

## **ALPINE PLANNING BOARD**

Alpine Borough Hall  
100 Church Street  
Alpine, New Jersey 07620

### **MINUTES**

July 23, 2013

**CALL TO ORDER/PUBLIC ANNOUNCEMENT:** The Planning Board, Borough of Alpine, convened in regular session on Tuesday, July 23, 2013 at 7:30 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, July 23, 2013 at 7:30 P.M. has met the requirements of the law by publication in The Record and posted on the bulletin board of the lobby in the Borough Hall and filed in the office of the Borough Clerk.

Hearings end at 10 PM.

#### **ROLL CALL:**

Members Present:	Chairperson Catherine Parilla Vice-Chair Catherine McGuire David Andrews Ralph Mattes	Mayor Paul Tomasko Jeff Fromm (arrived after roll call) William Robinson (arrived after roll call) Martin Cybul, Alt. II
Members Absent:	Lorraine Mattes Gayle Gerstein	David Kupferschmid, Atl. I
Staff Present:	John Phillips, Board Attorney Marilyn Hayward, Recording Secretary	Gary Vander Veer, Borough Engineer Rob Kasuba, Special COAH Counsel

**APPROVAL OF MINUTES OF JUNE 25, 2013 REGULAR MEETING:** A motion to approve the minutes of the June 25, 2013 Regular Planning Board meeting was made by Paul Tomasko, seconded by Ralph Mattes and carried by those eligible to vote.

**OPEN TO PUBLIC (NON-AGENDA ITEMS):** No comments.

**CONTINUED APPLICATIONS:** Request for Amended Preliminary Site Plan and Soil Moving Permit Approval: Alpine Three, L.L.C., Block 43 Lots 6.01, 6.02, 6.03 (Carried from May 21, 2013).

As per the prior hearings Mayor Tomasko recused. Catherine McGuire certified that she read the transcript of the May 21<sup>st</sup> hearing.

The Board received documents from the Applicant's Attorney prior to this hearing as noted in two letters from John R. Lago of the NJ Department of Community Affairs dated May 31 and June 7, 2013.

Appearing for the Applicant is Lloyd H. Tubman, Esq. of Archer & Greiner, PC, Plaza One, 1 State Route 12, Suite 201, Flemington, NJ 08822.

Attorney Phillips had prepared two documents for distribution to the Board and the Applicant prior to this hearing. The first was a list of conditions carried forward from Court Order 2/10/05; the second was a list of possible new considerations and issues to be resolved. Mr. Phillips announced that there were two additional items to be added to the second list.

1. The 'Willingness to Serve' letter has a property address in Closter, which must be corrected.
2. The three lots should be merged by deed, which was not set forth as a condition.

In the proposed considerations, an issue was raised regarding the condemnation proceedings that followed the vacation of Schoolhouse Lane. The chain of title researched by Attorney Tubman does not show that corner taken out; however the Borough's current tax map shows that it was taken out. This issue must be resolved.

Engineer Vander Veer asked that the following items be added for consideration:

1. Who will be responsible for enforcement of parking regulations?
2. NJDEP approval documents must verify that no further connections to the sanitary sewer force main are permitted. Who will protect the Borough from potential litigation in the event that a property owner along the route wishes to connect?
3. Access to the site from Schoolhouse Lane should not be permitted during construction and no use of the area for storage of equipment.

Attorney Phillips advised that the items in his memo are not necessarily conditions that must be imposed, nor are they a limitation on conditions that may be imposed. They are not an instruction to the Board as to how they should decide on this application. They are just items that came up during the course of the hearing and the 27 conditions carried over from the prior approval.

Open to the public for comment:

**Ted Noback**, resident of Schoolhouse Lane, was sworn. Mr. Noback stated that he has lived on Schoolhouse Lane for over 40 years and knows how dangerous the entrances and exits are from Closter Dock Road. He was hit from the rear end 25 years ago trying to make a left turn from Closter Dock Road. He feels that if the application is approved the entranceway should be aligned with Main Street to make it as safe as possible. He is concerned that the proposed retaining wall along Schoolhouse Lane was described as concrete or cement, and feels that the applicant should be required to put in some kind of decorative stone wall. He stated that he is upset about the fact that the spring, which we all know is a spring, has been renamed a well, and that it was fraudulently identified as a well in the interest of obtaining state and government approval, and this should be looked at.

**Paul Tomasko**, owner of property at 87 Church Street, was sworn. Although he does not reside there he is concerned for his tenant and for the future ability to lease this property. After listening to all of the testimony during these hearings, he still does not know how close to his property the proposed private sewer will be, of if it will be on his property and if so, how will he be compensated if he consents. The Applicant is attempting to ask the Mayor & Council rather than the Planning Board for a waiver from the RSIS which requires the proposed sewer to be on the center line of the roadway, but a minimum of five feet from the edge of pavement. Irrespective of the willingness of Mayor & Council to grant such a waiver, how can the Planning Board approve a sewer connection when the specific location or its impact on the 58 adjacent property owners and the borough as a whole cannot be assessed. Since the specific location is yet to be determined, we are dealing with a concept rather than a plan, which would burden the residents along the route as well as the borough as a whole with serious consequences. In the short term, some of those are 1) Potential litigation over private use of public roads & appropriate compensation. 2) Rock hammering and rock removal initially and up to 40 utility crossings, excluding connections for abutting residents. 3) Substantial disruption of traffic on the three busiest roads in the borough and of access to private residences and potential disruption of utility connections to residences. Long term hypothetical consequences are even more significant. Some are 1) Other developers who also won't take no for an answer and threaten litigation. 2) Hard to find blockages or breakdowns in these systems, requiring ongoing road cuts. Pressurized small bore lengthy sewer systems are rare even on commercial property, but under public roads for private residential use are unprecedented. The Applicant's Attorney conceded that there is no clear law that gives them the right to do this.

Regarding stormwater management issues, this proposed high density project is on a wet 1.1 acre lot with a natural spring, wetlands, constant runoff and water measured up to the surface in non-wetlands designated areas. In recent rainstorms water was observed sheet flowing off the entire southern line of the lot. We've been assured by the Applicant's Engineer that this lot can take such a large amount of impervious coverage partially over a spring and still comply with stormwater management standards, that foundations can be built into the water table, that water can be channeled toward seepage pits built on the lowest part of the lot without any detriment to the neighborhood.

Regarding traffic issues, you've been assured of safe ingress and egress on Closter Dock Road, where most of the accidents in the borough occur and where traffic is at a standstill to Route 9W during peak hours. The applicant has refused a request to realign the entrance so that it is directly across from Main Street, eliminating conflicting turns, although a few years ago the same engineer realigned the entrance to the Frick property so that it is directly across from Warren Lane. The Borough Master Plan notes that Closter Dock Road and Hillside Avenue handle large volumes of traffic and calls for a study of how to diminish the amount of traffic on Closter Dock Road. Up to 42 additional occupants in this proposed project will add to the worsening congestion and accident rate on this road.

Three larger developers who came forward after the applicant and asked for more than Alpine's zoning allowed subsequently scaled down their plans and built without imposing a huge burden on the town. Similarly the borough built eight affordable housing units with septic rather than sewer in keeping with its Master Plan and Health Code. The borough moved its affordable housing obligation from Closter Dock Road and acquired two parcels nearby for open space in order to avoid overdevelopment and traffic congestion along that road. Additionally, the Planning Board limited the 28 acre Alpine portion of the Frick Estate to four residential parcels.

Because of the sewer, water on the site and lack of safe ingress and egress, Mr. Tomasko feels that the project is not feasible and does not belong here, and asked the board not to approve it.

**Zina Kushner**, resident of Graham Street, was sworn. She stated that the Hoffman property was purchased specifically for low income and the houses were built because the late Herbert Minks came up with the idea. Ms. Kushner added that constantly fighting this project has probably cost the town \$1,000,000 or more. She feels that this development will beautify Closter Dock Road and give people like her who want to stay in town and downsize a place to move to, and will cut down on legal expenses. She wonders how much our attorney billed the town for the presentation he made tonight.

**Hal Shaw**, resident of Closter Dock Road, was sworn. He stated that he is opposed to this project, mainly because of the spring. It is a spring, not a well, and the perception brought forth originally bothers him and bothers a lot of people. Everything about it is not in keeping with Alpine standards. Perhaps they can purchase more property or lower the density and footprint, but this is just too much.

**Ian Greenway**, resident of Haring Lane, was sworn. He stated that his family moved to Alpine 12 years ago because of its ambience, the trees and the beauty. His perspective is that he sees incongruity with what is being proposed here in terms of character. He sees no other townhouse developments in town and feels that this would not fit and once you start, where do you stop.

Since there were no further comments from the public, the public session was closed. Chairperson Parilla asked Attorney Tubman if she had any comments. Attorney Phillips advised he had discussed with Ms. Tubman that the applicant had originally filed for soil movement permit with two waivers; they no longer need the 4:1 slope waiver, so the remaining waiver is for fill in excess of five feet.

Attorney Tubman stated that this application is back before us for two reasons:

1. The original application had the sewer line routed through borough property at the suggestion of the Board, not knowing that it was Green Acres property. That could not be approved so the line is now re-located out to Closter Dock Road. The Board's jurisdiction over that line ends at Closter Dock Road. Approval for the line in the street is up to the Governing Body and probably ultimately to the court. Mayor Tomasko is absolutely correct; she has researched and found no case law for private lines in roads, but that is something that will be resolved in the courts if not by the Governing Body. The Board's approval stops at the property line. The RSIS standard is that sewer lines should be located toward the center of the roadway unless the approving body wants it elsewhere; certainly the county wants it toward the shoulder. The more important thing is this property has been before us since 2000 and was the subject of a settlement agreement signed by the current Mayor. The zoning standards were met and it was to the court the last time around.
2. Over the course of the last ten years the stormwater rules have changed. DEP sent them back to the Planning Board for review of compliance with the current rules. At the last hearing Engineer Hubschman went carefully

step by step through compliance with the current stormwater rules. The well or spring was spoken of or complained about during the previous application for preliminary site plan approval and was condition eight in the resolution of 2005. Judge Harris took it out and said if the Board wanted to investigate it they should go to DEP; we have a letter of interpretation. There is a time when this ping ponging back and forth to court should end for the benefit of both parties. She asked that the testimony be considered; the consent order that provides for seven units has been ratified by superior court and the appellate division. She asked that we put this behind us and move on.

Attorney Phillips remarked with regard to Ms. Tubman's comment on condition eight, that as originally drafted it required the applicant to re-submit the Letter of Interpretation with additional information. The proposed condition for consideration is for the applicant to get a determination from DEP as to whether it is a spring or well on the property. A spring is a regulated water feature under DEP rules and has nothing to do with wetlands interpretation or the LOI. He feels it is a different condition than it was with Judge Harris.

Chairperson Parilla closed the presentation and opened for discussion by the board. She stated that there have been new issues brought to our attention since the last time we heard this case, particularly the misalignment of the streets. Secondly, to suggest that we have no authority to discuss the sewer line beyond Closter Dock Road is unfair. As a Planning Board, it is our responsibility to look at all applications in terms of how they will impact our community. To suggest that we are not permitted to look at how a project will impact our community would concern her a great deal. She continued that there are three main issues: stormwater, sewer and safety that have raised concern and need to be worked through in order to move forward.

Mr. Mattes expressed frustration with so many ambiguous issues that are beyond our ability to receive interpretation or control. He has sat on planning and zoning boards for over twenty years and usually with every meeting there is more clarification of the issues; with this application we end up with more muddied waters than we started with. He feels that we are being put in an awkward position without knowing the impact our decision will have on the town.

Mr. Fromm asked Attorney Phillips for clarification of what we are being asked to decide and what our latitude is. His impression is that his feeling about the project is not particularly germane to the questions that we have the right to decide. To the extent that there has been a court case and a settlement agreement which limits the jurisdiction of the Planning Board, we can have an interesting discussion but he would also like it to be relevant to what questions we can answer.

Chairperson Parilla felt that it would be appropriate at this time to make a motion in order to further discuss the application. Attorney Phillips advised that given the complexities of the case, it may be helpful for the Board to discuss the issues prior to floating a motion, since that locks people into positions that may or may not be relevant. There are four things that have to be decided:

1. Soil moving permit
2. Waiver requested of soil moving permit. Mr. Fromm asked if he is allowed to let his feelings about the application in general impact his consideration on the soil moving and waiver request. Mr. Phillips opined that with regard to the soil movement and waiver you have to look at that issue.
3. Variance for improved lot coverage (as discussed at the January 22, 2013 hearing, this was due to an error in the ordinance adopted by the Governing Body to implement zoning standards established by the Settlement Agreement, which they tried to correct by an amending resolution that was later deemed imperfect).
4. Site plan approval.

With regard to the offsite sewer, the court determined that they are entitled to have a force main running offsite. The specifics with regard to the offsite sewer line are within the purview of the Governing Body, but the Planning Board is certainly in a position to make recommendations to the Governing Body. It is the Board's duty to look at issues such as site plan issues, off tract improvements, etc. The Board does not have jurisdiction to make the decision on the offsite sewer because of the way the law is structured. Chairperson Parilla asked in terms of the soil movement permit with waiver, if the topography is going to be raised five feet, would that not have an impact on water levels. Engineer Vander Veer stated it is primarily at the southwesterly corner of the property where the retaining wall is to be constructed and he does not know how much of an impact it will have on the water conditions.

Mr. Fromm asked since this is a modification of a previously approved site plan can we revisit the approval from scratch or can we look only at the modified aspects. Attorney Phillips replied that he and Attorney Tubman disagree on this issue; he feels that you are not limited but Ms. Tubman feels that you are limited. You are bound by the same strictures as any site plan approval, but if there are issues that were not raised or have been changed or modified you are entitled to look at all of those.

Mr. Cybul asked who will ultimately approve the offsite sanitary line. Attorney Phillips responded it would be an agreement between and among the Borough of Alpine, Borough of Cresskill and the Applicant. There has already been a modification of the Wastewater Management Plan that allows the use of a private sewer for this particular lot, and there will be all the regular DEP requirements. With regard to the RSIS waiver request, that is within the jurisdiction of the Governing Body.

Soil Moving: Mr. Cybul asked if there is a separate application for soil movement for the installation of the sanitary line. Engineer Vander Veer offered that he has never seen a soil moving application made for a road opening permit. Attorney Phillips added that permits will have to be obtained in order to do the installation work but it is not an application to the Planning Board. It is reviewed by the Borough Engineer and the County Engineer for County roads.

For Mr. Fromm, Engineer Vander Veer advised total soil movement activity is 2,894 cubic yards, about half to be used on site and half to be imported. The fill is primarily for installation of the stormwater management system; activity and volume to be moved is not out of the ordinary. The number of trucks needed for this movement would be about one hundred.

Mr. Cybul asked what are the standard conditions applied to a soil moving permit. Engineer Vander Veer replied they include proof of insurance, performance guaranty, revegetation guaranty.

For Mr. Fromm, Attorney Phillips offered it would not be unreasonable to restrict hours of truck activity. Ms. Tubman stated that the applicant would restrict truck activity to non-peak hours. A traffic control plan would be submitted to the Police Department as a condition if approved.

Mr. Cybul remarked that a member of the public had expressed concern about Schoolhouse Lane and suggested that dust control and road cleaning be taken into consideration during soil movement. Engineer Vander Veer stated it is part of our erosion control plan. Ms. Parilla recommended and the Board concurred that no parking on Schoolhouse Lane should be added as a condition.

Waiver: Responding to another comment from the public, Mr. Cybul recommended that decorative retaining walls be a condition. Attorney Phillips stated this is a proposed condition. Attorney Tubman affirmed the applicant will propose a treatment for the wall.

Improved lot coverage variance: As discussed earlier, Attorney Phillips advised this is a technical issue which was part of the original court settlement.

Site Plan: Ms. Parilla remarked that Engineer Vander Veer had pointed out many items, some of which have been addressed; others have not. The first issue is the misalignment of the driveway. For some reason this did not come up during the first hearing; now that it has we have a responsibility to address it. Attorney Phillips referenced our Ordinance 195-8 (10) which states: "*Street jogs with center-line offsets of less than 125 feet shall be prohibited.*" The proposed offset is 13 feet. Mr. Fromm noted that this is proposed in #4 of Attorney Phillips' list of potential new considerations. He certainly supports it. Mr. Cybul agreed and recalled an analogous matter when Engineer Hubschman revised the plan for the Frick Estates so that the road opening aligned with Warren Lane. He added that he feels this is a life safety issue and it is important for us to protect those using the property as well as those travelling on Closter Dock Road.

Ms. Parilla noted that this condition was brought to our attention by the traffic studies. Ms. McGuire commented that she lives on Closter Dock Road and agreed that this is an important safety issue. Mr. Mattes remarked that whether or not the roads are aligned, for this Board to endorse additional traffic on Closter Dock Road, which we all know it is a

thoroughfare where almost fifty percent of the accidents in town occur, would be dangerous to the general public and very detrimental to the community. Ms. McGuire added that the traffic backs up from Route 9W almost to Church Street in the mornings and making a left turn onto Closter Dock Road will be very difficult. Mr. Cybul commented that restrictions on left turns should be considered during peak times. Ms. McGuire agreed but commented that it would be difficult to enforce. Ms. Tubman pointed out that it is a County road but Mr. Phillips opined that since the driveway is part of the site plan review we may be able to include that as a conditions for exiting.

The next element of the site plan to be addressed is Stormwater Management. Ms. Parilla asked the Board if they feel the site plan has adequately addressed the water issues on this site. Ms. McGuire remarked that she read through that portion of the transcript twice today and feels that Engineer Hubschman is being very optimistic. One of the houses is being built on top of the water feature. Mr. Cybul commented that we need a means to verify that the proposed design will work. Mr. Phillips asked that the Board look at his proposed new conditions 6 and 10, which address verification issues.

Mr. Fromm asked if the facts we are considering vary if we call the water feature a spring or a well. Attorney Phillips responded that a well is not regulated the same way by the State. Springs are considered to be water resources and are under the jurisdiction of the DEP. The 1892 map called this a spring, the ordinances of vacation called it a spring, the Applicant's request for an LOI called it a well. One of the conditions is that they get verification from the DEP that they do not want jurisdiction over the spring. This has nothing to do with the wetlands determination. Mr. Fromm asked if the Board can declare the water source a spring. Attorney Phillips replied that would be a finding of fact and we have the ability to make findings of fact. Mr. Cybul asked for definitions of well and spring. Attorney Phillips stated that a spring is a natural source of water, and a well is a man-made source. Dr. Andrews added that it is listed as a spring and was used by horses. A spring's water can only come from higher land. There is a layer of shale on top of the Palisades bedrock, so where he is at 910 Closter Dock Road there is a well at the bottom end which water came out of every spring and lasted four or five months, and there are Indian relics there. Mr. Cybul remarked that in earlier discussions he had requested that some archeological studies be done because historically springs and wells are sources of artifacts. Attorney Phillips noted that he had proposed this as new condition 9. For clarification, Attorney Tubman advised that the archaeologist is not qualified to direct excavation but would do a pre-construction evaluation. Mr. Fromm remarked that his evaluation is that a spring has some self-momentum of flow, while a well is stationary. Attorney Phillips offered that we have a judicial determination calling it a spring.

Mr. Cybul had a concern dealing with the southwest corner of the property, where there is a discrepancy between the tax map and the site plan. The tax map shows 10.19 feet along Schoolhouse Lane as Borough property; however, the Applicant's title work shows it as part of the applicant's property. The original condemnation ordinance included this piece but it is unclear if the town abandoned the request or bought the property. Further research will have to be done to resolve this issue.

Mr. Fromm asked if the Engineer is basing his assessment of the stormwater features on the one hundred year storm. Engineer Vander Veer explained that it is a variety of storms. Quantity controls are based on an evaluation of the two, ten and one hundred year storms. They must take into account storm levels in this area and topical conditions on the site. Mr. Fromm asked if we can hire an expert to evaluate the applicant's stormwater design and was informed that the Borough Engineer has this responsibility. Engineer Vander Veer stated that he has evaluated the design and has prepared a report with his comments. He has several items that have not been addressed to his satisfaction. The design that addresses the groundwater recharge requirements is not acceptable. If they presented a design that was realistic in relation to the groundwater measurements that have been made there could be adjustments made in the field during construction, but the design is not in compliance with stormwater regulations. Mr. Fromm asked if it is within the Board's jurisdiction to require remediation if there is evidence after building that the system is not functioning. Attorney Phillips noted that he has some proposed conditions for testing; for example, after the curtain drains are put in. If in Engineer Vander Veer's opinion the water cannot be handled they will have to modify the proposal. Right now it is an unknown condition. Engineer Vander Veer commented that the Applicant has provided testimony that groundwater flow from the spring is not a stormwater related issue. Mr. Vander Veer indicated in his most recent report that based on flow measurements made and presented by the Applicant, they fluctuate up and down based on rainfall events. To him that would indicate that it is at least partially impacted by stormwater; not strictly groundwater or spring flow. He does not know the full extent of that flow but it is bypassing all of the onsite systems. Mr. Fromm observed that the density proposed on this site is much higher than any other site in the Borough and based on recent weather patterns the one hundred year storms may happen

every two to three years, and feels that we may experience real problems after construction. He asked if we are allowed to impose a condition so that if the stormwater management is inadequate, they must bring it into compliance. Mr. Cybul commented that if you get to the point that it's failed after construction you may not have any suitable alternatives. Testing has to occur during the process, but testing various times during the year may not necessarily represent the greatest rainfall. Additionally, the permeability at the test hole locations may not represent the entire site. Once the construction is in process there should be testing to verify that the system is functioning. Attorney Phillips interjected that it is not improper to ask, which we have on other sites, where the water is going to go if the seepage pit overflows, and is there a place in the direction it is flowing that can handle the excess flow properly. Ms. Parilla commented that a very relevant issue here is what happens if the site is excavated and we find out that there are a lot more problems than what was anticipated. Mr. Cybul related it to septic installations, where they hit rock during excavation and have to relocate the system. We must have checks and balances built in, and Mr. Vander Veer can verify that the conditions described are met and their design can be accommodated. Mr. Vander Veer remarked that he is not aware of any testing that can be done to determine precisely whether or not the system will function exactly as designed. A water test could be done prior to the installation of the seepage pits. There would have to be an excavation and an evaluation to ensure that the seepage pits will be installed as required under the stormwater rules. That is why he indicated that at this point in time the design is not in compliance. The design presented is substantially right at the level of acceptance. For example, the design criteria allows one cubic foot per second of runoff during a two year storm; this design indicates .95 cubic feet per second which is right at acceptance but construction has to be exact, with no margin of error. Mr. Fromm commented that he has a fundamental concern about the population density on this small property that he wouldn't have for a single-family home on a one-acre or more lot. Therefore a margin of error makes sense since it takes into account real concerns of neighbors regarding water runoff. Ms. Tubman stated the applicant would accept a condition that they adjust the stormwater to the Borough Engineer's satisfaction, and she was not aware that it was that close. Mr. Vander Veer remarked that there are certain targets that have to be met; discharge of water quality to comply with allowable runoff for two, ten and one hundred year storms. Right now they are just at the level of acceptance and construction would have to be perfect. Ms. Tubman stated that the engineering design could be upgraded. Ms. Parilla commented that at this point she feels this is the plan that was presented to us. Our engineer has told us very clearly that the design is not in compliance, and we have made every effort to do a job that is not ours, and that is engineering. The Board must rely on the advice of our attorney and engineer and what we have seen before us. Questions and comments from the board and the public have been addressed or not addressed. We are going way off on what we can and should do. Our engineer is our expert and has said the design does not comply. Whether we accept his findings or not is up to us. The other issue is the roadway misalignment. The question is, is this site plan approvable or not. We have been deliberating it since last November. We cannot fix the problems on the property. The features on the property are construction and engineering problems, and not our problems. Our problem is to concern ourselves with the information we've been given, what has been recommended and how we are going to proceed with that.

At this time Ms. Parilla asked for a motion to approve with conditions or deny. Ms. McGuire made a motion to deny. Mr. Mattes seconded. Ms. Parilla stated that we have received mountains of material and the conditions are extensive. The board members must now decide if they agree or disagree with the motion. Attorney Phillips asked that the Board address the four items so that we have clarity on what we are dealing with. Mr. Fromm questioned since we have regularly approved applications with conditions would a motion to reject be premised on the fact that this set of conditions is too fundamental to warrant approval. Mr. Phillips corrected that *some* of the conditions, such as the road and stormwater, may be too fundamental. Mr. Cybul asked why we can't have a condition that would satisfy the road alignment. Mr. Phillips responded that we can. Ms. McGuire stated that she has no objection to the soil movement or the waiver; she has a fundamental issue with the traffic, alignment of roads and stormwater. She feels the stormwater management is a disaster waiting to happen. She has listened to all of the engineer's testimony and there is no safety built in. She lives on Closter Dock Road and runoff is a problem even on large properties that were engineered correctly. Mr. Cybul remarked that he agrees with both of those concerns; he just does not know whether we should approve with conditions so that the applicant has an opportunity to address the issues or disapprove in total and then we're back to the beginning.

Ms. Parilla asked Mr. Mattes for his thoughts since he seconded the motion. Mr. Mattes agreed that in terms of soil movement and the waiver he has no objection, but he finds it uncomfortable to dissect the application and approve or deny individual items. He remarked that the Board provided the Applicant with a list of potential new conditions and asked if the Applicant has agreed to those. Attorney Phillips advised that these were potential conditions and open items based upon issues that were raised during the hearing; had there been a motion to approve he would ask the Board to go through

each condition and say yes or no. Mr. Mattes continued that one of his main concerns is stormwater management; we still have many questions about the seepage pit, retention system, detention line, accuracy of groundwater levels and percolation. Ms. Parilla opined that for us to try to figure out at what point a drain is or is not working is not within our purview. Mr. Fromm commented that it is his understanding that it's always done that way. You engineer for certain assumptions which are tested during construction and engineer accordingly. Ms. Parilla questioned if our expert is telling us that the design itself is not in compliance before they even start, do we overlook that? Attorney Phillips commented that an issue often raised in the courts is what is too much delegation to experts. The Board has the right to approve the design of a system if there is minor tweaking of an engineering nature that needs to be done, and the courts generally find that minor technical issues are properly delegated. The more major decisions are generally not properly delegated. Mr. Fromm asked if Engineer Vander Veer's most recent review letter, dated July 10, 2013, was his third or fourth correspondence (Mr. Phillips corrected that it was about the sixth) and if a statement regarding non-compliance was included in each of those. Mr. Vander Veer stated that he pointed out certain items; groundwater recharge issues relating to the seepage pits was in numerous reports. There was a difference of opinion regarding sheet flow off the site. The Stormwater Management Regulations indicate that you should not be creating one point discharge. The sheet flow off the site now is going to be collected on the site and discharged at one point. That is contrary to Stormwater Management Regulations. Collecting of groundwater and the spring is an issue that he indicated in his letter. It is an unknown quantity and because it fluctuates with storms and rainfall events, it should be considered part of stormwater management. The Applicant has indicated through testimony that it is not stormwater related and does not need to be addressed in the stormwater management system. It is an unknown issue.

Since there were no further comments Chairperson Parilla asked for a vote on the motion before the Board. Ms. Parilla allowed Attorney Tubman to make a request. Ms. Tubman stated that at the last hearing Engineer Hubschman testified the entire evening on stormwater. She did not recall any position taken at that time by the Board or Mr. Vander Veer that the design was inadequate. She asked if the board would consider tabling the matter and allowing them to come back to address the comment about the design being inadequate. Ms. Parilla stated that she specifically recalls asking the Applicant's Engineer about taking into consideration the flow of water that will go into the stormwater system. It is in the transcript, Ms. McGuire stated that she has read it twice, it has been raised repeatedly by members of the community and he has not addressed it. To tell us now at this final hour that he will address it, she would have to say no, but she asked the Board members for their feelings on this. Mr. Mattes commented Ms. Tubman was copied on Mr. Vander Veer's letter dated July 10, 2013. Ms. Tubman responded that it was after the testimony was closed. Ms. Parilla felt that we have talked about this issue repeatedly and we haven't received a satisfactory answer from the engineer. Engineer Vander Veer has indicated that the design is not in compliance and that there is no margin for error. Secondly, everyone on the Board and members of the community have raised the issue repeatedly. Why is it going to change now? If the problem can't be fixed we can't change this piece of property and make it into something that it is not.

Ms. McGuire asked if the board would be more comfortable approving with conditions. Ms. Parilla responded that we have a motion before us, which we should bring to a vote. If it does not pass we'll make another motion. Attorney Phillips advised it is a motion to deny for the reasons stated in the record. A **yes** vote is to deny. Mr. Mattes asked if this is to deny the application or the site plan. Mr. Phillips advised it would be to deny the application in its entirety. The votes were as follows: David Andrews: **yes**; Martin Cybul: **no**; Cathy Parilla: **yes**; Jeff Fromm: **no**; Bill Robinson: **yes**; Catherine McGuire: **yes**; Ralph Mattes: **yes**.

**COMMUNICATIONS:**

- Notice of NJDEP application by Borough of Alpine re: Closter Dock Rd. Culvert Replacement. Duly noted; no comments.
- Notice of NJDEP application re: Block 1031 Lot 4.01, Block 105 Lot 6, Rockleigh, NJ. Duly noted; no comments.

**BILLS:**

Sills Cummis	\$1,280.00	Alpine Three (escrow)
Sills Cummis	\$ 200.00	May meeting attendance
Sills Cummis	\$ 200.00	June meeting attendance
Sills Cummis	\$1,560.00	Alpine Three (escrow)

A motion to approve the bills was made by Ms. McGuire, seconded by Mr. Mattes and approved by all those eligible to vote.

**RESPONSE TO ZONING BOARD OF ADJUSTMENT REPORT:** Mayor Tomasko reported that the proposed generator ordinance will be introduced at the July Mayor & Council meeting.

**COMMITTEE REPORTS:**

Northern Valley Mayors & Planners Assoc.: No meeting.

Board of Health: No meeting.

Environmental Commission: The site inspection scheduled for this Thursday has been cancelled.

Building Department: Report noted.

NJ Transit Update: No report.

COAH Update: No report.

**ADJOURNMENT:**

A motion to adjourn the regular Planning Board meeting was made by Mr. Cybul and seconded by Ms. McGuire. All were in favor. The meeting adjourned at 9:32 PM.

Respectfully submitted,

Marilyn Hayward  
Recording Secretary