

**New Milford Zoning Board of Adjustment  
Work Session  
March 13, 2012**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:34 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Appice		Present
Mr. Binetti		Present
Ms. DeBari		Present
Mr. Denis		Absent 7:40
Father Hadodo		Absent
Mr. Rebsch		Present
Mr. Stokes	Vice Chairman	Present
Mr. Schaffenberger	Chairman	Present
Jim Fordham	Engineer	Present
Mr. Sproviero	Attorney	Present

The Chairman stated Mr. Jim Fordham was filling in for Ms. Batistic who was on vacation.

**REVIEW OF MINUTES – February 14, 2012**

The Board Members reviewed the minutes with changes for the Work and Public session.

**RESOLUTION**

**11- 04 - AKAY 404 Monmouth Avenue – Block 804 Lot 4 – Mixed Use Development**

The Board Members reviewed the resolution and there were no changes.

Having already recused himself from the New Milford Redevelopment Associates application, Chairman Schaffenberger turned the meeting over to Vice Chairman Stokes.

**OLD BUSINESS**

**12- 01 - New Milford Redevelopment Associates – Block 1309 Lot 1.02**

The Board Attorney stated on February 27, 2012 the Board received correspondence issued by Mr. Alonso requesting that Boswell Engineering recuse itself from the application as a result of a review of Boswell’s website disclosing United Water as a client. On March 1, 2012 a response from Dr. Stephen Boswell stated Boswell had no current or ongoing relationship between Boswell McClave Engineering and United Water that would cause any conflict with the firm providing services to the Zoning Board of Adjustment in the subject application. The Board Attorney stated when the Board reconvenes for the April meeting the regular representative, Ms Batistic, would be here and the Board could hear from the Board Engineer as to whether or not she was engaged in any representation of United Water or any other affected party. Mr. Stokes asked for the status on the appointment of the planner. Mr. Sproviero stated he anticipated that

the applicant was prepared to present planning testimony. The Board Attorney reminded the Board that the Borough Planner at the request of the applicant has recused himself from the application. The Mayor and Council have requested proposals to engage a professional planner for this application. Mr. Sproviero stated it was his understanding that the Mayor and Council have prospective planners that they have issued correspondence seeking further clarification in attempt to identify any conflicts. Mr. Sproviero stated the Zoning Board was unrepresented with a planner at this meeting. The Board Attorney stated he impressed to the Borough Attorney the need for a planner for the next Zoning Board meeting on April 10<sup>th</sup>. Mr. Stokes felt the Mayor and Council were moving forward correctly with due diligence. The Board Attorney was reluctant to hear and consider planning testimony without the benefit of a professional planner on the Board's behalf. Mr. Sproviero's recommendation to the Board was that in the absence of a planner the Board does not proceed with the continued hearing of the application until the April 10<sup>th</sup> meeting when there would be planning representation. Ms. DeBari agreed. The Board Attorney stated they would hear in the public session what the applicant proposed.

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**Motion** to close was made by Ms. DeBari, seconded by Mr. Binetti and carried by all.

**New Milford Zoning Board of Adjustment  
Public Session  
March 13, 2012**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:02 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Appice		Present
Mr. Binetti		Present
Ms. DeBari		Present
Mr. Denis		Present
Father Hadodo		Absent
Mr. Rebsch		Present
Mr. Stokes	Vice Chairman	Present
Mr. Schaffenberger	Chairman	Present
Ms. Batistic-	Engineer	Present
Mr. Sproviero -	Attorney	Present

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK SESSION – February 14, 2012**

**Motion** to accept the minutes were made by Ms. DeBari, seconded by Mr. Denis and carried by all.

**OFFICIAL MINUTES OF THE PUBLIC SESSION – February 14, 2012**

**Motion** to accept the minutes with a change were made by Mr. Stokes, seconded by Ms. DeBari and carried by all.

**RESOLUTION TO BE MEMORIALIZED**

**11-04 Akay – 404 Monmouth Avenue – Block 804 Lot 4**

**Motion** to memorialize the resolution was made by Mr. Stokes, seconded by Ms. DeBari

The motion passed on a roll call vote as follows:

**For the Motion:** Members Stokes, DeBari, Binetti, Rebsch, Schaffenberger

Having already recused himself from the New Milford Redevelopment Associates application, Chairman Schaffenberger turned the meeting over to Vice Chairman Stokes.

**OLD BUSINESS**

**12- 01 New Milford Redevelopment Associates – Block 1309 Lot 1.02 -Mixed Use Development**

Mr. Sproviero asked Mr. Denis if he listened to the recording of the February meeting. Mr. Denis stated that he had. He signed a certification to that effect.

The Board Attorney stated as discussed in the work session the Board was in receipt of correspondence dated February 27, 2012 issued by the law firm Alonso and Navarrette, LLC seeking the recusal of Boswell Engineering. The Board Attorney explained Mr. Alonso's correspondence stated that upon review of the Boswell website it revealed United Water New Jersey was listed as a representative client. The response correspondence dated March 1, 2012 by Dr. Boswell stated they were not providing services to United Water at this time and there was no conflict of interest providing service to the Zoning Board of Adjustment in the subject application. The Board Attorney said as discussed in the work session the Board Engineer was on vacation and would like to withhold any determination with regard to the recusal request until Ms. Batistic was present for any specific questions of her with regard to any relationship she may have had on behalf of Boswell Engineering with respect to the representation or rendering of engineering services to United Water. Mr. Stokes agreed with counsel.

The Board Attorney asked Mr. Alonso if he understood their position or had any objections. Mr. Alonso had no objections and would defer his comments for the Board Engineer because he did have information to bring to the Board's attention. Mr. Del Vecchio strongly suggested that Mr. Alonso submit the questions in advance so the Board's Engineer would be prepared to answer them. The Board Attorney agreed and asked Mr. Alonso if he had any problems with that request. Mr. Alonso answered no. The Board Attorney requested his arguments be put in writing for Ms. Batistic's review as soon as possible. Mr. Alonso understood.

Mr. Stokes asked the Board Attorney for an update on the appointment of a planner. Mr. Sproviero explained prior to the February 14<sup>th</sup> hearing at the request of the applicant the Borough's planner recused himself from this application. This was not as a result of any representation with United Water but as a result of a situation where the applicant's attorney at one time represented the planner's wife. The Mayor and Council have sought proposals from other qualified planners and have not yet appointed a planner. They have received proposals and narrowed it down to two proposals and have issued requests for additional information with regard to conflict issues.

Mr. Del Vecchio member of the firm of Beattie Padovano on behalf of the applicant understood the Mayor and Council have requested additional information from the planners Birdsall Engineering Services and Phillips Preiss Grygiel, LLC. Mr. Del Vecchio stated Birdsall Engineering Services was providing engineering services to United Water but they had no issues with the other firm. Mr. Del Vecchio stated they have communicated this with the Borough Attorney.

Mr. Sproviero asked Mr. Del Vecchio what witness would testify at this meeting. Mr. Del Vecchio answered the planner David Kinsey had prepared a report and was prepared to testify before the Board. He was aware of the lack of planner for the Board but suggested because time was valuable they proposed to produce testimony and would provide a transcript of the proceedings for the planner to review. He added they would bring back David Kinsey if the planner had any questions. Mr. Del Vecchio stated they requested special meetings because hearing time was valuable. He stated they were prepared to proceed and asked the Board to do so and stood by their stipulation to produce a transcript and bring back the planner. The Board Attorney appreciated the offer but felt they would be not only doing this Board but the entire

process a great disservice if this Board were to hear and consider the testimony of this planner without the benefit of having at their side their own professional planner to respond immediately to any questions or comments. The Board Attorney asked the members of the public to accept his apologies on behalf of the Board for taking time to be here to hear the application but did not feel it was appropriate for the Board to proceed without a planner. He was sensitive to Mr. Del Vecchio statements regarding time being valuable and suggested the Board Members consider a special meeting in April in addition to the regular scheduled April 10<sup>th</sup> meeting. Mr. Stokes stated the Mayor and Council was working diligently to provide the Board with a planner and did not think it was out of line not hear this application without the advise from the Board's professional planner. Mr. Del Vecchio understood it was the Board's determination but for the record the applicant objected to the adjournment until April because there were concerns regarding the 120 day time frame for the application. The Board Attorney noted the objection and recommended to make up for time lost at this meeting, which came as no fault of the Zoning Board of Adjustment, to schedule the special meeting.

Mr. Stokes asked for a motion to continue the hearing to April 10<sup>th</sup>.

**Motion** to continue the hearing to April 10<sup>th</sup> until the Board had a professional planner was made by Mr. Binetti, seconded by Mr. Rebsch.

Motion passed on a roll call as follows:

For the motion: Members Binetti, Rebsch, DeBari, Denis, Loonam, Appice

The Board Members discussed available dates. The Special meeting was scheduled for April 19<sup>th</sup> at 7 PM. All members were in agreement.

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

Respectfully submitted,  
Maureen