

**New Milford Zoning Board of Adjustment
Work Session
May 8, 2012**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:36 pm and read the Open Public Meeting Act.

ROLL CALL

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

REVIEW OF MINUTES – April 10, 2012

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

OLD BUSINESS

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

The Board Members reviewed the applications and there were no questions or comments. The Board Attorney stated the Board has received correspondence from the County dated May 2, 2012 from Eric Timsak regarding the application.

OLD BUSINESS

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

Development. The Board Attorney stated the Board has not received anything new since the last meeting. The Board Members had no questions or comments regarding the application.

NEW BUSINESS

12-03 – 105 New Bridge Properties, LLC – Block 113 Lots 4,5,6 –Parking Lot/Restaurant Expansion

The Board Members reviewed the application. The Chairman stated the application was seeking a parking lot and restaurant expansion, impervious lot coverage, front and side yard setbacks, parking and signs. Mr. Alampi agreed and stated the application proposed to demolish two residential homes and develop a parking lot with 41 spaces with a pedestrian bridge over the brook. He added there was an expansion of the first floor level bar area of about 900 sq ft. He stated this triggered numerous variances most being preexisting.

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

**New Milford Zoning Board of Adjustment
Public Session
May 8, 2012**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:08 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Appice		Present
Mr. Binetti		Present
Ms. DeBari		Absent
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 (9 PM)
Mr. Sproviero -	Attorney	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – April 10, 2012

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

OFFICIAL MINUTES OF THE PUBLIC SESSION – April 10, 2012

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

NEW BUSINESS

12-03 - 105 New Bridge Properties, LLC – Block 113 Lots 4,5,6 – Parking lot/Restaurant Expansion

Mr. Carmine Alampi, representing Sanzari’s New Bridge Inn, requested an adjournment to June 12, 2012 because the agenda was full and they might not be heard. The attorney also believed he needs to renotice the public and republish because he failed to articulate that there was an expansion on the number of seats in the restaurant. Mr. Alampi stated the Board and public should be aware that the seat count was changing which affected the number of parking spaces. He added they will be submitting architectural plans to supplement the plans already filed.

Chairman Schaffenberger spoke to the audience explaining if any residents were present for the Sanzari’s application it would not be heard at this hearing but carried to the June meeting.

NEW BUSINESS

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

Warren Kahn, attorney for applicant, stated the proposed improvements were conforming with the Right to Farm Act. He explained one of the existing greenhouses would be relocated to the rear of the property. They were proposing to construct a 36'x 60' barn with a greenhouse and 12' overhang. Mr. Kahn stated they were also proposing to construct a new 26x60 greenhouse and replacing an existing shed with a planting shed attached to the existing greenhouse. The applicant was seeking a sign on River Road. He stated the sign was not for advertisement purposes but strictly for identification purposes. The Chairman believed the Board did not have jurisdiction over the sign because according to the deed it stated no signs. Mr. Kahn disagreed and felt the restriction did not apply because the deed said expansion of existing agricultural structures and construction of new temporary or permanent agricultural structures were permitted under a Farm Management Plan approved by the Grantee. He stated the sign was not for advertisement purposes but for identification purposes and it was on a County road. Mr. Kahn said they were willing to put the sign 10' in from the curb. The attorney stated they were entitled to conduct a farm and to have a sign that would identify the farm. The Chairman understood why he would want a sign but was unclear if it was permitted in the deed of easement. Mr. Kahn's interpretation was the sign was for agricultural purposes. The Board Attorney understood what he was saying but explained that Mr. Low by acquiring the property assumed all the rights, obligations and responsibilities of the deed. Mr. Sproviero stated the Board was not only bound by the zoning ordinances and land use laws but also the Board was bound by the constraints established by the deed restrictions. He added the Board had no jurisdiction over it and could not give a variance from a deed restriction. There was discussion on the interpretation of the language of the deed of easement.

Mr. Kahn stated the variances they were seeking were in accordance with the Right to Farm Act. The applicant was seeking variances for building coverage proposing 25.9% required 18 %, rear yard setback proposing 10' required 55', height for barn proposing 22' required 15'. The Board Attorney clarified that a 22' height triggered a D variance. He added they were also requesting a 6x6' sign on a 12' pole with a 10' setback from the curb.

Mr. Jason Pitingaro Azzolina & Feury Engineering 30 Madison Avenue Paramus NJ was sworn in by the Board Attorney.

The Board Members accepted the qualifications of Mr. Pitingaro as an expert in field of engineering.

Mr. Kahn marked as Exhibit A-3 aerial photo from 2008 with 6 photos.

Exhibit A-4 Sketch plan

Exhibit A-5 County letter from Erik Timsak

Exhibit A-6 Farm Growing Planting

Exhibit A- 7 Hardship

Exhibit A-8 Photo of 15' barn

Exhibit A-9 Photos of neighboring area

The Engineer discussed the photos in Exhibit A-3. Mr. Pitingaro stated he took the pictures on May 7th of the 6 photos in Exhibit A-3. He discussed the structures in the photos and stated the subject property was significantly lower than the adjoining property and River Road. Mr. Pitingaro stated from River Road the appearance would be somewhat mitigated by the placement of the buildings lower than the surrounding elevation. There was a reference to a tree in one of the photographs which the Chairman asked if there were plans to remove it. Mr. Pitingaro answered not at this time. The Engineer reviewed the setbacks for the variances. The Engineer said the proposed overhang for the barn is located 25' from the creek. He discussed the 25' line from the creek that was indicted on the survey which showed no proposed structures in that area. The Engineer discussed the construction of the 22' barn and stated the height was necessary for him to operate his equipment and farm vehicles in the barn. He stated the proposed greenhouses were 10' from the rear property line were the original structures encroached further. Mr. Kahn asked the Engineer if any of the structures could be located at any other location on the property. The Engineer stated this was the best configuration because the buildings needed separation.

Father Hadodo asked if there would be flooding at the greenhouses from the brook and where would the roof water go. Mr. Pitingaro stated there were no proposed seepage pits. Father Hadodo asked if their setbacks were similar to the neighboring property. The Engineer answered the heights and setbacks were consistent with the other agricultural purposes in the area. Father Hadodo asked if the barns were prefab with standard heights or would the applicant build the barn. The Engineer believed the applicant was proposing to buy a pre-engineered structure.

Mr. Stokes asked for the setback of the barn from the side property line. The Engineer answered 17' at one end and approximately 22' at the other end of the building. Mr. Stokes clarified the building would not be able to be moved or it would go into the 25' setback line. The Engineer agreed and said the overhang was right at the 25' setback line. Mr. Stokes asked how far the barn was from River Road. Mr. Pitingaro answered 37.5' from River Road.

The Chairman asked if he knew the height of the barns on the neighboring property. Mr. Pitingaro estimated the buildings to be approximately 22 – 24' high. The Chairman asked if he was aware of flooding on the property. He stated it was not in the flood plain but he could not testify either way regarding any history of flooding. The Chairman questioned if there was flooding on the site would it alter his opinion on this application. The Engineer answered no that the barn would be secured. The Chairman said his concerns were where the water would go at the site of the barn. The Chairman also asked if this property was lower than the neighboring farm. Mr. Pitingaro stated the other farm was approximately 2-3' higher.

Mr. Loonam asked if the structures covered more land in 2008 than with the proposed application. The Engineer answered there was 450 sq ft more land covered in 2008.

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

Mr. Michael Perrone 179 Holland Avenue questioned the drainage from the barn and greenhouses and if there would be seepage pits installed or piped into the brook. The Engineer answered it would be sheet flow across the gravel into the brook. He added there would be less coverage than originally there. Mr. Perrone asked if the proposed barn would be used for storage or growing. The Engineer believed it would be used for both. Mr. Perrone was concerned nothing would be able to be grown in the proposed barn.

Ms. Hedy Grant 175 Boulevard asked him to clarify his statement regarding the height of the building would be mitigated by something. He explained the appearance of the height of the building would not be as substantial as if you were on the same plane that you were standing on. Ms. Grant clarified that it was the difference between the reality and the perception. The Engineer agreed. Ms. Grant stated there was an existing red sign approximately 6x4 on a building and would that be removed if they were approved for a sign. Mr. Pitingaro assumed so but added it would be a question for the applicant. Ms. Grant felt if the purpose of the proposed sign was for identification the existing red sign was visible. Ms. Grant also asked what the barn was made of. The Engineer answered it was a stick construction with metal siding.

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

The Chairman had more questions on drainage. He understood Ms. Batistic already stated no seepage pit was required but questioned if there was anything that could be done to mitigate any impact the proposed barn would have on the property. Ms. Batistic felt a seepage pit would not work because it would get clogged. She added the applicant was reducing impervious area therefore the amount of runoff would be slightly reduced. The Board Engineer stated if they proposed to run the roof leaders to the brook it would help the erosion of the soil but it was not shown on their plan.

Mr. Stokes understood it was not required but asked if it would help to have a seepage pit in the rear of the building and have the roof leaders go to a pit at the back of the building. Ms. Batistic answered the seepage pit would fill very fast and there would be runoff on the land. She said they could not store all the water generated on the roof.

Mr. Sproviero asked if the sign would be illuminated. Mr. Kahn answered no.

The Chairman questioned if there would be a bathroom in the barn. Mr. Kahn answered there would be an employee bathroom. The Chairman asked for an explanation on the sewer connection for the bathroom. Mr. Kahn stated they were proposing to discharge by force main to the gravity sewer discharge into River Road. He added the Borough Engineer asked them to consider a different method. He discussed alternatives. The Chairman questioned if this would go across the bridge because there were issues with the bridge. Mr. Kahn answered it would be attached to the bridge but understood it would not be able to be attached to the bridge until the bridge was approved. He added the bridge would be based on DEP approval. The Chairman asked the Board Engineer if she had issues with it connected to the bridge. Ms. Batistic stated she had problems connecting a lateral to a lateral. She stated their plans showed a lateral to a lateral but now they were proposing a manhole and a gravity line which was a better solution. Mr. Pitingaro agreed there should be a manhole and a gravity line. Ms. Batistic would prefer to

have a separate lateral to the main. Mr. Pitingaro stated they would come to terms with the Borough Engineer for the best solution. The Chairman questioned a manhole in an area that might flood. Ms. Batistic answered this was not a flood plain but the manhole would be watertight.

Mr. Kahn asked Mr. Low to explain his relationship between Fresh & Fancy Farms, Town and Country Rentals and Town and Country Landscaping. Mr. Low stated he was owner of all three businesses. Mr. Kahn asked if there would be any use of the property by Town and Country Rentals or Town and Country Landscaping. Mr. Low answered no it was not permitted because his property was for farm use. Mr. Kahn asked who resides in the residential property. Mr. Low answered a family lives in the house and is employed by the farm. Mr. Low asked if he met with the Bergen County Development Board with regards to the proposed application and did they indicate the plans seemed to be in accordance to the NJ Farm Act. Mr. Low answered yes. Mr. Kahn read into the record Exhibit A-5 a letter dated May 2, 2012 from Mr. Timsak. It stated a review of the above referenced plan prepared by Azzolina & Feury Engineering, indicated that no further action by them was required.

Mr. Low referenced Exhibit A-6 and Exhibit A-7 to show the plantings on his farm and lack of space and the need for more greenhouses to profit from the farm and keep it running. Exhibit A-8 showed a picture of a 15' barn. He explained the need for the 22' barn for stacking and equipment. He stated the second balcony would be the location for hydroponics growing with a fiberglass roof and there would be enough sun to do that. He explained it was necessary to have a 12' door for a tractor. Mr. Low stated the distance between the barn and proposed greenhouse was 18.3". The Chairman asked if there would be storage of tables and tents from his rental business at this property. Mr. Low answered no. Mr. Low stated the 10' rear setback was the same as the neighboring 10' setback and would blend in nicely. Mr. Low explained most barns had heights about 30 -35' and 22' was what he needed. On Exhibit A-10 he showed photos that he was conforming to the neighborhood. Mr. Low explained there was an existing 20x20 greenhouse. They proposed to redo the potting shed because it was rotted and they would square it off and it would be 20'x24' with an 18' height. He stated it would be a work area to pot flowers and vegetables. Mr. Low explained the locations of the structures at the site. Mr. Kahn asked if he would be able to move the proposed greenhouses to comply with the 55' rear year setback. Mr. Low answered there was no other place to put them and he needed the greenhouses to run a farm. Mr. Kahn asked if it would create a hardship not to have them. Mr. Low agreed and stated the farm could not function without them. Mr. Low stated the sign would be 10' off the corner. He said a lot of customers ask if the two farms are the same farm so he needs identification. The Chairman understood the need for a sign but did not know if the Board had jurisdiction over the sign. Mr. Low understood. The Board Attorney agreed that granting a variance undermining a restriction would not be in the Board's control to modify.

Mr. Loonam interpreted the deed of restriction that it would be okay to have a sign on the property providing it supported agricultural operations.

Mr. Kahn asked the applicant how many greenhouses were on the neighboring farm. Mr. Low believed there were 10. Mr. Kahn asked if there have been drainage issues or water on the

property since he has owned on the farm. Mr. Low said the only time was during the torrential rainstorm in October and it only came up about 4-6' from the brook.

The Chairman stated because of the heavy schedule they would have to return next month at the June meeting and they would hear his application first. Mr. Kahn and Mr. Low agreed.

Recess

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.

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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 requested a Special Meeting for June. The Attorney believed in January they received a letter deeming them complete and were advised of the first meeting for February 14, 2012, which puts the expiration of the 120-day clock to May 10th. The Board Members scheduled a Special Meeting for Thursday June 21st at 7 PM.

Mr. Del Vecchio said Mr. Eisdorfer would continue with Dr. Kinsey's testimony regarding planning. Dr. Kinsey was previously sworn in and qualified and remains under oath.

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

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Mr. Stephen Eisdorfer asked the planner to recall the two part criteria that he used to determine whether a Mixed Use Inclusionary Development was an Inherently Beneficial Use in New Milford. Dr. Kinsey answered one was if the municipality had satisfied its Fair Share Housing Obligations and that the Mixed Use Inclusionary Development provides a substantial amount of low and moderate income housing. He stated the Residential component is 15% of rental units, which was established based on COAH rule and NJ Supreme Court decisions. The planner stated there was two COAH second round rules that support the 15% set aside. One permitted 15% set asides in Inclusionary Developments which include single family detached units and the second rule authorized a maximum 15% set aside for rental housing.

Mr. Eisdorfer asked how many units for this project would require a 15% set aside. Dr. Kinsey stated his approach was this is a mixed-use inclusionary development with proposed housing and non-residential development. The obligation generated by non-residential component was difficult because there were no set standards so he used the gross share standard adopted by COAH in 2008. He explained the table in Exhibit A-22 having a proposed inclusionary development which included a supermarket and a bank. The COAH rule establishes factors for how many affordable units would be required as a municipal responsibility. He stated there was a total gross share obligation of non-residential development of 8.2 units. The planner said this set aside of 8 units should be deducted from 221 units yielding a net of 213 units. He stated a portion

of the economic value created by non-residential uses was captured with the 8 low to moderate income housing units. He said the set aside based upon the residential component was based on the 213 units with a 15% set aside yielding 32 low to moderate-income units. The non residential set aside of 8 units added to the residential set aside of 32 units with a total set aside of 40 low to moderate income housing units.

The planner discussed Estaugh Commons v. Haddonfield and compared it with New Milford. He stated that New Milford had a gap of 60% of its prior round affordable need, New Milford lacks sufficient vacant land, New Milford did not have in place a realistic plan to satisfy its full Fair Share Housing Obligation and the proposed 40 set aside units would significantly satisfy the borough's Fair Share Housing Obligation. Dr. Kinsey said based on the criteria of the Estaugh case this was an inherently beneficial use. There were more discussions on Supreme Court Decisions. He stated the set criteria for identifying Inherently Beneficial Uses based on a court decision Smart SMR v. Fair Lawn Bd of Adj. was: First, is the proposed use strictly for commercial purposes, second, is the need that the proposed use meets already satisfied in the municipality, third is the proposed use exempt from regulation by government and fourth will the proposed use substantially impair the character of the neighborhood. Mr. Eisendorf asked in regard to the fourth criteria had he reviewed the plan submitted to the Board. The planner had not but his opinion under the first three criteria was this proposed mixed inclusionary development was an inherently beneficial use.

Dr. Kinsey stated there was an existing supermarket in New Milford and imagined that structure might be demolished. He added the demolition was a deduction from the proposed amount of affordable housing obligation.

Dr. Kinsey marked as Exhibit A-27 Dr. Kinsey's Report - Is Mixed Use Inclusionary Development proposed in New Milford Inherently Beneficial?

Mr. Sproviero asked Dr. Kinsey if his opinions that he expressed were developed without reviewing the architectural or engineering plans. Dr. Kinsey answered correct.

The Board Attorney swore in Mr. Paul Grygiel- Zoning Board Planner

Mr. Grygiel questioned Dr. Kinsey's testimony that New Milford was not in compliance with the third round COAH's rules. Dr. Kinsey's opinion was New Milford was not in compliance with its full Fair Share Housing obligation under COAH's third round rule. Mr. Grygiel asked if New Milford submitted a petition in 2008 that met the deadline and was it deemed complete. Dr. Kinsey answered yes. Mr. Grygiel asked if there were any objections registered by any parties to New Milford's submittal. Mr. Kinsey's answered not to his knowledge. Mr. Grygiel asked if this submittal was still pending with COAH and DCA. Dr. Kinsey answered yes. Mr. Grygiel asked if anyone determined the submittal was not compliant with COAH's rules or did not meet its standards. He answered no court has scrutinized and determined that New Milford was in compliance with its fair share housing obligation under the first, second or third round rules. Mr. Grygiel asked if anything happened that would affect the ability of New Milford to gain certification. Dr. Kinsey stated there was a constitution obligation there. Mr. Grygiel stated COAH has stopped reviewing the petitions for certifications and asked if he thought it is a fair

assumption that a municipality should just rezone a property, purchase a property or do anything else to address its obligation to implement a plan when the plan has not been certified. Dr. Kinsey answered under the Mt. Laurel Doctrine municipalities have an affirmative obligation to create realistic opportunities. Mr. Griegel clarified that New Milford has complied with all the rules and regulations in 2008 to get a plan to meet COAH obligations and regulations yet after the submittal was sent to Trenton even if it was incomplete there is no indication from the State agency that the plan was either permissible or not. Dr. Kinsey stated the process of developing low to moderate housing did not cease as a result of the appellate decision. Mr. Grygiel asked if he would expect New Milford to create a new plan or take other action beyond what was submitted to COAH. Dr. Kinsey would expect New Milford to satisfy its constitution housing obligation. Mr. Grygiel asked if there were any aspects of the testimony provided on the non residential growth share that were invalidated by the appellate division. Dr. Kinsey answered it was unclear today if the growth share approach in COAH third round rules would continue to be the methodology for calculation fair share housing obligations.

Mr. Griegel asked if there was a standard density that COAH applies to developments. Dr. Kinsey answered that COAH proposed a presumptive maximum rental inclusionary development density of up to 20 units in the third round rules. Mr. Griegel asked if there was a minimum presumptive density in COAH rules. Dr. Kinsey did not believe there was a minimum. Mr. Griegel questioned if it could be 8 units per acre. Dr. Kinsey would check into it. Mr. Griegel believed rental plans were 16 units per acre for minimum presumptive densities. Mr. Griegel questioned that Dr. Kinsey's testimony for the proposed project was 221 units with a set aside of 18%. Dr. Kinsey agreed but part of the set aside was based on non residential development. Mr. Griegel asked if he knew how that compared as far as the number of units on this site to the 2008 housing development plan. Dr. Kinsey believed the 2008 plan claimed an inclusionary rezoning of this site to allow 200 units with a 20% set aside. Mr. Griegel asked if that number of units would be Inherently Beneficial. Dr. Kinsey answered the 20% set aside was invalidated by the appellate division in October 2010. Mr. Griegel stated there have many things invalidated so we are all speculating on what will be required. He added there are no rules in place that are definitively going to be upheld and regulate affordable housing. Dr. Kinsey answered his opinion was the inclusionary development that had a substantial amount of affordable housing would be inherently beneficial.

Mr. Griegel questioned the planner on Inherently Beneficial Uses. He asked if his testimony was that a mixed use inclusionary development was an inherently beneficial use because of the affordable housing. Dr. Kinsey answered there were two standards first is the municipality in compliance with their fair share housing obligation and second does the proposed mixed use inclusionary development provide for a substantial amount of low and moderate housing. Mr. Griegel had questions on developments in municipalities in Saddle River, Wyckoff and Cherry Hill. Mr. Griegel said in Wyckoff the affordable housing component was almost 100% of residential units for the site. Dr. Kinsey stated there was one unit for the superintendent. Mr. Griegel questioned his testimony regarding a number of examples cited for inherently beneficial uses. One that he mentioned was they generally share the common malady of furthering the public good and some were cited in the MLUL and some not. Mr. Griegel asked in the case of a mixed use inclusionary development was it cited in the Municipal Land Use Law as being inherently beneficial. Dr. Kinsey answered no. He asked if there other uses explicitly cited as

beneficial use. Dr. Kinsey answers yes. Mr. Griegel clarified the MLUL provides special protections and favors uses such as child care, group homes and renewable energies. Dr. Kinsey answered yes. Mr. Griegel said MLUL does not do that for affordable housing. Dr. Kinsey answered MLUL does not include low to moderate housing. Mr. Griegel stated when the Board evaluates if the use was inherently beneficial they would recognize there was case law and decisions but the MLUL has been changed in the past to favor certain inherently beneficial uses. Dr. Kinsey answered there is case law in defining affordable housing developments as inherently beneficial.

Mr. Loonam asked for the original amount of affordable housing proposed. Dr. Kinsey answered the original public notice stated there were 33 affordable units and there was now 40 affordable units. Mr. Loonam asked why the number increased to 40 affordable units. Dr. Kinsey answered it was to carry out the analysis that he discussed in his testimony being that the set aside for a mixed use development should be determined based upon the appropriate set aside for the both residential and non residential components. He explained the method used for his calculations. Mr. Loonam asked if the affordable units from 33 to 40 were an attempt by the applicant to further the public good or to meet his methodology. He felt his methodology was fair for calculating a substantial amount for low to moderate housing from a mixed use inclusionary development. Mr. Loonam stated part of this application was in a floodway and asked if the developments in Cherry Hill, Saddle River and Wyckoff have any part of their properties in floodways. Dr. Kinsey did not know. Mr. Loonam asked if he could find out that information. Dr. Kinsey said the Board's planner could review the case studies and analyze the information. Mr. Sproviero responded to Dr. Kinsey that the burden was on the applicant to prove their case so if there members have questions our planner does not have to produce anything he had to. Mr. Loonam asked the planner if there was a request for changes in zoning on the three developments he had discussed. He explained the zoning in Cherry Hill, Saddle River and Wyckoff. Mr. Loonam asked the planner to clarify his testimony regarding our obligation being mitigated by what would become of the old Shop Rite. Dr. Kinsey stated he neglected to say since this was a new supermarket the existing supermarket and structure might change. If the supermarket was demolished under the current COAH rules the demolition would become a deduction. Mr. Loonam questioned that the new supermarket would trigger an increase in the town obligation by building this as proposed. Mr. Loonam asked if this project could potentially satisfied New Milford's entire obligation. Dr. Kinsey answered 221 units would be substantial towards satisfying the full prior round obligation and the current allocated third round obligation.

Mr. Stokes asked if the 15 percent was reducing the amount of numbers needed for New Milford's to meet their COAH obligation or only meeting the obligation of the applicant building. Dr. Kinsey explained using Exhibit A-21 which depicted the various obligations and contributions of this project. Mr. Stokes and Dr. Kinsey discussed the Haddonfield case. Mr. Stokes asked how Haddonfield compared to New Milford regarding percentages based on the obligation. Dr. Kinsey had not done that calculation. Mr. Stokes felt this would be important for the Board to know since New Milford is being compared to Haddonfield.

The Board Attorney stated the point of this testimony was to support Dr. Kinsey's opinion and the applicant's legal predicate to view this as an inherently beneficial use. In order to recognize this project as an inherently beneficial use a four prong analyses was discussed. Dr. Kinsey

agreed. Mr. Sproviero said that one of those questions that had to be answered yes was that New Milford was not in compliance with its fair share housing obligation as determined by the appropriate entity. Dr. Kinsey said to date neither the Superior Court or COAH as it exists today has determined that the borough is in compliance with its Fair Share Housing obligation. Mr. Sproviero answered that neither the Superior Court nor COAH has determined the borough is not in compliance. Dr. Kinsey answered there has been no determination and that is why he has done his compliance analysis as testified. Mr. Sproviero replied that analysis presented to the board was by way of his expert opinion. Dr. Kinsey agreed. Mr. Sproviero stated the facts are that none of the appropriate entities have determined New Milford not to be in compliance. Dr. Kinsey answered correct.

Mr. Sproviero stating they would resume this application at a Special Meeting May 17, 2012 at 7 PM.

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

Respectfully submitted,
Maureen Oppelaar