



**NEW MILFORD PLANNING BOARD  
PUBLIC SESSION  
July 26, 2011**

**Motion by: H. Grant      Seconded by: P. Santino**

Chairman DeCarlo called the Public Session of the New Milford Planning Board to order at 7:30 pm. The Chairman read the Open Public Meetings Act. All recited the Pledge of Allegiance.

**ROLL CALL:**

Chairman DeCarlo	Present
Mayor Subrizi	Present
Council Liaison Berner	Present
Secretary Art Castronova	Absent
Vice Chairwoman Hedy Grant	Present
Carol Hudak	Present
Chris Pecci	Present
Pat Santino	Present
Thea Sirocchi-Hurley	Absent
Donald Commerford, Alt. 1	Absent
Joanne Prisorndorf, Alt. 2	Absent
Arthur M. Neiss, Board Attorney	Present
Margita Batistic, Board Engineer	Present

**APPROVAL OF OFFICIAL MINUTES**

**Motion** by Mr. Santino, seconded by Ms. Grant and carried by all, to approve the May 17, 2011 minutes as submitted. Chairman DeCarlo and Mayor Subrizi abstained.

**NEW BUSINESS**

**Application 11-01 United Water – minor subdivision**

Chairman DeCarlo recused himself from hearing the application because a member of his family works for United Water, and has been involved with this property for many years. Council Liaison Berner asked Mr. Neiss if he would also have to be recused from hearing the application because his company has engaged the law firm of Archer and Greiner to do some work for them. Mr. Neiss asked if Mr. Berner interfaced with Archer and Greiner with regard to this particular matter. Mr. Berner said no. Mr. Berner said Archer and Greiner deals with tax appeals for his company. Mr. Neiss said he didn't feel that would be a conflict because it's common for law firms to deal with many different companies. He said he didn't see any direct or indirect pecuniary interest flowing to him with regard to Archer and Griener, unlike in the case of Chairman DeCarlo where it was prudent for him to recuse himself due to him having a personal interest with regard to this application.

At this time Chairman DeCarlo turned the meeting over to Vice Chairwoman Grant. Vice Chairwoman Grant welcomed Mr. Herten whose former company Herten and Berstein recently merged with Archer and Griener. Mr. Herten said he represents the applicant United Water. He said United Water's property was an approximate sixteen (16) acre parcel currently known as Block 1309, Lot 1 on the New Milford tax map. It is surrounded by River Road, Main Street, Madison Avenue and John D. Cecchino Drive. Mr. Herten said since this is a minor subdivision without variances this application could have been done administratively. He said it was important to the municipality and United Water that the application be properly noticed and heard at a public session, so the public could come out and view the application and voice any concerns they might have. Mr. Herten did remind the board and the public that this was not a development application at all. He said this is only a minor application to split one existing lot into two separate lots. He said if approved the lots would be known as Block 1309, Lot 1.01 and Lot 1.02.

Mr. Herten said while the Board Secretary and he were looking for an easel in the court closet to set up for tonight's meeting, he noticed a board concerning this piece of property dated 2003 with a proposed similar division line. He said this application has been planned for a long time. He could not answer why they had not come before the board before 2011. He said the past administration was thinking about purchasing the property for senior housing to comply with housing obligations. He said the obligations have changed numerous times throughout the years and he thinks the applicants were just waiting until they were in compliance with the clean up before filing for the subdivision. He said now a developer is interested in purchasing the property and it is the right time to go through with the subdivision plan that was planned so many years ago. Mr. Herten said the subdivision is in full compliance with the zoning ordinances and no variances would be needed.

Mr. Herten said the new plans address the issues that were brought up at the work session meeting last month. He said the jurisdiction for John C. Cecchino Drive has been transferred from the County to the Borough of New Milford. Mr. Herten said the plans show and states that all the buildings will be raised prior to perfecting the plan. Mr. Herten said the Board Engineer requested to see the meets and bounds and he provided the board members with the meets and bounds. He understood Ms. Batistic did not have a chance to review, but they would comply with the Board Engineer prior to perfecting the deed. Mr. Herten said last month Mr. Neiss asked if the sanitary sewer easement could be recorded. Mr. Herten said the surveyor would testify what was on the plat but they would agree to record the sanitary sewer easement and the storm-water easement with perfecting process. In answer to Board Attorney, Mr. Herten said the sanitary sewer easement was there for the benefit of the Borough.

Mr. Herten said in terms of homework he felt they did everything the board has asked them to do for the benefit of the public and the municipality. Mr. Herten said he submitted proof of publication and proof of notification to the Board Secretary and he hoped the Board Attorney had found them to be satisfactory. Board Attorney found them to be in compliance with the law. Mr. Herten said he marked the 1<sup>st</sup> page of 2 pages of the plans, dated January 11, 2011 as A-1. He said he marked A-2 as the 2<sup>nd</sup> page which consisted of the subdivision plat, with a revision date of May 4, 2011. He said he marked the County paperwork with regard to John D. Cecchino Drive as A-3 and he marked the cover letter from his office dated May 6, 2011 with all of the revision changes as A-4.

Mr. Neiss read aloud the definition of development for the board members. He said technically this is a development application according to the law subdividing two parcels is considered development. However, he wanted to clarify what Mr. Herten meant was this was not a site plan application. He does not have to notify the board nor the public what the intent of what goes on the property during this hearing; he said that would be for another application on another day.

Councilman Berner asked about the comment on the plans regarding the walking trail to be developed at a later time. Mr. Herten said he notified the board members during last month's work session. He said as part of the NJ Department of Environmental storm water management permit process the applicants were required to berm the area around the bend of the Hackensack River. He said the berm was required but mainly intended for protection purposes. He said at one point in time the County expressed an interest in acquiring the property and thought since the applicants were already berming the property they requested to widen the berm to twice the width in the event that a walking trail would be constructed along the river. Mr. Herten clarified the applicants are not proposing a walking trail; they are just berming an additional 12 feet. He said he is unaware of any intentions the County has at this time regarding the walking trail.

Ambrose Gmeiner, licensed professional surveyor was sworn in. The board members had no objection to his credentials and accepted him as an expert witness. Mr. Gmeiner described the property as being surrounded by four streets, along with the Hackensack River bypass on the portion of the property in the northwest, and some storage buildings which were located on the lot. He said the 1<sup>st</sup> page of the plans depicts the neighboring properties within 200 feet, and page the 2<sup>nd</sup> page of the plans show the existing easements, the proposed subdivision line, the County dedication along Madison Avenue, the terrain of the property, along with existing buildings, utilities and the Hackensack River by pass area. Mr. Gmeiner said the existing lot is 17.7 acres, he said it was his understanding the applicants requested the proposed subdivision line to outline the sanitary sewer easement. Mr. Gmeiner said proposed lot 1.01 is 3.7 acres. In answer to Mr. Herten, he said the lot is burdened by easements, a sanitary sewer line and a storm drain line. Mr. Gmeiner said the sanitary sewer line is approximately 30 feet and has never been recorded with the County. Mr. Gmeiner said there is a right of way dedication from the County for the roadway known as Madison Avenue. Mr. Gmeiner said proposed lot 1.02 would consist of 13.693 acres. Mr. Gmeiner said as a licensed surveyor the plat accurately depicts the parcel of land know as the United Water property.

In closing Mr. Herten said he understands the application would need Bergen County approval since it faces a County Road and he would accept that as a condition of the approval.

**Motion** by Mr. Berner, seconded by Mayor Subrizi to open the meeting to the public.

Randi Duffie, 120 California Avenue, asked about the unrecorded easement. Mr. Herten said the sanitary sewer approval was approximately fifteen years ago, and for some reason the paperwork was never signed by New Milford. He said the Board Attorney suggested at the work session to record it now if the approval of the application be granted. In answer to Councilwoman Duffie Mr. Herten said all of the construction vehicles have been moved to Haworth and all operations have ceased in New Milford.

In answer to Ms. Duffie, he said the only thing left to do is to raise the remaining buildings on the property and the intent is to leave the remaining impervious coverage.

In answer to Board Attorney, Mr. Herten said the care of the sanitary sewer is the responsibility of the Borough. Mr. Neiss questioned if the easement was created in order for the Borough to maintain and service the sanitary sewer that runs through the property. Mayor Subrizi said the easement was created fifteen years ago when they eliminated the Clover Street pump station. She said the easement was gravity fit and the Borough currently maintains the sanitary sewer. Mr. Herten agreed with the Mayor.

Martin Narciso, 226 Demarest Avenue, asked if the Board had any reason to turn down a subdivision application if no variances are needed. Board Attorney said if an applicant can demonstrate it complies with the Borough ordinances. He said the Planning Board has a checklist of items that needs to be satisfied with regard to minor subdivisions. He said if the applicant achieves the checklist items the courts say there is very little a Planning Board can do to refuse an applicant the right to subdivide. He said coupled with the fact they don't even need to appear before the Board to be granted the relief they are seeking. In answer to Mr. Narciso, the Board Attorney said some items that would make a subdivision be denied would be if an application was deemed incomplete or the plat plan was not shown, or certain items were missing from the plan. Vice Chairwoman Grant said the applicant did revise the plans from the work session meeting to comply with the Board Engineer suggestions and this plan was now deemed complete.

**Motion** by Mr. Berner, seconded by Mayor Subrizi to close the meeting to the public. Mr. Isknavar, who lived across the street from the property wanted to have a chance to speak.

**Motion** by Mr. Berner, seconded by Mayor Subrizi to open the meeting to the public.

Mr. Nabil Isknavar, 211 Demarest Street, said the foundation of his house suffered cracks during the cleanup and digging at the water company site. Board Attorney said unfortunately this is not the right meeting where this issue can be addressed. Mr. Isknavar was very upset that his house was going to continue to undergo damage if this application was granted. Mayor Subrizi said she recalled this situation coming before the Mayor and Council years ago. She said she would review the previous reports on the matter and get back to him. She said the action the Planning Board would be taking tonight does not allow any drilling, digging or building it was simply to portion off two pieces of the property from one piece.

**Motion** by Mr. Berner, seconded by Mayor Subrizi to close the meeting to the public.

**Motion** to accept the application as submitted by Mr. Santino, seconded Mr. Pecci.

Mayor Subrizi	For the motion
Council Liaison Berner	For the motion
Carol Hudak	For the motion
Chris Pecci	For the motion
Pat Santino	For the motion
Vice Chairwoman Grant	For the motion

Vote: 6-0 - Application is approved.

Vice Chairwoman Grant called for a five minute break at this time. After the break Chairman DeCarlo reconvened and the members went into the work session portion of the meeting. Chairman DeCarlo complimented and thanked Vice Chairwoman Grant for running her first public session meeting so well. Chairman DeCarlo wanted the record to reflect the same members from the public session still remained for the work session portion of the meeting.

Chairman DeCarlo said the recording secretary had received a resignation letter from Mr. Commerford explaining how his job hours had changed and he regretfully could no longer sit on the Planning Board. Chairman DeCarlo instructed the secretary to forward his resignation letter to the Mayor and the Board Attorney the following day.

Chairman DeCarlo said after reviewing the current definitions of the topics on the agenda he was in full agreement these definitions needed to be updated. He said nothing has to be finalized tonight as there were members not present tonight but he would like to go over what happened during the work session meeting last month.

### **Definition of Building/Impervious Coverage**

Chairman DeCarlo questioned if this would include cantilevers, roof coverings, bay windows and such. Board Engineer said our current definition only includes footprint coverage, and builders were adding additional cantilevers on a second floor addition and it was not included in the total building coverage. She said this definition would make it all inclusive and the whole house would be included in the total building coverage. She said this would not change the already allowable exceptions into the setbacks such as bay windows, chimneys, etc. Board Engineer said a lot of other towns include cantilevers in the building coverage. She used a description of having a bird's eye view of a house and anything you do not see would be considered building coverage. She said currently this is not depicted in our ordinance where only footprint coverage is required. She felt builders were taking advantage of that by going for the maximum allowable footprint coverage, then adding an additional two feet cantilever all around on second stories, allowing an enormous amount of additional coverage. The Zoning Officer agreed saying the proposed definition would require calculations needed for the additional coverage that the builders were currently taking advantage of.

Chairman DeCarlo reminded the members any ordinance revisions the Planning Board recommends still must go before the Mayor and Council for final approval. He said this is why it is so important members bring up these types of questions and issues could be addressed before the final draft copy gets presented to the Governing Body. He said the last thing the Planning Board wants to do is to make more work for the Mayor and Council.

After much discussion by the members if building coverage calculations would be required regarding pergolas, lanais, mechanical awnings etc., it was decided that if a roof was attached to an existing roof it would not be considered building coverage but if it had posts or being constructed over new impervious coverage it would be considered building coverage and calculations would be required.

## **Definition of Family**

Chairman DeCarlo asked where the proposed wording came from for the definition revision. Vice Chairwoman Grant said she researched other towns and pulled the best definitions among them. Mr. Pecci questioned the usage of the word “non-profit”. Ms. Grant suggested that wording was added to prohibit boarding house types of situations. Councilman Berner also questioned the usage of the word “non-profit” and questioned if a household had a live-in Au pair. Vice Chairwoman Grant said this definition is for family and a nanny is not considered part of the family. Mayor Subrizi said the person making the profit is not part of the household. She felt nannies and live in nurses would not be in non-conformance with the proposed definition. Mayor Subrizi felt the proposed definition was a little too stringent, she was unsure of using the wording “permanent and stable.” She felt they could both be removed because they felt intrusive. She felt saying “people living in a domestic character together in a dwelling” was sufficient. Vice Chairwoman Grant felt that might lead to dorm type issues, she felt the wording “permanent and stable” would prohibit that. Chairman DeCarlo said lets think about why we need the definition of family in the first place. He said the land use law uses terms like single-family, two family and multi-family dwellings.

The Zoning Officer suggested maybe looking into the single family home definition and clarify to prohibit renting, boarding house or dorm style housing in that definition. Chairman DeCarlo said he would like the board members to think about that suggestion. Board Attorney agreed, however he felt we still need some kind of definition of family due to the terms of single-family, multi-family and two family homes being used throughout the land use section of the ordinances.

Chairman DeCarlo said a decision is not needed tonight he asked the Board Members to rethink all the issues brought up and at the next meeting come with new suggestions on how to fix the issues to avoid renting rooms, boarding house and dorm type issues.

## **Definition of Home/Professional Office**

Chairman DeCarlo read the proposed definition to the members. He felt it was important to change this ordinance. He said the ordinance revision should encourage people who have or want professional offices to come into the zoning office and record it for safety reasons and other issues. Chairman DeCarlo questioned the proposed revision of allowing the first level only. He asked the members if they thought there would be any need where a professional would need both floors of their house for a professional use. Ms. Hudak said it has always been in her experience that funeral homes are in a residential home with the funeral director living on the premise, and they use the entire home. The members were all in agreement if another funeral home were to be proposed they should go to the Board of Adjustment for a variance. After much discussion it was assumed since the professional would be seeing patients, customers etc, they should have easy access to first floor egresses.

Mayor Subrizi asked if changing a home to a professional office would add assessed value to the home or market value to the home. Ms. Hudak said she felt the market value would raise but she would not know if the assessed value would increase. Ms. Hudak said she felt square footage is what the house is assessed at, and not if a home turns into a business. Mayor Subrizi felt the same. Board Engineer clarified changing this definition

would not change the use of a home; it would still be considered an allowable use in a residential home in the single family residential zone. Ms. Hudak suggested changing the word resident to owner/occupant. The question arose if an owner should be permitted to rent his home to another person to allow a professional use in his home. After much discussion the present members agreed they didn't have any issues with permitting if that situation arose. Councilman Berner read off the Internal Revenue Service site he said he would e-mail the secretary the definition of owner/ occupant to bring to the next meeting to see if it could help the members decide.

Chairman DeCarlo asked if ophthalmologist/optometrist could be added, however he was concerned about the not selling goods. Councilman Berner said chiropractors sell items too. He wanted to know if they should clarify the definition more to allow these instances. Chairman DeCarlo said they want to allow professionals to sell goods pertaining to their occupation but not allow a retail establishment in a home in the residential zone. Vice Chairwoman Grant suggested removing F: no on site sales of goods, because E: (2) prohibits retail and whole sale store covers that situation. All members were in agreement.

Ms. Hudak wanted to change the Real Estate Broker from the may not list, she said real estate agents are not permitted to sell real estate from a home. Chairman DeCarlo suggested to add to the may not list chemical or environmental laboratories. Ms. Hudak suggested anesthetist, the members didn't feel that was problematic. Chairman DeCarlo questioned invasive surgeries. Mr. Pecci said you could do multiple procedures and not necessarily consider it surgery. The Zoning Officer said she was pleased the proposed definition of removed surgeons from the allowable list, as it is allowed in the current ordinance.

The Mayor questioned if midwives could be in the prohibited list. Ms. Grant didn't understand why some medical professionals would be allowed and not a midwife. Mayor Subrizi felt that too many things could go wrong with a midwife in a home. Mr. Pecci said in theory anything could go wrong with many types of procedures. He said if that were the case would we have to think of not allowing many of these doctor/nurse offices and he was against not allowing them the right to practice their occupation in their home. Ms. Grant suggested prohibiting birthing centers. Some members were still not comfortable with allowing midwives. Mayor Subrizi asked if an informal poll could be taken to see where the members stood on allowing or disallowing midwives. Chairman DeCarlo said let's bring it up at the next meeting when more members would be present. He said no firm decision would have to be made tonight.

As there was no further business, a **Motion** to adjourn was offered by Vice Chairwoman Grant, seconded by Councilman Berner and carried by all. Chairman DeCarlo said the next Planning Board meeting would be combined session on June 28, 2011.

Respectfully submitted,



Maria Sapuppo  
Planning Board Recording Secretary