

**New Milford Zoning Board of Adjustment
Special Meeting
January 23, 2014**

Acting Chairwoman DeBari called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:05 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Binetti	Recused
Ms. DeBari	Present
Mr. Denis	Present
Father Hadodo	Recused
Mr. Ix	Absent
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes	Recused
Mr. Schaffenberger-Chairman	Recused
Ms. Batistic – Board Engineer	Present
Mr. Sproviero – Board Attorney	Present

PLEDGE OF ALLEGIANCE

**12-01 New Milford Redevelopment Associates, LLC- Block 1309 Lot 1.02-
Mixed Use Development- Supermarket, Bank and Residential Multifamily Housing
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.

Ms. DeBari asked the Board for a moment of silence for Mr. Stokes mother who passed away.

The Board Attorney said the Board was considering testimony from a real estate appraiser. The Borough appraiser was conflicted out of presenting testimony and they have not been able to engage an appraiser who was not concerned of a conflict with the applicant. The Board Attorney stated the Board would be foregoing the presentation of that type of witness and had no other witness to call. Mr. Del Vecchio said they had concluded their direct, subject to their ability to provide summations. The Board Attorney said they would open to the public. Mr. Sproviero understood that a representative of the environmental committee would like to be heard as members of the public and recommended they hear them first.

The Board Attorney said comments from the public would be limited to 10 minutes.

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

Sue Klecha, 419 Marion Avenue, read a resolution on behalf of the environmental committee. Mr. Del Vecchio objected that they were not taking evidence from this point. The Board Attorney stated this was a public comment. Mr. Del Vecchio said the resolution should have been presented during the direct case so the applicant could respond to it. The Board Attorney said his objection was noted and his recommendation was to hear the resolution.

Ms. Klecha read the resolution into the record stating the DEP had filed a letter of no further action but similar letters have found other properties contaminated. The commission had requested the Board to have the soil tested again but the Board has failed to do so. The commission had requested an Environmental Impact Study and stated a healthy and intact environment is vital to the community. Roads in the area of the proposed development are inadequate for the amount of increased traffic expected causing noise and pollution. The applicant proposes to destroy approximately 260 trees including sycamores. The development will not reduce and may cause additional flooding and the applicant relies on the legally acceptable flood maps more than 30 years old. The New Milford Environmental and Energy Commission was firmly in opposition to the development.

The Board Attorney said for the record the correspondence referred to in the resolution has been previously received by the Board and there was prior testimony from the Board Engineer with regard to the issue on the environmental impact study. The Board Attorney viewed this resolution as the comment of this agency with regard to this application. Ms. Batistic said she mentioned that the no further action from the DEP was received. She stated there was mention of some ground water contamination but it was concluded it was coming from other sources. Ms. Batistic stated New Milford did not have an ordinance requirement for an Environment Impact study and because the site has been disturbed, it would not warrant an impact study. The Board Attorney clarified that the site was previously disturbed. Ms. Batistic agreed and said there has been soil moving processes going on. The Board Attorney asked if anything has changed regarding her opinion or advice regarding this issue between October 2012 and December 2012. Ms. Batistic said no.

Nicholas D'Amelio, 349 Trench Drive, requested the environmental letter, the Board of Education correspondence and all emails and correspondence from residents referring to this application be read into the record. The Board Attorney said residents emails would not be read into the record because they do not comply with procedure. The Board Attorney would take the other requests under advisement and would render a determination at the conclusion of the public comments. Mr. D'Amelio said he has listened to testimony from the experts and concluded they have left out things or have not given all the details for the Board to make an informed decision. Mr. D'Amelio had environmental concerns and how the development would affect the wildlife in the area because there were many

animals in the area on the endangered species list. He commented on the noise and traffic generated from the development and the Hackensack River and its surrounding area was environmentally sensitive. Mr. D'Amelio questioned if New Milford wants to be an urban area or keep its small town identity. He said if this project goes thru it will change New Milford forever and believed this development would do more harm than good. The proposed site would increase the rodent population in New Milford and concluded New Milford should have power in their environmental commission to protect the river and surrounding area from over development, said Mr. D'Amelio.

Peter Brown, 441 James Street, said he saw and photographed a pair of adult eagles overlooking the site. The Board Attorney swore in the resident. Mr. Del Vecchio objected that this was not the portion of the meeting for testimony. The Board Attorney agreed it public comment only. Mr. Brown had a concern with the proposed site and the eagle's natural dwelling and habitat.

Barbara Monahan, 299 Webster Drive, was concerned about accessing Main Street from her block and the quality of her life. The resident was also concerned about the amount of garbage in the area and on the river from the development and asked the Board not to let this go through.

Donna Hittle, 277 Boulevard, said they choose New Milford for the tree lined streets at the northern end of town preferring the older homes. She added her home was in the Peetzburgh historic section near the proposed site. Ms. Hittle was concerned about the increase of traffic from the development. She feared having trouble exiting her driveway, the widening of River Road and the possibility of neighbors losing their frontage of their property. Ms. Hittle said New Milford would be paying higher taxes to improve and maintain the roads. She did not want anyone especially the students in the area exposed to the airborne dirt and dust from the pit when the pilings were driven in the soil with not knowing about the pollutants. Noise pollution could impact the classes for students, said the resident. Ms. Hittle doubted that the increase of flooding downstream would be immeasurable and New Milford should try to mitigate the flooding for the residents. The resident concluded that the development would ruin the way of life she enjoyed. The town has been planned around Brookchester apartments and shopping so apartment dwellers could walk to shopping. The resident was not convinced that her property value would not decline.

Richard Mide, 660 Columbia Street, said the objectors and citizens thru their presentations and cross examinations showed that the evidence and testimony from the experts lacked substantive detail, excluded key facts, showed a limited knowledge of the town and raised more questions than answers. Witnesses skirted the issues and gave misinformation and answers to questions. Mr. Mide said the Board's traffic engineer used the applicant's own data for the foundation for his findings and questioned the amount of traffic counts done at the high school. He added that the Board Engineer said the additional flooding caused by raising and developing the property would be immeasurable. Dr. Kinsey said he would have the Board decide and select one of four options that was induced by his own methodology to meet New Milford's COAH

requirements. The resident said that Mr. Del Vecchio would have you believe that his client was concerned about their COAH requirements but he has shown disregard to the existing taxpayers, students, open space and heritage trees, said Mr. Mide. He questioned the exact square footage of the existing supermarket. The resident said the planning experts have conflicting testimony on this matter. Mr. Mide said his presentation before the Board showed the current 1980 flood maps were not accurate and said until the Board could review the new and revised map they could not make a factual determination. Mr. Mide questioned if it was in the best interest for the town to endure the traffic, tax burden, street renovations, pollution and the immeasurable additional flooding the development would cause. Mr. Mide said the burden of proof was on the applicant and they have not met that burden. He added that Mr. Del Vecchio and Mr. Eisdorfer have done little to convince anyone that the development would not be costly to taxpayers, have a negative impact or benefit anyone but his client. The 24 affordable units were less than the recommended percentage of the 13 acres as testified by Mr. Grygiel. Mr. Mide said don't let the applicant threaten their existence and vote no unanimously to this application.

Lauren Maehrlein, 230 McKinley Avenue, said they had a vested interest in maintaining the town's livability. The resident said there has been a number of common sense reasons why this development must not move forward being potential flooding, children safety, loss of open space, increased traffic, overcrowding of schools, extra emergency services and loss of trees. The resident found Hekemian's ongoing assault on New Milford insulting. The resident was insulted that they wanted to convince them what was right for the town, that ordinances should be waived to suit their desires, for the low income people who were being used as pawns and that the project was inherently beneficial. Ms. Maehrlein said if the affordable component was removed from the proposal, it would be seen as the wrong project in the wrong place. The resident asked the Board to vote no.

Sabrina Wilson, 333 Milford Avenue, had concerns about the increase of traffic, apartments and supermarkets next to a high school. She thought it would increase the amount of accidents and did not think when she went to high school she would be able to walk because of the increase of traffic and would not feel safe. Ms. Wilson pointed out that not all the roads had sidewalks and did not think it would be a pretty quiet town with the proposed supermarket.

Richard Davidson, 685 Berkley Street, said this application focused on the COAH obligation and how the affordable housing units were inherently beneficial use to the community. Mr. Davidson said the supermarket was only beneficial to the applicant and the supermarket was the reason everyone was here. Mr. Davidson said everything about this application was a detriment to the community. He commented that the Board traffic Engineer stated that major roadways and intersection modifications at River/Madison were or might be necessary and only a small portion of the cost was the applicant's responsibility. Dr. Kinsey discussed the court decision that set the criteria for identifying inherently beneficial uses, said the resident. He outlined four criteria and his conclusion was based on the first three. The applicant said the supermarket provides the financial needs to support the affordable housing and it was Mr. Davidson's opinion that they were

using the housing element to force this oversized supermarket and all that goes with it on them. Mr. Davidson said the existing supermarket was only 42,600 sf and the proposed 70,000 sf which was 166% the size of the current store. Mr. Davidson understood that bigger stores were becoming the norm but the bigger stores are located on roads that could handle the traffic generated and the ingress/egress were often controlled by traffic lights. He added that the revised application indicated the building and lot coverage variance were no longer required but the use did not meet the intent of the master plan. He added that it was only after opposition from the residents that any concession was made and noted that the supermarket was still the way it was on day one. Mr. Davidson discussed the difficulty in turning into the bank lot. The resident noticed on the east elevation it said "Welcome to Wells Fargo" and questioned if it was generic or one from a past client submitted to the Board to comply with its request.

Mr. Davidson's commented that the three signs each 13' wide by 21' tall was larger than any sign in town and was excessive for the site. Dr. Kinsey said the site was particularly suited, said Mr. Davidson and he felt it was the opposite. He said the roads surrounding the site were two way lanes, Cecchino Drive was a one way street and major roadway modifications would be needed to handle the increase of traffic. The waiting time averages at peak hours at Madison/River would increase by 10.5 seconds, said the resident. Mr. Davidson said the application proposed to remove 261 mature trees on the site with another 13 along River Road for road widening. The resident commented that Mr. Dipple testified that they would be planting 450-500 trees back on site but noted on the revised plans, the planting count total for the supermarket was 148 trees and the apartment/bank was 125 trees totally 273 new trees.

Mr. Davidson's said when he appeared before the Board he noted the 2004 Master Plan called this site environmentally sensitive. He added that no information has been included in this application to address that issue. There are detention basins on the site but the applicant has not established the level of the water table. He stated that Ms. Batistic was concerned about the water table at the site and the design of the detention system. Mr. Davidson questioned if there would be extensive excavation and would piles need to be driven to provide for the foundation.

The resident said Mr. Grygiel stated that the recent Supreme Court decision has sent COAH back to the drawing board to establish new standards for affordable housing and the municipalities' obligations. He added Dr. Kinsey and Mr. Grygiel disagreed on the number of New Milford's affordable housing units. Mr. Davidson said the applicant has proposed 354 parking spaces for the supermarket and 470 spaces were required. He commented that Mr. Loonam had asked if one car for every 200 sf was typical or similar to other towns and Mr. Dipple testified that he rarely saw a town with an ordinance of one space for every 200 sf. Mr. Davidson believed New Milford was less restrictive than other towns.

Mr. Davidson thought that Brookchester, Dorchester and New Milford Estates were affordable housing looking at the rents and incomes in Bergen County. Mr. Davidson said this application did not meet the intent of the zoning ordinance or the 2004 Master

Plan or the 2010 reexamination report. He said that providing affordable housing units on this site was a small part of this application and it could not supersede all the other factors that have a negative impact at the site. Mr. Davidson concluded that this application was anything but an inherently beneficial use.

Shannon Murphy, 200 Prospect Avenue, had concerns if her children would be able to walk to school by themselves. As a teacher, her concerns were that the general public only gets notified of offenders of the highest level. With the new buildings, increased traffic, solicitation of more people into the residential area next to a high school within walking distance to an elementary school, would bring more strangers to their town. Ms. Murphy noted there would be a lot of people coming to the town which would significantly change the traffic patterns. Her worry was that they were exposing their children to strangers and they cannot place the burden on the teachers to be vigilant and to know every person in the neighborhood. Ms. Murphy said her children would not be walking to school.

Todd Ghiosay, 334 Morris Lane, commented how the town has suffered during the hurricanes. He felt when the Hackensack River continues to flood, the proposed retention basins would be inundated with river water at high tide. Mr. Ghiosay thought it ludicrous to use taxpayers' dollars to purchase and demolish homes on lots that would never be developed while at the same time allowing a development on flood prone property. Mr. Ghiosay said Mr. Henning blamed Bergen County flood issues on overdevelopment in flood plain areas of the river. The resident commented that the development of this property must be stopped as proposed. He also was concerned with the impact to the Hackensack River environment should the project be improved. He thought stormwater discharge from the development would further degrade the health of the Hackensack River making conditions less sustainable for the fish, birds and wildlife.

Mr. Ghiosay commented that most supermarkets were adjacent to four lane secondary roads for easy access but this was not the case with this project and felt this project would see a substantial increase of congestion. The revised traffic study included plans to widen River Road having to remove heritage trees, said Mr. Ghiosay and said the ordinance must be enforced to prevent this. The increase of traffic and associated risks to the children was an issue not to be considered, said the resident. He added that the supermarket, bank and housing would bring more traffic, noise, litter, congestion and additional overcrowding to the schools which would contribute to the devaluation of their homes. Mr. Ghiosay discussed the supermarket affecting small business owners. He stated that New Milford deserves to live without the fear of increased flooding, they deserve to have children walk to school, they deserve a community where trees and wildlife were valued, they deserve no tax increase to fund road improvements for overdevelopment, they deserve no additional burden on police, fire and ambulance, they deserve to have their property values maintained. Mr. Ghiosay urged the Board to deny any variance or change requested in this application.

Hannah Rostkowski, 103 Fulton Street, wanted to be able to walk and ride bikes on safe roads and be able to cross roads to go to the park.

Marilyn Esposito, 245 River Road, was concerned about having three lanes and traffic for the senior citizens walking to the senior center, joggers, students and people walking. The resident also questioned if the road was widened to three lanes how would she be able to back out of her driveway. She also did not know how she would be able to sell her home. Ms. Esposito said somebody should care about the commuters and adding more time to their commute. The resident would not have minded smaller stores but to change the neighborhood she was totally against the project.

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Terry Limaxes, 584 Columbia Street, discussed the hurricanes, the flooding and damage to her home. Ms. Limaxes stated that the proposed development was not good for New Milford and its residents. She added it would change the quality of their life because of the traffic, students would be at risk, noise during construction and delivery trucks and the possibility of flooding. Ms. Limaxes asked the Board to deny the application.

Peggy Saslow, 278 Ridge Street, asked how we could consider taking away the last piece of land in this town. Ms. Saslow said in an article in the New Jersey Education Association it discussed the danger of noise to hearing and said the noise from construction would cause a deterioration in the ears of the students and teachers in the school.

Nicolette Tomasini, 411 Charles Street, complained about traffic and being able to go jogging. She added there was also traffic from the new church and she has difficulty now pulling out of her driveway. Ms. Tomasini questioned the rules on a 24 hour store.

Nancy Ditmars, 751 River Road, commented on people at Brookchester Apartments who depend on the proximity of the supermarket because they have no cars. Ms. Ditmars believed that the Shop Rite should remain in its existing location. She felt they should renovate or reconstruct at that location because of the large number of low income people at Brookchester and New Milford Estates.

Jose Camacho, 265 Eagle Avenue, thought everyone moved into New Milford because of the characteristics existing in the town. He thought some of the expert testimony did not seem to be logical and thought every aspect of it was disingenuous. Mr. Camacho did not think they could afford to invest 1.2 million dollars for every street that needed to be widened when they had no money to buy the property. Mr. Camacho thought it was a waste of time, money and effort and asked the Board to deny the application.

Lori Barton, 399 Roslyn Avenue, said the proposed plans would cause substantial detriment to the public good. Mr. Steck's testimony was that this site was particularly suited for the proposed development, said Ms. Barton. He referenced the 2004 Master Plan but that plan did not include retail or commercial development. The only mention of affordable housing in the document was age-restricted housing. The resident commented that Mr. Steck's considered this proposed commercial development inherently beneficial

yet said the Valley Hospital expansion was not. Ms. Barton said Mr. Steck has said the Valley Hospital expansion was not conducive to the school environment. She discussed Mr. Steck's testimony for the Valley Hospital expansion and said he should use those criteria in New Milford. Ms. Barton discussed the flooding in the area and the 1980 DEP map used by the applicant. She said Mr. Dipple was unable to answer questions on the suitability of the land for building and on soil quality.

Ms. Barton stated her concerns on the trees and added that the Shade Tree Commission has indicated they would not give approval for the removal of the heritage trees or clear cutting. She noted that any increase of the student population might have a detrimental impact on an overcrowded school system and had concerns with the noise from construction to the students. Ms. Barton said that the increase of traffic, widening of road, removal heritage trees and eliminating frontage of properties was not beneficial to the neighborhood. She expressed her concerns on safety regarding the trucks, their routes and the figures based on ITE used by Ms. Dolan. The resident added that there would be a detrimental impact on the local businesses and also stated another impact would be the decrease in assessments of properties. Ms. Barton stated they needed the results from independent studies evaluated. She stated that New Milford was not preventing affordable housing and when New Milford builds affordable housing it would not be surrounded by a parking lots and a flood pit. Ms. Barton said New Milford would lose their quality of life, the last undeveloped land in the town and safe conditions for the high school students. It was time to say know no to variances that were detrimental and to save open space, said Ms. Barton. She thanked the Board for their time devoted to the application and asked the Board to vote this application down.

Stephen Tencer, 701 William Bliss Drive, thought the applicant was trying to optimize a narrow criterion disregarding the effects on everything else. The resident said Mr. Steck was not concerned with the projects impact on the New Milford, River Edge, Oradell and Dumont area but rather on the development site and perhaps adjacent properties. Mr. Tencer said they relied on outdated flood maps and the applicant experts assume such problems would be handled by emergency management services. He added the applicant projected forecasts knowing they did not need to guarantee any of the forecasted results regarding issues of flooding, traffic, noise, safety and modes of operation. He felt if any of these problems occurred, it could have a financial burden on the town and taxpayers. Mr. Tencer said Mr. Steck suggested several benefits that he could not guarantee. First that the supermarket height limit could be met by eliminating the trademark roof design, second residential parking needs might be reduced by the employment of some of the residents in the commercial component, third the applicant experts claim that there estimates of the parking needs would be met by complying with their design standards rather than New Milford's. The applicant offers no guarantee concerning any of them, said Mr. Tencer. The resident said when the applicant refers to something was designed to industry standards they mean minimum standards. The resident said he would be ashamed as a resident of New Milford to invite people to bring their children to live in a parking lot in inadequate housing. Mr. Tencer did not think they had an acceptable proposal and asked the Board to deny the application.

John Rutledge, 335 River Road, said since the first proposal in 2011 at the New Milford High School the developer has ignored the loud messages the residents have expressed regarding the negative impact the development would have on New Milford. He said the arrogance of the attorneys and witnesses was only exceeded by the annoyance and contempt they displayed towards the people of New Milford for their willingness and commitment to challenge the application. The disrespect they showed their town begins with the lack of understanding or appreciation for the town's history, which dates back to 1641. He gave a background of the town's history. Mr. Rutledge stated that applicant has continuously disrespected the residents when questioning their experts regarding flaws in their testimony. The attorneys objected to what they perceived to be repetitive questioning which they said slowed the process of the application and the resident said direct and simplistic answers were seldom provided.

Mr. Rutledge said the original proposal, although not a formal proposal, called for a new Shop Rite, restaurant, retail stores, bank, a greater field for athletics and 145 parking spaces for the town with no reference to a housing component. Mr. Rutledge said the reaction was apparently not what the applicant expected so they went back to the drawing board and the first application was a different from the original in an attempt to overwhelm the residents. He said the applicant proposed the original supermarket adding a 221 residential unit apartment building, four story parking garage, swimming pool and bank. Mr. Rutledge said this was an attempt to expand the footprint of the development and give the town the worse case scenario for them to negotiate. The next amendment to the application reduced the 221 residential apartment units to 24 affordable units. The applicant and witnesses were heavy handed utilizing elements of the COAH obligation to provide the variance they seek, said Mr. Rutledge adding that COAH was in flux. The resident said the applicant threatened residents with litigation involving a builder's remedy lawsuit. Mr. Rutledge further added that the applicant's attorney entered into an agreement with the New Milford Board of Education and superintendent of schools proposing a 3-acre portion of the property with \$200,000 to develop the field. Mr. Rutledge said the town residents were incensed with the alliance and expressed themselves with hundreds of comments on the patch. The applicant severed ties with the BOE and rescinded their offer indicating the placement of a water retention basin would not work out due to elevated ground water level. Mr. Rutledge said the applicant has ignored 1,200 signatures on petitions, marches on city hall in opposition to the development and the opposition of comments from residents expressing their concerns at public meetings. Mr. Rutledge said the applicant constantly requested special meetings. The resident added that information regarding testimony requested by the Board seemed to be made available at the day of the meeting making it difficult for the Board to assess the information. The applicant and experts would have you believe that it was inherently beneficial and would benefit New Milford, said Mr. Rutledge and asked the Board to deny the application.

Donna Tomasini, 411 Charles Street, said they were strongly against rezoning the United Water property. Her concerns for the development would be an increase of traffic and more cut thru traffic. The addition of two left turn lanes, Ms. Tomasini said would not help or alleviate traffic but add to the cut thru traffic. The resident said there were also

concerns with water and sewer pipes because they have had water main breaks. Ms. Tomasini said Bergen County would be Hudson County if they continue to overdevelop. The resident had concerns with heritage trees, air pollution, flooding, safety of children and home values being depreciated. The resident said over development would destroy the small town feel in this community and it would have a negative impact. Ms. Tomasini refused to pay one more dollar in taxes for over development. Ms. Tomasini said please protect New Milford's last open space. The resident added that she spoke with the transportation supervisor at Shop Rite and the tractor-trailers do not have GPS in them.

The Board Attorney said the Board Members scheduled a special meeting for February 4, 2014 at 7 pm and the next regular scheduled meeting was February 11, 2014. Mr. Sproviero recommended another special meeting for February 20, 2014. Mr. Del Vecchio would consult with his client and would book the date without prejudice.

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

Respectfully submitted,
Maureen Oppelaar