

**New Milford Zoning Board of Adjustment
Special Meeting
January 31, 2013**

Ms. DeBari called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:40 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	Absent
Mr. Rebsch	Present
Mr. Stokes Vice Chairman	Absent
Mr. Schaffenberger-Chairman	recused
Ms. Batistic- Engineer	Present
Mr. Sproviero – Board Attorney	Present

PLEDGE OF ALLEGIANCE

12-01 New Milford Redevelopment Associates, LLC- Block 1309 Lot 1.02- Mixed Use Development- Supermarket, Bank and Residential Multifamily Housing.

The Board Attorney read into the record a letter from Lori Barton dated January 17, 2013 questioning if the Board addressed the letters from the Environmental and Shade Tree Commission. Mr. Del Vecchio member of the firm of Beattie Padovano on behalf of the applicant stated the letter raised an issue of procedure and he did not think the Board had to review the process of how the application would be conducted again. Mr. Sproviero briefly explained to the public that at this stage of the proceeding the public were limited to questioning the witnesses as to the testimony induced during the course of their presentation and it was cross examination at this junction. He said once the public had heard all their witnesses the public then had the opportunity to offer general comments and/ or ask questions in regard to the application.

Mr. Del Vecchio requested special meetings. Ms. DeBari said there were only four members present and felt it would have to be addressed at the February 12 meeting. The Board Attorney agreed. Mr. Del Vecchio recalled Mr. Dipple previously sworn in and still remained under oath. Mr. Del Vecchio asked the Engineer if the Stormwater Management Report was the third revision prepared by him or under his supervision. Mr. Dipple agreed. Mr. Del Vecchio asked the Engineer to explain the revisions. Mr. Dipple reviewed changes to the site plan dated December 11, 2012 on the new 24 unit residential

building with the elimination of the former 221 unit building including some minor revisions to the site plan. He stated this affected the stormwater management design.

Mr. Del Vecchio marked as exhibit A-39 Stormwater Management Report dated 12/31/12.

The Engineer described a major change to the southwest corner of the site where they proposed a large detention infiltration basin and changes to the hydraulic modeling of the upper basins which was redirecting some stormwater from the basins in the north part of the site to the south larger basin. Mr. Del Vecchio asked if the conclusion reached as a result of the revised analysis concerning the stormwater function for the site fully complied with the stormwater management regulations. Mr. Dipple answered yes. Mr. Del Vecchio asked if the stormwater management design for the site would operate in a safe and effective manner as designed. Mr. Dipple answered yes.

Mr. Binetti questioned the safety precautions of the proposed large basin and had concerns with the location so close to a school. Mr. Dipple explained stormwater would come into the basin and some of it would infiltrate into the ground. He explained the bottom had a fine sand layer and the basin looked large in area but the maximum elevation even in the largest storm would only fill up to 18" of water. He said once it reached a foot of water it had the ability to run out into the Hackensack River. Mr. Binetti asked if there were sewer drains and if there was any danger to kids at the location. Mr. Dipple said at the outlet structure the pipe came into a concrete box with a grate on the top and a trash rack on the front with a fence surrounding the basin so no one could climb into the pipe. Mr. Dipple said it was similar to what was there but with a more attractive fence.

Ms. DeBari asked how high the fence would be. Mr. Dipple thought it was a 6' black PVC coated chain link fence. Ms. DeBari asked if the existing berm would be removed. Mr. Dipple answered yes.

Mr. Sproviero questioned if the purpose of the basin was to account for stormwater runoff only and it was not to address floodwater. Mr. Dipple agreed and clarified the report addressed stormwater runoff and the management of stormwater. Mr. Sproviero clarified there were certain points in the calculations where in larger stormwater events there would be discharge into the Hackensack River. Mr. Dipple agreed.

Mr. Rebsch asked who would maintain the basin. Mr. Dipple answered the property owner would be responsible to maintain the basins and said they had submitted a Stormwater Management Maintenance Manual and he would update and submit it to keep the report consistent.

Ms. DeBari questioned if the water in the basin would become stagnant and attract mosquitoes. Mr. Dipple said they discussed additional geotechnical testing which would be provided and there would be water for a certain period of time which was desirable because it kept the pollutants in the basin. Mr. Sproviero asked what the certain period of

time was. Mr. Dipple answered there was a low infiltration rate and it would be a period of 24-48 hours under the largest storm event. He said if they assumed 2 inches an hour for an infiltration rate it would fill up to 18" of water under a great storm and take 9 hours for that basin to infiltrate into the ground. Mr. Sproviero asked if that was a product of the soil make up and asked if they had that data. Mr. Dipple answered they did have some soil data but it had been requested that they continue to sample more.

Mr. Binetti asked if the water in the basin that released into the Hackensack River from a large storm would have any bearing on potential flooding for people in the vicinity. Mr. Dipple stated they were required by law to reduce the flow rates which they have done and under the previous proposal they reduced the flow rates dramatically and under the new proposal it was even better. Mr. Dipple added there was a piping system there today that collected the rainwater and discharged out and they modeled it based upon the existing flow rate.

Mr. Sproviero asked if it was all thru the utilization of the basin. Mr. Dipple said the basin was what controlled it. Mr. Sproviero clarified that they were putting it into the ground not into the river with the exception of the extreme events. Mr. Dipple agreed and stated they had Hydrologic Soil Group A soil which was the best type of soil for infiltration. Mr. Sproviero asked him to explain how this worked so everyone would understand. Mr. Dipple stated it did not work different from what they proposed they just changed the shape and reduced the amount of impervious surface.

Ms. DeBari asked how much sand would be used in the bottom of the basin and what was under the sand. Mr. Dipple said 6" of sand with the underlying soil beneath it.

Mr. Rebsch questioned what would happen if there was more building on the site in the future. Mr. Dipple said they would require site plan approval and the decision of the Board.

Ms. Batistic stated they were reviewing the drainage report and revised plans and would be issuing a report next week. The Board Engineer stated they were not concerned with the underground storage from the previous plan and requested the soil be tested because a lot of water was being stored underground. Ms. Batistic said she preferred the above ground detention system they were proposing now.

Mr. Sproviero asked if they were making changes to the berm that would affect possible flood conditions onto the property. Mr. Dipple answered yes they were altering the existing berm. He said on Main Street the existing berm, which runs along the Hackensack River Bypass, was on someone else's property so it would not be touched. He stated further south they were proposing the access drive on top of the existing berm so that berm would be altered. Mr. Dipple said they were removing the berm from their proposed driveway to Madison down to Cecchino and halfway down Cecchino they achieved the same elevation as the top of the berm. The Engineer explained under this proposal there was the invitation of floodwaters onto the site. Mr. Sproviero said he would rather see floodwaters on their site and into their retention pond instead of

downstream onto other properties. Mr. Dipple said it did not work that way because it has to be modeled that the basin was full. He said they were allowing floodwater onto the site and at elevation 14 water does not come onto the site and it never did. He said the site now provided some flood storage where it did not at elevation 14.

Mr. Sproviero asked what they could design in the context of their project to aid their downstream neighbors in the event of a future flood. Mr. Dipple felt this proposal did that by allowing some of the floodwaters onto the site it would provide flood storage. He stated the Hackensack River runs at a very high rate of flow during a 100 year or flood hazard area storm event and they were adding a fair amount of flood storage, which would help but he did not know to what extent.

Mr. Sproviero stated Governor Christie adopted some emergency regulations and questioned the FEMA maps and the flood surge for this property.

Mr. Del Vecchio marked as Exhibits:

Exhibit A-40 -excerpt of the online version of the advisory base flood elevation map issued by FEMA for coastal area for NJ.

Exhibit A-41- picture of the tidal area of the Hackensack River and the area that they studied.

Mr. Dipple described the map and the areas it referenced. He explained the lines in the areas delineate the advisory base flood elevations and on Exhibit A-41 FEMA issued their advisory base flood elevations up to the Riverside Mall. On Exhibit A-40 he marked the New Milford's site which showed it was not affected by the coastal flooding. The Engineer explained that the map marked the advisory base flood evaluation 1% (100 year storm event) elevation 8 and 0.2% (500 year storm event) elevation 11. He said those elevations were crucial when referring to their property along a fluvial stream. Mr. Dipple said their flood events were caused by upstream rainfall events and not by tidal flooding. He testified their flood elevation was 14 and FEMA was saying a 500-year storm event was elevation 11 so they could not be a tidal in this area.

Ms. DeBari said regardless of it being fluvial the area still floods. Mr. Dipple understood.

Mr. Binetti asked what they could do to help the surrounding areas that flood. Mr. Dipple said this property did its part under this proposal. He said at the regulatory flood elevation this had zero flood storage on this site and it was an inherent benefit to increase flood storage on the property. The Engineer stated they set the berm at elevation 12 at the lower southwest corner of the property. Mr. Binetti asked what the elevation was at the football field and if anything could be done to that area. Mr. Dipple answered it was elevation 10 and dropped down to 7 or 8 and part of the football field was in the floodway which could not be altered.

Mr. Sproviero asked if they dropped the berm that was at an elevation 12 to 10 what would happen. Mr. Dipple said they would lose their ability to store stormwater management in the basin effectively.

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

John DeSantis 190 Powell Drive, asked if there was a backflow preventer. Mr. Dipple answered yes. Mr. DeSantis asked what the rate was for the infiltration. Mr. Dipple answered more testing was required. Mr. DeSantis asked if he felt the testing should be done before the Board's decision. Mr. Dipple answered no because he used the ultimate conservative number zero. Mr. DeSantis commented on the FEMA map and questioned his testimony that the surge would not go beyond the mall. Mr. Dipple said he did not say that but that was as far as they studied it. Mr. DeSantis asked if he agreed the surge would go beyond that site. Mr. Dipple agreed. Mr. DeSantis said during the recent Storm Sandy the river flooded into his property and it continued to rise until the levee in Moonachie failed and asked if he could comment on it. Mr. Dipple said he did not doubt that he saw a tidal surge flow upward along the Hackensack River. Mr. DeSantis asked if he took that all into consideration in his design. Mr. Dipple said he used a stricter standard which was a fluvial flood elevation which was much higher and carried with it a lot more environmental regulations than tidal flooding.

Karl Schaffenberger 173 North Park Drive, asked if he knew why FEMA stopped where they did and if they had plans to go up further in the future. Mr. Dipple did not know.

Louis Flora law firm of Giblin and Giblin on behalf of the objector Borough of Oradell, 2 Forest Avenue, Oradell, NJ, questioned his testimony that the prior design was dealing with a greater amount of runoff and with that they were able to use less surface area to handle that runoff. Mr. Dipple said with the absence of the building he had more surface area in which to utilize which he had done. Mr. Flora asked if previously he had less surface area but deeper basins. Mr. Dipple agreed. Mr. Flora said he testified to lowering the berm to elevation 12 and questioned if the flood storage on the site overflow the basin and move towards the residential area. Mr. Dipple said theoretically yes and the BMP Manual states when there was a basin in a flood plain they had to assume the basin full. Mr. Flora asked if there was a large flood event the floodwaters would go across the basin into the parking lot into the residential area. Mr. Dipple answered no because the slope started at elevation 9 and went to elevation 17. Mr. Flora asked what the benefit of this design was with respect to the stormwater management over the prior design, Mr. Dipple answered it greatly reduced the runoff. Mr. Flora also questioned the possibility to revert to the prior design to change the basin into an area that could support another building. Mr. Dipple said an applicant could submit that application.

Michael Gadaleta 270 Demarest Avenue, asked if he was aware that New Milford had a fluvial event as high as elevation 18. Mr. Dipple said there have been reports and it may have been as high as elevation 18. Mr. Gadaleta questioned that the shopping center was elevation 15. Mr. Dipple said it was elevation 18 with the revised design. Mr. Gadaleta commented that Title 7 N.J.A.C. 7:8 addressed water quality and asked if there were any filtering of oil discharge or gasoline spilling. Mr. Dipple said they were required to remove 80% of total suspended solids and their above ground basin as designed met

those criteria. Mr. Gadaleta asked if he identified any environmental sensitive areas on the site and did he review the United Water reports that identified endangered species and fauna. Mr. Dipple said he did and there were no threatened or endangered species identified on the site and no freshwater wetlands. Mr. Gadaleta asked him to revisit it because there were a number of species on the report and it would be introduced to the Board as part of their closing argument. Mr. Gadaleta asked if they did a perc test. Mr. Dipple answered no they relied on data by another firm. The resident questioned how he could not have a perc test if their stormwater management was dependent on storage of water and infiltration back into the stormwater water table. Mr. Dipple stated they assumed zero infiltration, they have seasonal high ground water elevation thru the site and Hydrologic Soil Group A soil. Mr. Gadaleta asked if he would provide the Board with a perc test. Mr. Dipple said Ms. Batistic requested them to provide additional soil information and he said they would provide it. Mr. Gadaleta answered that the Stormwater Management Report could be thrown in the garbage if the perc test comes bad. Mr. Sproviero said the applicant had the burden of proof to demonstrate what they were asking for was supported both technically and legally. Mr. Gadaleta asked if anyone had done any geotechnical work to see if the soil could support a 70,000 sq ft building. Mr. Dipple said the architect typically orders the geotechnical work to design his foundation system and he did not know what foundation system would be designed.

Mr. Sproviero asked if they knew what type of foundation system would be installed. Mr. Dipple said he was not the architect or geotechnical engineer. Mr. Sproviero said the architect testified he did not know. Mr. Del Vecchio agreed that Mr. Lessard testified they don't do the geotechnical design for a foundation until the project was approved and ready for building permits. Mr. Sproviero said that was a catch 22. Mr. Del Vecchio said if someone could show him a requirement in the ordinance that said they must submit the type of foundation, they would provide it. Mr. Sproviero said if the applicant could tell the Board that they don't need to know whether or not what they were approving would be safe on the property, let the Board know. He felt the proofs were short and they were running out of witnesses and hearing dates. Mr. Del Vecchio said it was not the Board's job to determine whether a foundation or footing was safe. Mr. Sproviero said it was more than that limited issue it was whether the site was appropriate for what was being proposed and he added the Board Members needed to hear the evidence that would allow them to make a determination. Mr. Sproviero said he would not tell the applicant what evidence to put before them because that was their call. Mr. Del Vecchio said if the Board turned down the application on that issue it would enunciate its facts in the resolution but he did not find it as a completeness item and had never seen it in an engineering review letter.

Mr. Gadaleta asked if there has been soil testing for contaminants. Mr. Dipple could not answer that but he was aware that United Water received a no further action letter from the DEP. The resident questioned if he thought it would be prudent to get a perc test, geotechnical test, soil contaminant test that might prove the viability of the project and made available to the Board. Mr. Dipple felt he provided the necessary information to support his design. Mr. Gadaleta said the architect testified that the engineer was responsible for site layout and design and the individual structures on the site. Mr.

Gadaleta asked why the residential structure was not on River Road as opposed to the bank and asked if the bank could be located near the commercial end of the property near Main Street and the residential structure could be properly placed opposite the Senior Center. Mr. Dipple explained Mr. Hekemian deals with what he wants on the site and a lot of this was driven by engineering, parking layout and driveway locations. He said Mr. Hekemian will also weigh in on the market and where the bank wanted to be so it was a collaborate effort between Mr. Hekemian, Mr. Lessard's firm and himself. The resident had concerns about the locations for outdoor condensers, compressors and HVAC equipment on top of the building. Mr. Dipple said there was no location on the site for it and could not answer it. Mr. Gadaleta asked if he revised his tree management plan and resubmitted it to the Shade Tree Commission. Mr. Dipple said the tree management plan on C-10 did not change and dealt with existing conditions. Mr. Gadaleta asked if the existing trees could be salvaged with the elimination of the 221 unit building. Mr. Dipple said there were no trees that could be salvaged. Mr. Gadaleta asked if he was aware that the Shade Tree Commission had rescinded their approval for the basis that clear cutting was not permitted. Mr. Dipple would look at the ordinance. Mr. Gadaleta asked if there have been improvements to the intersection of River Road and Demarest Avenue where they access and egress the site to address safety concerns. Mr. Dipple said the design had not changed.

Gail Ablamsky 557 Mabie Street, questioned if the basin would be underground. Mr. Dipple answered it was a depression in the ground and it would be allowed to grow natural, aligned by trees and a fence around it.

John Rutledge 335 River Road, asked how large the area was for the detention basin. Mr. Dipple answered the basin bottom was 250 ft north to south and 335 ft east to west. Mr. Rutledge asked what percentage of the acreage that represented. Mr. Dipple said probably less than 20%. Mr. Rutledge asked what the capacity of the area was in terms of rainfall. Mr. Dipple answered the basin had the storage volume of 239,320 cu ft. Mr. Rutledge asked what amount of rainfall would cause the basin to fill beyond its capacity. Mr. Dipple answered they were required to design to the 100 year level which was 8.4" of rain over a 24 period and the discharge would stop once the elevation reached a certain point. Mr. Rutledge had concerns about flooding on the property. Mr. Dipple said no it was designed to completely handle the 100 storm event and it would not cause additional flooding. Mr. Rutledge asked what the anticipated amount of water was in a 100-year storm in the basin. Mr. Dipple answered 181,568 cu ft. Mr. Rutledge asked if there was a potential for the basin to exceed its capability and then what happened to the water. Mr. Dipple said if there was a storm event that exceeded the capacity of the basin, the water would flow out of the basin across Madison Avenue and back to the river. Mr. Rutledge clarified his testimony regarding an 80% factor to control suspended elements in the water and asked if gasoline or oil was considered a suspended particle. Mr. Dipple answered it was in the regulation and considered all pollutant loading and this type of basin meets that criteria. He said the Board Engineer mentioned that she preferred this type of basin. Mr. Rutledge questioned that the other 20%, which could be gasoline, antifreeze, and oil that was not absorbed would flow back to the River. Mr. Dipple said yes if it was a large enough storm it could leave the site and end up in the Hackensack

River. Mr. Rutledge questioned why they would want to remove the berm because it would protect the property and would this be an additional burden to the flooding at the high school. Mr. Dipple responded in disbelief that he heard complaints for a year that they were not providing flood storage on the property and the Engineer said he already testified that this was an inherent benefit to the flood storage situation because at elevation 14 the water did not enter the site and now they brought floodwaters onto the site at elevation 14 and above. Mr. Rutledge asked if it was an inherent benefit to the developer. Mr. Dipple disagreed with that entirely.

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Mr. Rutledge questioned his testimony on endangered species and did he have reports to substantiate his findings. Mr. Dipple did and said in 2010-2011 United Water received a natural heritage data base response from DEP which outlined threatened and endangered species and it did not come up as any on the site.

Lori Barton 399 Roslyn Avenue, asked if reducing the berm would allow floodwater onto the property. Mr. Dipple said that was the intent and an increase in flood storage was a benefit to the community. Ms. Barton asked if there would be chutes from the building into the trash compactors. Mr. Dipple said no. Ms. Barton asked how people with disabilities would get to the trash compactor. Mr. Dipple said maybe there would be special arrangements for people with disabilities. Ms. Barton had questions on the lighting in the residential area and would there be a negative impact to the existing residential area. Mr. Dipple said they provided a lighting plan and the lighting would be the acorn style fixtures with downward lighting which met all code requirements for the municipal ordinance for lighting spillage.

Todd Ghiosay 334 Morris Lane, asked where the water table was at various locations. Mr. Dipple said they believed elevation 7 was the accurate elevation of the seasonal high water table. The resident asked if it would be prudent to get a ground water study. Mr. Dipple answered that the Board Engineer in one of the review letters requested additional test pits in the area of the basin and they would provide it. Mr. Ghiosay questioned that the results could alter the design of the basin. Mr. Dipple said anything was possible and that was why they were requesting more information but he stood by the design. Mr. Dipple said he had designed it conservatively with zero for an infiltration rate. The resident had concerns with the descriptions on the test pits. Mr. Dipple said the resident was concentrating on the top level of fill and ignoring the gray fine course sand which was very good for infiltration. Mr. Dipple added that some of these materials were not suitable to put buildings on or support anything so they might have to move these areas of the site that were not suitable and don't depend on the integrity of the soil. Mr. Ghiosay asked if it would be prudent to plot all the soil descriptions on the map so he could see what was suitable for building. Mr. Dipple said at some point during final design they weigh in on the exactly how to blend soils to reduce any organics but the underlying soil was very good. There were questions on different test pits in the report. The resident asked the Board and the Board Engineer to recommend the engineer to plot the borings

on the map to get an accurate picture for the purpose of constructing a residential unit, supermarket and bank.

Mr. Ghiosay asked what suspended solids were. Mr. Dipple answered it was pollutants that runoff carries as the rain first impacts certain areas that might contain pollutants like asphalt and sidewalks. Mr. Ghiosay clarified that his plan said they had to meet an 80% reduction in suspended solids. Mr. Dipple said that was a state requirement. The resident questioned that he had to meet that requirement before it gets discharged into the Hackensack River. Mr. Dipple agreed. Mr. Ghiosay questioned his testimony that gasoline was a suspended solid and said that gasoline, oil, grease and road salt were not suspended solids. Mr. Dipple said it was pollutant loading and he did not know if some of the pollutants mentioned fall within the suspended solids but he would check into it. Ms. Batistic said the requirements that they had to achieve were that the 80% of the suspended solids were being removed. The basin itself would be vegetation and that would remove other pollutants. Mr. Ghiosay asked whose responsibility was it to check the contaminants in the soil. Mr. Dipple said the property was under the ownership of United Water who achieved a No Further Action from the DEP and it was their responsibility and their land and his client was the contract purchaser. Mr. Ghiosay asked if the NFA had a statement from the DEP acknowledging there was ground contamination on the property. Mr. Dipple did not have the specifics on it.

Gene Murray 425 Madison Avenue, questioned if the line of their site changed with the widening of River Road and Main Street to allocate 10' back to the Borough with road widening. Mr. Dipple answered they worked the road completely within the existing right of way. The resident asked if the 10' would be returned to the borough. Mr. Dipple said they were not proposing any right of way dedication. Mr. Murray questioned the revised landscaping plan and said he knew there were 14 Sycamore trees on the west side of River Road from Cecchino to Main Street. Mr. Murray said the plan showed 4 remaining and requested how many trees were to be removed. Mr. Dipple said he estimated 6-7 trees to be removed but he would review the plans and give the Board a count. Mr. Murray mentioned these have been recognized as heritage trees by the Shade Tree Commission. Mr. Murray questioned his previous testimony that soil would be brought onto the site to complete the excavation and did the Board have any specifications as to the soil brought onto the site. Mr. Dipple said that was a soil import site and soil would need to be brought onto the site to make the grading work. He believed the new design changed that and thought the Borough might have a soil moving permit application which would be submitted prior to construction. Mr. Murray asked how many cubic yards were to be brought onto the site. Mr. Dipple said they have not rerun the estimate based on the revised plan.

John DeSantis 190 Powell Drive, clarified how the site handled an elevation of 18. Mr. Dipple answered the supermarket and parking lot was elevation 18. He traced on the site plan elevation 18. Mr. DeSantis said it encompassed the supermarket. Mr. Dipple agreed.

Gail Ablamsky 557 Mabie Street, clarified his testimony that the basin was approximately 20% of the property and had concerns about the other 80% and how was the water brought to the detention basin. Mr. Dipple said they use inlets and pipes and catch basins which were drainage inlets. He explained the water was grated towards them and directs water towards a series of inlets and a series of pipes take it to the basin.

Michael Gadaleta 277 Demarest Avenue, stated the ordinance 26A-6.8(e) for the Shade Tree Commission outlined no clear cutting. The resident also asked if the revised plan addressed the safety concerns of the high school and if they added curbs and sidewalks on their side of Madison Avenue. Mr. Dipple answered no.

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

Respectfully submitted,
Maureen Oppelaar