

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

Mr. Manrodt called the meeting to order at 7:28pm.

Mr. Manrodt 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. Manrodt, Mr. Mullen, Mr. O'Neil, Mr. Bahrs, Mr. Schoellner,  
Mayor Little, Mr. Francy, Ms. Peterson

**Absent:** Mr. Parla, Mr. Stockton, Mr. Roberts

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

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**Executive Session Resolution:**

Mrs. Cummins read the following Resolution for approval:

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

**RESOLUTION  
EXECUTIVE SESSION**

**BE IT RESOLVED** that the following portion of this meeting dealing with the following generally described matters shall not be open to the public:

1. A meeting with in the Attorney Client Privilege.

**BE IT FURTHER RESOLVED** that it is anticipated that the matters to be considered n private may be disclosed to the public at a later date when the need for privacy no longer exists; and

**BE IT FURTHER RESOLVED** that no portion of this meeting shall be electronically recorded unless otherwise stated; and

**BE IT FURTHER RESOLVED** that the private consideration is deemed required and is permitted because of the following noted exceptions set for in the Act:

Item 10: Falls within the attorney-client privilege and confidentiality is required.

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

**Roll Call:**

**AYES:** Mr. Manrodt, Mr. Mullen, Mr. O'Neil, Mr. Bahrs, Mr. Schoellner,  
Mayor Little, Mr. Francy, Ms. Peterson

**NAYES:** None

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**ABSTAIN:     None**

The Planning Board then entered into Executive Session.

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Mr. Manrodt called the Regular Meeting back to order at 7:58 p.m.

**ROLL CALL:**

**Present:     Mr. Manrodt, Mr. Mullen, Mr. O’Neil, Mr. Bahrs, Mr. Schoellner,  
Mayor Little, Mr. Francy, Ms. Peterson**

**Absent:       Mr. Stockton, Mr. Parla, Mr. Roberts**

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

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**Review of Zoning Ordinance Amendment O-09-33**

**Martin Truscott, P.P. of T & M Associates was present and sworn in.**

Mr. Truscott explained that the Board is required to review the Ordinance for compliance of the Master Plan. There were some comments from the board members that he put them into a proposed ordinance revision which he handed out to the board which had green print. He stated that the Board can act on the amendments or the ordinance as originally presented and referred by the Governing Body.

Mr. Mullen questioned the B-2 Zone between Shore Drive and S. Second Street and that was in the overlay district in the master plan.

Mr. Mullen stated that the municipal parking should not be part of the overlay zone. He also stated that another issue that he has is block 38.01 was previously a waterfront commercial and in changing to a B-2 can we allow flexibility to not make the existing uses not in compliance.

Mr. Truscott – we may be able to do something.

Mr. Francy questioned if proposed amendments would be put forward to the Council at the public hearing.

Mayor Little explained that any changes would have to be readvertised.

Mr. Truscott stated that we could always amend the ordinance after the original is adopted.

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

**RESOLUTION  
BOROUGH OF HIGHLANDS PLANNING BOARD  
FINDINGS OF REVIEW OF ORDINANCE O-09-33  
ZONING ORDINANCE AMENDMENTS**

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**WHEREAS**, the Mayor and Council of the Borough of Highlands authorized the Planning Board to undertake a review of proposed Borough Ordinance O-09-33, which Ordinance will amend the Borough Zoning Ordinance; and

**WHEREAS**, the Municipal Land Use Act, NJSA 40:55D-26 & 64, requires that the Planning Board prepare and transmit a report back to the Governing Body; and

**WHEREAS**, said statute does further require that the report of the Planning Board shall include an identification of any provision or provisions set forth in the proposed Ordinance amendment which is or are inconsistent with the Borough Master Plan and contain recommendations concerning those inconsistencies and any other matters as the Board deems appropriate; and

**WHEREAS**, the Board conducted a review of the proposed amendment on December 10, 2009; and

**WHEREAS**, the Board received comments from Board Members, the Board Engineer and Attorney and various members of the public.

**NOW, THEREFORE BE IT RESOLVED**, by the Planning Board of the Borough of Highlands that Ordinance 09-33 is consistent with the Land Use and other elements of the Highlands Borough Master Plan and the Ordinance does advance the purposes of planning and zoning and advances the planning objectives of the Highlands Borough Master Plan.

**BE IT FURTHER RESOLVED** that the Board hereby directs its Secretary to transmit said findings to the Clerk of the Borough of Highlands pursuant to the Statute first mentioned above forthwith for consideration by the Mayor and Council of the Borough of Highlands.

**BE IT FURTHER RESOLVED** that the Board respectfully request that the Mayor and Council review the board's findings and recommendations which are hereto attached and made part of this resolution

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

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**ROLL CALL:**

**AYES:** Mr. Manrodt, Mr. Mullen, Mr. O'Neil, Mr. Schoellner, Mayor Little,  
Mr. Francy, Ms. Peterson  
**NAYES:** Mr. Bahrs  
**ABSTAIN:** None

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**PB#2009-1 Highlander Development Group, LLC  
Block 105.107 Lot 1.01  
Unfinished Public Hearing**

**Present:** Paul Drobbin, Esq., Applicants Attorney  
Court Reporter  
Armen McOmer, Objectors Attorney  
Daniel Busch, P.E., Applicants Engineer

**Conflict:** Mr. Manrodt, Mr. Bahrs, stepped down.

**Absent:** Mayor Little left the meeting.  
Mr. Parla  
Mr. Roberts

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

1. He stated that he is the Principal Engineer on this application and that he has been to all of the hearings on this matter.
2. Design Waivers , he referred to Exhibit A-14A and stated that it's a steep slope analysis that shows the areas of steep slope on the site and how it outlines the areas disturbance of areas greater than 35% and the area of a structure within the steep slope buffer.
3. He then read from ordinance 21-65 Steep Slope Ordinance.
4. He spoke about existing structures within the steep slope area.
5. As a result of construction they will have 1.28 acres from the disturbance buffer and .62 acres of disturbance of slopes greater than 35%.
6. He spoke about some minor fringe of disturbance and the construction of the swale on the north side which the disturbance of that buffer requires a waiver.
7. After construction is completed no structure will be within in the buffer area.
8. He described storm water basin location.

There were no questions for Mr. Busch from Mr. McOmer.

There were no questions from the public for Mr. McOmer.

Patel Phillips, P.P. was sworn in and stated the following during his testimony and response to questions from the board:

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1. He described his professional and educational background as a Licensed Professional Planner in the State of New Jersey.

The Board accepted Mr. Phillips as a qualified professional and there was no objection from Mr. McOmber.

2. He stated that he inspected the site on two occasions and reviewed the plans for development. He also met with applicant and professionals Mr. Busch and Mr. Serpico. He has reviewed the land use ordinance and the borough master plan, applicant's professional reports and board reports. He did attend one hearing and reviewed all of the transcripts.

Mr. Serpico, Board Attorney stated that he wanted to clarify for the record that the Mr. Serpico that Mr. Phillips referred is not him, it's the other Mr. Serpico.

3. He is familiar with requested design waivers and of the borough's zoning ordinance section 21-65, item 21 regarding steep slopes.

4. This application does conform to the standards for multi-family development as a permitted conditional use in this M-H District. The only relief that the applicant is seeking relates to the design waivers that were previously articulated by Mr. Busch.

5. Section 21-65.21 which is the design standard section of the borough's ordinance, there is a requirement where slopes exceed 35%, there shall be no disturbance of the steep slope area. The applicant is requesting a design waiver for this section and that section goes on to require that there shall be no disturbance of the area within fifteen feet of the top of slope and no structures shall be located within 25 feet of the top of slope, nor shall there be any disturbance within ten feet of the toe of slope or any structures located within fifteen feet of the toe of the slope. The applicant is also requesting a design waiver from that provision.

6. The standards for a Planning Board to grant a design waiver are set forth in the Municipal Land Use Statute under section 51, which states that a Planning Board may grant an exception if the literal enforcement of one or more of the provisions of the ordinance is impractical or will exact undue hardship because of peculiar conditions pertaining to the land in question. That is the standard for a waiver and he believes that what they have here in this case are peculiar conditions related to this property because this is not a virgin tract of land. This property has been previously disturbed including an area that is presently within the 35% slope category, as well as portions of the no disturbance buffer areas. Mr. Busch calculated previously that there is currently on the site .7 acres of disturbance within the 35% slope area. 1.36 acres of disturbance in the no disturbance buffer area and .56 acres of structure disturbance within the no disturbance area.

7. The disturbance of the area within the 35% slope category, which is .62 acres which is effectively limited to the finger area running through the central portion of the site. He then pointed to the central area of the site which is basically building three. He then stated that a portion of building three and a portion of the access road to building three does encroach within this 35% finger area within the central portion of this site.

8. Based on the testimony of Mr. Serpico and others these are not what he would characterize as natural slopes or what might be considered natural topography. This represents an isolated area of steep slopes which was more than likely was the result of earth movement which was done to accommodate the internal access roads as well as the leveling of the pad sites for the trailer park, which was previously testified to by the applicant's professionals. So the bottom line is that this particular slope ban where exists within the interior portion of the site that was part of

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the property that was previously disturbed to accommodate development that currently exists on the site. He will distinguish this area from the parameter portions of this site and effectively what we have been referring to as the north slope of the site which are areas that are part of the natural topography along the parameter which were not previously disturbed. He will basically mirror the testimony of the Architect that this particular band is really not worthy from a planning standpoint worthy of the same level of protection as the parameter slope areas that were not part of the previously disturbed areas of the site.

9. He thinks that the board should look to why they have steep slope ordinances to begin with. Steep slope ordinances are typically designed to limit changes to the natural topography to prevent things like erosion, increased flooding, potential soil loss and things of the like. In his mind there is no good planning reason to retain this area as part of any redevelopment proposal consistent with the underlying zoning, which is essentially the application that is before the board this evening. In fact he does not think that you would want to limit the available site design options to achieve what's allowed under the zoning by attempting to avoid this finger area within the site.

10. As testified to this area that is being disturbed can be regarded accordingly without detriment to the public health, safety and welfare.

11. Clearly in his mind there is a basis to grant this design exception consistent with the Statute. It relates to being impractical given the peculiar conditions of land.

12. The second part of where we do not meet the design standards of the slope ordinance has to do with the disturbance buffers and that is for both structures and any other disturbance. Number one post development there will no longer be any structures within the required buffer. The current condition of over a half of acre of disturbance will be eliminated. Number two, approximately 1.2 acres of this site are being disturbed within the no disturbance buffer. That is basically earth movement disturbance. .48 acres are associated with the buffer areas that are continues to the finger area that they are eliminating, which he further explained leaves .8 of remaining disturbance. The bulk of this is within areas that have already been disturbed.

13. There are only two exception, one is the disturbance associated with the necessary utility connections to Ocean Blvd for both stormwater and sanitary. Secondly, there is a disturbance to a portion of the north slope in order to create a drainage swale which is designed to divert water that currently flows over the north slope back into the interior of the site. These two exceptions are necessary so it's a clear basis to grant waivers.

14. There is a legitimate basis to grant waiver sought by applicant.

15. There is a public benefit to be gained if the level of disturbance is going to be lessened.

16. The applicant's requests are reasonable under the Statutory provisions.

17. He stated that this applicant has a plan that conforms to the zone.

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

Mr. Phillips stated the following during his cross examination by Mr. McOmber:

1. He is not an engineer.

2. Many of his conclusions were based on some of the conclusion of the discussion with site engineer.

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There were no further questions from Mr. McOmber or the public.

Mr. Drobbin requested that the following exhibits be marked into evidence:

- A-57: January 7, 2009 letter by Mr. Bush;
- A-58: April 15, 2009 Stop Control Summary by Mr. Jahr;
- A-59: Subsurface Profile dated 7/29/09;
- A-60: Slope Stability Run, containing five sheets, prepared by Mr. Serpico submitted on 7/30/09.
- A-61 Cut and fill analysis of site map dated 7/29/09;
- A-62: Letter from Mr. Busch dated 9/24/09 addressed to the Environmental Commission, Mr. Szulecki;
- A-63: 11 by 18 colored aerial maps, six sheets of view studies by Menno, the Architect dated 9/22/09.
- A-64: Letter from D. Busch to C. Cummins, dated 10/29/09 transmitting the Phase I Revised Environmental Assessment.
- A-65: The Revised Phase I Environmental Study dated October 2009.
- A-66: Transmittal Letter from D. Busch to Cummins dated 10/29/09 transmitting letter from the FAA.
- A-67: Letter from the FAA, 36 pages.
- A-68: Letter from D. Busch Office on 11/24/09 transmitting 17 copies of soil vapor report.
- A-69: Storm Vapor Report dated 11/19/09 prepared by Ms. Breikenhoff;
- A-70: CAFRA Letter to Municipal Clerk dated 2/18/09 consisting of 23 pages.

Mr. Drobbin questioned Mr. Busch and Mr. Busch stated the following:

1. His office prepared the plans and accompanying documents that were hand delivered to Carolyn Cummins, Board Secretary on January 7, 2009.
2. His office handled the hand delivery of the those items including the tax certification, deed restriction, tax conveyance, and W-9 forms as well as those documents that are listed in the January 7<sup>th</sup> letter.

Mr. Drobbin stated that Exhibit A-55 he believes was an environmental assessment report.

Ms. Cummins explained that this is the exhibit that his Secretary said based on transcripts it was not marked.

Mr. Drobbin stated that he will research exhibit A-55 before the next meeting. So we will hold off on this exhibit number.

Mr. Mullin requested that the following documents be marked into evidence:

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A-70: CAFRA Letter to Municipal Clerk dated 2/18/09 consisting of 23 pages;  
A-71: LeClair Ryan portion of share letter dated February 23, 2009.  
A-72: 5/29/09 Transmittal from Maser Consulting to Freehold Soil;  
A-73: 2/24/09 letter from D. Busch to Reg Robertson consisting of two pages;  
A-74: 7/26/09 Letter from D. Busch to C. Cummins referencing submissions.

B-15: T & M Letter dated 12/8/09;  
B-16: Letter from Environmental Commission outlining 13 comments dated 5/13/09;  
B-17: AHHRSA Letter dated 3/4/09 from D. Palamara;  
B-18: Code Enforcement Email dated 7/7/09;  
B-19: Freehold Soil Letter dated 2/17/09;  
B-20: Freehold Soil Letter dated 7/1/09;  
B-21: Freehold Soil Letter dated 10/6/09;  
B-22: Monmouth County Planning Board Incomplete Letter;  
B-23: T & M Associates 7/2/09 Cover Letter to Board transmitting Melick-Tully Report;  
B-24: 2/14/09 T & M Associates Letter dated 2/12/09 deeming application complete;  
B-25: T & M Associates Letter to C. Cummins dated 11/5/09.

There were no objections to the marking of any of the exhibits.

Mr. Busch stated that he submitted to FAA and it was not required but did so at Mr. McOmbers request and they issued 18 "No Hazard" documents which was referred to as Exhibit A-66, which he further explained.

Mr. McOmber did not cross examine and there were no public questions for Mr. Busch.

Mr. McOmber is prepared to proceed with fire expert witness at the next meeting for their case.

Mr. Drobbin stated that he consents to grant the board an extension of time to act on this application.

The Board agreed to begin the next meeting at 7:00 p.m.

Mr. Francy offered a motion to carry this hearing to the January 14, 2010 meeting, seconded by Mr. O'Neil and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES:** None

**ABSTAIN:** None

Mr. Mullen then informed the public that this hearing will continue at the January 14<sup>th</sup> meeting at 7:00 p.m. and that no further public notice will be given.

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**Approval of Minutes:**

**Mrs. Cummins stated that corrections need to be made on page 11 with regard to the vote, we will be adding Mr. Mullen and removing Mr. Bahrs and Stockton,**

Mr. Francy offered a motion to approve the September 10, 2009 Planning Board Minutes subject to the corrections, seconded by Mr. O'Neil and all eligible members were in favor.

Mr. Francy offered a motion to approve the October 8, 2009 Planning Board Minutes, seconded by Mr. Mullen and all eligible members were in favor.

**Mrs. Cummins stated that a correction needs to be made on page 6 Exhibit A-57 needs to be changed to A-6, traffic impact study by John Jahr.**

Mr. Francy offered a motion to approve the November 12, 2009 Planning Board Minutes, seconded by Mr. Mullen and all eligible members were in favor.

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

The Meeting adjourned at 10:07 p.m.

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**CAROLYN CUMMINS, BOARD SECRETARY**