

**New Milford Zoning Board of Adjustment
Special Meeting
December 02, 2013**

Acting Chairwoman DeBari called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:00pm 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 Vice Chairman	Recused
Mr. Schaffenberger-Chairman	Recused
Ms. Batistic – Board Engineer	Present
Mr. Sproviero – Board Attorney	Present
Also attending	
Mr. Tombalakian – traffic engineer	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.

The Board Attorney stated there was correspondence dated 11/26/13 from Mr. Alonso. Mr. Alonso said a set of redacted transcripts has been submitted pertaining to the Mr. Binetti's participation and that happened after he recused himself. The Board Attorney said a set of redacted transcripts have been presented to the Board. Mr. Alonso could not find any legal authority that would permit it. The Board Attorney stated there was an unreported case which he discussed. Mr. Alonso said it was an unreported case and there was no legal precedent that follows with that. He said although this addressed Mr. Binetti this did not address Mr. Stokes and Mr. Rebsch who also recused themselves and said the applicant was redacting transcripts attempting to unring the bell. Mr. Alonso thought if they were going to do that they would have to redact the transcripts as to Mr. Stokes and Mr. Rebsch or not consider it all.

Mr. Del Vecchio answered that the situation regarding Mr. Binetti was much different than that surrounding Mr. Stokes and Mr. Rebsch. Mr. Binetti participated in the proceeding with what was perceived to be a conflicting interest that was undisclosed to the parties. While the period of time he participated that conflict existed and needed to be redacted from the record of proceedings. The applicant's opinion was that the conflict for Acting Chairman Stokes did not arise until the day the Board of Education appeared at the proceedings and sought to take a position before that there was nothing to redact. Mr. Sproviero recalled upon the appearance by the Board of Education Mr. Stokes immediately recused himself from any proceedings. Mr. Del Vecchio agreed and added that Mr. Rebsch had an event that related to his involvement in a campaign that raised an issue of a potential conflict based on a position taken by his party but he represented that was not necessarily his position but he removed himself from the proceedings. When the campaign was over, he was reseated based upon his representations to the Board and public and there was no taint to the record because he did not participate when the conflict existed. Mr. Del Vecchio said the proceedings here would never be perfect and they could not make them perfect as a result of activities or events that unfolded involving certain Board Members. The Board was faced with a decision to complete the record as best as possible and remove the items perceived to be tied to a taint or take another action. The applicant was entitled to a vote on the merits and the Board could not just suspend the hearings. The Board Attorney said an option was to proceed with the direction to the Board at the time of deliberation that they consider the redacted transcripts that excises only Mr. Binetti's comments, another option was at the time of deliberation direct the Board Members to consider a set of transcripts that excises all comments by Mr. Binetti, Chairman Stokes and potentially Mr. Rebsch and the third option would be to have no redacted transcripts. Mr. Sproviero said prior to this matter being called for a vote, he would give instruction to the members as to the appropriate record to be considered. He added while he was comfortable with the protocol followed to date he did not know that it was time for him to instruct the Board yet. Mr. Alonso said either they redact everything or they don't. Unless presented with some compelling statement of law that convinces him that instruction would be inappropriate, Mr. Sproviero stated he was comfortable with that position now but would not close the book on the entire scenario. Mr. Alonso stated another issue was if a Board Member recused themselves, they did not count for purposes of determining whether or not there was a quorum. The Board Attorney thought that was an interesting issue.

Mr. Brian Giblin, on behalf the Borough of Oradell, asked if all the members present were qualified to vote if a vote were held this evening. Mr. Sproviero answered yes.

Mr. Alonso asked if the applicant could provide a full set of transcripts so there was one complete record. He was concerned someone could ask to listen to a recording.

Ms. DeBari asked if they should move Mr. Grygiel's report into the record. Mr. Del Vecchio did not have an objection.

Mr. Del Vecchio said Exhibit A-48 was marked as the Rezoning Study and A-49 the Ordinance. Mr. Del Vecchio said the Rezoning Study and Housing Element was one

report and Mr. Grygiel's report would be a Board exhibit. The Board Attorney suggested when they were done with their last witness they would identify everything the Board would move into the record. Mr. Del Vecchio agreed.

Mr. Del Vecchio asked for a special meeting in January. The Board made a tentative special meeting for January 9th at 7 pm.

Mr. Del Vecchio believed they were closed to the public and he was left to cross-examine Mr. Tombalakian.

Mr. Del Vecchio asked if he believed any additional crosswalks are required. Mr. Tombalakian believed there was discussion on adding a crosswalk at the intersection of Demarest and River Road and he had no objection. Mr. Del Vecchio asked if there was any other place in/around the perimeter property where he believed a crosswalk was necessary. Mr. Tombalakian said no. Mr. Del Vecchio asked if it would satisfy his concern about that one additional crosswalk if the applicant stipulated for the record that the applicant would stripe crosswalks anywhere he would say they were required or necessary to have in/around the perimeter property. Mr. Tombalakian said that would be fine. Mr. Del Vecchio stipulated for the record that the applicant would place crosswalks anywhere the Board's consultant would like to have them.

Mr. Del Vecchio said in Ms. Dolan's report, Mr. Tombalakian focused his comments to the intersection of River/Madison and called out certain movements within the peak hours of the day and made note of the decrease in the level of service. He added his February 2013 report said in the am peak hour there was a decrease in the level of service in the westbound Madison Avenue movement, which was an additional period of delay of 4.7 seconds. There was also reference to a single movement in the afternoon, evening and Saturday peak hour where similar decreases in the level of service were noted with the highest decrease being 7.9 second level of service further delay. Mr. Tombalakian said in the letter that was correct but in his testimony he noted in the afternoon peak hour the southbound River Road intersection had a delay of an increase of 10.5 seconds. Mr. Del Vecchio said with reference to the single movements within the various single peak hours there were levels of service being decreased by seconds. Mr. Tombalakian agreed. Mr. Del Vecchio said the overall levels of service continued to remain at a C level of service in the build and no build conditions. Mr. Tombalakian agreed. Mr. Del Vecchio stated even after the project was build the level of service for the overall intersection would not be degraded by any letter decrease in level of service. Mr. Del Vecchio asked if a C level of service to be appropriate from a service capacity of this intersection. Mr. Tombalakian said it would be acceptable from an overall point of view. Mr. Del Vecchio asked if there were any additional right of way available to the intersection of River/Madison. Mr. Tombalakian did not know. Mr. Del Vecchio asked about Mr. Luglio's letter where he indicated that as it pertains to this intersection that since there was no right away available timing mitigation of the signals was only thing available. Mr. Tombalakian recalled something to that effect. Mr. Del Vecchio asked if there was any other mitigation that could be performed at that intersection making it improved to a higher level of service than a level of service C. Mr. Tombalakian thought widening or additional length

would be needed. Mr. Del Vecchio said in the typical situation where a project creates an impact to a selected intersection, the applicant would be responsible to address it pro rata share of the impact at the intersection. The traffic engineer agreed. Mr. Del Vecchio asked if it would satisfy his concern at that intersection if the applicant would stipulate on the record that they would address its pro rata share of any improvement that was appropriate for that intersection. Mr. Tombalakian said the issue of increase in delay was still a concern to him and he would have concerns about the intersection performance in the time period between the times the project was constructed and when the improvements were made and understood there might be nothing else the applicant could do in terms of offset improvements. Mr. Del Vecchio said for the record the applicant would stipulate that to the extent there was an improvement to be made to the offsite intersection of River/Madison that it would as a condition of this Board's approval pay its pro rate share of that cost as it relates to the impact it causes to that intersection.

Mr. Del Vecchio asked what a typical parking ratio was for a shopping center. Mr. Tombalakian believed it was 4 to 5 per 1,000 sq ft. Mr. Del Vecchio asked if it was the same for a supermarket. The traffic engineer agreed. Mr. Del Vecchio asked based on observations of the shopping centers and operation the 4 to 5 per 1,000 was sufficient parking as not to cause any onsite or offsite congestion to the community. Mr. Tombalakian agreed.

Mr. Del Vecchio said another intersection that he focused on in his report was the River Road/Demarest Avenue site driveway intersection and asked if the level of service delay as it pertains to this study area would naturally have to increase because it was being changed from a two legged intersection to a three legged intersection. Mr. Tombalakian agreed but said it was changing from a three leg to a four legged intersection.

The Board Attorney asked Mr. Tombalakian if he had the opportunity to study and identify the potential improvements at the River/Madison intersection. Mr. Tombalakian answered no. Mr. Sproviero asked if he could do that and how quickly could he do it. Mr. Tombalakian said yes in two weeks. Mr. Sproviero said to Mr. Del Vecchio given the nature of the stipulation he made with regard to the applicant's position that it would share the cost of expense of any improvement to that intersection he thought it imperative that Mr. Tombalakian study it. Mr. Sproviero asked the traffic engineer to do his best to be in a position to discuss this at the next meeting. Mr. Tombalakian agreed.

Mr. Del Vecchio clarified the Board was reserving the ability to produce an additional witness. Mr. Sproviero said it would be a real estate appraiser to get his peer review of the testimony presented by Mr. Sussman. Mr. Del Vecchio said the Board was reserving the ability to have Mr. Tombalakian come back to report on the potential improvements to River/Madison. Mr. Del Vecchio knew the Board was not concluding their case and would leave open the possibility of bringing others.

Mr. Del Vecchio said the applicant was prepared to move forward with their rebuttal case and was turning this portion over to Mr. Eisdorfer. Mr. Eisdorfer said the applicant would recall Dr. Kinsey. Mr. Sproviero reminded Dr. Kinsey he was under oath.

Mr. Eisdorfer marked as Exhibit A-50 - Dr. Kinsey's supplemental report.

Mr. Eisdorfer asked Dr. Kinsey what New Milford's unmet new construction obligation was. Dr. Kinsey answered 23 units of housing of low to moderate income households. Mr. Eisdorfer asked if the municipality did an inventory of sites that would be suitable to meet their obligation. Dr. Kinsey said in the 2008 Housing Plan, the Planning Board and Borough deemed two suitable which was 1071 River Road which did not comply with COAH rules and the applicant's United Water Company site which proposed 200 multifamily units at a gross density of 12.5 units/acre with a 20% set-aside (40 units). Dr. Kinsey said the Borough has taken no action to rezone the site to implement the plan.

Mr. Eisdorfer asked if the NJ Supreme Court has given further guidance on the subject of municipality housing obligations. Dr. Kinsey said the Court in September 2013 has invalidated the growth share approach to meet COAH's Third Round rules and ordered COAH by the end of February to adopt new Third Round rules. Mr. Eisdorfer asked if he was able to make an estimate of the New Milford's Third Round obligation post 1999 obligation based on that methodology. Dr. Kinsey agreed and said he used a methodology developed by Art Bernard of Lambertville and the Fair Share Housing Center. Dr. Kinsey's planning opinion was that the Bernard-FSHC methodology and data properly update and implement the Supreme Court's directive of implementing the COAH's prospective need calculation methodology. The planner said applying the Bernard-FSHC methodology and data provides a reasonable determination of New Milford's post 1999 prospective need. Dr. Kinsey's conclusion was the post 1999 prospective need of New Milford would be 25 units for 1999-2023. Mr. Eisdorfer asked if it included all the elements included in the 1994 housing obligations. Dr. Kinsey said it omits what COAH called "the reallocated present need" which was a component of the first and second rounds.

Mr. Eisdorfer asked if he conducted an investigation in response to Mr. Grygiel suggestion regarding the possibility that existing housing might satisfy a portion of the housing obligation. Dr. Kinsey calculated the current maximum affordable rents in Bergen County for different household types who would be allocated different bedroom types. He ascertained the current rents for Brookchester, Dorchester Manor, and Milford Estates apartments. Dr. Kinsey said under the COAH rules the maximum affordable rent at 60% of median income for a two-bedroom apartment would be \$985 including an allowance for utilities. Mr. Eisdorfer clarified that would be the highest priced moderate income. Dr. Kinsey said that was allowed under COAH rules. The Board Attorney questioned the 60% of median. Dr. Kinsey said 60% was the highest allowed under COAH rules. Mr. Eisdorfer asked if he did a similar calculation for three bedroom units. Dr. Kinsey said for three bedroom units a maximum at 60% of median would be \$1,128 including utilities. Mr. Eisdorfer asked if he did calculations for low-income units. Dr. Kinsey said the maximum low income rent at 50% of median for a two bedroom would be \$795 and \$689 for a three bedroom. The Brookchester website indicated one bedroom rents start at \$1,135 and a two bedroom \$1,460, Dorchester Manor website indicated one bedroom \$1,245-1,345 and a two bedroom \$1,570 and Milford Estates website indicated

one bedroom \$1,035-1,085 and two bedroom \$1,305-\$1,360. He added one of the rental apartments in these three market rate complexes is affordable to low-income households or to very low-income households with less than 30% of regional median income. Secondly, one of the rental apartments in the three market rate complexes were affordable to moderate income households at 60% of regional median income. According to Dr. Kinsey, one of the market rate complexes offer three bedroom units and COAH rules require at least 20% of the affordable units to be affordable which would be at least five units for the applicant's proposal. The lowest rents at Dorchester Manor for one and two bedrooms are higher than the COAH maximum affordable rents and the Dorchester rents are not affordable at all, said Dr. Kinsey. He added the lowest rent for a one bedroom unit at Brookchester and Milford Estates is affordable only at the very top of the moderate income range close to 80% of median regional income which exceeds the COAH cap on affordability. COAH rules sets the maximum average rent affordable to low to moderate income households at 52% of the regional median income. According to the planner, the market rate units at these three complexes do not comply with COAH standards. He added the lowest rent at Brookchester for two bedroom units is not affordable and the lowest rent at Milford Estates for two bedroom units is affordable only at the top of the moderate income range.

Dr. Kinsey's opinion was only a small number of the one bedroom units at Brookchester and Milford Estates and the two bedroom units at Milford Estates have rents currently that may be affordable only at the top of the moderate income range close to 80% of median regional income which exceeds the COAH cap of affordability of 60% of regional median income. He added the rents at these complexes were established based on the market and were not reserved exclusively for households who were income eligible as low and moderate income households.

Dr. Kinsey said in the 1998 Smart SMR v Fair Lawn decision, the Supreme Court outlined four concerns to be examined in evaluating whether a proposed use was inherently beneficial. Dr. Kinsey's analysis was is the proposed use strictly for commercial purposes. He said no but the proposed 24 affordable housing units in a 100% affordable family rental project while privately owned would be indistinguishable as to cost to their low and moderate income tenants from affordable rental units that might be owned by a non profit housing sponsor. Another concern was is the need for the proposed use already satisfied in the municipality, asked Dr. Kinsey. The planner said his analysis was no the need for low and moderate income housing is not satisfied in New Milford. A third concern was is the proposed use exempt from regulation by State government. Dr. Kinsey answered no the proposed low and moderate income housing is strictly regulated by State government and must comply with bedroom mix, affordability controls, permitted rent levels, income mix of households, marketing of the units and choosing tenants. The fourth concern was would the proposed use substantially impair the character of the neighborhood. Dr. Kinsey said this was a site-specific inquiry beyond the scope of his planning analysis.

Mr. Eisdorfer asked his opinion on whether this project was inherently beneficial. Dr. Kinsey said this proposal was inherently beneficial under three of the four standards of

the Supreme Court Smart SMR. Mr. Eisdorfer said Mr. Grygiel raised a question of whether the 24 units of low and moderate housing were sufficiently substantial as part of the development as a whole. Dr. Kinsey said in his report last year he proposed two standards for determining whether a mixed-use inclusionary development (MXID) was inherently beneficial. One was does the municipality have a substantial remaining low and moderate income housing obligation and second does the proposed MXID provide a substantial amount of low and moderate income housing. Dr. Kinsey stated the applicant has revised one of the three proposed uses. Instead of the 221 units of multifamily rental units including 40 affordable housing units the proposal was now 24 units of affordable housing. Since there were no COAH rule, court decision or any generally accepted standard provided, Dr. Kinsey turned to the growth share standards that COAH adopted in the 2000s in his 2012 analysis and had concluded that 8.242 affordable housing units arising out of the non residential uses would be required under that rule at this site. Dr. Kinsey said to develop the ratio of jobs to building space, COAH turned to the Philadelphia based firm Econsult who developed employment density ratios for more than one dozen nonresidential land use types. He further explained for the two land uses proposed by the applicant, Econsult determined the median square feet of net building space per job by land use to be 588 sf per retail job and 357 sf per business job.

COAH in its third round rules, made the decision to require one affordable housing unit for every 16 jobs as its non-residential growth share ratio, said the planner. Dr. Kinsey testified that since his report, the NJ Supreme Court ruled on the contested COAH third round rules and invalidated COAH's growth share approach to calculating fair share housing obligations. According to the planner, neither the Supreme Court nor the Appellate Division decision reviewed or questioned the Econsult employment density analysis. Dr. Kinsey stated the applicant's proposed 24 units is slightly less than three times the number of affordable units that would have been required under COAH's Third Round rules which he felt was a substantial increase. He found that the proposed set-aside of 24 units to be subsidized internally by the non-residential development is substantial. He also looked at the jobs to be created at the MXID. Using Econsult's median ratios of square feet per job it implied that about 132 long-term jobs would be generated onsite. Dr. Kinsey said the two most common jobs in these land uses were cashiers and tellers, which were among the lowest paying jobs in the US economy. According to Dr. Kinsey, with annual incomes of about \$20,000 these workers and others would be income eligible for the proposed affordable housing. This job to housing ratio of 5.5:1 demonstrated that the applicant would be making a major contribution to the regional housing supply that would be affordable to most of the workers at the supermarket and bank. He added that the applicant would be satisfying some of the on-site demand for affordable housing generated by the non-residential components. According to Dr. Kinsey, this contribution was a substantial set-aside. The Board Attorney questioned in what sense was this contribution a substantial set aside. Dr. Kinsey answered in the sense of the test for what was inherently beneficial use. He added that setting aside 24 dwelling units that would provide 132 jobs of one the lowest paid categories was a substantial set aside.

Mr. Denis questioned his testimony was the people working at the supermarket would be renting the apartments. Dr. Kinsey clarified that the estimated 132 jobs and the wages of the employees for the two land uses would be low and income eligible for low and moderate-income housing and these 24 affordable units would be helpful for the regional supply open to income eligible people who meet the COAH obligations. The proposed 24 units would satisfy the 23 units of New Milford's unmet need of the prior round obligation, said the planner.

Mr. Grygiel spoke about a case in Advance at Branchburg II v Branchburg, said Mr. Eisdorfer and asked if the circumstances of this case differ factually from the circumstances of that case. Dr. Kinsey said in Branchburg the township had received substantive certification from COAH in 2004 for its Housing Element and Fair Share Plan and had satisfied its prior round obligation of 302 units of new construction obligation. According to Dr. Kinsey, New Milford has not satisfied its prior round obligation, no court or COAH has ever reviewed and approved the Housing Element and Fair Share Plan adopted by New Milford. The Board Attorney questioned that he was saying simply because they did not have an outstanding obligation, that the courts analysis as to what is considered by way of the inclusionary development, what portions are considered inherently beneficial and those which are not had no bearing on this application. Mr. Eisdorfer said they were not asking him to make a legal analysis but to highlight the differences. The Board Attorney questioned then what was the point of the testimony. Mr. Eisdorfer would make the legal analysis when the evidence was finished.

Mr. Eisdorfer asked in Branchburg was the site a designated housing site in the municipal housing plan. Dr. Kinsey answered no. Mr. Eisdorfer asked if that differed from New Milford. Dr. Kinsey said in New Milford the current 2008 Housing Element and Fair Share Plan identified two sites and one of the sites was the applicant's site.

Mr. Eisdorfer responded to a question made by Mr. Sproviero and said that on November 21st the NJ Builders Associates filed a motion to intervene in the Branchburg case post judgment for the purpose of filing a petition for substantive certification and on the same day filed a notice a petition for certification with the Supreme Court.

Ms. DeBari clarified his testimony was that a small number of one bedroom units at Brookchester and Milford Estates and two bedroom units at Milford Estates had rents that may be affordable but only at the top of the moderate income range and asked if that would qualify for COAH units. Dr. Kinsey said no because the COAH rules adopt a ceiling of affordability at 60% of regional median income while the definition goes up to 80%.

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Ms. DeBari asked if all the surrounding towns were in compliance with COAH. Dr. Kinsey did not know. Ms. DeBari asked why his opinion was a small number of one bedroom units may be affordable at 80% of median income and now he said it is not affordable. Dr. Kinsey clarified he could say those units were nominally affordable in the

sense that affordable means a household that pays no more than 30% of income for rent and utilities and was below 80% of median income. He said for completeness he provided the numbers of what the maximum rents would be at 80% of median as well as 60%, 52%, 50%, 40%, 35% and 30%.

Ms. Batistic pointed out in the table for rents that the three bedroom for the maximum low income rent at 50% of median income was less than the two bedroom. Dr. Kinsey would check into it. Ms. DeBari assumed it was a typo.

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

Anna Leone, 505 Boulevard, questioned his testimony that the current rents in New Milford do not comply with COAH standards. Dr. Kinsey clarified it was the COAH standards for affordable housing. The resident questioned his information was taken from the websites for the three apartment complexes. Dr. Kinsey agreed. Ms. Leone asked if he contacted the management of each of the apartment complexes to verify the information. Dr. Kinsey trusted that the website presented by the owners was accurate. Ms. Leone questioned if all the information that they see on the Internet is accurate. Dr. Kinsey said that was his assumption as to these apartment complexes. Ms. Leone asked if it was possible that these rents on the website were current rents for new tenants. Dr. Kinsey said it was not presented as such and noted that Brookchester started at the level indicated. Ms. Leone said maybe 2 years ago there could be a tenant paying \$900 not specified on the website and asked how he knew that those rent figures are correct. Dr. Kinsey assumed the figures were correct as to what the private sector apartment owners were advertising for rents. Ms. Leone questioned if the Bernard methodology that was used was an acceptable industry standard. Dr. Kinsey said he utilized a methodology that closely tracked the first and second round fair share methodologies. It used the best data available, said the planner.

Brian Giblin, appearing on behalf of the Borough of Oradell, asked from a planning perspective were low and moderate income units in a community that has achieved substantive certification deemed to be inherently beneficial. Dr. Kinsey agreed. Mr. Giblin asked then why would it make a difference to him that Branchburg had received substantive certification and New Milford had not. Dr. Kinsey said because New Milford has not satisfied their obligation while Branchburg had. Mr. Giblin clarified that they were deemed to be inherently beneficial in either case. Dr. Kinsey said nothing in Branchburg was deemed inherently beneficial. The Board Attorney questioned that. Mr. Eisdorfer objected that the witness did not offer a legal opinion as the significance of the Branchburg case but was highlighting facts. The Board Attorney said he could say he did not offer legal opinions but he offers a distinction. Mr. Giblin asked why he made a distinction from a planning perspective where the affordable units were located in New Milford and Branchburg. Mr. Eisdorfer objected that he did not make the distinction but was highlighting the facts. Mr. Giblin thought he should be allowed to inquiry to what he testified. The Board Attorney agreed. Dr. Kinsey said people who need low and moderate housing seek low and moderate housing wherever they are built. Mr. Giblin clarified that

it does not matter if it was in an area designated by a municipality or an area not designated. Dr. Kinsey said to be built it has to be designated in some manner. Mr. Giblin asked if it was being proposed in an area that was not designated it would be built. Dr. Kinsey said if it received approvals under the MLUL. Mr. Giblin asked what would be the distinction between whether it was in an area that was designated or not. Dr. Kinsey said two towns looked at their range of possible sites for affordable housing to satisfy their housing obligation. One town looked and found only two sites and one was the applicants site another town looked and found a lot of sites that was put in its plan and COAH certified it. COAH did not certify any plan for New Milford, said the planner. According to the planner, these distinctions were helpful.

Mr. Giblin said he testified there would be 130 jobs created by the non-residential uses. Dr. Kinsey stated he offered an estimate of the number of jobs likely to be created by various ratios prepared by Econsult. Mr. Giblin asked how many low and moderate income housing units would be generated by 130 jobs most of which would be low paying. Dr. Kinsey said zero affordable units could be generated by 132 jobs. Mr. Giblin asked where the 130 people would live that would work in those low pay jobs. Dr. Kinsey said they would live where they could find housing that they could afford. Mr. Giblin said this development as proposed could create a need for more low and moderate income housing units than provided. Dr. Kinsey answered yes if all the employees were low and moderate income. Mr. Giblin asked if the Art Bernard methodology relied upon the growth share formula. Dr. Kinsey said no. Art Bernard and the Fair Share Housing Center follow the Supreme Court directive and developed a methodology that tracks the COAH first and second round methodologies, said the planner

Steven Tencer, 701 William Bliss Drive, asked how many affordable housing units were currently available. Dr. Kinsey said zero. The resident asked how he did not know that other apartment developments would not offer units in the future that would be affordable. Dr. Kinsey did not know. The resident asked if the project was approved when would it satisfy the COAH requirement. Dr. Kinsey said when it was approved for construction, when it begins construction and is built. The resident said that was three different points. Dr. Kinsey said with each of those stages the 24 units more than satisfy New Milford's prior round obligation. The resident clarified if the Board approves this then New Milford would meet their obligation. Dr. Kinsey said New Milford would have a strong way up in supplementing their petition pending before COAH and when COAH reviews this they would find it a project approved which would be significant. The resident asked if they will, probably will or they might. Dr. Kinsey answered the standard was does the project create a realistic opportunity for the construction of the low and moderate housing. An approval certainly demonstrated that a realistic opportunity has been created. The resident asked if there were any other proposals for affordable housing that might satisfy the needs for the town. Dr. Kinsey said the town's Housing Element and Fair Share Plan only found two sites. The resident asked what would happen if the town found a third site. Dr. Kinsey said if they could that would be something to be looked at.

Mr. Tencer asked if they knew what the COAH rules would be in February. Dr. Kinsey said no. The resident said he would have to make assumptions to draw conclusions. Dr. Kinsey said he followed the directives of the Supreme Court. Mr. Tencer said they were not the same as COAH rules. Dr. Kinsey agreed. The resident clarified his testimony was the 130 jobs would be created and asked if he took into account that many of those jobs would be jobs shifted from south on River Road and those jobs would be eliminated there. Dr. Kinsey said he indicated that looking at the number of jobs likely to be created was one of the four approaches he used to evaluate if the set-aside was substantial. The Board Attorney questioned if he was saying 132 jobs are anticipated to result from the development project. Dr. Kinsey said 132 jobs were an estimate of the jobs likely to be generated by the development and its characteristics. The Board Attorney clarified gross number. Dr. Kinsey agreed. The Board Attorney questioned that it was not 132 in addition to what jobs existed at the current supermarket. Dr. Kinsey did not know the microanalysis of the micro labor market in western New Milford.

Lori Barton, 399 Roslyn Avenue, said tenants that might qualify for affordable housing receive financial aid that offsets the market rate rental so the market rate rental becomes an affordable housing unit. Dr. Kinsey agreed. Ms. Barton asked if there were any existing tenants in the apartment complexes that receive that aid. Dr. Kinsey did not know. Ms. Barton asked if it was desirable for affordable housing to have recreational space. Dr. Kinsey said the needs for any affordable housing site depends upon a range of factors that include recreational facilities. Ms. Barton asked if he recalled his testimony on the original proposal that he testified about recreational opportunities available for the tenants. Dr. Kinsey did not. Ms. Barton asked if he was aware that the revised plan had 24 units surrounded by parking lot and commercial development only. Dr. Kinsey said he did not look at the site plan.

Michael Gadaleta, 270 Demarest Avenue, asked if he was aware of any action taken by the Mayor and Council to rezone this property. Dr. Kinsey was aware of a rezoning study prepared by Mr. Grygiel. Mr. Gadaleta asked if by inaction the Mayor and Council has effectively not rezoned. Mr. Del Vecchio objected that it calls for a legal conclusion on behalf of the witness and it was outside the area of additional direct testimony. The Board Attorney said Dr. Kinsey's testimony takes into account what is and what is not available for inclusionary development. Dr. Kinsey did not talk about what was zoned but made an analysis of the Fair Share Plan, said Mr. Del Vecchio. The Board Attorney asked the resident if his question was if the municipality has taken action to zone this property for low and income housing use. Mr. Gadaleta agreed. Dr. Kinsey said the municipality has not taken action to rezone the United Water Company site in accordance with the 2008 Housing Element and Fair Share Plan. Mr. Gadaleta asked if Mr. Bernard would be available for questioning. Mr. Eisdorfer said no. The Board Attorney said Dr. Kinsey relied upon a study and added after he reads this report he would know if there was sufficient factual basis for the expert to render the opinion.

Mr. Gadaleta asked if he was aware of any financial documents that were presented justifying the 23 units based on 74,000 sf of commercial. Dr. Kinsey said no. Mr. Gadaleta asked if he was aware that financial analysis was required as discussed by Mr.

Grygiel. Dr. Kinsey was not aware of it. Mr. Gadaleta asked how do we know that 23 units were the right number for the 74,000 sf commercial. Dr. Kinsey said the proposal was for 24 affordable units and he testified to four approaches for evaluating whether the 24 units was a substantial set-aside. Mr. Gadaleta asked if he was aware of a financial analysis. Dr. Kinsey was not. The resident clarified that he has not reviewed the plans and drawings. Dr. Kinsey agreed.

John Rutledge, 335 River Road, asked if COAH and the Supreme Court have accepted Mr. Bernard's study or was it a report relative to his interpretations. Dr. Kinsey said this was his report based on his understanding of the Supreme Court's directive to calculate prospective need following the first and second round methodology. Mr. Rutledge said this was not a document that the court would follow. Dr. Kinsey did not know. Mr. Rutledge asked if the Fair Share Housing Center was a governmental agency. Dr. Kinsey answered no it was a non-profit group. Mr. Rutledge clarified that Mr. Bernard and the Fair Share Housing Center was offering an opinion. Dr. Kinsey agreed. Mr. Rutledge asked if he was a COAH expert. Dr. Kinsey said he was a licensed professional planner and had a lot of familiarity with COAH. Mr. Rutledge asked if the 24 proposed units would be according to what is now the COAH rules and regulations affordable relative to the formulas he allocated before. Mr. Eisdorfer said the applicant has stipulated that they would comply with COAH standards concerning the pricing and eligibility standards for those units. Mr. Rutledge asked if that conforms to Dr. Kinsey's explanation of what the dollar amounts and theory should be after his compilation of the pricing in the area. Mr. Eisdorfer agreed. The resident asked if Dr. Kinsey deemed the current locations of the apartment complexes were above the COAH regulations would the applicant be willing to lower the price per unit to the COAH scenario. Mr. Eisdorfer agreed. Mr. Rutledge asked how many municipalities in New Jersey were currently under COAH regulations and need to apply by February. Dr. Kinsey said February was not a deadline for municipalities to take any action. It was a deadline for COAH to take action under the Supreme Court directive, said the planner. The resident asked how many municipalities were required by COAH to provide round one, two or three. Dr. Kinsey said all municipalities in NJ have a constitutional obligation to create a realistic opportunity for their fair share of regional need for low and moderate income housing. He added currently there were more than 300 petitions before COAH addressing their third round obligations. The Board Attorney clarified New Jersey had 565 municipalities that shared a constitutional obligation but there were certain municipalities that were COAH exempt. Dr. Kinsey said not to his knowledge. The Board Attorney questioned there were municipalities that had no obligation. Mr. Eisdorfer said even those municipalities have an obligation to meet their indigenous need and when you look at the charts that say no obligation it is always a new construction obligation. According to Mr. Eisdorfer, nobody is obligated to follow COAH but everyone can and they get benefits for filing. The Board Attorney clarified that he was suggesting that no municipality was exempt from filing. Mr. Eisdorfer agreed. The Board Attorney questioned that there are certain towns that have been designated by their Round One and Round Two calculations as to having no obligations. Mr. Eisdorfer agreed. Mr. Rutledge asked how many of the 300 municipalities that had third round obligations have been reviewed by COAH. Dr. Kinsey said all municipalities have a third round obligation and there are about 300 pending

before COAH and COAH has not reviewed many. The resident asked how long have they been pending. Dr. Kinsey said since late 2008. Mr. Rutledge asked if he considered a master plan a document that has the flexibility at some point if additional opportunities present themselves to unhook an obligation from a location where it had not been previously indicated. Dr. Kinsey said such a document is flexible in the sense that the planning board could follow the procedures in MLUL and amend it and the governing body could follow the procedures for endorsing and amend the plan.

Ulises Cabrera, 659 Columbia Street, asked if he ever assisted in writing the laws for COAH. Dr. Kinsey said he submitted comments to COAH on its proposed rules. Dr. Kinsey further explained that when any agency contemplates adopting rules the procedure is the agency must first formally propose the rule, the proposal is published in the NJ register and the public had the opportunity to submit comments. Dr. Kinsey has done that in response to proposed COAH rules. The agency reviews the comments, decides whether to make the changes or to adopt the rule as proposed and the agency provides a written response, explained the planner. Mr. Cabrera asked if New Milford was in any COAH violation. Dr. Kinsey was not aware of it and added that New Milford has a prior round obligation and has submitted a plan and the plan in his opinion was insufficient to address the obligation based on his understanding of the COAH rules. Mr. Cabrera asked if New Milford met the 1999 obligation. Dr. Kinsey said the post 1999 obligation has not been met. The resident asked how he could come to a conclusion if he did not know if tenants at the three apartment complexes were receiving aid. Dr. Kinsey said in his review of the Housing Elements, the Fair Share Plan and submissions, the Borough made, he saw no mention of the three rental complexes as something that the Borough thought qualified for affordable housing.

Ms. DeBari asked if the town did a fact finding study and approached all the apartment dwellings and found out if people were being subsidized and could qualify as COAH units, could they be applied as COAH units. Dr. Kinsey said it was sometimes referred to as a section 8 certificate or housing opportunity vouchers which went to an individual. He said such subsidies do not qualify under the Fair Housing Act and COAH rules as credits against the Fair Share Obligation. Dr. Kinsey said there were other standards that have to be met and the units must have been built after April 1st 1980.

Motion to close was made by Mr. Rebsch, seconded by Mr. Ix and carried by all.

Mr. Rebsch asked if he was aware how many people worked in the COAH office. Dr. Kinsey thought about 7-8 employees currently but they were not working on COAH matters. Mr. Rebsch thought it would take years to do anything. Dr. Kinsey said it would take some time.

Mr. Del Vecchio agreed that Mr. Sproviero would have an opportunity to review the report produced this evening by Dr. Kinsey and if necessary the Board Attorney would have the opportunity to ask Dr. Kinsey additional questions at the next meeting. The next witness would be Mr. Dipple.

RECESS

Mr. Del Vecchio marked as Exhibit A-51 revised engineering drawing by L2A
revision date of 10/31/13.

Exhibit A-52 revised elevation drawing for the Shop Rite
Prepared by Tom Ashbahian revision date 11/9/13

Mr. Del Vecchio reminded Mr. Dipple that he was still under oath and commented that Exhibit A-51 was intended to pick up the minor revisions agreed to be made during his direct testimony which was reflected on the drawings. Mr. Dipple agreed. Mr. Del Vecchio said the Board Engineer had a concern that the rooftop mechanicals of the Shop Rite might be more visible than originally presented in the direct testimony. Mr. Dipple stated the concern was in front of the supermarket between River Road and the first row of parking and if it was substantially screened to hide the rooftop mechanicals. Mr. Dipple found a few more feet to expand the area by making the parking lot more efficient. They widened that area and have more landscaping in that area depicted on sheet C-11. On sheet C-05 in front of the bank there were no modifications made to the width of that strip but the following landscaping sheet C-12 depicts additional screening in that area. Mr. Del Vecchio asked Mr. Dipple to describe the revisions with regard to the enhanced landscaping across the front of River Road. Mr. Dipple said there were multiple rows of low line shrubs, evergreens and some deciduous trees, which were offset from the street trees. They increased the landscaping significantly and in front of the bank, they increased the amount of landscaping with a double row of Holly intertwined with evergreen and deciduous trees. Mr. Del Vecchio asked if it was possible to screen the mechanicals 100 percent with just landscaping. Mr. Dipple did not think so because the sidewalk is adjacent to the landscaping and the rooftop mechanicals were 200-300' away. Mr. Dipple said Mr. Ashbahian added a little slope roof in the middle of the building to hide the mechanical unit on three sides shown on Exhibit A-52. Mr. Del Vecchio said the other change that was made to the drawings was that the elevation of the site was raised so the finished floor of the Shop Rite would be to a finished floor elevation of 18. Mr. Dipple agreed and said it was done for a number of reasons. One reason it was done was because the flood elevation for the Hackensack River may change and the elimination of the large apartment building opened up an area for possible flood storage. He stated they could use some of that soil to elevate the building and provide further flood protection.

Ms. Batistic asked what the mature height was for the proposed Holly. Mr. Dipple said they were proposing about 3.5'. They were intertwined between the deciduous and evergreen trees along the front buffer strip. Ms. Batistic asked if they would be capped at 3.5'. Mr. Dipple said they would be planted at 24"-30" height and permitted to grow and suggested a height of 3.5-4'.

The Board Attorney questioned this revision did not contemplate making the buffer any wider. Mr. Dipple said it does and they were able to slide the retaining wall back a few feet.

Ms. DeBari questioned that three sides would hide the roof mechanicals. Mr. Dipple said the right, left and front.

Ms. Batistic questioned that the new roof that screens the mechanicals was now more than the two towers. Mr. Sproviero did not believe there was testimony on the height. Mr. Del Vecchio said the two peaks is what triggered the variance and Mr. Ashbahian was instructed to keep the screening below the two peaks so they did not trigger a new height variance by adding the screening. The Board Attorney questioned if the screening triggered a variance and is the existing height variance becoming any more intense. Mr. Del Vecchio did not think so. Mr. Dipple said the actual roof was about 22' from the grade in front of the building. It shows on the side of the building to be 24' because there was a 2' parapet. He had asked him to screen up to an elevation of 10'. The Board Attorney stated that would bring it to 32' but it would not trigger the D variance. The Board Attorney asked for confirmation of the parapet. Mr. Dipple agreed it was 32'.

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

The Board Attorney reminded the public to constrain the questions to Mr. Dipple's testimony and to adhere to the 7-minute rule.

Karl Schaffenberger, 173 North Park Drive, said when Mr. Del Vecchio asked him the reason was for raising the supermarket 2' he said for a number of reasons and only one was mentioned. Mr. Schaffenberger said one reason was getting the building out of the river. Mr. Dipple said he mentioned at least two. He said the first reason was that they knew that the Hackensack River elevation may change. The second reason was that the large apartment building originally proposed was no longer there and they could bring flood storage to the property were none exist. Mr. Dipple added that by doing so they had an opportunity to take some soil out of that area and move it over underneath the building to further protect the building. Mr. Schaffenberger questioned that when he testified that the elevation of the Hackensack River may change he was referring to elevation in terms of the map not in terms of the river. Mr. Dipple agreed and said the DEP was in the process of restudying and doing the hydrology and the flood hazard area maps would be revised.

Lori Barton, 399 Roslyn Avenue, asked how tall the tallest trees would be. Mr. Dipple said the cherry trees were shown as 2.5-3" caliber trees, which he thought, would be 8-10' at time of planting. Ms. Barton asked how it compared to the existing trees along River Road that would be removed. Mr. Dipple said they would be significantly shorter.

Steven Tencer, 701 William Bliss Drive, asked if the landscaping would be breaking up the view of the roof top mechanical or would it be entirely hidden. Mr. Dipple said he did not testify that the landscaping alone would hide the mechanicals but it would break up the visual of the top of the building. The resident asked what the percentage of the roof would be screened. Mr. Dipple answered as someone progresses up or down the sidewalk they would encounter these visual barriers with the evergreen and deciduous trees. Mr.

Tencer asked if all the buildings would be raised. Mr. Dipple said only the supermarket. The resident asked why they were only protecting the supermarket. Mr. Dipple said the supermarket was the largest building on the site. The finished floor of the bank is proposed to be 4' higher than the new elevation of the supermarket and the residential building was proposed to be 1' higher than the new supermarket elevation. Mr. Tencer asked if it would protect anything surrounding the site. Mr. Dipple said no.

Sam Tripsas, 327 Maple Avenue, Oradell, asked about the wall for the screening of the mechanicals. Mr. Dipple said the change was a new screening parapet on three sides.

Michael Gadaleta, 270 Demarest Avenue, asked with the additional screen did he know where they stood with trees removed vs trees proposed. Mr. Dipple thought the plan only indicated the trees removed. Mr. Gadaleta asked for the count of the total trees plantings. Mr. Dipple said a table of plantings was on the plan. Mr. Gadaleta asked for the size of the screen. Mr. Dipple said the length of the screen was about 80' wide on the bottom and at the top it was 58' wide. The resident said that was over 4,000 sf of roof top coverage. Mr. Dipple did not do the calculations. The resident asked if that was the only piece of equipment. Mr. Dipple said no there were a number of low units hidden by the parapet in the back. Mr. Gadaleta asked if there were 20 HVAC units or 2 units that went with the chiller. Mr. Del Vecchio answered that Ms. Batistic testified that the large unit on the roof would be the one that troubled her. They have not proposed or changed any other aspect of the plan as it concerns the other rooftop mechanicals on sheet C-02 that has been on file and testified to by Mr. Ashbahian, said Mr. Del Vecchio. Mr. Gadaleta stated they experience power outages and asked if there were any generators proposed. Mr. Del Vecchio showed the rooftop plan that was introduced by Mr. Ashbahian. The Board Attorney asked if he knew the answer to Mr. Gadaleta's question. Mr. Dipple did not know. The Board Attorney asked if someone could get an answer to that. Mr. Del Vecchio said if there was a generator he could assure them it was not on the roof. Mr. Gadaleta said the building was raised from 14' to 18' and asked how much additional fill would be needed to bring into the site. Mr. Dipple did not know and said they ran preliminary calculations and with the storage created it was close to being a wash. Mr. Gadaleta said on sheet C-12 there was a sidewalk in place along Cecchino. Mr. Dipple said that has always been on the plan. Mr. Gadaleta said it did not exist. Mr. Dipple said it was proposed.

John Rutledge, 335 River Road, asked if the rooftop mechanicals would be visible from Madison. Mr. Dipple said it was open from the back. Mr. Rutledge thought the only people who would see the roof units were the students at the high school. Mr. Dipple said it was screened on the left side facing the high school. Mr. Rutledge asked if the second and third floor of the high school would have a higher elevation. Mr. Dipple did not know and added the screen was taller than the unit itself.

Motion to close was made by Mr. Ix, seconded by Mr. Rebsch and carried by all.

The Board Attorney asked if there were any more witnesses tonight. Mr. Del Vecchio answered no and said the meeting would be carried to December 10th.

Mr. Del Vecchio said they had a chance to look at the building height and he was not sure that the screening of the mechanical equipment constitutes a height variance under the code. He stated building height was defined in their code as the vertical distance measured from the grade plane of the building to the highest point of the roof. The Board Attorney stated Ms. Batistic would understand that. Mr. Del Vecchio raised it now so they would have time to take a look at it. Mr. Sproviero agreed.

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