

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

Mr. Mullen called the Regular Meeting to order at 7:45 P.M.

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

Mr. Mullen read the Open Public Meeting Statement.

ROLL CALL:

**Present: Mr. Francy, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Mullen,
Mr. Britton, Ms. Solomon**

Absent: Mr. Braswell, Ms. Ryan

**Also Present: Carolyn Cummins, Board Secretary
Gregory Baxter, Esq., Board Attorney
Joseph May, P.E., Board Engineer**

**ZB#2008-3 Knox 400, LLC
Block 108 Lot 2.01 – 460 Hwy 36
Request from Objector for Postponement of August 7th P.H. Date**

**Present: Henry Wolff, Esq.
Paul Mazzella, Objector**

Paul Mazzella stated that he is representing himself tonight.

Mr. Baxter – we received letters from both Mr. Leckstein requesting a postponement of the August 7th public hearing date and Mr. Wolff's response. He then explained the history of this application that this application was reviewed at the June 5th meeting and Mr. Mazzella was present when the August 7th public hearing date was set. When Mr. Mazzella advised his Attorney Mike Leckstein of the August 7th public hearing date and the Attorney already had plans to be out of State on vacation. He then stated that based on the history of this case he recommends that a one month extension is not unreasonable and the Court would throw it back if we didn't.

Mr. Mullen expressed his disappointment with Mr. Leckstein not being present tonight to discuss his request for a postponement.

Mr. Wolff explained that this case has gone on for three years, it's been bounced between boards. Time is an enormous enemy for his client. He explained that the applicant has limitations on the financial commitment. Mr. Mazzella's goal is to stop this project from ever occurring and he might achieve that goal simply because we don't get this process finished in time for our funding. They have also had to bring a law suit against the sellers of the property to prevent the sellers from backing out of the contract. They have an urgency to move forward and time is their enemy and Mr. Mazzella's ally.

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

Mr. Mullen stated that if the board does not grant the objectors postponement request then it may appear arbitrary and capricious in terms of action of the board.

Mr. Wolff he understands Mr. Mullen's concerns but his client wants to move forward and Mark Leckstein can appear for objectors Attorney Mike Leckstein as he has done in the past.

Paul Mazzella was sworn in and stated that Mark Leckstein is also obligated that evening and he is not as experienced as Mike Leckstein but he is not available anyway so it's a moot point. He then explained that Mike Leckstein schedule this trip several months prior.

Mr. Gallagher suggested that the board schedule a special meeting and the cost of the meeting should be paid for by the objector.

Mr. Mazzella stated that he does not feel that a Special Meeting is appropriate. He stated that this hearing will take more than one meeting and the first Thursday his experts would not be available but he thinks a special meeting will be required but not for the first hearing.

Mr. Gallagher argued that a Special Meeting could benefit both parties and that is could be a cost saver.

Mr. Wolff stated that his expert testimony should go fairly quick because we don't need a use variance.

Mr. Mullen the expert testimony that will be present is for lack of parking spaces for the cell tower, it's no longer if a health club is appropriate, it's a permitted use. It is really coming down to whether lot coverage and the lack of parking for the cell tower.

Mr. Mazzella – traffic flow and circulation.

Mr. Wolff stated that he would like a Special Meeting at the objector's expense.

The Board discussed a possible special meeting with both Mr. Mazzella and Mr. Wolff.

Mr. Mazzella and Mr. Wolff argued about the postponement issues.

Mr. Francy – I haven't heard any way that we can avoid our Attorneys advice.

Mr. Mullen – I agree, we can argue this for a long time. The idea of a Special Meeting is a good one but the benefit is two weeks and objector is not willing to pay for it, the applicant is not willing to pay for it. I think it's a moot issue.

Mr. Wolff – his client would not be willing to pay for the entire meeting and Mr. Mazella is not willing to pay for half of it.

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

The Board discussed scheduling this matter for public hearing and the possibility of a future special meeting being paid for by the board.

The Board discussed the scheduling of this hearing with Mr. Mazzella and Mr. Wolff.

Mr. Francy offered a motion to grant the objectors request for a postponement of the August 7th public hearing date to the September 4th meeting, seconded by Mr. Mullen and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Francy, Mr. Fox, Mr. Anthony, Ms. Solomon, Mr. Mullen

NAYES: Mr. Gallagher, Mr. Britton

ABSTAIN: None

Mr. Baxter advised Mr. Mazzella to bring at least one of his witnesses to the September 4th meeting.

Mr. Baxter requested a copy of the Summary Judgment Motion from Mr. Wolff.

**ZB#2008-4 Wood, T & M
Block 26 Lot 9.02 – 3 South Peak Street
Hearing on New Business**

Mr. Mullen stated that it appears that there are public notice defects and that the board will not be able to have the hearing.

Mr. Baxter explained the public deficiencies of the public notice service and he feels that notice has to be resent and the notice itself has to be cleaned up.

Mr. Mullen offered a motion to correspond with Mr. & Mrs. Wood and advise them of the notice deficiencies and ask them to renotice and reserve.

Mike Kovic asked if the applicant could use the same property owners list.

Mr. Baxter – the notice list is okay.

Mike Kovic – the August Meeting date is okay and they can notice in time and the applicant understands that the deficiencies that were made and is aware that he has to redo it. The applicant will be here for the August Meeting.

Mr. Mullen offered a motion to carry the Wood public hearing to our August 7th meeting and that the applicant must notice and advertise for this, seconded by Mr. Gallagher and approved on

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

the following roll call vote:

ROLL CALL:

AYES: Mr. Francy, Mr. Fox, Mr. Gallagher, Ms. Solomon, Mr. Mullen

NAYES: None

ABSTAIN: Mr. Anthony

Mr. Mullen announced to the public that the Wood hearing is not going to go forward this evening and that the board rescheduled it for the August 7th meeting and that new notice will be served.

**ZB#2008-5 Sendowski, Oren
Block 43 Lot 6 – 30 Shrewsbury Avenue
Application Review & Set P.H. Date**

**Present: Mike Lettieri, Esq.
John Heyrich, A.I.A.
Oren Sendowski, Applicant**

Mr. Mullen – this is an application for a single-family home on 30 Shrewsbury Avenue.

The Board reviewed and discussed the application and the following was stated:

1. The board questioned how the lot coverage and building coverage were calculated because the ordinance requires decks above the first floor are counted as the main structure. Also it looks like the portion of the land that is within the Shrewsbury River may be used in calculating lot area; therefore lot coverage.
2. The board wanted to make sure that the elevations are preconstruction grades when calculating building height. Mr. Heyrich stated that they did use preconstruction grades and explained the building height calculation.
3. The board discussed the roof as being a flat roof and Mr. Heyrich explained that it's a slope roof as it's perceived around the house. The height appears to be 49.5 feet. The board discussed the roof with the Architect and stated that the building height may be in excess of what was requested on the application. Mr. Baxter stated that it's a use variance for the height, the question is at what height.
4. Mr. Mullen – the rear yard setback is given from that part of the property that is in the Shrewsbury River. That may be a legitimate thing but he does not think that you can use the land area underwater and take that developable area and pack it on the site because it changes the density of the site. The property goes into the river and he can understand using that area of land for a setback but he does not think that you can use it for lot coverage or building coverage. Mr. Baxter – what is the calculation of the area from the bulk head towards the house versus the structure. What part of the structure percentage would cover that portion of the lot, some will have to calculate that.

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

5. Flood Plain Review – the applicant submitted to the Borough and received a determination. NJDEP Flood Application is pending. The property is located in a Velocity Zone.
6. The board questioned why there were so many bathrooms and kitchens in proposed structure and wanted to know if it was a single-family home. The applicant stated that it is a single-family home.
7. The applicant stated that the Zoning Officer has reviewed the latest drawings.
8. There are three garage spaces.
9. The railing on the roof – the Board Engineer will review and make a determination as to if it is part of the building height.
10. The Board directed the applicant to prepare a comparison zoning chart for the existing, proposed and required.
11. The applicant should bring photographs to the hearing.
12. The applicant should provide information as to why they need to raise the grade.
13. Drainage must be addressed
14. The board discussed an August 7th public hearing date with the applicant and he requested to be placed on that agenda.
15. The Board Engineer was directed to prepare an Engineers Review Letter for this application.
16. The applicant must serve public notice and list all of the variances in it.
17. The applicant should measure setbacks correctly to the ordinance, the Board Engineer pointed out that there may be an encroachment to the side yard setback for a deck. Need to verify and include it in the public notice.

Mr. Gallagher offered a motion to schedule this application for a public hearing for August 7th, seconded by Mr. Francy and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Francy, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Britton,
Ms. Solomon, Mr. Mullen
NAYES: None
ABSTAIN: None

Resolutions for Professional Services:

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

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

**RESOLUTION
BOROUGH OF HIGHLANDS ZONING BOARD
APPROVING PROFESSIONAL LEGAL SERVICES FOR THE PERIOD OF JULY 1,
2008 THROUGH DECEMBER 31, 2008**

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

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

WHEREAS, such Professional Legal Services can only be provided by licensed Professionals and Gregory Baxter, Esq. of Caruso & Baxter is so recognized; and

WHEREAS, the Borough of Highlands Zoning Board memorialized a Resolution on January 3, 2008 appointing Gregory Baxter, Esq., of the firm of Caruso & Baxter as Zoning Board Attorney for a (1) one year term expiring December 31, 2008; and

WHEREAS, the law office of Caruso & Baxter has completed and submitted a Business Entity Disclosure Certification which certifies that Caruso & Baxter has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year, and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

WHEREAS, the determination of the value has been placed on file with the resolution of appointment with the Board Secretary; and

WHEREAS, the law office of Caruso & Baxter has submitted the C.271 Political Contribution Disclosure form in accordance with the NJSA 19:44A-20.26 (P.L. 2005,c271,s2).

WHEREAS, in addition to Professional Services Contract a contract is hereby awarded for an additional amount not to exceed \$600.00 for legal services provided to the Zoning Board for the period of July 1, 2008 through December 31, 2008 for legal services provided to the board which are not covered under annual salary amount; and

WHEREAS, a certification of availability of funds is hereby provided by the Chief Financial Officer contingent upon adequate funding being provided by the Borough of Highlands Governing Body in the State Fiscal Year 2008 Budget:

Zoning Board Budget
Account #1151-3755 \$600.00
Account #1151-3755 \$4,839.96
July 1, 2008 through December 31, 2008

Stephen Pfeffer, CFO

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

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

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

1. That Gregory Baxter, Esq., from the firm of Caruso & Baxter is hereby retained to provide Professional Legal Services as described above for an amount not to exceed \$600.00 in addition to annual salary amount of \$4,839.96 for the period of July 1, 2008 through December 31, 2008.
2. This contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, NJSA 40A:11-5(1)(a) because it is for services performed by person authorized by law to practice a recognized profession.
3. A copy of this Resolution shall be placed on file with the Board Secretary.
4. The Board Secretary is hereby directed to publish notice of this award as required by law.

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

ROLL CALL:

AYES: Mr. Francy, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Britton,
Ms. Solomon, Mr. Mullen

NAYES: None

ABSTAIN: None

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

**RESOLUTION
BOROUGH OF HIGHLANDS ZONING BOARD
AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN CONTRACT FOR
PROFESSIONAL ENGINEERING SERVICES
FOR THE PERIOD OF JULY 1, 2008 THROUGH DECEMBER 31, 2008**

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

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

WHEREAS, the Borough of Highlands Zoning Board memorialized a Resolution on January 3, 2008 appointing Joseph May, P.E. of CMZ, Inc. as Zoning Board Engineer for a (1) one year term expiring December 31, 2008; and

WHEREAS, the Board Secretary has determined and certified in writing that the value of the contract will exceed \$17,500; and

WHEREAS, CMX, Inc., has completed and submitted a Business Entity Disclosure Certification which certifies that CMX, Inc., has not made any reportable contributions to a

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

political or candidate committee in the Borough of Highlands in the previous one year and that the contract will prohibit CMX, Inc. from making any reportable contributions through the term of the contract; and

WHEREAS, CMX, Inc., has completed and submitted a Political Contribution Disclosure Form in accordance with P.L. 2005, c271; and

WHEREAS, this contract is to be awarded for an amount not to exceed \$2,100.00 for Professional Engineering Services provided to the Borough of Highlands Zoning Board for the period of July 1, 2008 through December 31, 2008; and

WHEREAS, certification of availability of funds is hereby provided by the Chief Financial Officer contingent upon the Governing Body of the Borough of Highlands adopting the SFY 2009 Municipal Budget.

Planning Board Budget
Account #1141-3757 = \$2,100.00
July 1, 2008 – December 31, 2008

Stephen Pfeffer, Chief Financial Officer

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

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

1. That Joseph May, P.E. of CMX, Inc., is hereby retained to provide Professional Engineering Services as described above for an amount not to exceed \$2,100 for the period of July 1, 2008 through December 31, 2008.
2. This contract is awarded without competitive bidding as a “Professional Service” in accordance with the Local Public Contracts Law, NJSA 40A:11-5(1)(a)(i) because it is for services performed by persons authorized by law to practice a recognized profession.
3. A copy of this Resolution shall be placed on file with the Zoning Board Secretary.
4. The Borough of Highlands Zoning Board Secretary is hereby directed to publish notice of this award as required by law.

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

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

ROLL CALL:

AYES: Mr. Francy, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Britton,
Ms. Solomon, Mr. Mullen
NAYES: None
ABSTAIN: None

**ZB#2008-2 Pace, Vincent
Block 22 Lot 34 – 22 Prospect Street
Hearing on New Business**

Present: Vincent Pace
Mike Kovic

Conflict: Ryan Britton left the meeting.

Mr. Baxter stated that he reviewed the public notice and finds it to be in order.

The following documents were marked into evidence:

- A-1: Variance Application;
- A-2: Zoning Permit Denial Letter dated 11/12/07;
- A-3: Six Pages of Plans Prepared by M. Kovic;
- A-4: July 17, 2008 Survey Prepared by T. Finnegan.

Mr. Mullen asked if the survey was ever submitted to the Zoning Officer because it may not have been evident to the Zoning Officer that this was in an area that we would consider to be in a proximity of a steep slope so there may be other variances required other than just the front yard issue.

Mr. May stated that there are two other variances required for this. The ordinance does not permit disturbance within 15 feet of the top of the slope and no building within 25 feet of that slope.

Mr. Mullen stated that he apologized for this issue coming up at this time but at the application review for this application the board asked for grades to be established so that the board could see how this fits on the site.

Mr. May stated that he asked for grades to verify steep slope.

Mr. Baxter swears in both Mike Kovic and Vincent Pace.

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

Mr. Baxter stated that with regard to the slope issues if a variance is required the public notice would be deficient because there is no language of steep slope variances.

Mr. May explained that this application does violate the steep slope ordinance.

Mr. Baxter does not see how this could get around the obligation to notify there are two steep slope variances.

Mr. Kovic explained the reasoning for placing the proposed garage in the proposed location. He stated that on the right side of the survey it shows a tree and a change in the elevation of five feet from the road down to where the house is. The problem is that it's all downhill and he explained that there would be water runoff. So that came up with the proposed and currently the existing black top that is there is pitched towards the hillside and the garage being placed there is actually a correction. He then explained that they are going to install leaders and gutters and a french drain being installed.

Mr. Baxter stated that the board cannot hear this application because all though the notice was proper for the variances sought it is not proper for the variances needed so the applicant must notice for the two additional steep slope variances that are needed. He stated that the board could amend the application tonight for the steep slope variances required.

Mr. Pace stated that he would not be available for the August 7th meeting but would be available for the September meeting.

Mr. Francy then asked what would be required for the applicant to prove the steep slope variances. Does he need to obtain an Engineer and supply soil reports and proofs that the proposed will not slide down the hill?

Mr. May – if it's located in the slump area then he has to go through all the requirements of the ordinance.

Mr. Kovic – it's not located in the slump block area. He then explained that this is a very solid hill.

Mr. Baxter – suppose we schedule this hearing for September 4th and start the meeting a half hour earlier and do this application first.

The Board agreed with starting the September 4th Meeting at 7:00 PM.

Mr. Kovic suggested that the proofs needed to obtain the steep slope variances would be to contain the water runoff which he further explained.

The Board discussed the application and the proofs needed with the applicant.

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

The applicant will bring pictures of the site with him to the hearing.

Mr. Baxter suggested that the board make a motion to continue the hearing at the September 4th meeting at 7:00 PM and that the applicant must renotice and republish.

Mr. Gallagher offered that motion, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Francy, Mr. Fox, Mr. Anthony, Mr. Gallagher, Ms. Solomon,
Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Mullen offered a motion to authorize the Secretary to publish the meeting time change of 7:00 PM for the September 4th meeting, seconded by Mr. Francy and all were in favor.

Mr. Mullen advised the public that this hearing will continue at the September 4th meeting at 7:00 PM.

**ZB#2007-7 231 Bay Avenue
Block 63 Lot 19.01 – 231 Bay Avenue
Request for Postponement of Public Hearing**

Mr. Baxter explained that the Board received a letter from Mr. Clarkin and it asked that this hearing be carried to the September meeting and its states that that they are granting the board an extension of time to act through September.

The Board discussed the schedule of the September Meeting and how there were already items set for that meeting. The board also discussed that this is the fifth or sixth postponement requests for this application.

Mr. Baxter suggested that it would be appropriate for the board to move to dismiss the case for failure to proceed or carry it until the October Meeting if the applicant accepts that. We will have to explain to the applicant that the board is agreeing to carry this case until the October Meeting provided that that they send a letter granting the board an extension and failing that part of the motion was that the case was dismissed for failure to prosecute.

Mr. Baxter then called Jim Clarkin, Attorney for 231 Bay Avenue and he left him a voice mail message explaining the boards a scheduling conflict for the requested September date and that the board is scheduling it for the October Meeting and that a letter is needed granting an extension of time through October. He asked that Mr. Clarkin call the Board Secretary tomorrow about this.

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

Mr. Fox offered a motion to carry this to the October 2nd Meeting with the understanding that the applicant will consent to an extension through the month of October for the board to act and if he does not the case will be deemed dismissed for failure to prosecute this evening when the case was scheduled. Seconded by Mr. Gallagher and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Gallagher, Mr. Fox, Mr. Anthony, Mr. Francy, Ms. Solomon,
Mr. Mullen

NAYES: None

ABSTAIN: None

Approval of Minutes:

Mr. Francy offered a motion to approve the June 5, 2008 Zoning Board Minutes, seconded by Mr. Fox and all were in favor except Mr. Mullen who abstained.

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

The Meeting adjourned at 9:36 P.M.

CAROLYN CUMMINS, BOARD SECRETARY

**BOROUGH OF HIGHLANDS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 17, 2008**

HIGHLANDS.NJ.US