

**New Milford Zoning Board of Adjustment
Special Meeting
June 27, 2013**

Acting Chair DeBari called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:04 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	Present (7:04)
Mr. Rebsch	Present
Mr. Stokes Vice Chairman	recused
Mr. Schaffenberger-Chairman	recused
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.

The Board Attorney discussed the agenda for July 18, 2013 and asked the members if they would be able to start the meeting at 6:30 pm. All members agreed.

Mr. Del Vecchio, member of the firm of Beattie Padovano on behalf of the applicant, asked for special meetings to conclude the proceedings in a timely manner. He understood at the July meeting there would be other applications on the agenda and there would be a procedural situation where the public would be given an opportunity to present testimony in one section of the meeting and allowed a second section of the meeting to provide comments which would add to the length of the meetings. The Board scheduled August 1, 2013 at 7 PM for a special meeting..

Mr. Sproviero said there was a pending motion for the Board to dismiss the application which was filed by Mr. Alonso. He added the Board received yesterday the applicant's response to the relief.

Mr. Alonso, 45 Clover Court, clarified this was not a personal attack against Mr. Stokes but rather a procedural motion based on jurisdictional arguments based on facts of the case and applicable case law. Mr. Alonso stated on January 6, 2011 the Board of Education (BOE) sent a letter to the Mayor and Council expressing concerns about the development and sale of the site with an attached document to the proposal of a partnership between United Water, Borough of New Milford and BOE which dated back to 2009. According to Mr. Alonso, the BOE had a plan for the property since 2009 and NMRA had indicated in their response that they had no knowledge of any communications other than the March 2013 letter. Mr. Alonso questioned that there was a conflict if NMRA knew about these original letters. He added sometime after January 2011, it appeared that NMRA reached out to Mayor and Council and asked for consideration for rezoning of the subject property. Mr. Alonso said the issue was what was discussed between NMRA and Mayor and Council. He said the BOE knew about it because the hearing was held at the high school. Mr. Alonso said in January 2012, the application was filed with the Zoning Board of Adjustment. He added that Father Hadodo and Karl Schaffenberger recused themselves from the beginning of the application. Mr. Alonso stated that the BOE intent was to acquire the land and make it part of their grounds and added that Mr. Stokes was supervisor of building and grounds. Mr. Alonso discussed the timeline of events. Mr. Alonso said Mr. Stokes had to recuse himself because of the conflict of interest and added the entire process was tainted because of his participation. He believed it was possible that NMRA knew about this before the March 2013 letter based on the participation of the BOE and because it has gone through the Mayor and Council. Mr. Sproviero asked why that was important and wasn't the issue when Mr. Stokes knew about it. Mr. Alonso said no because even if you didn't know about it, it was impossible for him in his capacity as an employee not to know this was happening. Mr. Sproviero asked what was the significance of the timing of the applicant's knowledge. Mr. Alonso said it was not relevant. Mr. Sproviero agreed but said he has been saying NMRA had to have known about this. Mr. Alonso clarified that it was only relevant as of 2013. The Board Attorney told Mr. Alonso he might be right with his factual predicates and the ultimate relief that he was seeking but Mr. Sproviero said he did not find in the MLUL any provision that said the Board could dismiss an application on any grounds other than a final determination. Ultimately it is the courts that make the determination, said Mr. Alonso. The Board Attorney agreed. Mr. Alonso said there were unique issues in this case not supported by law and he was creating another issue for the court to decide. The Board Attorney understood if his intent was simply to preserve his right to raise the issue. According to the Board Attorney, this was a matter to be determined by a court of law and he did not see any authority put upon the Board to do anything other than render a final determination. Mr. Alonso understood.

Mr. Del Vecchio relied on their papers dated June 26, 2013 and there was a lot of conjecture and theories thrown out by Mr. Alonso. Mr. Sproviero said there was conjecture on both sides. The Board Attorney said the principle issue was where was the authority for the Board to act upon such a remedy. Mr. Del Vecchio agreed and added what was lost in Mr. Alonso's presentation was NMRA filed the declaratory judgment to have the court declare whether or not Mr. Stokes could continue to sit because it was the Board itself and Mr. Stokes who could not determine that issue. Mr. Del Vecchio

recognized that the Board was not the forum to make that determination. He added that was the case then and remained the case now and that was essentially the end of their position as was laid out in their papers. Mr. Sproviero clarified that in the action that was filed on behalf of the applicant, it was not the position of the applicant that Mr. Stokes had a conflict but it they were there to determine whether a conflict did or did not exist. Mr. Del Vecchio said the issue was so close a call that they felt the courts needed to decide the issue. He added they have been diligent in preserving the record and trying to insure it was sound for appeal. The Board Attorney said in reading their papers he got the impression that they felt Mr. Stokes had a conflict. Mr. Del Vecchio said that was not their intention but they took it as that because of Mr. Stokes voluntary decision to step down. Mr. Sproviero recalled that Mr. Stokes statement was a rather safer than sorry position and clarified that Mr. Del Vecchio's position was that he should recuse himself not necessarily on the basis of an existence of a conflict but to take the actions best suited to the preservation of the record. Mr. Del Vecchio agreed.

The Board Attorney stated the Board was not the forum to determine this and the Board Members duty as a land use board was to diligently prosecute an application and render a determination with regard to relief sought. The Board did not have the power to grant a relief that Mr. Alonso asked for at this Board. Mr. Alonso has made the objection part of the record of proceedings and when the application comes to a final conclusion Mr. Alonso would have right to raise this issue in the appropriate judicial forum. The Board Attorney took no position as to the merits of the application on conflict issue and the integrity of the proceedings issue would be decided by a court of law. According to the Board Attorney, he found no authority of this land use board to do anything other than hear the application and render a final determination. He added that any objector had the right to raise an issue in the appropriate judicial court and this was not the place or the time.

The Board Attorney said there should be a motion made as to whether the Board was prepared to dismiss this application for the reasons set forth in Mr. Alonso's request for dismissal.

Mr. Loonam did not think the Board had the authority to determine whether or not the Board thought there was a conflict. The Board Attorney agreed but was asking the Board to consider a motion to deny the application on the grounds the Board did not have the authority to grant the relief.

A **Motion** was made by Mr. Ix to deny the request to dismiss the case on grounds that the Board did not have the authority to grant the relief, seconded by Mr. Denis.

The motion passed on a roll call vote as follows:

For the Motion: Members Ix, Denis, DeBari, Rebsch

Abstain: Member Loonam

Mr. Sproviero said they received correspondence from Mr. Flora's office advising that Oradell's traffic expert would not be present at this hearing. The Board Attorney explained they would hear the evidence presented by the objectors and not the public

comments. The Board Attorney's position on behalf of the board was that they would conclude in its entirety all of the evidential aspects of the application before the record was open for public comment. He added after the conclusion of that portion of the proceeding, the Board's experts would render their reports. Mr. Sproviero clarified that before public comments they should have heard and considered all the evidence and that was why there would be two separate times that they would be able to address the Board.

Ms. DeBari asked Mr. Flora if he was prepared to speak on behalf of Oradell. Mr. Flora would prefer to make his comments all at once with respect to the position of the Borough of Oradell and would be introducing their traffic expert and provide a report.

Motion to open to the public for the purpose of the presentation of the public's evidence was made by Mr. Loonam, seconded by Mr. Ix and carried by all.

John Rutledge, 335 River Road, was sworn in by the Board Attorney. The resident presented photographs. The Board Attorney asked if he took the photos, when they were taken, if they were altered in anyway and if the photos fairly and accurately depict the condition. The resident answered it did and the photos were not altered. Mr. Rutledge answered he took one series of photos on June 24, 2013 and the other set on March 12, 2013. The first set of photos taken on June 24, 2013 showed a crew dispatched by Bergen County to create a crosswalk on the corner of River Road and Cooper Street. He added one of the Sycamore trees was removed to complete it. The resident said his problem with this was regarding the traffic expert's counts and lack of recognition that Cooper Street was used as a spill over parking lot for the high school. The other photos showed the afternoon pick up of students at the high school with traffic backing up. Mr. Del Vecchio said the photo with the pedestrian crosswalk at Cooper was taken after the date of the traffic experts inspections but he had no objection to the photo representing what happened on the date taken but it had no relevance to the proceedings. He added the photos of traffic were photographs not traffic counts but appeared to be accurate but did not know what relevance they were to the proceedings. Mr. Del Vecchio had no objection to them as exhibits.

The Board Attorney marked as exhibit O-1 set of photos of high school and traffic
O-2 set of photos of Crosswalk

Mr. Rutledge said Ms. Dolan never took a traffic count on Cooper Street. He added Cooper Street was a secondary parking lot for high school students. The residents on Cooper, Charles and Salem were subjected during school days to traffic and automobiles parked in front of their homes. Mr. Rutledge agreed the striping was done after the traffic testimony but thought that the County put in the crosswalk because of the amount of automobile and foot traffic by students. He said this was an indication there was a flaw in the traffic expert's recognition of potential safety areas. Mr. Rutledge said he counted more than 45 cars on Cooper, 28 parked on Charles and 12 on Salem. The other set of photos showed the traffic from the pick up of students at the high school. He wanted to demonstrate the lack of projected recognition of what may or may not happen and his concern with additional traffic issues from the development in this area and thought this was a potential concern that needed to be addressed.

The Board Attorney asked for the photos to be transmitted to the Board by email and distribute electronic copies to Mr. Del Vecchio, Mr. Alonso and Mr. Flora.

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

Carrie Hittel, 544 Windsor Road, asked if the photos represented the high school windows as far as ventilation to the school. Mr. Rutledge did not think so.

Daniel Kemp, 217 Cooper Street, asked if the photos showed there were no sidewalks on Cooper. Mr. Rutledge said they might.

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

Steven Tencer, 701 William Bliss Drive, was sworn in by the Board Attorney. The resident requested to testify as an expert witness. The Board Attorney asked in regard to this application what field of discipline would he offering expert testimony. Mr. Tencer said he would address the traffic engineering from a statistical point of view. The resident said his degree was in industrial engineering and discussed his experience. Mr. Del Vecchio objected to this witness as being qualified as an engineer in the field of traffic or civil engineering. The Board Attorney asked if his testimony would be constrained to statistical analysis. Mr. Tencer also wanted to talk about the planners study. The Board did not recognize Mr. Tencer as an expert as defined in the context of the MLUL but he could offer factual testimony. The resident discussed Mr. Steck's testimony and said the applicant's studies only applied to the projects site not the surrounding communities. He added the applicant's witnesses defined traffic volumes, road closures, student safety, noise, flooding and other problems created by this development as New Milford's problems not theirs. Mr. Del Vecchio objected and stated this public comment belonged at the commentary section since there was no factual evidence. The Board Attorney asked if he would give any statistical data. Mr. Tencer answered no. Mr. Sproviero asked him to reserve his comments to the commentary section.

Ulises Cabrera, 659 Columbia Street, was sworn in by the Board Attorney. Mr. Cabrera said his document was regarding flood conditions. The Board reviewed the photos and documents for what was evidence and commentary. The Board Attorney asked if the photo on page one and page 10 fairly and accurately depicted the situation. Mr. Cabrera said yes.

The Board Attorney marked as Exhibit O-3 documents pages 1, 2 (tidal graph only), 10, 11 (tidal graph only) The Board Attorney stated he could submit the full version of the New Jersey Flood Hazard Area Control Act. He stated submissions should be in by July 8, 2013.

Recess

Mr. Cabrera stated he was a flood victim and his home has flooded four times since 2007 and the property had flooded five times since 1999. He added in 2007, his basement flooded with 62 inches of water, on April 17, 2011 his house flooded with 13” of water, on August 28, 2011 he had 56 inches of water with Hurricane Irene and 6’ with Hurricane Sandy caused by tidal surge. The resident said the additional runoffs were caused by overdevelopment throughout Bergen County and Rockland County. According to Mr. Cabrera, Mr. Henning from United Water, spoke at the November 28, 2011 Mayor and Council meeting about flooding in New Milford.. Mr. Del Vecchio objected that was hear say and they could not question Mr. Henning. Mr. Sproviero did not have a problem with it if it was being offered for what was being said at the meeting as opposed to the veracity of Mr. Henning statement. The Board Attorney added that they could not verify the accuracy of what Mr. Henning said. Mr. Cabrera said at the meeting Mr. Henning said that in 1960, 75% of runoff was absorbed. Today only 50% is absorbed; a 100% increase in runoff.

In the New Jersey Flood Hazard Area Control Act, Mr. Cabrera read unless properly controlled, development within flood hazard areas can exacerbate the intensity and frequency of flooding by reducing flood storage, increasing stormwater runoff and obstructing the movement of floodwaters. Mr. Del Vecchio stated it did not offer any factual testimony that stemmed from the witnesses knowledge of a fact. He was reading a law into the record. The Board Attorney recommended they should allow the resident to make his presentation based on his layman’s analysis of the flood hazard act. Mr. Cabrera continued to read the NJ flood hazard area control Act. The resident commented that New Milford was subject to both tidal and fluvial hazard areas. Mr. Cabrera said Mr. Dipple testified that their flood events were caused by upstream rainfall events and not by tidal flooding. He thought that was flawed because his property floods by tidal surges. The resident also thought removing the berm and putting a detention infiltration basin to the southwest corner of the property would make it worse for the town. The resident said the purpose of the tidal charts was to discredit the engineer who testified they did not flood because of the tidal surge.

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

No one wished to be heard in the audience.

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

Mr. Loonam clarified that Mr. Cabrera’s flooded five times since 1999. Mr. Cabrera agreed. Mr. Loonam asked what was the reason for his home flooding. The resident’s opinion was both the tidal surge and because United Water did not release water before a storm unless mandated by the Governor’s office. Mr. Loonam said he has had flooding without this development and asked how he thought this development would increase the flooding at his property. The resident said they learned from Mr. Henning at the meeting at the Mayor and Council that the reason for flooding was due to development occurring in Bergen and Rockland County which created additional runoff. He added additional development along a flood hazard area infringes and the water basin would collect all the

water would be piped into a basin. According to Mr. Cabrera, this development of 14 acres would only make the situation in New Milford worse. Mr. Loonam asked if he was aware that Mr. Dipple's testimony regarding runoff was that the applicant had to build something that helps. The resident said it fills up 18" and after that it would flow into the Hackensack and commented the flow of runoff would have higher speeds with heavy rain fall. The resident felt although NMRA were taking the right measures, the measure were not to build at all along the flood hazard area.

Todd Ghiosay, 334 Morris Lane, was sworn in by the Board Attorney.

Mr. Ghiosay submitted a series of photos for exhibit. The Board Attorney asked who took the photos, when were they taken and if they fairly and accurately represent the condition of the area photographed and were they altered in anyway. Mr. Ghiosay said he took all the photos, they were labeled with the date and location, they were not altered and they represented the condition.

The resident stated he had photographic evidence to show to the Board the flooding problem at the high school during the storm Irene.

The Board Attorney marked as **Exhibit O-4** – 17 Photographs taken by Todd Ghiosay dated August 11, 2011.

Mr. Ghiosay said he lived in New Milford for 56 years and never had flooding until 1999. Mr. Ghiosay read an article from a paper regarding the east coast sea level rising faster than global average. The resident said what was proposed for the property today was not good for today and did not take into account what was reported in the paper. Mr. Ghiosay hoped the Board would take into account what may happen in the future. He added that New Milford was purchasing homes to be knocked down and never be redeveloped. Mr. Ghiosay submitted a document and Mr. Del Vecchio objected to the entry of the document. Mr. Sproviero agreed and explained he could speak of the information he learned from the article but the article itself without the ability to cross-examine the author could not be introduced as evidence.

Mr. Ghiosay stated never missed a game or practice due to flooding when he was on the football team. He submitted a series of four photos dated June 8, 2013 from a heavy rain event. The Board Attorney asked who took the photos and when were they taken. According to Mr. Ghiosay, the photos were taken on June 8, 2013 and they were not altered. The Board Attorney asked if the photos fairly and accurately represent the condition of the area. Mr. Ghiosay said yes.

The Board Attorney marked the **Exhibit O-5** -Photographs of the track and high school and Hirschfield Brook taken by Todd Ghiosay.

Mr. Ghiosay described the photos of the high school showing the entire track inundated by water with a school of fish swimming inside the track as well as the fieldhouse and snack stand inundated by water not from a memorable storm. He stated Hirschfield Brook

also floods and normally was about 15' wide and in the photos it looked like a lake. Mr. Ghiosay was not only concerned about flooding but also the quality of the river. He read an article printed on March 27, 2013 on the health and safety of the water. The Board Attorney asked how the health of water related to the application. Mr. Ghiosay said he had a third set of photos dated December 8, 2012 of the current shop rite parking lot. Mr. Sproviero asked if the photos fairly and accurately depict the condition of the shop rite parking lot at the time he took the photos. Mr. Ghiosay said yes. The Board Attorney asked if he altered the photos. Mr. Ghiosay said no. Mr. Del Vecchio did not object to the photos subject to relevancy and objected to any recitation about the substance on the ground. Mr. Sproviero agreed and told the resident that he could say what he saw or smelt and unless he had factual data on what the substance was the Board would not accept that as evidence.

The Board Attorney marked the **exhibit O-6** - six photos of current Shop Rite parking lot. Mr. Ghiosay said these were six photos of the existing Shop Rite parking lot and he has spend 25 years cleaning up oil spills and knew the visual signs and what the oil spills smelt like and said it was diesel fuel on the pavement. He commented patrons walk thru this during the day until the rain washed it down the storm drain and once in the storm drain it was a direct shot into the river. Mr. Ghiosay said that was the importance of the article he read because the rivers had runoff, sewage and other problems this was another insult to the Hackensack River. According to Mr. Ghiosay, if this project were approved there would be another 9-10 acres of parking lot. He added nothing in a parking lot was good for the environment.

Mr. Loonam questioned that he was positive the spills in the photos was diesel fuel and assumed it was coming from a delivery vehicle. Mr. Ghiosay said yes. Mr. Loonam asked if there was any way to know it was from a vehicle that entered the property for deliveries or from something thrown out from a car. Mr. Ghiosay said he did not witness it but saw the conditions. He did not know what truck but the point was there was no effort to clean it up.

Motion to open to the public was made by Mr. Loonam, seconded by Mr. Rebsch and carried by all.

Michael Gadaleta, 270 Demarest Avenue, asked Mr. Ghiosay if he would explain his 25 years of experience. Mr. Ghiosay said he was an environmental scientist for the State of New York with a B.S. from Rutgers University in environmental science. He started with the department 29 years ago in an enforcement unit and in 1997 he began investigating and did remediation of oil and chemical spills. Mr. Gadaleta asked if he considered himself an expert in the field of environmental science. Mr. Ghiosay answered he had sufficient confidence in his ability to clean up spills and investigate the cause.

Karl Schaffenberger, 173 North Park Drive, said typically when someone produced a photo the issue was always who took the photo and if the person could not be identified they could not use the picture. Since Mr. Ghiosay took the photos, Mr. Schaffenberger asked that each photo be verbally identified for the record.

Mr. Ghiosay said the first set of photos (Exhibit O-4) were taken on August 28, 2011 between 4 – 6 pm.

The resident described each photo as follows:

Photo #1-taken from the vantage point of the curbside at United Water property looking towards the soccer field and teachers cafeteria. Mr. Schaffenberger commented it was clearly underwater. Mr. Ghiosay agreed.

Photo #2- taken from same vantage point looking west on Cecchino Drive towards the field house and towards the Hackensack River and United Water property was on the right behind the fence. Mr. Schaffenberger clarified the property behind the fence was the proposed property, which was clearly under water. Mr. Ghiosay agreed.

Photo #3- taken from the same vantage point was a wider angle of the corner of the cafeteria showing the soccer goal half underwater and football field underwater. Mr. Schaffenberger clarified it showed the teacher's cafeteria underwater and Madison Avenue impassable except by boat. Mr. Ghiosay agreed.

Photo #4- the purpose of this photo was to show moments later the river kept on coming further and flooding Cecchino Drive. Mr. Schaffenberger added also the cafeteria. Mr. Ghiosay agreed flooding the cafeteria more.

Photo #5-taken from the left hand side of the high school of the southern driveway which showed the tennis courts and the southern end of the football field. It showed the entire student parking lot was flooded as well as the tennis courts. Mr. Schaffenberger clarified it was looking to the west and on the other side of the tennis courts was Madison Avenue that was impassable. Mr. Ghiosay agreed.

Photo #6-similar vicinity of a previous picture and a photo of the soccer field showing the goal halfway underwater and the flood water now well beyond the western edge of the school and most likely flooding the interior of the school. Mr. Schaffenberger clarified that the high school was underwater on the right. Mr. Ghiosay agreed.

Photo #7-a view of the soccer field in the foreground and the track and football field in the background and Madison Avenue between the two fields.

Photo #8-taken from the parking lot behind CVS through the fence into the tennis courts and showed the flood waters entering the high school. United Water property was in the background showing floodwaters have reached beyond the high school.

Photo #9- A view of Hirschfield Brook at Washington Avenue. He said the brook was usually about 15' wide and estimated it 200-300' wide.

Photo #10-A view of Hirschfield Brook at River Road – He said you could see the width of the bridge so the brook appeared to be 200-300 wide. Mr. Schaffenberger clarified the bridge was in the brook. Mr. Ghiosay agreed.

Photo #11-a view of Hirschfield Brook and the flooding of the Prospect Avenue playground showing houses in the back with several feet of water in their garages.

Photo #12- a view of Hirschfield Brook at Main Street east of 7-Eleven which was impassable. Mr. Ghiosay stated there was a clear health hazard with the sewage discharge from the sanitary manhole on the left.

Photo #13- a view of Hirschfield Brook at the Boulevard showing spectators on the left.

Photo #15 a view of the tennis courts looking west towards the Hackensack River.

Photo #16- looking west on Main Street towards Old New Milford Water Works which would be north entrances if this project was built. Mr. Schaffenberger clarified that this was clearly underwater. Mr. Ghiosay agreed.

Photo #17- was a close up of Main Street looking westbound which would be the location to the northern entrance to the proposed shopping center. Mr. Schaffenberger clarified that it was clearly underwater and impassable. Mr. Ghiosay agreed and said the elevation on the bridge rises above and the topography dips down by the water works.

Photo #18-home on Hirschfield Brook at Washington Avenue – the purpose of the photo was to show how devastating the flooding was to this home. He noted the water was half way of the garage and front door of the home.

Mr. Schaffenberger asked the resident if he agreed that photos #2, 3, 4, 16, 17 showed areas that were directly adjacent to the proposed property and clearly in water. Mr. Ghiosay agreed. The resident said these were areas that on the flood maps were not suppose to be in water. Mr. Ghiosay agreed.

Bill Murray, 425 Madison Avenue, had questions on the photos in exhibit O-5 taken on June 8, 2013.

Photo #A – Mr. Murray clarified the photo of the track covered in water up to the snack stand and his testimony was there was fish in the water. Mr. Ghiosay agreed. Mr. Murray concluded this was not only surface water from the rain but the fish indicated the banks of the river overflowed. Mr. Ghiosay agreed. Mr. Murray asked if the east corner of the track was adjacent to the field house. Mr. Ghiosay agreed. Mr. Murray said in the photo the track was completely covered in water and appeared it reached the field house. Mr. Ghiosay agreed. Mr. Murray clarified the field house was at the corner of Cecchino and Madison and asked if diagonally across that corner was the southwest corner of the proposed development. Mr. Ghiosay agreed. Mr. Murray asked how many feet he estimated that there was from the field house to the southwest corner of the development. Mr. Ghiosay estimated 75'. Mr. Murray asked if he could see the northeast corner of Cecchino and Madison Avenue from the field house. Mr. Ghiosay agreed. Mr. Murray clarified that water reached the field house from a moderate rain event on June 8, 2013. Mr. Ghiosay agreed.

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

John D'Ambrosio, 482 Luhmann Drive, was sworn in by the Board Attorney.

Mr. D'Ambrosio requested to be an expert witness in the field of architecture.

The Board accepted the qualifications for Mr. John D'Ambrosio as an expert in the field of architecture.

Mr. D'Ambrosio submitted his documents as exhibit O-7 and the Board Attorney and Mr. Del Vecchio reviewed the documents. Mr. Del Vecchio objected to the first document O-7A because it was on the practice of engineering not architect. Mr. D'Ambrosio said architecture dealt with square footage. Mr. Del Vecchio said architecture dealt with the practice of the fundamentals of building construction not with the civil engineer and earth moving. Mr. D'Ambrosio answered as an architect he was responsible for the engineer's work and oversees his work. Mr. Del Vecchio said maybe with the projects that he did

but the licenses that he was aware of would not allow that to occur. The Board Attorney clarified that he would be able to do the math as well an engineer. Mr. D'Ambrosio agreed. The Board accepted the document as an exhibit. There was a discussion on Mr. Dipple's map to be submitted with an overlay. Mr. D'Ambrosio said his purpose was to give his assessment of what amount of earth was being moved and he added that he was refuting Mr. Dipple's testimony. Mr. Sproviero asked if he was refuting the testimony as to the elevations being inaccurate. Mr. D'Ambrosio explained he had asked Mr. Dipple why he raised the building 2' to get out of the flood water and Mr. Dipple answered he raised it because he created a flood storage basin and needed to put the extra dirt somewhere. Mr. D'Ambrosio said it took a lot more dirt to elevate the building two feet. Mr. Del Vecchio said setting site grades was an area outside the expertise of this witness. Mr. D'Ambrosio discussed the site sections document (1A) that he prepared. Mr. Del Vecchio's only objection would relate to the soil aspects and the quantification of it and the accuracy of it. The Board eliminated document 2 and 2A. The Board Members commented that all the documents were different in their packets. The Board Attorney suggested he get his packets together. Mr. D'Ambrosio said he would have them complete at the next meeting. Mr. Del Vecchio asked if they would be eliminated Exhibit O-7. Mr. Sproviero agreed.

Ms. DeBari stated if copies were being presented they should have 11 copies to distribute to the members and professionals. Mr. Sproviero stated Mr. D'Ambrosio would reassemble his copies and asked the public how many others would be presenting evidence. Mr. Sproviero said they would limit the meeting to the four lay witnesses. Mr. Del Vecchio said they should have these four witnesses for the next meeting and asked Mr. Flora to have the traffic engineer ready to testify should time permit.

Mr. Loonam asked Mr. Del Vecchio if he anticipated bringing back Dr. Kinsey. Mr. Del Vecchio said the time to bring him back would be at their redirect case and they wouldn't make any decisions on who was coming back until they get to a point when they would be up. He understood his request and would factor it into the decision process. Mr. Loonam added he had several important questions. Mr. Del Vecchio understood.

Ms. DeBari stated some of the Board Members have been to the site. Mr. Rutledge asked if the Board would produce the reports requested from the environmental committee. Mr. Sproviero said the Board would address the issues by way of the Board's engineer.

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

Respectfully submitted,
Maureen Oppelaar