

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
August 4, 2011**

Mr. Braswell called the meeting to order at 7:35 P.M.

Mr. Braswell 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 Zoning Board of Adjustment 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:** Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Knox,  
Mr. Braswell, Mr. Kutosh

**Absent:** Mr. Anthony, Mr. Cervantes

**Also Present:** Carolyn Cummins, Board Secretary  
Greg Baxter, Esq., Board Attorney  
Robert Keady, P.E., Board Engineer  
Martin Truscott, P.P., Board Professional Planner

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**ZB#2011-1 Compagni, J. & J.  
Block 28 Lot 16 – 21 Prospect Street  
Application Review & Schedule Public Hearing Date**

**Present:** Nobody

The Board reviewed the application and made the following comments:

1. A front yard setback is needed for this application for the location of a garage.
2. The Applicant should bring photographs of the subject and surrounding properties to their public hearing.
3. The Applicant must serve public notice.
4. The Board found the application to be complete.

Mr. Kutosh offered a motion to schedule a public hearing for ZB#2011-1 for September 1, 2011, seconded by Mr. Fox and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Ms. Ryan, Mr. Gallagher, Mr. Britton, Mr. Knox, Mr. Kutosh,  
Mr. Braswell

**NAYES:** None

**ABSTAIN:** None

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**Professional Service Resolutions:**

Mr. Gallagher offered the following Resolution and moved in its adoption:

**RESOLUTION APPROVING A NON-FAIR AND OPEN CONTRACT FOR  
PROFESSIONAL ENGINEERING SERVICES  
TO BE PROVIDED TO THE ZONING BOARD OF ADJUSTMENT  
FOR THE PERIOD OF JULY 1, 2011 THROUGH DECEMBER 31, 2011**

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**WHEREAS**, the Borough of Highlands Zoning Board has a need for professional engineering services as a non-fair and open contract to be provided to the Zoning Board for the period of July 1, 2011 through December 31, 2011 pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

**WHEREAS**, such professional engineering services can only be provided by licensed professionals and Robert Keady, P.E. of the firm of T & M Associates, is so recognized;

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

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

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

**WHEREAS**, certification of the availability of funds is hereby provided by the Chief Financial Officer contingent upon the adequate funding being provided by the Borough of Highlands Governing Body in the State Fiscal Year 2012 Budget:

Zoning Board Budget  
Account #1151-3757 - \$2,100.00  
For the Period of July 1, 2011 through December 31, 2011

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Stephen Pfeffer, Chief Financial Officer

**WHEREAS**, the Local Public Contracts Law N.J.S.A. 40A:11-1 et. seq. requires that notice with respect to contracts for professional services awarded without competitive bids must be publicly advertised;

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

1. Robert Keady, P.E. of T & M Associates is hereby authorized to provide professional engineering services to the Zoning Board for the period of July 1, 2011 through December 31, 2011.
2. This contract is awarded without competitive bidding as "Professional Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a) because it is for services performed by persons authorized by law to practice a recognized profession.
3. A copy of the Resolution as well as the contract 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.

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

**ROLL CALL:**

**AYES:** Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Knox,  
Mr. Kutosh, Mr. Braswell

**NAYES:** None

**ABSTAIN:** None

Mr. Kutosh 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,  
2011 THROUGH DECEMBER 31, 2011**

**WHEREAS**, the Borough of Highlands Zoning Board has a need for Professional Legal Services to be provided to the Zoning Board for the period of July 1, 2011 through December 31, 2011 pursuant to the provisions of N.J.S.A. 19:44A-20.4; 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 in January 2011 appointing Gregory Baxter, Esq., of the firm of Caruso & Baxter as Zoning Board Attorney for a (1) one year term expiring December 31, 2011; 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**, 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 2012 Budget:

Zoning Board Budget

Account #1151-3755 \$5,205.00

July 1, 2011 through December 31, 2011

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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.

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**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 \$5,205.00 for the period of July 1, 2011 through December 31, 2011.
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 Ms. Ryan and adopted on the following roll call vote:

**ROLL CALL:**

**AYES:** Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Knox  
Mr. Kutosh, Mr. Braswell

**NAYES:** None

**ABSTAIN:** None

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**ZB#2010-2 Metro PCS, New York, LLC**

**Block 108 Lot 2.01**

**Unfinished Business**

**Present: Mr. Beck, Esq., Applicants Attorney**

Mr. Baxter gave a recap on this application. This case was heard on three evenings, September 2, 2010, March 3, 2011 and May 5, 2011. All of these members have listened to the meeting tapes and have signed affidavits which are on file. Mr. Britton on May 5<sup>th</sup> date, Mr. Fox on the September 2<sup>nd</sup> and May 5<sup>th</sup> dates, Mr. Anthony on the March 3<sup>rd</sup> and May 5<sup>th</sup> dates, Mr. Knox on the September 2<sup>nd</sup> date and Mr. Kutosh on the September 2<sup>nd</sup> and May 5<sup>th</sup> dates. As a result of that eight members are eligible to vote, seven of whom are present. We received a brief from Mr. Beck prior to the last meeting or two meetings ago. He also wrote a letter on June 2<sup>nd</sup> which the board has the benefit of. The hearing has been closed for the record as of the May meeting. He has about twelve things to think about and there are a few alterations of that in his June 2<sup>nd</sup> memo which are numbers four and six. Number four, as to the sites particularly suited for this property, that's a test in cases where property owners want to develop them for a use that is not permitted in the zone. In this particular case the use is permitted in the zone although it's conditionally permitted. The fact that conditions are met by the applicant makes this a use variance application but the particularly suited part does not apply. On number six under alternate sites, since our ordinance permits this use in this zone if you meet the conditions then it's not required that the applicant prove alternate sites are available. On this particular case we've heard quite a bit of testimony on that. So the boards aware of issues and the fact and credibility issues that the board had to deal with as to who said what to whom and when. The board will make their own evaluations as to what they heard. Everything else he thinks is put before the board by the testimony, brief and his highlighting things to think about during deliberations. It would be appropriate for the board to now discuss the case and that at some point entertain a motion for final action.

Mr. Braswell explained that he does not want the extension of the tower to go on the Stewarts site.

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However, the applicant did their job and proved that they can't go on the Eastpointe building. Not for any technical reason but he thinks because there was some breakdown in communication at Eastpointe and they just can't get their act together. He thinks that this is unfortunate, it's unfortunate to Highlands. He thinks it's unfortunate for Eastpointe but he does not see how he can say "no" to the applicant because they did everything that they were supposed to do. Pretty much they did more than their best effort to talk to Eastpointe. He is really disappointed that this couldn't get worked out because he does not want the tower at Stewarts, it should have gone on Eastpointe but he does not think that this is the applications fault. So he would vote "yes" to the applicant.

Mr. Kutosh – I have to agree with you one hundred percent.

Ms. Ryan stated that after the testimony she is not inclined to vote "yes". She is not convinced that the applicant pursued adequately enough to see if this can indeed be put on Eastpointe. Our board had to subpoena someone to come to talk about that. She feels that this was ridiculous that we had to do that. The woman sat here in front of us that "yes" she wanted to have it. She does not believe that the site being discussed tonight is the only site in town that should be considered. This is not going to bring any income to Highlands putting it where it is. She does not think that this is a wonderful thing to bring to Highlands. It is going to impact the view line both coming over the bridge north and coming from Atlantic Highlands. It's going to be extremely visible, it is not attractive and we all agree on that. If there were some way that Highlands would get something out of this then she would possibly be considering it on a different level but right now listening and seeing what has happened and the breakdown of communications between the applicant and Eastpointe she is not convinced that it can't go there and she would like to see them try again.

Mr. Braswell – I agree with you and it can most certainly go on Eastpointe but you need Eastpointe's cooperation. Whatever is going on at Eastpointe they did not make sure the lines of communication were open. Every time the Applicant tried to get in touch with them something happened.

Mr. Gallagher – we don't really know that for sure Mr. Chairman. He does not know what happened.

Mr. Braswell – after we brought the President of Eastpointe here and the President became aware that the applicant wants to go there. She made it clear that she wants it to go there and the members of the board probably want it to go there. After they found out that there was something going on to keep it from moving forward then the ball was in her court to make it happen and nothing ever happened after that. We didn't hear back from them, the applicant didn't hear back from them.

Mr. Gallagher – here's where I have problem with that. The applicant had already started to pay rent for this site. For him it raises a question as to where the breakdown occurred. He just does not know what happened. He was not completely convinced that the person at Metro PCS brought here to testify about the breakdown of communication. The President of Eastpointe was here and couldn't address, had already left and couldn't question the veracity of that but we heard from the first hearing date that Eastpointe was the superior location. They testified then that Eastpointe said that they were not interested.

Mr. Braswell – that's correct and he believes that was incorrect testimony from the applicant.

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Mr. Gallagher – but it was testimony and then we later heard that they were interested. We heard much later that we heard that immediately after the September meeting they went back to Eastpointe and then there was a series of break downs of communications and we had another meeting or two in between there where they testified that Eastpointe wasn't interested. But, when we found out that they had already started to pay rent almost for a year now on the subject property. It raises a question of where is the source of that break down. Maybe Metro PCS already has enough of an incentive not to go to Eastpointe. Or if this place was not available at all how would they pursue getting into a superior location. The other possibility is that Eastpointe may not be the only location. There was testimony about them going to New Jersey American Water to put a tower on the water tank but they said they were not interested. We have the conflicting testimony that we heard from Eastpointe and the applicant. He continued to explain his questions and fact that he is not satisfied that the breakdown is at Eastpointe. Do we really know that they exhausted all other possibilities.

Discussions continued between Mr. Gallagher and Mr. Braswell.

Mr. Gallagher disagrees with page 10 and 12 of Mr. Beck's legal brief. He further responded to the lack of evidence to approve these application. He also questioned the old cell tower disapproval and the favorable appeal.

Mr. Braswell stated that we can't argue that the positive criteria has been met.

Mr. Gallagher expressed further opposition to the approval of this application.

Ms. Ryan again stated that this is not a good thing for Highlands. She also stated that aesthetics is an issue with her.

Mr. Kutosh stated that the coverage is an issue for him.

Board discussions continued.

Mr. Fox agrees with Mr. Gallagher and Ms. Ryan. There is too much of a mystery about Eastpointe. He strongly feels that aesthetically he cannot vote favorable on this application.

Mr. Braswell stated that he wants to say no but he has the experience with previous cell tower case and saying "no" is not good enough for the judge in Freehold.

Mr. Britton stated that aesthetically he doesn't like this. View problems will negatively affect values of surrounding properties.

Mr. Knox stated that he feels that if the Eastpointe residents understood the view impact then they would be here . This does not help Highlands its hurts the real estate in Highlands.

Mr. Baxter stated that the applicant does not have to prove a benefit to the town.

Mr. Gallagher stated that he does not feel testimony for positive criteria outweighs negatives, it's not credible.

Mr. Keady stated that he does not have any comments.

Marty Truscott advised the board to consider criteria in Mr. Baxter's outline. Can this site accommodate the deviations (variances). This is a conditional permitted use that does not meet

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the standards. The height and the property line is not a concerns. In terms of suitability of site could be a reason and also tower is too tall.

Mr. Braswell then commented on his vote to deny this application even though he feels applicant met their burden of proof.

Mr. Gallagher explained that he disagrees that the applicant has met his burden. He further expressed that he does not know if Eastpointe is the site for this.

Mr. Braswell then commented on Mr. Gallagher's comments.

Mr. Gallagher then offered a motion to deny the application, seconded by Mr. Fox and approved on the following roll call vote:

**ROLL CALL VOTE:**

**AYES:** Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Knox, Mr. Kutosh,  
Mr. Braswell

**NAYES:** None

**ABSTAIN:** None

Motion carries.

Mr. Britton then left the meeting.

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Approval of Minutes:

Ms. Ryan offered a motion to approve the July 7, 2011 Zoning Board Minutes, seconded by Mr. Fox and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Knox, Mr. Kutosh, Mr. Braswell

**NAYES:** None

**ABSAIN:** None

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

The meeting adjourned at 8:38 P.M.

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Carolyn Cummins, Board Secretary