

**New Milford Zoning Board of Adjustment
Work Session
April 10, 2012**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:32 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Appice		Present
Mr. Binetti		Present
Ms. DeBari		Present
Mr. Denis		Present
Father Hadodo		Present
Mr. Loonam		Absent (7:46)
Mr. Rebsch		Present
Mr. Stokes	Vice Chairman	Present
Mr. Schaffenberger	Chairman	Present
Ms. Batistic-	Engineer	Present
Mr. Grygiel	Planner	Present
Mr. Sproviero -	Attorney	Present

REVIEW OF MINUTES – March 13, 2012

The Board Members reviewed the minutes for the Work and Public session.

Having already recused himself from the New Milford Redevelopment Associates application, Chairman Schaffenberger turned the meeting over to Vice Chairman Stokes.

OLD BUSINESS

12- 01 - New Milford Redevelopment Associates – Block 1309 Lot 1.02

Mr. Stokes stated there was correspondence dated March 21, 2012 from Mr. Alonso with regard to Boswell Engineering recusal issues. Mr. Sproviero stated there were referral letters from the various departments with respect to the application. Mr. Stokes stated the Borough planner recused himself from this application and the Board has a new planner. The Board Attorney stated the appointed planner that would be representing the interests of the Board for this application was Mr. Paul Grygiel from Phillips Priess Grygiel, LLC. The Board Attorney acknowledged correspondence issued by Mr. Alonso raising a series of questions with regard to potential conflict with respect to Boswell Engineering for this application.

NEW BUSINESS

12-02 Fresh & Fancy Farms – Block 904 Lot 43 - 575 River Road

Chairman Schaffenberger stated the applicant was asking for four variances and the application was complicated by numerous deed restrictions and a farm management plan. There were

referral letters submitted from DPW, Police, Fire Department and Construction Official. The Board Attorney stated there was also a review letter from Boswell Engineering. The Board Engineer stated there were some issues with regard to the deed restriction which they would discuss in the public session.

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Motion to close was made by Ms. DeBari, seconded by Mr. Stokes and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
April 10, 2012**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:00 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Appice		Present
Mr. Binetti		Present
Ms. DeBari		Present
Mr. Denis		Present
Father Hadodo		Present
Mr. Loonam		Present
Mr. Rebsch		Present
Mr. Stokes	Vice Chairman	Present
Mr. Schaffenberger	Chairman	Present
Ms. Batistic-	Engineer	Present
Mr. Grygiel	Planner	Present
Mr. Sproviero -	Attorney	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – March 13, 2012

Motion to accept the minutes were made by Mr. Stokes, seconded by Mr. Binetti and carried by all.

OFFICIAL MINUTES OF THE PUBLIC SESSION – March 13, 2012

Motion to accept the minutes were made by Mr. Stokes, seconded by Ms. DeBari and carried by all.

Having already recused himself from the New Milford Redevelopment Associates application, Chairman Schaffenberger turned the meeting over to Vice Chairman Stokes. Father Hadodo also had recused himself from the application and stepped down from the dais.

OLD BUSINESS

12- 01 New Milford Redevelopment Associates – Block 1309 Lot 1.02 - Mixed Use Development

Mr. Del Vecchio member of the firm of Beattie Padovano on behalf of the applicant asked to place a minor amendment to the application on the record. The application initially filed sought approvals for 221 units of housing with 33 units affordable set aside. The Attorney stated they

were proposing to modify the affordable housing unit count to increase the set aside to 40 units affordable housing for the project.

The Board Attorney stated the Zoning Board of Adjustment was in receipt of a resolution adopted by the Mayor and Council on March 19, 2012 for the appointment of a Professional Planner for the purpose of representing the Board's interest in this application. The Board's Planner is the firm Phillips Preiss Grygiel, LLC. Mr. Sproviero stated they were also in receipt of correspondence dated March 21, 2012 issued by the law firm Alonso & Navarrete, LLC. raising specific questions with regard to information they sought from Boswell Engineering. The Board Attorney stated the Board Engineer was present as well as Boswell Engineering's staff counsel Mr. Kelly.

Mr. James Kelly introduced himself as Executive Vice President and General Counsel for Boswell Engineering and served as the firm's conflict officer. The Board Attorney asked Mr. Kelly if he reviewed the correspondence from Mr. Alonso. Mr. Kelly reviewed the matter and it was their position there was no conflict. Mr. Kelly explained the Local Government Ethics Law and the Laws and Regulations Governing the Practice of Engineering. Mr. Kelly stated it was their strong position that they have no financial interest or professional relationship with United Water in any fashion that presented a conflict of interest with the firm in continuing to provide engineering service to the Borough on this application. The Board Attorney asked if it was his position as the Ethics Compliance Officer for Boswell Engineering that there was no cause that would require Boswell to recuse itself from the application. Mr. Kelly agreed. The Board Attorney was satisfied with the opinion offered by Counsel to the Engineer and saw no grounds for recusal.

Mr. Del Vecchio stated Mr. Eisdorfer will be presenting Dr. Kinsey's testimony regarding planning.

The Board Attorney swore in David North Kinsey.

The Board accepted the qualifications of Dr. Kinsey as a licensed professional planner and expert in planning and affordable housing.

The Attorney marked as Exhibit A-19 David N. Kinsey, Qualifications.

Mr. Stephen Eisdorfer from Hill Wallack LLP called Dr. Kinsey as the next witness.

Dr. Kinsey discussed in depth the need for low to moderate housing. The planner explained since 1986 COAH has calculated statewide and regional lower income needs and allotted to municipalities fair share housing obligations in three rounds. He stated affordable housing is an inherently beneficial use. He stated none of the actions taken by Governor Christie has abolished the fair share housing obligation established by Mt Laurel document because the obligations were based on the constitution. What is still being challenged before the Supreme court is portions of the third round rule. Mr. Kinsey stated even if the Mt Laurel Doctrine and State Fair Housing Act did not exist, low and moderate housing would still be needed.

Mr. Stephen Eisdorfer asked if Mixed Use Inclusionary Development was an Inherently Beneficial Use. Mr. Kinsey answered yes and explained under Mount Laurel 11 it spoke of the affirmative obligation of municipalities to create realistic opportunities for the construction of low and moderate housing.

Mr. Eisdorfer asked if New Milford had met its Fair share Housing obligations. Dr. Kinsey discussed his compliance analysis of the Borough of New Milford. The Attorney marked as Exhibit A-20 Table 2 Gross Fair Share Housing Obligation. Dr. Kinsey said New Milford felt their borough's Indigenous Need should be reduced from 45 units to 5 units based on a survey by the construction official. Dr. Kinsey stated the Borough used the incorrect survey form which is consequently incomplete. He stated New Milford's survey was non compliant with COAH rules on many grounds and little credibility could be given to the claim on reduction on the indigenous need until an exterior commission survey was compliant with COAH rules. The Board Attorney asked Mr. Kinsey for the date the Borough submitted to COAH what he contends was a non compliant submission. Dr. Kinsey stated October 2008. Mr. Sproviero asked if he was aware of any action taken by the State that would declare it incomplete or in non-compliance with their requirements. Dr. Kinsey stated the State has not yet completed a substantive evaluation of the Borough's petition and all the documentation the Borough submitted. Mr. Sproviero stated it has been pending for 3 ½ years and there is no substantive determination or no information that they have taken any action to declare it incomplete or non compliant. Dr. Kinsey disagreed and stated COAH declared the petition complete, which is a procedural completeness. Dr. Kinsey discussed indigenous need, prior round obligation and prospective. He found the Borough's indigenous need was 34 units and the net prior round obligation was 14 units.

The Attorney marked as Exhibit A-21 a chart on Fair Share Obligation and A-22 Table 4 Non Residential Set-Aside Calculation.

Dr. Kinsey stated the applicant in the pending application proposed to set-aside as low and moderate income housing 40 units of the proposed 221 units of multi family housing to be developed at the site which is a 18% set-aside when the norm is 15% for rental housing. The planner explained the growth share standard and required low and moderate income housing units for the Supermarket and Bank. The Board Attorney questioned his testimony being that the implementation of the commercial component of the application generated an increase of the Borough's obligation to provide low and moderate income housing. Dr. Kinsey answered under the current COAH third round rules and the provisions, which were under review by the Supreme Court. The proposed non-residential development would establish an obligation for the Borough to create 8,242 more units as part of its growth share obligation. There was discussion on projected growth. Mr. Eisdorfer asked the planner from a planning prospective was it his opinion that the figure was an appropriate calculation of a substantial amount of housing.

Mr. Stokes questioned if this would be a good time to stop. The Board Attorney stated even if there was not another application on the agenda the planner would not be able to finish his testimony and would have to come back. He stated the applicant had the entire meeting of April 19th at 7 PM. Mr. Eisdorfer stated Dr. Kinsey would not be available for the Special Meeting but they would begin with a different witness and he would come back at another hearing to finish his testimony. Mr. Del Vecchio requested special meeting dates in May.

Mr. Marc Leibman representing Austin Ashley asked if Dr. Kinsey submitted a report to the Board. The Board had not received a report but Mr. Stokes thought it to be a good idea to submit a report because there was a lot of information heard at this meeting. Mr. Del Vecchio understood the request and carried the meeting without any further public notice.

Mr. Alonso stated he would be on vacation on the 19th and agreed to a special meeting provided the witness would return for him to cross examine the witness. Mr. Del Vecchio heard the request but did not make an agreement and he believed the request was limited to if they produced their engineer. Mr. Sproviero stated the Board heard your request and scheduled the special meeting and there were no conditions and he did not believe the Board would finish with the testimony of whatever witness was next. The Board Attorney said the Board did have ability to request in the public interest that the witness could be brought back for additional questioning.

NEW BUSINESS

12- 02 Fresh & Fancy Farms – Block 904 Lot 43 - 575 River Road

Warren Kahn, attorney for applicant, stated the property was designated as farm preservation and the applicant was seeking to build greenhouses all in accordance with the fair farming act and consistent with farming the property. He explained the property has been a farm for over 100 years. There were previously six greenhouses on the property and today there were two greenhouses. Mr. Kahn stated they proposed to construct two more greenhouses and a barn with a total of four structures. He explained one of the existing greenhouses would be moved to the rear of the property. One of the buildings proposed was a barn for the purposes of assembling the plants, growing and storing plant materials consistent with farming. The attorney stated greenhouses were a necessity in this area because of the climate. He stated the barn would be 36'x 60' with an overhang and a portion of it would be a greenhouse. The applicant was seeking a sign variance, height variance for the barn and building coverage. They did not intend to expand on any of the impervious areas but remove and reinstall macadam that has deteriorated. The applicant was seeking a side and rear yard variance for the greenhouse. Mr. Kahn stated they submitted their proposal to the Bergen County Planning Board. The Board Attorney asked if they had a resolution from Bergen County. Mr. Kahn answered no but would request one and hoped to have it for the next meeting. The Chairman asked if he submitted this plan to the DEP because of the creek. Mr. Kahn answered no because the creek has always been there and they were not changing the flow. The Board Attorney stated any action that the Board takes would be subject to and contingent upon the jurisdiction of the DEP with respect to any stream encroachment. The Attorney agreed. Mr. Sproviero stated the Board was in receipt of correspondence from Mr. Timsak dated March 19, 2012 addressed to Fresh & Fancy Farms asking for the plan to be forwarded to their office so they may determine whether an application to the County Planning Board for site plan review and approval would be required. The Board Attorney asked if that had been done. Mr. Kahn answered yes.

Mr. Donald W. Low was sworn in by the Board Attorney.

Mr. Low stated he was one of the owners of Fresh & Fancy Farms and they were proposing a Barn/greenhouse that would be located where the 22'x60' greenhouse was located now. He explained the greenhouse would be relocated to the back corner and the proposed barn was 36' x 60' with an 8' overhang. He stated the existing greenhouse would be located at the back corner with another barn at 26'x60' because that was the best location for sun. The greenhouse with a shed would be squared off which would be used as workshop. He stated there would be a 12' sign along River Road and he also requested a gate down the easement for safety because of the brook. Mr. Sproviero questioned how he planned to do that if that was prohibited by the deed restrictions in the deed of easement. Mr. Low answered other easements have gates. Mr. Sproviero answered the Board did not have jurisdiction over this and anything the Board did would be subject to his strict compliance to the obligations in the deed.

Mr. Kahn asked Mr. Low to explain which barn was new and which existed. Mr. Low reviewed the plan with the Board. Mr. Low explained the locations of the greenhouses and barns. He stated these were the best locations to keep it away from the brook and because of the sun required for farming. Mr. Kahn asked Mr. Low to explain why he needed a 22' high barn instead of the permitted 15'. Mr. Low answered because of his large tractor and half of the barn would be a greenhouse. Mr. Low stated there would be an office, a bathroom for the employees and some storage. Mr. Kahn asked if there were plans to change the brook. Mr. Low answered no. The Chairman asked the Board Engineer if the greenhouses were building coverage. Ms. Batistic answered yes. The Chairman questioned the repairs on the macadam driveway. Mr. Low explained the front driveway was paved but the driveway got crushed from the POD. He explained he put down stone for safety reasons. The Chairman questioned the conditions in the deed restrictions on driveways. The Board Attorney stated only paved roads can be those that were in place at the time of granting the deed of easement. The Chairman asked if they were removed could he replace them. The Board Attorney answered that was an interesting question. Mr. Low answered the pavement was still there just stone over it. There was discussion on whether or not the applicant eliminated the preexisting non-conforming use. The Chairman clarified that the applicant was requesting to remove the gravel to fix the cracked macadam. Mr. Low answered just in the front. Mr. Low submitted photos of the macadam.

The Board Attorney marked photos as Exhibit A-1 front of house with historic sign and the second photo marked as Exhibit A-2 cracked asphalt. The Chairman asked if he expanded the gravel area beyond the macadam. Mr. Low answered wherever there was macadam there is stone. The Chairman asked if he took the photos. Mr. Low answered his wife took the photos. Ms. DeBari asked what the flooring would be on the proposed greenhouse and barn. Mr. Low answered now there was concrete and dirt for the paths and he would install pavers.

Motion to open to the public was made by Ms. DeBari, seconded by Mr. Binetti and carried by all.

Mr. Michael Perrone 563 River Road was sworn in by the Board Attorney. Mr. Perrone asked how he expected to grow plants in the barn. Mr. Low answered there were 16' sides and the roof would be fiberglass with light coming in. Mr. Perrone asked if he was putting a bathroom in the barn how was the sewer line getting across the creek. Mr. Low answered across the bridge or into River Road. Mr. Perrone asked why couldn't he just repair the potting shed and not enlarge it. Mr. Low answered it was deteriorated by termites and he was trying to make it look nice.

Ms. Hedy Grant 175 Boulevard questioned the size of the tractor that required a 22' high barn. Mr. Low answered the door would be 12' and his boom on the tractor was 12'. Ms. Grant questioned if there was a stop work order on the bridge. Mr. Low answered yes. Ms. Grant asked how he expected to get sewage over a bridge that was not in compliance. The applicant said his engineer would address it. Ms. Grant asked if he would submit plans at the next hearing. Mr. Low answered they would be submitted to the building department. Ms. Grant asked for a picture of a structure that was half barn and greenhouse. He would see if they had something. Ms. Grant asked if there was enough sun coming in through a roof in New Jersey to grow plants and was he growing plants now. The applicant answered yes.

Mr. Jeff Pieper 564 River Road asked when there were six greenhouses at the property because he had concerns with adding greenhouse structures combined with other development in the area it would make the problem of flooding downstream worse. Mr. Low believed they were removed in 2008.

Mr. Kahn submitted a survey prepared in 2008 that was marked as Exhibit A-3.

Ms. Randi Duffie 120 California Avenue was sworn in by the Board Attorney. Ms. Duffie had questions on the conditions of the deed of easement regarding activities that are required to take place on the property. Mr. Low answered the activities would be farming and he did not believe the deed of easement specially designated any specific amount of area for farming. Ms. Duffie understood that you had to grow a certain percentage for sale in order to maintain your farm designation. Mr. Sproviero stated that might not be contained in the deed of easement but might be contained in the farm management plan. Ms. Duffie asked if he filed his plan and did the County approve it. Mr. Low answered yes. Ms. Duffie asked Mr. Low to clarify the reason for the stone on the macadam. Mr. Low stated the previous owner put down a POD on the driveway, which crushed all the macadam. He said when he took over he put down gravel rolled it to make it was safe. Ms. Duffie thought the previous owner used it to display goods for sale and questioned if it was now a parking lot. Mr. Low said he does not have customers park there but the tenant does and the previous owner did. Ms. Duffie questioned that this did not follow the conditions of the deed of easement. The Chairman questioned if she was referring to the tenant or the parking lot. Mr. Duffie answered both. The Chairman was not sure. Mr. Low stated the previous owner always parked there and assumed his tenant could also park there. Ms. Duffie told Mr. Low he should be following his farm management plan and deed of easement. Mr. Low answered he was. Ms. Duffie questioned the possibility of the waste line going across a stream. Mr. Low answered if it was not to code they would do it another way. Ms. Duffie asked if there was a bathroom in the home on the property. Mr. Low stated yes but the tenant lived there with his family. Ms. Duffie asked if there was open space that he was using for growing and asked for the percentage of area used for growing. Mr. Low answered not much now. Ms. Duffie asked if he could provide the Board with that information. Mr. Low agreed.

Mr. William Marciano 636 Stockton Street was sworn in by the Board Attorney. He asked if the purpose of the large barn was to store rental vehicles from his business from Town and Country. Mr. Low answered nothing from Town and Country would go in there.

Ms. Lisa Marciano 636 Stockton Street was sworn in by the Board Attorney asked how long he has been farming. Mr. Low said one year and one month. The resident said there have been large trucks from Town and Country parked weekly at the farm and asked if the barns would be used as warehouses. The resident was also concerned about the deliveries of plants, trees and peat moss from large trucks that have parked on the street making it difficult to pass. She felt it was a nursery for landscapers instead of a farm and was concerned the farm would be a front for his other business. Mr. Low understood her concerns and would not be storing table and chairs. This was a separate business and he will be getting out of Town and Country and would be doing this and would not bring anything to the property. Mr. Low stated the Town and Country trucks were there while they were fixing the house. Mr. Low stated there were two tractor-trailer deliveries dropping off mulch and the farm received deliveries just like everyone else. The resident asked if he intended to always rent out the house. Mr. Low answered yes because the tenant works on the farm. Ms. Marciano said the previous owner parked in the rear and he made it into a parking lot for his business. Mr. Low answered they did not have a lot of traffic and none of his customers park in front. The resident asked if the proposed sign would be lit. Mr. Low answered no.

Kerry Low Fresh and Fancy Farms was sworn in by the Board Attorney. Ms. Low said her daughter started a garden 40'x20' which grew many vegetables and it was fabulous. Ms. Low stated from the time they took title they were growing there. She stated from January they have a packed greenhouse that they started from seed or plug so they were New Milford Farmers. Mr. Kahn asked if she took the photos that were submitted for exhibits. Ms. Low answered she did. The Chairman asked if the photos were altered in anyway and when was the date she took them. Ms. Low answered they were not altered and were taken on April 29th, 2012.

Motion to close was made by Ms. DeBari, seconded by Mr. Rebsch and carried by all.

Ms. DeBari questioned in the Farm Management Plan there was mention of livestock to be raised. Mr. Low answered no he was not interested in livestock. Ms. DeBari stated the plan indicated under activities there would be demonstration on cooking. Mr. Low answered down the road they might teach the Scouts how to cook. Ms. DeBari questioned if he was planning on baking or if so where because his plan stated activities were preparing jam, pies and bread. Mr. Low stated that could be down the road but right now they were just concerned about getting the greenhouses up and growing flowers.

Fr. Hadodo was glad to have local family businesses but questioned the need for such a large sign.

The Chairman questioned if the location for the proposed barn floods. Mr. Low answered no. The Chairman thought the brook had overflowed into the area intended for the barn. Mr. Low said only one time when it was really bad did it overflow about 4' up from the brook but not close to the area.

Mr. Brian Callahan, architect, was sworn in by the Board Attorney.

The Board Members accepted the qualifications for Mr. Callahan as a licensed architect.

Mr. Callahan testified they were proposing a 36x60 barn on the north side of the property and on the south side was an 8' overhang to be supported by a series of columns. The walls along the 60' length at the eave of the roof structure were 16' high and the proposed peak of the roof were constructed with prefabricated roof trusses that were 6' which makes the height at the ridge 22'. There was a 12' high overhead garage door at one gable end with a decorative cupola. There was also a 30' section of the roof that was clear PVC roof panels to allow sunlight into the structure. The architect stated in the area proposed for the barn there was an existing 22'x60' greenhouse that they proposed to relocate to the east which would be 10' off the rear yard and 11.5' off the side property line. Mr. Callahan stated south of that would be a new proposed 26'x60' greenhouse. The relocated greenhouse would be 15' to the roof peak and the proposed greenhouse would be 12' high. The architect stated the proposed barn with a roof peak of 18' and part of the structure was an existing greenhouse to remain and there was a shed in disrepair that would be removed in the footprint of the proposed barn. Mr. Kahn asked if there any specific requirements for the construction of the barns. The architect stated there would be 3' footing by code and either concrete slab or pavers for the ground surface. The Chairman asked if the construction of a greenhouse was a metal frame and glass. The architect agreed. Mr. Denis asked how the barns were heated. The architect stated a gas fired heating system. Ms. DeBari asked if it was a portable unit. Mr. Low answered no they were all in house units. Mr. Stokes asked for the height of the existing shed. Mr. Low answered about 8-10'. The Chairman commented that the historic barn seemed to be sagging. The architect answered he did not visit that barn.

Motion to open to the public was made by Ms. DeBari, seconded by Mr. Stokes and carried by all.

Mr. Jeff Pieper 564 River Road asked if there would be an open area after the greenhouse sited east. The architect stated there would be the proposed barn. He clarified there would be no old foundations out in the open. The architect answered no.

Motion to close to the public was made by Mr. Stokes, seconded by Fr. Hadodo and carried by all.

Mr. Kahn asked for this application to be carried to the next meeting. The Chairman stated the next scheduled meeting was May 8, 2012. Mr. Loonam suggested the application be heard first since he waited to be heard tonight. The Board Attorney felt that was a good suggestion.

The Chairman asked the make and model of the tractor needed for the 12' high door. Mr. Low believed it was a New Holland LB75.

As there was no further business to discuss, a motion to close was made by Ms. DeBari seconded by Mr. Binetti and carried by all.

Respectfully submitted,
Maureen Oppelaar