

**New Milford Zoning Board of Adjustment
Special Meeting
June 21, 2012**

Vice Chairman Stokes called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:34 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Appice	Present
Mr. Binetti	Present
Ms. DeBari	Present
Mr. Denis	Present 7:40
Father Hadodo	recused
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes Vice Chairman	Present
Mr. Schaffenberger-Chairman	recused
Ms. Batistic- Engineer	Present
Mr. Grygiel Planner	Present
Mr. Sproviero – Board Attorney	Present

PLEDGE OF ALLEGIANCE

OLD BUSINESS

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

Chairman Schaffenberger and Father Hadodo have already recused themselves from this application

Mr. Del Vecchio member of the firm of Beattie Padovano on behalf of the applicant stated they were here on continued public hearings and they were requesting a special meeting for August. The Board Members had scheduled a special meeting for Monday July 20, 2012 at 7:00PM and a special meeting for August would be discussed at the July 10, 2012 hearing.

Frank Appice and Joseph Loonam certified that they had listened to the recording of the June 12, 2012 meeting.

Mr. Stephen Eisdorfer from Hill Wallack LLP recalled Mr. Sussman who was previously sworn in and remained under oath.

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

Mr. Eisdorfer marked as Exhibit A-30 - 3 page location map
Mr. Leibman marked as Exhibit O-1 SR-1A Washington Twp
Exhibit O-2 SR-1A Wyckoff
Exhibit O-3 SR-1A Westwood

Marc Leibman representing Austin Ashley asked Mr. Sussman if he had prepared the requested report. Mr. Sussman responded he had location maps showing the location of the sales in his report. The map was marked as an exhibit and distributed to the Board Members.

Mr. Leibman asked if he did an analysis on the impact of affordable housing to nearby residential homes. Mr. Sussman responded no. Mr. Leibman asked if he was aware this project had a significant affordable housing component. Mr. Sussman believed there were 40 affordable units. Mr. Leibman asked for his opinion on whether or not 40 affordable housing units would have an impact on adjacent real estate values. Mr. Sussman said he had not studied that. Mr. Leibman questioned if the 2005 sale at 312 Pascack Road was the most recent sale. Mr. Sussman did not know but explained he looked for other sales in the same time frame and in the same neighborhood. Mr. Leibman introduced his exhibits and Mr. Sproviero clarified that these were the SR-1As for the properties depicted in Exhibit A-30. Mr. Leibman agreed. Mr. Leibman commented in 2005 the 312 Pascack property sold for \$370,000 and in 2010 sold for \$253,500. He asked the witness if he had more current sales data from 2010. Mr. Sussman did not and explained he found the 2005 sale and in that time frame found similar sales. Mr. Leibman asked if he analyzed the 2010 data. Mr. Sussman had not. Mr. Leibman questioned that one of the properties was described as a fixer upper. Mr. Sussman knew it had been fixed up and later sold at a higher price. Mr. Leibman asked if the SR-1As were public documents and the MLS information was the information he relied upon for his report. He agreed. Mr. Leibman requested O-1 be moved into evidence. Mr. Sproviero agreed. Mr. Del Vecchio objected. He stated there was no foundation for the validity of the documents and no testimony that the information was accurate.. Mr. Del Vecchio stated other than the SR-1A, which was a government record the MLS data sheets was a private service. Mr. Sproviero interrupted and said his witness testified that he relied on the MLS sheets for the preparation of his report. Mr. Del Vecchio stated they provided his foundation testimony on his material in preparation of the report.. If objectors choose to introduce this evidence and support it with confident evidence of their own professionals he would withdraw the objection. Mr. Sproviero stated Mr. Leibman identified the information he used and it was the same database used by Mr. Sussman and his recommendation was the objection be overruled. Mr. Del Vecchio said the appraiser had to confirm the sales independently of the document.

Mr. Leibman questioned Mr. Sussman on usable and non- usable sales. Mr. Leibman asked if he selected the homes based on what he was hired to do. Mr. Sussman disagreed and said if he found that homes were \$100,000 more than the houses across from the shopping center he would have notified Mr. Eisdorfer that he could not help them out. Mr. Leibman requested O-2 be moved into evidence. Mr. Del Vecchio objected and supplemented his objection with O-2 being moved into evidence without any testimony or verification that the NU-26 was not overturned in

addition to his prior reasons for O-1. Mr. Del Vecchio said the Wyckoff assessor had a 63% overturn rate on her selection of the NU- 26.. Mr. Leibman removed that SR-1A4 from the package and moved the rest into evidence.

Mr. Leibman questioned a home that was an estate sale. Mr. Sussman responded that an estate sale might be excluded from the sales ratio study but it doesn't mean in the market place it was not viewed as a valid sale. Mr. Leibman cited a home marked 3C was in the floodplain. Mr. Sussman answered it was in an insurance FEMA flood zone. Mr. Leibman said it stated flood insurance required and would that not impact the value of the real estate. Mr. Sussman answered not necessarily. Mr. Leibman moved O-3 into evidence. Mr. Del Vecchio objected and his position was the same as O-1. He stated an MLS document was a marketing document not 100% fact. He objected that the MLS document was being offered as evidence of a condition of a particular home. Mr. Sproviero recommended that the 3C admitted into evidence subject to the qualifications as to the conditions of the property articulated by Mr. Del Vecchio.

Lori Barton 399 Roslyn Avenue asked Mr. Sussman if he was aware at the time of his analysis of the subject properties at Boulder Run it did not have the residential component. Mr. Sussman agreed. Ms. Barton questioned how the mixed-use development was keeping with the character of the neighborhood when the neighborhood did not have any of those components in the neighborhood. Mr. Sussman answered it was referring to the design characteristic of the project being a well-designed attractive project. The resident asked why 314 Godwin Avenue was used instead of 304 Godwin that sold in 2010 and after the residential component was built. Mr. Sussman explained it was not enough to have a sale in 2010 because he had to find 3 similar residents sold in the same time frame.

Michael Gadaleta 270 Demarest Avenue questioned that Mr. Sussman's analysis was sales of homes where there was already an existing shopping center. Mr. Gadaleta asked if his analysis in other towns was based on a shopping center that did not exist as opposed to a shopping center that did exist. He said the homes on River Road do not have a shopping center across the street so was there anything in the report to substantiate that. Mr. Sussman did not know how he could find that in the marketplace because there would be a passage of time. Mr. Gadaleta asked if not having open space across the street from a single-family home compared to having a mixed-use development would be a distraction or asset to the value of homes. Mr. Sussman said the data tells him that a single family home across the street from an existing shopping center and similar homes in the neighborhood that are removed from the shopping center had no significant difference in the sale price. Mr. Gadaleta stated there was nothing in his report to reflect the situation in New Milford with undeveloped land and developed land. Mr. Gadaleta asked if any of the homes were rentals or owner occupied homes. Mr. Sussman answered all owner occupied. The resident asked if Boulder Run with 16 units was a comparable mixed use to the proposed 221 units. Mr. Sussman did not think another 221 residential building on the same lot existed. Mr. Gadaleta clarified that in his 30 years of experience he did not know of a four story 221 residential unit building with a shopping center in Bergen County. Mr. Sussman did not recall one but said there were larger and smaller apartment complexes all over Bergen County but was not sure of the configurations.

Ulises Cabrera 659 Columbia Street asked for his reason for using 2004 data in the analysis. Mr. Sussman explained they start current but have to work backwards. He explained they needed to find a number of things in order to do the analysis. One was they need to find a house for sale across from a shopping center and they have to spread out in the same time frame and find similar homes in the same neighborhood which he did not find in the recent sales. Mr. Cabrera asked his opinion if homes near a shopping center had a lesser value than a home not near a shopping center. Mr. Sussman said the analysis showed it was about the same price. He explained there was a segment of the market that would like walking across the street to a shopping center. Mr. Cabrera asked if he reviewed engineering plans. Mr. Sussman reviewed conceptual plans, architectural rendering and had visited the property a number of times. Mr. Cabrera showed the flood map on the Borough's website. Mr. Del Vecchio stated for the record it appeared this was the existing land use plan pulled from the master plan. It does have a category listed as 100-year flood plain. He objected to the categorization that the map was a map that binds the boards to determine flood plains. Mr. Cabrera asked if a home in flood areas assess less than homes that were not in a flood area. Mr. Sussman answered it depends. He explained that homes in a FEMA flood area only means the mortgage companies require flood insurance.

Miriam Pickett 222 Baldwin Avenue asked if he agreed that during the construction process the value of the homes would be negatively impacted in the immediate area. Mr. Sussman answered that they look at value over the long term and the construction period was temporary. He did not think it would have a permanent impact on properties. Ms. Pickett asked if he was saying it would not impact the value of a home if you lived across from a quiet wooded area with little traffic as opposed to living across the street from an active construction site where there would be trucks and noise. Mr. Sussman responded that value was for the long term so someone looking at the house would know construction would be short term. Ms. Pickett asked when reviewing the architectural rendering did he consider any negative aspects of the project. Mr. Sussman answered sales directly across the street from a shopping center already have what the shopping center generates. Ms. Pickett questioned his testimony that it was widely known that the Boulder Run development would expand and that the people who bought the house were aware of the expansion. Mr. Sussman agreed and said he received his information from the listing broker. Ms. Pickett questioned that was hear say. Mr. Sproviero agreed and the Board would access the credibility of the statements of the entire presentation made by Mr. Sussman when the Board determines the application. Mr. Del Vecchio stated Mr. Sussman's comments were not hear say. He stated this was evidence that was customarily relied upon by an expert in forming his opinion and was accepted in the Tax Court by the judges. Mr. Sproviero repeated when the Board determines the application the credibility of all witnesses' opinions will be considered, accessed and determined.

Mr. Tom Belthoff 74 Beechwood Road Oradell questioned that a comp analysis was not an exact science. Mr. Sussman agreed. Mr. Belthoff asked if he hired different types of appraisers could the results be significantly different. Mr. Sussman answered it was possible. Mr. Belthoff asked if economic times impact the values regardless whether or not a commercial development was being built. Mr. Sussman answered it was a more volatile market and it was generally harder to appraise in a volatile market but the relationship tends to be constant. Mr. Belthoff asked if his analysis considered infrastructure impact, police, fire or ambulance, schools, other residents impacted by the flood. Mr. Sussman answered no and it was beyond the scope of his work. Mr.

Belthoff asked if the only thing he considered was the physical location and how it impacted six homeowners. Mr. Sussman answered no it considered location of homes immediate proximate to shopping centers and everything that goes with a shopping center was there.

John Rutledge 335 River Road asked if the Boulder Run project was also a Hekemian project. Mr. Sussman believed it was. Mr. Rutledge questioned the shopping centers and its proximity to major highway access. Mr. Sussman believed none of them were immediately located to a highway. Mr. Rutledge asked what the closest highway was to the proposed development in New Milford. Mr. Sussman answered none. Mr. Rutledge questioned his testimony was that the construction for this project would only be a year. Mr. Sussman answered that was an example but he did not know the time for construction. Mr. Rutledge asked if construction took a few years did he feel it would have a negative impact on property values. Mr. Sussman answered it was a temporary situation and would not impact the long-term value. Mr. Rutledge questioned if he could manipulate the analysis to make it work. Mr. Sussman answered the sales were facts and there were modest adjustments made to them from the differences found.

Richard Mide 660 Columbia Street asked if he had knowledge of the history of flooding in New Milford. Mr. Sussman answered he knew New Milford historically had flooding problems but he did not know the specifics. Mr. Mide asked if flooding affected home values. Mr. Sussman answered that was not part of his analysis. Mr. Mide asked if he ever did a study on a shopping center that had three major floods. Mr. Sussman answered no.

Emily Rostkowski 103 Fulton Street questioned his report on traffic patterns of the supermarket and why the report only used six homes on River as opposed to homes on Main. Mr. Sussman answered the trucks exiting would be beyond those houses. Ms. Rostkowski asked if the house on Washington Avenue with their driveway on Main Street was a house in the zone of influence. Mr. Sussman felt the houses directly across from the shopping center on Main Street would be affected the same as River Road. The resident asked why those houses on Main Street were not included in the analysis. Mr. Sussman answered they were because he was talking about homes in direct proximity to the shopping center. He stated his analysis showed the homes directly across the streets from shopping centers showed no significant difference in sales and that applies to River Road and Main Street.

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Ms. Rostkowski asked if Rt 17 was behind a house would it depreciate property values. Mr. Sussman answered not necessarily because he has seen very valuable homes behind highways. The resident asked if could have done comps at any of the three developments at the rear or side of the shopping center. Mr. Sussman answered the house on Godwin Avenue was on the side with trucks that pass the house. Ms. Rostkowski gave examples of homes around the perimeter of the proposed area and questioned if those homes would depreciate in value. Mr. Sussman's opinion was no.

Jose Camacho 265 Eagle Avenue asked if does appraisals and professional testimony. Mr. Sussman answered appraisals and consulting. Mr. Camacho questioned that he does not deal

with clients or seller concerns with buying and selling homes. Mr. Sussman answered many years ago he was a residential broker. The resident questioned his dealings with brokers. Mr. Sussman answered that the sales were documented through deeds, public records and SR-1A that were actual sale transactions and he spoke with brokers because they were required to confirm sales. The resident felt the analysis should be before a shopping center existed and after a shopping center existed. Mr. Sussman repeated his testimony that it was almost impossible to do that because there was a passage of time. The effect of a home value next to an older shopping center to a new shopping center would be the same. Mr. Camacho asked if the real estate market was higher in 2005 than in 2010. Mr. Sussman answered they were not comparing 2005 to 2010. The resident questioned the comparison was done at the time of a buyers market. Mr. Sussman agreed houses sold quicker than today. The resident asked if a development would have a more negative impact in a town with schools that were overcrowded as opposed to a town that schools were not overcrowded. Mr. Sussman could not answer that. He said an overburdened school system would not be as desirable as a less burdened school system.

Scott Gifford 654 Columbia Street asked what the relevance of his report was to New Milford because there is no existing shopping center but a proposed site in a flood plain. Mr. Sussman answered they were not trying to analyze the impact of vacant land on homes but the applicant was proposing a shopping center. He explained they were analyzing what the impact of the proposed shopping center might have on nearby homes. Mr. Gifford asked when he visited the site did he notice it was next to a river. Mr. Sussman answered yes. Mr. Gifford asked if he thought it might be in a flood plain. Mr. Sussman responded that he looked at the flood map and it was his understanding it was not in a flood plain. Mr. Gifford asked if he considered that this would impact the houses downstream and exacerbate the flooding. Mr. Sussman did consider it and was aware of it. He understood there were very strict storm water management rules and new projects have to reduce runoff and could not contribute to additional run off onto other properties.

Mary McElroy 297 Greve Drive commented that location was a factor in assessing long-term value and asked if he thought a house located on a quiet street had more value than a house on a busy street. Mr. Sussman said it was not a simple answer because there were factors involved like price ranges of houses. Ms. McElroy asked if the reputation of a school system was a factor in long-term value of a house. Mr. Sussman agreed. Ms. McElroy asked if an overcrowded school system negatively or positively impacted the long-term value of a house. Mr. Sussman answered the overall quality of a school system is something a buyer looks at. The resident asked if noise and pollution from this type of development would impact the long-term value of a house. Mr. Sussman answered looking at sales directly across the street from these types of development did not show any significant difference. Ms. McElroy asked what factors determine long-term value of a house. Mr. Sussman answered part of the reason that New Jersey's market was stronger than other parts of the country was the location to New York City and jobs. The resident asked how he determined long term value. He answered value is determined from what people paid for similar properties in the same location.

Casey Hittel 544 Windsor asked if a property owner would have to disclose if a parcel of land next to it had been contaminated when selling a home. Mr. Del Vecchio objected that the witness was not qualified to give a legal conclusion.

Denise Vollmar 271 Fulton Street asked if the developer would try to acquire businesses and homes along River Road and Main Street. Mr. Sussman answered he could not speak for the developer and had no idea what their plans where.

John DeSantis 190 Powell Drive asked Mr. Sussman if he would rather have a house next to a development or a house on a quiet street. Mr. Sussman answered probably a quiet street.

Lori Barton 399 Roslyn Avenue asked what the current character of the neighborhood was. Mr. Sussman described the area mentioning some were a the high school, homes on River Road, on Main Street there were small commercial businesses, and a residential area in front of the property. Ms. Barton asked what the largest business was in the area. Mr. Sussman thought there were small businesses in the area. Ms. Barton asked for the largest multifamily building in the area. Mr. Sussman answered there was Brookchester by the Shop Rite but nothing in this area. Ms. Barton asked how this large development fit into the character of the neighborhood. Mr. Sussman was referring to the design characteristics of the project. Ms. Barton asked if he thought it fit into the character of the neighborhood. Mr. Sussman answered there was nothing of that size in the neighborhood.

Motion to close was made by Mr. Loonam, seconded by Mr. Appice and carried by all.

Mr. Loonam asked as an appraisal expert was there different uses of land to adjacent properties that would positively or negatively affect the property values in the area. Mr. Sussman answered an industrial use skewing a lot of smoke creating noise, schools could go either way, community shopping centers he did not think had a significant impact either way because people need the stores. Mr. Loonam asked if when he appraised properties he broke it down by land and improvements. Mr. Sussman answered it depended on the type of property sometimes they value the land separately and sometimes they do not break it out separately. Mr. Loonam asked if all 75x100 land values would be the same in residential A areas. Mr. Sussman answered they should be similar. Mr. Loonam asked if train tracks in a backyard impact the value of a property more than a house without a train track. Mr. Sussman answered probably if it was an active rail line because there was also a safety issue. Mr. Loonam asked if in his report he contemplated the time a house was on the market. Mr. Sussman answered he had not analyzed that aspect of it.

Mr. Rebsch asked if this was the first time he was hired by Hekemian. Mr. Sussman believed this was the first time. Mr. Rebsch asked if he ever appraised a 221 apartment building. Mr. Sussman answered he appraised smaller and larger apartment buildings. Mr. Rebsch asked if any of them had ever been in a flood zone. Mr. Sussman answered there probably were some in a flood zone. Mr. Rebsch asked how he appraises a commercial development in a residential area. Mr. Sussman answered they look at comparable sales of similar commercial properties and at the incomes. Mr. Rebsch said this development would create a lot of truck traffic by the high school if there were any flooding. Mr. Sussman understood that with the storm water management rule this development could not create additional runoff.

Mr. Binetti stated he was a realtor in town and had been approached by several residents surrounding the site who felt their property would be adversely affected by this project. He stated

a lot of residents downstream also want him to list their homes and were selling and moving because of the project. Mr. Binetti's opinion was that this could be a major problem for the surrounding residents and could affect the property values.

Mr. Del Vecchio stated unfortunately it appears there might be a conflict of interest based on the comments. He added they need to evaluate and determine whether the Board Member may continue to sit given the state of business just put on the record. Mr. Sproviero would take it under advisement.

Mr. Del Vecchio stated this matter would be continued to the July 10, 2012 meeting. There was a special meeting scheduled for July 30, 2012 7 PM.

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

Respectfully submitted,
Maureen Oppelaar