

Approved  
9/10/13

**New Milford Zoning Board of Adjustment  
Special Meeting  
August 1, 2013**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:09 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Binetti	Present
Ms. DeBari	Present
Mr. Denis	Present
Father Hadodo	recused
Mr. Ix	Absent
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes Vice Chairman	recused
Mr. Schaffenberger-Chairman	Present
Ms. Batistic – Board Engineer	Present
Mr. Sproviero – Board Attorney	Present

**PLEDGE OF ALLEGIANCE**

**RESOLUTION TO BE MEMORIALIZED**

**13-03 GORIN – 221 Birchwood Avenue - Block 119 Lot 7  
New Single Family Home – Building coverage**

**Motion** to memorialize the resolution was made by Mr. Binetti, seconded by Mr. Denis.

**A Motion** passed on a roll call as follows:

Members Binetti, Denis, Loonam, DeBari, Schaffenberger

**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.

Stephen Eisdorfer, firm of Hill Wallack, LLP on behalf of the applicant, asked for special meetings for August and September. The Board Members would not be available for any additional meeting in August and would discuss the matter at the August 13, 2013 meeting for September special meetings.

Mr. Louis Flora marked as Exhibit O-8 - L2 Group, LLC. Report dated 7/8/13.

Mr. Louis Flora, Counsel from the firm of Giblin and Giblin, 2 Forest Avenue, Oradell, NJ on behalf of the Borough of Oradell introduced Mr. Louis Luglio, P.E. L2 Group, LLC.

The Board Attorney swore in Mr. Louis Luglio, 160 Hillcrest Avenue, Leonia, NJ. The Board Members accepted the qualifications of Mr. Luglio as an expert in the field of traffic engineering.

Mr. Luglio discussed his report dated 7/8/13. The traffic engineer stated he looked at all the reports and plans submitted, attended at least two meetings, reviewed transcripts and meeting notes and conducted his own field visits. The traffic engineer said a traffic impact study needs to look at the existing conditions and traffic counts. They need to look at the future year, what type of growth would they see on the roadway networks and what would happen to the existing Shop Rite site if the proposed Shop Rite was open. The traffic engineer said a 2% growth factor per year was used in the report and that counted for background growth and the reuse of the existing Shop Rite. He said the next thing to look at was the surrounding roadways. Figure 3 in his report depicted consumer capture areas based on the proximity of the existing store locations. There was a lack of coverage area for Shop Rites specifically and it looked like some areas were unmet, said Mr. Luglio. Next he looked at the proposed project, reviewed the traffic impact study and the amount of trip generation projected. He discussed the numbers for the peak hours and said there was significant traffic volume that was generated to and from the proposed site.

Mr. Luglio thought the Shop Rite could provide some data on zip code information to get an idea on what was happening at the current site. In addition, the traffic engineer thought some information that would be helpful would be traffic counts for the existing Shop Rite to determine the percentages of how many people were coming/leaving the Shop Rite from the north and south. He referred to figure 4 which showed the actual study area locations that were included in the report. Mr. Luglio said seven intersections were included in the last revision. Figure 5 in his report was derived from the percentage of vehicles coming to the site from the roadways. It was the opinion of Mr. Luglio, that the intersection of Kinderkamack Road and New Milford Avenue should have been a study location because it would process at any peak hour over 100 vehicles per hour and also recommended Origin-Destination (OD) information on where people would be going to/from in the current store location.

Mr. Luglio stated that the NJDOT criteria were if 100 vehicles traveled in any direction thru an intersection it should be a study location. The Traffic Impact Analysis revised 1/4/13 prepared by Dolan and Dean, showed the site generated traffic to /from the site, said Mr. Luglio. The traffic engineer's opinion was the broader study area should be analyzed for the intersection of Kinderkamack Road and over to the east for a few intersections. The traffic engineer thought the 15% coming to /from the west towards Kinderkamack was low and could be as high as 30% which would change some of the numbers on the other approaches. He added said only the intersection capacity analysis would have to be done at that intersection. He thought the intersection at Elm Street

handling 15% was high. He added the applicant made the effort to look at the intersection and gave an analysis.

Mr. Luglio had checked all the numbers and information associated with the reports provided by the applicant. He said there were site improvements that were part of the plan, the intersections were narrow and the area was congested. He said the report did not suggest these intersections would operate at a perfect level of service nor did it degrade the intersections that they would not operate. His opinion was the am peak hours would get a little longer, the peak times during day would have more intensity but the roadways today that were congested would be a little more congested but be able to process the traffic thru the intersection based on the recommendations provided on the mitigations, signal timings and phasing plans. The Traffic Engineer agreed with the assumptions included in the traffic impact study that there was a certain percentage of vehicles that were considered pass-by traffic.

The traffic engineer said the NJDOT and ITE guidelines of 100 vehicles per hour during any peak hour were subject to the engineer. He stated a 70,500 sf supermarket was a large supermarket and from a traffic engineering standpoint it was not a direct correlation between a 40,000 sf and 70,000 sf supermarket. A 70,000 sf supermarket would have more amenities but did not necessarily double the amount of trips to/from, which was represented correctly in the applicant's reports. Mr. Luglio said the future intersections would operate at acceptable levels of service with the exception of some of the intersections that would be a degrade in the level of service but not to a point that the intersection would fail during any peak hour.

Mr. Luglio explained that the project would have an impact on the roadway network. It would be more traffic associated with it that the area had not seen before. According to the traffic engineer, beyond signal traffic timing, mitigation and phasing that was put in the study, there was not much more that could be done at the intersections because of the right of way. He added there was existing congestion on the roadways now and it becomes a function of how much the roadway could handle and it would be spread out over a longer period of time.

Mr. Flora referred to Exhibit O-8 and questioned the existing and projected traffic. Mr. Luglio said he was trying to give an example of the existing River Road traffic at the am/pm peak hours. Mr. Flora clarified that the last column showed the am/pm peak hour would have a 50% increase. Mr. Luglio agreed if it was compared to River Road traffic. Mr. Flora clarified that his conclusion was that this would have significant traffic increase on the area roadways and additional intersections need to be studied as well as the Origins -Destinations of the proposed shoppers. Mr. Luglio agreed. Mr. Flora questioned his testimony of 100 vehicles per hour was calculated from the original results of the traffic analysis prepared by Dolan and Dean on 1/4/13. Mr. Luglio agreed and he referred to an example showing 54 vehicles coming in the westbound direction at the intersection of Elm and 41 vehicles coming from the eastbound direction so 95 vehicles were at the intersection of Kinderkamack. He added it was less than 100 but close enough to have a study location. The OD information might change distribution but the overall information

in the traffic impact study would not change much in its recommendations, said the traffic engineer.

Mr. Loonam stated that safety has been brought up many times regarding the high school location next to the proposed site. He asked if the additional generated trips to the site had any impact to safety issues. Additional traffic and increase of accidents, Mr. Luglio said had no direct correlation in adding 100 vehicles and having an increase of accidents. He added there could be a significant increase of traffic on the roadways and not have any additional accidents as a result of it. He said the caveat to that was if the roadway and the connection to the site is designed to standards and safety guidelines. Mr. Loonam asked Mr. Luglio in regard to student's safety relating to crosswalks, would there be any significant chance there would be a major problem having this development next to a high school. The traffic engineer said no not that there would be a direct correlation that there would be additional conflicts between pedestrians and vehicles. He added there was more the applicant could do in terms of crosswalks at the intersections of River Road. Mr. Loonam asked from a traffic standpoint, what the ideal circumstances were to build a supermarket. Mr. Luglio thought as long as the roadway network had the capacity to handle the volume coming in, it could go anywhere. The traffic engineer's concern with this was they were adding a lot of traffic to an already congested roadway network. Mr. Luglio said the question was if the Board and the applicant want to live with additional traffic congestion that might last another 15 minutes in the peak hours. The traffic engineer said this site lends itself to this type of use because there were multiple access points. He said adding the additional traffic won't break the system but exacerbate the conditions that were there today. Mr. Loonam clarified his testimony was that it would exacerbate the conditions but asked if the site could handle the traffic it would draw. Mr. Luglio answered the site could handle the traffic with the mitigation measures and the site design from a traffic evaluation.

Ms. DeBari questioned if he was including the other six additional intersections. Mr. Luglio said no because he did not have the analysis for those intersections. He would be interested to see the analysis of the intersection of Kinderkamack and New Milford Avenue to see what change that would have in the level of service. Ms. DeBari clarified if there should be a study on that. Mr. Luglio agreed. Ms. DeBari thought there was a conflict in what he was saying. Mr. Luglio said this project and the amount of traffic that it would add was a significant amount of traffic. There was congestion on the roadway network around the site today and these intersections could work with the proposed mitigations, said Mr. Luglio. He added there would be additional queuing and congestion but it would still work. The Traffic Engineer said he would like to see intersections to the east and the intersection to the west to see what would happen to the neighboring intersections.

Mr. Denis questioned the backing up of traffic because of the train. Mr. Luglio said it was not part of the average day average condition that was normally studied. He said an event or a football game at the school was not an average condition. He thought the Board or the applicant for those special conditions need to employ traffic monitors or police at the

intersections. The Traffic Engineer said there would be additional volume and congestion and it would work but you would have to live with it.

Mr. Sproviero questioned if he was familiar with the existing Shop Rite location. Mr. Luglio said he was. Mr. Sproviero asked if his traffic flow concerns regarding the proposed site be more or less acute for the existing supermarket. Mr. Luglio said the concerns would be the same for the existing Shop Rite expanding to 70,000 sf because it was a different segment of River Road. The Traffic Engineer would have the same issues of additional volumes coming to the existing expanded site and would also want to expand his analyses further away. Mr. Sproviero asked how the existing location of the high school entered into his analysis. Mr. Luglio said only from the sense that he would design the intersections with the pedestrian and higher level pedestrian activity in mind and if that could be done it would not be a large concern. The Board Attorney asked if his opinion was that this has been done with the current application. According to Mr. Luglio, it had been done to a certain degree but there was more that could be done at the intersections in the one-way section that the students park in. There could be more pedestrian amenities and crossings that could be accommodated that would be safer than a striped crosswalk on the pavement, said Mr. Luglio. Mr. Sproviero asked what conditions he would recommend. Mr. Luglio said it could be a stamped concrete, raised or brick pavers. He said the applicants or Board's engineer could come up with mechanisms to distinguish the crosswalks and pedestrian areas.

Ms. DeBari questioned his report that 15% increase of traffic flowed from Kinderkamack to New Milford to the site. Mr. Luglio clarified that 15% of the traffic volume destined for the supermarket would be coming from the Kinderkamack/New Milford intersection, 30% would be coming up River Road to the site based on the traffic information contained in the report. Ms. DeBari said he also said there would be 15% increase of traffic on Elm Street which would be opening soon. Ms. DeBari added that Elm Street was a cut thru and had a lot of traffic. Mr. Luglio agreed and said if it was 20-25% it would change everything but not to the degree that the project would not be viable. He added it would not change the outcome of the study.

Mr. Eisdorfer asked if he had any empirical basis for saying that this project would increase the length of the period of the rush hour by 30 minutes. Mr. Luglio said from a qualitative standpoint the intersections were near capacity and the only way to go would be length of time. Mr. Eisdorfer questioned his basis for the 30-minute time. Mr. Luglio believed that the additional traffic specifically during the highest peak hours would be a 15-20 minute increase in congested activity. Mr. Eisdorfer clarified that was his discretionary judgment. Mr. Luglio agreed. Mr. Eisdorfer questioned his testimony that an additional study be done and asked if a gravity model was the same as an Origin-Destination (OD) analysis. Mr. Luglio said a gravity model would be similar to looking at what the OD was but any other way would not be as conclusive as the data from existing customers. He added he would use OD as the first source of information. Mr. Eisdorfer stated the first part of the model was to estimate how far a customer would travel and asked if there was an industry standard on it. Mr. Luglio said there was not an industry standard on how far a customer traveled but it depended on the existing stores. Mr.

Eisdorfer asked if that was affected by what the other competing stores might be. Mr. Luglio said it was based on the type of supermarket. Mr. Eisdorfer said people choose their supermarket on the basis of convenience, price, ease of parking, products, and ethnic products. Mr. Luglio agreed. Mr. Flora objected that this was outside the expertise of this witness regarding ethnic products. The Board Attorney said he could offer his opinion. Mr. Eisdorfer said in his report he included all the Shop Rites and asked if supermarket brand loyalty trumps all the other factors. Mr. Luglio said no it was simply other Shop Rites because this was for a proposed Shop Rite. Mr. Eisdorfer commented there were other supermarkets that would draw from the same customer base. Mr. Luglio agreed. Mr. Eisdorfer asked if the decision to include or exclude them was a discretionary judgment on the part of the traffic engineer. Mr. Luglio agreed. Mr. Eisdorfer asked how he decided on the shapes for the catchment area in figure 3. Mr. Luglio said it was based on the roadway network and physical features of the land. Mr. Luglio added this was not rocket science but an idea on how far the catchment area would be compared to the other store locations. Mr. Eisdorfer asked if a gravity model was required under ITE standards. Mr. Luglio said probably a gravity model would be required for this particular project but he said it would be easier to analyze the data. Mr. Eisdorfer asked if this was an engineering judgment. Mr. Luglio agreed. Mr. Eisdorfer asked if he did traffic counts or a traffic study of the existing Shop Rite. Mr. Luglio said no. Mr. Eisdorfer clarified that he wanted to see six additional intersections studied. Mr. Luglio agreed but said the purpose of the letter was for three intersections marked A, D and E in figure 4. Mr. Eisdorfer asked if he was looking for additional traffic counts. The Traffic Engineer said additional traffic counts for existing conditions along the intersections of Kinderkamack and Boulevard and the analysis for the existing build and no build. Mr. Eisdorfer asked if he did any traffic counts. Mr. Luglio said that was not his job and it was the responsibility of the applicant. Mr. Eisdorfer said without that data he could not say it was a detrimental impact. Mr. Luglio said they could not say it would not be without the data to prove it. He added it should be studied and determined if there was an impact. Mr. Eisdorfer asked what his empirical basis was for his estimate that the distribution of the traffic on New Milford should be as high as 30%. Mr. Luglio agreed that the 15% was low based on the traffic volumes along New Milford that travel up and down Kinderkamack and having one crossing to get into Oradell and River Edge. Mr. Eisdorfer asked if he had a basis for 30%. Mr. Luglio said no and there wasn't a basis for 15%. Mr. Eisdorfer asked if any of the vehicles at any of the intersections rise above 100 vehicles per hour assuming the distribution provided in this report was correct. Mr. Luglio answered no and his opinion was 95 was very close and the intersections along Boulevard were under 100 but over 75. Mr. Eisdorfer clarified that none of these met the 100 standard. Mr. Luglio agreed.

Mr. Flora questioned brand loyalty for supermarkets. Mr. Luglio said there were probably brand loyalties but the applicant must have some market research data on what was happening in the area and the information has to be available to them to make a determination from a customer base if they move to a different location or stay at the existing location. Mr. Flora asked if he was aware that the Board requested information on zip codes to determine the OD. Mr. Luglio had read that. Mr. Flora asked with respect to the intersections not studied, was there any reference in the Dolan and Dean report that indicated that they utilized other information to determine possible impact at the

intersections. Mr. Luglio said not on those other intersections. He added that the study area was done in and around River Road and New Milford Avenue around the site, Madison Avenue, expanded to Elm but did not expand further in any direction. Mr. Flora questioned if the information was available. Mr. Luglio said it was not in their report. Mr. Eisdorfer asked if he was aware of a report reflected in A-42 of directions for cars entering the existing Shop Rite. Mr. Luglio said the report spoke of a study of the existing site for trip generation but not distribution.

Ms. DeBari wanted clarification on what intersections he thought needed to be studied for the application. Mr. Luglio said the intersection of New Milford Ave/Kinderkamack Rd, Main Street/Boulevard, Madison/Boulevard. He was asking to widen the study area by three intersections east to Boulevard west to Kinderkamack and see what the analysis said. The second part was to get the zip code information or a study of the direction people were coming in/out of the existing Shop Rite.

The Board Attorney clarified his testimony was that this was not rocket science and questioned if gravity models were rocket science. Mr. Luglio answered no and gave an example of a gravity model having an existing store and opening up another store 100 miles away they would look at the 50 mile halfway distant point. The new facility was attracted by gravity of its captured area.

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

Richard Mide, 660 Columbia Street, questioned how the vehicles from the residential area affected the report. The traffic engineer said the number of vehicles coming to/from the residential component were included in the report. He stated in the 1/4/13 revision based on the ITE they had four different peak periods for the supermarket, bank and residential components. He added the analysis was for the entire project. Mr. Mide asked if there was anything in the report regarding additional use of the roads creating additional repairs. Mr. Luglio said the report would not go into road repairs. Mr. Mide asked if road repairs would that create more traffic in an area already congested. Mr. Luglio said it would not be reflected in this type of analysis. Mr. Mide questioned his testimony on traffic due to the train being similar to a one time football game. Mr. Luglio said in addition to the train there were sporting events. Mr. Mide said if there was a weather event it would create more traffic by the trains. Mr. Luglio agreed.

Nicholas D'Amelio, 349 Trench Drive, clarified that there would be an increase in traffic time during peak hours. Mr. Luglio agreed. Mr. D'Amelio asked if anyone took into consideration the location of the fire department and the ambulance corp and would it affect their response time during peak periods. Mr. Luglio said that was a valid question but it would not be part of the study. His opinion was it would not be detrimental only because if they were responding to an event they would not be sitting in traffic but they would go thru an intersection that was stopped.

John Rutledge, 335 River Road, if the ITE called for logic and local knowledge information to add to their interpretations. Mr. Luglio said local knowledge was

important but it would come after the report was submitted and comments were received from the Board or professionals. Mr. Rutledge said if the project was approved there be an 18-24 month build out and asked about the growth in traffic. Mr. Luglio said the ITE did not give an idea of growth in traffic since the NJDOT with the County had a table for their anticipated growth per year. He added in this area it was 1 % per year anticipated background growth and they utilized 2% for a total of 4%. Mr. Rutledge questioned the percentage in 5 years. Mr. Luglio said from a planning standpoint they utilized 2% but he would have utilized 1% per year. He thought they could use the 1% for the first five years. The traffic engineer said that traffic would not grow 2% over 20-year period because there was not enough capacity to grow to that point. Mr. Luglio said the existing Shop Rite was old in terms of design and something brand new had to conform to the industry standards. Mr. Rutledge clarified that it would work although there would be additional traffic and congestion but it may not work to acceptable levels for townspeople. Mr. Luglio agreed. Mr. Rutledge questioned if the ITE information had any slack in it. Mr. Luglio said there was room and deviation to what the data was and usually ITE data was on the higher side than what was usually counted. Mr. Luglio said Dolan and Dean had volumes lower than ITE but used the higher rates.

## RECESS

George Fabiano, 109 Golden Gate Avenue, asked if he was aware that Elm Street/Main Street was a T-intersection. Mr. Luglio agreed. The resident asked if the T-intersection would require an installation of a traffic light. Mr. Luglio said it was possible in the future but a study would be needed to justify it. Mr. Fabiano asked if Madison/Main Street required a traffic light. Mr. Luglio said no. Mr. Fabiano questioned if a study was done for crossing guards or police for students crossing to the field. Mr. Luglio said it would not be part of the traffic impact study but rather part of the site plan or part of their operations. The resident asked if there had been a study of the increase of trucks and the effect on the area. Mr. Luglio said the truck traffic was included in the traffic impact study and there was testimony in October 2012 about truck activity.

Steven Tencer, 701 William Bliss Drive, clarified his testimony was the proposed plan in terms of traffic flow would work and questioned what kind of plan would not work. According to Mr. Luglio, if this was a 120,000 sf shopping center with 30,000 sf of retail, it might be too much for the site. The criteria would be the intersections and their ability to process the traffic for all four peak hours. He said it was shown in the report with mitigation measures the intersections would be able to operate at acceptable levels of service. Mr. Tencer asked what the level of service E would be like. Mr. Luglio said a level E would still be congested but you would be able to get thru the green signal time of an intersection. He added an unsignalized intersection level service E you might wait a minute or two to make a left turn.

Gene Murray, 425 Madison Avenue, questioned that there was no projection of traffic beyond the build date for the project and should the growth in traffic be factored in. Mr. Luglio said for smaller projects they don't take into account long-term traffic growth in the area because there are projects that would come after this and they would deal with



any traffic conditions. He added they look at a 10-20 year horizon for roadway work, interstate, state or county roads. Mr. Murray asked if it would be common sense to factor in known growth rates. Mr. Luglio said it makes sense to factor it in but only to the opening date or build year. The traffic engineer said the real test for any traffic impact study was what the project has in terms of negative or positive effects it had on traffic. Mr. Murray questioned the ITE referred to the average daily traffic and design hourly volume. Mr. Luglio answered the average daily traffic was the average number of daily traffic for a timeframe and the design hourly volume was what was the split of one direction vs the other direction and what that volume included in the analysis. Mr. Murray asked what the timeframe was for the design hourly volume. Mr. Luglio said it was the peak timeframe for the roadway network when the roadway was peaking or of the site when it was peaking. Mr. Murray questioned the design hourly volume was for the 30<sup>th</sup> highest daily volume 20 years after completion. Mr. Luglio said that focused on highways not on local street traffic and not for land development. Mr. Murray stated this was a large supermarket bringing a lot of traffic and asked if the traffic was factored in for the large supermarket. Mr. Luglio thought the traffic was factored in the report. The traffic engineer said there would be more traffic and the question was whether or not the town and the board wanted to live with the benefits associated with the project whether it be economics or aesthetics or the detriments which might be increased travel time and congestion. Mr. Murray asked if a future projection of traffic growth impacts the projection of levels of service over time. Mr. Luglio said yes but it was hard to make a determination 5-10 years in the future beyond the opening date and tie them to certain improvements. Unfortunately, Mr. Luglio said it would be the next applicant to deal with what has already been approved. Mr. Murray thought the Board would benefit from a projection. Mr. Luglio did not agree that additional analysis would help. Mr. Murray referred to Ms. Dolan's report dated 1/4/13 and said they were comparing the existing volumes to a 62,100 sf supermarket but Mr. Pagano testified to a 40,000 sf existing Shop Rite. Mr. Luglio said Ms. Dolan protracted the data from the 62,100 sf supermarket to a 70,500 sf proposed supermarket. Mr. Murray questioned if it would change the prorated data if the existing supermarket was 40,000 sf. Mr. Luglio thought it would question the data from the Shop Rite from the existing counts however the end result was they used the ITE estimates in their analysis. The traffic engineer said if there was 20,000 sf that had been inflated as far as the existing building then the volumes and data would go up and there would be a question on which set of data to utilize.

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

Ms. DeBari called for the next objector to offer their evidence which was Karl Schaffenberger.

Mr. Eisdorfer objected to the appearance of Karl Schaffenberger who was a member of the Zoning Board and was not testifying as to his own property and thought it was not proper under New Jersey Law. He cited a case law regarding public figures not being able to testify. The Board Attorney stated Mr. Schaffenberger recused himself from day one and had indicated from the beginning before the Mayor and Council his opposition regarding the issue of potential of rezoning of the properties. Mr. Sproviero suspected

from hearing Mr. Schaffenberger's reason for recusal it would implicate his own property was threatened. The Board Attorney said he listened to the recording of his appearance before the Mayor and Council and that was the substance of his opposition and how it related to him and surrounding properties. Mr. Schaffenberger did not forfeit his rights because he sits on the Zoning Board and had not participated in this application, said Mr. Sproviero. The Board Attorney did not think it violated the law and thought Mr. Schaffenberger as a resident of New Milford had a right to be heard with respect to this application. Mr. Eisdorfer asked there be instruction to the Board when deliberating that Mr. Schaffenberger's credibility was not enhanced by being a member of the Board.

Mr. Schaffenberger stated that it would be a shame if the reward for his dedication to this town and the Board would be to lose a voice on an issue that was so vitally important to him. Mr. Schaffenberger knew the Board Members and had confidence that they would listen and render an independent decision based upon the experts from the applicant, objectors and advice from the professionals. Mr. Schaffenberger stated that no one on the dais was waiting to hear from him about this and they were quite capable of making up their own minds. The Board Attorney stated prior to the deliberation he would advise the Board that they were to give no greater nor any less credibility to what Mr. Schaffenberger said because he serves on the Board. Mr. Sproviero stated that this not only applied to the credibility of his presentation but also his right as a citizen to present his presentation. Mr. Schaffenberger clarified that half of his presentation was regarding his home.

Karl Schaffenberger, 173 North Park Drive, New Milford, was sworn in by the Board Attorney.

Mr. Schaffenberger explained at the beginning of this application in February 2012, he recused because he was opposed to the aggressive development of this property and the environmental impact it would have on the area. According to Mr. Schaffenberger, he had nothing against this application other than its size and scope. He felt the overdevelopment of the 13 acres adjacent to the Hackensack River in a flood sensitive area and a neighborhood that has been flooding in recent years was irresponsible.

Mr. Schaffenberger said the applicant first addressed the flooding issue in May 17, 2012 by Mr. Dipple. Referring to exhibit A-28 prepared by Mr. Dipple, Mr. Schaffenberger recalled that he questioned Mr. Dipple regarding the numbers on the flood parameters were not accurate because he had personal knowledge of the area and knew the flooding was worse than on the document. Mr. Dipple had testified and Mr. Schaffenberger agreed that he used the required 1980 DEP flood maps.

Mr. Schaffenberger stated he would be using photos from Exhibit O-4 submitted in June 2013 by Mr. Ghiosay on Hurricane Irene. Mr. Schaffenberger's explained his slide presentation had pictures of the flooding next to the corresponding areas on the 1980 DEP flood map. Mr. John Scordato from NJDEP electronically sent him the 1980 DEP flood elevations, said Mr. Schaffenberger. The Board Attorney asked if that was the same

document submitted into evidence by Mr. Dipple. Mr. Schaffenberger said these were the 1980 DEP maps sent by Mr. Scordato.

Slide Presentation:

Slide #1- 1980 DEP map of the proposed site, Hackensack River and the bypass

Slide #2- labeled NJ Department of Environmental Protection Delineation of Floodway and Flood Hazard Area- Hackensack River- Oradell Borough- New Milford Borough- March 1980.

Slide #3- 1980 DEP Map for Hirschfeld Brook sent by Mr. Scordato.

Although Hirschfeld Brook is not immediately adjacent to the brook, Mr. Schaffenberger said it was included in his presentation and his focus was on the difference between the actual flooding and the flood parameters on the 1980 DEP map.

Slide #4- DEP Delineation of floodway and Flood Hazard Area -Hirschfeld Brook -New Milford Borough- Dumont Borough

Mr. Schaffenberger explained some of the slides were enlargements of different parts of the document that have not been altered other than to add color.

Slide #5- DEP Map -the 100-year flood area was colored yellow and the +25% in purple.

Slide #6- DEP map showing the location of Cecchino Drive facing west. Mr.

Schaffenberger indicated the location of the Water Company site showing how far the floods should be and no further.

Slide #7- photo#1 from Exhibit O-4 – Cecchino Drive -Mr. Schaffenberger indicated the location with a red dot on slide #6 to show approximately where the photo was taken from. Mr. Schaffenberger pointed out how much further the flood went from the elevation on the 1980 DEP flood map.

Slide #8, #9 and #10 photos #2, #3 and #4 from Exhibit O-4 - Cecchino Drive showed the proposed site on the right, Madison Avenue in the distance showing the cafeteria. Mr. Schaffenberger stated the distance from the telephone pole to the building was 73 yards showing the difference where the flood should be and where the flood was. He added it showed the faculty cafeteria in the water and stated it should not be.

Slide #11- DEP map with location of tennis courts facing west showing the 100-year flood area and the +25% cuts into the northwest area of the tennis courts. He added according to the 1980 DEP elevations the rest of the tennis courts should be dry.

Slide #12- photo #5 exhibit O-4 showed the high school tennis court for the high school under water..

Slide #13- DEP map showing location of tennis courts and soccer field facing west – He added most of the soccer field and tennis court should not be in the water indicating the map was not accurate.

Slide #14 #15 & #16 Exhibit O-4- showed the tennis court with the corner of the soccer field underwater and floodwaters in the high school. He noted according to the DEP flood elevations map almost all of this area should be dry.

Slide #17- DEP map - Hirschfeld Brook at Washington Avenue facing north showing the yellow area in the 100 year flood plain the purple was the 100 year+25%.

Slide #18- Photo #9 exhibit O-4 showed the power lines and flood area up to Fulton Avenue, which Mr. Schaffenberger referred to slide #17 showing the flood should not be near Fulton.

Slide #19- DEP colored map of Hirschfeld Brook at River Road with a red dot showing the location of the telephone pole.

Slide #20- Photo #10 from Exhibit O-4 view of Hirschfeld Brook at River Road showed the water was further than it should be according to the 1980 DEP flood map and the telephone pole in slide #19 was in the water.

Slide #21- DEP colored map of Hirschfeld Brook at Prospect Park facing north showing the basketball courts should be in a dry area.

Slide #22- Photo #11 from exhibit O-4 -Hirschfeld Brook and Prospect Avenue showing the basketball courts under water.

Slide #23- DEP colored map Hirschfeld Brook at Main Street facing east – Mr. Schaffenberger showed that very little flooding should occur there.

Slide #24 Photo #12 from Exhibit O-4 showed the road impassable due to flooding. Mr. Schaffenberger noted that Mr. Ghiosay commented that the rippled water was sewage discharge from the sanitary manhole.

Slide #25- DEP colored map Hirschfeld Brook at Boulevard facing north showing no yellow or purple in that location and should not flood.

Slide #26- Photo #13 exhibit O-4 view of Hirschfeld Brook at Boulevard showed flooding and according to the DEP map it should not flood.

Slide #27- Photo #15 exhibit O-4 -Tennis courts under water.

Slide #28- DEP colored map of Hackensack River bypass at Main Street facing west– Mr. Schaffenberger commented that the 100 year flood plain was to the north of Main Street and the only part that should flood was the 100 year +25% and commented that most of this should not be wet and indicated where the north entrance was to the proposed site.

Slide #29 & #30 exhibit O-4 Flooding at Main Street Bridge over the Hackensack River bypass.

Slide #31- Photo #18 from Exhibit O-4 - House on Washington Avenue underwater in the flood plain.

Mr. Schaffenberger said when he questioned Mr. Dipple regarding the flood parameters he knew the flooding was worse than what was shown on the map. He recalled his testimony was that these DEP numbers were meaningless. Mr. Del Vecchio objected to his characterization. Looking at the actual pictures from the site where the floods should be as depicted on the DEP maps, Mr. Schaffenberger thought the DEP numbers were antiquated or meaningless.

Slide #32 Exhibit O-3 Front sheet from Mr. Cabrera's presentation 6/27/13. Mr. Schaffenberger commented when this photo was viewed in June; Mr. Sproviero noted this photo put a human face on the flooding. Mr. Schaffenberger agreed and thought that was what had been missing from this application. He added there had been testimony from engineers, architects, planners, traffic experts, real estate experts, attorneys and testimony on COAH but no mention of the residents who would be affected by this development. The resident said this flooding was hurting people and extremely stressful.

Mr. Schaffenberger thought he would add his face to this and gave a brief background of where he lived and his time spent in the area and by the Hackensack River. Mr. Schaffenberger said he bought a house in New Milford in 1986 by the river, which he had checked with the borough hall before purchasing the house, finding it was not in the flood zone and did not need flood insurance for his mortgage. He added everything was fine until Hurricane Floyd occurred in 1999.

### **Hurricane Floyd 1999**

Slide #33- map from google earth not altered except for arrows indicating the location of his house and the proposed site.

Slide #34- DEP map showing the flood elevations for his house. He pointed out the blue area was the location of his house not in the flood zone.

Slide #35- photo from google earth - aerial view North Park Drive facing north. He said it was a close up of his house, to the left was the Hackensack River, it indicated there was an easement and at the end of the street was a drop off.

Slide #36- DEP colored map North Park Drive facing west – He showed the drop off was between the 100 year and 100 year+. Mr. Schaffenberger stated previously flooding had never gone past the drop off.

Slide #37- Photo of northwest corner of his backyard showing the water level in relation to his 4' fence -the morning after Hurricane Floyd 9/16/99 .

Slide #38- Photo of flood water looking northwest to neighbor's yard.

Slide #39- Photo from front window looking at the front yard with his house surrounded by water.

Slide #40- Photo northeast corner of backyard as water receded showing debris.

Slide #41, #42, #43 and #44 Photos of front yard showing driveway and neighbors properties and back yard after water receded.

Slide #45 and #46 Photos removing items from the house after the flooding.

Slide #47- Photo of his personal belongings on the curb with a barrel that had floated down from Main St.

Slide #48 and #49 - Photo of last house on the left surrounded by water also not in the flood zone.

Mr. Schaffenberger explained they were concerned about a neighbor not answering the door in slide #49 and went to Columbia looking for assistance and found the police and fire department taking people out from their second story windows that had water moving about 40 mph. He commented on how the first responders were risking their lives.

The cleanup took two weeks of blood, sweat, tears and money to put back his house, said Mr. Schaffenberger. He further explained his furnace, hot water heater, washer/dryer, electrical systems were replaced without any flood insurance because he was not in the flood zone. According to Mr. Schaffenberger, there were numerous municipal meetings after the storm and it was determined the water company let water out at an inopportune time which was why the water came up fast. The final consensus was that there had been a 500 year flood and not likely to happen again, said Mr. Schaffenberger.

### **Nor'easter 4/15/07**

Slide #50 -Photo of his backyard showing the water in relation to his 4' fence. He added this storm was worse.

Slide #51, #52, #53, #54, #55 & #56-Photos from different views showing his woodpile and patio furniture floating away. Mr. Schaffenberger pointed out the ground having a combination of mud and raw sewage covering everything.

Slide #57- showed the condition of the backyard after the water receded showing the high water mark on the house and added this house was not in the flood zone.

Slide # 58- Photo showing water between the neighbor's homes which he stated was moving fast.

Slide #59- Photo of neighbor's 4' pool under water showing only the top of the pool cover.

Slide #60- Photo of the backyard and the drop off where the water never passed before.

Slide #61, #62 and #63 -Photos of condition of front yard after water started to recede.

Slide #64- Photo of all the ruined belongings piled up from his driveway to his neighbor's driveway.

Slide #65 -Photo of boat tied to a tree that was used to rescue neighbor's pets from their house. Mr. Schaffenberger indicated the high water mark on the street, which was about 68 yds from the drop off at the end of the street where the river never went.

Slide #66- Unsafe Structure notice posted to Mr. Schaffenberger's house reading it was unsafe for human occupancy. He added his home was not in a flood zone but it was declared "unsafe for human occupancy".

Mr. Schaffenberger said again it took two weeks of blood, sweat, tears and money to clean up because he had no flood insurance because he was not in a flood zone. A new furnace, hot water, washer/dryer, electrical systems and all the belongings in his basement were replaced again, said the resident. Mr. Schaffenberger stated this was the "new normal" and he could no longer keep items in his basement like normal people do.

Mr. Schaffenberger said there were two storm events in 2011. He added United Water referred to the spring flood event as a "nuisance flood" which did not flood his property but damaged his neighbor's property.

### **Hurricane Irene August 2011**

Slide #67, #68, #69- Basement photos showing washer/dryer in water floating, showed the washer covered in mud and sewage.

Slide #70- Photo of ruined 4-year-old furnace.

Slide #71 & #72- Photo of basement steps – one showed the water up to top step and the second showed the condition of the steps after the water receded.

Slide #73- Photo of door damaged going out to Bilco door.

Slide #74- Photo of personal belongings destroyed at the curb.

Slide #75 and #76 Photo of north wall of basement showing mud and sewage on the screen of window. Also showed on the wall was a 6'1" high water line mark from Hurricane Irene and a 6'5" water line from the Nor'easter.

Slide #77 showed a photo of the arrival of the new hot water heater and sewage on his vegetable garden

Slide #78 showed the basement with the mud and sewage covering everything.

Mr. Schaffenberger stated this time he had flood insurance. He hired a company that sent three men who cleaned all day in HAZMAT suits. The last two times he cleaned up his basement he was in shorts and a t-shirt, said the resident. Mr. Schaffenberger questioned what has happened, what was different because it has never flooded like this before. He stated that Mr. Cabrera mentioned in his June presentation that Mr. Henning from United Water at a Mayor and Council meeting said that the reason this was happening was because two out of every three raindrops in 1960 ended up in the system of reservoirs, rivers and tributaries and now it was three out of four. He stated the Mayor was engaged in dialogue with United Water about how they managed the reservoir and the Mayor and Council was invited to United Water for a program given by Mr. Henning. Mr. Schaffenberger said a representative from both planning and zoning attended the meeting on 9/22/11. Mr. Eisdorfer objected that they were dealing with hearsay. The Board Attorney stated it was admissible if Mr. Schaffenberger was testifying to what he heard as opposed to the truth of what Mr. Henning said. Mr. Schaffenberger continued that at the meeting Mr. Henning had a power point presentation, which was all about the flooding. He also heard at that meeting there were now three out of four raindrops ending up in the system. According to Mr. Schaffenberger, Mr. Henning said it was because of civilization encroaching more on the buffer areas between the water systems and civilization. Mr. Henning also said the difference was that water that used to be absorbed was now ending up in the reservoirs, said Mr. Schaffenberger.

Mr. Schaffenberger stated he would not concede to Mr. Dipple testimony that this proposed project built as designed would have no perceptible impact on the flooding. He added that not one of the projects since 1960 had any perceptible impact on the flooding by themselves but cumulatively over 50 years they had a huge impact. Mr. Schaffenberger's concern was what would happen over the next 50 years. He said it made no sense that Blue Acres was buying property to knock down homes and in the same neighborhood the applicant had a 13-acre property being buried in concrete. At a meeting in New Milford after Hurricane Irene, Mr. Schaffenberger said he asked a DEP representative if he ever flat out denied a DEP request for development. The representative answered no. Mr. Schaffenberger replied to him therein lies the problem. Someday, somewhere, somebody had to say no and added they cannot take 30 acres and bury it in concrete next to the Hackensack River, said Mr. Schaffenberger.

The resident stated there was a power point presentation by Mr. Henning at that September 22, 2011 meeting— Slide #20 titled: The Solution on what to do with the flooding. Mr. Schaffenberger said he was testifying to what Mr. Henning said. Mr. Eisdorfer objected that this was being presented for the truth of it and wanted all testimony regarding what Mr. Henning said be stricken from the record. It was not be offered not for the impression of it but for the truth. The Board Attorney asked if he or his client had access to those documents. Mr. Eisdorfer said no. The Board Attorney asked why they don't just produce it. Mr. Eisdorfer said they don't have to contradict this because it was not admissible. The Board Attorney said this has been the issue from day one. He wanted the record to reflect that the applicant had no intention of producing it.

The Board Attorney instructed the Board that they could not accept what Mr. Henning was saying as the truth but all they could hear was what Mr. Schaffenberger heard him say and what his impression of it was. The Board could not accept whether it was true or otherwise regarding Mr. Henning's slides or statements. Mr. Schaffenberger said at the United Water meeting the slide #20 was titled The Solution and two direct quotes were 1. Better land use and zoning regulation. 2. Diligently protect our flood plains to remain undeveloped as the natural, permanent solution to attenuate flooding.

Mr. Schaffenberger ended by commenting on Mr. Cabrera's testimony that the flooding was affected by the tides. Mr. Schaffenberger agreed because when he and his neighbor were facing a flooding event the first thing they all checked was the tides because the tides affected the flooding up in his area.

The Board Attorney marked as exhibit O-9 Mr. Schaffenberger's presentation.

Mr. Rebsch commented he was present at the United Water meeting on 9/22/11.

Mr. Eisdorfer had no questions on his testimony on existing conditions.

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

Richard Mide, 660 Columbia Street, commented he lived on Columbia Street in a flood zone and said his pictures were nothing. The resident asked if he was aware south of the bus depot there was a sand bar and the depth of the water. Mr. Schaffenberger was aware it was turning into an island. Mr. Mide said that area due to the sand bar and obstructions from downed trees and mud would contribute to displacing the river. The Board Attorney objected that this was beyond the scope of the knowledge of this witness.

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

Mr. Eisdorfer asked for a poll of the audience to determine how many additional people would be heard. Ms. DeBari asked for a show of hands and thought about 10 more people.

Ms. DeBari stated the next scheduled meeting would be August 13, 2013.

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