numbers that were input into the program to be more conservative, which he further described. He continued to review his response letter to the Stober letter. He stated that most of the slopes stability pre and post construction are the same, which he further described.
7. His calculations are approved methods.
8. We located the key structures in an area away from slopes, which he further explained.
9. He believes they have done the work.

Mr. McOmber then began his cross examination of Mr. Serpico.

Mr. Serpico stated the following during cross examination:

1. In paragraph one of his letter he refers to Geotechnical Engineering as an art form which he further described.
2. He stated that local knowledge and experience is important.
3. He stated that he has local knowledge which he further described.
4. He spoke about computer software program that he used and stated that he does not know of any failures.
5. Page two, Paragraph one speaks about past slope failures which he spoke about.
6. He spoke about the Highland Shores failure and stated that it wasn't a slope failure it was a mud flow problem.
7. On bottom of page two of his letter he speaks about the Montecarlo Technique.
8. Building one is the hardest to build so they will start with that one.
9. He is not aware of any slumps in the area.
10. He explained that there is not a debate in the geotechnical world about methods. He stated the debate is that you should do something.
11. He explained that the numbers that he presented were to the lowest factors in safety.

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

Donna O'Callaghan of 29 S. Bay Avenue questioned the differences between the methods of calculations. She is not comfortable that his method was the easier method.

Mr. Serpico responded and explained that by easier he means because it spits out an answer.

Donna O'Callaghan – why couldn't you use the other methods in conjunction with your method?

Mr. Serpico explained why.

Don Manrodt of 268 Bayside Drive asked when he was last on Bayside Drive because there are eight or nine springs in front of his house.

Mr. Serpico replied that he knows that there is flow seeping out of seepage.

Don Manrodt – do you consider Bayside Drive stable?

Mr. Serpico explained that parts are very unstable.

Don Manrodt – do you know why we couldn't build a sewer plant on Bayside Drive?

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Mr. Serpico – slump block

Don Manrodt continued to question Mr. Serpico about the Bayside seepage.

Female Resident of Eastpointe questioned the study only being done on footprint of building and asked if he did a risk analysis.

Mr. Serpico explained that in past meetings they have addressed this. He then spoke about the temporary wall for the building.

Henry Stober of 1 Scenic Drive questioned Mr. Serpico about his report.

Mr. Serpico explained that they did not find a slump block at the top of the slope.

Mr. McOmber then asked more questions of Mr. Serpico.

Mr. Stober asked more questions of Mr. Serpico and his report.

Mr. Serpico replied, he spoke about the Minard Report and said that they could not prove that Minard was correct or that a slump block line existed on top of the slope.

There were no further public questions; therefore Mr. Serpico was excused.

Mr. Schoellner announced at 8:47 p.m. that the board was taking a five minute recess.

Mr. Schoellner called the meeting back to order at 8:55 p.m.

ROLL CALL:

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

Absent: Mayor Little, Mr. Stockton, Ms. Ruby

Mr. Drobbin requested that exhibit A-89 be moved into evidence.

There was no objection from Mr. McOmber.

Mr. Serpico, Board Attorney called Robert Schwankert up to testify on behalf of the board.

Robert Schwankert was sworn in and stated the following during his testimony and response to questions from the board:

1. He is employed with Melick-Tully & Associates and was hired as the Boards Geotechnical Engineer Consultant.
2. Exhibit B-39 is a review letter dated 5/10/10 that he prepared in response to the Stober & Maser letters.
3. His conclusion is that with regard to the Maser Report and Response he feels confident and believes that good engineer practices were provided for the data and site investigation. Their findings are reasonable and valid.
4. The Board does not need to require further information.

There was no cross examination by Mr. Drobbin.

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

Mr. Schwanker stated the following during his cross examination:

1. Final design will be subject to further review. He does not believe it's a Planning Board issue which he further explained. The final design has not been completed as of yet.

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2. It would be the call of T & M to determine if Geotechnical services are needed for review of final design.

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

Henry Stober of 1 Scenic Drive questioned the retaining wall and asked if the tie backs will be on the Eastpointe Condo property.

Mr. Schwankert believes it was previously indicated that the applicant demonstrated that they could do it without going onto Eastpointe's property.

Robert Keady, P.E, Board Engineer was sworn in.

Mr. Keady stated that the issue was discussed and the tie backs will not go onto Eastpointe's property.

There were no further questions from the public.

Mr. Serpico then moved exhibit B-39 into evidence, there were no objections.

Mr. Schoellner then opened up the public comment hearing based on tonight's testimony.

Don Manrodt of 268 Bayside Drive was sworn in and stated that this board should not approve anything until test borings are done by the DEP because this is affecting our health.

There were no further questions or comments from the public.

Mr. Schoellner offered a motion to close the public hearing, seconded by Mr. Parla and all were in favor. The public portion was then closed.

Mr. Serpico, Board Attorney then gave the board instructions about weighing the evidence and asked if they want to move Mr. Stober's letter into evidence.

Mr. Parla then offered a motion to accept Exhibit O-3 into evidence, seconded by Mr. Schoellner and all were in favor.

O-3 was then moved into evidence.

Mr. Mullen spoke about the Environmental Commission email dated 7/8/10 which discusses some of the issues that are going on with the seep and the NJDEP. He stated that there is a significant health issue at the bottom end of the seep as Mr. Manrodt stated, so it seems to him that the applicant should make an effort to allow the DEP to establish the area of this plume and whatever testing they need to do to get to the bottom of this and find some way to mitigate that. He stated that is what was characterized at the meeting that the applicant is very uncooperative, which he feels is not so.

Mr. Drobbin stated that the applicant was not invited to the Environmental Commission meeting. The fact of the matter is the applicant signed an access agreement with Exxon Mobile in January of 2010 to go onto the applicant's property and to do what is necessary in terms of drilling. They did nothing until the end of May of 2010 and those are the facts. He stated that the applicant has been very cooperative.

Mr. Mullen explained that the Environmental Commission Meeting was an update for the Bayside Drive Residents. His point of this is to be pro active on this for the residents of Bayside Drive. Lets remove any obstacles of the two week notice requirements for Exxon.

Jim Parla stated that he attended the Environmental Commission Meeting and the lady from Exxon gave an impression that the applicant is uncooperative. He feels that the applicant is cooperative.

Mr. Mullen – during excavation is area of concern along the seep?

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Mr. Serpico explained that he just reviewed the Exxon Plans and they have not been part of the Exxon's plans, they haven't even seen remediation plan. We are still 35 feet above the water table.

Mr. McOmber stated that there should be a "No Further Action" sign off from the NJDEP that construction will not impede remediation.

Mr. Serpico, Board Attorney – we would make sure there are conditions that cover outside agency approvals.

Mr. Parla stated that on July 9, 2009 there was a discussion about pedestrian access and to the best of his memory he and Mr. Mullen wanted pedestrian access from Linden Ave so that residents could walk to town. At the top of Linden there is a sidewalk that runs parallel to Hwy 36 for about 25 feet and he wants Mr. Busch to provide a pedestrian access to connect to existing sidewalk.

Mr. Drobbin stated that the change in elevation is very significant.

Mr. Parla suggested a stairway.

Dan Busch was sworn in and he spoke about pedestrian access and stated that they can take another look at that.

Mr. Mullen prefers stairs where they are digging trench for utilities.

Mr. Busch – we can look into it.

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

The Board then had a discussion about changing the August meeting date.

Mr. O'Neil offered a motion to change the August 12th PB meeting date to August 3rd at 7:30 p.m. and to carry this hearing to August 3, 2010, seconded by Mr. Roberts and all were in favor.

Mr. Serpico announced to the public that this matter has been carried to August 3rd at 7:30 pm and that no further public notice would be given.

Approval of Minutes

Mr. Parla offered a motion to approve the June 10, 2010 Planning Board Minutes, seconded by Mr. Mullen and all eligible board members were in favor.

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

The meeting adjourned at 9:38 p.m.

CAROLYN CUMMINS, BOARD SECRETARY