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854, LLC; 850 Closter Dock Road, LLC;
842 Closter Dock Road, LLC; and Sylco
Investments #5, LLC

In the Matter of the Application of the Borough of
Alpine, A Municipal Corporation of the State of New
Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-6286-15

CIVIL ACTION

**NOTICE OF MOTION TO RESCIND
A CONDITION OF APPROVAL
CONTAINED WITHIN A
RESOLUTION ADOPTED BY THE
BOROUGH OF ALPINE PLANNING
BOARD ON OCTOBER 28, 2008 AND
TO TERMINATE A DEED
RESTRICTION CONTAINED
WITHIN A DEED RECORDED ON
JULY 28, 2008 OR OTHERWISE
CONFIRM THAT THE LIMITATIONS
IN SAID DEED RESTRICTION DO
NOT AFFECT THE ABILITY TO
DEVELOP THE PROPERTY
FORMALLY KNOWN AND
DESIGNATED AS BLOCK 55, LOT
25.01 ON THE TAX ASSESSMENT
MAPS OF THE BOROUGH OF
ALPINE**

To: Levi Kool, Esq.
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Bern & Associates, LLC
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PLEASE TAKE NOTICE that on Friday, January 26, 2024 at 1:30 p.m., or as soon thereafter as may be heard, Interested Parties F.E. Alpine, Inc., Sylco Investments #4, LLC, Sylco Investments 854, LLC; 850 Closter Dock Road, LLC; 842 Closter Dock Road, LLC; and Sylco Investments #5, LLC shall move before the Hon. Christine A. Farrington, J.S.C., Bergen County Superior Court, 10 Main Street, Hackensack, New Jersey, or should the Court prefer, by way of a remote videoconferencing platform as specified in a legal advertisement published by the Borough of Alpine in the Bergen Record on November 17, 2023 for an Order that (1) rescinds a condition of approval contained within a Resolution adopted by the Borough of Alpine Planning Board on October 28, 2008; and (2) terminates a deed restriction contained within a deed recorded on July 28, 2008 or otherwise confirms that the limitations in said deed restriction do not affect the ability to develop the property formally known and designated as Block 55, Lot 25.01 on the Tax Assessment Maps of the Borough of Alpine in accordance with the Settlement Agreement between the Borough of Alpine and F.E. Alpine, Inc., Sylco Investments #4, LLC,

Sylco Investments 854, LLC; 850 Closter Dock Road, LLC; 842 Closter Dock Road, LLC; and Sylco Investments #5, LLC that is to be considered simultaneously with this motion.

PLEASE TAKE FURTHER NOTICE that Interested Parties shall rely upon the Letter Brief of counsel and the Certification of counsel with exhibits annexed thereto in support of the Motion to Consolidate. A proposed form of Order is enclosed.

PLEASE TAKE FURTHER NOTICE that Interested Parties request oral argument on this motion.

BEATTIE PADOVANO, LLC
Co-counsel for Interested Parties F.E. Alpine, Inc., Sylco Investments #4, LLC, Sylco Investments 854, LLC; 850 Closter Dock Road, LLC; 842 Closter Dock Road, LLC; and Sylco Investments #5, LLC

By: /s/ Antimo A. Del Vecchio
Antimo A. Del Vecchio, Esq.

SCHEPISI & McLAUGHLIN, PA
Co-counsel for Interested Parties F.E. Alpine, Inc., Sylco Investments #4, LLC, Sylco Investments 854, LLC; 850 Closter Dock Road, LLC; 842 Closter Dock Road, LLC; and Sylco Investments #5, LLC

By: /s/ John A. Schepisi
John A. Schepisi, Esq.

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In the Matter of the Application of the Borough of Alpine, A Municipal Corporation of the State of New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-6286-15

CIVIL ACTION

CERTIFICATION OF DANIEL L. STEINHAGEN, ESQ. IN SUPPORT OF NOTICE OF MOTION TO RESCIND A CONDITION OF APPROVAL CONTAINED WITHIN A RESOLUTION ADOPTED BY THE BOROUGH OF ALPINE PLANNING BOARD ON OCTOBER 28, 2008 AND TO TERMINATE A DEED RESTRICTION CONTAINED WITHIN A DEED RECORDED ON JULY 28, 2008 OR OTHERWISE CONFIRM THAT THE LIMITATIONS IN SAID DEED RESTRICTION DO NOT AFFECT THE ABILITY TO DEVELOP THE PROPERTY FORMALLY KNOWN AND DESIGNATED AS BLOCK 55, LOT 25.01 ON THE TAX ASSESSMENT MAPS OF THE BOROUGH OF ALPINE

Daniel L. Steinhagen, Esq., of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and am a member of the firm of Beattie Padovano, LLC, which is co-counsel to Interested Parties F.E. Alpine, Inc., Sylco Investments #4, LLC, Sylco Investments 854, LLC; 850 Closter Dock Road, LLC; 842 Closter Dock Road, LLC; and Sylco Investments #5, LLC in this matter. I am fully familiar with the

facts set forth in this Certification, which I make in support of the motion seeking an Order that (1) rescinds a condition of approval contained within a Resolution adopted by the Borough of Alpine Planning Board on October 28, 2008; and (2) terminates a deed restriction contained within a deed recorded on July 28, 2008 or otherwise confirms that the limitations in said deed restriction do not affect the ability to develop the property formally known and designated as Block 55, Lot 25.01 on the Tax Assessment Maps of the Borough of Alpine in accordance with the Settlement Agreement between the Borough of Alpine and F.E. Alpine, Inc., Sylco Investments #4, LLC, Sylco Investments 854, LLC; 850 Closter Dock Road, LLC; 842 Closter Dock Road, LLC; and Sylco Investments #5, LLC.

2. A true and accurate copy of the minutes of the Borough of Alpine Planning Board meeting held on March 25, 2008 is attached as Exhibit “A”. During discovery in a related matter (BER-L-293-20) conducted during 2020, the Borough of Alpine advised that the recordings for the Planning Board’s meetings held in 2007 and 2008 were destroyed.

3. A copy of a deed recorded at Book 9581, Page 115 in the Bergen County Clerk’s Office concerning Block 55, Lot 25.01 in the Borough of Alpine is attached as Exhibit “B”. This deed was obtained from the Bergen County Clerk’s online deed repository.

4. A true and accurate copy of the minutes of the Borough of Alpine Planning Board meeting held on September 23, 2008 is attached as Exhibit “C”.

5. A true and accurate copy of the Resolution of the Borough of Alpine Planning Board adopted on October 28, 2008 concerning the application of F.E. Alpine, Inc. is attached as Exhibit “D”.

6. A true and accurate copy of a decision of the Superior Court of New Jersey, Law Division in the action captioned *I/M/O the Borough of Englewood Cliffs, slip. op.*, BER-L-6119-15 (Law Div. Feb. 12, 2020) is attached as Exhibit “E”.

7. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Daniel L. Steinhagen
Daniel L. Steinhagen, Esq.

Dated: November 29, 2023

EXHIBIT “A”

ALPINE PLANNING BOARD

Alpine Borough Hall
100 Church Street
Alpine, New Jersey 07620

MINUTES

March 25, 2008

(This meeting was taped in its entirety)

CALL TO ORDER/PUBLIC ANNOUNCEMENT: The Planning Board, Borough of Alpine, convened in regular session on Tuesday, March 25, 2008 at 8:26 P.M. Chairperson 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, March 25, 2008 at 8:00 P.M. has met the requirements of the law by publication in The Valley Star/Press Journal on January 3, 2008 and posted on the bulletin board of the lobby in the Borough Hall with a copy filed in the office of the Borough Clerk.

SWEARING IN OF 2008 APPOINTEE: The board welcomed Jeffrey Fromm, who was sworn in by Attorney Phillips as Alternate Member I.

ROLL CALL:

Members Present:	Chairperson Catherine Parilla	Martin Cybul
	Vice-Chair Catherine McGuire	David Andrews
	Mayor Paul Tomasko	Lorraine Mattes
	Gayle Gerstein	Ralph Mattes
		Jeffrey Fromm, Alt. I
Members Absent:	Alina VandenBerg	
Staff Present:	John Phillips, Board Attorney	
	Gary Vander Veer, Borough Engineer	
	Marilyn Hayward, Recording Secretary	

APPROVAL OF MINUTES OF FEBRUARY 26, 2008 REGULAR MEETING:

Mayor Tomasko commented that on page 5, 4th line from the top, the words "to approve" should be deleted. A motion to approve the minutes of the February 26, 2008 Regular Planning Board meeting, with the above noted correction, was made by Mayor Tomasko, seconded by Martin Cybul and carried by those eligible to vote. David Andrews, Lorraine Mattes and Ralph Mattes did not attend the February meeting and were therefore not eligible to vote.

OPEN TO PUBLIC (NON-AGENDA ITEMS): There were no comments or questions from the public.

APPLICATIONS:

Soil Movement Permit: Patel, Gus; Block 79.03 Lot 8.08; 12 Audrey Urban Ct.: Carried to April 22, 2008 hearing; no further notice required.

Final Subdivision Approval: F.E. Alpine, Inc., Section I, Block 55 Lots 22, 23, 24 & 25, Closter Dock Rd.: Board members Catherine McGuire and David Andrews recused themselves. As adjoining property owners, they were not eligible to participate in this matter.

Attorney David Watkins, who represented the applicant, stated that they are here for final subdivision approval. Mr. Watkins asked Mr. Vander Veer to confirm that all the necessary conditions and criteria have been satisfied. Mr. Vander

Tuesday, March 25, 2008

Alpine Planning Board

Page 2

Veer replied that he had no issues with the map; there are deeds that still need to be filed for the various easements. He believes that all conditions of preliminary approval have been satisfactorily addressed.

The applicant's engineer, Michael Hubschman, was sworn in by Attorney Phillips and accepted as an expert witness. Mr. Hubschman testified that the final plat substantially conforms with all the conditions of the preliminary major subdivision approval.

Chairperson Parilla asked if we have resolved the issue with the wall along Closter Dock Road. Attorney Phillips stated that this issue is unrelated to the matter being heard this evening. Mr. Cybul commented that the issue was that the wall does not conform to the original exhibit of wall elevations, which was presented at the November 14, 2006 planning board hearing and marked as Exhibit A-3. The board had requested a copy of this exhibit from Mr. Hubschman, which he brought with him this evening. The exhibit was placed on an easel and was made part of the board's file. Mr. Hubschman stated that the construction plan submitted to the borough was substantially consistent with this exhibit. Mr. Watkins stated that when the wall is completed it will substantially conform to what was agreed upon. The final grade has not yet been established.

Mayor Tomasko pointed out that Item #3 on page 1 of Engineer Vander Veer's January 29, 2008 review letter stated that the end pier will be eight feet high.

Sal Lombardo, the Construction Manager of the project, was sworn in by Attorney Phillips. In response to Mr. Cybul's inquiry, Mr. Lombardo testified that the slate samples in front of the wall will not remain there, and that lighting will be installed on the columns, only to illuminate the main entrance.

Ms. Gerstein commented that the wall illustration looks different from what was built. Mr. Lombardo responded that the drawing is one dimensional and not drawn in perspective. Mr. Vander Veer stated that his concern when reviewing the plan revisions was that the wall did not exceed the height limitations. The configuration in the field is slightly shifted, but although it is not identical to the drawing, the heights of the piers and the wall are in accordance with what was approved.

Chairperson Parilla opened the hearing to the public for questions or comments. David Andrews of Closter Dock Road asked if the deeds now specify that further subdivision is prohibited, which was not contained in the original deeds. Mr. Watkins and Mr. Phillips affirmed that it has been added.

Mr. Vander Veer asked if a reference to the homeowners association is in the deeds. Mr. Phillips acknowledged that it is.

Chairperson Parilla asked for a motion. A motion to approve the final subdivision conditioned upon continued compliance with Exhibit A-3 was made by Martin Cybul, seconded by Gayle Gerstein and carried by those eligible to vote.

Mayor Tomasko asked Attorney Phillips who is authorized to sign the deeds as board secretary. Mr. Phillips advised that since Alina VandenBerg is the board's official secretary, she would be the authorized signer.

Soil Movement Permit: McCormack, Dennis; Block 49 Lot 2.01; Hillside Ave.

Attorney Phillips advised that a letter distributed to board members from an adjoining property owner, who is not in attendance this evening, cannot be considered in connection with this application since the writer cannot be cross-examined.

Adjoining property owners Ralph Mattes and Lorraine Mattes were not eligible to participate in this matter and recused themselves.

The applicant's engineer, Michael Hubschman, was sworn in by Attorney Phillips and accepted as an expert witness. The applicants, Dennis and Dolores McCormack, were also in attendance. Mr. Hubschman stated that the applicants are here this evening to request a revised soil moving permit. Revision #10 Site Plan was presented and marked as Exhibit A-1. The Plan was prepared 10/20/99 and Revision #10 was dated 12/29/04. A soil moving permit for this site was originally issued in 2003. At that time construction began with a contractor who made a lot of errors and was released. A second

contractor was hired and released about 2½ to 3 years later. Subsequently, Chris Lombardo was hired to complete the project. For the past year, a series of correcting mistakes and revisions to the plan have been done. They have hired a landscape architect, and are proposing to raise the grade in front so that there are fewer stairs going up to the front of the house. Additionally, they are proposing to widen the driveway in front to create a larger parking area.

Mr. Hubschman referred to a rendered copy of a new site plan dated March 12, 2008, Revision #16, which was marked as Exhibit A-2. Originally the wall in front was installed in the right of way and filled behind it. That wall has been relocated to the proper location and the fill has been moved and placed on the site. Additionally, there is a wall on the east side of the property which is four feet off the property line. That wall is shown to be removed and relocated to six feet from the property line on the plan. However, the McCormack's would like to keep it in its present location and lower it to three feet in height in order to avoid moving drainage in that area, which was also installed incorrectly.

Chairperson Parilla asked Mr. Vander Veer for his comments. Mr. Vander Veer stated that the technical issues raised in his March 19th letter have been addressed. The design for the front wall has been submitted to his structural engineer. The design is acceptable, but since the wall has already been constructed, certification that the wall is constructed in accordance with the approved design and is stable is required from the applicant's engineer. Mr. Vander Veer's office requested that a guardrail be installed along the edge of the driveway closest to Hillside Avenue. Mr. Hubschman agreed to comply with this request.

Mayor Tomasko asked Mr. Vander Veer about Item (d) on page 1 of his March 19th review letter, which refers to expansion and elevation of the septic fields. Mayor Tomasko stated that he spoke with Health Officer Bill Galdi, who stated that the fields were elevated but not expanded. Mr. Vander Veer replied that he had been under the assumption that there was a slight expansion as well as an elevation, but stands corrected. Mr. Andrews asked the reason for the elevation. Mr. Vander Veer speculated that it may have been a water table issue. Mr. Hubschman stated that originally, the contractor placed too much fill on the field. They had to scrape everything off, redo the pipes and put the stone back in.

Chris Lombardo of Rock Ridge Construction was sworn in by Attorney Phillips. Mr. Lombardo testified that the quality of the soil put on top of the tank by the original contractor was not adequate. When the tanks were relocated they had to readjust the piping and install new tanks to conform to the current situation.

Martin Cybul asked about the existing wall closest to the east, which is shown to be removed and relocated, and asked if that is what they are requesting. Mr. Hubschman responded that they are requesting an amendment to the application, to allow the wall to remain in its present location and lower it to three feet.

Mr. Cybul asked about the comment made about the front wall being in the right of way, and asked if that wall is shown on the plan. Mr. Hubschman replied that it was an old wall which was removed, and the wall on the plan is in conformance.

Mr. Cybul noted that there appears to be a portion of the building that projects into the front yard setback. Mr. Hubschman replied that it is a chimney. Mr. Cybul asked what our ordinance states about chimneys projecting into a front-yard setback. Mr. Vander Veer commented that he believes they are allowed to project no more than two feet. Mr. Cybul asked how far this chimney projects. Mr. Hubschman did not know.

Mr. Cybul stated that he had significant concern about drainage coming off the west side of the property, and questioned whether the swale design is sufficient to direct the water away from the property at Block 49 Lot 2. Mr. Hubschman stated that this was mentioned in Mr. Vander Veer's letters, and they will be constructing a swale which will direct the water to the front on that side.

Mr. Cybul asked if the updated drawing shows all trees and trees to be removed. Mr. Hubschman replied that it shows all trees remaining on site. He wasn't sure if it showed trees to be removed.

Mayor Tomasko stated that he visited the site a few hours ago and noted that the plan shows a ten foot tree buffer on the west side of the property, and asked if trees are going to be planted in that area. Mr. Hubschman stated that they are

Tuesday, March 25, 2008

Alpine Planning Board

Page 4

working with the landscape architect, and the site will be extensively landscaped and will comply with the board's and/or Mr. Vander Veer's recommendations.

Mayor Tomasko asked where the soil will be filled more than five feet above the original grading. Mr. Hubschman replied that it is in the front section. Mr. Vander Veer added that it is mostly in the front where the new parking area is to be installed. Most of the fill has already been installed.

Mr. Andrews commented that the six-foot retaining wall law and the ten-foot tree buffer law conflict with each other, and further commented that four feet is a minimal amount of space for a tree buffer. Six feet is the law and would allow more room for a proper tree buffer.

Ms. McGuire commented that the original contractor removed trees from the adjoining property at Block 49 Lot 25 when removing trees on the applicant's property, and hopes that the McCormack's will replant in that area to give the neighbor a screen.

The applicant, Dennis McCormack, was sworn in by Attorney Phillips. Mr. McCormack stated that it is his intention to be a good neighbor. He appreciates the neighbor's desire for privacy and he wants to make it private for the neighbors and for himself. They hope to have a landscape plan shortly, which will provide coverage on both sides. If trees have been taken down, they will be replaced. They will do what is necessary to avoid runoff to the west, and will conform to what Mr. Vander Veer says is necessary.

Mr. Phillips asked where the seepage pit to the southwest of the house drains. Mr. Hubschman said that is for the footing drains and there is no overflow for that. He also noted that the lines from the four seepage pits at the southwest corner of the property run to the trench drains in the driveway area, and asked if there is an outlet there. Mr. Hubschman replied that they will put an overflow in the front.

Mr. Phillips asked if the footprint is the same from A-1 to A-2. Mr. Hubschman stated that the footprint has not changed.

With regard to setback, Mr. Phillips read from the ordinance that "other architectural features" can project no more than two feet.

Chairperson Parilla opened the hearing to the public. Lorraine Mattes of Hillside Ave. was sworn in by Attorney Phillips. Ms. Mattes commented that the wall constructed on the easterly side of the property is five feet high at one point, not four feet, and is four feet from her property line. She would like to see that wall moved to six feet from the property line, with proper fill and a screening of trees installed. If it is lowered to three feet as proposed, there will be a slope from her property to theirs, which will create additional drainage problems.

Ralph Mattes of Hillside Ave. was sworn in by Attorney Phillips, and stated that he wished to underscore his wife's comments. He added that this construction has been ongoing for eight years now, with sixteen revisions. The septic issue goes back to August of last year, when the building inspector discovered that there were more rooms than originally proposed. The health officer issued a stop work order. The applicant appeared before the Board of Adjustment to appeal the stop work order, which was denied. He then brought a civil action against the borough which was settled with an agreement that the additional rooms would not be utilized as bedrooms or bathrooms. He asked the board to see that our ordinance in terms of location of the retaining wall is complied with.

Lorraine Mattes added that the trees on site should be identified properly. There are fewer trees on site than shown on the site plan.

Mr. Hubschman stated that they will relocate the wall, and will prepare a landscape plan and send to Mr. Vander Veer's office for approval.

A motion was made by Catherine McGuire and seconded by Mayor Tomasko to approve the application with the following conditions:

1. Provide a landscape plan for the entire site.
2. Verify that drainage will bring all flow to the front.
3. Add outlet structures to seepage pits.
4. Equalize the grades at adjoining property owner to the east to eliminate drainage impact.
5. Verify that the front chimney does not exceed the setback requirement.
6. Comply with all other conditions of Mr. Vander Veer's March 19th letter.

The motion was carried by all members eligible to vote.

RESOLUTIONS:

Soil Movement Permit: Lee, Hyang Ja & Thomas; Block 81.06 Lot 24; 4 Schaffer Road: A motion to accept the resolution was made by Gayle Gerstein, seconded by Mayor Tomasko and carried by those eligible to vote.

COMMUNICATIONS:

Notice of Certification of Soil Erosion & Sediment Control Plan: Lee; Block 81.06 Lot 24; 4 Shaffer Road: Duly noted; no comments.

Copy of A&F notice re: Closter Dock Road culvert replacement: Duly noted; no comments.

Copy of A&F letter to Hubschman Engineering re: FE Alpine, Inc., Section I – deed revision: Duly noted; no comments.

BILLS:

Burgis Assoc., Inc.	\$839.40	Summary of COAH 3 rd Round Revisions
Bergen Newspaper Group	\$ 24.82	Legal Advertising
Sills Cummis	\$161.35	F.E. Alpine, Inc. (escrow)
Sills Cummis	\$240.00	Patel Soil Movement (escrow)
Sills Cummis	\$280.00	Lee Soil Movement (escrow)
Sills Cummis	\$521.80	F.E. Alpine, Inc. (escrow)
Sills Cummis	\$200.00	Appearances - Feb.

A motion to approve the above referenced bills was made by Catherine McGuire, seconded by David Andrews and carried unanimously.

COMMITTEE REPORTS:

Northern Valley Mayors & Planners Assoc.: The Mayor reported that a meeting will be held on March 27th at 6:30 PM. at Madeleine's Petit Paris. The guest speaker will be William Dressel, Executive Director of the NJ State League of Municipalities, who will discuss and hear comments on State budget cuts, COAH issues, etc. The Mayor will attend, and extended the invitation to the board.

Board of Health: No meeting.

Environmental Commission: There was only one tree inspection over the past month.

Building Department: The report was distributed. There were no comments.

NJ Transit Update: Ms. McGuire reported that there was no meeting, but there was a recent newspaper article regarding the diesel vs. electric issue.

COAH Update: The Mayor announced that the public comment period on the revised Third Round Rules ended on Friday, March 21st. This borough, the Bergen County Chapter of the League of Municipalities as well as the entire League, submitted written objections and concerns to COAH. He distributed a copy of his comments, written at the request of the Bergen County Chapter of the League, along with a copy of a letter from the State League, summarizing the response they sent to COAH.

Tuesday, March 25, 2008

Alpine Planning Board

Page 6

ADJOURNMENT:

A motion to adjourn the regular Planning Board meeting was made by Mayor Tomasko and seconded by Gayle Gerstein. All were in favor. The meeting adjourned at 9:21PM.

Respectfully submitted,

Marilyn Hayward
Recording Secretary

RESOLUTION

**ALPINE PLANNING BOARD
IN THE MATTER OF THE APPLICATION OF HYANG JA LEE AND THOMAS LEE
FOR SOIL MOVEMENT PERMIT
BLOCK 81.06, LOT 24
4 SCHAFFER ROAD**

BE IT RESOLVED, by the Planning Board of the Borough of Alpine that the following Procedural History, Findings of Fact and Conclusions of Law are hereby adopted in reference to this matter.

PROCEDURAL HISTORY

An application was made before the Alpine Planning Board by Hyang Ja Lee and Thomas Lee ("Applicants") as owners of the referenced property for a soil movement permit for a volume in excess of 1,000 cubic yards. No variances or waivers were required or requested. The property is located on Schaffer Road and is proposed to be redeveloped with a new two story single family dwelling, in ground pool, tennis court and other ancillary improvements. The proposed septic location has been approved by the Board of Health but it has not yet been installed.

The application was deemed to be substantially complete by the Borough Engineer and was referred to the Planning Board for placement on its agenda. The hearing was held on February 26, 2008.

Proof of compliance with the notice requirements of the Borough soil movement ordinance was provided to the satisfaction of the Board Secretary.

The application was heard by the Planning Board on February 26, 2008. The Applicants were represented by Richard Hubschman, Esq.. Michael Hubschman, P.E. testified in support of the application.

FINDINGS OF FACT

1. The Board considered the following materials:

A Site Plan prepared by Hubschman Engineering P.A. for 4 Schaffer Road, Tax Map Block 81.06, Lot 24 dated 1/25/08, revised to 2/12/08, consisting of three sheets.

Application forms (incorrectly referencing Block 81 Lot 24).

Drainage Report prepared by Hubschman Engineering P.A. dated February 13, 2008.

Soil Moving Calculations prepared by Hubschman Engineering, P.A. dated February 1, 2008.

Keystone Retaining Wall Design prepared by Hubschman Engineering, P.A. dated February 13, 2008.

Quadrangle and Soils maps.

Reports prepared by Gary Vander Veer, P.E. dated February 11 and 25, 2008.

2. The application was for the movement of 4,904 cubic yards of soil including septic work, No waivers were requested or required.
3. Michael Hubschman, P.E. was accepted by the Board as an expert in the field of site engineering. Referring to Exhibit A-1, a rendered copy of sheet 1 of 3 of the plans, he described the proposed project. A new two story single family home is to be constructed to replace the existing dwelling which will be removed. The existing septic systems will be abandoned and two new fields will be installed. The field shown to the right on the plans will be moved closer to the house at the direction of the Board of Health but this will not change the amount of soil to be moved. The applicant proposes to construct an in-ground pool and tennis court in the rear of the property.
4. Mr. Hubschman testified that the plan complied with all bulk requirements of the zoning ordinance and no waivers were required for any of the soil movement. He indicated that trees in the buffers would not be disturbed. Storm water filters will be added to the plans to the satisfaction of the Board engineer to comply with storm water requirements.
5. The Board requested that the Applicants consider saving more trees on the site and perhaps eliminate the proposed tennis court from the plans. The Applicants indicated they would consider the Board's request.

The Board concluded that the application as set forth on the submitted plans could be granted in accordance with the ordinance requirements and subject to the conditions set forth below.

CONCLUSIONS

Upon hearing the testimony produced on behalf of the Applicants and studying the exhibits and other materials submitted, the Planning Board unanimously voted to approve the soil movement permit application subject to Mayor and Council approval, and also subject to the following:

- A. Compliance with the list of Required Revisions/Supplements set forth in the engineering report of Gary Vander Veer, P.E. February 25, 2008, a copy of which is annexed hereto and incorporated by reference.
- B. The plans shall be revised to the satisfaction of the Board's engineer in the following respects:
 1. Revise reference in Note 5 on sheet 1 to refer to sheet 2 as containing the tree removal plan.
 2. Add a trench drain across the driveway to collect driveway runoff.

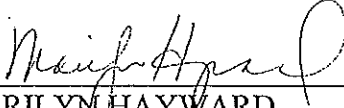
- 3. Extend the proposed drain by the tennis court around the corner of the court toward the rear of the property to catch additional runoff.
- 4. Add the calculated height of the house to page 1.
- 5. Add a note that the dead tree in the rear buffer is to be removed.
- C. The Applicants shall consider the preservation of additional trees in the rear of the property as well as areas in the front of the property where the septic has been moved.
- D. The Applicants shall submit wall stability calculations to the satisfaction of the Board engineer.
- E. The Applicants shall submit plans for adequate water quality and recharge to the satisfaction of the Board engineer.
- F. Applicants shall submit acceptable proof of liability insurance coverage held for the benefit of the Borough as an additional named insured in the minimum amount of one million dollars, single limit.
- G. This Board approval incorporates the Site Plan prepared by Hubschman Engineering, P.A. for Tax Map Block 81.06, Lot 24 dated 1/25/08, revised to 2/12/08, consisting of three sheets. Any deviations from the elevations or contours indicated thereon shall be referred by the Applicants to the Borough Engineer, who may approve such modification or refer the Applicants back to the Planning Board for review.
- H. In the event that the Borough Engineer determines that any deviations from the approved plan are major, the Engineer shall notify the Applicants that the approval is void and the Applicants must return to the Planning Board for additional review.
- I. Applicants shall secure an appropriate tree removal permit.

The Board has resolved that a copy of this Resolution shall be provided to the Applicants, the Construction Code Official of the Borough of Alpine, the Secretary of the Planning Board, and the Borough Clerk.

This Resolution constitutes a Resolution of Memorialization of the action taken by the Planning Board of the Borough of Alpine on February 26, 2008 and adopted on March 25, 2008.



 CATHERINE PARILLA
 CHAIR,
 ALPINE PLANNING BOARD



 MARILYN HAYWARD
 RECORDING SECRETARY,
 ALPINE PLANNING BOARD

Dated 3/27/08



AZZOLINA & FEURY ENGINEERING, INC.

Professional Engineers and Land Surveyors

30 Madison Avenue, Paramus, NJ 07652 • (201) 845-8500 • Fax (201) 845-3825
110 Stage Road, Monroe, NY 10950 • (845) 782-8681 • Fax (845) 782-4212

February 25, 2008

Planning Board
Borough of Alpine
Municipal Building
100 Church Street
Alpine, New Jersey 07620

Attention: Mrs. Marilyn Hayward
Secretary to the Board

Re: Lee
Block 81.06 Lot 24
4 Schaffer Road
Our File No. ALP-818

Dear Members of the Board:

Our office is in receipt of several documents (see Appendix A, attached) regarding the above referenced soil moving permit application. Pursuant to your request we have reviewed these documents and offer the following comments:

I. Submission Status

1. Our office had previously found the soil moving permit application to be complete. The application is listed on the agenda for a public hearing at the next meeting of the Alpine Planning Board.
2. There are a few technical issues which will need to be addressed prior to the issuance of any permits. These matters are detailed herein
3. The application has been referred to the Alpine Planning Board for consideration of the soil moving application; soil moving in excess of 1,000 cubic yards.

II. General / Soil Moving

1. The applicant proposes to redevelop the subject property with the construction of a two story single family residence, in-ground pool, tennis court and other ancillary improvements. All existing improvements are proposed to be removed.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-818
Page 2

February 25, 2008

2. There are no apparent variances associated with the proposed redevelopment plan. An application for Zoning Permit has been submitted to the Borough's Zoning Officer.
3. The applicant proposes to install certain stormwater management improvements to offset the increase in stormwater runoff associated with the redevelopment plan. The plan has been revised to amend the proposed increase in impervious area at the site. Since this project is classified as a "major development" the drainage report shall be revised to verify compliance with the stormwater runoff quality controls and groundwater recharge requirements. The stormwater runoff quantity controls are acceptable.
4. The applicant proposes to install new septic systems for the proposal. At this time, the septic systems have not been installed. Each of the proposed septic fields will require removal of a portion of the existing driveway. Since the Planning Board's policy requires the installation of septic systems prior to considering any soil moving applications, the applicant should obtain consent from the Alpine Health Department, indicating that the septic system design is conceptually acceptable.
5. The reported soil moving activity is as follows:

- volume of cut	3,200 cubic yards
- volume of fill	2,172 cubic yards
- volume to be imported	1,704 cubic yards
- volume to be exported	2,732 cubic yards
- total volume of soil to be moved	4,904 cubic yards
6. The above noted soil moving volumes include the volumes of excavation and importation associated with the installation of the septic system disposal fields.
7. The application does not require any waivers of the soil moving ordinance.
8. Numerous trees will need to be removed to perform the proposed redevelopment of the site. The applicant will need approval from the Alpine Environmental Commission to remove the trees. A tree removal permit application has been submitted to the Borough.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-818
Page 3

February 25, 2008

9. The retaining wall design calculations have been submitted. The design is under review.

III. Recommendations

1. This application is on the agenda for the next meeting of the Board. A public hearing can be scheduled, subject to satisfactorily addressing any public notice requirements and submission of adequate copies of the application documents for distribution.
2. At the public hearing, the applicant should be prepared to present testimony regarding the detailed scope of work proposed for the redevelopment plan.
3. At the conclusion of the public hearing, the Board should consider the applicant's request for soil moving in excess of 1,000 cubic yards.
4. If approved, the resolution of recommendations to the Governing Body should include the following conditions on the applicant:
 - a.) Satisfactorily addressing any special items deemed necessary by the Board.
 - b.) Satisfactorily addressing any recommendations offered by the Alpine Environmental Commission.
 - c.) Satisfactorily addressing any requirements of the Alpine Health Officer. Should the finished grades of the septic system deviate more than twelve inches from the design, the applicant shall be required to return to the Board for an amended approval.
 - d.) Satisfactorily addressing those technical issues raised in this report, above.
 - e.) Provide the Borough with proof of liability insurance, a performance guaranty and a revegetation guaranty in the amounts determined by our office.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-818
Page 4

February 25, 2008

- f.) Obtain plan approval from the Bergen County Soil Conservation District prior to the issuance of a building demolition permit.
5. No permits should be issued until such time that all conditions of approval have been satisfactorily addressed by the applicant.

If we can be of any further assistance regarding this matter, do not hesitate to contact us.

Very truly yours,

AZZOLINA & FEURY ENGINEERING



Gary Vander Veer, P.E.

GVV

cc: Mr. Alden Blackwell, Construction Official
Mr. John C. Phillips, Esq., Board Attorney
Alpine Health Officer
Alpine Environmental Commission
Hubschman Engineering, P.A.
Hyang Ja Lee and Thomas Lee

ALP-818
02-25-08

LEE
BLOCK 81.06 LOT 24
4 SCHAFFER ROAD

APPENDIX A

- A set of plans (three sheets) entitled "Site Plan/ Septic Plan, Lot 24 Block 81.06, Proposed Single Family Dwelling, #4 Schaffer Road, Borough of Alpine, Bergen County, New Jersey", prepared by Hubschman Engineering, P.A., dated January 25, 2008 and revised on February 12, 2008.
- A document entitled "Drainage Report", prepared by Hubschman Engineering and dated February 13, 2008.
- A document entitled "Soil Moving Calculations", prepared by Hubschman Engineering and dated February 1, 2008.
- A Borough of Alpine Application for Soil Moving Permit for Hyang Ja Lee & Thomas Lee, dated February 5, 2008, signed and notarized.
- A document entitled "4' Keystone Retaining Wall", prepared by Hubschman Engineering and dated February 13, 2008.
- A document entitled "Standard Forms for Submission of Soils/Engineering Data", prepared by Hubschman Engineering and dated February 5, 2008.

EXHIBIT “B”

This is not a legal document

26
7P
chg 271

prepared by
[Signature]
DAVID M. WATKINS, ESQ.

#21

DEED

This Deed is made on June 4, 2008

71179.02 Deed - Export
Kathleen A. Donovan Recording Fee 100.00
Bergen County Clerk Charge 271
Recorded 07/28/2008 15:25 WATKINS, DAVID M

BETWEEN

Sylco Investments #3, LLC, Sylco Investments, LLC c/o Kamson Corporation

whose post office address is 270 Sylvan Avenue, Englewood Cliffs, New Jersey
referred to as the Grantor,

AND

F.E. Alpine, Inc a New Jersey Corporation

whose post office address is 270 Sylvan Avenue, Englewood Cliffs, New Jersey
referred to as the Grantee.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

1. Transfer of Ownership. The Grantor grants and conveys (transfers ownership of) the property (called the "Property") described below to the Grantee. This transfer is made for the sum of Less than \$100.00

The Grantor acknowledges receipt of this money.

2. Tax Map Reference. (NJSA 46:15-4.1) Borough of Alpine Block No.55 Lot No. 25.010 Account No.

3. Property. The Property consists of the land and all the buildings and structures on the land in the Borough of Alpine, County of Bergen and State of New Jersey. The legal description is:

X Please see attached Legal Description annexed hereto and made a part hereof (Check box if applicable).

The street address of the property : Closter Dock Road, Alpine, New Jersey

BR 095816115



HUBSCHMAN ENGINEERING

ENGINEERS
SURVEYORS
PLANNERS

263A SOUTH WASHINGTON AVE., BERGENFIELD, NJ 07621 • (201) 384-6666 • FAX (201) 384-7968

**DEED DESCRIPTION
LOT 25.01, BLOCK 55
BOROUGH OF ALPINE
BERGEN COUNTY, NEW JERSEY**

Beginning at a point on the dividing line between Lots 22.01 and 25.01, Block 55, where same intersects the southwesterly sideline of Closter Dock Road (width varies), said point being distant 2,183.31 feet in a northwesterly direction along said sideline, from the intersection of the westerly sideline of Church Street (45.00 foot right-of-way), with said southwesterly sideline of Closter Dock Road and running thence:

1. South 47 Degrees 14 Minutes 20 Seconds West, 121.85 feet, along said dividing line between Lots 22.01 and 25.01, Block 55, to a point of non tangent curvature, thence;
2. Along a curve to the left, having a radius of 45.00 feet, an arc length of 80.10 feet, a delta angle of 101 Degrees 58 Minutes 49 Seconds, a chord bearing South 41 degrees 58 Minutes 41 Seconds West, a chord distance of 69.93 feet, along said dividing line between Lots 22.01 and 25.01, Block 55, to a point of non tangency, thence;
3. South 47 Degrees 14 Minutes 20 Seconds West, 215.74 feet, still along said dividing line between Lots 22.01 and 25.01, Block 55, to a point on the northeasterly line of Lot 24.01, Block 55, thence;
4. North 42 Degrees 45 Minutes 40 Seconds West, 180.42 feet, along said northeasterly line of Lot 24.01, Block 55 to a point on the northwesterly line of Lot 24.01, Block 55, thence;
5. South 47 Degrees 14 Minutes 20 Seconds West 518.84 feet, along said northwesterly line of Lot 24.01, Block 55, to a point on the northeasterly line of Lot 1.05, Block 120, in the Borough of Demarest said point being on the Municipal Boundary Line between the Borough of Demarest and the Borough of Alpine, thence;
6. North 43 Degrees 35 Minutes 00 Seconds West, 412.97 feet, along said northeasterly line of Lot 1.05, Block 120 in the Borough of Demarest and said Municipal Boundary Line to a concrete Monument on a southeasterly line of Lot 1.07, Block 119, in the Borough of Demarest, thence;

Page 1 of 3

RR09581PG11b

DEED DESCRIPTION
LOT 25.01, BLOCK 55
BOROUGH OF ALPINE
BERGEN COUNTY, NEW JERSEY

- 7. North 34 Degrees 22 Minutes 10 Seconds East, 377.69 feet, along said southeasterly line of Lot 1.07, Block 119, and said Municipal Boundary Line, to a point on a southeasterly line of Lot 26, Block 55, in the Borough of Alpine, thence;
- 8. North 31 Degrees 42 Minutes 20 Seconds East, 304.85 feet, along a southeasterly line of Lot 26, Block 55, to an angle point, thence;
- 9. North 41 Degrees 13 Minutes 00 Seconds East 273.04 feet, still along a southeasterly line of Lot 26, Block 55, to a point on the southwesterly sideline of Closter Dock Road, thence;
- 10. South 42 Degrees 38 Minutes 00 Seconds East, 758.16 feet, along said southwesterly sideline of Closter Dock Road, to an angle point, thence;
- 11. South 43 Degrees 19 Minutes 10 Seconds East, 23.19 feet, still along said southwesterly sideline of Closter Dock Road, to the point and place of beginning.

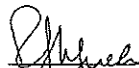
Containing 556,548.35 Square Feet / 12.777 Acres

The above described property is subject to: an Access and Utility Easement, a Driveway Easement, a Drainage Easement, a Bergen County Road Widening Easement, Wetlands Transition Area Limit Line in accordance with Freshwater Wetlands/Waters Boundary Line as verified by NJDEP L.O.I. File No. 0200-06-0003.1 F.W.W. 060001, dated March 8, 2007, a Special Water Resource Protection Area Line, and Municipal Setback Restrictions.

1/1/08

DEED DESCRIPTION
LOT 25.01, BLOCK 55
BOROUGH OF ALPINE
BERGEN COUNTY, NEW JERSEY

Being further described on a certain map entitled "Final Plat, lots 22, 23, 24 and 25, Block 55, Frick Estates - Section I, Borough of Alpine, Bergen County, New Jersey" prepared by Hubschman Engineering, P.A., and about to be filed in the Bergen County Clerk's Office.


Robert J. Mueller, PLS
October 1, 2007

Page 3 of 3

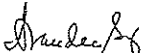
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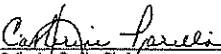
4. Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the Property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). (This promise means that the Grantor has not allowed a judgement to be entered against the Grantor).


5. Signatures. This Deed is signed and attested to by the Grantor's proper officers as of the date at the top of the first page. Its limited liability company (LLC) seal is affixed.

6. Deed Restriction. This conveyance is made subject to the restriction that the current owner or any future owner of the subject property may not subdivide the property into additional lots at any time in the present or in the future. This deed is also subject to all access and utility easements, drainage easements, and conservation easements which affect the subject property. This conveyance is also subject to the terms and conditions of a Homeowners Association Agreement to be recorded subsequent to the recording of the within deed.


This deed is in accordance with Final Major Subdivision Approval granted by the Planning Board of the Borough of Alpine on 03/25/08, memorialized by Resolution adopted 05/20/08, Application Number _____.


Alina Vanden Borg, Secretary


Catherine Parla, Chair


Syleo Investments #3, LLC, Syleo Investments, LLC c/o Kamson Corporation by: Richard Kurtz, Managing Owner

STATE OF NEW JERSEY, COUNTY OF BERGEN SS:
I CERTIFY that on July 4 08 Syleo Investments #3, LLC, Syleo Investments, LLC c/o Kamson Corporation personally came before me and stated to my satisfaction that this person (or if more than one, each person): by Richard Kurtz, Managing Owner h.c.
(a) was the maker of the attached Deed;
(b) made this Deed for \$ less than \$100 as the full and actual consideration paid or to be paid for the transfer of title.


DAVID M. WATKINS, ATTORNEY AT LAW
OF NEW JERSEY

RECORD AND RETURN TO:
David M. Watkins, Esq
POB 304
Closter, NJ

BR09581PG119

EXHIBIT “C”

ALPINE PLANNING BOARD

Alpine Borough Hall
100 Church Street
Alpine, New Jersey 07620

MINUTES

September 23, 2008

(This meeting was taped in its entirety)

CALL TO ORDER/PUBLIC ANNOUNCEMENT: The Planning Board, Borough of Alpine, convened in regular session on Tuesday, September 23, 2008 at 8:00 P.M. Chairperson 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, September 23, 2008 at 8:00 P.M. has met the requirements of the law by publication in The Valley Star/Press Journal on January 3, 2008 and posted on the bulletin board of the lobby in the Borough Hall with a copy filed in the office of the Borough Clerk.

ROLL CALL:

Members Present:	Chairperson Catherine Parilla	David Andrews
	Vice-Chair Catherine McGuire	Alina Vandenberg
	Mayor Paul Tomasko	Jeffrey Fromm, Alt. I (arrived after roll call)
	Martin Cybul	

Members Absent:	Gayle Gerstein
	Ralph Mattes
	Lorraine Mattes

Staff Present:	John Phillips, Board Attorney
	Gary Vander Veer, Borough Engineer
	Marilyn Hayward, Recording Secretary

APPROVAL OF MINUTES OF JULY 22, 2008 REGULAR MEETING:

A motion to approve the minutes of the July 22, 2008 regular Planning Board meeting was made by Mayor Tomasko, seconded by Catherine McGuire, and carried by those eligible to vote. Catherine Parilla did not attend the July meeting and was therefore not eligible to vote.

OPEN TO PUBLIC (NON-AGENDA ITEMS): There were no comments or questions from the public.

CHANGE IN AGENDA: The F.E. Alpine Amended Major Subdivision application was postponed until later in the agenda due to lack of a voting quorum present.

COMMUNICATIONS:

- A&F Review letter dated 9/15/08 re: Roura Subdivision; Block 78 Lots 1 & 2.
- Copy of BC Dept. of Planning letter re: Roura Subdivision; Block 78 Lots 1 & 2.
- Notice of DEP Application re: F.E. Alpine – Section II; Block 120 Lots 1.03, 1.04 & 1.05; Demarest, NJ.
- Copies of BC Dept. of Planning comments dated 8/11 & 8/22 re: Frick Estates Section I; Block 55 Lots 22-25.
- Copy of BC Dept. of Planning letter re: Alpine Three, LLC; Block 43 Lots 6.01, 6.02 & 6.03.

Tuesday, September 23, 2008

Alpine Planning Board

Page 2

- Notice of Certification of Soil Erosion & Sediment Control Plan:

- 1) Alpine Scout Camp – Landfill Closure; Block 3 Lot 120; 441 Rt. 9W.
- 2) Chemtek Construction; Block 79.03 Lots 8.07 & 8.08; 12 & 16 Audrey Urban Ct.
- 3) Drut, Dr. Oleg; Block 79.01 Lot 3; 11 Cassandra Dr.

Duly noted; no comments.

RESOLUTIONS:

Major Subdivision w/variances: Roura; Block 78 Lots 1 & 2; Anderson Ave.: A motion to accept the resolution was made by Catherine McGuire, seconded by Martin Cybul and carried by all members eligible to vote.

BILLS:

Sills Cummis	\$360.00	Roura resolution thru 8/31 (escrow)
Sills Cummis	\$360.00	Roura subdivision thru 7/31 (escrow)
Sills Cummis	\$200.00	F.E. Alpine Final Major Subdivision (escrow)
Burgis Assoc., Inc.	\$ 75.43	Master Plan costs – reprographics

A motion to approve the above referenced bills was made by Catherine McGuire, seconded by Martin Cybul and carried unanimously.

COMMITTEE REPORTS:

Report of Zoning Board of Adjustment – 2007 Applications and Recommendations for ZO Amendments: Mayor Tomasko commented that Items 2, 3 & 4 should be addressed by the Planning Board. These items will be placed on the next meeting agenda.

Northern Valley Mayors & Planners Assoc.: The Mayor reported that the next meeting will be held on Thursday, September 25th at 6:30 PM at the Colonial Inn. Representatives of Hackensack University Medical Center will be in attendance to discuss the re-opening of the Pascack Valley Hospital facility. The Mayor attended a meeting earlier this evening of the Bergen County Chapter of the League of Municipalities, details of which will be discussed later in the agenda.

Board of Health: No report.

Environmental Commission: No meeting.

Building Department: The reports were distributed. There were no comments.

NJ Transit Update: Mayor Tomasko attended a meeting last evening in Dumont. The matter pending is the draft environmental impact study, which is expected late this year or early next year. The question is whether or not the northern line will be built, and whether to do so with diesel or light rail.

COAH Update: The Mayor reported that he received an update from the League of Municipalities dated September 17th regarding the lawsuit appealing the regulations adopted by COAH on June 2nd. There are twenty challenges to the revised third round rules. There are now 240 municipalities that have pledged funds toward the league's challenge. The Mayor attended a meeting earlier this evening of the Bergen County Chapter of the League of Municipalities, and commented at that meeting that any municipalities who have not joined with the League's challenge are missing an opportunity to register their concerns about the impact of the revised third round rules on their towns.

Our 39th district assembly representatives Vandervalk and Rooney attended the League meeting. Ms. Vandervalk remarked that she has rarely if ever seen a bill rushed through as quickly as A-500, which eliminated Regional Contribution Agreements.

The Mayor spoke with Governor Corzine recently and expressed his concerns about COAH's expectations. The Governor commented that they are looking at ways to ameliorate the elimination of credit for demolitions.

Finally, the Mayor spoke with Attorney Tom Hall today for his updated comments and advice on this matter. Attorney Hall commented that COAH may lose again in court, in which case the court will appoint a master and come up with new rules. However, there remains the constitutional obligation to provide affordable housing, and we must file a plan by the end of this year in order to avoid builders remedy lawsuits.

NEW APPLICATION:

Amended Major Subdivision Application: F.E. Alpine, Inc.; Block 55 Lots 22-25; Closter Dock Rd.: (Carried From July 22, 2008):

Board members Catherine McGuire and David Andrews recused themselves. As adjoining property owners, they were not eligible to participate in this matter.

The applicant's engineer, Michael Hubschman, was sworn in by Attorney Phillips and was accepted as an expert witness. Attorney David Watkins represented the applicant. Mr. Watkins stated that they are here to request certain variances for improved lot coverage, which are required because the roads are private and 50% of the macadam area is owned by each individual homeowner. If the roads were public, the requested variances would not be necessary. Additionally, they are asking to construct a guardhouse and gate at the entrance along Closter Dock Road for security purposes, and more importantly to limit the homeowners' liability.

Attorney Phillips asked Mr. Watkins to clarify for the record that the roads are related to the lots, but are not split down the middle. Mr. Watkins acknowledged that portions of the roads are owned by the individual homeowners, as shown on the plans.

A color rendering of Sheet 2089-2, entitled 'Preliminary Plat – Major Subdivision, Stream Encroachment Plan' last revised 9/3/08 was marked as Exhibit A-1. Mr. Hubschman stated that he prepared the subject plan, he was present when the original application was approved on November 14, 2006 and he prepared the amendment on May 22, 2007.

Mr. Hubschman stated that they are here to modify the preliminary approval for Section 1, containing the four lots: 22.01, 24.01, 23.01 and 25.01, which is the estate house. They are requesting an amendment of the preliminary approval with regard to the construction of walls, a guardhouse and gates, and are requesting variance relief for lots 22.01 and 24.01 with regard to improved lot coverage.

Mr. Watkins asked Mr. Hubschman to describe the impact of the private roadway on each of the lots in relation to improved lot coverage. Mr. Hubschman stated that lot 22.01 and 24.01 own the frontage of the entire Frick Drive. The improved lot coverage includes the roadway. If the roadway was excluded from lot 22.01, the improved lot coverage would be 23.1%. With the macadam included, it is at 26.8% coverage. There have been modifications to lot 22.01; specifically a small service parking area in the northwest corner and additional patios in the rear, around the pool and tennis court area. With regard to lot 24.01, 7% of the roadway is included in coverage ratios. Total coverage on that lot is 32.69%.

Mr. Hubschman addressed the comments in Engineer Vander Veer's letter dated September 12, 2008. With regard to item 3 on page 2, Mr. Hubschman referred to Sheet 2089-8 entitled 'Site Plan – New Lot 22.01', which was marked as Exhibit A-2. In response to item 3(a), Mr. Hubschman stated that if the road was excluded, total coverage would be 23.1%.

Mayor Tomasko commented that if the roadway was excluded, or if it was a public roadway, the lot would be smaller. Mr. Cybul asked if the cabana was included in the building coverage calculations. Mr. Hubschman replied that the ordinance does not include it. Mr. Vander Veer stated that he was present when this matter was discussed by Council and he believes that building coverage is intended to include only the primary structure; not accessory structures. Ms. VandenBerg added

that the ordinance was intended to include only habitable space. Attorney Phillips read the section of the ordinance which states that "building coverage shall mean that portion of a lot which is occupied by the *principal* building".

Mr. Hubschman continued to address Mr. Vander Veer's 9/12 review letter, as follows:

Item 3(b): Mr. Hubschman stated that the cabana and pool exceed the minimum setback requirement.

Item 3(c): Mr. Hubschman stated that both septic systems were expanded as required by the Health Officer because of another room in the house being considered a bedroom.

Item 3(d): Mr. Hubschman will remove the notes from the plan which relate to the grassy paver access.

Item 3(e): Mr. Hubschman replied that this is an approximately 1,500 square foot service parking area for service vehicles and staff.

Item 3(f): Mr. Hubschman stated that a proposed generator pad was added, which is 33 feet from the property line.

Item 4(a) on page 3 will be discussed later.

Item 4(b): Mr. Hubschman stated that the street lighting will match the fixtures in the front.

Item 4(c) on page 3: Mr. Hubschman stated that the driveway easement was shifted more to the north, and has no impact on the application. Attorney Phillips asked that the notation be removed from the plan.

Item 5: Mr. Hubschman referred to Sheet 2089-3, entitled 'Lot 25.01 & Frick Drive Entrance Details', dated 8/6/08, revised 9/3/08, which was marked as Exhibit A-3. The exhibit shows a guardhouse, about eight feet in width and stone faced on the bottom to match the walls. The guardhouse is fifty feet in from Closter Dock Road. The proposed gates are 10 foot-1 inch high, and are about eighty feet in from Closter Dock Road.

Item 6: Mr. Watkins stated that his notice included this item, in case is determined that a variance is required.

Item 7: Mr. Hubschman presented a 'Single Unit Truck Turning Schematic', which was marked as Exhibit A-4. Mr. Hubschman stated that a truck the size of a UPS truck would be able to make a K-turn within the twenty-foot wide exit lane, based on AASHTO (American Association of State Highway and Transportation Officials) templates.

Item 8 on page 4: Mr. Hubschman referred to Exhibit A-1 and stated that revisions were made to comply with Engineer Vander Veer's request.

Item 9: Mr. Hubschman stated that additional fill will be installed in that area behind the garage; they will be grouting and pointing that rock face. They do not intend to add a retaining wall on that (easterly) side, as it is not needed.

Item 10: Pertaining to Lots 23.01 and 24.01, Mr. Hubschman stated that NJDEP permits have been received and were submitted to Mr. Vander Veer's office. For lot 23.01 they are not seeking a variance for coverage.

Mr. Watkins asked Mr. Hubschman to comment on the benefits to the borough of this being a private development. Mr. Hubschman noted that maintenance of the roadways, drainage system, retention, etc. are the responsibility of the individual homeowners. Mr. Watkins asked if the gate provides security to the individual homeowners. Mr. Hubschman replied that in addition to providing security, it provides the benefit of not allowing public access to the property, which therefore limits the homeowners' liability in case of an accident. Mr. Hubschman testified that from a planning standpoint, he finds nothing adverse to the location of the guardhouse and placement of the gates; it is a unique design which is part of the aesthetic improvement and an enhancement to the development.

Attorney Phillips asked what signage will be placed on Closter Dock Road to indicate that it is a private road. Mr. Watkins stated that they have not yet decided. Mr. Phillips commented that until someone turns in and gets seventy feet into the property they will not know it is a private road. Mr. Hubschman noted that there is a turnaround. Mr. Watkins stated that if the board feels that signage is appropriate they have no objection to it.

Chairperson Parilla asked if there is a homeowners' association, and if the individual homeowners will therefore pay a percentage for use of the roadways. Mr. Watkins stated that he prepared the deeds, and this is covered. Mr. Phillips noted that the ownerships are covered, but the splitting of expenses is not included in the deeds. Mr. Watkins responded that a percentage provision is included in the Homeowners' Association Agreement. Mr. Phillips did not recall seeing that agreement, and Mr. Watkins agreed to provide him with a copy if he does not have one.

Ms. Parilla asked if the association would be responsible in case of an accident on the premises. Mr. Watkins replied that the individuals would be responsible, as they comprise the homeowners' association.

Ms. Parilla asked if the plans depict the actual proposed development on Lots 23.01 and 24.01. Mr. Hubschman replied that they are only conceptual at this point. Mr. Watkins added that they are in compliance for those two lots and they will not be seeking any variances.

Mr. Cybul asked the size of the proposed generator, and would like to see testimony with regard to decibel levels. His concern is noise since the generator is located within the side yard setback closest to the Andrews property. Mr. Hubschman stated that he did not have that information with him, but that the generator is tucked into the hill and is lower than the Andrews property. Mr. Cybul would like someone to provide testimony that the noise level does not exceed what is allowable at the property line. Mr. Watkins stated that testimony with regard to the generator could not be provided tonight, and he would therefore like to extract that portion of the request from this application so that we can move forward. He will come back to clarify this issue as a separate matter.

Mr. Cybul asked Mr. Vander Veer if the applicant has to seek approval when a septic system is enlarged or additional fill is called for if it was not part of the original approval. Mr. Vander Veer replied that generally it is part of the prior approval, depending on the quantity of soil movement involved. In this case it was for the septic system.

Mr. Cybul noted that Mr. Hubschman had testified that he will be adding three feet of fill behind the garage, and asked if that was part of the original approval. Mr. Hubschman stated that it was part of the original plan.

Mr. Cybul commented that if the guardhouse is determined to be an accessory structure, there is a fifteen-foot height restriction. It is presently at sixteen feet nine inches, and is raised three feet from ground level. Mr. Watkins stated that they will comply.

Mr. Cybul stated that he did his own calculations and found that some of Mr. Hubschman's calculations were inaccurate. Specifically, Mr. Cybul calculated 400 sq. ft. more in the front driveway, and an additional 800 sq. ft. in the road surface, and he included the widening of Closter Dock Road in that calculation. Mr. Hubschman agreed to recheck those calculations. Mr. Watkins noted that if Mr. Cybul's calculations are correct, they still do not need additional relief.

Mr. Cybul asked where the electrical service will be located for lighting and control of the gate and guardhouse. Mr. Hubschman pointed out the location on the plan, and stated that the existing house service line runs along the east side of the cul-de-sac, and there is a private conduit on the west side of the road.

Mayor Tomasko referred to a note on Sheet 2089-2 of the plan, which states that one of the lots in Demarest will be annexed to Lot 25.01 in Alpine, and asked how that will happen. Mr. Hubschman replied that this lot is unbuildable, and the borough of Demarest stipulated that it must be connected to the lot in Alpine.

Mayor Tomasko complimented the owner and those involved in the design and construction of the wall along Closter Dock Road.

The Mayor asked if the 12.77 acre lot (25.01) will remain intact. Mr. Watkins stated that Attorney Phillips has the deeds, and there will be no further subdivision of that lot. Attorney Phillips indicated that he did not recall a 'no further subdivision' stipulation on that lot. Mr. Watkins stated that that lot was not included. Mayor Tomasko asked if we could get a deed restriction on that lot. Mr. Watkins asked for a five-minute recess, after which he will address that issue.

Engineer Vander Veer asked Mr. Hubschman to verify that a thirty-foot panel truck can make a K-turn within the twenty-foot exit lane. Mr. Hubschman stated that it is wide enough, and he will provide Mr. Vander Veer with a copy of that plan.

Mr. Vander Veer asked what the generator will be used for. Mr. Hubschman stated that it will be for emergency use, and will be started up once a month.

Ms. Parilla asked if the fire department has looked at the roadways and if they would be able to access the road with hook and ladder trucks. Mr. Watkins responded that they have seen the initial application, and the sizes have not changed.

Ms. Parilla opened the hearing to the public for questions.

Dr. David Andrews, a resident of Closter Dock Road to the east of the subject property, asked if the generator has a diesel engine and if it has a muffler. Mr. Hubschman stated it is a 100-kw natural gas generator, and it has a muffler. It will be fired up for about five to ten minutes each month.

Dr. Andrews asked about the plantings along the back of the property, and stated that the area is about a foot down to solid bedrock. When the land was cleared, about a foot of soil was removed. He asked if there is enough room to plant trees there without building a retaining wall. Mr. Watkins will have an expert testify on that matter this evening.

Dr. Andrews stated that any increase in impervious coverage decreases the amount of water going into the soil. He questioned whether a new development should be allowed to exceed the impervious limits. They knew the laws and could design within the parameters that exist. Mr. Hubschman remarked that the State requires that they analyze the recharge to the soil, which is required to be greater than the existing.

A five-minute recess was taken.

When the hearing resumed Attorney Phillips swore in Mr. Paul Keyes of Paul Keyes Associates, Tenafly, NJ. Mr. Keyes stated that he has a BS in Environmental Planning & Design from Rutgers, with a minor in Ornamental Horticulture, and a Master in Environmental Studies from Montclair State. He has 28-29 years experience in design and installation of landscaping, primarily residential. Mr. Keyes stated that he designed the wall and plantings along Closter Dock Road, and has been retained to do the landscape layouts for the lots in question. Attorney Phillips asked Mr. Keyes if he has been accepted an expert in Landscape Architecture by any boards or governing bodies in the state. Mr. Keyes responded that he is a Landscape Designer, and has testified in Englewood, Tenafly, Cedar Grove and Old Tappan. Mr. Cybul asked if there is licensing for his profession. Mr. Keyes responded that there is no specific professional license through the State.

Mr. Keyes presented computer enhanced drawings, which were marked as Exhibits A-5, A-6, and A-7. A-5 represents a direct view at the entrance to the development, with the existing landscaping and walls and the proposed guardhouse and gate. A-6 and A-7 represent different views of the entrance to the development along Closter Dock Road. The guardhouse is about fifty feet from the road, and the gates are about eighty feet from the road.

Mr. Keyes testified that the guardhouse contains a very comprehensive camera system linked to each home. A typical visitor would pull up to the guardhouse and press a button on a key panel connecting to the home he wants to visit. The home will have an electronic system with a panel which will display multiple views, showing the person at the gate, the car and license plate. The homeowners will have the ability to control the gates from their homes.

Mr. Watkins asked Mr. Keyes to address the question Dr. Andrews had with regard to the plantings along the rear of lot 22.01, adjacent to his property. Mr. Keyes stated that each area must be assessed to decide what plants will thrive in those

conditions, and they must stabilize the back wall with native ground coverage. Mr. Keyes stated that he deals with this issue on a daily basis, and is equipped to handle that activity.

Mayor Tomasko asked Mr. Vander Veer if he is satisfied that the plans address the issue of the turning radius for trucks. Mr. Vander Veer replied that if a K-turn can be made in the twenty-foot gap, he is satisfied. If there is a problem, some adjustments will have to be made.

Mr. Cybul stated that the design of the guardhouse shown in the engineering plans is somewhat different from what is shown on Mr. Keyes drawings. Mr. Hubschman stated that engineering plan is accurate; however, the height will be reduced as discussed earlier.

Mr. Fromm asked if the placement of the guardhouse and gate is the optimal placement. Mr. Vander Veer stated that he is comfortable with the distance from Closter Dock Road. His only concern is whether the width between the two islands in the center of the road is sufficient for trucks to make a K-turn.

Mr. Vander Veer asked if the proposed gates are solid or iron railing. Mr. Keyes responded that they are iron railing, and the height is ten-foot one-inch. There is a six-foot high pedestrian gate.

Chairperson Parilla opened the hearing to the public for questions regarding the guardhouse.

Catherine McGuire of Closter Dock Road asked what happens in case of a power outage. Mr. Watkins responded that he has a witness to address that issue.

Attorney Phillips swore in Mr. Fred Stedtler, who stated that he owns a security company specializing in the installation of gate operating systems. Mr. Stedtler stated that he has been in business for nineteen years, doing gates for about fifteen years. During that time he has installed over one hundred systems, and considers himself an expert in the field. Mr. Watkins stated that Mr. Stedtler has been qualified before a board in Demarest.

Mr. Watkins asked Mr. Stedtler to explain how the gate works in case of a fire or other emergency at the premises. Mr. Stedtler stated that if the gates are closed, the siren on a fire truck will open the gates. If there is a total power failure, there is a key that can be accessible to the fire department, kept in a Knox key box, to release the gates. The Knox Company specializes in working with fire departments throughout the country and sets up programs with specific keys for each town which operate these locks. Police and fire department are given these keys. With the back-up systems they will put in place, there should be no restriction in accessing the property. This system was installed about two years ago at the Bellaire Condominiums in Demarest, and has worked flawlessly since then.

Chairperson Parilla opened the hearing to the public for questions pertaining to the security system. Dr. Andrews asked if there is a backup power system. Mr. Stedtler replied that there is a battery backup in case of a total power failure.

There were no further questions from the public.

Mr. Watkins stated that he discussed the 12.77 acre lot with his client, Mr. Kurtz, who agreed to place a deed restriction on that lot. Attorney Phillips noted for the record that the offer by Mr. Kurtz is not conditioned upon the action of the board this evening.

Attorney Phillips read the conditions, as follows:

- Deed restriction for no further subdivision of Lot 25.01;
- Removal of note on 1.054 re driveway easement;
- Submission of turning schematics to the Borough Engineer for clarification that the K-turn works;
- Submission of Homeowners' Association Agreement to Board Attorney for review;
- Note that Mr. Hubschman's drawing will govern over Exhibit A-5 with regard to the guardhouse;
- Reduction of height of guardhouse to comply;

Generator is excluded from this application.

Mayor Tomasko made a motion to approve the three variances requested with the conditions referenced above. The motion was seconded by Alina VandenBerg.

Mr. Cybul stated that his only concern is that the applicant will not seek to change the road from private to public in the future. Mr. Watkins agreed to have Attorney Phillips add that as a stipulation.

The motion was carried by all members eligible to vote.

ADJOURNMENT:

A motion to adjourn the regular Planning Board meeting was made by Martin Cybul and seconded by Mayor Tomasko. All were in favor. The meeting adjourned at 10:02 PM.

Respectfully submitted,

Marilyn Hayward
Recording Secretary

EXHIBIT “D”

RESOLUTION

**ALPINE PLANNING BOARD
IN THE MATTER OF THE APPLICATION OF F. E. ALPINE, INC.
FOR AMENDED PRELIMINARY AND FINAL MAJOR SUBDIVISION APPROVAL
(PHASE I)
BLOCK 55, LOTS 22 TO 25
CLOSTER DOCK ROAD**

BE IT RESOLVED, by the Planning Board of the Borough of Alpine that the following Procedural History, Findings of Fact and Conclusions of Law are hereby adopted in reference to this matter.

PROCEDURAL HISTORY

An application was made before the Alpine Planning Board by F. E. Alpine, Inc. ("Applicant") as owner of the referenced property for an amendment to the previously approved Preliminary and Final Major Subdivision Approval (Section I). The Applicant received Preliminary Major Subdivision Approval on November 14, 2006 (Memorialized December 19, 2006) and Revised Preliminary Major Subdivision Approval on May 22, 2007 (Memorialized on June 26, 2007). Final Major Subdivision Approval was granted on March 25, 2008 (Memorialized on April 22, 2008).

The application was deemed to be substantially complete by the Borough Engineer and was referred to the Planning Board for placement on its agenda. The hearing was held on September 23, 2008.

The Applicant was represented by David Watkins, Esq., Michael Hubschman, P.E., Paul Keyes, and Fred Stedtler testified in support of the application.

FINDINGS OF FACT

1. The Board considered the following materials:

Set of plans entitled "Frick Estates—Section I Lots 22, 23, 24 & 25 Block 55 Borough of Alpine, Bergen County, New Jersey" prepared by Hubschman Engineering P.A. dated September 7, 2006 revised to July 30, 2008 consisting of four sheets.

Application forms.

Reports prepared by Gary Vander Veer, P.E. dated August 5, 2008, August 13, 2008 and September 12, 2008.

2. The application was for amendment of the previously approved Preliminary and Final Major Subdivision of Section I. The applicant sought additional variances as more fully described below.

3. Michael Hubschman, P.E. was accepted by the Board as an expert in the field of site engineering. He testified regarding the proposed changes to the plans. The applicant sought a variance to allow greater impervious surfaces than permitted by the ordinance and a variance to allow an unmanned guard house to be constructed on the entrance road. Mr. Hubschman explained that since the roadways are private, the impervious surfaces of those roadways count toward the total impervious surface of the development. If these roadways were public, the surfaces would not be counted toward the individual lot numbers and no variances would be required. In response to the Board's questions, Mr. Hubschman represented that the applicant would stipulate that no request will be made in the future for the Borough to accept any of this roadway.
4. According to the witness, who referred to Exhibit A-1, a rendered copy of sheet 2089-2 (sheet 2 of 11 of the original plans) revised to 8/13/08, for Lot 22.01 the total requested impervious surface coverage is 26.8% while if the roadway were public the number would comply at 23.1%. With regard to Lot 24.01 the request is for 32.69% impervious surface coverage while if the roadway were public the number would be at 25% and would comply. It was his opinion that there was no negative impact from the requested variances since the total impervious surface was within what would be allowed in any public roadway development. The benefits to the municipality from the private nature of the roadway outweigh any potential detriment from the "technical" variance requested.
5. Using Exhibit A-2, a rendered copy of sheet 2089-8 (sheet 8 of 11 of the prior plans—revision 10 dated 9/3/08), Mr. Hubschman responded to the concerns raised in Gary Vander Veer's letter of September 12, 2008 and explained to the Board the various issues including: patio and walkways, movement of the cabana (which still complies with the ordinance), septic enlargement, note to be removed from the plans, service area parking, additional generator, the guard house, and the easement to Demarest. He also offered Exhibit A-4 which was a single unit truck turning template to address the Planning Board Engineer's concerns regarding the ability of a mis-directed truck to exit the site if it entered in error.
6. Mr. Hubschman indicated that the drainage plan had been revised to comply with Mr. Vander Veer's comments and that no additional retaining walls would be needed since final grading would raise the grade and eliminate the areas of concern. He agreed that detailed plans for each remaining lot will be provided at the time of application for building permit to ensure that all drainage functions as designed and all structures comply.
7. The witness indicated that a C-2 variance was being sought for the impervious surface coverage and was based upon the private/public roadway distinction. He also testified generally regarding the apparent variance for the guard house being in the front yard of one lot. If the road were public, this structure would not be in a front yard of a building lot. Since this is a private roadway, the desire is to keep the public out to reduce potential liability to the homeowners.
8. In response to concerns from the Board regarding the overall impervious surface on the site, Mr. Hubschman testified that no additional variances for impervious surface

coverage would be sought for any lots in the development. In addition, after consultation with his client, Mr. Hubschman indicated that the applicant would impose a deed restriction on the remainder parcel that it would only be used for one single family dwelling. As a result, the Board concluded that the total impervious surface for the project as a whole would be sufficiently limited to allow the excess requested by this application.

9. Paul Keyes, a landscaping design professional also testified. He offered Exhibits A-5 (a single view of the entrance to the project), A-6 (a series of 6 photo simulations of Closter Dock Road and the entrance, and A-7 (a series of 6 photo simulations of the proposed entrance to the old Frick estate). It was agreed that Mr. Hubschman's drawing would govern in the event of any inconsistency between the engineering drawing and exhibit A-5 regarding the guard house height or style. The iron railing gate was agreed to be 10' 1" in height at its highest point.
10. Fred Stedtler, the owner of the security company providing the gate also testified. He described the various safe guards to allow emergency services to enter and also described how homeowners would allow visitors to enter. The Board was satisfied that the proposed gate system would not create a safety hazard to the residents of the project or the general public.

The Board concluded that the application as set forth on the submitted plans and the requested additional variances could be granted in accordance with the ordinance requirements without substantial detriment to the public good and without substantially impairing the zone plan or zoning ordinance provided the conditions set forth below were imposed.

CONCLUSIONS

Upon hearing the testimony produced on behalf of the Applicants and studying the exhibits and other materials submitted, the Planning Board unanimously voted to approve amendments to the previously approved Preliminary and Final Major Subdivision application subject to the following:

- A. Posting of all required bonds or other guarantees.
- B. Compliance with the list of comments/requirements set forth in the engineering report of Gary Vander Veer, P.E. September 12, 2008, a copy of which is annexed hereto and incorporated by reference.
- C. Revision of the plans to the satisfaction of the Planning Board Engineer in the following respects:
 - a). remove note on I.054 "Driveway easement to be removed";
 - b) delete generator for now;

c) guard house accessory structure to be reduced in height so that the midline of the roof does not exceed 15 feet above the original grade;

d) verification of the turning schematic with the current design or modification of the driveway width if required.

D. Imposition of a deed restriction on the remainder lot to permit one dwelling only; form and language to be satisfactory to the Planning Board Attorney and Planning Board Engineer.

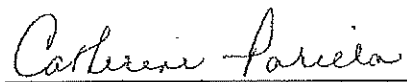
E. Submission of the proposed Homeowner's Association Documents to, and approval by, the Planning Board Attorney and Planning Board Engineer. These documents shall include a statement that no future request will be made to the Borough for acceptance of any responsibility for the private road.

F. The representation by the applicant through his engineer that no future request will be made (by the applicant or any successors) to the Borough for the Borough to assume responsibility for any aspect of the roadway is an integral part of this approval and forms a substantial part of the justification for the granting of the impervious surface coverage variances.

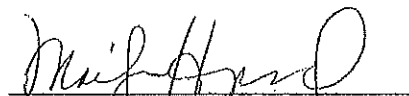
All conditions imposed by any prior approval shall remain in full force and effect unless specifically modified by this Resolution and shall be satisfied prior to the signing of the Amended Final Plat by the Planning Board officers.

The Board has resolved that a copy of this Resolution shall be provided to the Applicants, the Construction Code Official of the Borough of Alpine, the Secretary of the Planning Board, and the Borough Clerk.

This Resolution constitutes a Resolution of Memorialization of the action taken by the Planning Board of the Borough of Alpine on September 23, 2008 and adopted on October 28, 2008.



CATHERINE PARILLA
CHAIR,
ALPINE PLANNING BOARD



MARILYN HAYWARD
RECORDING SECRETARY,
ALPINE PLANNING BOARD

Dated 10-28-08



AZZOLINA & FEURY ENGINEERING, INC.

Professional Engineers and Land Surveyors

30 Madison Avenue, Paramus, NJ 07652 • (201) 845-8500 • Fax (201) 845-3825
110 Stage Road, Monroe, NY 10950 • (845) 782-8681 • Fax (845) 782-4212

September 12, 2008

Planning Board
Borough of Alpine
Municipal Building
100 Church Street
Alpine, New Jersey 07620

Attention: Mrs. Marilyn Hayward
Secretary to the Board

Re: Frick Estates, Section I
Block 55 Lots 22 – 25
Closter Dock Road
Our File No. ALP-752

Dear Members of the Board:

Our office is in receipt of the following documents with respect to the above referenced amended major subdivision application:

- A set of plans (four sheets) entitled “Frick Estates – Section I, Lots 22, 23, 24 & 25 Block 55, Borough of Alpine, Bergen County, New Jersey”, prepared by Hubschman Engineering, P.A., dated September 7, 2006 and last revised on September 3, 2008, further identified as follows:
 - Cover Sheet, sheet 1 of 11
 - Preliminary Plat – Major Subdivision, Stream Encroachment Plan, sheet 2 of 11
 - Easement & Private Road Plan, sheet 3 of 11
 - Site Plan, New Lot 22.01, sheet 8 of 11
- A plan entitled “Lot 25.01 & Frick Drive Entrance Details”, prepared by Hubschman Engineering, P.A., dated August 6, 2008 and revised on September 3, 2008.
- A Borough of Alpine Development Application for FE Alpine Inc. dated June 11, 2008 and signed by the applicant.

Pursuant to your request we have reviewed these documents and offer the following comments:

Borough of Alpine
Attention: Planning Board
Re: Our File No. ALP-752
Page 2

September 12, 2008

1. The applicant is requesting an amended major subdivision approval for the subject property. This subdivision application was originally approved, with conditions, on November 14, 2006 and subsequently amended and conditionally approved on May 22, 2007.
2. Specifically, this application seeks additional variances for Lots 22.01 and 24.01, to exceed the permitted improved lot coverage, as follows:
 - a.) Lot 22.01: improved lot coverage proposed 26.83% where 25% is permitted.
 - b.) Lot 24.01: improved lot coverage proposed 32.69% where 25% is permitted.
3. The development details for Lot 22.01 are identified on sheet 8 of the submission. This lot is currently under construction. This plan has been modified since the most recent approvals, including but not limited to the following:
 - a.) Expansion of the pool/cabana/patio area, increasing the impervious area at this location by approximately 4,000 square feet.
 - b.) The proposed cabana and in-ground pool have been shifted approximately twenty feet closer to the adjacent property. Both of these features exceed the minimum twenty feet setback for accessory structures.
 - c.) The septic systems have been expanded. Each of these disposal fields has been enlarged by approximately thirty percent.
 - d.) The proposed grassy paver access has been removed from the plan. The notes relating to this feature (limits of grassy paver and drop curb) should be removed from the plan.
 - e.) A small parking area is shown near the subdivision roadway, off the access driveway for this site.
 - f.) A proposed generator pad is shown off the northeasterly corner of the proposed building, against the stabilized rock face.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 3

September 12, 2008

4. The subdivision plans have been revised, including but not limited to the following:
 - a.) A guard house and gates are proposed on center islands at the entry, off Closter Dock Road. There is a proposed twenty feet wide separation between the two center islands.
 - b.) Street lighting has been provided, with a series of light poles, each with two light fixtures. The lighting details have been provided on sheet 3 of 11.
 - c.) The driveway easement to the Demarest lots (Section II) has been modified.
5. Entry gates and piers have been detailed for Lot 25.01; said details are shown on the bottom of sheet 1 of 1.
6. The un-manned guard house needs to be reviewed. Due to the private nature of the roadway, the guard house falls within the limits of Lot 22.01. The status of this feature needs to be determined (is it an accessory structure). If it is classified as an accessory structure, a variance is required, since it is within the front yard.
7. The applicant shall be requested to provide testimony with regard to the operation of the un-manned guard house. If the intent is to restrict traffic from entering the development, vehicles without permitted access will need to perform a K-turn in close proximity to Closter Dock Road or may attempt to back out onto the roadway. Although the plans have been revised to provide a twenty feet wide exit lane, prior to the gates, the width of the roadway does not permit most passenger vehicles to make the U-turn to exit. The applicant shall provide testimony, with a turning template overlay, that a single unit delivery truck can make the K-turn within the twenty feet wide exit lane. Without the un-manned guard house and the center island for the guard house, there will be more room for maneuvering of vehicles needing to make a K-turn.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 4

September 12, 2008

8. We had previously requested a revised Drainage Report to be submitted for the Lot 22.01 development, due to the change in impervious coverage. The report has been submitted and reviewed by our office. We find the proposed stormwater management improvements are acceptable and will satisfy the stormwater management requirements for a major development. The improvements include the installation of eleven seepage pits and six perimeter sand filters.
9. The area of cut on Lot 22.01, along the easterly and southeasterly side of the residence, is shown to be supported by a stabilized rock face. The applicant should present testimony with respect to the stability of this area. Based on our recent visits to the site, portions of these areas are not supported with a stable rock area and retaining walls may be required to support the embankment areas. If retaining walls are necessary, the area of the walls will need to be included in the improved lot coverage.
10. The proposed development for Lot 24.01 does not have the level of detail shown for lot 22.01. The conceptual proposal for lot 24.01 shows proposed improvements, such as the residential building, driveway, tennis court, in-ground pool, etc. Prior to the issuance of permits to develop this site, detailed plans shall be provided to the Borough for review. The development of this site as proposed will require additional NJDEP permits due to the presence of freshwater wetlands and transition areas on the southerly portion of the site. Similarly, the proposed development of Lot 23.01 is schematic in nature and may also be impacted by the same section of freshwater wetlands and transition area as well as an additional area in the southerly end of the lot.

This application is scheduled for a public hearing at the next meeting of the Alpine Planning Board. A public hearing can be scheduled, subject to the applicant satisfying any notice requirements. At the public hearing, the applicant shall be prepared to present testimony regarding the detailed scope of work, the changes to plans since the prior approvals, and the need for relief from Borough Ordinances.

At the conclusion of the public hearing, the Board should consider the applicant's request for variances and our recommendations noted above.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 5

September 12, 2008

Kindly review the above information at your earliest convenience. If we can be of any further assistance regarding this matter, do not hesitate to contact us.

Very truly yours,

AZZOLINA & FEURY ENGINEERING



Gary Vander Veer, P.E.

GVV

cc: Mr. John C. Phillips, Esq., Board Attorney
Mr. Alden Blackwell, Construction Official
Hubschman Engineering, P.A.
Mr. David M. Watkins, Esq.
FE Alpine, Inc.



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August 13, 2008

Planning Board
Borough of Alpine
Municipal Building
100 Church Street
Alpine, New Jersey 07620

Attention: Mrs. Marilyn Hayward
Secretary to the Board

Re: Frick Estates, Section I
Block 55 Lots 22 – 25
Closter Dock Road
Our File No. ALP-752

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- A Borough of Alpine Development Application for FE Alpine Inc. dated June 11, 2008 and signed by the applicant.

Pursuant to your request we have reviewed these documents and offer the following comments:

Borough of Alpine
Attention: Planning Board
Re: Our File No. ALP-752
Page 2

August 13, 2008

1. The applicant is requesting an amended major subdivision approval for the subject property. This subdivision application was originally approved, with conditions, on November 14, 2006 and subsequently amended and conditionally approved on May 22, 2007.
2. Specifically, this application seeks additional variances for Lots 22.01 and 24.01, to exceed the permitted improved lot coverage, as follows:
 - a.) Lot 22.01: improved lot coverage proposed 26.83% where 25% is permitted.
 - b.) Lot 24.01: improved lot coverage proposed 32.69% where 25% is permitted.
3. The construction details for Lot 22.01 are identified on sheet 8 of the submission. This lot is currently under construction. This plan has been modified since the most recent submission to our office, including but not limited to the following:
 - a.) Expansion of the pool/cabana/patio area, increasing the impervious area at this location by approximately 4,000 square feet.
 - b.) The proposed cabana and in-ground pool have been shifted approximately twenty feet closer to the adjacent property. Both of these features exceed the minimum twenty feet setback for accessory structures.
 - c.) The septic systems are shown to be expanded. Each of these disposal fields will be enlarged by approximately thirty percent.
 - d.) The proposed grassy paver access has been removed from the plan. The notes relating to this feature (limits of grassy paver and drop curb) should be removed from the plan.
 - e.) A small parking area is shown near the subdivision roadway, off the access driveway for this site.
 - f.) A proposed generator pad is shown off the northeasterly corner of the proposed building, against the stabilized rock face.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 3

August 13, 2008

4. The subdivision plans have been revised, including but not limited to the following:
 - a.) A guard house and gates are proposed on center islands at the entry, off Closter Dock Road. There is a proposed fifteen feet wide separation between the two center islands.
 - b.) Street lighting has been provided, with a series of light poles, each with two light fixtures.
 - c.) The driveway easement to the Demarest lots (Section II) has been modified.
5. Entry gates and piers have been detailed for Lot 25.01; said details are shown on the bottom of sheet 1 of 1.
6. The un-manned guard house needs to be reviewed. Due to the private nature of the roadway, the guard house falls within the limits of Lot 22.01. The status of this feature needs to be determined (is it an accessory structure). If it is classified as an accessory structure, a variance is required, since it is within the front yard.
7. The applicant shall be requested to provide testimony with regard to the operation of the un-manned guard house. If the intent is to restrict traffic from entering the development, vehicles without permitted access will need to perform a K-turn in close proximity to Closter Dock Road or may attempt to back out onto the roadway. Although the plans have been revised to provide an exit lane, prior to the gates, the width of the roadway does not permit most passenger vehicles to make the U-turn to exit. Larger vehicles, such as single unit delivery trucks, cannot make the exit through the opening. The applicant should be prepared to demonstrate that a single unit delivery truck or a fire engine will be able to make the turning maneuver into the site from Closter Dock Road, without being impacted by the proposed center island.
8. We had previously requested a revised Drainage Report to be submitted for the Lot 22.01 development, due to the change in impervious coverage. The report has been submitted and reviewed by our office. We find the proposed stormwater management improvements are acceptable and will satisfy the stormwater management requirements for a major

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 4

August 13, 2008

development. The improvements include the installation of eleven seepage pits and six perimeter sand filters.

9. We recommend that the proposed on-site drainage system for Lot 22.01 should be redesigned. The stormwater runoff from the cabana roof drains should be directed from 24" x 24" inlet no. 3 to seepage pits no. 1 – 4. The drain line from the 24" x 24" inlet no. 2 should run to seepage pits no. 5 – 7, then to 24" x 24" inlet no. 1. This redesign would maximize the use of the seepage pit fields.
10. The area of cut on Lot 22.01, along the easterly and southeasterly side of the residence, is shown to be supported by a stabilized rock face. The applicant should present testimony with respect to the stability of this area. Based on our recent visits to the site, portions of these areas are not supported with a stable rock area and retaining walls may be required to support the embankment areas. If retaining walls are necessary, the area of the walls will need to be included in the improved lot coverage.
11. The proposed development for Lot 24.01 is not as detailed as lot 22.01. The proposal for lot 24.01 shows proposed improvements, such as the residential building, driveway, tennis court, in-ground pool, etc. Prior to the issuance of permits to develop this site, detailed plans shall be provided to the Borough for review. The development of this site as proposed will require additional NJDEP permits due to the presence of freshwater wetlands and transition areas on the southerly portion of the site. Similarly, the proposed development of Lot 23.01 is schematic in nature and may also be impacted by the same section of freshwater wetlands and transition area as well as an additional area in the southerly end of the lot.
11. Construction details for the proposed street lighting shall be provided. The details shall include fixture information, pole mounting heights, illumination data, etc.

This application is scheduled for a public hearing at the next meeting of the Alpine Planning Board. A public hearing can be scheduled, subject to the applicant satisfying any notice requirements. At the public hearing, the applicant shall be prepared to present testimony regarding the detailed scope of work, the changes to plans since the prior approvals, and the need for relief from Borough Ordinances.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 5

August 13, 2008

At the conclusion of the public hearing, the Board should consider the applicant's request for variances and our recommendations noted above.

Kindly review the above information at your earliest convenience. If we can be of any further assistance regarding this matter, do not hesitate to contact us.

Very truly yours,

AZZOLINA & FEURY ENGINEERING

A handwritten signature in blue ink that reads "Gary Vander Veer". The signature is written in a cursive style with a long horizontal stroke at the end.

Gary Vander Veer, P.E.

GVV

cc: Mr. John C. Phillips, Esq., Board Attorney
Mr. Alden Blackwell, Construction Official
Hubschman Engineering, P.A.
Mr. David M. Watkins, Esq.
FE Alpine, Inc.



AZZOLINA & FEURY ENGINEERING, INC.

Professional Engineers and Land Surveyors

30 Madison Avenue, Paramus, NJ 07652 • (201) 845-8500 • Fax (201) 845-3825
110 Stage Road, Monroe, NY 10950 • (845) 782-8681 • Fax (845) 782-4212

August 5, 2008

Planning Board
Borough of Alpine
Municipal Building
100 Church Street
Alpine, New Jersey 07620

Attention: Mrs. Marilyn Hayward
Secretary to the Board

Re: Frick Estates, Section I
Block 55 Lots 22 – 25
Closter Dock Road
Our File No. ALP-752

Dear Members of the Board:

Our office is in receipt of the following documents with respect to the above referenced amended major subdivision application:

- A set of plans (four sheets) entitled “Frick Estates – Section I, Lots 22, 23, 24 & 25 Block 55, Borough of Alpine, Bergen County, New Jersey”, prepared by Hubschman Engineering, P.A., dated September 7, 2006 and last revised on July 30, 2008, further identified as follows:
 - Cover Sheet, sheet 1 of 11
 - Preliminary Plat – Major Subdivision, Stream Encroachment Plan, sheet 2 of 11
 - Easement & Private Road Plan, sheet 3 of 11
 - Site Plan, New Lot 22.01, sheet 8 of 11
- A Borough of Alpine Development Application for FE Alpine Inc. dated June 11, 2008 and signed by the applicant.

Pursuant to your request we have reviewed these documents and offer the following comments:

1. The applicant is requesting an amended major subdivision approval for the subject property. This subdivision application was originally approved, with conditions, on November 14, 2006 and subsequently amended and conditionally approved on May 22, 2007.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 2

August 5, 2008

2. Specifically, this application seeks additional variances for Proposed Lots 22.01 and 24.01, to exceed the permitted improved lot coverage, as follows:
 - a.) Lot 22.01: improved lot coverage proposed 26.83% where 25% is permitted.
 - b.) Lot 24.01: improved lot coverage proposed 32.69% where 25% is permitted.

3. The construction details for Lot 22.01 are identified on sheet 8 of the submission. This lot is currently under construction. This plan has been modified since the most recent submission to our office, including but not limited to the following:
 - a.) Expansion of the pool/cabana/patio area, increasing the impervious area at this location by approximately 4,000 square feet.
 - b.) The proposed cabana and in-ground pool have been shifted approximately twenty feet closer to the adjacent property. Both of these features exceed the minimum twenty feet setback for accessory structures.
 - c.) The septic systems are shown to be expanded. Each of these disposal fields will be enlarged by approximately thirty percent.
 - d.) A grassy paver access has been provided, from the front driveway, running along the northeasterly side of the proposed residence to the pool area at the rear of the site.
 - e.) A small parking area is shown near the subdivision roadway, off the access driveway for this site.

4. The subdivision plans have been revised, including but not limited to the following:
 - a.) A guard house and gates are proposed on a center island at the entry off Closter Dock Road.
 - b.) Street lighting has been provided, with a series of light poles, each with two light fixtures.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 3

August 5, 2008

- c.) The driveway easement to the Demarest lots (Section II) has been modified.
 - d.) Entry gates and piers have been detailed for Lot 25.01; said details are shown on the bottom of sheet 2 of 11.
5. The un-manned guard house needs to be reviewed. Due to the private nature of the roadway, the guard house falls within the limits of Lot 22.01. The status of this feature needs to be determined (is it an accessory structure). If it is classified as an accessory structure, a variance is required, since it is within the front yard.
 6. The applicant shall be requested to provide testimony with regard to the operation of the un-manned guard house. If the intent is to restrict traffic from entering the development, vehicles without permitted access will need to perform a K-turn in close proximity to Closter Dock Road or may attempt to back out onto the roadway. The applicant should be prepared to demonstrate that a single unit delivery truck or a fire engine will be able to make the turning maneuver into the site, without being impacted by the proposed center island.
 7. We had previously requested a revised Drainage Report to be submitted for the Lot 22.01 development, due to the change in impervious coverage. The report has been submitted and reviewed by our office. We find the proposed stormwater management improvements are acceptable and will satisfy the stormwater management requirements for a major development. The improvements include the installation of eleven seepage pits and six perimeter sand filters.
 8. We recommend that the proposed on-site drainage system for Lot 22.01 should be redesigned. The stormwater runoff from the cabana roof drains should be directed from 24" x 24" inlet no. 3 to seepage pits no. 1 – 4. The drain line from the 24" x 24" inlet no. 2 should run to seepage pits no. 5 – 7, then to 24" x 24" inlet no. 1. This redesign would maximize the use of the seepage pit fields.
 9. The proposed grassy paver detail has been provided. This area is not included in the listing for the improved lot coverage for Lot 22.01. We are of the opinion that this would fall under the category of improved lot coverage. Generally, these types of features are provided to permit vehicular access while giving the appearance of "green area". Since the

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 4

August 5, 2008

subgrade will need to be compacted to support vehicular loading, this will then be “highly resistant to infiltration by water”.

10. The area of cut on Lot 22.01, along the easterly and southeasterly side of the residence, is shown to be supported by a stabilized rock face. The applicant should present testimony with respect to the stability of this area. Based on our recent visits to the site, portions of these areas are not supported with a stable rock area and retaining walls may be required to support the embankment areas. If retaining walls are necessary, the area of the walls will need to be included in the improved lot coverage.
11. The proposed development for Lot 24.01 is not as detailed as lot 22.01. The proposal for lot 24.01 shows proposed improvements, such as the residential building, driveway, tennis court, in-ground pool, etc. Prior to the issuance of permits to develop this site, detailed plans shall be provided to the Borough for review. The development of this site as proposed will require additional NJDEP permits due to the presence of freshwater wetlands and transition areas on the southerly portion of the site. Similarly, the proposed development of Lot 23.01 is schematic in nature and may also be impacted by the same section of freshwater wetlands and transition area as well as an additional area in the southerly end of the lot.
11. Construction details for the proposed street lighting shall be provided. The details shall include fixture information, pole mounting heights, illumination data, etc.

This application is scheduled for a public hearing at the next meeting of the Alpine Planning Board. A public hearing can be scheduled, subject to the applicant satisfying any notice requirements. At the public hearing, the applicant shall be prepared to present testimony regarding the detailed scope of work, the changes to plans since the prior approvals, and the need for relief from Borough Ordinances.

At the conclusion of the public hearing, the Board should consider the applicant's request for variances and our recommendations noted above.

Borough of Alpine
Attn: Planning Board
Re: Our File No. ALP-752
Page 5

August 5, 2008

Kindly review the above information at your earliest convenience. If we can be of any further assistance regarding this matter, do not hesitate to contact us.

Very truly yours,

AZZOLINA & FEURY ENGINEERING

A handwritten signature in blue ink that reads "Gary Vander Veer". The signature is written in a cursive style with a horizontal line at the end.

Gary Vander Veer, P.E.

GVV

cc: Mr. John C. Phillips, Esq., Board Attorney
Mr. Alden Blackwell, Construction Official
Hubschman Engineering, P.A.
Mr. David M. Watkins, Esq.
FE Alpine, Inc.



HUBSCHMAN ENGINEERING

ENGINEERS
SURVEYORS
PLANNERS

263A SOUTH WASHINGTON AVE., BERGENFIELD, NJ 07621 • (201) 384-5666 • FAX (201) 384-7968

September 4, 2008

VIA HAND DELIVERED

Marilyn Hayward
Planning Board Secretary
Borough of Alpine
100 Church Street
Alpine, New Jersey 07620

**RE: Frick Estates, Section I
Block 55, Lots 22, 23, 24, 25
Borough of Alpine
Our File No.: 2089**

Dear Ms. Hayward:

Attached hereto, please find sixteen (16) copies of Preliminary Plat, Major Subdivision, submitted for your distribution prior to the September 23rd Planning Board Hearing. The following revisions were made:

1. The aisle width between the proposed guard house and the gates has been widened to 20-feet.
2. The drainage near the cabana has been revised in accordance with Mr. Vander Veer's letter dated August 13, 2008.
3. Details of the Street Lighting is shown on the plan.

If you have any questions, or should require additional information, please do not hesitate to contact me.

Very truly yours,

HUBSCHMAN ENGINEERING, P.A.
Michael J. Hubschman, P.E., P.P.

Enclosures

c: David M. Watkins, Esq.
Gary Vander Veer, PE
FE Alpine, Inc.

Architect's Name and Address: F, E, Alpine Inc.
270 Sylvan Avenue Tele. No. _____
 New Jersey License No.: _____

Engineer's Name and Address: Michael Hubschman
263 S. Washington Avenue Bergenfield, NJ 07642 Tel. No. 384-5666
 New Jersey License No.: _____

Planner's Name and Address: N/A
 Tele. No. _____
 New Jersey License No.: _____

Attorney's Name and Address: David M. Watkins
285 Closter Dock Road Tele. No. 768-0301

I/We have reviewed the contents of this application and, to the best of our knowledge and belief, it is true and correct

Signature of Applicant
F E Alpine Inc
Date
6/11/08

Signature of other applicants, if any

Date

Does this application seek approval of:

<u>Yes</u>	<u>No</u>	
_____	<u>X</u>	(a) Combination or merger of lots?
_____	<u>X</u>	(b) Site plan approval?
_____	<u>X</u>	(c) A minor subdivision?
<u>X</u>	_____	(d) A major subdivision?—Amended
_____	<u>X</u>	(e) Conditional use application?
_____	<u>X</u>	(f) An area variance or width variance? Number of Lots? _____
_____	<u>X</u>	(g) Any bulk variances, if so, what type?
_____	<u>X</u>	(h) Any signed approval?
<u>X</u>	_____	(i) Is County Planning Board approval required for site plan?
_____	<u>X</u>	(j) Use variance?

<u>Yes</u>	<u>No</u>	
<u>X</u>	<u> </u>	(j) Is County Planning Board approval required on subdivision?
<u>X</u>	<u> </u>	(l) Is Department of Environmental Protection approval required?
<u> </u>	<u>X</u>	(m) Is soil erosion and sediment control approval required?
<u> </u>	<u>X</u>	(n) Are any other approvals required, such as Board of Health, County, or State? If so, please specify.

Give general narrative description of application concerning all facts and state reason why approval should be given:

Four Lot Subdivision

Variances for impervious coverage on lots

22.01 & 24.01

To your knowledge, have there been prior appeals or applications involving this property? If so, describe and give disposition of application.

Yes, Subdivision Approval

General Plot Details: 22- 218,402.22

1. Size of Lot Area: 244 150,343.08 Frontage: N/A

2. Number of Lots: 2

3. Present Use: Residential

4. Proposed Use: Residential

5. Zoning District: R1

6. Buildings:

Size of ground area - square feet N/A

Dimensions N/A

Gross Floor Area: N/A sq. ft.
Stories: N/A
Height: N/A ft. Front Setback N/A ft.
Rear Yard: N/A ft. Side Yard N/A ft.
Coverage: N/A (b) N/A ft.

No. of garage parking spaces: N/A

(Also show how the required number would be computed under the Zoning Ordinance.)

No. of exterior parking spaces: N/A

(Also show how the required number would be computed under the Zoning Ordinance.)

TOTAL NUMBER OF PARKING SPACES: N/A

No. of off-street loading berths: N/A

APPLICANT MUST HAVE COMPLETED ALL OF PRECEDING BLANKS OR QUESTIONS UNLESS NOT APPLICABLE AND INDICATED BY "NA"

IMPORTANT NOTICE TO APPLICANT:

YOUR APPLICATION WILL ONLY BE HEARD ON SCHEDULED HEARING DATES IF THE ORIGINAL AND AMENDMENTS ARE FILED AT LEAST:

TEN (10) CALENDAR DAYS FOR A MINOR SUBDIVISION
OR
FOURTEEN (14) FOR A MAJOR SUBDIVISION

BEFORE SAID HEARING DATE. SITE PLAN AND ZONING VARIANCE APPLICATIONS MUST BE ADVERTISED AT LEAST TEN (10) DAYS BEFORE HEARING.

Application No.: _____

Date Filed: _____

Development Application

In accordance with the terms of Chapter 291, Laws of New Jersey, 1975, and the ordinances of the Borough of Alpine as a prerequisite to obtaining a permit for development, certain approvals or appeal procedures may be necessary. In some cases, it may be determined that more than one type of application is necessary. In order to facilitate this procedures for the applicant and the Borough, the attached application must be completed. No application will be considered completed unless all necessary information, exhibits and necessary fees accompany this application. Completed applications (14 copies) should be forwarded to the Planning Board ten (10) calendar days (for a minor subdivision), or fourteen (14) days (for a major subdivision, prior to a regularly scheduled meeting of the board. Subdivision, site plan, and variance applications must be advertised at least ten (10) days in advance, as required by statute, where a public hearing is involved. All statutory time limitations are calculated from the submission of a complete application.

In addition, in accordance with the Borough's ordinance, only the applicant or the applicant's attorney should be present at the meeting.

Location of property:

Street Address: Closter Dock Road Tax Sheet No. _____

Lot(s) No. 22.01-23.01 Block No. 55 Tax Sheet No. _____

24.01-25.01 Phone No. _____

Applicant's Name: FE Alpine Inc. Phone No. _____

Address: 270 Sylvan Avenue, Englewood Cliffs NJ

If corporation, President or Vice President: Richard Kurtz Phone No. _____

Attorney: David M. Watkins Phone No. 768-0301

Owner: _____ Phone No. _____

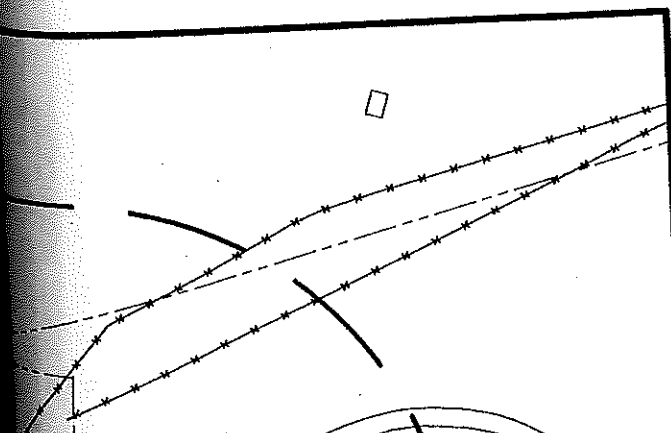
Status of Applicant:

Please check one: (Tenant/Lease _____ Phone No. _____

Contract Purchaser Phone No. N/A

Owner's name and address (if different from applicant):

Attach "Exhibit A", consent of owner, obtained from Borough Clerk if application is to be submitted by other than owner.



NO.	REVISIONS	DATE	BY	CHKD
14	PER AF LETTER DATED 8-13-08; MODIFIED LOT 25.01 ENTRANCE	9-3-08	B.W.	M.J.H.
13	ADDED GUARD HOUSE; MODIFIED LOT 25.01 & MAIN ENTRANCE	8-6-08	B.W.	M.J.H.
12	MOD. FOR IMP. COVERAGE VARIANCES FOR LOTS 22.01 & 24.01	6-6-08	B.W.	M.J.H.
11	PER AF LETTER DATED 6-27-07	8-16-07	B.W.	M.J.H.
10	ADDED SECTION II DWELLINGS	6-26-07	B.W.	M.J.H.
9	MODIFIED DRAINAGE	6-19-07	B.W.	M.J.H.
8	MODIFIED LOT 22.01 LAYOUT	5-4-07	B.W.	M.J.H.
7	PER COUNTY LETTER DATED 3-27-07	4-25-07	B.W.	M.J.H.
6	PER N.J.D.E.P. COMMENTS	4-13-07	B.W.	M.J.H.
5	PER S.C.S. COMMENTS	4-10-07	B.W.	M.J.H.
4	MODIFIED LAYOUT AND ROADWAY	3-28-07	B.W.	M.J.H.
3	G. VANDERVEER LETTER, REV. DRAINAGE, COUNTY LETTER	1-9-07	B.W.	M.J.H.
2	MODIFIED LAYOUT AND ROADWAY	11-1-06	B.W.	M.J.H.
1	MODIFIED LAYOUT AND ROADWAY	10-10-06	B.W.	M.J.H.

COVER SHEET

LOTS 22, 23, 24 & 25
FRICK ESTATES - SECTION I
 BLOCK 55
 NEW JERSEY
 BOROUGH OF ALPINE BERGEN COUNTY
 OWNER: SEE OWNERS LIST
 APPLICANT: F E ALPINE, INC. (RT. 9W)
 270 SYLVAN AVE. ENGLEWOOD CLIFFS, NJ 07632

DRAWN BY: B.W.
 CHKD BY: MJH
 SCALE: 1"=100'
 DRAWING NO. 2089-1
 REV. 14
 1 OF 11

HUBSCHMAN ENGINEERING, P.A.
 ENGINEERS - PLANNERS - SURVEYORS
 263A S. WASHINGTON AVE., BERGENFIELD, NJ 07621
 201-384-5666

MICHAEL J. HUBSCHMAN P.E., P.P.
 PROFESSIONAL ENGINEER AND PLANNER
 N.J.P.E. NO. 29497
 N.J.P.P. NO. 3200
 DATE 9-7-06

F.
F.
F.

LIST ITEMS TO SHOW STEEP
REQ'D, 1"=60' SHOWN).
COUNTY DEPARTMENT OF
) AT LEAST FORTY-EIGHT (48)
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LE OF SEEING AN OBJECT
ALL LANES. DEPICTED
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P.H.
INDIVIDUAL SUBSURFACE

JND.
PITS TO MEET THE N.J.D.E.P.

Y EASEMENT AREA(S) SHALL
(%) PERCENT AND SHALL BE
CORATIVE BOULDERS/BERMS.)

NO.	REVISIONS	DATE	BY	CHKD
13	PER AF LETTER DATED 8-13-08; MODIFIED LOT 25.01 ENTRANCE	9-3-08	B.W.	M.J.H.
12	ADDED GUARD HOUSE & LOT 25.01 ENTRANCE DETAILS	8-6-08	B.W.	M.J.H.
11	MOD. IMP. COVERAGE CALCS. FOR LOT 22.01	7-2-08	B.W.	M.J.H.
10	SHOW IMP. COVERAGE VARIANCES FOR LOTS 22.01 & 24.01	6-6-08	B.W.	M.J.H.
9	UPDATED HOUSE NUMBERS & EASEMENTS	2-25-08	B.W.	M.J.H.
8	PER AF LETTER DATED 6-27-07	8-16-07	B.W.	M.J.H.
7	ADDED SECTION II DWELLINGS	6-26-07	B.W.	M.J.H.
6	MODIFIED DRAINAGE	6-19-07	B.W.	M.J.H.
5	PER COUNTY LETTER DATED 3-27-07	4-25-07	B.W.	M.J.H.
4	MODIFIED LAYOUT AND ROADWAY	3-28-07	B.W.	M.J.H.
3	G. VANDERVEER LETTER, REV. DRAINAGE, COUNTY LETTER	1-9-07	B.W.	M.J.H.
2	MODIFIED LAYOUT AND ROADWAY	11-1-06	B.W.	M.J.H.
1	MODIFIED LAYOUT AND ROADWAY	10-10-06	B.W.	M.J.H.

**PRELIMINARY PLAT-MAJOR SUBDIVISION
STREAM ENCROACHMENT PLAN**


LOTS 22, 23, 24 & 25
BLOCK 55

FRICK ESTATES - SECTION I

BOROUGH OF ALPINE BERGEN COUNTY NEW JERSEY

APPLICANT: F E ALPINE, INC.
270 SYLVAN AVE. (RT. 9W)
ENGLEWOOD CLIFFS, NJ
07632
OWNER: SEE OWNERS LIST
SHEET 2 OF 11

P.P.
ANNER
10. 3200

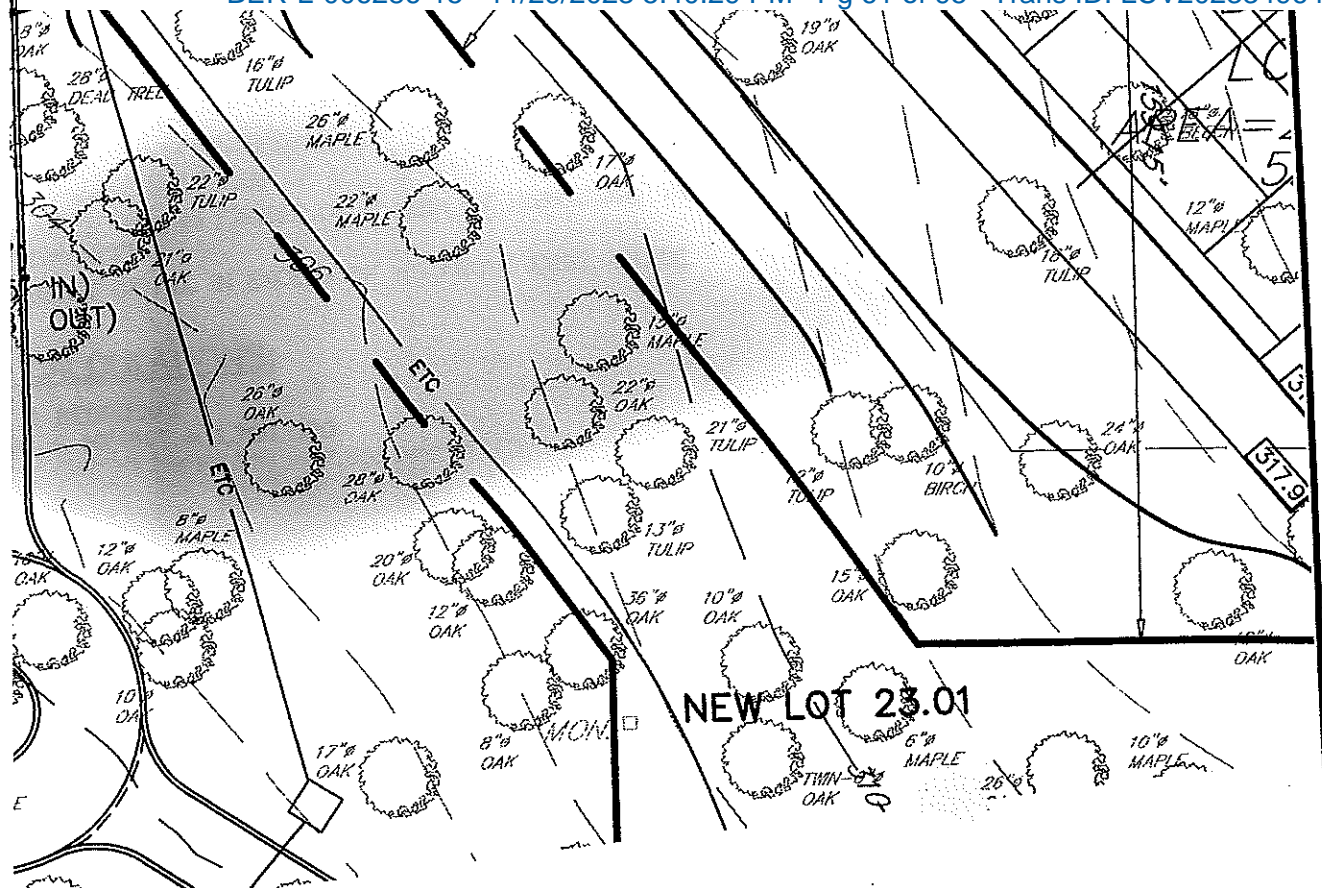


**HUBSCHMAN
ENGINEERING, P.A.**
ENGINEERS - PLANNERS - SURVEYORS
263A S. WASHINGTON AVE., BERGENFIELD, NJ 07621
201-384-5666

DRAWN BY:	B.W.
CHKD BY	MJH
SCALE:	1"=60'
DRAWING NO.	2089-2
REV.	13
2 OF 11	

EX-
A-1

-06



12	PER AF LETTER DATED 8-13-08; MODIFIED LOT 25.01 ENTRANCE	9-3-08	B.W.	M.J.H.
11	ADDED GUARD HOUSE; MODIFIED DRIVEWAY EASEMENT No. 1	8-6-08	B.W.	M.J.H.
10	MODIFIED LOT 25.01 ENTRANCE	1-9-08	B.W.	M.J.H.
9	PER AF LETTER DATED 6-27-07	8-16-07	B.W.	M.J.H.
8	EXTENDED LOT 25.01 DRIVEWAY	6-26-07	B.W.	M.J.H.
7	MODIFIED DRAINAGE	6-19-07	B.W.	M.J.H.
6	MODIFIED LOT 22.01 LAYOUT	5-4-07	B.W.	M.J.H.
5	PER COUNTY LETTER DATED 3-27-07	4-25-07	B.W.	M.J.H.
4	MODIFIED ROADWAY AND DRAINAGE	3-28-07	B.W.	M.J.H.
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2	MODIFIED LAYOUT AND ROADWAY	11-1-06	B.W.	M.J.H.
1	MODIFIED LAYOUT AND ROADWAY	10-10-06	B.W.	M.J.H.
NO.	REVISIONS	DATE	BY	CHKD

EASEMENT & PRIVATE ROAD PLAN

LOTS 22, 23, 24 & 25 BLOCK 55

FRICK ESTATES - SECTION I

BOROUGH OF ALPINE BERGEN COUNTY NEW JERSEY

APPLICANT: F E ALPINE, INC.
270 SYLVAN AVE. (RT. 9W)
ENGLEWOOD CLIFFS, NJ
07632

OWNER: SEE OWNERS LIST
SHEET 2 OF 11

SCHMAN P.E., P.P.
ENGINEER AND PLANNER
N.J.P.P. NO. 3200



ENGINEERS - PLANNERS - SURVEYORS
263A S. WASHINGTON AVE., BERGENFIELD, NJ 07621
201-384-5666

DRAWN BY: B.W.	
CHKD BY MJH	
SCALE: AS SHOWN	
DRAWING NO.	REV.
2089-3	12
3 OF 11	

9-7-06
DATE

MOVING NOTES:

ALLOWING WAIVERS ARE REQUIRED:
 MOVING IN EXCESS OF 1,000 CY OF SOIL.
 PROP. GRADES IN EXCESS OF 4:1; 3:1 PROPOSED.
 CONSTRUCT WALL IN EXCESS OF 6' HIGH (8' HIGH CONC. WALL
 AT ENTRY ENTRANCE).
 PLACEMENT OF FILL IN EXCESS OF 10' ABOVE EXIST. GRADE.

C. CALCULATIONS:

PROPOSED 11 BEDROOMS
 $200 + 10(150) = 1,700$ GPD
 $Q = (1.61)(1,700)(0.75) = 2,053$ MIN REQ'D
 F. PROPOSED FOR BLACK WATER FIELD.
 F. PROPOSED FOR GREY WATER FIELD.

D. SLOPE NOTES:

APPLICANT REQUESTING VARIANCE TO CONSTRUCT A DWELLING IN
 AREA WHERE EXISTING SLOPES EXCEED 15%.

NO.	REVISIONS	DATE	BY	CHKD
10	PER AF LETTER DATED 8-13-08	9-3-08	B.W.	M.J.H.
9	MODIFIED GENERATOR LOCATION	8-6-08	B.W.	M.J.H.
8	MODIFIED LOT 22.01 IMP. COVERAGE & REAR PATIO	7-2-08	B.W.	M.J.H.
7	MODIFIED LOT 22.01 LAYOUT; IMP. COVERAGE VARIANCE	6-6-08	B.W.	M.J.H.
6	MODIFIED DRAINAGE	6-19-07	B.W.	M.J.H.
5	MODIFIED LOT 22.01 LAYOUT	5-4-07	B.W.	M.J.H.
4	PER COUNTY LETTER DATED 3-27-07	4-25-07	B.W.	M.J.H.
3	PER N.J.D.E.P. COMMENTS	4-13-07	B.W.	M.J.H.
2	MODIFIED DRIVEWAY	3-28-07	B.W.	M.J.H.
1	G. VANDERVEER LETTER, REV. DRAINAGE, COUNTY LETTER	1-9-07	B.W.	M.J.H.



SCALE: 1"=30'

SITE PLAN

NEW LOT 22.01

LOTS 22, 23, 24 & 25 BLOCK 55

FRICK ESTATES - SECTION I

BOROUGH OF ALPINE BERGEN COUNTY NEW JERSEY

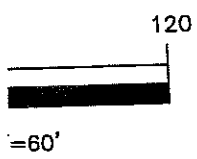
APPLICANT: F E ALPINE, INC. OWNER: SEE OWNERS LIST
 270 SYLVAN AVE. (RT. 9W) SHEET 2 OF 11
 ENGLEWOOD CLIFFS, NJ
 07632

<p>HUBSCHMAN ENGINEERING, P.A. ENGINEERS - PLANNERS - SURVEYORS 263A S. WASHINGTON AVE., BERGENFIELD, NJ 07621 201-384-5666</p>	DRAWN BY: B.W.	
	CHKD BY: MJH	
	SCALE: 1"=30'	
DRAWING NO. <h2>2089-8</h2> 8 OF 11	REV. 10	

11-1-06
DATE

ex. A-2

1	PER AF LETTER DATED 8-13-08; MODIFIED LOT 25.01 ENTRANCE	9-3-08	B.W.	M.J.H.
<i>NO.</i>	<i>REVISIONS</i>	<i>DATE</i>	<i>BY</i>	<i>CHKD</i>
<p>LOT 25.01 & FRICK DRIVE ENTRANCE DETAILS</p>				
<p>LOTS 22, 23, 24 & 25</p>				<p>BLOCK 55</p>
<p>FRICK ESTATES - SECTION I</p>				
<p>BOROUGH OF ALPINE</p>		<p>BERGEN COUNTY</p>		<p>NEW JERSEY</p>
<p><i>APPLICANT:</i> F E ALPINE, INC. 270 SYLVAN AVE. (RT. 9W) ENGLEWOOD CLIFFS, NJ 07632</p>		<p><i>OWNER:</i> SEE OWNERS LIST SHEET 2 OF 11</p>		
<p>IMAN P.E., P.P. ENGINEER AND PLANNER N.J.P.P. NO. 3200</p>		<p><i>DRAWN BY:</i> B.W.</p>		
		<p><i>CHKD BY</i> MJH</p>		
		<p><i>SCALE:</i> AS SHOWN</p>		
		<p><i>DRAWING NO.</i></p>		<p><i>REV.</i></p>
<p>8-6-08</p>		<p>2089-16.1</p>		<p>1</p>
<p>DATE</p>		<p>1 OF 1</p>		
<p>HUBSCHMAN ENGINEERING, P.A. ENGINEERS - PLANNERS - SURVEYORS 263A S. WASHINGTON AVE., BERGENFIELD, NJ 07621 201-384-5666</p>				



EX. A-3

EXHIBIT “E”

FILED

FEB 17 2020

IN THE MATTER OF THE : SUPERIOR COURT OF NEW JERSEY
BOROUGH OF ENGLEWOOD : LAW DIVISION: BERGEN COUNTY
CLIFFS : DOCKET NO. BER-L-6119-15
: CIVIL ACTION
: ORDER
:

This matter having come before the court for trial on January 22, 2020 and February 5, 2020; and

The court having heard the testimony of witnesses, arguments of counsel and considered the legal submissions of all parties, and for reasons set forth in the attached Decision and for good cause shown;

IT IS on this 12th day of February, 2020,

ORDERED:

The court having found previously found the Borough of Englewood Cliffs to be constitutionally non-compliant, the court grants 800 Sylvan Avenue, LLC a builder's remedy having found that the proposed plans meet the sound planning criteria and there are no environmental or other constraints which would prohibit the remedy for reasons set forth in the decision filed this date;

The court further finds proposed Plan A to be the plan which best meets sound planning criteria;

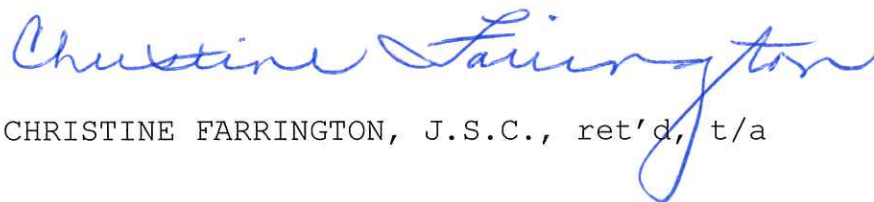
The court further grants 800 Sylvan Avenue LLC's motion to conform its pleadings;

The court further directs the Borough of Englewood Cliffs to reserve capacity for all utilities and sewer capacity for all sites designated for Mount Laurel housing, including but not limited to 800 Sylvan Avenue, all properties designated for rezoning, the overlay zones and proposed municipal site;

The court finds the restriction against parking contained in a prior resolution pertaining to an application before the

Planning Board for this site not to require a quiet title action is addressed by the court in the attached decision

The court has deferred the issue of the appointment of a special hearing officer to assume the function of the joint land use board pending submissions by the parties;

A handwritten signature in blue ink that reads "Christine Farrington". The signature is written in a cursive style with a large, looping 'y' at the end.

CHRISTINE FARRINGTON, J.S.C., ret'd, t/a

NOT TO BE PUBLISHED WITHOUT THE APPROVAL OF THE COMMITTEE ON

OPINIONS

IN THE MATTER OF THE : SUPERIOR COURT OF NEW JERSEY
BOROUGH OF ENGLEWOOD : LAW DIVISION: BERGEN COUNTY
CLIFFS : DOCKET NO. BER-L-6119-15
: :
: :
: CIVIL ACTION

FILED

FEB 12 2020

DECISION

Trial: January 24 and February 5, 2020

**CHRISTINE A. FARRINGTON,
J.S.C.**

Decided: February 12, 2020

Honorable Christine Farrington, J.S.C., ret'd, t/a

Thomas J. Trautner, Jr., Esq. and Marie Mathews, Esq., Chiesa, Shahinian & Giantomasi; Jeffrey R. Surenian, Esq., Jeffrey R. Surenian & Associates; Albert H. Wunsch, III, Law Office of Albert H. Wunsch appearing on behalf of plaintiff, Borough of Englewood Cliffs.

Christopher Martin, Esq., Morrison & Mahoney appearing on behalf of the Borough of Englewood Cliffs Planning Board

Antimo A. DelVecchio, Esq., and Daniel Steinhagen, Esq., Beattie Padovano; and Thomas F. Carroll, III, Esq., Hill Wallach appearing on behalf of Defendant- Intervenor 800 Sylvan Avenue, LLC.

Joshua Bauers, Esq., appearing on behalf of Fair Share Housing Center.

Special Master, Mary Beth Lonergan, PP

This matter comes before the court for a determination whether Defendant-Intervenor, 800 Sylvan Avenue LLC is entitled to a builder's remedy. The court previous revoked the Borough's

immunity and found that the Borough's Housing Element and Fair Share Plan was constitutionally non-compliant.

The following exhibits were marked into evidence:

DS1	Current conditions (previously DS 49)
DS12	Andrew Clark resume
DS15	Letter of Interpretation
DS37	Concept Plans AO3 and AO4
DS51	Concept plans
DS71	Photographs
DS72	Photographs
DS73	State Development Plan
DS68	Townhome designs
DS69	Townhome concepts
DS70	Building rear elevation
DS74	Concept Site Plan A revision date February 4, 2020

Defendant-Intervenor filed two builder remedy plans, here referred to as Plan A and Plan B. The plans call for 600 units and 617 units respectively, with full 20% set aside and the appropriate bedroom mix and affordability categories. The distinguishing factor between the two plans is Plan A calls for intrusion into the front yard where parking, but not residences, are prohibited as a result of a restriction contained in a Planning Board resolution. The intrusion would result in a

smaller parking structure near Hollywood Avenue and Floyd Street.

The Borough opposes any residential development on the 800 Sylvan site.

800 Sylvan called Stuart Johnson. Mr. Johnson previously testified on the issue of constitutional non-compliance and was accepted as an expert in architecture and land planning. Mr. Johnson described the site as currently existing, as he had previously.

He testified the site slopes west to east and north to south. It has frontage on Sylvan Avenue, Hollywood Avenue and Floyd Street. Adjacent to the property are commercial and office properties. The Borough Board of Education property is located to the west. There are approximately five residential houses on Floyd and Hollywood which are a minimum of 80 feet from the property line. The park adjacent to Floyd Street has tennis courts and batting cages. The property is in close proximity to a state park. The plan proposes the southwest corner of the site will continue as it presently exists, an office building leased by Unilever.

Mr. Johnson identified DS-51 as redevelopment plan for 600 dwelling units, of which 20% or 120 units would be affordable. Of the 600, 80 units would be attached for sale three-bedroom townhomes. The plan proposes 520 rental units in two buildings.

Mr. Johnson testified the townhomes offer a diversity of housing on site and provides a true transition of scale and mass to residences along Floyd Street. He testified the townhouses would also help buffer the multi-family units.

A 1 ½ level parking deck with 122 structured spaces was proposed to be located on the remaining eight acres on which the Unilever building is located in addition to adjacent 308 surface parking spaces. He testified the proposed parking would be more than sufficient for current and future uses. Mr. Johnson testified currently Unilever has 250 employees of which 60% utilize parking.

Additional on grade parking was proposed at front of the Unilever building which intrudes into the restricted area. Mr. Johnson noted that location of the surface parking at this location was consistent with surface parking at the adjacent CNBC site which has a setback of 74 feet. He noted further south on Sylvan Avenue existing surface parking is closer to the right of way. Mr. Johnson testified the compensating benefit from the proposed front surface parking was the reduction of the height of the parking deck at the rear of the property.

The height of the parking deck proposed is 1 ½ stories (25 feet at the Hollywood portion) with sloping from west to east and the highest point along Floyd is 13 feet.

He testified if front yard parking was disallowed the parking garage would have to be increased one story to 2 ½ stories. The resulting height would be increased to 24 ½ feet along Floyd Street and 33 feet facing Hollywood. Mr. Johnson testified the closest distance to Floyd Street from the parking garage was more than 65 feet plus an additional 20 feet to the curb line. The distance from parking deck to an existing structure on Floyd Street would be approximately 145 feet. The closest distance of deck is 145 feet from property line at Hollywood and closest distance to a house on Hollywood is about 205 feet.

The existing structures on Hollywood and Floyd are approximately 35 feet tall and therefore taller than the proposed parking deck in Plan A.

Mr. Johnson testified the approximate height of the R&D building is about 55 feet. The deck and building appear comparable in height because of the sloping nature of the property.

He testified proposed Building A is approximately 90 feet from the R&D building which exceeded requirements for fire code, light and air.

Mr. Johnson described DS-36 A02 page 2 as showing 342 parking spaces on ground floor. Above the parking are 315 residential units on four levels with three open area court

yards which facing east were proposed. Seventy-two of the units will be affordable be distributed throughout building. Exterior and finishes were proposed to be the same for all units. All units will share the same building entry. Unit doors will be side by side and the affordable units indistinguishable from the market rate units. The proposed structure parking will include 342 spaces which would be screened with articulated windows. Amenities would include a club room for private event and dining room, gaming space, pool and barbeque areas and areas of passive and active recreation. In addition to the structure parking 194 surface parking spaces are proposed.

Mr. Johnson testified DS-36-A01 represents the ground floor plan. He indicated where the restriction fell, part way along the drive aisle. The restriction applies to parking only and does not prohibit residential use within the restriction. He testified approximately 50-60 parking spaces are proposed in the location.

Mr. Johnson testified the ground level parking would have punched windows making it comparable in design to the upper story residential floors.

Mr. Johnson testified the parking supply for building A is 1.7 parking spaces to unit ratio. He testified 1.7 was chosen as opposed to the RSIS which requires 1.8 depending on the number of bedrooms. He testified in his experience there is a

decline in auto ownership and in a building with a significant number of one-bedroom units, many households would have a single vehicle. He testified the proximity of the New Jersey Transit bus route was also a factor in his determination. He testified 1.7 spaces per unit would meet market demand and testified there could be additional parking provided under Building A if required.

Mr. Johnson identified DS-36 A02 as the Building B conceptual which proposes 205 apartment units, of which 157 would be market rate and 48 would be affordable units. He testified Building B is predominately a four-story building at grade. There is a small portion of the building which is 3-story at grade and a small portion which is 5-story as building steps with grading. The plan proposes three-story parking garage with the entrance located at southern end of the building. The main entrance proposed a U-shaped area drop off area. There is proposed a center courtyard at grade with pool, barbeque area and sunbathing deck. Mr. Johnson testified the four-story portion of building is about 50 feet in height, a small portion is 60 feet in height and the three-story portion is 40 feet in height. Building B also proposed 1.7 parking spaces per unit.

Mr. Johnson testified the plan did not envision any sharing of parking between the Unilever use and residential use.

He testified there is shared entry and arrival sequence, but no shared direct access to the Unilever facility.

Mr. Johnson also testified as to the townhouse component. He testified the townhouse provided diversification to the residential project and transitional scale from the apartment buildings to existing residential and Board of Education uses.

He testified the townhouses would help define the street scape along Floyd Street and provide buffering from the apartment buildings.

The proposed eighty townhouses were designed as an enclave and were proposed to have separate and dedicated access, landscaped boulevard ingress and egress off Floyd Street. He testified from a vehicular standpoint the only connection to the rest of the project would be an emergency gate.

Mr. Johnson testified the townhouses were proposed to be attached in clusters of three, four, five and six with one cluster of seven. The buildings were proposed as three stories with 2 car garages and driveway spaces. The townhouses would be 2800-3000 square feet per unit with pitched roofs, 42 feet high from finished first floor level to roof.

He testified the proposed parking for the townhomes was RSIS compliant at 2.5 parking spaces per unit, and more if the driveway parking was included. He testified guest parking spaces were also provided.

Mr. Johnson testified that DS-37 was concept Plan B which is an alternate plan in which proposed parking does not intrude into the deed restricted area.

He testified DS-37 Concept Plan B depicts 617 units of which 124 were affordable housing units. Building A and B comparable to Concept A. Plan B also proposes 80 for sale townhomes. In Plan B, Building A has 17 more units. The building also continues to intrude into the restricted area but is not violative of the restriction because the intruding portion of the building contains only residences and no parking. The parking proposed in Plan A, but lost in Plan B is replaced by 81 spaces in a partial basement in Building A. The height, scale and massing of the building all remain the same.

Mr. Johnson also testified the parking for the Unilever facility had to be modified to respect the parking restriction, by elimination of the parking in front of the building and increasing the proposed parking deck by one story. He testified that residential building footprint, setback everything else remained the same, the height of the parking deck increased by 11 feet making the maximum exposure of the deck to Floyd Street 24 ½ feet measured from adjacent grade and 33 feet measured from adjacent grade on Hollywood Avenue.

Mr. Johnson identified DS-35I as Illustrative theme demonstrating exterior architecture for multi-unit buildings consisting of masonry brick veneer and residential windows.

Mr. Johnson identified DS-35J as an Illustrative illustration of amenities, showing the club amenity room, private event room, fitness room.

DS-35K was identified as an Illustrative illustration of the interior showing among other aspects the lobby lounge and work cube areas.

DS-35L was identified as an Illustrative illustration of the outdoor amenities, barbeque facilities, courtyard and pool.

DS-68 was identified as showing the front elevation of the three story proposed townhomes. Mr. Johnson testified the scale and typical elevations match product type being proposed and were proposed to be articulated horizontally and vertically with faux dormers on the roof.

DS-69 was identified by Mr. Johnson as showing a grouping of four townhouses with masonry brick veneer.

DS-70 was identified as showing the rear elevation illustration of a grouping of 5 townhomes.

Mr. Johnson testified the roofs would be pitched and would have private decks 10 feet deep.

He testified all affordable units would be provided in the rental component.

In cross-examination by Mr. Bauers of FSHC, Mr. Johnson testified that the 120 affordable units would be located Building A (72 units) and Building B (48 units) on a pro-rate share basis. All of the proposed affordable housing would be rentals. Mr. Johnson testified 24 one-bedrooms, 72 two-bedrooms and 24 three-bedroom units were proposed.

He testified whether the court found Plan A or Plan B to be acceptable, all affordable units would be rentals. He testified there would be an additional four affordable units if Plan B were chosen. He testified at least 13% of the units would be very low-income units and the breakdown of bedrooms would be FSHA compliant.

Patricia Ruskan, P.E. was called by 800 Sylvan. Ms. Ruskan was previously accepted by the court as an expert in Civil Engineering. Ms. Ruskan identified DS-35A as an aerial view of site. She testified she had visited the site the previous week and took photographs which she identified as the photographs in DS-71.

The photographs showed the existing conditions of the property along Floyd Street near Hollywood Avenue, Allison Drive and from the school property. Generally, the photographs showed a sparse buffer consisting a small deciduous trees with a small number of evergreens.

Other photographs showed the cul-de-sac toward the municipal recreation area and a "tot" lot at the park. Ms. Ruskan testified the pictures confirmed her earlier testimony that the trees had elevated canopies and provided little buffering. She testified she was familiar with the landscape plans of 800 Sylvan LLC which provided better landscape options including 8-10-foot evergreen trees. She testified the walk from Allison Road to the tot lot took approximately 4 ½ minutes. Based on that she testified she considered the recreational area to be a nearby amenity.

Ms. Ruskan testified she had previously prepared an exhibit which showed building and parking setbacks for buildings along Sylvan Avenue. Ms. Ruskan identified DS-72 as setbacks which exist today. She testified 700 Sylvan is located 135 feet from building to right of way and closest its closest surface parking is 65 feet away. The CNBC building is 60 feet from the right of way and surface parking is 75 feet from right of way.

Ms. Ruskan testified there are also numerous properties along Sylvan Avenue where the buildings and parking are closer - 15 feet, 28 feet, 86 feet, "as you look further south things get much closer." She testified the new LG building is 69 feet from Sylvan Avenue.

Ms. Ruskan testified the LG north parking structure is 4 stories in height with the south wing one level of parking running south to north with three levels above.

Ms. Ruskan testified LG had steep slopes greater than 15% that were developed and were constructed upon with no issues raised.

With regard to the wetlands on the 800 Sylvan site she testified wetlands would not be a problem for development proposed. She testified the total acreage of wetlands is very small totaling .271 acres in six areas.

Ms. Ruskan testified the storm water management requirements could be met and that she had advanced storm water management as part of the wetlands management permit submitted on December 2019.

She testified the existing impervious coverage on site is as per DS-35A 51.5% and 64.2% was proposed. She opined the project could be constructed with sound engineering design.

On cross-examination by Mr. Reagan, attorney for the Special Master, Ms. Ruskan testified she would recommend a sidewalk on Floyd Street to intersect with the connector in the proposed project to Floyd Street.

Plaintiff next called Andrew Clark who was accepted by the court as an expert in Wetlands Science.

Mr. Clark testified he had co-authored the letter report previously marked as DS-15 which speaks to an Letter of Interpretation verifying wetlands location on a subject property and which he says validated the delineation his company found in field.

He testified a permit application was filed in December 2019 for a Fresh Water General Permit Number 6 for filling of the isolated wetlands on the site. He testified a general permit is supposed to be an easy permit to obtain, the main criteria for such a permit is that the wetlands are isolated which he testified the subjects are. He testified the wetlands for which a permit is sought cannot exceed one acre, provide habitat for threatened or endangered species and cannot be an EPA priority. He testified none of these criteria apply to the subject wetlands and he did not foresee any issues with the issuance of a GP6 permit.

800 Sylvan next called Art Bernard who the court accepted an expert in professional planning with expertise in Affordable Housing. Mr. Bernard testified he had reviewed the developers proposed builders remedy plans. He testified the standard to grant builder's remedies was established by the Supreme Court and entitles 800 Sylvan to the remedy where there are no environmental or other substantial planning concerns such that the plan is not contrary to sound land use planning. Mr.

Bernard testified both proposed plans were consistent with sound planning and there were no environmental concerns. He testified he believed Plan A to be a better plan primarily because parking deck is substantially lower with modest encroachment into restricted area. He testified there is a balancing test which attempts to balance an appropriate response which promotes general welfare and addresses needs of New Jersey citizens. He testified the need for affordable housing is very important and it is the only land use of which he is aware which is a constitutional obligation.

He testified affordable housing is particularly significant in Englewood Cliffs because in all the time New Jersey has mandated affordable housing, the Borough has not provided a single unit.

Mr. Bernard testified it was established in Phase I of the trial that 96% of Borough's housing stock is single-family detached homes. The demographics of population show there are much lower percentage of lower income households, African Americans and Latinos in Englewood Cliffs because of the housing stock.

He testified the State Plan is significant because it is a document adopted by State Planning Commission. He testified the Borough lies in Planning Area I which is designated as the area where much of the State's growth is to take place.

Mr. Bernard testified that the 800 Sylvan site does not have environmental concerns that he is aware of which were not addressed by Ms. Ruskan or Mr. Clark. He testified the site is sewerred and has water.

Regarding access Mr. Bernard testified the site has access from Floyd Street and Hollywood Avenue, with Floyd street having 30 feet of cartway. He testified Sylvan Avenue is a state highway with traffic controls. There is a bus stop in front of site. He testified Sylvan Avenue ties into Palisades Interstate Parkway.

He testified the site has access to regional employment, shopping, transportation.

He testified to the west there are schools and recreation facilities, to the east there is Sylvan Avenue and beyond that hiking, a boat launch, and bird sanctuary.

Mr. Bernard testified the proposed density of 30 units per acre was consistent with sound planning practices and the State Plan endorses higher densities.

He testified Judge Jacobson has determined the regional need which exceeds 38,000 affordable housing units and the ability to satisfy that need is limited by the restrictions of the Highlands Region of which Englewood Cliffs is not part.

He testified he was present during the first phase of the trial and was aware the Borough had taken position that site is

too isolated to support density. Mr. Bernard testified the site is not in downtown area, but few of the housing units in Englewood Cliffs were.

He testified the proposed townhomes provided a good transition. He testified no buffer was required between residential buildings and the proposed townhomes did not need to be screened as they will be very attractive.

When shown DS-36 Mr. Bernard testified that the locations of the driveways internal to the site was a good plan because it would allow for uninterrupted landscaping. He testified the developer was more than willing to extend the sidewalk to the municipal park. He testified the proposed building setbacks met or exceeded those existing along Sylvan Avenue.

He testified Plan A in which the proposed parking deck would be one story less was the better plan.

He testified the proposed buildings would not generate noise or emissions, and would not deprive each other, the Unilever building or the CNBC building of air or light and the setbacks were appropriate.

Mr. Bernard found the recreational amenities to be adequate for proposed Buildings A and B in conjunction with the nearby municipal amenities and state park.

Mr. Bernard noted that the townhomes did not have private recreational facilities. He testified data from Rutgers

University shows that expensive townhomes do not generate school age children.

He testified he was present during Mr. Johnson's testimony. Regarding his testimony on bedroom and income distribution he testified the affordable units would be dispersed throughout the apartments. He testified the developer would comply with all requirements to include income mix, marketing and units for very low-income families.

He testified the site is relatively constraint free, the height and mass of the apartment buildings are compatible with adjacent office uses; the townhouse use is an appropriate transitional use between the school and the few existing single-family homes and apartments.

Upon cross-examination by Mr. Bauers, Mr. Bernard testified the development would comply with the Uniform Housing Affordability Controls (UHAC) regulations with the appropriate bedroom and income mix. He testified the phasing requirement would be complied with and affirmative marketing would be undertaken. The deed restrictions would comply with the regulations.

On cross examination by Mr. Reagan, Mr. Bernard agreed that access to Floyd Street through the townhomes development would be shorter and could be located between the buildings and CNBC.

He testified the rents for the units would cover the amenities and the affordable units would not be charged for their use.

When the trial continued February 5, 800 Sylvan recalled Mr. Johnson in conjunction with concerns expressed by the Special Master relative to recreation on the proposed site plans. Mr. Johnson identified DS-74 as the Concept Site Plan for Plan A which he testified was last revised on February 4, 2020. He testified the sheet did not change Concept A plan previously submitted as to site metrics, location or footprints, all of which remained the same. He testified the revised sheet highlighted outside recreation areas.

He testified Building A had three open air courtyards. The central courtyard has a pool and deck area of approximately 2800 square feet with seating areas for sunbathing, barbequing, outdoor seating and dining. It includes a natural gas fireplace and would be adjacent to interior Club Room, gaming room and private dining. He testified inside there would be golf and soccer stimulators. There would be direct connectivity between outdoor and indoor recreation. He identified a toddler play area, adjacent to an indoor play area, geared to children 2-7 years of age and a passive play/fitness area with artificial turf approximately 40'X 50', or 2000 square feet, and suitable for light ball play volleyball, bocce, outdoor movie

screenings, and outdoor yoga. An indoor area was proposed to be 500 square feet and geared to children 1-6. He testified each residential unit on the courtyard has private patio area screened with hedges. These private areas were netted out of the public recreational areas.

Mr. Johnson testified Building B has a courtyard behind the main entry. The plan proposes 8500 square feet of internal recreation for Building B in addition to the open-air courtyard and 2800 square foot pool area.

He testified to the west of Building B a multi-purpose recreation area of approximately 8800 square feet was proposed, inclusive of a toddler playground area. The multi-purpose recreation area was proposed to be 160 feet long and 30-70 feet wide.

He testified the revised drawing showed the proposed sidewalk extending to the multi-purpose recreation area. He testified the sidewalk was further proposed to be extended out to Floyd Street for access to Borough recreation areas. He testified the developer also proposed a sidewalk along Floyd Street and extending behind the CNBC building

Mr. Johnson testified the proposal for both Building A and Building B included a hotel style lobby with charging ports, wifi, workspaces and fireplace.

He testified the club room would also include a fireplace, wifi and direct access to outdoor areas. The private event room was proposed to be between 800-900 square feet. Both buildings would also have state of the art fitness centers of 1500-2000 square feet. He testified the proposed amenities are above market standards.

On cross-examination by Mr. Bauers, Mr. Johnson testified that the residents of both buildings would have cross access, including to the pools. The residents of the townhouses would have access to outdoor areas.

He reaffirmed that the plan for integrating the affordable housing units was to spread them throughout the two buildings on a pro-rata share meaning there would be more units in Building A than Building B.

In response to cross-examination by Mr. Trautner on behalf of the Borough, Mr. Johnson testified that the calculations used in designing the recreation spaces were based in part on bedroom distribution. He testified for one-bedroom units the occupancy would typically be one or two persons. He testified there was no calculation made for school age children.

800 Sylvan rested and the court called Special Master Mary Beth Lonergan to testify.

Ms. Lonergan testified that the Supreme Court in Mt. Laurel II, South Burlington County N.A.A.C.P. v. Township of Mount

Laurel, 92 N.J. 158 (1983) ruled a builder's remedy should be granted unless because of environmental or some other reasons it would be against sound planning. She testified the revised plans proposed by 800 Sylvan meet the sound planning criteria and there were no environmental or other reasons which dictated against the granting of the remedy.

Ms. Lonergan noted, as did Mr. Bernard, that 800 Sylvan's site is in Planning Area I which is the preferred location for inclusionary and redevelopment sites pursuant to the State Development Plan

Ms. Lonergan recommended that water and sewer capacity should be reserved for this inclusionary development and other affordable sites in the Borough and the court so orders.

Ms. Lonergan testified that she is comfortable with the site access and urged the Borough to support 800 Sylvan's proposal to apply to NJDOT for a left turn lane from northbound Sylvan Avenue into the site.

Ms. Lonergan testified that she supports the introduction of single-family attached townhouses as they will make the overall development of the site more feasible. She further endorsed that townhouse use as a transitional use, agreeing that they would help buffer the massing of the apartments from the single-family homes.

Ms. Lonergan testified the height and massing of proposed Building A and Building B were consistent with surrounding area massing.

She testified that removal of the front yard parking restriction would result in a lower rear parking deck structure and that proposed structure would be below the tree line and effectively buffered from the single-family homes on Hollywood Avenue. The Special Master testified it made sense for the court to remove the restriction which is in keeping with appropriate buffering and landscaping.

Ms. Lonergan testified she appreciated the Floyd Street pedestrian and bicycle access and stated the enhanced access from the site to the Borough park was an important component to her finding that the proposed active and passive recreation was sufficient for the site.

Ms. Lonergan endorsed the developer's plan that the affordable units would be fully integrated on every floor without identification from halls or exterior doorways.

She testified as to the UHAC standard and state law and agreed that the actual income breakdown by very low or moderate income could be worked out with FSHC and herself and the developer on a later date.

She testified that she supported the proposed building setbacks between the Unilever building and proposed residential

apartments. She further supported the potential emergency access between residential complex and Unilever stating this issue is appropriate for determination at site plan review, as was the full sidewalk plan, landscaping and buffering.

Ms. Lonergan testified that as a result of the plan revisions testified to by Mr. Johnson relative to active and passive recreation spaces, she had no concerns regarding open space and recreation of a substantial planning nature and testified 800 Sylvan had adequately addressed recreation. She opined that Dr. Kinsey's finding regarding a Wall Township application which concerned a very isolated site, and referred to by Mr. Mistretta, did not have application in this matter. She testified that she had searched for nationwide standards, and did not find anything specific for this site, as the national standards are geared to what a municipality should be providing to its residents as a whole. She testified it is common for a town to reserve land for open space. However, she testified because this is an important inclusionary development site for the Borough, and one of a very few sites which may be developed, she did not think the focus should be on green fields or a 30% open space requirement. She testified she concluded from Mr. Johnson's testimony that the proposed development would have approximately 1 ½ acres for active and passive recreation.

She testified that important to making the determination that 800 Sylvan has addressed active and passive recreation appropriately was consideration of the location of the site which is directly across the street from school area, and a short distance from the only Borough owned play area not associated with a school.

Ms. Lonergan concluded that the 800 Sylvan site does address sound land use planning concerns and she saw no environmental or other substantial planning concerns that should prohibit 800 Sylvan from being awarded a builder's remedy.

On cross examination by Mr. Bauers the Special Master testified that the most recent version of UHAC was adopted in 2004. The State Fair Housing Act was amended in 2008 and increased the amount of very low-income housing to 13% of all affordable units. Very low income means at or below 30% of the median income.

On cross examination by Mr. Trautner regarding the applicability of the Wall Township case and Dr. Kinsey, the Special Master referred to Dr. Kinsey's report from 2005, pages 18 and 19, and read two paragraphs into the record in which Dr. Kinsey commented on that the apartments proposed were isolated from safe access to offsite recreation.

Essentially for the reasons testified to by Special Master Lonergan and supported by the other expert witnesses produced by

800 Sylvan, particularly Mr. Bernard, and undisputed by the Borough and the Planning Board which produced no witnesses to the contrary, the court finds 800 Sylvan Avenue LLC is entitled to a builder's remedy. As noted by Ms. Lonergan, our Supreme Court in Mount Laurel II wrote at page 330:

As previously explained, builder's remedies will no longer be "rare" and will be granted as a matter of course where (i) the plaintiff-developer will provide a substantial amount of lower income housing, and (ii) the proposed project accords with sound land use planning. . .

The court finds that 800 Sylvan proposes to provide a substantial amount of lower income housing and the proposed project accords with sound land use planning.

The court further finds, based upon the unrefuted testimony of the Special Master and Mr. Bernard that Plan A, which includes an area of front yard parking with the concomitant result of reducing the height of the proposed parking deck, is the plan which best meets sound land use planning criteria.

800 Sylvan Avenue LLC the conclusion of its case moved to conform its pleadings to remove the parking restriction which may prohibit the front yard parking called for in DS-36 from being constructed.

800 Sylvan argued that the restriction was imposed by the planning board as a condition related to the construction of an office building on the site. 800 Sylvan further argued that

circumstances had changed by virtue of the proposed project and that the Borough had permitted front yard parking on various other sites on Sylvan Avenue.

The Borough and the Planning Board objected.

This court previously addressed the issue of the restriction in a prerogative writ action on February 22, 2019, 800 Sylvan Avenue LLC v. Planning Board of Englewood Cliffs, BER-L-9088-17, wherein the court found on page 28-30 that the restriction was imposed by the Planning Board as a condition of approval for a prior approval on the property and contained in the prior approving resolution. The court found 800 Sylvan was entitled to apply to the Board to reconsider the previously imposed restriction which could be modified by the Planning Board. 800 Sylvan argues the restriction is not analogous to the restriction in Soussa v. Denville Twp. Planning Bd., 238 N.J. Super. 66 (App. Div. 1990), citing an unpublished Appellate Division case in which the Appellate Division found an approval, which included a condition of no further improvements to increase lot coverage or disturbance of the "Crest Line," in a resolution which was recorded not to be analogous to Soussa, but only a notice to future owners that they would be prohibited from future development which would increase lot coverage or disturbed area without first seeking approval from the zoning board. The Borough argues that the restriction is analogous to

the one in Soussa and 800 Sylvan is required to bring an action to quiet title. In Soussa, in return for approval granting for major subdivision approval for nine building lots, the Soussas agreed that a remaining 20.22-acre tract of land would be unavailable for future subdivision and development on that tract would be limited to a single one-family residence. The Soussas executed a new deed with the restrictive covenant which conveyed the property from the Soussas as grantors to themselves as grantees. Subsequently, the Soussas filed an application for subdivision which the Board declined to hear based upon the deed restriction. The court in Soussa found that although an applicant is free to make a new application to a board which had previously denied the application and such is not barred by res judicata, the restriction in the deed in Soussa read the restriction was required so "that there be adequate protection afforded the township and the general public. . ." The court found that language intended to make the public of the Township a third-party beneficiary of the covenant in the deed and the Township was entitled to maintain an action to enforce it and was a necessary party to any action to lift the restriction.

The court has no evidence before it that the parking restriction was other than that contained in a prior resolution of approval which was recorded. There is to the court's knowledge no separate deed and no language which would suffice

to make the Borough a third-party beneficiary of any covenant in a such a deed. Accordingly, the court finds the restriction does not require an action to quiet title and could be modified by the joint land use board and therefore the court, or the Special Hearing Officer should one be appointed.

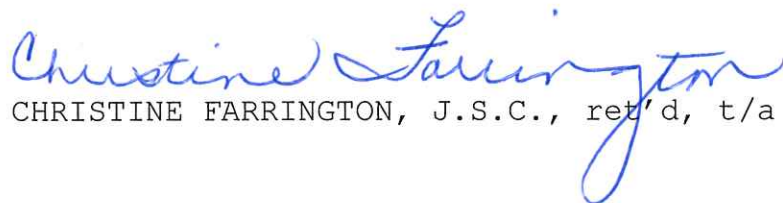
The court grants 800 Sylvan LLC's motion to conform its pleadings.

800 Sylvan joined by FSHC made request for the appointment of a special hearing officer to undertake the role of the joint land use board alleging the board has been compromised and has demonstrated it is opposed to affordable housing being constructed in the Borough.

The Borough and Planning Board opposed.

The court has granted all parties the opportunity to brief the issues and will address the application by separate order.

The appropriate order has been entered.


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November 29, 2023

Via Ecourts and Regular Mail

Hon. Christine A. Farrington, J.S.C.
Superior Court of New Jersey, Law Division
Bergen County Justice Center
10 Main Street
Hackensack, New Jersey 07601

**Re: In the Matter of the Borough of Alpine
BER-L-6286-15**

**F.E. Alpine, Inc., et als. v. Borough of Alpine
BER-L-293-20**

**Motion to Vacate Excise Condition of Approval and Deed Restriction,
or Alternatively, for Confirmation that Deed Restriction Does Not
Limit Development of Affordable Housing**

Dear Judge Farrington:

This firm is co-counsel with Schepisi & McLaughlin, P.A. to F.E. Alpine, Inc., Sylco Investments #4, LLC, Sylco Investments 854, LLC; 850 Closter Dock Road, LLC; 842 Closter Dock Road, LLC; and Sylco Investments #5, LLC (collectively "Sylco" where appropriate) in the above-referenced matters. Please accept this Letter Brief in lieu of a more formal submission in support of Sylco's motion to vacate a condition of approval contained within a Resolution of approval adopted by the Alpine Planning Board on October 28, 2008 granting F.E. Alpine

Fifty-Three Years of Service

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 2

subdivision approval for property formally known and designated as Block 55, Lot 25.01 on the Tax Assessment Maps of the Borough of Alpine (the “Property”). F.E. Alpine also seeks to terminate a deed restriction limiting future subdivision of the Property, or alternatively, for confirmation that the deed restriction does not impact the development of the Property as part of the Borough of Alpine’s affordable housing compliance plan.

Background

The Property is a 12.77 acre parcel that is located in the Borough of Alpine’s R-A Residential A Zone. The R-A Zone permits, on lots that are at least 2 acres in size, single family dwellings, parks and other public uses, and agricultural uses. Accordingly, the Property is more than six (6) times the required minimum lot area in the R-A Zone. The Property known as the “Frick Estate” was formerly owned by the scion of one of the founders of U.S. Steel. The Property was part of a 63-acre tract that spanned the municipal boundary between Alpine and Demarest. After F.E. Alpine acquired the so-called “Frick Estate” in 2006, it was subdivided in 2007 for the proposed development of 13 dwellings.

The Alpine Planning Board approved the subdivision that was the subject of the New York Times article by voice vote on November 14, 2006 and memorialized its decision in a written resolution on January 23, 2007 (the “2007 Resolution”). The 2007 Resolution contains a finding that provides as follows:

The Board accepts, and incorporates herein, the Applicant’s stipulations that there will be no further subdivision of lots 22.01, 23.01, and 24.01 and that there will not be more than four lots in Demarest accessing the proposed road.
[2007 Resolution at p. 4, ¶ 4]

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 3

This condition is hereinafter referred to as the “2007 COA”. Pointedly, no finding was made by the Planning Board regarding the possibility of future subdivision of the Property as the 2007 COA pertains to other lots.

When F.E. Alpine returned for final subdivision approval on March 25, 2008, a question was raised about whether the deeds for the properties to be restricted against future subdivision had been prepared. [Steinhagen Cert., Ex. “A” (March 25, 2008 Minutes¹) at p. 2]. Both F.E. Alpine’s then-attorney and the attorney for the Alpine Planning Board confirmed, in response to an inquiry from a neighbor (who was also a member of the Board that recused himself from the consideration of the application because his home was within 200 feet of the Property), that the deeds had been prepared. [Steinhagen Cert., Ex. “A” at p. 2]. Later, the Board’s attorney confirmed that the Board’s Recording Secretary would sign the deeds that were the subject of the 2007 COA. [Steinhagen Cert., Ex. “A” at p. 2].

The Board memorialized its grant of final subdivision approval on May 20, 2008. Although not required by any condition of approval (since the “no further subdivision” condition voted upon at the March 25, 2008 meeting pertained only to lots 22.01, 23.01 and 24.01), F.E. Alpine also recorded, on July 28, 2008, a deed restriction signed by the Board’s Chairwoman and its Recording Secretary for the Property that provides as follows:

¹ During discovery in the case captioned “Sylco Investments #4, LLC et als. v. Borough of Alpine” docketed as BER-L-293-20, the Borough confirmed that its recordings from 2007 and 2008 had been destroyed at some point prior to the filing of the Complaint in that action. Accordingly, the Board’s meeting minutes are the only official record of the proceedings. They are submitted herewith because they provide a reasonably comprehensive account of what transpired, and pursuant to *N.J.R.E.* 802(c)(8), are admissible as a public record, not subject to the hearsay rule, and may be offered for the truth of the matter asserted because the Municipal Land Use Law (“MLUL”) requires land use boards to keep minutes that include “the names of the persons appearing and addressing the municipal agency and of the persons appearing by attorney, the action taken by the municipal agency, the findings, if any, made by it and the reasons therefor.” *N.J.S.A.* 40:55D-9(c).

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 4

This conveyance is made subject to the restriction that the current owner or any future owner of the subject property may not subdivide the property into additional lots at any time in the present or in the future.
[Steinhagen Cert., Ex. "B" (Deed Restriction)].

There is no provision in the deed restriction that the purpose of same was to protect the public, the Board or any other party. The restriction is also clear on its face, that the only restriction imposed was as to future subdivision of the Property and not on what might otherwise be constructed on the single lot.

Later that year, F.E. Alpine sought amended subdivision approval from the Alpine Planning Board to permit the construction of a guard house on the internal roadway within the development. Neither the guardhouse nor the private road were on any part of the Property formally known and designated as Block 55, Lot 25.01. At a hearing held on September 23, 2008, the Board's meeting minutes reflect that the Board again requested that the Property also be deed restricted against future subdivision. In particular, the Board's meeting minutes state as follows:

"The Mayor asked if the 12.77 acre lot (25.01) will remain intact. Mr. Watkins stated that Attorney Phillips has the deeds and there will be no further subdivision of that lot. Attorney Phillips indicated that he did not recall a 'no further subdivision' stipulation on that lot. Mr. Watkins stated that that lot was not included. Mayor Tomasko asked if we could get a deed restriction on that lot." [September 23, 2008 minutes at p. 6]. Later in the meeting and apparently as part of a summation/closing statement, Watkins represented to the Board that F.E. Alpine's principal "agreed to place a deed restriction on that lot (i.e., the Property)." [Steinhagen Cert., Ex. "C" (September 23, 2008 Minutes) at p. 7].

Immediately thereafter, the minutes indicate that the Board Attorney "read the conditions, as follows: Deed restriction for no further subdivision of Lot 25.01 . . ." and upon the recitation of the conditions of approval, the Board voted to approve the application. [Steinhagen Cert., Ex. "C" at p. 7].

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 5

But when the Board voted on its Resolution to memorialize the subdivision on October 28, 2008 (the “2008 Resolution”), the condition agreed upon by F.E. Alpine at the hearing held on September 23, 2008 that the Board voted upon (because it had recorded a deed imposing the prohibition against future subdivision several months earlier) was not in the Resolution. Instead, the Resolution imposed a condition, one never agreed to by F.E. Alpine that required a recorded restriction limiting the use of the Property for one dwelling. [Steinhagen Cert., Ex. “D”]. The Resolution plainly did not reflect the record created at the hearing and the recitation of the condition by the Board’s own attorney. Importantly, the deed restriction described in the 2008 Resolution (“DR”) has never been recorded and Alpine did not require F.E. Alpine to comply with that aspect of the 2008 Resolution. This is known because the improvements authorized by that October 28, 2008 resolution, namely the guard house, have been constructed as depicted below:



Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 6

ARGUMENT

The Court should eliminate or otherwise conform the Board's DR set forth in the October 28, 2008 Alpine Planning Board resolution limiting the Property to use for one family. Also, the Court is requested to excise and terminate the 2007 COA as recorded or alternatively, declare that the development proposed by way of the Settlement Agreement would not violate the 2007 COA, as recorded. Both are blatantly unreasonable, and function to limit/prevent the use of the Property to help satisfy the Borough's constitutional obligation to provide for its affordable housing fair share. Indeed, the timing of the DR in the October 28, 2008 Resolution – following on the heels of the Borough's affordable housing plan presentation on September 23, 2008 – strongly suggests that the Board attempted to impose this DR, which was not the subject of the actual vote on the application, to make the Property unavailable for affordable housing. *Cf.*, *N.J.A.C. 5:93-1.3* (definition of "available site").

A. The Court Should Excise the Improperly Imposed Condition of Approval Limiting Use of the Property to One Single-Family Dwelling

The purpose of conditions of approval is to mitigate negative impacts of the relief granted. *Sica v. Board of Adjustment of Tp. of Wall*, 127 N.J. 152, 166 (1992). Where a land use board imposes an unreasonable or unlawful condition, it is to be excised. *Tirpak v. Bd. of Adj.*, 457 N.J. Super. 441, 445 (App. Div. 2019). With respect to the DR, there are several problems. Chief among those problems is the fact that the Board never voted and F.E. Alpine never consented to the DR as inexplicably written into the Resolution. This is clear from the meeting minutes of September 23, 2008 which confirm that F.E. Alpine only agreed to a prohibition against future subdivision and the Board's own attorney represented to the Board that the prohibition against future subdivision was the condition upon which the Board was voting.

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 7

Another problem with the DR, even if the Planning Board had imposed the condition when it approved the application, is unlawful.

To impose a condition of approval, “there must be evidence in the record that the Board actually ‘considered and determined’ that the . . . restriction was a condition upon which the variance was granted.” *Sherman v. Bd. of Adj.*, 242 N.J. Super. 421, 430 (App. Div. 1990); compare *Park Center v. Bd. of Adj.*, 365 N.J. Super. 284, 291 (App. Div. 2004)(holding that failure to include condition of approval that was set forth on the record and part of the board’s decision within memorializing resolution did not bar enforcement). While the Resolution of the Board is certainly evidential on that issue, it is not determinative – the Appellate Division has noted that the record is the best evidence of what the Board considered and decided. *Allied Realty v. Upper Saddle River*, 221 N.J. Super. 407, 416 (App. Div. 1987), *certif. den.* 110 N.J. 304 (1988). Here, the Board’s minutes of the September 23, 2008 meeting describe what the Board requested, what F.E. Alpine agreed to with respect to the Property, and what the Board voted upon. It is apparent from the Board’s own records that the Board did not seek and did not vote upon a condition of approval that the Property could only be utilized for a single-family dwelling. As a matter of law, the condition of approval must be excised because it is not found within the hearing record, F.E. Alpine never agreed to such a condition of approval and the Board never voted upon that condition when it approved the application on September 23, 2008. Moreover, neither the Board nor the Borough ever took action (and is therefore estopped or has waived their right) to compel F.E. Alpine to record the DR purportedly approved by the Board. In this regard, it is noted that the Borough permitted F.E. Alpine to construct the guardhouse on the lot adjacent to the Property even though the DR required by the Planning Board was not, and

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 8

has never been, recorded. This alone is reason to excise the DR in the 2008 Resolution limiting that purports to limit the use of the Property.

Additionally, the DR constitutes an improper exercise of the power to review subdivision applications conveyed to land use boards by the Municipal Land Use Law. As noted in *Orloski v. Planning Bd.*, 226 N.J. Super. 666 (Law Div. 1988), *aff'd o.b.* 234 N.J. Super. 1 (App. Div. 1989), “To be valid, conditions must (1) not offend against any provisions of the zoning ordinance; (2) not require illegal conduct on the part of the permittee; (3) be in the public interest; (4) be reasonably calculated to achieve some legitimate objective of the zoning ordinance; and (5) not be unnecessarily burdensome to the landowner.” *Id.* at 672. The condition restricting the use of the Property to one single-family dwelling fails several of these requirements.

The DR limiting the use of the Property to one single-family dwelling contained within the 2008 Resolution violates the bedrock principle of the MLUL that the municipal governing body, not land use boards, establishes “the nature and extent of the uses of land and the buildings and structures thereon.” *N.J.S.A.* 40:55D-62(a); *see also, Medici v. BPR Co., Inc.*, 107 N.J. 1, 23 (1987) (there is a strong legislative policy favoring zoning by ordinance rather than through the variance process). To this end, the New Jersey Supreme Court has held, repeatedly, that attempts by municipal planning boards to regulate what may be developed on a particular piece of property under the delegation of site plan or subdivision review is unlawful. *See, e.g., PRB Enter. v. Twp. of S. Brunswick*, 105 N.J. 1, 7 (1987) (prohibiting planning board from imposing use limitations during site plan review); *Pizzo Mantin Group v. Twp. of Randolph*, 137 N.J. 216 (1994) (precluding planning board from denying subdivision application where development

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 9

conforms with all ordinances). Here, the Borough's governing body determined the size, scale and intensity of permissible residential development in the R-A Zone – a single-family house may be developed on a lot that is at least 2 acres. A limitation imposed by a planning board that is more than six times the minimum lot area required in the zoning district is not within a planning board's power and runs counter to the MLUL. The Court should conclude that this DR violates the division of powers within the MLUL and is unenforceable.

Furthermore, the DR is not in the public interest and has no relationship to mitigating the impacts of the variances granted (which were for coverage on adjacent lots). This DR operates to restrict otherwise available, suitable, developable and approvable lands in Alpine from development. Furthermore, it was important to remember that the variances sought on September 23, 2008 related to the impervious coverage attributable to a conversion from a public roadway network within the subdivision to a private road so that Sylco could construct a guard house, none of which was on the Property. The public had no interest in regulating how the Property could be used given that neither the roads, the guardhouse nor any other impervious coverage was proposed on the Property. Had the roads within the larger development been turned over to the Borough – as was initially contemplated – the application would not have needed variance relief at all. The existence of additional impervious coverage on adjacent lots was no reason to limit the permissibility of what could be developed on the Property, and the after-the-fact attempt to do so was clearly a transparent ploy to limit the Borough's affordable housing exposure during the Third Round.

Finally, the DR is not reasonably calculated to achieve a legitimate objective of Alpine's Zoning Ordinance. The unreasonable condition that was the subject of the Appellate Division's

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 10

decision in *Grand Land Co. v. Township of Bethlehem*, 196 N.J. Super. 547 (App. Div. 1984), *certif. den.*, 101 N.J. 253 (1985), is similar to the Alpine Planning Board's restriction here. In that case, the Appellate Division invalidated a requirement that an applicant for subdivision approval set aside certain nearby land to be preserved for agricultural use. It held, "subdivision approval for a residential building lot may not be conditioned upon reservation of adjoining or nearby land for a private use, as in the A-25 zone under challenge before us, precluding any other use permitted by ordinance or, it appears, by variance, N.J.S.A. 40:55D-70." *Id.* at 552. Here, the Zoning Ordinance, as noted above, would permit (based upon area) the development of up to 6 dwellings on the Property, based upon its lot area. Uses are already restricted in the R-A Zone; however, the Alpine Planning Board tried to impose an after-the-fact condition on the subdivision approval upon a restriction that limited the developability of a portion of the tract for one dwelling. It did so without any authority. Moreover, it is clear that the Borough did not actually intend to require recordation of that deed restriction at the time of approval, since the DR was not, in fact, voted upon by the Planning Board, nor required to be recorded by the Borough prior to construction of the improvements authorized in the application pursuant to the 2008 Resolution. The imposition of this condition in the Resolution after not voting on it at the meeting prior is especially troubling given that the Board was, at the same time, considering its Third Round affordable housing compliance plan which excluded the Property from its vacant land inventory.

The DR was neither properly imposed nor is it a legitimate limitation on the Property. The Court should excise the DR imposed by the Alpine Planning Board in the 2008 Resolution concerning the Property.

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 11

B. The Court Should Excise the Deed Restriction Prohibiting Future Subdivision, or in the Alternative, Confirm that the COA does not Impair the Development of the Property with an Inclusionary Housing Development as Contemplated by the Borough's Affordable Housing Compliance Plan

The prohibition against subdivision that is recorded in the deed restriction is one that can be lifted or deemed to be inapplicable to the development of the Property with an inclusionary development as part of the Borough of Alpine's affordable housing settlement. The COA at issue here is similar to the deed restriction in *I/M/O the Borough of Englewood Cliffs, slip. op.*, BER-L-6119-15 (Law Div. Feb. 12, 2020) (Steinhagen Cert., Ex. "E"), where the restriction in question was a prohibition against parking in the front yard. The court in that case found that the recorded restriction bore none of the hallmarks of a restriction imposed to protect the public interest and in which the public was an intended beneficiary. *Id.* at *27-29. As a result, the procedures outlined in *Soussa v. Denville Twp. Planning Bd.*, 238 N.J. Super. 66 (App. Div. 1990), regarding a quiet title action were unnecessary. The same is true here. The deed does not contain any language indicating that the public is a beneficiary of the prohibition against future subdivision and the restriction can be lifted by the Court. In fact, F.E. Alpine recorded the deed to impose what the COA later required *before* the Board imposed any condition upon the Property (i.e., the deed restriction was recorded in June of 2008, while the Planning Board imposed the COA several months later), so the limitations contained therein could not have been imposed by the Planning Board to protect the public interest.

Accordingly, the restriction can be removed by the Alpine Planning Board or the Court. F.E. Alpine requests that the Court remove the restriction now, so that there is no doubt about

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 12

whether the Property is “available” pursuant to the applicable affordable housing regulations. *See N.J.A.C. 5:93-5.3* (“Municipalities shall designate [new construction] sites that are available, suitable, developable and approvable, as defined in *N.J.A.C. 5:93-1*”).

Alternatively, the Court should determine that the prohibition against future subdivision of the Property is not impacted by the development of the Property with a multifamily inclusionary housing development. A subdivision is defined by the New Jersey Municipal Land Use Law as: “the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development.” *N.J.S.A. 40:55D-7*. The MLUL also provides that development regulations adopted pursuant to the MLUL,

Shall be construed and applied with reference to the nature and use of a condominium or cooperative structures or uses without regard to the form of ownership. No development regulation shall establish any requirement concerning the use, location, placement or construction of buildings or other improvements for condominiums or cooperative structures or uses unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then or thereafter under the condominium or cooperative corporate form of ownership.
[*N.J.S.A. 40:55D-58*]

The Property, along with the other lots that are the subject of the settlement, are proposed for a consolidated development that requires site plan, but not subdivision, approval. Caselaw directs that a municipality may not regulate, through its land use ordinances, the creation of a horizontal property regime such as a condominium. *See, e.g., Bridge Park Co. v. Highland Park*, 113 *N.J. Super.* 219 (App. Div. 1971); *compare Bonner Properties, Inc. v. Planning. Bd. of Franklin Twp.*, 185 *N.J. Super.* 553 (Law. Div. 1982) (holding that the municipality could not prohibit condominium-ization of housing units, but that the developer could not sever ownership of the common elements from the other units within the condominium). Accordingly, if the COA

Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 13

cannot be rescinded by the Court, it can only be interpreted to prohibit F.E. Alpine from dividing the Property by way of subdivision pursuant to *N.J.S.A. 40:55D-47* (minor subdivision approval) or -48 (preliminary major subdivision approval). It cannot be interpreted to limit future actions with respect to site plan approval and the creation of a condominium, should F.E. Alpine elect to pursue same (or the rental of the units to be developed on the Property). Therefore, if the Court elects not to rescind the COA regarding future subdivision (even though both the Borough and its Planning Board have agreed to do so in their settlement and do not oppose this motion), it should confirm that the language contained in the deed restriction does not impact or limit F.E. Alpine's ability to develop the Property in the manner contemplated by the Settlement Agreement.

Conclusion

For the foregoing reasons, the Court should grant Sylco's request to eliminate the deed restriction prohibiting future subdivision of the Property and eliminate the Planning Board's condition of approval that the Property only be utilized for a one-family dwelling.

Respectfully submitted,

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Hon. Christine A. Farrington, J.S.C.
November 29, 2023
Page 14

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