



**COPAKE PLANNING BOARD**  
**AUGUST 1, 2013**  
**MINUTES**

**Approved**  
September 5, 2013

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**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 regular meeting of the Copake Planning Board was called to order at 7:00 p.m. by Marcia Becker, Chair. Also present were Chris Grant, George Filipovits, Bob Haight and Jon Urban. Steve Savarese was excused. Lisa DeConti was present to record the minutes. Attorney Ken Dow was also present.

**ZONING BOARD OF APPEALS – Referrals**

**1. ZBA REFERRAL/SPR – EDWARD SAWCHUCK – Lake Shore Dr. [Taconic Shores] – (2013-10)**

Frank Peteroy, the project architect, appeared with Mr. Sawchuck. Ms. Becker acknowledged that the ZBA decision was made however the Board was still waiting for a survey, asbestos decision, a DEC letter and verification of the septic system.

Mr. Peteroy submitted the:

- Survey
- First five (5) pages of the Asbestos Report
- Elevations
- DEC Report
- Septic affidavit

Mr. Peteroy acknowledged that the building is not locked in and the information on the Survey is what presently exists. Mr. Peteroy also acknowledged that Mr. Sawchuck is rebuilding on the exact same footprint however the house is being moved, the sunken driveway will remain and the structure will have three (3) bedrooms which is not an increase from the previous structure. Mr. Peteroy acknowledged that the Asbestos Report came back positive for window caulking with no asbestos present in all other samples. Ms. Becker questioned whether Mr. Peteroy was advised on how to remove the window caulk and Mr. Peteroy clarified that it would be removed by the company performing the inspection. Ms. Becker questioned whether Mr. Peteroy would inform CEO Ferratto regarding this and was told that CEO Ferratto would receive copies of

everything. Mr. Haight questioned whether the window caulk was on the outside of the structure and was informed that it was.

Mr. Peteroy presented the DEC Report however he did not print out the complete fifteen (15) pages. He did acknowledge that approval was received as long as they build on the same footprint and no problem was found with the septic location. Mr. Peteroy did make note of the fact that as predicted the ground soil is gravelly, very loose and coarse.

Mr. Peteroy acknowledged the affidavit regarding the working condition of the septic system and the fact that it was not stamped by an engineer however he felt this was sufficient inasmuch as it is adequate for the Board of Health. Mr. Peteroy explained that everything was dug up, the distribution box located and the tank is a one-thousand (1,000) gallon concrete tank. Mr. Peteroy continued to explain that there are five (5) legs from the distribution box. Mr. Grant pointed out that the Board requires a letter from an engineer stating that the system is in good working order which is also what New York State Code requires. Mr. Peteroy informed him that Mr. Sawchuck can self-certify the septic letter as he is an engineer.

Ms. Becker questioned the distance of the septic from Robinson Pond and was advised that it is in the front yard. Mr. Haight questioned why the Board wouldn't accept this inasmuch as the DEC accepts it. Ms. Becker advised him that this is because the Board has to apply the same standards to everyone. Mr. Grant questioned whether Mr. Sawchuck can self-certify and Mr. Peteroy informed him that this is an accepted practice. Mr. Grant questioned whether an engineer could not be called in to inspect this and Mr. Sawchuck acknowledged that he was willing to put his stamp on it as he was present during the inspection. Ms. Becker acknowledged that this has been done before.

Mr. Peteroy made note of the fact that the septic tank, intermediate tank and distribution box were all uncovered and inspected and there were no leaks present nor was there anything present to indicate any residual backflow of material. Ms. Becker accepted Mr. Peteroy's explanation but not being an engineer the Board could not accept his conclusion. Mr. Sawchuck questioned whether there was a difference between an RA and PE in the Code. Ms. Becker referred to the decision which stated certification by a Licensed Engineer is required. A letter certified by Mr. Sawchuck stating that the septic system is sized properly and is in good working order will be forthcoming. Attorney Dow acknowledged this would be acceptable as it had been done previously.

On a motion made by Mr. Grant and seconded by Mr. Haight the Board voted unanimously to approve the Site Plan for the Sawchuck residence on Lake Shore Drive in Taconic Shores along with a schematic of the septic system design provided by Frank Peteroy dated July 31, 2013 along with a survey of the property dated July 8, 2013 from a map by Lyden Chase subject to receipt of a stamped certification by licensed engineer that the septic system is in good working order.

## **2. ZBA REFERRAL/SPR – JESSICA WANG & JAMES SPENCER – Lakeview Road[Copake Lake] – (2013-20)**

There were no new submissions for this application

### **3. ZBA REFERRAL – PATRICK GRECO – Pumpkin Hollow Road [Copake] – (2013-23)**

Ms. Becker advised the Board that Mr. Greco's application to put a garage in his front yard was being referred to us by the ZBA. She acknowledged the:

- Site Plan and Maps

Ms. Becker asked if the Board had any comments regarding the placement of the garage in Mr. Greco's front yard. Ms. Becker did make note of the fact on the ZBA application it was said there was no other place for the garage to be placed as the house is located at the back of a three (3) acre lot. Mr. Grant questioned the set-backs and was advised by Ms. Becker that there is a ten foot (10') set-back for an accessory building. It was noted that the garage is not being placed at the front of the house but off to the side front and will be pretty well hidden by trees presently located toward the front of the lot so there is no apparent visual impact.

Ms. Becker asked the Board if they had any recommendation for the ZBA. Ms. Becker will write a letter to the ZBA advising them that the Board had no specific comments regarding this application.

## **PUBLIC HEARING**

### **2012 -33 MINOR SUBDIVISION/BLA – MICHAEL & EILEEN COHEN – High Meadow Road [Copake Lake]**

Ms. Becker advised that the Public Hearing for this application was still open and asked if anyone had any questions or comments regarding it. Mr. Filipovits believed this application had been approved. Ms. Becker clarified that submission of the Ag Data Statement had inadvertently been omitted so the Public Hearing remained open.

Being no further comments, on a motion made by Mr. Haight and seconded by Mr. Filipovits the Board voted unanimously to close the Public Hearing.

## **SUBDIVISION/SITE PLAN**

### **2012 -33 MINOR SUBDIVISION/BLA – MICHAEL & EILEEN COHEN – High Meadow Road [Copake Lake]**

Two submissions were received:

- The Ag Data Statement.
- The Deed

Jeff Plass appeared before the Board representing Michael and Eileen Cohen. Ms. Becker advised that the submission of the Ag Data Statement had inadvertently been omitted and had

since been submitted by Surveyor Jeff Plass and mailed to all the abutting neighbors. Ms. Becker acknowledged that Mr. Cohen's property is located in District 1 which is an Agricultural District and the neighboring land is being actively farmed by Adrian Langdon, Peter Reed and Ezra Link Jr.

Mr. Haight questioned whether this application had to be forwarded to the County Planning Board and was advised that this was not required as they do not have the authority to review subdivisions. Mr. Plass believed that the County reviewed applications that were on County roads. Ms. Becker brought up the fact that she was advised by the County Planning Board that they had no authority to review subdivisions. Mr. Plass clarified that the County just wants to be aware of any subdivision that have transpired. He presented the Board with the deed to the property as requested by Mr. Grant and it was noted that there are no restrictions within the deed.

Being no further comments, on a motion made by Mr. Grant and seconded by Mr. Filipovits the Board voted unanimously to approve the minor subdivision of the lands of Michael and Eileen Cohen on High Meadow Road for parcels from a map stamped by Jeff Plass and revised June 17, 2013.

Ms. Becker will stamp the maps on Saturday and Mr. Plass will advise Mr. and Mrs. Cohen accordingly.

**2012-1 MAJOR SUBDIVISION – COPAKE LAKE GOLF LLC– Lakeview Road –  
[Copake Lake]**

Ms. Becker acknowledged the:

- o Flow Data Study which was received July 17, 2013

Mr. Plass appeared before the Board representing the applicant Jon Urban who previously recused himself from participating on the Board for this application. Ms. Becker reminded the Board that this application was approved May 3, 2012 subject to the submission of the Flow Data Study from the DEC and their approval of the expansion. A copy will be submitted to Code Enforcement Officer Ed Ferratto.

Ms. Becker advised that the map which had previously been approved was dated March 29, 2012. Mr. Plass acknowledged that in the interim Mr. Urban and others reviewed the maps and decided they wanted to slightly adjust the two lots so there was a little more road frontage with parcel 7. Ms. Becker made note of the fact that a new motion needed to be made and pointed out that there were no other changes being made.

Mr. Grant reviewed the building envelope and questioned the set-backs. He was advised that the set-backs will be tight but everyone is aware that any houses placed on them will have to be sized accordingly.

On a motion made by Ms. Becker and seconded by Mr. Grant the Board voted unanimously to approve the revised major subdivision map added to the previously approved major subdivision for the Copake Lake Golf LLC application dated July 2, 2012.

Ms. Becker will stamp the maps for pick up by Mr. Plass on Wednesday.

**2012 -4        MINOR SUBDIVISION – MICHAEL FRIED/RMF PARTNERS – Woodchuck Road – [Copake Lake]**

Jeff Plass appeared before the Board representing Michael Fried. Ms. Becker reminded the Board that this application which had been reviewed a while ago had been on hold. Mr. Plass presented additional maps for the Board to review.

Ms. Becker reminded the Board that Mr. Fried did not want to have a perc hole dug in the middle of his tennis court however the Town Engineer recommended that a lot not be approved unless it was buildable requiring a test hole be done for approval.

Mr. Plass acknowledged that Mr. Fried consulted with Engineer Pat Prendergast who is designing systems so that approval could be obtained. Mr. Plass acknowledged that Mr. Prendergast suggested that both parcels 2 & 3 be serviced by the septic system on Lot 3 and he is designing a system to be presented to the DOH for approval. Ms. Becker acknowledged that this will not need to be presented to the Town's Engineer as it will have Mr. Prendergast's stamp on it as well as review by the DOH. Mr. Plass made note of the fact that they are presently waiting to hear back from the County Planning Board and asked whether a Public Hearing could be set for next month's meeting.

Mr. Plass advised the Board that he hopes to have the Health Department approval and road maintenance agreement for the right-of-way by the next meeting. Mr. Haight brought up the fact that the Board will need the easement between Lots 2 & 3 for the septic system. Ms. Becker advised that the SEQR needs to be completed. Mr. Grant questioned whether there will be a deed restriction. Mr. Plass clarified that besides having the letter from the County he will place a note on the map referring to the letter stating that the septic system for Parcel 2 will be used in conjunction with the one on Parcel 3. Ms. Becker advised him that the Board will need to see the actual agreement. Mr. Plass will provide this information. Mr. Haight made note of the fact that the shared expense of the system also be noted. Mr. Plass suggested it be noted 'until a further date' should a test hole be dug at that time for Lot 2.

Mr. Grant questioned what the DOH policies are regarding this. Ms. Becker will look in to this. Mr. Plass made note of the fact that approval will say that approval is for Lots 2 & 3 on the Subdivision map. Ms. Becker made note of the fact that the Board just needs to see the agreement and does not need to see it executed. Mr. Grant pointed out that the agreement needs to be made between the two (2) owners. Attorney Dow questioned whether the parcels have been subdivided as yet and was advised that they are in the process of doing that. He advised that the parcel with the septic system should have an easement on it and this should be written in the deed. Ms. Becker pointed out that the easement needs to include road access as well. Mr. Plass acknowledged that access to Parcel 3 is off Woodstock Road and the only easement needed is for the septic.

On a motion made by Mr. Grant and seconded by Mr. Urban the Board voted unanimously to accept the map for the Michael Fried/RMF subdivision as a preliminary sketch and set a Public Hearing for next month's meeting.

**2013-7            MINOR SUBDIVISION – JOYCE K. COWARD – Lakeview Rd. [Copake Lake]**

Jeff Plass appeared representing Joyce Coward. Ms. Becker advised the Board that this application had been started in March.

Submissions included:

- New Maps
- A letter from Ms. Coward giving Mr. Plass permission to represent her at the meeting
- A fee in the amount of \$50.00

Ms. Becker acknowledged that Ms. Coward's property is across the street from the newly approved addition to the Copake Lake Golf LLC Major Subdivision however she clarified that this is separate from the Copake Lake Golf LLC Major Subdivision. Mr. Plass advised that the reason the Copake Lake Golf LLC application needed to be approved first is because Parcel 3 of the Coward property will be merged with newly approved portion of the lands of Copake Lake LLC. Ms. Becker noted that when merged Ms. Coward's lot will be one point four-nine-four (1.494) acres. Mr. Plass clarified that Parcel 3, the one point four-nine-four (1.494) acres is being merged with the Copake Lake Golf, LLC.

Ms. Becker questioned whether a perc test needed to be done and was advised by Mr. Plass that one was not necessary on Parcel 3 as they are not creating a building lot it is simply a Boundary Line Adjustment.

On a motion made by Ms. Becker and seconded by Mr. Filipovits the Board voted unanimously to classify this application as a Minor Subdivision.

Mr. Plass pointed out the two (2) approved septic sites and acknowledged that they are waiting for the final letter from the DOH regarding septic system design and the driveway permit letter. Mr. Plass did make note of the fact that the driveway location had to be moved approximately thirty feet (30') so it doesn't interfere with the septic area. Mr. Plass also pointed out that the approved septic area on Parcel 1 shows a one-hundred and fifty foot (150') lake line showing that distance from the lake. Mr. Grant pointed out that the driveway on Parcel 2 should be twenty feet (20') from the lot line. Mr. Plass was under the impression that the distance was ten feet (10'). It was decided that the lot line on Parcel 3 will be adjusted rather than apply for a variance.

On a motion made by Mr. Grant and seconded by Mr. Haight the Board voted unanimously to accept the Minor Subdivision of the property of Joyce Coward including a lot to be merged with the lands of Copake Lake Golf LLC from a Subdivision map by Jeff Plass dated July 27, 2013 as a Preliminary Sketch and schedule a Public Hearing for next month's meeting.

**MINUTES**

A motion to approve the July minutes could not be made at this time. Although Mr. Grant and Mr. Haight were present Mr. Savarese was not so a quorum of members present at that meeting did not exist.

## **ADMINISTRATIVE**

**AG DATA STATEMENT:** Ms. Becker advised the Board that it is the responsibility of the applicant to submit the Ag Data Statement however the Board needs to keep track of whether they are submitted or not and make sure they are received.

**LINDSAY LEBRECHT AND PLANNING BOARD CONFERENCES:** Ms. Becker advised the Board that Lindsay Lebrecht requested a conference before the Board. Ms Becker questioned whether a sketch plan conference should be done without an application and whether the Board should function as an advisory Board. She was advised by Attorney Dow that the Board should not function in this capacity however this would depend on what is being requested. He made note of the fact that any advice given without an application does not carry any legal weight and cannot be relied on in any legal way and if the Board wants to do this as an Administration privilege they could do it.

Attorney Dow made note of the fact that most questions can and should be directed to the Building Inspector who can answer them and pointed out that should the Board consider a conference they should not advise them on how they would make their decision as that would need to be determined by the specifics of the application. Attorney Dow asked Ms. Lebrecht what type of information she was requesting. She explained that one of her sellers would like to know if the undersized lot they wish to sell is a buildable lot or not and another seller has a house with a foundation problem on an undersized lot with community septic and well and are asking what can or cannot be done by perspective buyers.

Ms. Lebrecht explained that when she spoke with CEO Ferratto he explained that the process will direct her to the ZBA who will then direct her to the Planning Board. She acknowledged that she is looking for help for her clients by shortening the process so that they would honestly be able to tell a perspective buyer what they would be able to do. Mr. Haight did not see any reason why advice could not be given by the Board to help someone as long as they gave them an understanding that the list is just a starter for the process as other things will pop-up during the official process. Mr. Haight suggested giving the set-backs for an undersized lot and what the remaining area would be and at what percentage the lot changes. Attorney Dow felt that kind of advice would be acceptable if the Board wished to do this but the Board could not advise whether needed variances could be obtained.

Mr. Urban suggested consulting a surveyor who should be able to answer these questions. Mr. Grant felt the CEO could answer these questions. Mr. Haight made a motion to let Ms. Lebrecht give her information to the Board to see whether they can answer her questions or not. No second was made. Mr. Filipovits did not agree with giving answers that could affect the decision of Ms. Lebrecht's sellers. Mr. Haight did make note of the fact that going before the Zoning Board and/or the Planning Board is a big concern in the Town for people buying property. Ms. Lebrecht clarified that she contacted Ms. Becker who directed her to CEO Ferratto who then referred her to the Board. Ms. Lebrecht explained that it was her understanding that the usual process with an undersized lot was to go before the ZBA and then onto the Planning Board who would make their decisions and send it back to the ZBA if necessary. Ms. Becker explained that the CEO makes the initial decision as to where an applicant needs to go first.

Mr. Urban pointed out that Ms. Lebrecht's sellers can submit an application or go to the CEO for information. Mr. Haight questioned why Ms. Lebrecht's questions could not be answered. Ms. Becker informed him that the reason was that there was no application before the board. Ms. Lebrecht explained that she is just looking for guidance and was advised by Ms. Becker that this is the job of the CEO. Ms. Lebrecht clarified that she was just inquiring as to what the Planning Board would require. Ms. Becker advised that the Board requires what is in the Town Code. Attorney Dow clarified that in asking whether a lot is buildable is asking the Board for an outcome which is what the Board does not have the capacity to do. All they can do is acknowledge the size of the lot and the set-backs defining the buildable area and anything in excess of that would most likely require a variance.

Attorney Dow pointed out that the problem with guidance is that you don't want to suggest that an outcome will happen because they don't have the authority to do that and should someone rely on this guidance a problem could arise. Attorney Dow did acknowledge that should the Board wish to give guidance they can however this is not part of the Board's statutory role as without an application. All they can really do is point out what the law is and describe the process which consists of going to the Building Inspector first who will inform them whether they need to proceed to the ZBA or Planning Board. Attorney Dow did make mention of the fact that any advice beyond the Code can be risky.

Ms. Becker made note of the fact that Ms. Lebrecht requested to be put on the Agenda and since she was put on the Agenda she should be given the courtesy of being heard and sent to the part of the code where she could find the answers she needs. Ms. Becker did comment on the fact that she was uncomfortable doing this without an application.

Mr. Urban made note of the fact that an application fee is fifty dollars (\$50.00) and felt that if someone wanted information they could go through the process and get all the guidance they want. Mr. Filipovits pointed out that an application provides a record of what transpired which Ms. Becker acknowledged. Once an application is received, a Sketch Plan Conference could clarify what needs to be done. Ms. Lebrecht did make note of the fact that the Board knows the Code inside and out and would be able to point out just what sections apply. Ms. Lebrecht did acknowledge that there is no weight put on anything she is asking as she just wanted some guidance regarding her clients. Ms. Becker did advise Ms. Lebrecht that the Board cannot advise her as to whether the undersized lot is buildable or not without an application.

Ms. Lebrecht approached the Board and explained that one of her clients owns a house on Golf Course Road at Copake Lake that could have a foundation problem and questioned whether someone would be able to build in the exact footprint putting in a new foundation or whether one (1) or two (2) walls would need to remain. Ms. Becker referred to Town Code 232-24B.(2)(b) which read: *Replacement. A nonconforming structure may be replaced to occupy the same space on the lot or rebuilt providing greater yard space and less lot coverage and not exceeding the height of the prior structure except as provided above or as approved by the Planning Board in a site plan review and approval.* Attorney Dow advised that there are other sections that could apply as well and referred to Section 232-24B.(2)(a)[2] which read: *A nonconforming building or structure shall not be added to, enlarged, reduced, or altered in any manner in a way which increases its nonconformity. Nothing herein, however, shall prevent the strengthening or increasing of the safety of all or part of a building or structure, provided that the repair or alteration will not increase the nonconformity.*

Ms. Lebrecht concluded that should the roof line want to be changed a variance would have to be sought. She was also advised that if the height increased a variance would be needed. Regarding the height, Mr. Grant referred to Section 232-24B.(2)(a)[4] which read: *Where a single-family dwelling exists on a nonconforming lot, a second story may be permitted over the same footprint, provided such addition does not exceed the height limitations in the density control schedule of this chapter for nonconforming lots.* Mr. Urban explained that someone can rebuild on the same footprint with a height up to twenty-five feet (25') without a variance. Attorney Dow advised that CEO Ferratto would be able to explain the requirements further. Ms. Lebrecht acknowledged that CEO Ferratto did explain things to her but some things she heard were conflicting and she wanted to go to the source for clarification.

Attorney Dow explained that it is the authority of the Building Inspector and the ZBA to interpret the Code and the Planning Board does not. Ms. Becker questioned whether Ms. Lebrecht's clients were on the community septic and was advised that they were. Ms. Lebrecht questioned whether the structure could be moved further away from the lake and was advised that this information could not be given without an application. Ms. Lebrecht questioned whether this was an option and was advised that this is not in the Code. Ms. Lebrecht thanked the Board for their help and guidance.

**AGENDA PROCEDURE:** Ms. Becker advised the Board that a memo from Attorney Dow regarding the proper agenda procedure for having items placed on the Agenda was in their packet.

**TOWN BOARD LIAISON:** Ms. Becker reminded the Board that the Town Board Liaison is Linda Gabaccia and if anyone has any issues or comments with the Planning Board they should be brought to her as per the policy established in the Policy Manual. Attorney Dow clarified that accordingly to Robert's Rules of Order Agendas are guides to move the meeting forward through the process and are not set in stone for the most part. Attorney Dow acknowledged that most of what the Board does is set by procedure and the only thing that could be discretionary would be the Administrative section. Attorney Dow continued to note that according to Robert's Rules of order anyone should be able to put something on the agenda to be taken up however this is not for anyone to shape their own personal views and whether or not the Board acts on these items is a decision by the Board. Mr. Filipovits questioned the fact that there was no vote on letting Ms. Lebrecht speak and was advised that this was done at the previous meeting which is why the courtesy was given her to be addressed. Attorney Dow made note of the fact that the process is somewhat awkward as any Board member should be allowed to put something on the agenda, however the Board shouldn't be bound to take action. Anything placed on the Agenda is to be brought up but doesn't have to be acted on. Attorney Dow did make note of the fact that this is not a rigid legal issue however anything acted on needs to be by a majority of the Board.

## **CARRY OVER**

The following matters were carried over to the next meeting:

- 2013 – 20      JESSICA WANG & JAMES SPENCER – ZBA REFERRAL/SPR – Lakeview Road  
[Copake Lake]**
- 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. Filipovits, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 8:25 p.m.

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Marcia Becker, Chair

**Please note that all referenced attachments, comprising 11 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**

### EDWARD SAWCHUCH

July 19, 2013           Asbestos Report (5)  
July 30, 2013           Gabriel to Sawchuck (3)

### MICHAEL & EILEEN COHEN

Ag Data Statement (1)

### COPAKE LAKE GOLF LLC

July 17, 2013           Higgins to Urban (2)