

ALPINE PLANNING BOARD

Alpine Borough Hall
100 Church Street
Alpine, New Jersey 07620

MINUTES

August 25, 2020

CALL TO ORDER/PUBLIC ANNOUNCEMENT/PLEDGE OF ALLEGIANCE: The Planning Board, Borough of Alpine, convened in regular session on Tuesday, August 25, 2020 at 7:35 P.M. This meeting was held using Zoom webinar platform. Notice of this virtual meeting with instructions for the public on how to attend was published in The Record on August 14, 2020, posted on Council chamber doors, the Borough website and the lobby bulletin board.

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 of the Alpine Planning Board held August 25, 2020 has met the requirements of the law by being published as part of the annual meeting notice in The Record, posted continuously on the bulletin board of the lobby in the Borough Hall and a copy filed in the office of the Borough Clerk.

ROLL CALL:

Members Present: Carol Cochi, Gayle Gerstein, Elizabeth Herries, David Kupferschmid, Catherine McGuire, Lorraine Mattes, Catherine Parilla, Joyce Sonpal, Mayor Paul Tomasko
Staff Present: Perry Frenzel, Borough Engineer, Marilyn Hayward, Board & Recording Secretary
Michael Kates, Board Attorney, John Phillips, Special Counsel

Note: Attorney Matt Earle from Kates, Nussman, Ellis, Farhi & Earle, LLP assisted with hosting the Zoom platform.

PUBLIC COMMENT NON-AGENDA ITEMS: None at this time.

APPROVAL OF MEETING MINUTES OF JULY 20, 2020 SPECIAL MEETING:

Upon a motion by Ms. Herries, seconded by Ms. McGuire to approve the minutes of the July 20, 2020 Planning Board Special Meeting.

Discussion. Mr. Kupferschmid questioned where minutes reflect height ordinance last revised in 2004. He thought was subsequently amended and questioned whether issue was closed. Members recalled discussion on varying heights in different zones or measuring only from original grade but determination not to change the existing definition. Mr. Frenzel clarified current ordinance which measures from original or finished grade, whichever is lower, provides a conservative approach. Secretary Hayward affirmed minutes accurately reflect what was said. Ms. Herries offered minutes reflect Mr. Frenzel's oral history of ordinance being last revised in 2004 which can easily be checked¹. The re-examination report states on page 11 "as in comparison to 2010" meaning the ordinance has not changed since the last re-exam in 2010 which is accurate. Report to be memorialized by separate resolution.

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

¹ Added Post-Meeting for clarification: Borough Ordinance 220-2 **HEIGHT OF BUILDING**

The vertical distance measured from the average original grade or the average finished grade of the proposed building, whichever is lower, to the highest point of the roof, if the roof is flat, or to a point that is half the distance between the plates and the top of the ridge beam in the case of sloping roofs. The average original grade of the proposed building shall be the average of the reported original grade elevations for all corners and entrances of the proposed building. The average finished grade of the proposed building shall be the average of the reported finished grade elevations for all corners and entrances of the proposed building. Excluded from the calculation of building height shall be chimneys, steeples, handrails for widow's walks and other architectural features that are no greater than four feet in height and which occupy no more than 5% of the total roof area.

[Amended 5-26-2004 by Ord. No. 637]

APPROVAL OF MEETING MINUTES OF JULY 28, 2020 REGULAR MEETING:

Upon a motion by Ms. Gerstein, seconded by Ms. Herries to approve the minutes of the July 28, 2020 Planning Board Regular Meeting.

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

MEMORIALIZATION OF RESOLUTIONS:**ADOPTION OF 2020 REEXAMINATION REPORT OF THE BOROUGH OF ALPINE MASTER PLAN**

Mr. Kupferschmid re-raised the issue of a conflict between the report and minutes. Mr. Kupferschmid did not want to set a precedent by referring to the 2004 date as the last amendment if that is not the date of the current definition. Ms. Herries again asserted this may not be a conflict if the ordinance was last revised in 2004 and that is what remained in effect through 2010 and after. The report says it has not changed since 2010. Attorney Kates concurred with Ms. Herries this is easily checked. They can adopt subject to review of this point and if needed, correct at the next meeting.

Ms. Herries and Mayor Tomasko raised questions regarding the revised re-examination report as provided to the Board noting a redline copy would have been helpful. It appears some of the Board's requested changes were not incorporated:

- Cover page date – should this be tonight's date? Attorney Kates clarified the July 20, 2020 date correct reflects the date of adoption. This evening is the memorialization.
- On page 13 Item #1 Line 4 after “and protect the ‘single-family’ residential character” which change should carry through on page 15 Item #10 “the Borough is essentially a ‘single-family’ residential community.”
- On page 13 Item #10 “and both are characterized by a large ‘and growing’ volume”
- On page 14 in the next to last sentence in the next to last paragraph “housing rental development in the Borough ‘and’ bonus credits”
- On page 14 as noted in the minutes Item #4 Comment should read: “The Borough has no sewer infrastructure and much of the community is still served by private septic systems.”
- On page 42 Item #4 –believed that entire paragraph was to be rescinded and taken out. Secretary Hayward quoted the minutes “the ordinance remains unchanged and therefore the Planning Board hereby rescinds its prior recommendation from the master plan reexamination”
- On page 42 Item #5 He thought they decided to rescind this section regarding garage doors. Ms. Herries noted page 2 of the minutes indicated “Recommended for further review.”

Ms. Cochi noted much of the plan relies on census data not yet available. While they are proceeding now to meet time requirements, they should endeavor to re-review the plan when that data comes out. Attorney Kates concurred adding it does not need to be part of this formal resolution.

In light of these concerns Attorney Kates recommended they postpone the vote on memorialization until the report conforms to what was discussed. Ms. Herries asked they be provided with a redline version from the July 20, 2020 draft initially reviewed. Ms. Parilla agreed the memorialization will be carried to next month.

ADOPTION OF AMENDMENT TO THE ALPINE OPEN SPACE AND RECREATION PLAN

Upon a motion by Mayor Tomasko, seconded by Mr. Kupferschmid

At this regular meeting of the Alpine Planning Board held August 25, 2020

WHEREAS, the BOROUGH OF ALPINE is under contract to acquire from SUEZ Water 6 East Main Street, also identified as Lot 9 in Block 47 on the Tax Map and List, from SUEZ; and

WHEREAS, the acquisition will be funded with the Borough’s Open Space Trust Fund, established pursuant to N.J.S.A. 40:12-15.1 et seq.; and

WHEREAS, in accordance therewith, it is necessary to amend the Open Space Recreation Plan Element of the Borough’s Master Plan, adopted in 2006, to identify the acquisition; and

WHEREAS, the Planning Board engaged the services of Joseph H. Burgis, PP, AICP, of Burgis Associates, Inc., who presented a draft amendment at a special meeting of the Planning Board on July 20, 2020, for which notice of the proposed amendment of the Open Space Recreation Plan Element was duly advertised, and during which a public hearing was conducted;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Alpine that the appended Amendment to the Open Space and Recreation Plan, is adopted. Accordingly, Lot 9 in Block 47, commonly described as 6 East Main Street, will be included in the Borough’s Open Space and Recreation Plan.

FURTHER RESOLVED that this Resolution and the Amendment to the Open Space and Recreation Plan be transmitted by the Board Secretary to the Bergen County Planning Board and the New Jersey Department of Environmental Protection.

Discussion: Ms. Herries corrected the special meeting date from July 10, 2020 to July 20, 2020.

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

Ms. Parilla advised the Board will dispense with regular agenda items before proceeding with the hearing.

COMMUNICATIONS - None noted

BILLS AND CLAIMS: A motion to approve the below referenced bills was made by Ms. McGuire seconded by Ms. Gerstein and approved by all.

Burgis Associates	\$ 562.50	Housing Plan 2015	
Burgis Associates	\$ 2,000.00	Master Plan Re-examination Report	
Huntington Bailey, LLP	\$ 3,080.00	Legal fees	COAH
Huntington Bailey, LLP	\$10,631.17	Legal fees	COAH
Azzolina & Feury	\$ 2,349.00	Alpine Three	escrow
North Jersey Media Group	\$ 25.65	Public Notice Virtual Meeting August 25, 2020	
John Phillips	\$ 1,900.00	Alpine Three	escrow

COMMITTEE REPORTS:

Northern Valley Mayors & Planners Assoc.: No meeting

Board of Health: Next meeting is September 8th.

Environmental Commission: No report.

Building Department: Report on file.

NJ Transit Update: No report.

COAH Update: Defer to Executive Session

HEARINGS: AMENDED PRELIMINARY AND FINAL SITE PLAN AND SOIL MOVING WITH WAIVERS; ALPINE THREE, LLC; CLOSTER DOCK ROAD, Block 43 lots 6.01, 6.02 & 6.03 (carried from July 28, 2020)

Ms. Parilla advised the Board's policy is to end meetings at 10 PM. Hearing will end at 9:40 PM to afford the Board time for scheduled executive session.

Mr. Earle provided instructions for public participation in the zoom meeting.

Stenographer present at the request of the applicant. Transcript to be provided.

Additional appearances on behalf of the Board: Special Counsel John Phillips, Special Engineer Gary Vander Veer and David Novak of Burgis Associates, Inc., Borough Planner.

Guliet D. Hirsch, Esq. appeared on behalf of the Applicant, Alpine Three, LLC along with applicant's Environmental Consultant, John Peel, PP of PK Environmental POB 1066, 205 Main Street, Chatham, NJ 07928.

Members of the public who spoke to the application: Matthew G. Capizzi, Esq. 11 Hillside Ave., 2nd Floor, Tenafly, NJ 07670 who appeared on behalf of Victoria Zoellner and Gordon Uehling, owners of Block 55, Lot 4 and Block 55 Lot 8 and John McCaffrey, adjoining property owner.

Exhibits marked during the course of these proceedings:

B – 11 Memorandum from John C. Phillips, Esq., Special Counsel to Alpine Planning Board dated August 20, 2020
Re: Issues to be decided – Alpine III

Attorney Phillips reviewed the following for the record:

- As for prior hearings, the Mayor recuses.
- Memorandum marked **[B-11]** as noted above has been provided to Attorneys Hirsch and Capizzi.
- Board members who visited the site should put their observations on the record at this time.
 - Ms. Parilla observed all the water will drain to one corner. It's her understanding the water would flow to the end of the ditch and then to the Lee property crossing into a Category 1 (C-1) brook. How can someone pump water from their property through another person's? She'll seek that information.

Attorney Phillips offered she should get answers as the Board will hear from multiple engineers: its two, Attorney Hirsch's three and two from Attorney Capizzi.
 - Ms. Mattes saw visual signs of a significant overflow of runoff towards the Borough Hall area. While not flowing strongly they have had some drought. She walks that route frequently and has noticed heavier flows in the past. Can that little ditch handle heavy water runoff from the improved coverages?

Attorney Hirsch thought the Board's request to visit the site was just to have the applicant remove the lid so they could look at the spring and not for looking around the site to see how things are draining.

- Ms. Parilla was surprised to see the eight to ten-inch diameter pipe in the spring. The area or container was at least half full. She assumes overflow would be greater than a smaller pipe would accommodate.
- Ms. Sonpal noted lots of pockets of water around the site. If water flows into the well why is there so much water around the site? Noting how close the houses are, where does the water go?
- Mr. Kupferschmid disagreed they were only there to look at the well. He was there to view the spring and the groundwater. Being his first visit to this site he was underwhelmed at the amount of discharge and very disturbed by all the pockets of water around the southern portion nearest Borough Hall. He asked

Mr. Frenzel if this was simply the ground water table? Obviously, the engineers have to comply with regulations that determine runoff controls but there is a substantial amount of runoff from the property.

- Ms. Herries agreed while the main impetus of their site visit was to examine the spring, the Board is generally encouraged to view the entire site for an application. It was her first visit to the site and although it has been very dry, she was surprised to see, while not a torrent, a steady stream flowing at the base of the property and all of the piping. She, too, was struck by the amount of water moving on the property. She's interested in the experts' opinions and how they will manage to ensure a result consistent with regulations and not unduly burdensome to the neighbors.
- Ms. Cochi was also surprised by the size of the pipe entering the well. She expected it to be a lot smaller. She offered the spring cannot be viewed in isolation. She looked at the entire site which had more standing and running water than she expected. She thought the property would be drier and is concerned with the impact of groundwater and runoff to neighbors.
- Ms. McGuire was also surprised at the amount of water around. It's been a very dry summer. She was surprised at the amount of water that was in the well and by the size of the pipe. She thought a spring that size would catch more water and the property would have been drier.

Attorney Hirsch reviewed Mr. Peel last testified February 25, 2020 at great length on the various DEP permits including the Flood Hazard Area Applicability Determination and what that particular determination meant. He was subject to lengthy questioning by the Board, its consultants and the public. Attorney Capizzi asked for the actual DEP applications and these were provided. Mr. Peel appears again to answer questions relative to those applications but not to repeat previous testimony or answer the same questions again.

Ms. Parilla opened to Board members for questions. There were none at this time.

Ms. Parilla opened to Attorney Capizzi who advised he reviewed the applications and has no questions for Mr. Peel.

Ms. Parilla asked Attorney Hirsch if she has another witness who will be handling groundwater and stormwater management. Attorney Hirsch apologized scheduling is difficult and Mr. Hubschman and Mr. Ciliberto could not be present. She has noted the Board's site visit observations and will ensure they are prepared to address at the next meeting in September. She has no other witnesses available this evening.

Mr. Vander Veer spoke up that at the last meeting he raised questions from Mr. Frenzel's letter updated July 14, 2020 that were deferred to Mr. Peel: Specifically, Items #4 and #6. Ms. Parilla asked him to proceed.

To refresh Mr. Peel, Attorney Hirsch read **Item # 4 on page 6:**

“4. Much has been discussed regarding the 'spring' on the property. The Site Plan shall be revised to indicate this water feature as a spring, not as an 'Existing Well', as per Mr. Phillips' direction at a prior session of the public hearing. Additionally, the Site Plan and other plans within the set of drawings submitted there are no details of the manner in which this feature will be managed going forward should the application be approved. Representations have been made that the NJDEP is aware of the spring since their personnel has visited the site a number of times in the past, but there is nothing in writing from the Department regarding their jurisdiction over what is in our opinion a regulated watercourse. A finite jurisdictional determination from NJDEP regarding this issue specifically is warranted.....”

Mr. Peel deferred any stormwater questions regarding the spring to Mr. Hubschman or Mr. Ciliberto.

Mr. Peel repeated prior testimony that multiple DEP personnel scoured the one-acre site multiple times over the years in connection with the two LOIs, two General Permit #6's, and associated extension. He knows they were made aware of the spring by public objectors during enforcement reviews and believes also by Borough officials. Proper notice was given and the time for challenges was when applications were submitted and permits issued. The "well – spring" is a subsurface issue and not regulated as a surface water or wetland.

Mr. Vander Veer was sworn and described the condition of the spring which was not always the well-defined structure the Board saw on their site visit. The concrete structure they viewed was installed after a contractor, while performing soil moving, filling wetlands, or exploratory test holes and septic work, inadvertently demolished the spring's service area which was supposed to remain undisturbed. They were instructed to rebuild and protect it. Previously it had a concrete lid covered with brush and piles of woodchip mulch as if to hide it from view. It is a natural occurring spring where the water comes from underground, not from surface water flowing into it. It's always at the same level. Calling it an 'abandoned well' for twenty-five years was misleading to the DEP and walking the site you would not see it unless you knew where to look. DEP includes springs in the definition of state open waters.

Mr. Peel offered it was covered for safety and again repeated his testimony. He maintained no matter what it was called DEP knew what it was and they know whether a feature is a regulated water per the Land Use Regulation Program and Division of Watershed Management whose current Director is Larry Baier. Mr. Baier was one of the multiple DEP reps who have walked this site. Asked about the piping Mr. Peel said no one is sure when that was added. It was originally a clay pipe. He's heard prior to that the water just bubbled out of the surface. The water table is a few feet below ground.

Mr. Peel testified to his experience and observations on site having visited 25-30 times since 2000. He concurs with Mr. Vander Veer's description of how it came to be disturbed and how it appears now. The structure was comprised of concrete blocks even back in 2000 and he assumed people needed some type of structure to access the water back in the 1880's adding there's probably a lot of those all over Alpine. DEP saw the property prior to the rebuild and the DEP enforcement guys may have subsequently seen what the Board saw but he did not know if the lid was ever removed for them to look in.

Asked if DEP relies just on information provided by applicant's engineer Mr. Peel explained they provide DEP and the Borough Clerk with the application package including public maps, USGS maps, summary report and the public notice. DEP then performs a mandatory site inspection 'scouring the site.' He was asked how DEP would know the actual condition of the feature versus the conditions from any particular engineer's report if it was obscured by brush. While Mr. Peel acknowledged that's a fair question, he again stated his belief that DEP knew having been contacted by public objectors and he believed also the Board. The Board could not recall giving such notice to DEP.

Mr. Vander Veer could not recall any written notification in any of the permits claiming the feature to be beyond their jurisdiction. Regulations specifically include springs as open waters. It was improperly labeled as an abandoned well for twenty-five years. Mr. Peel maintained DEP was aware and suggested Mr. Vander Veer contact them.

To refresh Mr. Peel, Attorney Hirsch read **Item # 6 on page 7:**

".....We respectfully disagree with the applicant's engineer who contends that the stormwater from the site does not discharge into a Category I stream three-hundred-foot riparian buffer and therefore 95% TSS removable is not required. If the purpose of TSS removal is to limit the pollutants loading from the developed site into what is a Category I stream it makes no difference from a water quality perspective if that stormwater discharges into a Category I stream riparian buffer located within the property, at the edge of the property or off site. The environmental impact on the Category I stream has been different in all case scenarios. Therefore, we continue our position regarding the need for onsite 95% TSS removal. This issue should be addressed in testimony"

Attorney Hirsch conceded this may cross into Mr. Ciliberto's area but asked Mr. Peel to comment. He stated the Flood Hazard Applicability Determination issued by DEP addressed the project and all of its elements and deferred stormwater aspects to Mr. Ciliberto.

In response to questions Mr. Peel advised if DEP does not regulate the spring, that's it. No other agency regulates. Although it eventually drains to a Category I stream that's further away. They drain to the ditch which is not considered a Category I stream. The stream behind the municipal building might be the beginning.

Ms. Parilla noted someone put a pipe into the spring which empties into the ditch which drains to the corner and all the stormwater will be collected and directed towards that same corner where it eventually flows directly into that C-1 stream. Attorney Hirsch deferred to Mr. Ciliberto. Mr. Kupferschmid questioned if anyone had traced the pipe from the spring to ensure it all goes directly to the ditch and is not dispersed underground, particularly towards the west side of the property, via a T or Y fitting. That might explain why they're seeing water in other parts of the property. Ms. Mattes questioned the inconsistency of an 8-10-inch pipe going into the spring and a 4-6" pipe going into the ditch. Ms. Parilla added the Board has never gotten a straight answer on who installed the pipe. Attorney Hirsch questioned relevance. Ms. Parilla said it speaks to volume and water management. It would be helpful if Mr. Hubschman can resolve their question. Ms. Parilla finds it bizarre they can recall the clay pipe that broke and observed a new pipe was inserted all under the management of the property owner and no one has told Mr. Hubschman who did it. Mr. Peel offered it was probably considered normal property maintenance. Mr. Peel believed it was a straight pipe to the ditch and Johnson Soils Engineering and others dug sixty to seventy soil test pits as another clue as to whether there are pipes there. There's no evidence of any other pipes that he's aware of. Attorney Hirsch deferred to Mr. Hubschman and Mr. Ciliberto while reminding Mr. Ciliberto testified regarding maximum flows from the spring which he described as similar to the flow from a regular garden hose, the effect of the drainage on the ditch, the stormwater controls and the only answer they really need is that the stormwater controls on this property meet the state requirements.

Attorney Capizzi complained testimony has been lean. Mr. Hubschman could not provide information on the invert at the well and won't provide information unless the Board specifically asks for it. His recollection of Mr. Hubschman's prior testimony was that he did not design anything relative to the well, doesn't know anything about it and all he did on his plan was to plot what he perceived to be something that existed prior to his working on the project site. He cautioned the Board to be quite direct with the applicant about information they wish to receive at the next meeting. He further interjected his belief the Board's questions are about the accuracy and legitimacy of the permits issued by NJDEP and whether the information supplied to them was accurate at the time the applications were filed. The Board's interest in the history of what was described as a well, which they know is a spring, along with the piping and how it was maintained reflect a need to understand the underlying factors that were related to NJDEP and where the applicant derived those factors from. There does not appear to be any concrete history the applicant can present besides Mr. Peel's informal opinion about what unnamed NJDEP personnel may have seen during unknown, unidentified site visits. Attorney Hirsch and Mr. Peel cautioned Mr. Capizzi who maintained that clearly there is a certain amount of vagueness associated with the testimony and that's why they're grappling with the issue and not moving on. Attorney Hirsch referred him to the DEP applications which name at least some of the DEP reviewers and maintained proper notice was provided, the DEP has jurisdiction and this is not the forum to challenge those Permits which should have been done when the permits were issued.

Attorney Capizzi opined the applicant's position that the Board should review the substance of the applicant's submittal to the NJDEP for inaccuracies and raise those issues is preposterous. The applicant has the responsibility to ensure information supplied is accurate and attests to it. From these proceedings we've learned of at least one inaccuracy being the description of an onsite water feature as a well when it actually was a spring, and that leads to other potential inaccuracies that the Board is now exploring.

Attorney Hirsch repeated Mr. Peel's repeated testimony that DEP reviewers were not confused or misled and understood what was there no matter what it was called and did not determine that it was a regulated feature under DEP's jurisdiction.

Attorney Capizzi reminded Mr. Peel just testified he never lifted the wood lid to show anybody. He's assuming they saw it because it is a small site. He never testified that he actually opened up the covering and showed them the water beneath the covering. Mr. Kupferschmid believed the well or spring may not have been visible at the time of their inspections based on Mr. Vander Veer's description. Mr. Peel maintains reviewers saw it. Ms. Parilla asked if it is too late for the Board to make an objection or request for review by DEP on this matter. Attorney Phillips advised he will share his thoughts on this matter with the Board at the appropriate time.

Being no further questions, Ms. Parilla opened to the public for questions asking they not repeat questions already asked by the Board. Attorney Earle again provided instructions noting there had been two attendees but one had dropped off.

John Patrick McCaffrey, adjacent neighbor owning two plots of land on the west side of the subject property. He offered since the beginning the deception factor has been high right through the recent applications by labeling the spring an abandoned well and asked if Mr. Peel can provide all of the original applications and documentation provided to DEP so they can specifically look at the wording? Mr. Peel responded he already did.

Mr. McCaffrey asked if Mr. Peel knew who put the 12-inch concrete reinforced pipe across the road where the C-1 stream is. Mr. Peel did not. Mr. McCaffrey heard that the C-1 stream begins behind the municipal building which is exactly where it begins to ask if that pipe were not there and it crossed over onto the said properties that you've been hired to represent would that be part of the C-1 stream going to the spring? Mr. Peel asked how old the pipe was and Mr. McCaffrey responded roughly 1968. Mr. Peel noted that's a long time ago and since somebody put that pipe in illegally, which they did, it's a channel and not a watercourse. Where it daylight into a natural channel, then it's a watercourse. Mr. McCaffrey questioned how if there were only two ten-foot lengths and then a natural watercourse? Mr. Peel noted humans built it and everything about that area has been modified by man over time: Schoolhouse Lane, the spring itself, the pipes, the clay, the concrete, etc.

Mr. McCaffrey countered the spring is shown on the original map of 1892 laid out by Thomas R. DuBois subdivided for his children and it was well documented from that point on that in fact it was a spring and that it was the supply of water to all of his children and their children for ever and ever. It shows on the map that the watercourse goes well beyond the signed portion of that road. Attorney Hirsch objected. Attorney Phillips interjected the map Mr. McCaffrey is referring to has already been marked into evidence and advised him he can feel free to testify to his ownership and what he's observed when they get to the public comment portion of the meeting.

Mr. McCaffrey asked if the stream bed that fed the concrete reinforced pipe is still considered a C-1 stream on its course to the spring? Mr. Peel stated no. Mr. McCaffrey asked why it is not delineated as a C-1 stream when it's only a pipe that's using a water channel for twenty feet to cross a roadway? Mr. Peel stated the DEP doesn't regulate pipes and infrastructure like that as streams. Mr. McCaffrey questioned how when there's been discussions that at the southerly side it becomes a stream and if he looks at the older maps on record it shows that? Mr. Peel asked what maps? Mr. McCaffrey replied the older maps on record. Mr. Peel asked for C-1 streams? Mr. McCaffrey replied yes. Mr. Peel didn't see that. Mr. McCaffrey asked if he had done the studies going back to roughly the 1950's of the stream beds in the Borough of Alpine? Mr. Peel stated no. Mr. McCaffrey asked him to look at both the Army Corps of Engineers and geological maps that we have on record? Mr. Peel stated they went through this exercise already. Mr. McCaffrey asked if he could provide to them for their knowledge? Mr. Peel stated another consultant was hired to talk about the Bergen County Soil Survey and Black Line Streams and he rebutted that already. Mr. McCaffrey asked if Mr. Peel can provide that information? Mr. Peel did not have it with him today.

Attorney Hirsch and Mr. Peel recalled the name of the other consultant was James Cosgrove. Attorney Hirsch asserted Mr. Cosgrove is not an expert in this hearing. He has not testified. His report has been referred to but she will continue to object to having it be put into evidence to support certain facts without some witness here to testify to it and be cross examined. We're sticking all this stuff in the record without anyone to testify to it and certainly you have Mr. Peel in front of you and you can ask him questions and let's get him finished and off the witness stand tonight. Attorney Capizzi stated he would certify that he already testified to the Cosgrove report when he cross examined him. He had said he had reviewed it and was familiar with it on the record.

Mr. McCaffrey asked if it's in the record that the Board can look at the Cosgrove report; is that correct? Mr. McCaffrey asked the report be put into evidence. Attorney Hirsch stated it is not in evidence and she's objected to that in the past and she'll continue to object to this thoroughly improper procedure to put this in and to have the Board review it and consider it without Mr. Cosgrove appearing and testifying and being subject to cross examination. Also, that report was based upon prior plans and nothing that is in front of the Board today was in front of Mr. Cosgrove at that time.

Attorney Earle affirmed there were no other hands raised. Ms. Parilla closed the meeting to the public for questions.

The Board and Applicant's counsel had a lengthy discussion on format for the next meeting whether in-person or virtual. Some preferred virtual for safety during the pandemic while others preferred in-person finding the virtual format disruptive and a problem for those lacking technical skills and equipment. Current Executive Order limits indoor gatherings to 25 insufficient for the anticipated number of attendees expected in-person. Attorney Hirsch noted DCA guidance and her client must agree to the matter being carried. Attorney Phillips provided advised the Board.

Resolution: Upon a motion by Ms. Gerstein seconded by Ms. Mattes and approved by all to carry this matter to the next regular meeting in September as an in-person meeting with the proviso that in the event the Board cannot comply with an in-person hearing in September under an Executive Order of the Governor limiting number of persons permitted indoors, the matter will be addressed on the September agenda at which time the Board will exercise their option to either grant an extension given with applicant's consent or dismiss the matter without prejudice.

Discussion: Attorneys Phillips and Kates will seek clarification from Governor's counsel regarding application of Executive Orders regarding public hearings for land use boards.

PUBLIC COMMENTS

Ms. Parilla opened to the public for comments and asked that comments not be repeated from prior meetings.

John McCaffrey affirmed he remains under oath from the prior hearings. He spoke with other individuals who did not participate tonight because they are not comfortable with virtual meeting technology. He further noted limitations on an in-person hearing with social distancing where they could not see the plans being presented and had difficulty hearing.

Mr. Kupferschmid recalled Mr. McCaffrey mentioned another consultant's report. Can he provide it and any other information he feels is relevant. Attorney Phillips clarified Mr. McCaffrey can submit documents and introduce them during public comments. He will need to be prepared to provide direct testimony. These can only be things he's observed or government documents he's obtained and not what somebody else told him which is hearsay. Attorney Hirsch affirmed she does not have a problem with his submitting documents as long as she can see it as well so they are all prepared.

Mr. McCaffrey advised the Board that DEP and Trout Unlimited would have documentation such as early aerial photography from the 1930's that would paint a story of the birth waters of native trout streams. He petitions the Board, or for the Board to recommend to Mayor and Council, that they fund a study to identify the birth waters, which are the springs, that feed Alpine's fresh water stream beds, as the spring on this property exhausts itself in the one of the last of north Jersey's native trout streams being the brook that flows into the Deer Hill / Duck Pond Road pond.

Attorney Hirsch recalled Mr. McCaffrey appeared at the July meeting after e-mailing them he had symptoms and had just been tested for COVID-19. Can they ask him to share his test result? He stated it was negative but asked the Board in future to require anyone attending an in-person meeting be certified as clear of COVID-19 for everyone's safety.

Ms. Hirsch asked if the Board can declare Mr. Peel's testimony finished. Ms. Parilla could not at this time. She noted they've asked Mr. Peel to provide the Board with the DEP applications. Mr. Peel has deferred to Mr. Ciliberto, Mr. Ciliberto has deferred to Mr. Peel and when people keep deferring to other people and they can't answer our questions it puts the Board at a disadvantage too so when we see these documents, we'll consider this further.

Ms. Parilla further stated that the Board will do everything in its power to conduct a safe in-person meeting and work on accommodations. She asked if Attorney Hirsch could prepare two sets of exhibits so one could be posted in the front for the Board and the back for the public in addition to providing them for posting on the website so people could access them from their phones. Attorney Phillips reviewed remaining witnesses anticipated to appear per Attorney Hirsch and Attorney Capizzi noting the Board will also seek concluding testimony from its engineers.

Ms. Parilla advised the Board will now go into executive session. Attorney Earle explained the procedure.

EXECUTIVE SESSION:

Resolution: Executive Session A Resolution providing for a Meeting Not Open to the Public in Accordance with the Provisions of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-12.

OFFERED BY: Mr. Kupferschmid **SECONDED BY:** Ms. Gerstein

at a regular meeting of the Planning Board of the Borough of Alpine held on Tuesday, August 25, 2020

WHEREAS, the Planning Board of the Borough of Alpine is subject to certain requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.; and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-12, provides that an Executive Session, not open to the public, may be held for certain specified purposes when authorized by Resolution; and

WHEREAS, it is necessary for the Planning Board of the Borough of Alpine to discuss in a session not open to the public certain matters relating to the item or items authorized by N.J.S.A. 10:4-12b subsection designated below:

(b)(8) Matter Relating to Employment Relationship

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Alpine, assembled in public session on Tuesday, August 25, 2020, that an Executive Session closed to the public shall be held for the discussion of matters relating to the specific items designated above; and

BE IT FURTHER RESOLVED, that the deliberations conducted in closed session may be disclosed to the public upon the determination of the Planning Board that the public interest will no longer be served by such confidentiality.

The Board entered into the executive session at 10:00 PM and resumed the public session at 10:22 PM

Ms. Parilla affirmed a quorum was present and requested a motion based on the Executive Session discussion.

Resolution: Upon a motion by Mr. Kupferschmid, seconded by Ms. Cochi and approved by all those in attendance to recommend the Mayor and Council consider compensation for the public employees who have gone well beyond their duties to help the Planning Board with meetings during this COVID crisis.

ADJOURNMENT: A motion to adjourn the regular Planning Board meeting was made by Ms. Sonpal and seconded by Ms. Herries. All were in favor. The meeting adjourned at 10:24 PM.

Respectfully submitted,

Marilyn Hayward
Recording Secretary