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**New Milford Zoning Board of Adjustment
Work Session
September 10, 2013**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:35 pm and read the Open Public Meeting Act.

ROLL CALL

| | | |
|--------------------|---------------|---------|
| Mr. Binetti | | Present |
| Ms. DeBari | | Present |
| Mr. Denis | | Present |
| Fr. Hadodo | | Present |
| Mr. Ix | | Present |
| Mr. Loonam | | Present |
| Mr. Rebsch | | Present |
| Mr. Stokes | Vice Chairman | Absent |
| Mr. Schaffenberger | Chairman | Present |
| Mr. Sproviero | Attorney | Present |

REVIEW OF MINUTES – July 18, 2013 and August 1, 2013

The Board Members reviewed the minutes and there were no changes.

OLD BUSINESS

12-01 New Milford Redevelopment Associate, LLC – Block 1309 Lot 1.02

Supermarket, Bank and Multifamily Residential Units

Height, stories, building and impervious coverage, use and parking

The Board Attorney stated the Board would continue to hear the evidentiary component of the objector's cases.

13-02 Alex and Sons Real Estate, LLC – 391 Madison Avenue - Block 1211 Lot 32

Three story 14 unit multiple dwelling with parking underneath building

Use, building coverage, front yard and height

Chairman Schaffenberger mentioned there was a letter from Carmine Alampi dated 9/6/13 requesting the application to be carried to the October 8, 2013 meeting. The Chairman was uncomfortable that no one from the firm was there. The Board Attorney believed there should be some form of explanation to the Board and the interested public. Mr. Sproviero stated the Board has received revised plans but there has been no testimony with respect to it. The Board Attorney recommended that the Board carry this to the October 8 meeting. The Chairman asked if there was any statutory limit on how many times an application could be carried. The Board Attorney said not as long as the applicant continued to grant their consent for the Board's time to determine the application.

Motion to close work session was made by Ms. DeBari, seconded by Mr. Ix and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
September 10, 2013**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:02 pm and read the Open Public Meeting Act.

ROLL CALL

| | | |
|---------------------|---------------|-----------------|
| Mr. Binetti | | Present |
| Ms. DeBari | | Present |
| Mr. Denis | | Present |
| Father Hadodo | | Present |
| Mr. Ix | | Present |
| Mr. Loonam | | Present |
| Mr. Rebsch | | Present |
| Mr. Stokes | Vice Chairman | Absent |
| Mr. Schaffenberger- | Chairman | Present |
| Mr. Sproviero - | Attorney | Present |
| Also Present | | |
| Mr. Tombalakian – | Engineer | Present (9:30) |
| Mr. Grygiel | Planner | Present (10:00) |

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – May 14, 2013

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

OFFICIAL MINUTES OF THE PUBLIC SESSION – MAY 14, 2013

Motion to accept the minutes were made by Mr. Ix, seconded by Mr. Loonam and carried by all.

OFFICIAL MINUTES OF THE SPECIAL MEETING – May 28, 2013

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

OLD BUSINESS

13-02 Alex and Sons Real Estate, LLC – 391 Madison Avenue – Block 1211 Lot 32

Three Story 14 Unit Multiple Dwelling with parking underneath building

Use, Building Coverage, Front Yard and Height

The Chairman read into the record the letter dated 9/6/13 from Mr. Carmine Alampi requesting this matter be carried to the October 8, 2013 agenda.

**12-01 New Milford Redevelopment Associates, LLC – Block 1309 Lot 1.02
Supermarket, Bank and Multifamily Residential Units
Height, stories, building and impervious coverage, use and parking**

Karl Schaffenberger, Ronald Stokes, Joseph Binetti and Father Hadodo have previously recused themselves from the application.

Mr. Del Vecchio, member of the firm of Beattie Padovano on behalf of the applicant, questioned that the approved redacted transcripts have been forwarded to the Board Secretary and that the process of reading and certification of the Board Members was taking place. Mr. Del Vecchio said if there was an issue they should resolve it. Mr. Sproviero said it was an ongoing process. Mr. Del Vecchio verified there was a September special meeting and asked for meeting dates for October. The Board Members discussed a tentative October 29th special meeting pending availability of the professionals.

The Board Attorney asked if there were any members of the public that had evidentiary presentations.

Richard Mide, 660 Columbia Street, was sworn in by the Board Attorney.

Mr. Mide said he and his wife resided at their riverside home along the banks of the Hackensack River since 1999. He said their home had encountered multiple floods since 2007 that included FEMA flood claims exceeding the original cost of their home. He added his loses since 2007 were \$292,848.21 and in 1999 they purchased their home for \$280,000.00. Mr. Mide explained he would show that the flood map was based on unimpeded and unrestricted flow of the Hackensack River and that sandbars, down trees, debris, garbage and mud have contributed to a bottleneck at a critical juncture. Mr. Mide said at peak high tide, the river was restricted and impeded at key areas and the depths were not what the tide charts indicated. Unless the river was properly controlled, Mr. Mide said he would show that water retention, elevations and water disbursements were incomplete and should be considered inaccurate.

Mr. Mide referring to page 2, read part of the NJFHA Control Act stating that unless properly controlled, development within flood hazard areas could exacerbate the intensity and frequency of flooding by reducing flood storage, increasing stormwater runoff and obstructing the movement of floodwater. Mr. Mide suggested that if improperly built, rezoning the proposed property to commercial would threaten the health, safety and welfare of anyone who patronized the businesses.

The resident referred to a photo on page 3 showing the approximate height of the above ground water level after the flood on 8/28/11. He stated they had 9-11' of water in their home including their basement. He showed a video of the damage in his home after the flood and noted that his oil tank had shifted because the water pressure lifted it off the ground. He commented that if the tank had spilled his house would have been deemed uninhabitable.

The Board Attorney asked if he took the photos and videos, they fairly and accurately depicted the conditions and they were not altered. Mr. Mide agreed.

Mr. Mide referred to a photo of Mr. Cabrera and his son taken on 4/17/11 being trapped by flood waters watching a rescue team risking their lives to save others and said that was the true face of flooding. He noted Hekemian first introduced the Shop Rite proposal on 4/11/11, which was reported on the Patch on 4/12/11. The resident stated there was no advance notice from the town. Mr. Mide said the Board could view the videos at the YouTube site. Mr. Sproviero said the Board when reviewing the record of the proceedings could only consider what they hear at this meeting and they could not go onto his YouTube site. Mr. Mide understood and said the video validated the town did not give advance notice.

There was an aerial satellite view on page 6 showing the sandbar south of the Oradell bus depot at a critical juncture where the river bottlenecks and makes an extreme turn. He pointed out the river was an island at that location which was not on the flood map. He added the sandbar and obstructions forced the water in another direction. On page 8, there was an aerial satellite view showing the sandbar in the perspective to the high school field, the berm and proposed development area. Mr. Mide said the developer proposed to remove the berm and replace it with a flood storage area, which would increase the volume of drainage and runoff north of the sandbar without a clear path downstream.

Page 10 showed the 1983 DEP flood map provided by John Scordato and Mr. Mide noted there was no indication of any sandbars or obstructions on this map. The resident discussed displacement. Mr. Del Vecchio objected to any testimony being considered given the way of an expert. He objected to his testimony was facts and trying to render an opinion which required the witness to be considered an expert.

Page 11 was the map rotated and enlarged to see the direction of the river. He noted that the 1983 DEP flood map did not show the river flow accurately because the landscape had changed in 30 years. Page 12 was the map that Mr. Gadaleta entered into evidence showing the u-turn that the river made at the proposed development which was not in a flood zone but experienced flooding, said Mr. Mide.

Mr. Mide commented that he had correspondence via email and telephone with Rich Henning regarding their role in the flooding. Mr. Del Vecchio objected to testimony on conversations where the party was not present. Mr. Sproviero agreed and added the letter Mr. Mide sent was fine but the letter sent back and not authenticated was not.

Mr. Mide referred to a DEP document titled Climate Change in New Jersey: Temperature, Precipitation, Extreme Events and Sea Level saying that water levels have risen in the past century due to an increase in average temperature by 1.3 degree Fahrenheit and the northeastern United States was vulnerable to the impacts of climate change and the potential ecological, economic and public health impacts to NJ may be devastating. In response to Mr. Schaffenberger's question "What has changed", Mr. Mide said the answer was the river obstructions, displacement due to sandbars, United Water's no release policy and increase development in flood hazard area along the river.

Page 16 was a tide chart showing peak high and low tides for 7/30/13.

Page 18 was a photo of a view from the Oradell bus depot showing the sandbar and restricted path of the Hackensack River at peak low tide. He pointed out the path of the river showing the island that was created. Mr. Mide played a video showing peak low tide on 7/30/13 and pointed out mounds of sand and mud. Because of the sandbar the tide charts were not accurate, said the resident. The water at peak high tide was less than 2' and all the data presented was based on the area being clear of obstruction, said Mr. Mide. The resident showed videos south of the bus depot on the Hackensack River showing the sandbar and obstructions at peak low tide and at peak high tide on 7/30/13. He said the water was under 3' at peak high tide and should be 5' in depth according to the charts. Mr. Mide said if the water was not there it was somewhere else.

On page 22 and 23, Mr. Mide showed homes in the flood zone that were bought out by the town, bank owned or unoccupied because they have been severely flooded. Page 24 had photos taken on 2/25/12 and 24 B had a photo taken on 9/10/13 which were used for comparison of the sandbar and erosion, said Mr. Mide. The resident pointed out the down tree blocking the river.

Referring to page 25, Mr. Mide showed a photo of the houses there were bank owned, abandoned and town owned. He noted the sandbar discussed was directly behind these riverfront homes. Mr. Mide stated that 668 Columbia was purchased and demolished by the town. A video of the demolition was shown. He also showed a house on Columbia that was uninhabited and remained unsold and a photo of a town owned property at 668 Harvard Street being demolished. Mr. Mide's said it was not a coincidence that the sandbars were causing displacement and contributing to the flooding.

Page 29 showed three photos with down trees and obstructions blocking the river collecting garbage and debris taken from the southern end of Columbia Street by the dead end and the bus depot. A video was shown of the down tree and blockage on the river. Mr. Mide said the river was not properly controlled.

Mr. Mide had a video of a rally on 9/24/12 of concerned citizens. Mr. Del Vecchio objected that it was a video petition, which was not admissible in these proceedings. Mr. Sproviero agreed and explained it was more comment than evidence.

Regarding the ecosystem, Mr. Loonam asked if there were still big fish in the river. Mr. Mide said there were many different types of fish in the river but noted with the flood in June about 14 giant carp had washed up on his neighbor's property. Mr. Mide commented that they usually don't see that size carp unless the dam overflowed because they were freshwater fish from the reservoir.

Ms. DeBari asked if the photo taken on 9/5/13 with the down trees was at low tide. Mr. Mide said that was peak high tide.

Motion to open to the public was made by Mr. Ix, seconded by Mr. Denis and carried by all.

Lori Barton, 399 Roslyn Avenue, asked Mr. Mide to read the letter he wrote to Mr. Henning. Mr. Mide read the letter dated 11/2/11 addressed to Mayor Subrizi and Mr. Henning into the record.

Michael Gadaleta, 270 Demarest Avenue, asked him to expand on his testimony that the damage in dollar value on his home exceeded the purchase price of his home. Mr. Del Vecchio objected on the grounds of relevance. Mr. Gadaleta said the relevance was that New Milford came in first in the category. Mr. Del Vecchio objected to the witness giving testimony. Ms. DeBari said he was answering his question on relevance. Mr. Del Vecchio wanted the record to reflect he was not under oath and was not testimony. Mr. Sproviero asked why it was relevant. Mr. Gadaleta said New Milford came in first in the most damage in NJ at \$28 million and wanted to find out how many times Mr. Mide was flooded and how many insurance claims he had to get to the value of his house being lost. Mr. Del Vecchio did not know how dollar value plays in the zoning proceedings. Mr. Sproviero said the time he was flooded was relevant but not the dollar value. Mr. Mide said his first flood claim was 4/15/07 for \$195,767.12 and in August 2011 a claim for an additional \$97,081.09 for a total of \$292,848.21. He paid out of pocket for the damages from the April 2011 floods and Hurricane Sandy to avoid flood claims. Mr. Gadaleta asked why his home was not included in the buy out from the state. Mr. Mide said he did not apply. Mr. Gadaleta asked if giving the opportunity would he have his house demolished and take the cash. Mr. Mide said he did not have a mortgage, loved his home, his neighbors, New Milford and would prefer the things be addressed in his presentation to help flood mitigation. Mr. Gadaleta asked if he thought United Water, as the keeper of the dam, should be maintaining the river. Mr. Mide said he was not an expert but said they were not responsible for the river and it was a statewide issue. They have these sandbars and displacement and Mr. Mide asked if they want a Shop Rite near the river causing more displacement because a flood map 30 years ago said it was okay.

Ulises Cabrera, 659 Columbia Street, asked if his point in showing the Columbia sandbar was to show the displacement of water was also occurring by the bus depot and why Karl Schaffenberger's home floods. Mr. Mide agreed and added Mr. Schaffenberger's property floods because the maps were not accurate. Mr. Cabrera questioned that they did not see the island on the map that was seen in the photos and videos. Mr. Mide agreed. Mr. Cabrera verified that the island was deviating water that would normally go west which was now going southwest. Mr. Mide agreed. Mr. Cabrera asked if the sandbar behind his house increased. Mr. Mide agreed. Mr. Cabrera questioned that the developer never took into account what the river was experiencing after the super storms and how it was displacing the water. Mr. Mide agreed.

Nicholas D'Amelio, 349 Trench Drive, asked if he was aware of historical pictures showing the river directly across from the proposed development or the banks of the river from River Edge north. Mr. Mide said no. The resident asked if he had seen dramatic changes in the river in his 13 years in New Milford. Mr. Mide agreed and said the flood map did not account for the changes.

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

The Board Attorney marked as exhibit O-22 Mr. Mide's presentation.

Mr. Del Vecchio noted his objection to the relevance to the admission of the entirety of the presentation.

Recess

Richard Davidson, 685 Berkley Street, was sworn in by the Board Attorney. The Board Members accepted the qualifications of Mr. Davidson as an expert in architect and planning.

Mr. Davidson noted on Sheet C-03 of the plans it indicated the existing use of the property as a Residual Lagoon. He read the definition of a lagoon being a shallow lake or pond especially one connected with a larger body of water. He added this should acknowledge that the property was environmentally sensitive. Mr. Davidson said that the sensitivity of the property is addressed in the 2004 New Milford Master Plan. Referring to the 2004 Master plan, Mr. Davidson read that the property (block 1309 lot 1) presented an opportunity to the Borough to develop a plan which balances preserving the site's environmentally sensitive areas and special purpose residential housing on the site's more developable portions. If it ever were sold by the water company, a plan to fill the gap between existing open space and recreation land and the need for that type of land could be achieved. He added the 2004 Master Plan said that the site was located adjacent to the river and contained the 100 year flood plain and might have environmental issues associated with the site..

Mr. Davidson referred to an article in North Jersey.com *Fixing flooding problem is a marathon, not a sprint for Bergen County Towns* where Mayor Subrizi said a common denominator in flooding for the municipalities was there was more rain that the ground could hold.

Mr. Davidson questioned if a study of the ground water table was done because the proposed Grading Drainage and Utility Plan-2 plan had three detention basins with one at a base elevation of 9' and one at 10'. He also discussed the tree management plan noting 261 trees was proposed to be removed with 10 Sycamore trees to be planted along River Road. Mr. Davidson pointed out there was a retaining wall located within 12' of the trees and had concerns if the ground area for the roots was sufficient for the growth of a healthy tree and if the roots would damage the retaining wall.

In the reexamination report June 7, 2010, Mr. Davidson listed some of the planning and zoning objectives and the Planning and Zoning Problems. He noted in the 2010 reexamination report it said when the cleanup process was completed, the Planning Board would make recommendations for the preservation and/or development of the property consistent with the 2004 Master plan and the goals and objectives established in the 2010 reexamination report. Mr. Davidson said the Borough amended its building coverage ordinance from 25% to 20% for lots under 10,000 sf and from 25% to 18% for lots 10,000 sf or more.

There was a malfunction of the recording between 10 -10:22 PM. The entirety of Mr. Davidson's presentation is in the office verbatim as a hard copy.

Richard Mide, 660 Columbia Street, questioned what he based his testimony on. Mr. Davidson said the proposed drawings, 2004 New Milford Master Plan, the reexamination report and the article from North Jersey.com.

Michael Gadelata, 270 Demarest Avenue, had questions on the placement of the supermarket. Mr. Davidson discussed the north entrance of the building with small windows creating a tall elevation and appearance of a warehouse.

Lori Barton, 399 Roslyn Avenue asked if he agreed with the testimony from the applicant's planner that this was well suited for a supermarket. Mr. Davidson said it was well suited because it was vacant land but being environmental sensitive it was no longer well suited.

Ulises Cabrera, 659 Columbia Street stated that according to the Master Plan, New Milford was short about 50-60 acres in comparison to the National level and open space/recreation. He asked if this property would be suitable to fulfill their shortage. Mr. Davidson answered yes and explained he tried to keep his presentation to issues of environmental sensitivity of this property but agreed according to the master plan they were short by the national average of open space for the number of people and size of the town. Mr. Davidson said to preserve it as open space because it was environmentally sensitive was ideal for open space.

John Rutledge, 335 River Road, asked if he was aware the property in question was in need of remediation relative to the DEP and the contaminated soil removed. Mr. Davidson did not know all the specifics as to quantities or what the contaminants were but knew the property had a cleanup. He said the master plan spoke of the remediation and once complete what should be done with the property. Mr. Rutledge said at the bottom of the DEP NFA letter there was a notation that although it was cleared the water table beneath the property was being contaminated. Mr. Rutledge asked as an architect would these be issues that he would take into account prior to a plan for this site and to perform prior testing of soil and water. Mr. Davidson said yes because in prior appearances before boards, applicants were required to do that. As an architect, Mr. Davidson said in doing his own due diligence on the property and finding out that there had been an environmental cleanup, he would want to have all the proper documentation.

Mr. Sproviero marked Mr. Davidson's exhibit as O-23

Motion to close to the public was made by Mr. Denis, seconded by Mr. Ix and carried by all.

Thomas Balthoff, 74 Beechwood Drive, Oradell, was sworn in by the Board Attorney.

Mr. Balthoff stated his presentation was regarding safety. He said the applicant had testimony regarding traffic flows and previously he had asked the expert witness if any consideration was given to the railroad crossing and the answer was no. According to Mr. Balthoff, Oradell also did a traffic study and did not consider the impact of the train station.

Mr. Balthoff submitted a copy of the NJ transit Pascack Valley train schedule dated 10/14/12 marked as exhibit O-24. He stated the only difference between this schedule and the current schedule was the time of trains had been changed by 2-3 minutes. There was expert testimony

that deliveries would come down Kinderkamack Road onto Main Street turning into Madison Avenue. He noted on the train schedule from Hoboken to Spring Valley there were 20 trains that passed this location and there was on a weekday a total of 38 times the gate goes down. Coming from Kinderkamack Road was downhill so any increase of traffic would be problematic relating to safety, said Mr. Balthoff. Going up to Kinderkamack both traffic experts testified that they did not consider the impact of what Main Street and Kinderkamack was, said Mr. Balthoff.

According to Mr. Balthoff, he would refute the completeness of these traffic studies due to the impact that it would have on the area because of the railroad gates going down and traffic coming to a complete stop. Mr. Balthoff said any incremental increase in traffic, which the applicant would provide, would have a significant impact to the traffic. The Oradell traffic study concluded that the project would have a significant traffic increase on the area roadways and up to six additional intersections need to be included in the study, said Mr. Balthoff. Mr. Balthoff concluded that everyone was in a rush to go some place and minutes count. Because of the railroad crossing, any potential incremental increase of traffic from the applicant for the use of fire, police and ambulance would create safety issues.

Motion to open to the public was made by Mr. Rebsch, seconded by Mr. Ix and carried by all.

Ulises Cabrera, 659 Columbia Street, asked how long he lived in Oradell. Mr. Balthoff said 25 years in Oradell and he grew up in New Milford. Mr. Cabrera asked what kind of truck traffic currently existed where the truck route was proposed. Mr. Balthoff said there was a lot of traffic and he lived on the east side of Oradell and had to cross the tracks every day which always had a significant amount of bus, truck and car traffic. Mr. Cabrera asked if he ever had been tied up in traffic with buses and trucks waiting for the train to pass. Mr. Balthoff said during the weekday rush hour when the train signals go down traffic backs up past Madison Avenue and almost to Washington. He added going west, it backs up from the train tracks all the way to Kinderkamack and sometimes turn onto Kinderkamack during rush hour. Mr. Cabrera questioned that this was not accounted for in any traffic report. Mr. Balthoff agreed and said the specific question was asked to the applicant's traffic expert.

John Rutledge, 335 River Road, asked as an Oradell resident if he had concerns about traffic once the Elm Street Bridge was opened. Mr. Balthoff knew Elm Street well and said it was a significant cut thru.

Richard Mide, 660 Columbia Street, asked if ever tried to cross one of the four main roadways and encountered flooding where it was impassable. Mr. Balthoff agreed and said River Edge Road, Main Street, Oradell Avenue and his train line had been shut down due to flooding. Mr. Mide asked if the four crossroads cross the river. Mr. Balthoff agreed.

Motion to close to the public was made by Mr. Denis, seconded by Mr. Rebsch and carried by all.

Daniel Kemp, 217 Cooper Street, was sworn in by the Board Attorney.

The Board Attorney marked as exhibit O-25A-G seven photos.

Mr. Kemp described the first photo showing his driveway with cars blocking both sides. It showed no sidewalks on either side of the street and noted there were a total of 40 student cars parked. He described the second photo showing children walking in the street. The third photo was a sign showing 126 was a county road and the next picture showed where it stopped. He added everyone cuts thru Salem to get to Cooper. He also showed a picture of the Water Works questioning if that was to become a museum it would create more traffic. The resident showed eleven various signs in front of the high school indicating that River Road was very busy. He added all that traffic was going down Cooper Street, which was dangerous. Mr. Kemp pointed out on another photo that no one could pull into the circle because there was no lefts turn into the circle and again all that traffic was going down Cooper Street. Trucks and farm equipment from the high school going to the other school use Cooper Street, said the resident. Mr. Kemp did not think his street was ever surveyed for safety issues.

Motion to open to the public was made by Mr. Ix, seconded by Mr. Denis and carried by all.

John Rutledge, 355 River Road, verified that Cooper intersected with Charles. Mr. Kemp said it was a continuation of Charles. Mr. Rutledge asked if there was an overflow of student cars on those streets. Mr. Kemp said on Salem there were no parking signs on one side but it was packed on the other side. Mr. Rutledge said there was also parking on Charles that runs to Cooper almost to Madison. Mr. Kemp agreed. Mr. Rutledge questioned that someone had a serious injury crossing at Cooper and River. Mr. Kemp heard about it. Mr. Rutledge asked if he was familiar that the DEP crosshatched the road at Cooper and River to provide a crosswalk to aid the students. Mr. Kemp said they hoped they were not handicapped because the handicap access went to a grass patch.

Lori Barton, 399 Roslyn Avenue, stated his testimony was that most of the streets had cars parking on both sides of the street. Ms. Barton asked if the cars were parked during school hours. Mr. Kemp agreed that they were all students. Ms. Barton questioned that students were walking in the streets because there were no sidewalks. Mr. Kemp agreed and students were also dropped off on his street.

Motion to close was made by Mr. Ix, seconded by Mr. Denis and carried by all.

The Board Attorney confirmed the special meeting for Thursday September 19, 2013 at 7 pm. As there was no further business to discuss, a motion was made by Mr. Rebsch, seconded by Mr. Ix and carried by all.

Respectfully submitted,
Maureen Oppelaar