



COPAKE PLANNING BOARD

APRIL 3, 2014

MINUTES

DRAFT

Please note that all referenced attachments, comprising 18 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.

A regular meeting of the Copake Planning Board was called to order at 6:30 p.m. by Marcia Becker, Chair. Also present were Chris Grant, Jon Urban, Julie Cohen and Ed Sawchuk. Bob Haight and Steve Savarase were excused. Lisa DeConti was present to record the minutes. Supervisor and Board Liaison Jeff Nayer, Attorney Ken Dow and Town Engineer Tom Field were also present.

ZONING BOARD OF APPEALS – Referrals

NONE

PUBLIC HEARING

2013-31 MINOR SUBDIVISION –BERKSHIRE MOUNTAIN CLUB AT CATAMOUNT SKI AREA – Route 23 – [Copake]

Pat Prendergast appeared along with Developer Harry Freeman and Project Attorney Andy Howard. Surveyor Jeff Plass and Catamount owner Rich Edwards were also present.

On a motion made by Mr. Grant and seconded by Ms. Cohen the Board voted unanimously to open the Public Hearing for the Minor Subdivision of Berkshire Mountain Club at Catamount Ski Area.

Ms. Becker asked Mr. Plass if there were any new maps and was advised by him that there were no changes made to the maps since last month's meeting. Ms. Becker acknowledged that no notes were added to the maps and was advised by Mr. Plass that he is in the process of preparing this.

Mr. Prendergast made a presentation explaining the subdivision. Ms. Becker was confused as the subdivision map was noted to be by Catamount Development Corp. and the application is in the name of Berkshire Mountain Club at Catamount. Attorney Howard clarified that the contract vendee for the project is Berkshire Mountain Club, and the owners of the property is Catamount

Development Corp. He continued to explain that the project is contingent upon Subdivision approval, Site Plan approval and the issuance of a Special Use Permit.

Ms. Becker made note of the fact that the Subdivision is a separate action from the Site Plan and questioned whether a SEQR should be done for the Subdivision. Mr. Prendergast saw no harm in doing a SEQR for both projects. Mr. Grant made note of the fact that the Subdivision requires a SEQR and is a separate action on the part of the Town. Attorney Dow advised that the Subdivision is a free standing action that could be approved on its own. Mr. Grant did make note of the fact that the Subdivision is an Unlisted Action and doesn't trigger a detailed review. Attorney Howard acknowledged that they envision the Board doing the Subdivision and the site plan at the same time, as he would not want to segment the review because he thinks it would be important for the Board to consider everything. He pointed out that similar circumstances in the past have had the final SEQR finding statement, narrative and conclusions taken into consideration jointly. Ms. Becker did make note of the fact that the Subdivision approval would be conditional and didn't believe there would be a time problem. Mr. Grant agreed and felt the short form SEQR could be gone through fairly quickly and inasmuch as they are dealing with an Unlisted Action the Board is required to address it. Attorney Dow suggested initially doing the short form and then reincorporating it into the larger one.

Attorney Dow asked Attorney Howard if his preference is to do the short form on its own or incorporate it into the larger one. Attorney Howard's preferred to have it incorporated completely so that all of it could be dealt with so there is no confusion about the hard look the Board took. Mr. Prendergast brought up the fact that a long form had also been submitted and noted that the action is the Subdivision and the Site Plan. Mr. Grant did point out that these are two separate actions with different levels of review that are required.

Ms. Becker acknowledged that the Subdivision Check List was reviewed last month and everything was on the maps with the exception of the easements. Ms. Becker also acknowledged that there were no new submissions dealing with the Subdivision.

After the presentation Ms. Becker asked if anyone wished to speak on the Subdivision. No one present wished to speak. The Public Hearing was left open.

2013-30 MAJOR SITE PLAN –BERKSHIRE MOUNTAIN CLUB AT CATAMOUNT SKI AREA – Route 23 – [Copake]

Pat Prendergast appeared along with Developer Harry Freeman and Project Attorney Andy Howard. Surveyor Jeff Plass and Catamount owner Rich Edwards were also present.

On a motion made by Mr. Grant and seconded by Ms. Cohen the Board voted unanimously to open the Public Hearing for the Major Site Plan Review of Berkshire Mountain Club at Catamount Ski Area.

Submissions on file:

- David Silver letter Feb 18, 2014
- Hillsdale-Copake Fire District letter Feb 21, 2014

- Schematic Elevation – Bulk from Frank Peteroy February 27, 2014
- Andrew Gilchrist letter and package Feb 27, 2014
- Andrew Gilchrist letter and package March 4, 2014
- Gert and Cindy Alper letter March 21, 2014
- Stephanie Ferradino letter to ZBA March 27, 2014
- Andrew Gilchrist letter to ZBA and PB March 27, 2014
- Stephanie Ferradino letter to PB April 2, 2014
- Andrew Gilchrist letter with photos April 3, 2014
- Andrew Gilchrist presentation package – EAF April 3, 2014

Ms. Becker advised that any comments should be directed to the Planning Board as the purpose of the Public Hearing is not to have a question and answer period. She also asked the Attorneys who submitted letters to the Board to please summarize their letters.

Mr. Prendergast made a presentation explaining the proposed Site Plan application for the purpose of the Public Hearing.

DONALD PULFER, Town of Egremont... Mr. Pulfer acknowledged that the Town of Egremont Planning Board supports this project as does most of the town however they would like a clear assessment of the project as to the mutual health of the surrounding communities. Mr. Pulfer expressed a desire for more information in the forms of Site Plans and traffic studies to present to the Town of Egremont so they can review them. He acknowledged receipt of some information on an updated 2004 traffic study however that dealt only with peak traffic in and out on the weekends during ski season. He expressed concerns on what effect the extra traffic will have on everyone. Although the Town has received two information sessions with Mr. Freeman they would like to be able to assess the plans. He requested copies of the Site Plans and expressed concerns for Nicholson Road as an emergency access road as the road is tight in one area and very muddy in others. He also expressed concern that at one point on Nicholson Road the tendency in the curving road is to bear right which will lead into the Swiss Hutte parking lot. He feels there should be a sign directing people left onto the Catamount parking lot. Another concern he had was that part of the emergency access road may be on private property and he would like to see a legal document establishing a right-of way. Mr. Pulfer also had a concern about life safety in the event of a fire and noted that the nearest ladder fire truck is in Great Barrington, MA.

ATTORNEY ANDREW GILCHREST, Tuczinski, Cavalier & Gilchrest, PC... Attorney Gilchrest represents Gert and Cindy Alper, owners of the Swiss Hutte. Attorney Gilchrest submitted a letter to the Board from Mr. & Mrs. Alper who could not attend. Attorney Gilchrist advised that Mr. & Mrs. Alper are seeking the benefits of the prior approval, specifically the one in 2005 concerning the Neopolis project which he says the present application is heavily based on. He believes that in seeking approval of a prior project it should be consistent in and should also be conditioned as the previous project.

He expressed concern about the secondary emergency access road and the use of Nicholson Road for this purpose. Attorney Gilchrest referred to the original Neopolis Creighton Manning Plan of April 2003, Figure 4.1 which shows the construction of a new emergency road and wondered why this was not considered an acceptable plan. He then addressed Figure 4.2 of the Creighton Manning Access Modification Plan identified as Conceptual Access Modification Plan Alternative 5 which was acted on by the Planning Board for Neopolis. He asked the Board to review the prior EIS and questioned why a supplemental EIS was required.

He made note of the fact that those findings went on to say a secondary means of access would be built approximately one-hundred feet (100') from Route 23 providing a safe alternative emergency access road. He pointed out that this road would have served truck traffic which would mitigate the potential impact of heavy vehicles on the adjacent land used along Catamount Road during the construction and operation phases of the project which is of particular interest for his clients. Attorney Gilchrest's concerns for his clients are that in the present application heavy trucks will be traveling directly in front of the Swiss Hutte for the duration of the five (5) year project as well its continued use by all delivery vehicles after completion of the project. Attorney Gilchrest feels the Board needs to take into consideration the fact that his client's building is twenty feet (20') from Catamount Road. He submitted copies of color photos to the Board of Nicholson Road showing the narrow spot and the road condition. He made note of the fact that there is a power pole on the side owned by Catamount Development Corp. He expressed concern that the sharp left turn into Catamount from Nicholson Road will cause emergency vehicles to veer onto his client's road which is why the previous Board required a different access road.

Before making any decision he suggested the Board ask for what specific types of emergency vehicles will be used for access to the site. What their specifications, dimensions and weight are, what apparatus is attached to any and all emergency vehicles of the primary and mutual aid districts, what the load bearing capacity of Nicholson Road is and whether it can handle the weight of all these vehicles, especially emergency vehicles. He then questioned where the snow will be put when the road is plowed. He suggested the Board consult a traffic engineer for answers to these questions and whether Nicholson Road is a safe road to use for these purposes. He questioned why Creighton Manning's current submittal letter states that the original design was not safe. Regarding construction and public delivery vehicles he feels the Board should also ask about their type, size, materials, frequency, months, dates, hours of operation, ground vibration, noise, lights and impact on his client's property before making any decision.

BILL WOOD, Historian Town of Egremont... Bill Wood commented on the fact that Nicholson Road is the Twelfth Massachusetts Turnpike Historic Road. Mr. Wood felt the Town of Copake should search out where Nicholson Road went when it enters into New York State.

MR. ADAM SCHULTZ, Linda Breen Representative... Mr. Schultz advised the Board that he was representing Attorney Stephanie Ferradino who could not be present. Mr. Schultz asked that the recording of the meeting be preserved. Mr. Schultz's belief was that this project does not appear to be an allowed use inasmuch as it is time-share and

multi-family dwellings are not an allowed use in a residential district. Mr. Schultz questioned how the Board can consider a use that is not allowed and how they can consider a Site Plan for a use not allowed in the district. He believed that if this is to go forward the zoning issue needs to be resolved first. Mr. Schultz also questioned that without jurisdiction the Board cannot be considered lead agency for the SEQR.

Attorney Dow addressed the fact that there is a special provision in Copake Town Code 232-23A(8) which reads: *Integration of procedures. Whenever the particular circumstances of proposed development require compliance with either the special use procedure in this chapter or other requirements of the Town, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this section with the procedural and submission requirements for such other compliance.* Mr. Schultz was not sure this applied in this instance as integration would not apply in a use that was not allowed. Assuming the Board did have jurisdiction, the SEQR process would need to start over inasmuch as the previously approved project expired in 2010 and with that expiration the environmental review conducted at that time has also expired.

Mr. Schultz made note of the fact that SEQR has changed since that time so the new regulations would need to be looked at. He brought up the fact that in the December minutes it appears that there was a discussion and some type of approval to waive certain design requirements and if that occurred it would be premature because decisions cannot be made and approvals cannot be given until the SEQR process is complete. Mr. Schultz also felt the Site Plan Review was premature as if you don't have a decision as to what variances will be granted one doesn't know the scope of the project being reviewed in the Site Plan process. Mr. Schultz encouraged the Board to start the review process again by determining whether they have jurisdiction, get the zoning straightened out, restart and complete the SEQR once the zoning is straightened out, and ensure an appropriate and complete review be done with a completed environmental impact statement.

LINDSAY LeBRECHT, Copake, New York ... Ms. LeBrecht acknowledged that there is a lot of community support for this project. She pointed out that there are an estimated sixty (60) jobs that will open up as well as four-hundred-thousand dollars (\$400,000.00) per year of taxable revenue that was estimated at one of the ZBA meetings that will ripple through the area. Ms. LeBrecht also noted that this project conforms to the Comprehensive Plan. Ms. LeBrecht hopes that everyone can come together on common ground so that the project can proceed forward.

JEFF PAGE, Hillsdale, NY... Mr. Page expressed concern with the entrance to the project as he feels it will shorten the reaction time for people coming over the hill and people pulling out from the exit. He was in favor of a road being built onto Breezy Hill Road as a previous application suggested. He also had concerns with the condition of Nicholson Road.

RICH EDWARDS, Catamount... Mr. Edwards made note of the fact that UPS trucks go down Nicholson Road as well as National Grid and The Haupt Tree Service and the road can handle these large trucks.

STEPHEN HOPPE... Mr. Hoppe believes it is a good thing to bring some development into the Town and the only way to decrease taxes is to spend less or to increase tax rolls and lighten the burdens somewhat on the Town people. Mr. Hoppe also felt the process of proceeding between the Planning Board and the ZBA to help expedite the project is a good thing. Mr. Hoppe thanked the Board for their work on this project.

ELLIOT SNIDER, Town of Egremont ZBA Chair... Mr. Snider believes that it should be the Copake Planning Board, ZBA and the Town of Egremont ZBA helping to make this the most perfect project it can be and to take in to account any negative effects there might be on the surrounding properties.

The Public Hearing remained open.

SUBDIVISION/SITE PLAN

2014-7 MINOR SUBDIVISION – DAVE VALDEN – Main Street – [Copake]

Dave Valden, owner of the Church Street Deli, appeared before the Board requesting a Boundary Line Adjustment to merge the back of his property with a twenty-five hundred (2,500) square foot parcel from the Copake General Store. He explained that this will square his property in the back of the structure. Ms. Cohen questioned the alley way at the right of his property and was advised by Mr. Valden that this is a right-of-way to the barn in the back of the General Store.

Ms. Becker acknowledged the following submissions:

- Boundary Line Adjustment map
- A fee in the amount of Fifty Dollars (\$50.00)
- Application

Ms. Becker advised that a new survey map will be needed. Mr. Valden acknowledged that he is in the process of having a new map prepared.

On a motion made by Mr. Grant and seconded by Ms. Cohen the Board voted unanimously to classify the Boundary Line Adjustment for the Church Street Deli as a Minor Subdivision. Ms. Becker acknowledged that this is an Unlisted SEQR Action and a Short Form EAF will need to be filled out by Mr. Valden and reviewed at the next meeting.

On a motion made by Mr. Grant and seconded by Ms. Cohen the Board voted unanimously to accept this application as a Preliminary Sketch from the survey of Praetorius and Conrad dated January 2008.

On a motion made by Mr. Grant and seconded by Ms. Cohen the Board voted unanimously to schedule a Public Hearing for next month's meeting.

2013-30 MAJOR SITE PLAN –BERKSHIRE MOUNTAIN CLUB AT CATAMOUNT SKI AREA – Route 23 – [Copake]

2013-31 MINOR SUBDIVISION –BERKSHIRE MOUNTAIN CLUB AT CATAMOUNT SKI AREA – Route 23 – [Copake]

Pat Prendergast appeared along with Developer Harry Freeman and Project Attorney Andy Howard. Surveyor Jeff Plass and Catamount owner Rich Edwards were also present.

Ms. Becker acknowledged the following submissions:

- Andy Howard letter of March 11, 2014 – items to address
- Bob Haight e-mail March 15, 2014 – width Nicholson Rd
- M. Becker list of items to address March 17, 2014
- Andy Howard letter of March 19, 2014 – to T. Hannigan
- Prendergast letter of March 21, 2014 and revised plans
- Prendergast e-mail March 24, 2014 – Nicholson Rd
- Tom Field, Clark Engineering letter March 31, 2014
- Ed Ferratto, CEO Copake April 1, 2014 – fire and safety
- Prendergast letter April 3, 2014 – response to Clark Eng letter
- Andy Howard letter and packet April 3, 2014
- Notices of Public Hearing
- Valley Reporter article Condos destroyed by fire at Sugarbush – Ed Sawchuk submission
- Color map of project site and subdivision overlay
- Revised EAF Part 1 with corrections.
- Set of revised site maps with changes notes on drawings: #2,3,5,SA 1, SA 2.

Ms. Becker acknowledged that she made a site visit to the Breen property to see the view from Mrs. Breen's property. Ms. Becker read CEO Ferratto's letter into the record.

In his letter CEO Ferratto clarified that he has jurisdiction over all Uniform Fire and Building Code compliance related to development in Copake. He determined that a secondary fire apparatus access road will be required and will have to meet the required specifications. One of CEO Ferratto's other concerns was whether the amount of water which will be available to fight a fire and provide for the sprinkler system will be adequate. Although he has received an analysis of availability of water from the engineer, he feels it is still uncertain as to whether this amount is appropriate for the fire apparatus necessary to fight a fire of this type of magnitude. CEO Ferratto's letter made note of the fact that the meeting he had with Mr. Joe McGrath of the NYS Department of Codes Division Regional Engineer and other principals went well and he feels that Mr. Jim Trip has done an excellent job meeting the NYS Fire and Building Codes. He also noted that the building is being designed to comply with NYS Uniform Fire and Building Codes.

The photo map was reviewed. It was noted that the rock formation on Nicholson Road is owned by Catamount Development Corp. The easement from Nicholson Road was also discussed and Mr. Freeman noted that it is a thirty foot (30') easement and starts on the far side of where the Swiss Hutte parking begins with parking done up to the easement so that the road is still navigable. Mr. Freeman also advised the Board that the No Maintenance sign on Nicholson Road had been removed. Attorney Howard acknowledged that this was contained within the submitted correspondence and the Town of Egremont Board of Selectmen confirmed that Nicholson Road is a maintained road by the Town of Egremont and it is their understanding that this will serve as a secondary road access to Catamount as well as to the Berkshire Mt Club. Mr. Freeman also made note of the fact that it was confirmed by the Egremont Fire Department at a public information session he did in Egremont that Nicholson Road is their primary means of access into this property for the current Swiss Hutte and Catamount for all of their apparatus.

Engineer Tom Field's concerns regarding handicapped parking were addressed by Mr. Prendergast who noted that there are ADA compliant parking areas between two-hundred and three-hundred (200-300) parking spots. Engineer Field advised that actual requirements for State building codes require that all handicapped parking spots have to be van accessible. Mr. Prendergast will look into this and acknowledged that he went by ADA federal standards which stated that the parking spots be sixty inch (60") wide aisles.

Mr. Prendergast also acknowledged that sidewalks had been added and the grading was fine tuned addressing Engineer Field's concerns. Mr. Prendergast advised that he is working on an easement map and noted that there were a fair amount of easements that need to be considered. Ms. Becker questioned whether these easements will be placed on the Subdivision maps as well and was advised by Mr. Prendergast that plans are to have a description that will refer to another map that show the easements. Ms. Becker advised that this should be included with the Subdivision maps. Mr. Prendergast suggested referencing this on the Subdivision map to a drawing with a date and a number. Mr. Freeman clarified that the concern is that the maps be readable. It was noted that these would need to be on a separate map.

Mr. Prendergast acknowledged that the lighting sheet has been updated and noted that some lighting has been added. He also addressed the fact that he was not able to find a minimum lighting requirement in the Town Code but will add lighting to any places that the Board had concerns with. Mr. Prendergast also explained that a new oil and water separator will be used to replace the older one.

Engineer Field's letter was addressed and he expressed concern with the driving isles as well as fire access and advised that the Planning Board and/or CEO Ferrato need to see a plan showing that vehicles can get through the roads and isles in question. There is a choice of isles that can be accessed by a fire truck if need be. Engineer Field pointed out that it is just due diligence to show on a plan somewhere that this can be accessed by the required vehicles. Engineer Field also felt that the issue of whether or not Nicholson Road is good enough or not needs to be resolved. Mr. Prendergast brought up the fact that Nicholson Road is twenty-four feet (24') wide at the widest point.

Attorney Dow questioned whether there was consideration regarding the ladder truck that was discussed in the prior application. Ms. Becker believed this went with the height variance. Attorney Dow was concerned with the turning radius. Engineer Field suggested the Fire Department resolve this with CEO Ferratto to make sure the vehicles in question can access the

site if needed. Engineer Field also brought up the fact that it was previously noted that there is a sharp left off Nicholson Road into the parking lot and if the vehicle went straight it would be going onto someone else's property which cannot be done. Mr. Freeman addressed these concerns and advised that when the radius is shown it will show that this is an accessible turn. Engineer Field questioned whether the Swiss Hutte will be tied into the sewage system and was advised that although there is room to do this there are no plans for this to be done.

Engineer Field addressed whether the storm profiles will be shown in the plan however Mr. Prendergast prefers to wait and do the actual construction plans. Mr. Prendergast clarified that the two (2) utilities that are on the site which are critical and run by gravity are the sewer system and the drainage system. If there were a mistake on the plans where a sewer line and a drainage line came together, both being run by gravity, it could not be fixed. He continued to explain that the water mains get put on after the gravity lines are done. Engineer Field felt it was important to be part of the present plan set so anyone looking at it will know where the lines go.

In his letter Engineer Field also questioned the parking places on Building Three (3) and whether they could be included in the parking plans and Mr. Prendergast's response agreed with this. Ms. Cohen questioned whether assigned parking is planned. Mr. Prendergast acknowledged that this would likely be the case in front of the buildings. Mr. Freeman agreed and acknowledged that the planned parking is more than the required amount and if the Board wished certain spaces be removed this can be done.

Mr. Grant questioned the status of the access road and Ms. Becker advised him that she has received two (2) more pieces of information from the Town of Egremont certifying that Nicholson Road is a well maintained road by the Town of Egremont and is maintained to the property line of Gert and Cindy Alper. Ms. Becker also informed there is a rock formation on the road however one side of the road is owned by Catamount Development Corp. She also acknowledged that the road will need to meet the standards set forth by CEO Ferratto. Mr. Freeman advised that the Fire Department said the road was eight feet (8') wide however it was measured by one of the Board members to be twelve feet six inches (12'6") at its narrowest point. Engineer Field suggested checking this code reference because he believed the road needed to be somewhere around twenty-six feet (26') wide. Mr. Freeman advised that the section CEO Ferratto referred to was at twenty feet (20') wide except in areas where there is an emergency gate. Mr. Freeman acknowledged that they will comply with these specifications.

After a short break Ms. Becker advised that the next step is to review the EAF however inasmuch as Mr. Schultz raised the issue about the Special Use Variance and whether the Board has jurisdiction to make the SEQR determination she questioned whether the Board should proceed with this. Attorney Howard acknowledged that he spoke regarding this issue at last week's ZBA meeting and included it in the correspondence he submitted at this meeting. He continued to note that under the Town's Table of Use regulations the Resort Hotel and Lodge is a permitted use in this residential zoning district subject to Site Plan Review and approval and Special Use Permit review and approval. In going back through the SEQR findings of 2005 on page 2 of the SEQR findings of Exhibit B in talking about the Neopolis project he noted that the units for the Resort Hotel will also be offered for sale in a condominium format and noted that the site is located in the 'R' Zoning District where the project is a permitted use contingent on obtaining a Special Use Permit from the ZBA. Attorney Howard pointed out that the Planning

Board has reviewed projects such as this on this particular site and has found them to constitute a Resort Hotel for with a Special Use Permit with Site Plan approval required.

Attorney Howard submits as a threshold question that this application has been appropriately proceeding before the respected Boards. With regard to SEQR and the comments made by both Mr. Schultz and Attorney Gilchrest he pointed out that they are proceeding with an application to have this particular Site Plan approved along with the modifications going forward. He continued to note that as they have said before to the extent variances have been granted in the past and to the extent this particular site has undergone significant environmental review it is certainly well within this Board's discretion to consider it and take their hard look at it. He believes that what the Board wants to avoid is conducting ad hominem zoning where it's the person and not the land, as the land hasn't moved or migrated. He believes that the concerns that this Town had in doing a full EIS and analyzing the supplemental EIS are certainly things to consider. He pointed out that the reason the applicant has been before the Board in the past five (5) months is because they are seeking approval of this particular project and not saying this was done before. He feels the Board is taking that task very seriously which is why this Board elected to assume Lead Agency Status, gone through with the required circulation and are serving legitimately as Lead Agency on this project under what they believe is a permitted use.

Ms. Becker questioned whether the Board should proceed forward. Attorney Dow pointed out that the ZBA has a couple of questions before it and hasn't taken any formal actions on anything as yet and two (2) of those questions have to do with the use as proposed. He noted that there are two (2) steps to this question and the biggest one is does this project fit within the definition of the Code of a Resort Hotel because a Resort Hotel as defined in the Code and not commonly what one thinks of a Hotel. He made note of the fact that a similar project was proposed several years ago and that among the characteristics of that project was a condominium format with determinations that were made by the ZBA that even though it was in condominium format that involves private ownership they deemed that to be within the definition of a Resort Hotel as the Copake Code calls it. Once it is classified as a Resort Hotel it then becomes a permitted subject to a special exception permit.

Attorney Dow continued to note that one of the legal questions is to what extent is the decision to make the condominium project fall within the Resort Hotel. He pointed out that this is very influential as the prior determination of the ZBA generally has to be followed unless it can be distinguished by a rational basis that arriving at a different decision the second time around is a well articulated rational reason. He commented that there is a precedent with similarities however he can't say whether all relevant things are identical and the ZBA in theory can arrive at a different decision but it would need a legally sound and rational basis. He pointed out that when the project was started several months ago there was a sense given that most of this was previously addressed with some work to be done around the edges. However after getting deeper into the project it became apparent that it needed to be treated as a new application where there may be overlaps, findings and facts that can be relied on from the past but becomes an unclear situation with the scope and complexity greater than originally understood and a lot that needs to be considered.

Attorney Dow acknowledged that the ZBA needs to make a determination one way or another on whether it is the Resort Hotel and the same as was done before and followed as was done before or if there is sufficient rational reason to find otherwise. He pointed out that there is more ambiguity than people might have thought a few months back and it all comes down to whether

it is an approved use. He also acknowledged that a determination was made on a similar project called a Resort Hotel and the question is whether these Boards are bound by those previous decisions. He noted that there is a very strong historical precedent that has to be dealt with however without a finality there is uncertainty created.

Attorney Howard made note of the fact that the applicant submitted an application to this Board and the Board has had circumstances where an application comes in, is reviewed and questions come up as to whether that application fits the definition of a use. He continued to note that at that point there is a decision made by the Board affirmatively that it is a permitted use, not a permitted use, or they are not sure if it is a permitted use, something will be sent to the ZBA if they needed an interpretation. He believed that this has not occurred here. This Board has not taken that path and instead has accepted the application and deemed the application complete enough to schedule a Public Hearing.

Mr. Grant brought up the fact that the ZBA is dealing with the issue and what Attorney Dow is saying is that the Board needs some certainty before continuing because with the EAF if it is not a permitted use it changes the whole equation. Attorney Howard commented that this Board has independent jurisdiction to make that determination from a Site Plan perspective. As he understands this is an applicant that has been here, prepared the engineering and has proceeded under the definition of a Resort Hotel with this Board recognized it as so. They have made certain determinations, moved the process forward and have circulated for Lead Agency which they would not have done on a project that was not a permitted use in the Town of Copake. Attorney Howard feels they made the right decision based on the fact that on this very site there will be a situation where units are being sold in a condominium format. In 2005 they made the decision that this is a permitted use in this district.

Attorney Dow noted that the confusion may be due to the fact that it was presented as a re-approval. Attorney Howard made the argument that it is very significant that this was a project twice before on this same site and this makes the application very different. He pointed out that those prior approvals did occur and they are looking to have this project re-approved. He also made note of the fact that they understand that in connection with that they need to submit a new application and new SEQR form. Although they have conceded that the prior application had lapsed, they are not changing their position that the full Environmental Impact Statement and Supplemental Environmental Impact Statement that were done are all relevant to this application and are not concepts and conflicts. He believes they have made changes according to any changes in the Code when applicable and would like to have the application analyzed on that basis.

Mr. Grant acknowledged that the Board is proceeding on a dual track with the ZBA doing their job while the Planning Board is doing their job but until there is some confirmation he doesn't see how an EAF can be done contingent upon a ZBA decision. Mr. Prendergast questioned what confirmation Mr. Grant was referring to. He was informed that Mr. Grant was referring to confirmation as to whether this is a permitted use and just requires a Special Use Permit and not a change in land use. Attorney Howard argued that they did not ask for that and do not have an application pending for an interpretation. Mr. Becker acknowledged that the applicant has an application for a Special Use Permit. Mr. Grant noted that it is his understanding that the ZBA has to determine whether this is a use variance instead of a Special Use Permit. Mr. Grant also made note of the fact that as Attorney Dow stated it needs to be determined that this is a Hotel and not a

Multi-Family residence. Mr. Grant did point out that this determination was made before. Attorney Howard argued that the prior decision was made by the Planning Board and not the ZBA.

Ms. Becker asked Attorney Dow if the Board could proceed at this time or needed to wait. Mr. Prendergast brought up the fact that the Board never asked the ZBA for an interpretation as it appeared clear to everyone that this was a Resort Hotel as presented in the past. Mr. Prendergast argued that an application was filled out for a Special Use Permit and not an interpretation. Ms. Becker brought up the fact that this was accepted and Attorney Howard noted that an application was filled out for a Site Plan. Attorney Dow noted that there are different opinions from people with different interests in this matter and it is hard to know how this is going to play out at this point and everyone is trying to do things in a way that this will not end up in litigation. He also noted that there are a lot of vague questions and complicated issues as well as likelihood and risk of litigation whereas the applicant's project would be set back should that happen. Attorney Dow acknowledged that given the volume of what still needs to be reviewed it was unlikely a decision would be reached tonight. Mr. Urban pointed out that things cannot be put on hold as with so much still to be done the process needs to keep going and at some point a decision will need to be made.

Ms. Becker questioned whether it would be helpful to review Part 1 of the EAF. Attorney Dow advised that this could be done in any case. This was reviewed and any pertinent changes were made by Mr. Prendergast on the applicant's copy. Mr. Prendergast suggested having Mr. Freeman initial the changes that were made to the EAF and this was done by him.

A discussion arose regarding Part 2 of the EAF and Attorney Howard acknowledged that he would prefer that they not do anything on this until the Public Hearing is closed as he had concerns that it could be viewed as pre-judging of the application.

Part 2 of the EAF was reviewed for possible issues that might need attention in the applicant's preparing for the next process. Attorney Dow referred to the impact on ground water section and questioned whether there was any documentation on the section where it discussed the Water Supply Demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the supplied aquifer. Mr. Prendergast advised that seventy-two (72) hour float tests had been done. He also noted that #14 the impact on energy, #15 the impact on noise, odor and light and #17 consistency with community plans are issues that would probably be discussions on.

MINUTES

On a motion made by Mr. Urban and seconded by Mr. Grant the Board voted unanimously to approve the meeting Minutes of December 5, 2014.

ADMINISTRATIVE

ZBA ALTERNATES: Attorney Dow advised the Board that the ZBA requested the authority to use alternates when they are short members in an ongoing concern for lost time and that it takes a local law to permit it. He acknowledged that the Copake Zoning Code presently states that there should be a minimum of five (5) members and one (1) alternate member who shall be appointed.

He noted that an inserted passage would need to say that notwithstanding any limitations when a member is needed the Chair can appoint a previously designated alternate to fill in and this would let the alternate fill in when the Board is short for any reason. Mr. Grant questioned what the Planning Board needed to do for this and was advised by Attorney Dow that anything in Chapter 232 needed to be passed by the Planning Board.

CJ REALTY: Ms. Becker informed the Board that a letter was received by CJ Realty to once again extend the Site Plan approval for their subdivision project on Empire Road. Mr. Grant questioned when this will expire and was advised that it expires in May. Ms. Becker felt this should be looked at again. No decision was made.

CARRY OVER

The following matters were carried over to the next meeting:

2012 -14 SPR/BLUESTONE & TRAFFIC CIRCLE – CAMPHILL VILLAGE – Camphill Road [Copake Lake]

2011-18 SITE PLAN REVIEW – DOMINICK SINISI – Lakeview Road [Copake Lake]

ADJOURNMENT

There being no further business, on a motion made by Mr. Grant and seconded by Mr. Urban, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 10:00 p.m.

Marcia Becker, Chair

Please note that all referenced attachments, comprising 18 pages, are on file with the Copake Town Clerk and in the Planning Board office. The referenced attachments are filed in the individual project files. An annotated listing follows:

ADMINISTRATION

BERKSHIRE MOUNTAIN CLUB AT CATAMOUNT SKI AREA RESORT HOTEL

March 19, 2014	Howard to Hannigan (1)
March 27, 2014	Wersted to Thomas/Becker (2)
March 31, 2014	Field to Becker (3)
April 1, 2014	Ferratto to CPB (1)
April 2, 2014	Turner to Berkshire Mountain Club (1)
April 3, 2014	Prendergast to Becker/CBP (3)
April 3, 2014	Howard to Becker/CPB (7)