

**Borough of Highlands  
Planning Board  
Regular Meeting  
October 14, 2010**

Mr. Schoellner called the meeting to order at 7:43 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 a Regular Meeting of the Borough of Highlands Planning Board and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

**ROLL CALL:**

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

**Absent: Mayor Little, Ms. Peterson, 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  
Adoption of Resolution**

The Board reviewed the following draft Resolution and had discussions on it:

Mr. Serpico explained the recent changes that he made to the resolution which are shown below.

Re: PB#2009-1

**RESOLUTION APPROVING THE CONDITIONAL USE, PRELIMINARY SITE PLAN, VARIANCES  
AND DESIGN WAIVER 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 1.1 on the Highlands Borough Tax Map, which property is located at the intersection of Route 36, Ocean Boulevard 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, variance(s) and design waivers 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

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 structures within 25 feet of the top of slope or 15 feet from the toe of slope. The applicant is proposing to remove structures within these areas.

3. The applicant proposes to disturb a small portion of the exterior slopes (0.8 acres) in order to install a retaining wall to the west; install utilities to the south; and minor transitional grading to the north; and

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WHEREAS, the waivers requested were from Chapter 21, Section 65.4A of the Municipal Zoning Ordinance, are as follows:

1. The installation of curbing along Ocean Boulevard; and

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 which were entered into evidence; 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 Traffic Engineer from the firm of Maser Consulting with 25 years of experience and a Bachelor of Science Degree in Civil Engineering from Rutgers University. Mr. Jahr was the traffic consultant or engineer for the project.

Laura Brinkerhoff, a certified Professional Geologist, and licensed Site Remediation Professional 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 in the following areas: professional engineering, asbestos safety control, UST subsurface evaluation, and lead evaluation contractor.

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 Salle, 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 (which were initially characterized as design 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., was called to testify on behalf of the objector as a fire protection and rescue expert; 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 sixteen (16) public hearings and a site visit, attended by members of the Board, its professionals; the applicant, its professionals; the objector and the public; 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, which is

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a list of all of the exhibits entered into evidence in this matter, which is 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 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 is herein designated as Exhibit 1), 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.
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 #O-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 "time of decision" rule and has reserved his client's rights on this issue.
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 majority of slopes being disturbed are man-made in nature and that they are not critical to the stability of the site and their removal

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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 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.
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 has imposed conditions as part of this approval that will insure that the applicant will continue to monitor and address any and all environmental issues, including, but not necessarily limited to, the Exxon contamination and the existing 2000 gallon UST related to this project and the site as set forth below.
14. The Board finds from the testimony of Jeffrey La Salle 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 hereinafter.
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.
17. The Board accepts the testimony of the site engineer, Daniel Busch, and his office and the exhibits and plans prepared by him and his staff for this project.
18. The Board also finds that it may require further study, including soils and other technical reports, on the stability of the soils and any special construction techniques or limitations to construction required to address the issues of the slump area. (previously par 4 on page 1)
19. The Board finds that with the conditions hereinafter imposed on the applicant (i.e. the approved project), that the design waiver(s) requested pursuant to Section 21-65.4A of the Zoning Ordinance are necessary, appropriate and reasonable.
20. The Board finds that the applicant has submitted satisfactory evidence that the provisions of Section 21-84B, subsection 2 of the Zoning Ordinance has been complied with; and

WHEREAS, the Board has determined based on the testimony and evidence 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) and design waiver by Highlander Development Group, LLC for Block 105.107, Lot 1.1 is hereby approved contingent upon the following conditions being met;

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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 for all bondable activities at the site in amounts approved by the Borough as a condition of final approval consistent with the MLUL.
4. The applicant shall enter into a developer's agreement with the Borough as a condition of final approval.
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, which include, but are not limited to, sanitary sewer improvements, if necessary; curbing and sidewalk along Ocean Boulevard, unless not permitted by NJDOT; and utility connections in accordance with the Municipal Land Use Law
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 July 2, 2009, August 12, 2009, January 13, 2010, and May 10, 2010, except as modified herein: .
  - A. Modifications to T&M letters of March 9, 2009 and June 5, 2009 shall be as follows:
    - B.1. Design Waiver from Section 21-65.4 if curbing along Ocean Boulevard is not permitted by the New Jersey Department of Transportation (NJDOT).
    - B.4. The applicant will provide sidewalk along Ocean Boulevard unless not permitted by NJDOT. If not permitted by NJDOT, the applicant shall provide sidewalk as indicated in Exhibit A-90.
    - E.2. The applicant should continue to provide street trees along the entrance drive, including portions to the east, south and west where practical.
    - E.8. The applicant should consider screening the pool and patio area with additional landscaping to the satisfaction of the Board Engineer.
    - F.1. Structural calculations for retaining walls in excess of 3.5 feet shall be submitted at the time of application for a building permit.
    - G.8. Textured crosswalks shall be provided.
    - H.3. The applicant shall obtain the necessary approvals for sanitary sewer service and, if required, will conduct the applicable studies of the Borough's sanitary sewer system impacted by the project prior to final approval.
    - I.3. Excluded
    - I.5. The interior curb of the circle and outer rings shall have mountable curb to allow for fire apparatus circulation as indicated in Exhibit A-84.
    - I.9. The sidewalk around the ellipse shall be 5 feet without a grass strip.
    - I.15. The applicant will obtain the required outside agency approvals prior to final approval.
  - B. Modifications to Melick-Tully Letters of July 2, 2009 and August 12 2009 shall be as follows:

Item #6 shall be provided at the time of application for building permits for construction of retaining walls.
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, where practical 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.
8. The applicant shall provide super "silt fence" in accordance with the approved soil erosion and sediment control plan.
9. The applicant shall submit a landscaping plan to the Board Engineer for its review and approval, which includes, but is not limited to, larger trees along the perimeter of buildings 2 & 3.
10. The applicant and any successors shall be responsible for trash and recyclable pick-up at the site.

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11. All equipment installed on the rooftop of any structure at the site shall be adequately screened and said screening shall be approved by the Board Engineer.
  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, dated July 7, 2009, January 13, 2010 and May 3, 2010, except as modified herein and with the exception of the recommendation that suggests that the applicant purchase a new fire truck for the Borough.
- A. Modifications to the July 7, 2009 letter shall be as follows:
- a. Comment #2, Hydrant will be on left side of garage entrance to building #3.
  - b. Comments 3, 4 and 12 will be addressed as shown on Exhibit A-84 discussed at the May 13, 2010 meeting.
  - c. Comment #7, the water main will not be looped.
- B. Modifications to May 3, 2010 letter shall be as follows:
- a. Comments #3 through #4 contained in second full paragraph of said letter are excluded.
  - b. Comments #6 and #8 are limited to what is required by the building code at the time of construction.
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 pursuant to written agreement between applicant and Exxon dated January 13, 2010 and amended effective August 31, 2010.
  15. When the applicant removes the 2,000 gallon underground fuel storage tank located on the site, it shall do so in accordance with all applicable laws. Thereafter the applicant shall provide the Borough with documentation that the tank was removed in accordance with all applicable laws.
  16. The applicant will not be permitted to direct impact drive any pilings or sheeting into the site at any time. Other means would be acceptable, such as, but not limited to, vibratory or drilled shaft, subject to review by Board's Geotechnical Engineer.
  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 80 feet along the north ridge line for all heavy construction equipment, such as cranes, concrete trucks, etc., during the construction of the project and as indicated in Exhibit A-47.
  21. **The applicant shall comply with the recommendations of the Borough Environmental Commission which are set forth in the Commission's letter dated January 12, 2010, except as modified herein. Comment #1 is excluded and appropriately replaced with Condition 15 above. Comment #4, the applicant will comply with the code. Comment #7 "jakebraking" shall not be used, except when necessary for safety. Comment #7 "stockpiling" will be maintained in accordance with approved soil erosion and sediment control plan.**
  22. The applicant shall provide the most recent groundwater sample test results from Exxon's consultant or on behalf of the applicant that exists at the time of construction in order to verify contaminant levels identified in prior sample results.
  23. Offsite sanitary sewer evaluation and improvements (if necessary) to ensure adequate capacity prior to final approval.

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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 at the time of final approval.
25. The cost of all monitoring, inspections and personnel required to oversee this project shall be paid for by the applicant. No expense for the foregoing shall be charged to the Borough for this project unless paid for by the applicant.
26. The applicant shall maintain any and all excavations, such as, but not limited to, pumping of water and stabilization.
27. The applicant shall submit amended plans showing the following items and all other items contained elsewhere in the resolution 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, unless not approved by NJDOT.
  - 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, where feasible, to the Board Engineer for its review and approval.
  - c. Submission of a plan showing a permanent decorative security fence along the north ridge line to the Board Engineer 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 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 revised lighting plan for the site and the exterior of the buildings at the site.
  - 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 at time of final approval
  - 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 at time of final approval.
  - j. Submission of a plan showing a bus stop and waiting area for schoolchildren at the entry point into the site along Ocean Boulevard. If no sidewalk is permitted by NJDOT, then the applicant will provide an alternate plan at time of final approval.
  - k. Submission of a plan showing that a lined swale is to be constructed to direct most of the site runoff away from the slope. The swale will be lined with soils of low permeability, not exceeding  $1.5 \times 10^{-6}$ .
  - l. Submission of a plan indicating the details of "stockpiling" of material on the site during the construction of the project prior to final approval.
  - m. Prior to final approval of this project the applicant shall submit 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, if the applicant cannot provide a sidewalk in accordance with condition 27a. The alternate plan testified and referenced above is Exhibit A-90.
28. The applicant shall obtain all approvals necessary for the project from all local, 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 from any of the conditions of this approval the applicant must submit those approvals to this Board for its review and approval.
29. The applicant shall pay all the applicable fees associated with the project.
30. 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 prior to final approval.
31. 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 prior to final approval.



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32. The approval contained herein and the conditions attached to this approval are hereby imposed on this applicant and this project and any and all successors to the applicant's interest in this project and/or the real property on which it is located.

**Discussions**

Mr. Serpico explained his clerical changes that he made to the resolution today and also about some proposed changes from Mr. Mullen.

1. Resolution Title – added “s” to Variance
2. First Page, First “Whereas” he added .1 to the lot 1.
3. First Page, the third “Whereas” in number 1.  
Where slopes exceed 35% there shall be no disturbance INSERT “of the steep slopes areas, in addition there shall be no disturbance” within 15 feet of the top of the slope and 10 feet of the toe of the slope.

Mr. Drobbin and the board had no objection to change 3.

4. First page, last “Whereas” in number 1.  
The installation of INSERT “sidewalk” curbing along Ocean Blvd; and

Mr. Keady stated that sidewalk is addressed further in the Resolution.

Mr. Mullen then had no objection to not adding in the word “sidewalk”.

5. There were no changes to Page 2.
6. Page three, the second to last “Whereas”, it has been suggested to insert “and positions” after the word “testimony” in the second line.  
There were no objections to this change.

7. Page 4, there are no changes.

8. Page 5, item 12, in the last sentence added. The Board further finds there has been no evidence produced that the construction of this project will have any adverse impact on the public including surrounding property owners. This is a new sentence that is for the boards consideration.

Mr. Mullen stated that this sentence is too broad and he would not want to add that sentence in.

Mr. Drobbin – okay to narrow statement and saying “The Board further finds that construction can proceed at the site without endangering the public health, safety and general welfare of the surrounding community”.

The board agreed to Mr. Drobbin suggested change.

9. Page 5, item 13 Mr. Mullen recommends adding the following to the fifth line.

applicant will continue to monitor and INSERT “allow access by others interested parties to monitor; and”.

Mr. Drobbin explained that further in the resolution there is a condition that addresses this so it shouldn't be added here.

Mr. Serpico – we will make sure that it's addressed in the conditions. No Change here.

10. Page five items 18 and 20, should be combined and add a new 20. He then read item 18 as modified as follows:

18. The Board also finds that it may require further study, including soils and other technical reports, on the stability of the soils and any special construction techniques or limitations to construction required to address the issues of the slump area and the application has satisfied the requirements of Section 21-84B, subsection 2 of the Zoning Ordinance.

19. The Board finds that with the conditions hereinafter imposed on the applicant (i.e. the approved project), that the design waiver(s) requested pursuant to Section 21-65.4A of the Zoning Ordinance are necessary, appropriate and reasonable.



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There was no objection to the modified 18 and 19 and the removal of section 20.

11. Page 6, of his resolution, items 3 & 4 he defined what Municipal Land Use Law means so from this point forward he uses MLUL rather than the complete title.

12. Page 7, item, item I.9 – Mr. Mullen wanted to clarify and change it to” The pedestrian sidewalk around the perimeter of the ellipse shall be a minimum 5 feet without a grass strip”.

There were no objections to the change in I.9.

13. Page 7, item I.15 Mr. Mullen has requested that it be changed to “ The applicant will obtain all required outside agency approvals prior to final approval”.

There were no objections to this change.

14. Page 7, item 7 Mr. Mullen suggested adding “After the demolition of the existing structures and the restabilization of the ridge, 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”. Delete “where practical or as shown on the plan entitled “soil erosion and sediment control plan”, dated November 18, 2008, last revised May 28, 2009”. No change to the last sentence.

Mr. Drobbin expressed his concerns with the changes and explained that that after the grading is done then place fence at 15 feet.

Mr. Keady explained that what Mr. Drobbin is suggesting is that the applicant will maintain the silt fence at the ridge line shown on the plan and then after that grading performed; within that 15 foot area put a second fence along that area so that no further work can go within that 15 foot zone.

Discussions continued regarding item 7 on page 7.

Mr. Keady suggested that it state “After the demolition of existing structures the applicant shall install a construction fence at a distance of 15 feet from the north ridge line of the site for the duration of the construction of this project, except when grading in the vicinity. In addition, a soil erosion fence shall be as shown on the plan entitled “Soil Erosion and Sediment Control Plan”, dated November 18, 2008, last revised on May 28, 2009. The type and strength of the fence shall be determined by the Board Engineer.

Mr. O’Neil left the meeting room for a moment so the Board waited for Mr. O’Neil to return.

Mr. Serpico then informed the public that Mr. O’Neil has submitted an Affidavit that he has listed to the last recording of this hearing. Therefore Mr. O’Neil is eligible to vote on this matter.

Mr. O’Neil returned at 8:10 p.m.

**Roll Call:**

**Present:** Mr. Mullen, Mr. O’Neil, Mr. Schoellner, Mr. Parla, Mr. Roberts

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

**Discussion continued about the draft resolution as follows:**

14. Condition 7 – Mr. Keady suggested some language as follows:

After the demolition of existing structures and the restabilization of the ridge the applicant shall install a construction fence at a distance of 15 feet from the north ridge line at the site for a duration of the construction of the project. except when grading in the vicinity. In addition a soil erosion fence shall be as shown on the plan “Soil Erosion and Sediment Control Plan” then continue with the rest of the language.

All agreed with the Mr. Keady suggested language for condition number 7.

15. Page 7, Item 9 to read as follows: The applicant shall submit a landscaping plan to the Board Engineer for its review and approval, which includes, but is not limited to large trees planted along the perimeter of the garage structures of buildings 2 & 3.

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There was no objection to this correction.

16. Page 8, Item B-a – Mr. Parker is okay with this.

- 1) 17. Page 8, Item B-b – Mr. Parker is requesting that comment #6 be part of this resolution. Comment 6 refers to Fire Equipment cabinets in the stair towers on the fourth, eighth, and twelfth floors of buildings one, two and three. Pre-staged hose, tools, SCBA bottles, Evacuation Chairs (ADA), High Rise Curtains, and equipment will enhance overall firefighting operations and reduce the time to get to the seat of the fire. Equipment cabinets, hose, tools and equipment to be purchased by the applicant and selected by the Fire Department.

Mr. Keady stated that Mr. Parker has requested that this be made part of the Resolution.

Mr. Drobbin questioned what if the code at the time of construction is different.

Mr. Serpico – then the code would supersede so he suggested that we add “ subject to change in code at the time meaning that it prohibited it.

Mr. Keady – then we need to add B-c on page 8. Which is condition number 8 is limited to what is required by code at the time of construction.

17. Page 8, number 14 – Mr. Mullen questioned what if this agreement has a sunset clause or termination clause.

It was determined that number 14 will remain as is with no change.

18. Page 8, item 15 – Mr. Mullen suggested that it call for the immediate removal of the 2,000 gallon underground tank and or possible borings through the tank be done to sample soil below the tank.

There were discussions on this items and the majority of the board did not support the immediate removal of the tank or to drill through the tank to obtain samples at this time.

19. Page 9, item 21. Need correction in the third to last sentence regarding comment #7 be corrected to comment #8 and that we add signage be required on site to indicate on site no jakebraking. There was no objection to these amendments.

20. Page 9, item 23 - is this a duplication of H-3? Leave it.

21. Page 9, item 24 last sentence to be amended to read as follows:” The details of said program shall be reviewed and approved by the Board’s Geotechnical engineer and incorporated on the plans at the time of final approval.

This change was acceptable.

22. Page 9, item 27 – Mr. Mullen asked if the applicant has to draw this to get DOT approval. This was agreed to.

23. Page 9, item e stays the same.

24. Page 10, add item “n” to add guardrail by retaining wall.

Mr. Serpico then stated that we need to address the Greenbaum letter from Eastpointe’s Attorney.

Wendell Smith, Esq., Attorney for Eastpointe stated that he has sent letters to the board about insurance protection for Eastpointe Condo’s. They don’t oppose or support the application but the owner assured Eastpointe that they would have protection. Eastpointe has concerns and they want a recommendation by the board that the applicant provide proof of adequate insurance protection for Eastpointe.

One hundred Million dollar insurance policy was requested.

Mr. Serpico explained that he removed this condition from the resolution for insurance for Eastpointe.

Mr. Drobbin stated that he has listened to all testimony and reviewed all reports. There wasn’t any evidence that the construction would be a health and safety issue. Liability Insurance is a hardship to the applicant which he further expressed his opposition to insurance requirements.

Wendell Smith spoke about how liability insurance would not be a hardship to the applicant.

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Mr. Serpico – you provided no proof of requirement for liability insurance which he further explained. The contractor and owner will have insurance and further more he has never had a board impose any insurance. He then spoke about how he researched the law on this matter.

Mr. Wendell – there was testimony about the slump block which is the issue.

Mr. Parla expressed his opinion which he also feels there was no testimony of concerns and no evidence.

Mr. Roberts agrees with Board Attorney.

Mr. Schoellner also did not agree with insurance requirements.

Re: PB#2009-1

Mr. Parla offered a motion to move on the adoption of the following Resolution:

**RESOLUTION APPROVING THE CONDITIONAL USE, PRELIMINARY SITE PLAN, VARIANCES AND DESIGN WAIVER 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 1.1 on the Highlands Borough Tax Map, which property is located at the intersection of Route 36, Ocean Boulevard 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, variance(s) and design waivers 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

**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 steep slope areas. In addition, there shall be no disturbance of the areas 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 structures within 25 feet of the top of slope or 15 feet from the toe of slope. The applicant is proposing to remove structures within these areas.

3. The applicant proposes to disturb a small portion of the exterior slopes (0.8 acres) in order to install a retaining wall to the west; install utilities to the south; and minor transitional grading to the north; and

**WHEREAS**, the waivers requested were from Chapter 21, Section 65.4A of the Municipal Zoning Ordinance, are as follows:

1. The installation of curbing along Ocean Boulevard; and

**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

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**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 which were entered into evidence; 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 Traffic Engineer from the firm of Maser Consulting with 25 years of experience and a Bachelor of Science Degree in Civil Engineering from Rutgers University. Mr. Jahr was the traffic consultant or engineer for the project.

Laura Brinkerhoff, a certified Professional Geologist, and licensed Site Remediation Professional 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 in the following areas: professional engineering, asbestos safety control, UST subsurface evaluation, and lead evaluation contractor.

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 Salle, 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 (which were initially characterized as design 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., was called to testify on behalf of the objector as a fire protection and rescue expert; 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 sixteen (16) public hearings and a site visit, attended by members of the Board, its professionals; the applicant, its professionals; the objector and the public; 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, which is a list of all of the exhibits entered into evidence in this matter, which is 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 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

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**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 is herein designated as Exhibit 1), 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, testimony and positions 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:

18. The property is located in the MH Mobile Home Residence Zone.
19. 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.
20. The applicant has met all of the specific requirements of the conditional use as set forth in Section 21-97J of the Ordinance.
21. 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 #O-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).
22. 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.
23. Counsel for the applicant has objected to the application of the "time of decision" rule and has reserved his client's rights on this issue.
24. 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.
25. 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.
26. The Board further accepts as fact that the majority of 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.
27. 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 that granting the requested variances are appropriate and reasonable.
28. 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.
29. 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

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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. The Board further finds that construction can proceed at the site without endangering the public health, safety and general welfare of the surrounding community.

30. 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 has imposed conditions as part of this approval hereinafter that will insure that the applicant will continue to monitor and allow access by other interested parties to monitor and address any and all environmental issues, including but not necessarily limited to the Exxon contamination and the exiting 2000 gallon UST related to this project and the site as set forth below.
31. The Board finds from the testimony of Jeffrey La Salle 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 hereinafter.
32. The Board accepts the testimony of the project architect, David Minno and the exhibits and plans prepared by him for this project.
33. 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.
34. The Board accepts the testimony of the site engineer, Daniel Busch, and his office and the exhibits and plans prepared by him and his staff for this project.
18. The Board also finds that it has required further study, including soils and other technical reports, on the stability of the soils and any special construction techniques or limitations to construction required to address the issues of the slump area and the applicant has satisfied the requirements of

Section 21-84B paragraph 2.

19. The Board finds that with the conditions hereinafter imposed on the applicant (i.e. the approved project), that the design waiver(s) requested pursuant to Section 21-65.4A of the Zoning Ordinance are necessary, appropriate and reasonable; and

**WHEREAS**, the Board has determined based on the testimony and evidence 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) and design waiver by Highlander Development Group, LLC for Block 105.107, Lot 1.1 is hereby approved contingent upon the following conditions being met;

3. All testimony, evidence and representations made by the applicant and its witnesses are incorporated herein.
4. 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 for all bondable activities at the site in amounts approved by the Borough as a condition of final approval consistent with the MLUL.
4. The applicant shall enter into a developer's agreement with the Borough as a condition of final approval.
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, which include, but are not limited to, sanitary sewer improvements, if necessary; curbing and sidewalk along Ocean Boulevard, unless not permitted by NJDOT; and utility connections in accordance with the MLUL

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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 July 2, 2009, August 12, 2009, January 13, 2010, and May 10, 2010, except as modified herein: .
- C. Modifications to T&M letters of March 9, 2009 and June 5, 2009 shall be as follows:
- B.1. Design Waiver from Section 21-65.4 if curbing along Ocean Boulevard is not permitted by the New Jersey Department of Transportation (NJDOT).
  - B.4. The applicant will provide sidewalk along Ocean Boulevard unless not permitted by NJDOT. If not permitted by NJDOT, the applicant shall provide sidewalk as indicated in Exhibit A-90.
  - E.2. The applicant should continue to provide street trees along the entrance drive, including portions to the east, south and west where practical.
  - E.8. The applicant should consider screening the pool and patio area with additional landscaping to the satisfaction of the Board Engineer.
  - F.1. Structural calculations for retaining walls in excess of 3.5 feet shall be submitted at the time of application for a building permit.
  - G.8. Textured crosswalks shall be provided.
  - H.3. The applicant shall obtain the necessary approvals for sanitary sewer service and, if required, will conduct the applicable studies of the Borough's sanitary sewer system impacted by the project prior to final approval.
  - I.3. Excluded
  - I.5. The interior curb of the circle and outer rings shall have mountable curb to allow for fire apparatus circulation as indicated in Exhibit A-84.
  - I.9. The sidewalk around the perimeter of the ellipse shall be 5 feet without a grass strip.
  - I.15. The applicant will obtain the required outside agency approvals prior to final approval.
- D. Modifications to Melick-Tully Letters of July 2, 2009 and August 12 2009 shall be as follows:
- Item #6 shall be provided at the time of application for building permits for construction of retaining walls.
7. After the demolition of existing structures the applicant shall install a construction fence at a distance of 15 feet from the north ridge line of the site for the duration of the construction of this project, except when grading in the vicinity. In addition, a soil erosion fence shall be as shown on the plan entitled "Soil Erosion and Sediment Control Plan", dated November 18, 2008, last revised on May 28, 2009. The type and strength of the fence shall be determined by the Board Engineer.
8. The applicant shall provide super "silt fence" in accordance with the approved soil erosion and sediment control plan.
9. The applicant shall submit a landscaping plan to the Board Engineer for its review and approval, which includes, but is not limited to, larger trees along the perimeter of the garage structures of buildings 2 & 3.
10. The applicant and any successors 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 the Board Engineer.
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, dated July 7, 2009, January 13, 2010 and May 3, 2010, except as modified herein and with the exception of the recommendation that suggests that the applicant purchase a new fire truck for the Borough.
- C. Modifications to the July 7, 2009 letter shall be as follows:
- a. Comment #2, Hydrant will be on left side of garage entrance to building #3.



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- b. Comments 3, 4 and 12 will be addressed as shown on Exhibit A-84 discussed at the May 13, 2010 meeting.
- c. Comment #7, the water main will not be looped.

D. Modifications to May 3, 2010 letter shall be as follows:

- c. Comments #3 through #4 contained in second full paragraph of said letter are excluded.
  - d. Comments #6 will be provided unless the code prohibits this requirement.
  - e. Comment #8 is limited to what is required by the building code at the time of construction.
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 pursuant to written agreement between applicant and Exxon dated January 13, 2010 and amended effective August 31, 2010.
  15. When the applicant removes the 2,000 gallon underground fuel storage tank located on the site, it shall do so in accordance with all applicable laws. Thereafter the applicant shall provide the Borough with documentation that the tank was removed in accordance with all applicable laws.
  16. The applicant will not be permitted to direct impact drive any pilings or sheeting into the site at any time. Other means would be acceptable, such as, but not limited to, vibratory or drilled shaft, subject to review by the Board's Geotechnical Engineer.
  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 80 feet along the north ridge line for all heavy construction equipment, such as cranes, concrete trucks, etc., during the construction of the project and as indicated in Exhibit A-47.
  21. The applicant shall comply with the recommendations of the Borough Environmental Commission which are set forth in the Commission's letter dated January 12, 2010, except as modified herein. Comment #1 is excluded and appropriately replaced with Condition 15 above. Comment #4, the applicant will comply with the code. Comment #7 "jakebraking" shall not be used, except when necessary for safety. In addition signage shall be placed on the site indicating that "jakebraking" will not be allowed except when necessary for safety reasons. Comment #8 "stockpiling" will be maintained in accordance with approved soil erosion and sediment control plan.
  22. The applicant shall provide the most recent groundwater sample test results from Exxon's consultant or on behalf of the applicant that exists at the time of construction in order to verify contaminant levels identified in prior sample results.
  23. Offsite sanitary sewer evaluation and improvements (if necessary) to ensure adequate capacity prior to final approval.
  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 and incorporated on the plans at the time of final approval.
  25. The cost of all monitoring, inspections and personnel required to oversee this project shall be paid for by the applicant. No expense for the foregoing shall be charged to the Borough for this project unless paid for by the applicant.
  26. The applicant shall maintain any and all excavations, such as, but not limited to, pumping of water and stabilization.

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27. The applicant shall submit amended plans showing the following items and all other items contained elsewhere in this resolution 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, unless not approved by NJDOT.
  - b. In addition to the landscaping plan referred to in number 9 above, the applicant shall submit plans showing terracing and landscaping in the areas of the retaining walls, where feasible, to the Board Engineer for its review and approval.
  - c. Submission of a plan showing a permanent decorative security fence along the north ridge line to the Board Engineer 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 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 revised lighting plan for the site and the exterior of the buildings at the site.
  - 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 at time of final approval.
  - 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 at time of final approval.
  - j. Submission of a plan showing a bus stop and waiting area for schoolchildren at the entry point into the site along Ocean Boulevard. If no sidewalk is permitted by NJDOT, then the applicant will provide an alternate plan at time of final approval.
  - k. Submission of a plan showing that a lined swale is to be constructed to direct most of the site runoff away from the slope. The swale will be lined with soils of low permeability, not exceeding  $1.5 \times 10^{-6}$ .
  - l. Submission of a plan indicating the details of "stockpiling" of material on the site during the construction of the project prior to final approval.
  - m. Prior to final approval of this project the applicant shall submit 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, if the applicant cannot provide a sidewalk in accordance with condition 27a. The alternate plan testified and referenced above is Exhibit A-90.
  - n. Submission of a plan showing a guardrail along the main entry to Eastpointe in the area of the new retaining wall.
28. The applicant shall obtain all approvals necessary for the project from all local, 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 from any of the conditions of this approval the applicant must submit those approvals to this Board for its review and approval.
29. The applicant shall pay all the applicable fees associated with the project.
30. 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 prior to final approval.
31. 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 prior to final approval.
32. The approval contained herein and the conditions attached to this approval are hereby imposed on this applicant and this project and any and all successors to the applicant's interest in this project and/or the real property on which it is located.

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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

Nays: None

Abstain: None

**EXHIBIT 1**

**PB#2009-1 Highlander Dev. Group, LLC – Bl. 105.107 Lot 1.01  
Exhibit Listing**

**May 14, 2009**

- A-1: A plan set entitled "Preliminary and Final Major Site Plan for Highlander Development Group" prepared by Daniel W. Busch, P.E., P.P. dated November 18, 2008.
- A-2: A plan set entitled "The Enclave at Mt. Mitchell" prepared by D. Minno, R.A. Dated November 7, 2008, last revised December 14, 2008.
- A-3: A plan entitled "Utility Survey for Highlander Development Group" prepared by Leonardo E. Ponzio, P.L.S. dated 10/6/08 last revised 11/11/08.
- A-4: A report entitled "Report of Preliminary Subsurface Exploration Site Feasibility Slope Stability Evaluation" prepared by James Serpico, Jr., PE. dated 1/29/09.
- A-5: A report entitled "Stormwater Management Report" prepared by Daniel Busch, P.E., P.P. dated 11/18/08.
- A-6: A report entitled "Traffic Impact Study", prepared by Nicholas J. Schaefer, P.E. And S. Maurice Rached, P.E., P.T.O.E., dated 10/13/08.
- A-7: A document entitled "Site Plan Review Application Form" signed by the applicant December 1, 2008.
- A-8: A document entitled "Checklist Site Plan".
- A-9: A document entitled "Zoning Permit Application: for application number Z08-107, signed by Zoning Officer 12/11/08.
- A-10: A letter from the NJDEP dated August 7, 2008 regarding "Letter of Interpretation" Presence/Absence Determination".
- A-11: A letter from Daniel W. Busch, P.E., P.P., C.M.E. last revised 2/27/09.
- A-12: Large Aerial Exhibit on large Board.
- A-13: Colored rendering of landscaping plan on large board
- B-1: T & M Associate Review Letter dated March 9, 2009.

**June 11, 2009**

- A-14a: Steep Slope Analysis of Existing Mobile Home on large board;
- A-14b: Steep Slope Analysis of Proposed Development on large board and Is a colored representation;
- A-14c: Steep Slope Analysis of Proposed Grade on large board;
- A-15: Letter from Maser Consulting dated May 29, 2009;
- A-16: Truck Turning Template prepared by Maser Consulting Consisting of three sheets dated 5/28/09;
- B-2: T & M Associates Letter dated June 5, 2009.
- O-1 (Previously Known As 14-B1)Objectors Exhibit – Sheet 2 of 3 of Steep Slope Analysis.

**July 9, 2009**

- A-17: Sheet A-1 of Architectural Plan prepared by Minno & Wasko Architects Last revised 12/14/08;

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- A-18: Sheet A-2 of Architectural Plan prepared by Minno & Wasko Architects  
Last revised 12/18/08;
- A-19: Building 1 Elevations South & West, Sheet A-3 dated 11/7/08 on large  
Board prepared by Minno & Wasko Architects;
- A-20: Building 1 Elevations North & East, Sheet A-4 dated 11/7/08 on large  
Board prepared by Minno & Wasko Architects;
- A-21: Sheet A-5 of Architectural Plan prepared by Minno & Wasko Architects  
Last revised 12/18/08;
- A-22: Sheet A-6 of Architectural Plan prepared by Minno & Wasko Architects  
Last revised 12/18/08;
- A-23: Building 2 Elevations, Sheet A-7 dated 12/18/08 on large board prepared by  
Minno & Wasko Architects;
- A-24: Building 2 Elevations South & West, Sheet A-8 dated 12/18/08 on large board  
prepared by Minno & Wasko Architects;
- A-25: Sheet A-9 of Architectural Plan prepared by Minno & Wasko Architects  
Last Revised on 12/18/09;
- A-26: Sheet A-10 of Architectural Plan prepared by Minno & Wasko Architects  
Last Revised 12/18/08;
- A-27: Sheet A-11 of Architectural Plan prepared by Minno & Wasko Architects  
Last Revised 12/18/08;
- A-28: Building 3 Elevations North & East, Sheet A-12 dated 11/7/08 prepared by  
Minno & Wasko Architects;
- A-29: Building 3 Elevations South & West, sheet A-13 dated 11/7/08 on large board  
prepared by Minno & Wasko Architects;
- A-30: Sheet A-16 of Architectural Plan prepared by Mino & Wasko Architects  
Last Revised 12/18/09;
- A-31: Club Facility Elevations, Sheet A-17 dated 11/17/08 on large board  
Prepared by Minno & Wasko Architects;
- A-32: Entry Signage Plan & Elevations , Sheet A-19 on large board dated  
11/14/08 prepared by Minno & Wasko Architects;
- A-33: Sheet A-14 of Architectural Plan prepared by Minno & Wasko Architects  
Last Revised 12/18/09;
- A-34 Sheet A-15 of Architectural Plan prepared by Minno & Wasko Architects  
Last Revised 12/18/09;
- A-35: Shadow Study of January 23, & April 23 prepared by Minno & Wasko Architects  
Dated 7/9/09;
- A- 36: Shadow Study of July 23 & October 23 on large board dated 7/9/09 prepared by  
Minno & Wasko Architects;

**August 13, 2009**

- A-37 Test Boring location Plan (part of A-4);
- A-38: Slope Profile;
- A-39: Slope Section B-B Calibration;
- A-40: Slope Section B-B Post Calibration;
- A-41: Slope Section B-B Critical Toe;
- A-42: Slope Section B-B Post Critical Toe;
- A-43: Slope Section A-A Post Shallow Surface;
- A-44: Slope Section A-A;
- A-45: Slope Section D-D Critical Surface;
- A-46: Master Letter dated 7/30/09;
- B-3: Unknown Source Investigation Summer for Bayside Drive Seep  
With a cover letter dated from the NJDEP dated 1/21/09.
- B-4: T & M Associate Letter dated 8/12/09.

**September 10, 2009**

- A-47: Master Letter to T &M Assoc dated 7/29/09 – Construction Phasing Report
- A-48: Addendum to Soils Report;
- B-5: Certification from R. Schoellner;
- B-6: Certification from R. O'Neil;
- B-7: Certification from Mayor Little;

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- B-8: Certification from J. Peterson;
- B-9: Certification from R. O'Neil;
- B-10: Certification from R. O'Neil;
- B-11: Certification from Mayor Little;
- B-12: Certification from C. Francy

**October 8, 2009**

- B-13: Mayor Little's Affidavit dated October 8, 2009;
- B-14: T & M Letter dated 10/2/09;
- A-49: 64 Laurel Drive Remedial Investigation Report dated 9/10/09;
- A-50: 69 Laurel Drive Remedial Investigation Report dated 9/10/09;
- A-51: 103 Laurel Drive Remedial Investigation Report dated 9/10/09;
- A-52: Memo dated 10/8/09 from Brinkerhoff to D. Busch.
- A-53: Site Investigation Report for 200 Laurel Drive dated 9/17/09;
- A-54: Brinkerhoff Response letter to D. Busch dated 9/24/09;
- A-55: Phase I Environmental Assessment prepared by Maser Consulting

**November 12, 2009**

- A-56: Limit of Clearing Plan dated 10/28/09;
- A-6a: Supplemental traffic report dated 5/27/09

**December 10, 2010**

- 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.
  - 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.
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- 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.

**January 14, 2010**

- A-75: Resubmission letter to Freehold Soil dated 5/29/09;
- A-76: Soil Erosion Sediment Control Plans, Sheets 11, 12 and 14 last revised 5/28/09;
- A-77: Grass Swale Stability Calculations last revised 5/28/09;
- A-78: Lateral Truck Turning Template, Sheet 3 of 3 last revised 6/17/09;

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- A-79: Report prepared by Mr. Serpico of Maser Consulting pertaining to additional soil borings
- O-2: Dr. Harry Carter Report;
- B-26: Board Member Oath from Mayor Little;
- B-27: Board Member Oath from G. Roberts;
- B-28: T & M Letter to C. Cummins dated January 14, 2010;
- B-29: Melick-Tully Review Letter dated January 13, 2010;
- B-30: Environmental Commission letter dated January 12, 2010.

**February 25, 2010 Meeting Cancelled**

**March 11, 2010**

- B-31: Affidavit from Board Secretary RE: posting meeting cancellation notice;
- B-32: Affidavit of publication from the Asbury Park Press dated 2/27/10;
- B-33: Fire Official Report dated January 13, 2010;
- A-74 – A-78 were moved into evidence.
- A-80: Drobbin letter dated 2/17/10 to Jack Serpico;
- A-81: Freehold Soil Letter dated 1/7/10

**April 8, 2010**

- A-82: Aerial Truck Access Exhibit last revised 3/15/10;
- B-34: Two River Times Affidavit of Publication
- B-35: Affidavit from Mayor Little RE: Listening to March 11<sup>th</sup> PB Audio Recording .

**May 13, 2010**

- B-36 Schoellner March 11<sup>th</sup> Meeting Affidavit;
- B-37: Schoellner April 8 Meeting Affidavit;
- B-38: Fire Letter dated 5/3/10;
- B-39: Melick-Tully letter dated 5/10/10 for Identification Purposes Only;
- A-83: April 30, 2009 Letter from P. Drobbin transmitting Mailing Notice & Receipts;
- A-84: Aerial Truck Access Exhibit on large board dated 5/13/10;
- A-85: D. Busch Transmittal Letter;
- A-86: Overall Landscaping Plan dated 4/27/10;
- A-87 Landscaping & Lighting detail sheet 10/14;
- A-88: Aerial Truck Plan;
- A-89: Maser Letter dated 4/20/10 for Identification Purposes Only;
- O-3: Mr. Stober letter for Identification Purposes only.

**June 10, 2010 – Meeting Cancelled Due to Lack of a Quorum`**

**July 8, 2010**

- B-40: Affidavit from Mayor Little RE: May 13, 2010 Meeting tapes

**August 3, 2010**

- B-41: Anna Little Affidavit Listened to July 8, 2010 Meeting Tape.
- A-90: Proposed Sidewalk Access from Linden Avenue

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**Approval of Minutes:**

Mr. Roberts offered a motion to approve the September 9, 2010 Planning Board Minutes, seconded by Mr. Schoellner and all were in favor.

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

**Borough of Highlands  
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The meeting adjourned at 9:30 P.M.

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CAROLYN CUMMINS, BOARD SECRETARY