

**New Milford Zoning Board of Adjustment  
Special Meeting  
February 4, 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	Present
Mr. Loonam	Absent
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.

Douglas Cohen, on behalf of New Milford Redevelopment Associates, stated that Mr. Del Vecchio had a conflict that preexisted this meeting. Mr. Cohen wanted to keep things going with the public comment portion.

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

Casey Hittel, 544 Windsor Road, said there were no sidewalks on Demarest Avenue noting this would be the cross street for the proposed development. The resident said the streets are often blocked by snow, leaf piles, parked cars and children walk on the streets or lawns. Ms. Hittel commented on the three traffic lights within hundreds of feet of each other and no plans have been made to widen Demarest Avenue, install sidewalks or curtail it from being used as a cut thru. She thought improvements might be required later at New Milford's expense. Ms. Hittel also had concerns with lack of filtration for the high school, the need for windows to be closed as a result of noise from construction and

the children breathing in the dusty air from the construction. The resident indicated the proposed development would bring in more school age children into the overcrowded school system. She heard some people would like to see the existing Shop Rite become a municipal or emergency service building for the town and asked how they would find funding to purchase the property if they have not found funding for flooding mitigation. The resident wanted to keep the town current but without taking drastic methods to destroy what little space exists and added the town needs rejuvenation more than a population increase. The greatest feature of the apartments were they were in walking distance to the Shop Rite, said the resident. She feared that with the proposed development any gain for ratables would be diminished by the expenses to rehab the streets, widening street, adding sidewalks, traffic signals and filtration systems to the school. Ms. Hittle concluded that they must retain their identity and not surrender the green of their trees for the green of greed.

Thomas Balthoff, 74 Beechwood Road, Oradell, said he would focus on safety concerns as it pertains to traffic, trucks and trains. He stated the area was already congested and any increase would impact safety for drivers, pedestrians and students and there would be an increase of 911 calls for emergency responders. Mr. Balthoff said there would be more 18 wheelers and box trucks coming down the hill on New Milford Avenue from Kinderkamack Road. There was also concerns with trucks going over the tracks and making wide right turns onto Madison to access the development. Another safety concern was the cars at the stop sign at Madison would have to back up to allow the trucks to make a turn. The resident was concerned about the safety of the train crossing and the traffic having to stop at the train gates. Mr. Balthoff asked the Board not to let this possible nightmare be on their watch.

Rosalie Giardella, 246 Madison Avenue, said because of the high school and the Middle School it was very hard to pull out of her driveway. She said it was a highly travelled road and she had to close her windows because of the pollution from the traffic and noise. She asked the board not to build a Shop Rite next to a high school where it was not zoned adding it would be a disturbance to the education of the children. Ms. Giardella thought because the taxes would be raised anyway, New Milford should just buy the property and save their strip malls without building more.

Judy Scioli, 693 Trenton Street, said over time she witnessed many changes in town with new 24 hour businesses in her area causing more traffic, noise, pollution and garbage. She has noticed a change in her quality of life and questioned what it would be like to live across from the development. Developing the United Water land would be detrimental to every resident in town and it would forever change the charm of their sleepy little town, said the resident. She said the wildlife would lose their homes, the heritage trees would be destroyed and the tranquil woods would become an eye sore. Ms. Scioli stated that the plan would necessitate roads being widened and property being taken from homeowners with the cost falling on the taxpayers. The resident said this development would ruin their town and New Milford would no longer have the neighborhood feel and asked the Board not to approve the application.

Gail Ablamsky, 557 Mabie Street, thanked the Board for the many hours spent on considering the application. The resident commented that the streets in town had neatly manicured lawns and clean sidewalks. She was impressed by the dedication and passion of her residents. Ms. Ablamsky thought this development was a terrible idea and added there was nothing inherently beneficial in developing the last piece of open land to build a Shop Rite, low income housing and a bank. Ms. Ablamsky questioned the suitability of the location of the development. The only thing she saw being decreased were her property values, their quality of life and trees. The resident has not heard one person, other than employees of the applicant, having anything favorable to say about the development and asked the Board Members to reject the applicant's request.

Celeste Scavetta, 635 Mabie Street, a homeowner for 20 years said she had the opportunity to keep her home or put it on the market because she would be moving in the next year and a half. Because of what was going on at this property, Ms. Scavetta said this has helped her make the decision because the value of her home would not be worth what it could be in a couple of years. Ms. Scavetta said the applicant has won because she was one of the people that probably would leave this town that she loved and called home for 20 years. Ms. Scavetta stated she has been against this from day one and asked the Board to vote no on behalf of those on the opposite side.

Anna Leone, 505 Boulevard, said there were no positive impacts except for the developer. Her opinion was that NMRA and their attorneys have made a mockery of the zoning board proceedings by having experts testify that did not live in town to know what was best for them. She said many of the experts showed disrespect to the residents and the Board. If the application was approved, it would be unrecognizable as it is today, said the resident. Displacing wildlife and endangered species, destroying the sycamore trees, delaying response time for the emergency services because of the increase of traffic, increase of delivery trucks and cars, increase of travel time, a 70,000 sf supermarket in a residential zone, the fumes from the vehicles, the lighting and roof equipment on the supermarket were all an negative impact, said Ms. Leone. The resident said filing the lawsuits was a tactic to bully the governing body and the town into submission to grant the applicant everything they requested.

Michael Gadelata, 270 Demarest Avenue, said the Board had accepted him in the field of architecture and added that he had been both the co-chairman of the planning board, a two term elected councilman, a member of the environmental commission and the school expansion commission. He said his prior history with the borough was involved in the adoption of ordinances to protect residents and their quality of life. They pursued grant money for traffic calming initiatives to strengthen the land use ordinances, improve business districts and landscaping aesthetics.

Mr. Gadelata said two years ago the original submittal was presented as an application for a 70,000 sf Shop Rite, a bank which has remained unchanged and a 221 apartment complex with 36,000 sf of parking with five stories. When they questioned the experts on the first proposal, they were not familiar with River Road flooding but raised the building based on the residents concerns, said Mr. Gadaleta. He questioned who the experts were

because Mr. Dipple testified that he did not know New Milford flooded. Mr. Gadelata stated the parking lot did not fit or work and what was presented to the Board was a decoy. He said all the structures still were on one lot, the buildings do not stand on their own and it was total non-conformity. The resident said with the new proposal, the Shop Rite remained the same and all the buildings faced each other. Mr. Gadelata said the bank faces away from River Road with no street presence and people could not walk up to the bank. The residential building faces away from the street, it deserves to have a street presence and the residents deserve a normal way of life. Mr. Gadaleta read ordinance 30-21.5(c) yards-*No building to be used as a dwelling shall be constructed or altered in the rear of a building situated on the same lot, nor shall any building be constructed in front of or moved to the front of a dwelling situated on the same lot. These provisions shall not be construed, however, as preventing the erection, alteration and maintenance of dwelling quarters in connection with an accessory building upon the rear of the lot when the persons occupying such quarters are employed in domestic service upon the premises* Mr. Gadaleta stated that this ordinance protects the borough from that one lot trick. He added this meant that the bank could not be constructed in its present location. The ordinance under height 30-21.6 states *a person or entity which constructs, alters or reconstructs a dwelling shall not alter the existing natural grade of the property by more than two (2) feet.* The resident said there was testimony of significantly raising the natural grade.

Mr. Gadaleta said the site was dominated by retention basins because there was too much impervious coverage and added the acres of open detention basins were both dangerous and subject to rodent and insect infestation. Regarding the tree management, he pointed out in his presentation that the buffer could have remained and found this particularly offensive that the developers ignored it.

The testimony on traffic was flawed, said Mr. Gadaleta. . He said the residents got it on the record that the existing Shop Rite was 43,000 sf. He added no geotechnical reports and soil tests have not been submitted by the applicant requested by the public and felt the Board should have insisted. Mr. Gadaleta said they do not want to have their students subjected to airborne carcinogens and questioned if there would be soil borings and the soil capacity of the lot was unknown. They also asked the applicant to assess the safety of the high school students, pedestrians, additional crosswalks and signalized intersections. He said the only improvement was the reconstruction and widening of River Road at the taxpayers' expense. They asked for an environmental impact study which the applicant did not supply and pointed out there were endangered species on the site. Mr. Gadaleta read testimony of Mr. Steck from the transcripts from a meeting in Ridgewood. The resident said Mr. Steck's testimony was that good planning did not change town to town. Mr. Gadaleta urged the Board to ignore the testimony from Mr. Steck because his expertise was questionable based on his testimony in Ridgewood. Mr. Gadaleta encouraged the Board to vote the application down.

Sharon Hillmar, 563 Columbia Street, said negative impacts were increasing the height of floodwaters, health and safety issues, tax burdens on the residents and traffic congestion. Ms. Hillmar did not agree with the Board Engineer's opinion that the flooding impact

would not be significant. The resident thought there should be a clarification statement that indicated the conclusion was based on NJDEP calculations and they used the outdated elevation maps. Ms. Hillmar said the reality was that flooding would probably occur more often, the height of the floodwater levels would be higher and floods would enter the residential areas quicker. The resident commented that residents would be out of their homes longer waiting for the water to recede due to the retention basin. With the berm being removed, it would result in the homes downstream taking the brunt of the flooding and thought that to be detrimental, said Ms. Hillmar. Another concern the resident discussed was the disturbance of the soil and contaminants. Ms. Hillman thought the retention basins would be a breeding ground for mosquitoes and West Nile virus. More accidents would occur because of the increase traffic, said the resident. Ms. Hillmar said delayed proceedings was not due to filibustering but it was due to the lack of expertise of the experts. The resident thought with this project New Milford would become the Paterson of Bergen County and stated that this application was about pure greed.

Sam Tripsas, 227 Maple Avenue, Oradell, would like to see the Shop Rite at its existing location and renovate it. Mr. Tripsas said in 1991 Hackensack Water Company donated 14 acres and the Water Works buildings to the County. From 1991 to 1996 there were discussions on what to do with the property. Mr. Tripsas said these 14 acres had hundreds of people in opposition for the same reasons as this proposed site. He showed the Board a model of one of their proposals showing a supermarket, retail stores and senior housing with 400 parking spaces. The resident said it didn't work then so why should it work now. Mr. Tripsas urged the Board to reject this application based on the history of the area and commented on the three 21' signs being more appropriate for the highway.

John Podesta, 263 River Road, thanked the Board for their diligence and commended the Board Attorney on his leadership in handling this application. Mr. Podesta said they had trees almost a century old lining the streets with single family homes and the character of the neighborhood would change if this project was approved. He was one of the four houses that faced that property and commented on all the wildlife on the site. He was concerned about traffic, noise and lights blaring into his window. Mr. Podesta mentioned the property has not been maintained and was concerned about health issues with the soil. The resident said to quote his father "you could not unscramble the eggs".

Hedy Grant, 175 Boulevard, said she was not here in any official capacity and would not address the substantive issues of this matter. Ms. Grant said New Milford has been her home for almost three decades and was grateful she found New Milford. She noted the wonderful group of people she met and was proud to call New Milford her home. These last two years, Ms. Grant said she has seen her friends, neighbors and residents unite in a cause that they all believe in protecting the future of New Milford. Ms. Grant said she was left in awe watching these people dissect this complicated development application with expertise and dedication. She said the extraordinary, unimpeachable and impeccable research done by the residents enabled them to speech the language of the experts. They were able to expose inconsistencies, inaccuracies and omissions in the experts' testimony. Ms. Grant said the public comments touched her heart and each person

approached the application from a slightly different perspective. The members of this Board has always taken their responsibility seriously, respected the laws and heard the voices of those they represent and knew the Board would do the same with this application, said Ms. Grant.

Judy Machacek, 131 Clinton Avenue, said there were no parks to take her grandson to and wished the Board would reject the application and try to find a way to create a park. She thought a large supermarket in that location disrupts the beautiful quiet neighborhood. Ms. Machacek thought the Shop Rite might consider the old Pathmart building. The resident asked the Board to turn down the application and preserve the space.

## RECESS

Joette Williams, 265 Summit Avenue, appealed to the board to keep the area residential. The families in town would be effected by noise, traffic congestion and air pollution. She also had concerns with it being located next to a high school because of safety issues for children and widening River Road was dangerous to pedestrians. Ms. Williams said affordable housing might be able to be included in existing apartment buildings. Fewer jobs would be created because it would most likely be employees from the existing supermarket, said the resident. Ms. Williams thought this builder's remedy would hurt the quality of life and decrease property values.

Thea Sirocchi, 455 Ryeside Avenue, asked the Board to be "Clarence Otbody" to help New Milford that could be in distress. The resident would like to continue to live in this small town community and not let it become "Hekemianville" with acres of blacktop with cars and congestion, large obtrusive buildings, 20' Vegas type signs, roads widening at a cost of 1.2 million dollars to the taxpayers, homeowners losing a portion of their property and hundreds of trees removed. The resident noted that these sycamore trees have lined their streets for decades. Ms. Sirocchi asked the Board to please not kill the heart of New Milford. She added they were trying to preserve the community and trying to keep it "a wonderful life". Ms. Sirocchi said the Board was "Clarence second class angel" - jump in and save them.

Ulises Cabrera, 659 Columbia Street, said with this development New Milford taxes would increase for additional crossing guards, policeman and DPW workers. He discussed the different Boards the developer appeared before and how the application changed. For months before the Zoning Board, the applicant testified the merit of the application, said the resident. He added there were months of questioning from the residents from New Milford, Oradell, Bergenfield and Dumont over the engineering of the project, the poor arguments presented, made up rules by Dr. Kinsey regarding the apartments being inherently beneficial, inconclusive traffic analysis and wrong square footage of the existing supermarket. After months of testimony, the application was revised to 24 units. The superintendent appeared before the Board and voiced his opinion against the application. After that meeting, the applicant filed suit regarding the recusal of the acting chairman. Mr. Stokes recused himself. Mr. Cabrera said after that the Board of

Education was offered a conceptual agreement with a field and \$200,000. He said this divided the town to get the Mayor and Council to vote for rezoning the property and the Council voted for the no zone change. Mr. Cabrera said after the vote, the developer cancelled the conceptual agreement with the Board of Education because the elevation of the track was not suitable for the basin. The resident said Mr. Binetti's comments should not be redacted because of testimony from the applicants engineer and questions from Mr. Binetti regarding the elevation of the field. Mr. Cabrera said the main thing he had trouble with was the DEP map used by the applicant which he said was flawed. The resident said New Milford has serious flood problems and yet the Board's engineer did not recommend that the proposed development should be built at a higher elevation and said the runoff produced by the property would be an immeasurable runoff. Mr. Cabrera said the engineer failed to see that any additional runoff was unacceptable to the town even if it was immeasurable. The resident questioned how they could allow this town plagued with floods to build a storage basin in that area. Mr. Cabrera said Suez United Water blamed overdevelopment for the reason of their flooding problems. Mr. Cabrera asked the Board to vote unanimously to send a message that this development does not belong there and the Shop Rite belongs where it exists. He commented on the traffic signal which was not proposed at the entrance but it would be needed at the entrance of the site and how it would raise the taxes in the future. Mr. Cabrera asked to make it open space to enjoy and come close to the national level of open space required. He asked the Board to deny the application.

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

Al Alonso, 45 Clover Court, thanked the Board Members as well as the recused members for the job that they did. He said the hearings were conducted fairly and they were all given an opportunity to present their sides. Mr. Alonso said the Board has heard from the objectors, their cross examination of the witnesses and the objectors evidence and comments. He clarified that was all part of the evidence and facts and it was not just what the experts say on direct reexamination. Mr. Alonso said the Board was the finders of the fact and any decision made by the Board, if supported by evidence, would not be overturned. He hoped the decision was to deny the application. Mr. Alonso said the standard that was required to be met has been discussed and said the applicant has the burden of proof. He said objectors don't have to proof anything or say anything but they felt they needed to question the witnesses because they were not being straightforward with the Board and they were not giving the board all the evidence. He added the witnesses were not familiar with the facts relevant to this application and the local conditions. The applicant did not meet their burden in justifying the granting of the variances, said Mr. Alonso.

Mr. Alonso said credibility was important. With respect to the applicant, they wanted the Board to believe their benevolences was bringing them to the board because it was important for them to provide affordable housing. Mr. Alonso said they all know that was not true and it was the "tail wagging the dog". He said back in 2011 there was a presentation made to the Mayor and Council at the high school where the developer was

requesting the property be rezoned for a field, Shop Rite, bank, pad with restaurant uses but no apartments. He said that night the developer showed a black and white picture which was housing and they said the housing was bad. Mr. Alonso said that housing could have been built and they could have included affordable housing. Mr. Alonso told the Mayor and Council that the housing was presented for shock value and they never intended to build housing. After a year of considering it by the Mayor and Council, no action was taken on the rezoning of the property. The applicant filed an application with 221 apartments, 40 affordable units and took away the field which Mr. Alonso took as a threat. Mr. Alonso said the applicant does not want apartments, they want a Shop Rite. Now the applicant has reduced the 221 apartments to 24 affordable units and the same common denominator is the Shop Rite. It was obvious there would be an appeal and he indicated that should the Board approve the application he would file the appeal and the applicant would file an appeal if there was a denial.

A concern in town is litigation was expensive and they need to settle the case and give them what they want so they don't incur the expense. Mr. Alonso said according to Mr. Tombalakian it would cost 1.2 million dollars to upgrade the road system if the application was approved. He noted that 1.2 million dollars was more than any litigation cost to defend a denial of the application and that the threat of litigation should not sway the Board from denying the application. He added that given the likelihood that there would be an appeal, their findings were important because under the law there was a presumption of validity as to their actions as long as it's based on the evidence. There was a high standard the applicant had to meet on appeal that is whether it was arbitrary, capricious and unreasonable as to whether or not it should be overturned, said Mr. Alonso. He believed the residents have gone above and beyond by presenting the local conditions and more than enough evidence to deny the application.

Mr. Alonso stated the main variance requested was a D1 use variance and that the courts prefer zoning over variances. With New Milford, the rezoning was already considered and denied likewise the application should be denied, said Mr. Alonso. The standard the applicant chose was the inherently beneficial standard. He added this was when the credibility of the witnesses come into play. In the MLUL, inherently beneficial use has a list of what was considered inherently beneficial such as churches, schools and hospitals. He added the applicant conceded that the supermarket and bank were not inherently beneficial uses. Mr. Alonso said this was the first time Dr. Kinsey ever testified in an inherently beneficial use case and questioned if there was no other expert witness that would put their credibility on the line and give the type of testimony that he did. Mr. Alonso discussed the Smart SMR case and the four prongs to be met adding Dr. Kinsey only met three of the prongs so he failed on the Supreme Court analysis. Dr. Kinsey makes up his own analysis which was two prongs, said Mr. Alonso and he made up an analysis to support his conclusion that it was inherently beneficial. On the rebuttal testimony, Dr. Kinsey had four approaches which Mr. Alonso said any approval that may be granted based on that standard was arbitrary, unreasonable and capricious.

Regarding the Branchburg case, Mr. Alonso said this project as a whole was not an inherently beneficial use. Dr. Kinsey argues that case was distinguishable because



Branchburg had met all its prior round obligations and New Milford had not. Mr. Alonso clarified that nowhere in the case was that an issue. He said the issue in the Branchburg case was whether the proposed housing development was an inherently beneficial use within the context of the D1 use variance not within the context of an affordable housing act. Under the Branchburg case, this application was not an inherently beneficial use. Mr. Alonso said they need to rely on the most stringent test, which was the Medici test and he did not believe he proved any of them with that test. Mr. Alonso said if the Board finds that he did not prove one standard, then the whole application fails. One thing he had to prove was the particular suitability of the site and one thing to consider was whether the use would fill a need in the general community. Mr. Alonso stated they already had a Shop Rite and bank and they had affordable housing so there was no need in the community and there was already a viable location at the existing Shop Rite. Mr. Alonso said the apartments were also a viable location for affordable housing. Another standard was if the property itself was particularly well fitted for the use either in terms of location, topography or shape which this site was not well fitted for the use because it was in a flood zone. He stated Ms. Batistic concluded that this site was 0.018% of the 120 square mile watershed area and therefore any flooding impact would be insignificant. Mr. Alonso thought that logic was flawed because one could take any property in any flood zone within the 120 square mile watershed area and develop on it because it was insignificant. The fact that they would have to pay 1.2 million dollars to improve the infrastructure of the streets which meant they could not accommodate the traffic, said Mr. Alonso. This was a quiet residential neighborhood given the proximity to the schools and all the other arguments made by the objectors that this site was not well fitted. Mr. Alonso said therefore they did not meet the particularly suitability standard.

Mr. Alonso said they also need to prove a negative criteria which had a two prong test. The first prong was the variance could be granted without substantial detriment to the public good and the objectors have listed all things that were substantially detrimental. The second part was that it would not substantially impair the intent of the purpose of the zone plan and ordinance. Mr. Alonso thought there was sufficient testimony and cross examination of their planning witnesses to demonstrate that. He said the last thing to prove was the enhanced quality of proof and that was by reconciling the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district. Mr. Alonso noted that the Mayor and Council would not rezone it so there was no way they could meet the enhanced quality of proof standard.

Mr. Alonso noted that they were a unified community standing up to the developer to say they were not going to build there and he added it was up to the Board to stand up and deny the application based on the facts and evidence. He concluded that this application would create a legacy and the Board did not want 10 years from now someone questioning what the Board was thinking when they approved this Shop Rite at this site. Mr. Alonso asked the Board for all those reasons to deny the application.

Louis Flora, on behalf of the law firm of Giblin and Giblin, representing the Borough of Oradell, was amazed by the quality of the participation by the public. He commented that it makes him proud to see the American system were people can come out and speak

about things that were dear to their heart without feeling retribution and he thought they were right. Mr. Flora said the application was trying to do by variance what has not been done by zoning. The 24 unit affordable housing complex would be a stick building without an elevator, facing a parking lot, no amenities, no buffers and no pool. He said basically children would be playing in the parking lot and asked if that is what planning was and would New Milford want to put their affordable housing in the middle of a parking lot. He asked if that was okay because these people were poor and if that was discriminatory. Mr. Flora said that was what happens when you begin to forget about what the principals of zoning are. He said the Master Plan speaks to changing the use of the area but they talk about something less intensive. They speak of things like professional offices, residential or small retail. He said the intensity of the proposed use was incredible which would operate 6 days a week from 7am to 11 pm and Sunday closing at 10 pm. He said the amount of traffic was incredible. Oradell's traffic expert testified that they could expect the peak traffic would last longer and there would be more cars traveling the same roads with a longer peak period. There would be some deterioration in the levels of service at the intersection but they did not know how much because the applicant refused to do an origin destination study. There were concerns about safety with respect to the high school, said Mr. Flora. He said there was talk about safety studies but the applicant did not come forth with that either. Mr. Luglio testified there were more pedestrian safety measures that could be employed, said Mr. Flora and none of those were offered by the applicant.

Mr. Flora said when submitting an application and documents they should be in 10 days before the meeting. It did not mean every time there was an additional piece of evidence it had to be in 10 days before the meeting but when the plan was revised completely he thought it should have been in 10 days before and some of the other major changes as to drainage should have been in 10 days before. Mr. Flora said the applicant has complained that the proceedings have been protracted but essentially the applicant has asked for that themselves by bringing major changes to the application to the meeting before the Board experts had the opportunity to review them. There were questions because no one had a chance to look at them and analyze it. He said the applicant was looking for the Shop Rite and looking for the Board to consider zoning by variance. Mr. Flora said it doesn't work when looking at the development, what it would do to the area and what the people said. Mr. Flora discussed the Branchburg case and Medical Center case. The attorney said they did not need a 70,000 square foot supermarket to support an affordable housing complex. He commented if New Milford needed all this affordable housing and this was the only available site then New Milford got rid of their only available land. New Milford would be hard pressed to fulfill whatever obligation they should have because there would be no place to put it. Mr. Flora said this was probably contrary to the intent of affordable housing because they have used any affordable land for that obligation and put Shop Rite on it. Mr. Flora said there were other means to have affordable housing without having a 70,000 sf supermarket to finance it.

Mr. Flora said in the Branchburg case they talked about a project being inherently beneficial and it said in the Medical Center case that *there is nothing in our opinion to suggest that the analysis we established would be applicable where the predominant use*

*is not the inherently beneficial one.* Mr. Flora said the predominant use should be the inherently beneficial use which here it was not. He added that this project would not meet the standards that would apply for a D1 use variance under Medici.

Mr. Flora asked the Board on behalf of everyone and his client, the Borough of Oradell, to deny the application.

The Board Attorney said that concluded the public comment section of this application. The applicant would have their opportunity to deliver their summation at the regular meeting of February 11, 2014.

Mr. Eisdorfer hoped they would complete the application on February 11<sup>th</sup> but asked if that did not happen was there another meeting scheduled. The Board Attorney said they have noticed February 20<sup>th</sup> for a special meeting.

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

Respectfully submitted,  
Maureen Oppelaar