

**New Milford Zoning Board of Adjustment
Special Meeting
July 30, 2012**

Vice Chairman Stokes called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:15 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Appice	Absent
Mr. Binetti	Present
Ms. DeBari	Present
Mr. Denis	Present
Father Hadodo	recused
Mr. Loonam	Absent
Mr. Rebsch	Absent
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.

The Board Attorney stated there was a quorum with four members and asked Mr. Del Vecchio if he recognized a quorum existed and was it his position to move forward with the minimum amount of members. Mr. Del Vecchio answered yes he would move forward with the understanding the absent members listen to the recording for the next meeting. The Board Attorney agreed.

Mr. Stokes said they had confirmation that Mr. Binetti listened to the recording of the last July 10, 2012 meeting that he did not attend.

The Board Attorney stated they were in receipt of an ambulance referral letter dated 7/30/12.

The Board Attorney explained there was an issue they needed to deal with in regard to the applicant’s request that Mr. Binetti recuse himself from the application as a result of comments made at the June 21, 2012 meeting. Mr. Sproviero asked Mr. Binetti if he recalled the nature of the controversy. Mr. Binetti did. The Board Attorney stated he made certain statements at the

conclusion of the testimony of the applicant's valuation expert. Mr. Del Vecchio stated it was not his place to question a Board Member on their ability to sit but he would like to hear what the statements were, what the facts underlying the statements were and the legal analysis of it.

Mr. Sproviero asked Mr. Binetti of his recollection of what he said and what he meant. Mr. Binetti said he was a realtor in town and people do ask him questions. He assured the Board this would not sway his decision one way or the other. Mr. Binetti stated people have asked if property values would be affected by this application. The Board Member said he answered that he could not give an opinion based upon what was at hand. Mr. Sproviero asked if anybody listed a property with him because of the application. Mr. Binetti answered absolutely not. Mr. Sproviero asked if he had any economic or business interest in the outcome of the application. Mr. Binetti did not. The Board Attorney asked if he could fairly and impartially decide the application. Mr. Binetti answered absolutely. Mr. Sproviero asked if he had made a determination as to his position with respect to the application when it comes to a vote. Mr. Binetti had not made any decisions. The Board Attorney asked if his position had been swayed by any comments from homeowners in town. Mr. Binetti answered no. The Board Attorney asked if he would be able to constrain himself to the evidence that appears at record and not be influenced by third party comments. Mr. Binetti answered yes. Mr. Sproviero asked if he should be recused from the application. Mr. Binetti answered absolutely not. The Board Attorney was satisfied that Mr. Binetti did not have any economic interests in the outcome of the application and would be able to fairly and impartially determine this application. Mr. Del Vecchio said only that the applicant did not waive his position and would respect the Boards finding at this time.

Mr. Del Vecchio member of the firm of Beattie Padovano on behalf of the applicant was here on continued public hearings and they were requesting a special meeting for September. The Board Members would discuss this at the August meeting.

Mr. Del Vecchio recalled Mr. Dipple who was previously sworn in and remained under oath.

John DeSantis 190 Powell Drive asked to see the elevation drawings. Mr. Dipple showed Exhibit A-2 and referred to the Grading Sheet. Mr. DeSantis asked the Engineer to outline elevation 18. Mr. Dipple traced the area at elevation 18. Mr. DeSantis asked for the elevation of the ground floor of the apartment building and the supermarket. The Engineer answered the ground floor elevation was 20.5 for the eastern portion and 15.17 for the western portion for the apartments and the supermarket was elevation 16. Mr. DeSantis asked what the elevation was at the access road coming into the site. The Engineer said it starts at Madison elevation 12 runs to 15 down to 13.5 and up to 27. Mr. DeSantis asked if he was aware the river reached elevation 18. Mr. Dipple had not confirmed it reached or had seen anything that said it reached elevation 18. The resident asked about the backflow preventer. The Engineer explained there was already a backflow preventer and they were proposing two new backflow preventers. Mr. DeSantis commented that he previously had asked how much water would be displaced by not letting it into the basin and pushing it down river and Mr. Dipple commented it would be a drop in the bucket. Mr. Dipple believed the question was what would be the effect and he used that analogy. Mr. DeSantis said a United Water representative said flooding was due to overdevelopment on the Hackensack River. Mr. Dipple replied he could not comment on United Water's position because he was not at the meeting. Mr. DeSantis asked at what point does a town that was experiencing flooding

stop building on floodplains. Mr. Dipple commented this was not on a flood plain. The resident was concerned about the backflow preventer. Mr. Dipple stated the backflow preventer was required by the State of New Jersey and was on an existing pipe at the site which discharged out to the Hackensack River. The Engineer commented that the regulatory flood map shows the berm protects the site. Mr. DeSantis stated if the water was not going to the site it was going downstream. The Engineer stated the regulatory flood elevation showed the river does not go to that site and the backflow preventer was required when a discharge pipe was below the flood elevation. Mr. DeSantis said that it was displacing water. Mr. Dipple explained he was required to follow the regulatory flood map as agreed by the town's professionals. The map does not show flooding at the site during the flood hazard area flood event and that was the map that governs the Hackensack River and this development.. The resident replied the site does flood and that they all have seen water there. Mr. Dipple answered he had seen photos of the water. The resident said if the water was not on the site and they were preventing it from going to the site it was going downstream. Mr. Dipple said it was going downstream. The resident felt it would add to the flooding problems that already existed. Mr. DeSantis asked how he could justify saying the flooding does not exist at the site because he had a map that said it doesn't flood when everyone knows it does. Mr. Dipple justified it by following the flood hazard area regulations that was set forth by the DEP, which said if a map exists he must use the map. Mr. Del Vecchio objected that the witness had to keep repeating himself. The Board Attorney agreed and felt he made his point.

Michael Kurt 362 Demarest Avenue Oradell asked when the flood hazard area map was drawn and when maps were revised. Mr. Dipple answered 1980 and he did not know how often the maps were revised. The resident asked what the impact would be on the flood zone map if they were up to date. Mr. Dipple answered there was no way to guess. Mr. Kurt asked if he quantified how much water would be diverted from the backflow. Mr. Dipple answered the backflow preventer was required by the State of NJ when a pipe connected below the regulatory elevation. Mr. Kurt asked how many acres was this site. The Engineer answered 13.61 acres and the proposed impervious was 70.37%. Mr. Kurt said he testified he had seen the photographs of the water and asked if he calculated the amount water and where it would go. Mr. Dipple had not calculated anything based on photographs. Mr. Kurt asked if he did not do that because it was not required and he did the bare minimum. Mr. Dipple objected to the comment of bare minimum because he had done what was required and said he had done exactly what needed to be done. Mr. Kurt asked if the Zoning Board were to ask for data on it would he provide it. Mr. Dipple answered if the Zoning Board asked for additional data he would definitely provide it. Mr. Kurt asked if the Zoning Board hired an engineer. The Board Attorney stated the Board's Engineer was here and we are in the process of hearing the case.

John Rutledge 335 River Road asked how long this would take to complete the development. Mr. Dipple thought about two years from breaking ground to open doors. Mr. Rutledge was concerned about the high school being in session and asked about the OSHA requirements relative to sound decibels. Mr. Dipple stated New Jersey had sound requirements and believed they were more focused on the evening hours but did know the exact decimal levels. Mr. Rutledge asked if he was aware OSHA required anyone working the site with a noise level of 95 decibels to wear hearing devices for up to four hours. Mr. Dipple was not familiar with OSHA decibels for ear protection. Mr. Rutledge asked if most of the noise would be coming from the

construction equipment.. The Engineer agreed. The resident had concerns regarding different equipment that would be used and the decibels levels produced. Mr. Dipple answered he was not an expert to testify on it. Mr. Del Vecchio objected to the resident giving testimony on noise acoustics. The Board Attorney agreed. The resident asked when the construction would be permitted to start and end. Mr. Dipple said the construction schedule had not been set but they would comply with OSHA, standards of the UCC and the State. Mr. Rutledge asked if the construction would be taking place while the high school students were in session. Mr. Dipple agreed that it would coincide with the students in class. He did not think anyone would be displaced by the construction noise. The resident asked if a buffer of trees around the area would help the situation. The Engineer answered no. The resident asked about the removal of the trees from the site. Mr. Dipple discussed the landscape plan. Mr. Rutledge asked if trees help permeate water through a site. Mr. Dipple agreed. Mr. Rutledge asked what would happen if there was a significant loss of permeable surface like the removal of 225 trees which absorbed hundreds of gallons of water. Mr. Dipple was aware additional impervious created additional runoff and that was why they have the detention basins. He added the site was designed to meet the New Jersey Storm Water Management Rule.

Miriam Pickett 222 Baldwin Avenue asked if he hired an acoustic engineer to make sure the rooftop equipment met Federal and State Standards. Mr. Dipple did not and he was not an architect. Ms. Pickett asked if trash compactors meet Federal and State Standards. Mr. Dipple testified they would be required to meet the State standards for noise and the site would meet those requirements. Mr. Del Vecchio stated that all roof top mechanicals and other mechanical devices that were subject to noise code would meet the State noise code at the appropriate measurements. Ms. Pickett asked if they were within New Milford's noise code regarding operating hours. Mr. Dipple stated the trash compactor would meet the regulations whether it was an ordinance or state regulation. Ms. Pickett asked if the neighbors could call the police and complain if it was running at 1 am. Mr. Sproviero said this was beyond the scope of his expertise.

Betty Verdejo 24 South William Street Bergenfield asked if they did a study on the noise level and air quality in the surrounding area. Mr. Dipple responded it was not required and the compactor was fully enclosed and was a fair distance from the residence. Ms. Verdejo asked what the distance was between the supermarket and the residential building. Mr. Dipple answered 65'.

Terry Limaxes 584 Columbia Street asked if River Road and Main Street was a County Road. Mr. Dipple answered no and explained this part of River Road was not under County jurisdiction. The resident questioned the weight capacity on the roads. Mr. Dipple explained there was a comment from the Fire Department regarding on site roadway capacity but they had not done any studies. Ms. Limaxes had questions on the main entrance to the site. Mr. Dipple referred to CO-3 Exhibit A-2 overall site plan and discussed the location of the driveway for ingress and egress. The resident questioned if they were standard width roads. Mr. Dipple believed they were standard. The resident asked if there was a plan for road improvements. Mr. Dipple said there would be some improvements on River Road but it would be discussed with the traffic engineer.

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Anna Leone 505 Boulevard questioned that his prior testimony was that flooding was a minor impact or constraint. Mr. Dipple referred to Exhibit A-23 copy of the DEP Hackensack River flood map and believed he was referring to the flood hazard area colored in green on this map and the site in a yellow color. He was referring to the comparison of the two areas were minor. Ms. Leone asked how he arrived at that conclusion. Mr. Dipple answered he reviewed the map, traced the site, looked at the impact, studied the two prior applications filed by United Water and came to that conclusion based on those maps and review. Ms. Leone asked if he performed any industry tests to conclude flooding would be considered minor. Mr. Dipple said there was no industry testing that could be done to determine whether a site was in the flood plain when there was a map required to be used. Ms. Leone asked what testing was done to get the statistics and variables on the map. Mr. Dipple answered there was no testing but there was a topographic survey performed on the property by HDR. He also described how they arrive at these maps. Ms. Leone asked if the DEP had erroneous information would he be basing his analysis on their information. Mr. Dipple answered he did not say it was erroneous and said this map was used by many developments. Mr. Sproviero asked if the areas that fell outside a flood delineation map such as this map were those areas outside of the flood area subject to flooding under the right circumstances. Mr. Dipple answered it could be. Mr. Sproviero questioned that the map in itself was not necessarily determinative of whether or not the property would be subject to flood events. The Engineer answered it was possible. The resident asked if the Engineer was ever on the property during a rain event. Mr. Dipple did not recall but it was possible. The resident questioned that he testified to looking at only one photo of the flood event. The Engineer replied he had seen at least two. Ms. Leone asked how he could come to a conclusion after viewing a photograph along with the DEP map that flooding would have a minor impact. The Engineer said he showed the minor impact colored on the site and he was not under the impression that the data was erroneous. He was following the rules set forth by the State , New Milford ordinances, conversations and a report from the Zoning Board's Engineer who concurred with his findings. Ms. Leone asked if he had seen any other photographs of the flooding events surrounding United Water property or the surrounding area and was it of any concern to him. Mr. Dipple had seen pictures of flooding in New Milford and they did not concern him. The resident questioned Mr. Dipple's statement that the flooding did not concern the development. Mr. Dipple answered he could not reduce the amount of flood storage, could not increase but must reduce the amount of run off and the laws were tough to meet and the development would meet the regulations. Ms. Leone asked if he had visited the DEP website. Mr. Dipple had not and had many projects that he works on and could not follow everything that the DEP or newspaper posts. Mr. Leone felt he should have knowledge of what the DEP had to say regarding flooding events. Mr. Del Vecchio objected. Ms. Leone questioned that Mr. Dipple was incorrect in his assessment in a Cranford Case stating flooding was a minor concern. Mr. Dipple stated he wrote a letter taking a position regarding the flood event and because there was no map he used the FEMA map. He was proven wrong that the FEMA map had a gap so it had to do with an ambiguous map that he read incorrectly.

Brian Confino 501 1st Street Oradell questioned if there had been noise complaints at other sites he worked on. Mr. Dipple had not heard of noise complaints but he was involved in the design. Mr. Confino questioned the site was adjacent to a flood hazard area and they were not allowed to

develop on a flood hazard area. Mr. Dipple corrected him that they could develop on a flood hazard area but there were strict regulations how they could develop within the flood fringe. Mr. Confino asked where a development was not allowed. The Engineer answered the floodway. Mr. Confino asked where the floodway was located. Mr. Dipple indicated on the map the area where it was located. Mr. Confino asked if the map was revised and the flood fringe was larger than it exists today how it would impact the neighborhood. Mr. Dipple answered it does touch the site but would still have to follow the same rules. Mr. Confino asked if the development was completed and the map was revised and the zones were different would they have to change the site. Mr. Dipple would not have to go back and amend it.

Tomasina Schwartz 676 Cooper Avenue Oradell asked how many variances they were requesting. Mr. Dipple reviewed the zoning schedule and variances requested. Ms. Schwartz asked Mr. Del Vecchio if the height variance was a D6 variance. Mr. Del Vecchio answered the variances would be covered by the planner. Ms. Schwartz asked if he was aware of any lawsuit against his firm because of the use of the Flood Regulatory 30-year-old map. Mr. Dipple had not been sued. Ms. Schwartz asked what project he had completed that was adjacent to a flood fringe. Mr. Dipple completed two large developments in Englewood with the entire property within a flood fringe. Ms. Schwartz asked what the size of this proposed project would be without any variances. The Engineer answered about 50 single-family residential units on lots of 7500 sq ft. Ms. Schwartz asked if it was customary to be hired by a developer that does not own the property. Mr. Dipple answered yes. There were questions and discussions on the sewer design.

Peggy Saslow 278 Ridge Street asked how far down would they dig for the construction. Mr. Dipple stated they would lift the site up instead of dig down. The resident asked if there would be any basements. Mr. Dipple answered no basements were proposed. Ms. Saslow questioned the reasons for affordable housing at this site and what could be done at Brookchester instead. Mr. Del Vecchio stated Mr. Dipple was not qualified to answer those questions and would fall under the expertise of Dr. Kinsey. Mr. Sproviero stated they would hear from the Board's planner on affordable housing issues.

Ulises Cabrera 659 Columbia Street asked about other projects he worked on and the completion time. The Engineer answered it depended on what was being built but he estimated two years. The resident asked if he was aware that the DEP said the ground water was contaminated on the site. Mr. Dipple was aware that United Water had obtained certain clean up permits but was not aware that the ground water was currently contaminated. Mr. Cabrera asked if he ever worked on a project close to a river. Mr. Dipple answered yes. Mr. Cabrera asked if thought this property floods. Mr. Dipple thought he had seen photos of floodwater on the site and under the flood hazard area regulatory storm they do not show the flood. Mr. Cabrera asked if the property did not have the berms would more water enter the site. Mr. Dipple agreed. Mr. Cabrera asked if the site would be underwater if the berms were not there. Mr. Dipple said he already answered that if the berms were not there to keep the water out of the site the property would flood.. Mr. Cabrera asked where the wetlands were on the property. The Engineer answered they were not on this site but on the adjacent property. Mr. Cabrera asked who owned the adjacent property. Mr. Dipple believed Bergen County and United Water. Mr. Cabrera asked if pollutants were healthy for the wetlands. Mr. Dipple answered they use wetlands to clean pollutants out of water. The

resident asked what were storm water inlets and where would they be on the site. Mr. Dipple explained they were the metal grates on the side of the road and he was proposing a series of inlets along the front of the supermarket property, a series of inlets at the northeast corner, the rear of the property and there would be about 50-70 inlets. Mr. Dipple stated generally they drain to a basin and discharged to the Hackensack River. Mr. Cabrera asked if they had 8 inches of water how much would drain into the Hackensack River. Mr. Dipple answered not all of it because it was designed to allow infiltration into the soil below and thought they infiltrated up to a 2-year storm. He stated this site was designed for a 100-year storm which was 8.3 inches over a 24-hour period. The resident asked why they were proposing a retaining wall behind the sidewalk. The Engineer discussed the elevation of River Road was about 27 and the building was at elevation 16. He discussed the grading of the parking lot to achieve a 3.5% maximum grade. The resident asked if he was aware that Madison Avenue floods. The Engineer was aware of it and stated it was in the flood hazard area. Mr. Cabrera asked if the loading docks were in the flood hazard area. Mr. Dipple answered no. Mr. Cabrera asked where the sewage lines tap into and was he concerned about back up of sewer lines. The Engineer discussed the sewer lines and there was a permit for treatment works approval that tells him how the flow would come off the site which needed to be approved by New Milford, DCA and DEP. Mr. Dipple had discussions with the DPW on connections. Mr. Cabrera asked if the addition of apartments increase the sewage bill for the town. Mr. Dipple answered yes the meter would show a higher reading and a portion of the tax revenue from the development would pay the DCA bill. Mr. Cabrera questioned the water collection system. Mr. Dipple answered it included the inlets, series of two catch basins along the parking lot, two catch basins along the west side, one in front of the bank, a couple on the southeast in front of the bank which went to a storm water infiltration system underneath the bank parking lot and the building and parking garage drains were internal.. The resident asked how much asphalt would be added to the site. Mr. Dipple thought maybe half the impervious would be in form of asphalt. Mr. Cabrera asked how many trees would be removed and how many would be replaced. Mr. Dipple estimated 261 trees would be removed and listed the quantity and types of trees. Mr. Cabrera stated at the last meeting he testified he would return with the load capacity for the bridge. Mr. Dipple apologized and would get the number if available from the County. Mr. Cabrera asked if he would agree that overdevelopment was a cause for flooding. Mr. Dipple agreed that overdevelopment in the past was a cause for some flooding. The State, Engineers and citizens have been educated on ways to bring a halt to it and now there was the Storm Water Management Rule and the Flood Hazard Area regulations that were modified to be strict on flooding areas. Mr. Cabrera asked if in addition to the Flood Regulatory Map did he look at any other maps for this site. Mr. Dipple responded he looked at the FEMA map.

Henry Keough 934 Pacific Street asked if his testimony was the Hackensack River was tidal downstream. Mr. Dipple agreed. Mr. Keough thought it was tidal up to the Oradell reservoir. Mr. Dipple stated the terminology had changed recently and this area used to be considered tidal influenced. Tidal elevations are usually elevation 10 and the flood elevation in New Milford was elevation 14 so this was a fluvial floodplain. The map shows what happens when the tide was in and a flood occurred at the same time. Mr. Keough asked for the location of the berms. Mr. Dipple referred to exhibit CO-6 and indicated the location.

Tomasina Schwartz 676 Cooper Avenue Oradell thought he testified they would be putting in sewers as a result of the project. Mr. Dipple answered not in the right of way but on site they had proposed sewers and only connecting to the municipal sewer by crossing the street. Ms. Schwartz had questions on the detention systems and would they be concrete. Mr. Dipple answered no they were depressed areas where the water collects and gets held there and release at a much lower rate. Ms. Schwartz asked if there would be any pumping from the site during construction. Mr. Dipple answered no. He said there would be no pumping unless they encounter some groundwater in order to build the foundation then there might be some minor dewatering. There was a dewatering permit required.

Barbara Monahan 299 Webster Drive asked how much common sense was used in creating the development. Mr. Dipple answered common sense was used everyday and in every part of this project including the layout and design and there were regulations that regulate development. The resident asked if he was speculating on the impact to the neighborhood. The Engineer said they used accepted methodologies that were also used by the Board Engineer and it would also be reviewed by the DEP. Ms. Monahan asked if his firm was protected from litigation. Mr. Del Vecchio objected this witness was not qualified to give a legal conclusion.

Sharon Hillmer 563 Columbia Street asked if the reduced run off was from the detention systems. Mr. Dipple agreed and showed the areas on the map. He stated the area was approximately 160x90 and the lowest depth was elevation 9' and the highest point was elevation 15. He explained the water was not allowed to rise to the top which had a freeboard that needed to be maintained so water did not go over the top. He added the water depth under the most severe conditions rise to elevation 5. Ms. Hillmer asked if the two basins were sufficient to handle all the water. Mr. Dipple answered there were 5. There was another one at the rear of the supermarket, one at the west side of the residential, a small underground one at the south side of the residential and the south side of the bank. Ms. Hillmer asked if he thought there would be an increase in storm water downstream. Mr. Dipple answered that his analysis did not allow an increase. The Board Engineer had reviewed it and the State will review it. He was required to decrease the runoff. Ms. Hillmer asked if an environmental friendly stone instead of asphalt could be used for the parking lot. Mr. Dipple answered stone would not be used and asphalt was accepted and almost every parking lot used it. They had accomplished the Storm Water run off quantity through the basins, accomplished storm water quality through the infiltration storm water and a treatment device. Ms. Hillmer was concerned that 225 trees were being removed and replaced by about 160 trees and asked if he was 100% certain there would be no additional flooding. Mr. Dipple answered he had presented an analysis of the storm water and presented it to the town. The town Engineer had reviewed it and had a few comments that they needed to address, and he was confident but the real judge would be the State of New Jersey because he had to get the flood hazard area permit. The resident had questions on overflow with wastewater and was concerned about putting so much into a smaller pipe. Mr. Dipple answered he was not permitted to cause overflow. He explained there was a set of rules he followed which required a signature from the Borough that the sewage generated from the site could be safely handled. Bergen County Utilities Authority and the State also must review and approve the plans. The resident had questions on the size of the pipes being used. Mr. Dipple answered they were proposing a 8" pipe for the sanitary sewer and any sewage pipe must carry 2x the flow when flowing half full. The storm sewers must be designed for 25-year storm event. Ms. Hillmar had a

question on the A-23 flood hazard area map and asked if he knew how many major floods there were since 1980. Mr. Dipple answered he testified he was aware of two major flood events in 2007 and 2011.

The Board Attorney stated there were more residents wanting to ask questions of Mr. Dipple but it was getting late. Mr. Sproviero said he would need Mr. Dipple back. Mr. Del Vecchio understood. Mr. Del Vecchio agreed it was late but stated the amount of questions from the public had been extremely repetitive and there were no time limits imposed and no duplication of questions limits imposed. He understood we want to encourage free dialogue but if that was the practice of the Board he would request a second special meeting.

The Board Members reviewed dates and the Board Secretary would email dates and ask the members to come to the next meeting with available dates.

Mr. Del Vecchio stated this matter would continue to the August 14, 2012 meeting

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

Respectfully submitted,
Maureen Oppelaar