



**COPAKE PLANNING BOARD**  
**APRIL 20, 2013**  
**SPECIAL MEETING MINUTES**

**Approved**  
**May 2, 2013**

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**DRAFT**

**Please note that all referenced attachments, comprising 11 pages, are on file with the Copake Town Clerk and in the Planning Board office. An annotated listing of those attachments appears at the end of this document.**

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A special meeting of the Copake Planning Board was called to order at 2:05 p.m. by Marcia Becker, Chair to review the Eric Sokol application. Also present were Gray Davis, Chris Grant, George Filipovits, Bob Haight, Steve Savarese and Jon Urban. Lisa DeConti was present to record the minutes. Attorney Ken Dow was also present.

**ZONING BOARD OF APPEALS – Referrals**

**1. ZBA REFERRAL/SPR – ERIC AND CAROL SOKOL – Lakeview Rd [Copake Lake] – (2013-3)**

Ms. Becker advised the Board that the purpose of the special meeting was to review materials submitted on the Sokol application. Ms. Becker advised that the Board that they will be entering a non-public session allowed under the Open Meeting Law as an Attorney/client privilege conference. The Board returned to the meeting at 2:47 pm after the end of the Executive Session.

Ms. Becker addressed Ms. Chernewsky advising her that on April 15<sup>th</sup> she requested a new Site Map to be delivered by Friday so they could be reviewed by the Board prior to this meeting. Ms. Chernewsky acknowledged that she had the new maps to present at this time. Ms. Becker advised that it was the Board's decision as to whether they would accept the Site Maps at this time. The Board was in agreement to accept the maps.

Ms. Becker stated that this marks a pattern of things being received late and noted that the Morris Associates letter was received two (2) hours before the March 16<sup>th</sup> Planning Board meeting. Ms. Becker continued and addressed the fact that the Baldwin letter for the March 7<sup>th</sup> Planning Board meeting regarding the septic system was requested on February 7<sup>th</sup> and wasn't received until March 11<sup>th</sup> however inasmuch as the meeting had to be rescheduled the letter was entered into the record at the March 16<sup>th</sup> meeting. Ms. Chernewsky explained that the reason the Baldwin letter was late was due to fact that she believed the ZBA would pass the letter on to the Planning Board. Ms. Becker advised that this was not an adequate excuse.

Ms. Chernewsky presented the stamped letter by the Morris Associates Engineer which was requested by the Board. Ms. Becker entered the April 10<sup>th</sup> response letter from Clark Engineering

into the record and it was read by Mr. Savarese. Ms Becker acknowledged that the elevations needed to be reviewed as there were inconsistencies in the explanation of the project whereas the house was referred to as a three (3) bedroom and as a four (4) bedroom house at different times. Ms. Chernewsky clarified that that the house is an existing four (4) bedroom house. Ms. Becker made note of the fact that the second floor is being removed along with the roof. Ms. Chernewsky clarified that the pitch of the roof is being changed and they are leaving as much of the walls as possible.

The site maps were reviewed and Ms. Becker acknowledged that they were dated November 12, 2012. Ms. Becker made note of the fact that the Department of Health requires a one-thousand (1,000) gallon septic tank for one (1), two (2) and three (3) bedroom homes.

Ms. Becker acknowledged that Mr. Davis, Mr. Grant and Mr. Haight visited the site. Mr. Davis reported on the visit noting that the site is a tight site and the embankment to the road where the dry wells are located is quite steep however no leakage was seen in this location. Mr. Davis also noted that it appeared that some trees had been removed from the site which he felt was a plus as they couldn't interfere with the dry wells. Mr. Grant agreed that the site is tight, elevated above the lake and quite steep and he noted that the flow of the water would be out of the bank and onto the street. Mr. Grant did point out that you can't tell the condition of the dry wells from a visual inspection inasmuch as the system is buried underground. Mr. Grant did point out that only one tank lid was seen however Mr. Sokol advised that there are two lids.

Ms. Becker referred to a similar application for Mr. Wetter on Robinson Pond where the Town Engineer opened the dry wells to inspect their condition. Ms. Becker pointed out that the Town Engineer stated that the condition of the dry wells is not clear and made note of the fact that there is a possibility that they could be rusty buckets in the ground. Mr. Sokol acknowledged that he paid for a pumping and inspection from professional septic associates. Ms. Becker advised that the Board asked about the septic at the sketch plan conference in January. Mr. Sokol asked if the Town Engineer visited the site in January and Ms. Becker advised him that the Town Engineer had not been contracted by the applicant to go and look at the site and has responded only to the plans and the minutes. Mr. Sokol acknowledged Raymond Jurkowski, P.E. who advised that he inspected the site visually and did not see any seepage. Mr. Jurkowski pointed out that there is a large bank and if there was a failure, seepage would be seen coming out of the banks and there is no sign of that. He also noted that this is a pre-existing facility prior to the latest Appendix 75A and the number of bedrooms is being reduced from four (4) to two (2) reducing the potential for environmental issues as well as expanding the life span of the existing system.

Mr. Haight acknowledged the new submission of the letter signed and stamped by Morris Associates Engineer Raymond Jurkowski stating that the system is adequate. Mr. Filipovits asked Mr. Jurkowski if it was his professional opinion with his stamp that the system was in proper working order. Mr. Jurkowski acknowledged that it was his belief that the system was in proper working order.

Attorney Dow addressed the Board and the audience advising that he spent quite a bit of time on this issue this past week and with all the different provisions and laws in the Town Code it was hard to come to a crystal clear black and white answer. Attorney Dow referred to a prior opinion by Attorney Lawrence Howard on another application stating the Board did not have the authority to enforce an update to a septic system if it can be proven by the applicant that the existing system is in proper working order.

Attorney Dow brought up the fact that there were discrepancies as to when a renovation project is automatically subject to reviews and whether this application is a complete rebuild. In Attorney Dow's opinion under the Town Code that states the Planning Board's review of the Site Plan shall include as appropriate ... etc. He noted that one can refer to different things like the State Department, DOH guidelines and such but they do not provide the sole answer as there is a provision in the Town Code for the Planning Board to review 'as appropriate' which raises the question as to what is appropriate. Attorney Dow's consensus is that on a project of this scale even if it is not a complete re-build and just a major renovation it is not inappropriate for the Board, if it so chooses, to make use of that part of the Code that reads 'to judge as appropriate' to look at the sewage disposal system. If this is not done it can be proven by the applicant that the system is in proper working order, working order being that it doesn't just not back up into the basement but does what it is meant to do, take raw sewage and handle and degrade it in such a way that what is coming out into the environment is within acceptable health standards.

In conclusion Attorney Dow advised the Board that in order to comply with the powers of the Board the applicant would need to show a certification by an engineer that the existing sewage system is in proper working order, working order meaning it shall include specific statements that the system can handle the flow burden from the proposed use, the resulting affluent output complies with applicable health standards and what is coming out is not causing health impairment.

Attorney Dow acknowledged that the April 4<sup>th</sup> letter from Morris Associates seems to address these issues. Ms. Becker pointed out that Mr. Jurkowski's letter does not say anything about meeting the health standards but talks about the visual inspection and the flow rate. Attorney Dow clarified that there are no signs of anything that would indicate the undersized system for the biologic loading would impair Copake Lake however it is the Board's call to interpret the letter and to whether they want further clarification from the Engineer. Attorney Dow also addressed the fact that the Board can do this on their own initiative because of the scope and sensitivity of the project and it would not be unreasonable to judge this to be an appropriate thing to look at under the circumstances. Attorney Dow also addressed the fact that the Zoning Variance has a condition that the Board act on this.

Mr. Grant acknowledged that the letter is in the record and there is a response from Clark Engineers in which the engineering firm recommends a more complete review of the system. Mr. Grant questioned whether it was discussed whether the County Health Department or Department of State Code Variance requested by Clark Engineer is required. Mr. Haight pointed out that Clark Engineers is going by the fact that this is a complete home replacement. Ms. Becker questioned whether this fact has been determined. Ms. Chernewsky previously spoke with the DOH who classified this project as a Level Two (2) Alteration. Mr. Jurkowski addressed the fact that Clark's assumption that this project needs to come into compliance with Appendix 75A is incorrect as the project is an addition as well as an alteration and not new construction. Mr. Grant clarified that Clark Engineering stated to either come into compliance with Appendix 75A or get a variance from the State Code enforcement and administration. Ms. Becker acknowledged that Ms. Chernewsky did try to obtain a variance from the DOH but they would not grant one. Ms. Chernewsky clarified that the DOH will only grant a variance on new construction and they do not review renovations or alterations.

Mr. Filipovits suggested a vote. Mr. Sokol was in agreement with this as he felt new issues were being addressed after the fact. Mr. Filipovits asked for a motion to approve and accept the application. On a motion made by Mr. Savarese and seconded by Mr. Haight the Board voted five (5) to two (2) with Mr. Davis, Mr. Filipovits, Mr. Haight, Mr. Savarese and Mr. Urban in favor and Mr. Grant and Ms. Becker against to accept the Morris and Associates letter with Mr. Jurkowski's stamped approval and seal that he take responsibility for the septic system, its capability and/or problems and to approve the Site Plan for the Sokol Residence on Lakeview Road at Copake Lake,

Mr. Grant's preference was that the septic system have a true inspection of the actual dry wells and the inspection of the affluent. Ms. Becker felt a condition should be added that this is a two (2) bedroom house and that is how it be used in the future.

## **MINUTES**

On a motion made by Ms. Becker and seconded by Mr. Grant the Board voted unanimously to accept the minutes of the March meeting.

## **ADJOURNMENT**

There being no further business, on a motion made by Mr. Filipovits and seconded by Mr. Haight, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 3:25 p.m.

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Marcia Becker, Chair

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## **ADMINISTRATION**

### ERIC & CAROL SOKOL

March 22, 2013	Moore to Becker/CPB (2)
April 4, 2013	Jurkowski to CPB (2)
April 10, 2013	Moore to Becker/CPB (3)
	NYSDOH Design Handbook (2)
	NYSDOH Fact Sheet (2)