

## **ALPINE PLANNING BOARD**

Alpine Borough Hall  
100 Church Street  
Alpine, New Jersey 07620

### **MINUTES**

October 22, 2019

**CALL TO ORDER/PUBLIC ANNOUNCEMENT/PLEDGE OF ALLEGIANCE:** The Planning Board, Borough of Alpine, convened in regular session on Tuesday, October 22, 2019 at 7:30 P.M. Catherine Parilla read the announcement in accordance with the requirements of the Sunshine Law:

In accordance with the provisions of the New Jersey Open Public Meetings Act, the notice of this regular meeting held Tuesday, October 22, 2019 at 7:30 P.M. has met the requirements of the law by publication in The Record, posting on the bulletin board of the lobby in the Borough Hall and filing in the office of the Borough Clerk.

#### **ROLL CALL:**

Members Present: Carol Cochi, Gayle Gerstein, Elizabeth Herries, David Kupferschmid (arrived 7:31 PM), Lorraine Mattes, Catherine McGuire, Catherine Parilla, Joyce Sonpal, Mayor Paul Tomasko

Members Absent: Alt I Jeff Fromm

Staff Present: Michael Kates, Board Attorney  
Perry Frenzel, Borough Engineer  
Marilyn Hayward, Board & Recording Secretary  
John Phillips, Esq., Special Counsel regarding the Alpine Three matter  
David Novack, PP, of Burgis Associates, Inc., Borough Planner

#### **APPROVAL OF MINUTES OF SEPTEMBER 24, 2019 REGULAR MEETING:**

Upon a motion by Ms. Herries, seconded by Mr. Kupferschmid, to approve the minutes of the September 24, 2019 Planning Board Regular Meeting. Eligible members voted as follows:

**Vote: Ayes:** Ms. Herries, Ms. Mattes, Ms. McGuire, Ms. Parilla, Mayor Tomasko

#### **APPROVAL OF MINUTES OF SEPTEMBER 24, 2019 EXECUTIVE SESSION MEETING:**

Upon a motion by Ms. Gerstein, seconded by Ms. McGuire, to approve the minutes of the September 24, 2019 Planning Board Executive Session Meeting. Eligible members voted as follows:

**Vote: Ayes:** Ms. Herries, Ms. Mattes, Ms. McGuire, Ms. Parilla, Mayor Tomasko

**ANNOUNCEMENT:** Ms. Parilla advised the public the meeting will end at 10 PM.

**OPEN TO THE PUBLIC FOR NON-AGENDA ITEMS:** None

#### **NEW APPLICATION:**

- **Soil Moving: Their, Kelly; 3 Deerhill Rd., Block 50 Lot 1.01 (Carried to November 26, 2019)**  
**Resolution:** Upon motion by Mayor Tomasko, seconded by Ms. McGuire and approved by all to carry this matter to November 26, 2019 without need for further notice.
- **Amended Preliminary and Final Site Plan and Soil Moving: Alpine Three, LLC; Closter Dock Road, Block 43 Lots 6.01, 6.02 & 6.03.**

Special Council John Phillips sat for the Board due to his long history and familiarity with this applicant.

Stenographer present at the request of the applicant: Laura Carucci of Rizman Rappaport Certified Court Reporters 66 W Mt. Pleasant Ave, Livingston, NJ 07039. Attorney Hirsch advised she would make a copy of the transcript available to the Board Secretary prior to the next hearing.

Mayor Tomasko recused and stepped down to the audience having received notice he owns property within 200 feet of the proposed sanitary sewer line which is part of this application. Attorney Hirsch cautioned Board members and Board consultants that they should not be consulting with the Mayor at all on this matter as he has a conflict of interest.

Guliet D. Hirsch, Esq. of Archer Attorneys at Law 101 Carnegie Center, Suite 300, Princeton, NJ 08540 appeared on behalf of the Applicant, Alpine Three, LLC.

Matthew G. Capizzi, Esq. 11 Hillside Ave., 2<sup>nd</sup> Floor, Tenafly, NJ 07670 appeared on behalf of Victoria Zoellner and Gordon Uehling, owners of Block 55, Lot 4 and Block 55 Lot 8.

Exhibits marked during the course of these proceedings:

Applicant:

- A – 1 Affidavit of Service
- A – 2 Settlement Agreement May 24, 2000 between Edward Norian and George Haralabatos, trading as Alpine Three, L.L.C. and the Borough of Alpine
- A – 3 Decision: Superior Court, Appellate Division DN A-3163-04T1 Edwards Norian, George Haralabatos and Alpine Three, LLC v. Planning Board of the Borough of Alpine, Borough of Alpine and Borough of Cresskill dated January 3, 2006.
- A – 4 Order for Remand to Planning Board by Judge Harris dated September 29, 2003 re: Edwards Norian, George Haralabatos and Alpine Three, LLC v. Planning Board of the Borough of Alpine DNL BER-L-3971-03 and  
Final Judgment by Judge Harris dated February 10, 2005 re: Edwards Norian, George Haralabatos and Alpine Three, LLC v. Planning Board of the Borough of Alpine DNL BER-L-3971-03
- A – 5 Settlement Agreement, Sewage Capacity Allocation and Sewer Extension Agreement between alpine Three and Cresskill Borough dated January 20, 2005.
- A – 6 Letter dated March 26, 2013 from Elizabeth Semple, Manager, Division of Coastal and Land Use Planning to Lloyd Tubman re: Alpine III Amendment
- A – 7 Amendment to Settlement Agreement [A-2] dated December 15, 2015 between Edward Norian and George Haralabatos, trading as Alpine Three, L.L.C. and the Borough of Alpine
- A – 8 Drawing No. 495-41 pg 2 of 11 entitled “Site Plan” prepared by Hubschman Engineering, P.A. dated May 22, 2019 last revised #1 “BSCD Letter dated 7-29-19” dated October 7, 2019
- A – 9 Drawing No. 495-42 pg 3 of 11 entitled “Grading, Drainage, Utility Plan” prepared by Hubschman Engineering, P.A. dated May 22, 2019 last revised #3 “BSCD Letter dated 7-29-19” dated October 7, 2019
- A – 10 Letter dated June 13, 2019 from Gerard J. Naylis, A.R.M Technical Fire services, Inc. to Michael Hubschman re: review of fire flow

Board:

- B – 1 Letter dated February 6, 2013 from the Borough of Cresskill to WQM Program Docket DEP/Division of Coastal and Land Use Planning re: Cresskill – Alpine Three Sewer Extension Agreement
- B – 2 Stipulation of Settlement between Alpine Three and NJDEP dated September 21, 2012 Agency Ref No. 0202-05-0001 OAL DKT. No. ELUWM 13600-2008N

Opposition:

- O-1 Letter from attorney Matthew G. Capizzi, Esq. dated October 22, 2019

Attorney Phillips and Attorney Hirsch agreed to first address a letter from Attorney Capizzi dated October 22, 2019 and just delivered to the Board Secretary and Attorney today at 5 PM. This letter was marked **[Exhibit O-1]** and distributed to the Board and Attorney Hirsch. In his letter Attorney Capizzi requested a 30-day continuance and questioned the Board’s jurisdiction to hear the matter relative to completeness and adequate public notice. Attorney Capizzi apologized for the last-minute notice having only been retained late last week. Claims summarized as follows:

Item 1: Applicant did not provide application and supporting documentation/delay providing plans and reports. - Attorney Capizzi confirmed he was able to review the application at Borough Hall. Attorney Hirsch noted his client signed for their notice on October 8th. Applicant provided 17 days’ notice where only 10 is required. She had provided Attorney Capizzi with some plans upon request but did not have all documents on her computer. As the public notice states, the application is on file with the Planning Board for public review and no applicant is obligated to provide copies. Attorney Phillips concurred. She’d be happy to provide the Board with a copy for use for duplication if requested.

Item 2: Application is incomplete. Attorney Capizzi stated the application is missing information. The application should not have blanks and should contain all necessary documents such as prior resolutions and court orders so the lay public can understand and not have to rely on only the applicant's summaries. Attorney Hirsch advised the Board is supposed to determine completeness based on the checklist in the Ordinance. If the Board fails to do that within 45 days the application is deemed complete as a matter of law. Attorney Capizzi's requests for additional information can be resolved during the course of the hearing but are matters of substance and not matters for completeness. Attorney Hirsch referenced her letter [dated October 3, 2019] in response to Mr. Frenzel's letter [August 13, 2019] wherein she declared the application complete as none of the items in the August review effected completeness. Without using the word 'completeness' Attorney Phillips subsequently advised the Board to schedule the hearing. Attorney Phillips stated the application was deemed complete for purposes of getting on the agenda but reminded the Board has the right to request any materials on the checklist during the course of the proceedings. Attorney Phillips does not recall ever taking a vote on completeness having always deferred to the Board's engineer. Mr. Frenzel was sworn and clarified his second letter [September 20, 2019] found the application to be administratively complete. When Attorney Capizzi persisted, Attorney Phillips advised he can save arguments for appeal affirming Attorney Hirsch was correct that even without Mr. Frenzel's follow-up letter the 45-day rule applied. He emphasized Attorney Capizzi can ask questions and request additional materials during the course of the hearing. Attorney Capizzi requested any materials described in his letter as open items be supplemented prior to the next hearing.

Item 3: Public Notice mischaracterizes the relief required by the Board – Attorney Capizzi felt there were jurisdictional issues relative to notice. Attorney Phillips noted unless there is a gross deficiency it is up to Attorney Hirsch if she wants to re-notice; the risk is the Applicant's. Attorney Capizzi claimed the property description is deficient citing an unpublished opinion: *Tonnelle USA, Inc. v. Township of North Bergen* [Zoning Board of Adjustment] decided July 1, 2015 [Superior Court of NJ Appellate Division] to support his claim the notice is defective for failure to state the roadway improvements require municipal approval, are not part of the Applicant's property and do not reference the specific block and lots effected. Borough of Alpine should be listed as a co-applicant. Although the Applicant seeks 'amended preliminary and final site plan approval and soil moving approval' the notice does not fully disclose the full scope of the project or all the variances and waivers. The notice states amended but does not reference prior approvals beyond the court order. What are they amending? They cannot seek a final approval given the open issues. Attorney Hirsch responded the latter issue is substance and not relative to notice. An unpublished opinion means there is no precedent. She will review the case but does not feel it applies. There is no case law that requires those items in a notice or that the Borough has to be a Co-Applicant. The force main issue will be presented to the Mayor and Council. The Applicant agreed to include it with this application to permit engineering review so they could address any questions or concerns. Site plan approval will be conditioned on all other required agency approvals. Affidavit of Service was marked [**Exhibit A-1**] and Attorney Hirsch noted the notice does name the four roads traversed by a proposed sanitary sewer line and that they are seeking waivers and a variance. She is satisfied the notice is adequate and they should proceed.

Item 4: Applicant does not have authority to file for private improvements under Borough roadways– Attorney Capizzi summarized his understanding of the application being a 7-unit townhouse development that relies upon 5,000 linear feet of roadway to connect to the Cresskill sanitary sewer system. The application does not reference Applicant's authority to make these improvements (ex. title search, prior deed, etc.). The proposed use is for a private purpose. No other properties can connect to the sewer line. Attorney Phillips advised during prior court proceedings Judge Harris ruled the Applicant had the right to seek to run a forced main from their property down to the Cresskill manhole. Judge Harris acknowledged he didn't know what legal rights the Applicant would need or if the Borough would have to be compensated. The Planning Board acknowledged they did not have jurisdiction to decide the legal issue but could condition any approval on requiring the Applicant enter into a written agreement with the Borough for use of the roadway or obtain a decision from Superior Court that they can use the roads. Attorney Phillips advised Attorney Capizzi case law under *Goodfellows*<sup>1</sup> precludes his argument. However, he and Applicant's prior counsel, the late Lloyd Tubman, Esq., had agreed that notice would be given to every property owner along the route of the proposed force main so they could properly review the application, appear and decide if they wanted to object as individuals. Such notice was provided for this application.

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<sup>1</sup> W.L. *Goodfellows & Co. of Turnersville, Inc. v. Washington Twp. Planning Bd.*, 345 N.J. Super. 109 (App. Div. 2001)

Attorney Phillips noted Attorney Capizzi has raised multiple issues to be dealt with during the course of the proceedings. He reminded the Board a prior court order by Judge Harris determined the Applicant had the right to make the application. The Planning Board can place conditions requiring an agreement with the Borough before work begins, establishing legal title for use, etc. Notice was provided to property owners along the four roads as agreed to between the Board Attorney and Applicant's prior attorney. That's sufficient and if a court determines it's not that's the Applicant's risk and not the Board's. The objector retains his rights to appeal in court. He recommends the preferred course for the Board is to hear the application and try to resolve the engineering issues.

Chairwoman Parilla asked the Board Secretary to call the roll. A yes vote would be to proceed to hear the application. Vote: Ayes: Ms. Cochi, Ms. Gerstein, Ms. Herries, Mr. Kupferschmid, Ms. McGuire, Ms. Mattes, Ms. Parilla, Ms. Sonpal

Chairwoman Parilla advised Attorney Capizzi he is welcome to raise questions from the audience as this matter proceeds. Attorney Phillips reminded Attorney Hirsch at least half the Board is new and has not heard this application before.

Attorney Hirsch provided background and provided supplemental exhibits. This project dates back to a 1993 Mount Laurel I lawsuit that resulted in a Settlement Agreement dated May 24, 2000 **[Exhibit A-2]**. This agreement was reviewed in the context of prior applications by both the Law Division and Appellate Divisions of the Superior Court. She opined the courts specifically ruled 7 units are permitted subject to compliance with all requirements of municipal law and state regulations. Attorney Phillips countered they were permitted "up to 7 units" but 7 units was not a requirement. In response Attorney Hirsch referenced the Appellate Court decision in Alpine Three v. The Alpine Planning Board dated January 3, 2006 marked **[Exhibit A-3]** and quoted from pages 19-20 to put forth they have approval for 7 units:

*"The fact is they [Borough of Alpine] did settle, they received all of the benefits of the settlement agreement, and they are bound to comply with the agreement's provisions. For the reasons we have already stated, we are satisfied the agreement contained an implied authorization for connection to an off-site system.*

*Further, plaintiffs bargained for the right to construct seven market-rate townhouses. Alpine had a duty of good faith and fair dealing to perform its part of the agreement in accordance with the settlement... 'A party to a contract may not unreasonably frustrate its purpose.' To allow Alpine to require an on-site disposal system would frustrate plaintiff's ability to enjoy the benefit of their bargain, namely the construction of seven conforming townhouse units.*

*We also find unpersuasive the argument by the Borough and the Board that plaintiffs had a duty to scale down the size of the units or the number of units, in an effort to obtain DEP approval for an on-site system."*

Attorney Hirsch next marked two orders from Judge Harris: Order for Remand to Planning Board dated September 29, 2003 and Final Judgment dated February 10, 2005 **[Exhibit A-4]** stating the orders made clear Applicant has site plan approval for seven townhouse units subject to other compliances including DEP and stormwater requirements.

Attorney Capizzi objected stating these exhibits should have been provided in advance. Attorney Hirsch objected. Attorney Phillips advised Attorney Capizzi he already made his argument and does not have to repeat it.

Attorney Hirsch next provided a copy of a Settlement Agreement between Alpine Three and Cresskill Borough allowing the connection to the Cresskill Borough sewage treatment plant and allocating capacity dated January 20, 2005 **[Exhibit A-5]**. Chairwoman Parilla asked if the agreement has been updated. In response Attorney Phillips offered a letter marked **[Exhibit B-1]** dated February 6, 2013 from the Borough of Cresskill to DEP acknowledging the agreement but stating they cannot officially sign off on the sewer extension request because the Applicant does not yet have an agreement with the Borough of Alpine. Attorney Hirsch affirmed while noting there does not appear to be any extension/expiration requirement. Attorney Phillips noted he would recommend to the Board that any approval be subject to an agreement with the Borough of Alpine and affirmation from the Borough of Cresskill that the agreement is still in effect.

Attorney Hirsch next provided a DEP letter dated March 26, 2013 **[Exhibit A-6]** from Elizabeth Semple, Manager, Division of Coastal and Land Use Planning to Applicant's prior counsel re: Alpine III Amendment. The letter was provided pursuant to their stipulation of settlement between DEP and the Applicant regarding the water quality management plan amendment for the Alpine III property to confirm adoption is subject to the Borough's approval of the

stormwater management design and calculations. Attorney Phillips provided a copy of the Stipulation of Settlement between Alpine Three and NJDEP dated September 21, 2012 [**Exhibit B-2**] that sets forth several conditions.

Attorney Hirsch submitted an Amendment to May 24, 2000 Settlement Agreement dated December 15, 2015 [**Exhibit A-7**] between Alpine Three, the Borough and the Planning Board. The amendment acknowledged a preferred option was five units with an onsite wastewater management system subject to obtaining all required permits and approvals. Attempts to install said system failed and their application was denied by the Board of Health which resolution she included with the application.<sup>2</sup> Attorney Hirsch summarized after 12-15 months of extraordinary rainfall, experts for both sides agreed the hydrogeological data indicated the groundwater table was too high for a septic system to function. That denial sent them back to the original agreement with the off-site sewer line. Attorney Phillips commented the agreement was a request to move forward with site plan approval before the septic systems were approved by the Board of Health. However, the Applicant had correctly and wisely held off on the site plan until they could see if a septic system would work. Chairwoman Parilla thought one field had functioned? Attorney Hirsch responded the Borough ordinance requires two fields: black water and grey water. The grey water field appeared to work for a period of time prior to the heavy rains but the second field did not. Ms. Herries asked what happened during that time with respect to the sewer line? Attorney Hirsch advised that option was put on hold while they explored the preferred option. Mr. Kupferschmid requested clarification that per the amended settlement they did not abandon their connection to the sewer system. Attorney Hirsch stated her interpretation is that if they were not able to get approvals for the five units with septic the original option remained. Attorney Phillips affirmed the zoning and Judge Harris's decision stayed in place.

Attorney Hirsch continued that a number of outside approvals have been granted for the project included in the application package under Item #7. They will provide testimony on some of them for example, DEP freshwater wetlands GP-6 and the Letter of Interpretation (LOI).

8:49 - 8:58 PM Before Attorney Hirsch proceeded with her first witness Chairwoman Parilla called for a short break.

**Michael Hubschman, P.E., P.P. of Hubschman Engineering, P.A. 263 A S. Washington Ave., Bergenfield, NJ 07621** was sworn and qualified as an expert in his fields<sup>3</sup>.

Point of Order: Attorney Phillips pointed out plans still refer to the spring as an abandoned well. Two Superior Court judges as well as a court appointed expert have determined that it is a percolating spring. He is to use that reference. Chairwoman Parilla and Attorney Phillips directed Mr. Hubschman to revise plans to replace "abandoned well" with "spring" wherever shown on plans.

Attorney Hirsch asked Mr. Hubschman to review his plans consisting of 11 pages as submitted with the application. For display purposes Mr. Hubschman had colored renderings of two of the pages and these were marked and described as follows: [**Exhibit A – 8**] Drawing No. 495-41 2 of 11 Site Plan last revised October 7, 2019

[**Exhibit A – 9**] Drawing No. 495-42 3 of 11 Grading, Drainage & Utility Plan last revised October 7, 2019

- Drawing No. 495-40 1 of 11 contains the 200 foot radius map, property owners' list and drawing schedule
- Drawing No. 495-41 2 of 11 contains zoning information, all the required notes and general layout
- Drawing No. 495-42 3 of 11 shows drainage, the sewer pump, force main on site and other notes
- Drawing No. 495-43 4 of 11 shows details of the drainage system and engineering details on site
- Drawing No. 495-44 5 of 11 shows details of signs, curbing, sidewalks, etc.
- Drawing No. 495-45 6 of 11 enlargement of rear drainage system with cross sections, details. Includes a filter system which they have added as required by new stormwater management rules.
- Drawing No. 495-46 7 of 11 Lighting Plan showing lantern type lighting along the road
- Drawing No. 495-47 8 of 11 Soil Erosion & Sediment Control Plan subject to Bergen County Soil Conservation District approval
- Drawing No. 495-48 9 of 11 Existing Conditions & Tree Removal Plan depicting the old house and spring
- Drawing No. 495-49 10 of 11 Profile of Closter Dock Road required by the County
- Drawing No. 495-50 11 of 11 Profiles for proposed roadway and drainage

<sup>2</sup> Borough of Alpine Board of Health resolution February 19, 2019 numbered 7(a) with application

<sup>3</sup> Credentials: Licensed engineer since 1984, Graduate NJIT Bachelors in Civil Engineering 1979 appearing before Boards since 1985 and has regularly appeared before Boards in Alpine and throughout Bergen County.

Ms. Gerstein asked if they have a tree replacement or landscaping plan? Mr. Hubschman advised Brad Meumann will be testifying regarding the landscaping plan at a future meeting.

Referencing [A-8] Attorney Hirsch asked Mr. Hubschman if the project complies fully with COAH-1 zoning standards. Mr. Hubschman affirmed. Attorney Hirsch asked Mr. Hubschman to address questions in Board Planner Lydon's letter<sup>4</sup> regarding stories and setbacks. Mr. Hubschman stated the COAH-1 zone has no regulation regarding number of stories. They comply with the building height regulation. Only building setback requirements are regulated under the COAH-1 zoning which does not speak to whether any other improvements can be in the setbacks.

Attorney Hirsch asked Mr. Hubschman to review the exceptions requested for the fence. Mr. Hubschman referenced Note 18 [on A-8] requesting a waiver for the fence along Schoolhouse Lane being a four feet of chain link fence atop five feet of retaining wall: 9 feet proposed where 6 feet is maximum. This is for safety for fall protection. Additionally, per Note 19 [on A-8] they seek a waiver for a decorative split rail fence along Closter Dock Road 2 feet from the interior roadway where ten feet is required.

Attorney Hirsch asked Mr. Hubschman if he reviewed the plan for compliance with the Residential Site Improvement Standards. Mr. Hubschman affirmed they comply relative to parking, roads, slopes and widths. They seek a waiver per Note 17 [on A-8] and as better depicted on [A-9] from the RSIS standard requiring manholes to be located in the center of a roadway. The first two onsite manholes are located in the center of the interior road but they seek to locate the third manhole in Closter Dock Road closer to the side of the road. The RSIS standard for sanitary sewer mains is that they are a minimum of ten feet from the right-of-way line where they propose the force main closer to the side of the road. This is for purposes of traffic control and ease of construction limiting disturbance to one lane.

Ms. Gerstein questioned location of the 28 parking spaces. Mr. Hubschman advised RSIS includes garage space so two in the garage and two in the front driveway equals four but RSIS only counts as 3.5 spaces. Seven times three and a half plus four other onsite spots equal twenty-eight spaces. Ms. McGuire questioned garage locations. They are on the first level except for Type C where the road slopes placing it at basement level. Ms. McGuire questioned access to Schoolhouse Lane. There is no vehicle access. There is a five foot wall there. At a prior hearing a stairway was requested for pedestrian use as shown on the plan. The stairway would be fenced on the sides but no gate is proposed. No gate is proposed at the Closter Dock Road entry.

Ms. Gerstein questioned property taxes. Due to variables Attorney Hirsch cannot estimate.

Attorney Phillips noted in prior applications there was an agreement by the Applicant for inclusion in their master deed or condominium regulations that the garages cannot be converted. Attorney Hirsch agreed that's an appropriate condition.

Attorney Phillips further noted a prior condition for a finish to be added to the concrete retaining wall. Mr. Hubschman stated they can add that to the plan. He recalled it was to be some type of masonry.

Ms. Cochi asked the width of the interior road. Mr. Hubschman stated twenty-five feet. She asked if that is sufficient for emergency vehicles to get in and turn around. Mr. Hubschman stated the turning radius to enter complies but they would need to back out. There is a hydrant across the street and they are actually required to install a second hydrant on their side of the street.

Ms. Mattes questioned how much elevation is being added to the rear of the property? Mr. Hubschman stated the face of the wall along Schoolhouse Lane will be five feet.

Attorney Phillips noted an ordinance requires their road be aligned with Main Street. Mr. Hubschman pointed out their revision adding a jog to the east to comply with alignment requirements.

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<sup>4</sup> [Steve Lydon, PP, AICP of Burgis Associates, Inc. dated September 13, 2009]

Attorney Hirsch asked about Bergen County Planning Board review. Mr. Hubschman noted their prior approval lapsed. They submitted and the County requested certain modifications. They resubmitted amended plans and that review is pending. Their application to Bergen County Soil Conservation District is also pending review.

Chairwoman Parilla asked the location of the spring relative to the structures. Mr. Hubschman pointed out this feature lies under Unit 5 on **[A-9]**. Attorney Hirsch advised another witness will address stormwater and the spring.

Attorney Hirsch asked Mr. Hubschman to address water supply. Mr. Hubschman responded public water will be provided by Suez Water Company. Attorney Hirsch noted a Willingness to Serve letter from Suez [dated June 5, 2019 annotated 7.d.] was provided with the application. Attorney Hirsch asked if they verified sufficient fire flow from the adjacent hydrant. Mr. Hubschman advised a fire flow test was done by Suez Water and they submitted this to the fire expert who concurred it was sufficient for 7 units. Ms. Hirsch marked a letter from Technical Fire Services, Inc. to Mr. Hubschman dated June 13, 2019 **[Exhibit A-10]**. Mr. Hubschman noted the letter concluded:

*“Based on the water supply data provided by Suez and the NFF identified in both the International Fire Code and the Insurance Services Office rating schedule, we conclude that the available water supply is adequate for the intended residential development.”*

Attorney Hirsch asked Mr. Hubschman to describe the current status of the septic fields. Mr. Hubschman advised both fields were pumped out, filled and closed for safety reasons. A pile of leftover gravel remains on site.

Attorney Hirsch asked Mr. Hubschman to respond to comments in Mr. Frenzel’s August 13, 2019 review letter.

Soil Movement Volume (Item #2 page 3) The plan is correct but his office inadvertently attached the septic system soil moving application so those numbers are not correct. Correct numbers are cut: 1,422 cubic yards, fill: 2,894 cubic yards and the net import is 1,472 cubic yards. Mr. Hubschman will submit the correct application.

Tree Removal (Item #3 page 3) Trees are marked on the Existing Conditions plan. The tree removal application and plan are usually not submitted until after preliminary approval. That would be a condition of any approval.

ADA Compliance (page 6) They intend to provide one sixteen-foot-wide handicapped accessible space for visitors as shown on the plans. The space is not designated for any one unit. Mr. Frenzel questioned if units would be designed in a way that they could be modified or retrofitted for ADA compliance. Mr. Hubschman stated these are connected single family units and there is no requirement for them to be ADA adaptable. Owners would have to make needed changes. Attorney Hirsch advised they’ll try and get an answer from the architect on that.

Parking (page 6) Ms. Parilla questioned visitor parking. Mr. Hubschman stated visitors can park in the host’s driveway or any of the three or four guest parking spaces. There is no parking permitted on the interior road. He opined overflow would park on Main Street or the Borough Hall parking lot. Schoolhouse Lane is too narrow. Attorney Phillips advised when Schoolhouse Lane was vacated the Judge’s decision required access continue to be provided to those houses. They got half of the road and Alpine Three got the other half but they were required to keep it open and unobstructed. Mr. Hubschman confirmed their rear wall is ten feet back from the center line of Schoolhouse Road. Ms. Parilla asked if you can get a fire truck down there. Mr. Hubschman said yes. Attorney Phillips assumes they have no objection to a restriction of No Parking on the interior road and the application of Title 39. Attorney Hirsch responded if that’s an appropriate condition. She pointed out the number of spaces is dictated by RSIS.

Force Main and Stormwater Management These will be addressed by a future witness.

On Site Fire Hydrant location (page 9) Per prior application the Fire Department requested a hydrant on their side of the street for safety and to minimize traffic disruption. They note this on the plan with exact location yet to be determined by the Fire Department. The application should be reviewed by the Alpine Fire Department.

Outside Agency Approvals: (pages 10-11) Status reviewed: Bergen County Planning Board and Soil Conservation District reviews are pending. Following County and Planning Board site plan approvals they will apply for Bergen County road opening permits, an Interlocal Agreement between Borough of Alpine, Borough of Cresskill and Applicant, Prepare NJDEP / BCUA Treatment Works Approval applications with signatures from Boroughs of Cresskill and Alpine, and Alpine road opening and tree removal permits. Attorney Hirsch reminded their NJDEP letter **[A-3]** approval of the Northeast Water Quality Management Plan is subject to Alpine’s approval of their stormwater management design. Mr. Hubschman explained as soil movement is not covered under the Municipal Land Use Law, they will need Mayor and Council approval of the Planning Board’s recommendations regarding the soil moving permit application. Another witness will address the NJDEP Flood Hazard Area Permit and Applicability Determination for an open watercourse on adjacent property.

Mr. Hubschman concluded they comply with all the reasonable requests of the Borough Engineer.

Attorney Hirsch asked Mr. Hubschman for comments on Mr. Lydon's September 13, 2019 memorandum to the Board. Mr. Hubschman clarified there are no steep slopes so that ordinance does not apply. This can be added as a note on the plans if requested. No project sign is proposed; only street and stop signs. Attorney Hirsch questioned drainage improvements within the 20-foot access easement. Mr. Hubschman noted a manhole and rip rap in the existing ditch which will not impede through access. The rip rap is outside of the gravel way and the manhole is flush with the ground.

Ms. Parilla invited questions for the Board.

Construction relative to commuter traffic. Attorney Hirsch stated they'll comply with Borough ordinances. Attorney Phillips noted the Board would impose usual conditions relative to soil moving.

Location of split rail fence. Mr. Hubschman clarified the fence complies with the ten foot setback from Closter Dock but is only two feet from the interior road which is the side requiring the waiver.

Five 42 inch pipes flow to one 12-inch pipe. A future witness will address.

Who will testify regarding the force main? Mr. Hubschman provided the plans and will address any questions.

Noting the time Ms. Parilla deferred at this time and opened the meeting to the public for questions from the witness reminding comments will be addressed at another time.

**Michael Cacouris, 22 Allison Road** questioned lowest elevations and how effluent will reach Closter Dock Road. Mr. Hubschman advised from basement floor (424 feet) to Closter Dock Road (442) is about 18 feet. Two three horsepower pumps will alternate to pump effluent through the force main to be detailed at the next hearing. Mr. Cacouris asked if any other properties in Alpine use this type of system. Mr. Hubschman responded no but there are septic systems that use pumps. Ms. Cochi asked if the plan has generators. Mr. Hubschman responded yes, two generators are located near the back wall as backup for the sewer pumps.

**Ted Noback, 57 Schoolhouse Lane** asked if the Applicant would be required to repave Hillside Avenue which was just paved. Attorney Phillips noted the court said the Planning Board can apply the same conditions to this road opening as any other application but they can't go beyond that. Mr. Noback asked if they can restrict visitor parking on DuBois Avenue. Attorney Phillips noted police control parking by ordinance. The Board noted DuBois residents might object to a restriction. Mr. Noback asked why he can't tie into the sewer line. Attorney Phillips advised Alpine's policy is not to have sewers. This property was excepted only due to Mount Laurel litigation. Attorney Hirsch noted NJDEP has conditioned approval on applicant filing a deed restriction precluding anyone else from tying in; this was not the Applicant's request. Mr. Noback questioned impervious coverage. Mr. Hubschman responded proposed impervious coverage is about 50%.

**Andrew Schlesinger, 17 Haring Lane,** asked about drainage control. Question deferred to their next witness.

**John McCaffrey, 203 Hickory Lane, Closter, NJ** owns adjacent property with his brother Robert who is also present. Mr. McCaffrey asked how private access rights to the spring will be maintained if it is located under Unit 5. Mr. Hubschman opined that has been litigated and vacated. Attorney Hirsch advised public rights have clearly been vacated by ordinance. She has no documentation of anyone having any private rights in that spring. Mr. McCaffrey can submit any proof he may have to the Board and they will respond to it. Attorney Phillips noted this question arose in prior hearings. In 1988 Judge Sciuto ruled on a lawsuit filed by several property owners including Duncan Shaw regarding the vacation of Schoolhouse Lane and the public rights to the spring. He ruled Schoolhouse Lane could be vacated but the private rights to Schoolhouse Lane which were given by deed as opposed to a public dedication were to remain and DEP would have to look at the vacation of the spring to determine whether public rights could be vacated. He did not rule on private rights. Attorney Phillips believed the only private rights would be through deeds and that would be up to the individual property owner to assert. The public rights have been vacated. Quoting from the decision<sup>5</sup>:

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<sup>5</sup> Letter from Judge Anthony J. Sciuto, JSC re: Duncan Shaw Associates., Inc. et al v. Borough of Alpine, et al. Docket No. L-39211-86 P.A. Superior Court of New Jersey dated September 22, 1988



*“The court is cognizant of the fact that the original grantor only referred to the spring and its lane spur on a filed map and with deed references, unlike the explicit grant to use School House Lane. The spring and lane spur area that is excepted from the deed of the original grantor to his heirs, successors and assigns will revert in fee to Alpine III, whose property the spring and lane spur is adjacent and contiguous to.*

Attorney Phillips explained in the opinion of Judge Sciuto there are no private rights to the spring or the land that ran from the spring to Schoolhouse Lane but there are private rights in Schoolhouse Lane.

Mr. McCaffrey questioned Mr. Hubschman’s elimination from his plan of the stream bed that came from the spring which he claims produces roughly 14,000 gallons of fresh water per day. He asked if he has that in his calculations and where is the stream bed now going? Mr. Hubschman stated presently there is a clay pipe and a PVC pipe that leads to the gravel ditch. Attorney Hirsch asked Mr. Hubschman to be clear that is not a “stream bed”. Mr. Hubschman attested to same stating there’s only a pipe to the ditch along Schoolhouse Lane. Mr. Hubschman stated the clay pipes are very old and he didn’t put the PVC pipe there. Mr. McCaffrey asked what happened to the fresh watercress beds there. Mr. Hubschman did not know.

Mr. McCaffrey noted Schoolhouse Lane is twenty feet wide open and to remain unobstructed; is that on the plan? Mr. Hubschman stated that will remain.

Mr. McCaffrey asked if there is a current LOI in effect or did that expire April 2019; are they updating or submitting a new one? Attorney Hirsch deferred to a subsequent witness. Mr. Schlesinger asked what a LOI is. Attorney Hirsch responded Freshwater Wetlands Letter of Interpretation.

**Paul Tomasko, owner 87 Church Street,** asked if they considered adapting the functioning graywater field albeit for a lesser number of units before returning to the sanitary sewer line option. Attorney Hirsch responded no. The failure of the septic for five unit option permitted them to revert to seven units with offsite sanitary sewer line. The two years spent exploring the septic option demonstrated good faith and due diligence. Her client was not interested in spending additional years redesigning and testing or reducing the project further.

Mr. Tomasko asked why they are again hearing the same application. Attorney Hirsch responded to address open items such as compliance of the stormwater management design with state rules. Everything else was approved. Attorney Phillips added they also had to address the road alignment. He reminded the Board is about 50% new members who were not present the last time this matter was heard. He’s sure in fairness to the Board they intend to bring witnesses to give an understanding of the other aspects of the application. Attorney Hirsch had not planned to bring the architect back noting they will address what’s regulated by ordinance such as height. She added they’ve been reviewed and received approval from the NJS Historic Preservation office. While they’ll listen to comments regarding design she wanted to be clear the ordinance does not regulate that. They do not want those issues to take up significant hearing time

**Andrew Schlesinger** questioned regulations pertaining to impervious lot coverage. Attorney Phillips advised under the original Mount Laurel agreement there was to be an ordinance amendment adopted by the Borough with a COAH-I zone. This was done but somewhere along the lines the words “lot coverage” replaced “building coverage” in the ordinance. The mistake was brought to their attention and the governing body at the time attempted to correct by adopting a resolution saying we really meant “building coverage.” Unfortunately, under the law you can’t amend an ordinance by resolution. He advised the Board the last time that because of the actions taken by the council the Board was mandated to grant a variance for lot coverage because that was not really what was to govern. Building coverage is what governs and they comply with the intent of the agreement and the ordinances that were to have been adopted.

Attorney Capizzi asked what year the prior approvals that this application seeks to amend were granted. Attorney Hirsch referred him to the court orders 2003, 2005 and 2006 [**Exhibits A-3 & A-4**]. He asked the differences between the prior plan and this one. Attorney Hirsch clarified the plans are substantially the same. Mr. Hubschman noted they changed the alignment of the internal road where it meets Closter Dock. Attorney Phillips noted minor changes proposed subsequent to Judge Harris’s decision have also been reflected in the plans such as the additional fire hydrant. Attorney Capizzi requested copies of the exhibits and was advised to contact the Planning Board Secretary.

**Ted Noback** asked if it is the testimony that the applicant has not installed any PVC piping to connect the spring to Schoolhouse Lane over the last five years. Mr. Hubschman stated it's there but he did not install it.

Attorney Phillips apprised the audience there will be no further notice by mail unless the applicant decides they want to re-notice. The Board will motion to continue this matter to the next available Board meeting asking the applicant to extend the time within which the Board needs to reach a decision to 48 hours after that second meeting. They will also add a provision that should a meeting need to be cancelled because of inclement weather, the extending notice remains in effect. This is so the applicant will not need to re-notice. Attorney Hirsch had no objections. Mr. Schlesinger asked how they find out when the meetings are. They will tell him tonight and it's posted on the bulletin board in the Borough Hall. Session closed to the public.

**Resolution of Continuance:** Upon a motion by Ms. McGuire, seconded by Ms. Gerstein to continue this matter to the next regular meeting scheduled for Thursday, November 26, 2019 with no further notice required.

**Vote: Ayes:** Ms. Cochi, Ms. Gerstein, Mr. Kupferschmid, Ms. Herries, Ms. Mattes, Ms. McGuire, Ms. Sonpal,

**COMMUNICATIONS:** on file

- Borough of Tenafly Notice of Adoption of Historic Preservation Element of Master Plan.
- Notice of Proposed Amendment to Northeast Water Quality Management Plan re: Block 50 Lots 1.01 and 1.02.
- Notice of Application for Soil Erosion and Sediment Control Plan Certification re: Block 55 Lots 20 and 21.

**BILLS AND CLAIMS:** A motion to approve bills was made by Ms. Gerstein, seconded by Ms. McGuire

Azzolina & Feury	Alpine Three 43/6.01,6.02,6.03	Escrow	\$3,904.00
Azzolina & Feury	Alpine Three 43/6.01,6.02,6.03	Escrow	\$ 448.00
Burgis Associates	Alpine Three 43/6.01,6.02,6.03	Escrow	\$ 350.00
Burgis Associates	COAH Planning	Escrow	\$ 37.50
Bisgaier Hoff	COAH Administrative Agent	Escrow	\$ 260.00
Huntington Bailey	COAH Legal	Escrow	\$1,545.00
Huntington Bailey	COAH Legal	Escrow	\$1,557.18
Clarke, Caton Hintz	COAH Court Master	Escrow	\$ 161.53

**Vote: Ayes:** Ms. Cochi, Ms. Gerstein, Mr. Kupferschmid, Ms. Herries, Ms. Mattes, Ms. McGuire, Ms. Sonpal, Mayor Tomasko

Due to the late hour Chairwoman Parilla deferred Committee Reports to the next meeting.

**ADJOURNMENT:** A motion to adjourn the regular Planning Board meeting was made by Ms. Gerstein and seconded by Ms. Mattes. All were in favor. The meeting adjourned at 10:20 PM.

**REOPEN:** Upon a motion by Ms. McGuire seconded by Ms. Gerstein at 10:21 PM and approved by all to re-open for purposes of addressing the proposed tree ordinance amendment.

**REVIEW OF DRAFT TREE ORDINANCE AMENDMENT.**

Attorney Kates advised he circulated a draft with two corrections provided by Mr. Frenzel.

Upon a motion by Mayor Tomasko, seconded by Ms. Gerstein to recommend the Mayor and Council introduce and adopt the draft amendment to the tree ordinance which they find in keeping with the Borough's master plan.

**Vote: Ayes:** Ms. Cochi, Ms. Gerstein, Mr. Kupferschmid, Ms. Herries, Ms. Mattes, Ms. McGuire, Ms. Sonpal, Mayor Tomasko

**ADJOURNMENT:** A motion to adjourn the regular Planning Board meeting was made by Ms. Gerstein and seconded by Ms. Herries. All were in favor. The meeting adjourned at 10:23 PM.

Respectfully submitted,

Marilyn Hayward  
Recording Secretary