



COPAKE PLANNING BOARD
DECEMBER 6, 2012
MINUTES

Approved
January 3, 2013

Please note that all referenced attachments, comprising 10 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 7:00 p.m. by Marcia Becker, Chair. Also present were Chris Grant, George Filipovits and Bob Haight. Gray Davis participated via Video-Teleconference. Steve Savarese and Jon Urban were excused. Lisa DeConti was present to record the minutes. Attorney Ken Dow was also present.

ZONING BOARD OF APPEALS – Referrals

1. ZBA REFERRAL/SPR – JAMES MATSCHUAT – Lakeview Road [Taconic Shores] – (2012-34)

Ms. Becker advised the Board that Mr. Matschuat was referred by the Zoning Board of Appeals for a modification of a non-conforming structure and although it is a very slight modification it does require a Site Plan Review. Ms. Becker went on to explain that Mr. Matschuat would like to enclose an existing porch presently on a deck that will need reinforcement to the pier structures. Ms. Becker pointed out that the side set-backs are the non-conformity.

Ms. Becker made note of the fact that the Site Plan states that Mr. Matschuat is enclosing a structure that is six feet (6') which keeps them within the one-hundred foot (100') set-back of Robinson Pond. However, the building plans appear to state the structure at seven and one half feet (7 ½') which puts the structure one half of a foot into the one-hundred foot (100') set-back.

The Site Plan Check List was reviewed. Ms. Becker made note of the fact that the location of the water courses, lakes and ponds, the zoning district, parking areas and outbuilding information were not accounted for on the map. Inasmuch as the porch was being enclosed the Board felt the applicant should be asked about whether any lighting will be added. Ms. Becker acknowledged that there was no account of the buffer areas and whether any of it will be removed. It was noted that no county or state permits are required.

Mr. Davis questioned if the existing pier structures will need reinforcement and whether there will be any excavation that could potentially cause any sediment or erosion into the lake that might require silt fences. Ms. Becker will research this matter.

Ms. Becker asked the Board if they were comfortable with this being approved subject to receipt of the above required information being placed on the map. Mr. Grant believed the application should be reviewed again at next month's meeting as it is unclear exactly what is being dealt with.

On a motion made by Mr. Grant and seconded by Mr. Filipovits the Board voted unanimously to accept the Site Plan for James Matschuat as a Preliminary Sketch and ask him to provide the detailed information for the next meeting.

PUBLIC HEARING

None

SUBDIVISION/SITE PLAN

2012 -34 MAJOR SUBDIVISION/BLA – SCOT COHEN REALTY – High Meadow Road

Scot Cohen appeared before the Board and informed them that he has a parcel of land on High Meadow Road that he would like to do a four (4) lot subdivision on. Mr. Cohen acknowledged receipt of a letter from the Board advising him that this may now be considered a Major Subdivision. Mr. Cohen made note of the fact that although there were two (2) pieces of land subdivided from this parcel, two (2) other pieces have been added and he wondered whether this might cancel each other out and allow this to be considered a minor subdivision.

Ms. Becker acknowledged that this is another case of land that dates back to 1972 which has been subdivided more than five (5) times and now comes under the category of a Major Subdivision. Ms. Becker referred to Town Code 197-5G which read: *Any subsequent minor subdivision of any lot approved under this chapter must be submitted to the Planning Board for approval, and the number of additional lots shall be added cumulatively to the number of lots approved since 1972. At the discretion of the Planning Board, it may determine that a subsequent minor subdivision plus the earlier minor subdivision result in a number of lots that would require application as a major subdivision. In such event, the Planning Board may require that the new subdivision application be considered a major subdivision and all requirements and limitations of a major subdivision must therefore be met.*

Mr. Cohen advised the Board that the parcel had been owned by Mrs. Hughes who subdivided a five (5) acre parcel off the land when she sold it thirteen (13) years ago. Mr. Cohen went on to explain that twenty (20) acres were then sold off of the two-hundred and ten (210) acre parcel by the new owners who also purchased an approximate forty (40) acre parcel that was added to the parcel making it two-hundred and twenty nine (229) acres. Mr. Davis suggested an up to date survey be supplied by the applicant showing the progression of all the subdivisions that have taken place over the years and what is being requested for removal at this time.

Mr. Cohen also questioned what would be required for a major subdivision. Mr. Grant explained that he would be required to do a conservation subdivision and will have to set aside a sixty percent

(60%) portion of land to be held as open space. Ms. Becker suggested Mr. Cohen read Chapter 232-26.1 of the Town Code to familiarize himself with the Major Subdivision procedure.

Mr. Cohen questioned whether this could be considered a minor subdivision inasmuch as there were lands added. Ms. Becker questioned whether he would consider deed restrictions since some of the conserved land can exist within large lots. Mr. Cohen was not sure he wanted to that at this time.

2012 -22 MAJOR SUBDIVISION/BLA – JOE FLOOD – Route 22 & Yonderview Road

Surveyor Dan Russell appeared before the Board representing Mr. Flood. Mr. Russell presented two sets of maps and questioned whether the Board gave any consideration to the possibility of waiving the major subdivision requirements because of the relative minor impact of the removal of the forty six (46) acres. Ms. Becker advised Mr. Russell that it doesn't appear that the Board will require the detail of a design for a total build out of the land and they might be able to approve this with other areas of the parcel indicated to be built out in the future.

Mr. Grant questioned the amount of the constrained lands. Mr. Russell advised him that the constrained acres are fifty seven (57) with one-hundred and sixty-eight (168) unconstrained acres out of a total of two hundred and twenty six (226) acres. Ms. Becker acknowledged that the sixty percent (60%) of land that will need to be conserved includes the total acreage leaving ninety (90) developable acres. Ms. Becker pointed out that this would give Mr. Flood fifty six (56) lots that could be developed. Mr. Russell made note of the fact that Mr. Flood did not want any restrictions on the forty six (46) acre parcel he plans on selling. Mr. Grant advised Mr. Russell that what the Board might suggest is that Mr. Flood designates the sixty percent (60%) of land to be conserved and the Board might waive the requirement to put a conservation easement on the land at the present time and if there were any future subdivisions it could be dealt with at that time. Ms. Becker was in agreement with this.

Mr. Russell will speak to Mr. Flood regarding this. Ms. Becker made note of the fact that it is the farm land that the Town wishes to keep in farming and conserving some of the land Mr. Flood wishes to sell at this time might be land he would consider conserving. Mr. Russell advised the Board that he believed Mr. Flood did not want to make any commitments on that part of the land inasmuch as he has someone interested in purchasing it. Mr. Russell questioned whether the Town decides what lands are conserved. Mr. Grant advised him that this is negotiable and based upon conservation findings.

Mr. Russell questioned whether the buildable land could be considered as building envelopes rather than a Town mandated conservation easement as this could affect the value of a person's land. Mr. Grant believed this was a possibility but the Board would like the non-buildable areas designated. Ms. Becker made note of the fact that once the forty-six (46) acre parcel is removed it could be built up without any restrictions if no deed restrictions were attached to it. Ms. Becker had an issue with the forty six (46) acre parcel not having any restrictions on it since it is included in the total acreage calculation. Mr. Haight noted that much of that parcel is constrained land and only about ½ of it looks like it could be developed. Mr. Grant advised that this was something the Board had to look at as a Town and the terms of the Code and the design guidelines. Ms. Becker advised Mr. Russell that the one hundred and thirty five (135) acres to be left open need to be designated. Mr. Russell noted that he will speak to Mr. Flood who might

want to proceed with the major subdivision build out. Ms. Becker advised him that the next step for that would be to go into the Design Guidelines. Mr. Russell questioned whether a fee was due from Mr. Flood. Mr. Russell will be advised on the fee and the amount due.

2012 -30 MAJOR SUBDIVISION – VIJOBA REALTY – Yonderview Road

Dan Russell appeared before the Board with Mr. & Mrs. Gellert representing Vijoba Realty. Ms. Becker acknowledged the submissions she received from Mr. Gellert. She entered into the record The Northern Empire Realty letter dated November 8, 2012, The Dutchess Land Conservancy comments about the IRS land values, Memo from Columbia Land Conservancy and Dutchess Land Conservancy and Scenic Hudson Federal Funding, Agriculture and Markets Farmer Benefits and Protection memo, Scenic Hudson Land Conservancy workshop article, Waiver from Town Code 195-24, Department of Taxation and Finance Value Per Acre Agricultural Exemption, New York State Agriculture and Markets Soil Group Workshop sheet and conservation option flyer, Memo from Attorney Ken Dow who spoke to the Columbia Land Conservancy regarding mandatory donor tax deduction benefits, Contour, Aerial and Boundary Maps from Mr. Gellert.

Mr. Gellert acknowledged that his objectives, the Town's objectives and the State objectives are all on the same wave length in wanting to preserve open spaces and keep land in agriculture. Mr. Gellert pointed out that the lands he has already subdivided have been lands that are non-agricultural lands. Ms. Becker advised that the Board needs a map with everything on it so they can review the piece as a whole. Mr. Gellert made note of the fact that the fourteen (14) acres he would like to subdivide at this time are too steep to use for agriculture. Mr. Gellert expressed his concerns that it would be prohibitive for him to place his land in a conservation easement.

The Board reviewed the fourteen (14) acre parcel Mr. Gellert wishes to subdivide. Mr. Russell explained that there is a beautiful house site at the top of the acreage but it is too steep to get up to it. Mr. Gellert acknowledged that he would grant an easement to get up to that location over his other lands. Mr. Grant advised that the Conservation Subdivision Regulations are there for big time development of property but pointed out that the provision runs with the land and not the ownership and the Town would want some recognition that the land would have to be conserved at a future sale and ownership of the land. Mr. Grant suggested designating on the plat what areas could be restricted should there be a sale or future subdivision.

Mr. Gellert pointed out that the land cannot be granted to the land conservancy with that restriction on it because it would already have a restriction on it. Ms. Becker advised him that the restriction would not be on the land now but only in the event of future subdivision or sale. Mr. Gellert once again objected to the fact that this would hinder him in future endeavors as he would lose the difference between the market value and the non-development areas. Mr. Grant advised that right now there is no conservation easement on the land and all that would be done is that the land would be flagged to the next person that looks at a subdivision on this land that the land is subject to the conservation subdivision regulations in the Town Code. Mr. Gellert pointed out that Scenic Hudson or any land like it would not purchase it with that restriction attached. Mr. Grant advised Mr. Gellert that there is no formal restriction on the land at this time. Mr. Gellert made note of the fact that the new owner would be restricted to development. Mr. Grant acknowledged that this would be up to the Board at that time but noted that the land is at

that point already and no matter how you look at it the new owner would be subject to these regulations as it has already been subdivided several times. Mr. Haight brought up the fact to Mr. Gellert that the Board would be giving him a pass at this time and any future subdivision would fall under the sixty percent (60%) regulation.

Ms. Becker advised Mr. Gellert that he still needs to go through the process of identifying the constrained lands and identify the building sites. Mr. Gellert once again objected to the fact because he feels that it would be cost prohibitive on a piece of land of this size for the owner to accept it as this is preventing him from deeding it to a land conservancy. Mr. Grant explained to Mr. Gellert that all he is being asked to do is to put the entire parcel on one map and designate the steep slopes and unbuildable areas. Mr. Gellert still believed this to be a restriction. Mr. Gellert had no objection to designating these areas but did once again object to restriction being put on the land. Ms. Becker advised him that the restriction is not being put on his land, the Board is just asking for the constrained lands to be identified. Mr. Gellert still viewed this as a restriction.

Mr. Gellert also objected to the cost of having to provide the Board with a new larger map when he provided the information on several small ones. Ms. Becker advised him that the Board cannot work from the small maps provided. Mr. Grant also acknowledged that should this come before the Board again in the future the ground work was already started. Mr. Davis made note of the fact that the Board needs a legal document done by a licensed surveyor so they can use something that documents everything accurately showing what has been subdivided and what is intended to be subdivided. Mr. Grant added that the constrained lands be added accurately as well as the water bodies and the steep slopes. Ms. Becker made note of the fact that the Board doesn't have the right to review the half of the land that is in Hillsdale and only needs to review the lands in the Town of Copake. Mr. Grant pointed out that any lands within one-hundred feet of a water body need to be designated as constrained lands.

Mr. Gellert questioned the fact that if sixty percent (60%) of his lands are identified as remaining open what would happen if he wishes to sell another piece of property. Mr. Grant advised him that this would be dealt with at that time but at least the Board would have a starting point. Mr. Gellert asked for clarification that if sixty percent (60%) of his lands were identified that would free up the remainder of his lands. Mr. Grant acknowledged that the remainder of the land could be developed.

Mr. Russell asked the Board to review the request to subdivide the fourteen (14) acre parcel. Ms. Becker advised him that the Board would have to see a written easement for an access road to the lot over other lands. Mr. Gellert acknowledged that in the past they put forth an easement allowing a right-of-way for use of the easement but he has no responsibility for maintenance. Mr. Gellert left all but two of the remaining maps with the Board.

2012 -27 SITE PLAN REVIEW – JAMES AND ANNE WAGNER – Golf Course Road

Linda Chernewsky appeared before the Board with James Wagner. Ms. Becker acknowledged the submissions by the applicant. She entered into the record a revised Site Plan with some landscaping, a Demo Narrative, a receipt from Bill Baldwin and Sons regarding the septic tank inspection, the easement for the leach field on the Golf Course, Proposed Elevations, Record of Building Permits and history of property showing no permits for this house ever existed, response from Clark Engineers regarding what needs to be done to protect the lake.

Mr. Davis asked when the original house was built and noted that it looked like an addition had been added on the part closer to the roadside. He questioned whether there had been a variance or building permit issued for this. Mr. Wagner did not have any idea about this and advised Mr. Davis that he had purchased the property about twenty (20) years ago and it was his understanding that it had been subdivided from the Wagner property next to it who he commented was no relation to him. Ms. Becker acknowledged that the Town had the house being built in 1960 but had no record of any building permits or other information regarding it.

Ms. Becker acknowledged that several Board members visited the site and made notes regarding the visits. Mr. Wagner advised the Board that his highest priority is to maintain the integrity of the lake and everything he proposed to do is with that upmost in his mind. Ms. Chernewsky addressed some of Clark Engineering's comments. She noted that she visited the site with Jeff Gaylord of Gaylord Contracting on Saturday November 3rd and acknowledged his letter regarding the demolition process and removal of the material that will be placed in a dumpster and hauled away. Mr. Gaylord also pointed out in his letter that he did not see any issues with this house and recommended taking the existing deck off by hand and removing the material off the site prior to the demolition of the house in order to be able to install another row of silt fence for protection. In the letter Mr. Gaylord also advised that a professional insured tree contractor be used to remove the tree in the front of the house.

Mr. Davis asked Ms. Chernewsky whether there was any lead paint on the original house or whether she was aware of any kind of asbestos being used on the house and questioned whether a report should be done regarding this as he was concerned about any of this becoming airborne and the potential of this getting into the water. Ms. Chernewsky made note of the fact that of all the houses she has done work for on the lake, no request like this has ever been made for this and she doesn't think it is fair for this owner to be singled out and have to bear the cost of this testing. Mr. Davis acknowledged that the other houses were farther away from the lake and his concerns regarding this house are due to the fact of the house's close proximity to the lake. Mr. Davis also suggested bringing the silt fences up along the sides of the property as well as at the shoreline.

Mr. Wagner did acknowledge that most any house build more than forty (40) or fifty (50) years ago would have lead paint in it. Ms. Becker questioned if there is a specific method the excavator would use to deal with materials such as lead paint and asbestos. Mr. Haight acknowledged that the method of dealing with these substances is different than with normal materials. Mr. Davis pointed out that he is not saying that there are any of these substances but just wants to make sure, given the proximity of the structure to the lake. Mr. Wagner made note of the fact that most of the rooms are knotty pine and is all natural wood with the exception of the new addition which he believes was done within the past thirty years.

Ms. Chernewsky brought up the fact that lead paint will not become airborne. Mr. Davis asked what the material was under the aluminum siding and questioned whether it was wood clapboard siding that has been painted. Mr. Wagner said he would assume that is a possibility but has no idea what is under the siding. Mr. Davis then questioned what the floor material is inside the house. Mr. Wagner acknowledged that the floors are linoleum floor squares and the new addition is a plywood floor covered with rug. Mr. Haight noted that if there is a question the contractor would go in and test before the demolition. Mr. Wagner asked if any of the other houses were tested for this. Ms. Becker advised him that none of the other houses were six feet (6') from the

lake. Ms. Chernewsky brought up the fact that this measurement includes the deck which is being removed by hand bringing the house approximately thirteen feet (13') away from the lake. She also pointed out that the demolition contractor will be pulling the debris away from the lake and not toward it. Mr. Haight approved of the addition of the silt fences and the removal of the deck by hand prior to demolition of the house but also expressed concern about any airborne debris and although this hasn't been done before it should have been and has to start someplace.

Ms. Becker brought up the request by the engineer for a detailed explanation of construction sequence and asked if this was done. Mr. Filipovits believed asbestos testing should be done on a regular basis. Ms. Chernewsky was under the belief that an owner would be able to take asbestos shingles off their house and bury them on their own property however she was advised that this is not the case. Mr. Davis did note that Mr. Wagner's property is unusual in the sense that it is so close to the lake and this is the reason the Board is being more cautious and if the house was being moved farther from the lake it wouldn't be as much of a concern. Mr. Wagner did bring up the fact that even if he moved the building site back the house would still have to be demolished from its existing site. Mr. Davis asked if Mr. Wagner would consider removing the existing house and moving the new structure back a way and restore the shoreline where the old house sat. Mr. Wagner was not in agreement with this as he bought the house for the view from where the house sits now. Mr. Filipovits did note that the concerns are for the demolition and moving the house is not the issue.

Mr. Grant brought up the question of what the exact footprint of the house is as there is an addition that projects out over bare earth. Ms. Becker questioned whether the Board will recommend the materials be tested. Mr. Haight felt this should be required. Ms. Chernewsky asked Attorney Dow whether the Board can legally require this testing be done. Attorney Dow would have to research this. Mr. Davis believed if there is a concern that there is any asbestos or lead paint used on the premises it is a reasonable request for the Board to request this. Mr. Wagner made the point that if there were any lead paint on the house it would be encapsulated and is not an issue. Mr. Davis advised him that even if it is encapsulated it becomes an issue once it is disturbed. Ms. Becker did acknowledge that the statute gives the Board the authority to request this testing. Mr. Wagner questioned why this hasn't been brought up at any of the prior three meetings. Mr. Haight acknowledged that he did raise this issue at the last meeting. Ms. Becker acknowledged that the Board is requesting these materials be tested. Mr. Haight suggested this be supplied to the Building Inspector prior to issuance of the Demolition Permit.

Ms. Chernewsky acknowledged that the Soil and Erosion Sediment Control Notes she was asked to add to the plans. She added that all soil and erosion sediment control devices shall be installed in accordance to New York State standard and specifications for erosion and sediment control as published by the New York State Soil and Water Conservation Society and recommended by the US Department of Agriculture Soil Conservation Service referred in the New York State Guidelines have been added. Ms. Chernewsky also noted that the construction sequence has been added to the plans as well. Ms. Chernewsky reviewed the plans and pointed out that the silt fences are not being put near the water is because of the tree line and it is all rocks and the silt fence that is six feet (6') from the house is the one that will protect the lake. Mr. Davis questioned if it is denoted on the plans which trees are being removed and which will remain. Ms. Becker advised him that new plans have been submitted showing this. Mr. Wagner advised him that two dead trees and the maple are the only trees being removed. Mr. Davis asked that the trees being removed be tagged so that the contractor is aware of which trees are being removed. This will be done.

Ms. Becker acknowledged receipt of a new landscaping plan. Ms. Chernewsky acknowledged that there is nothing in the code requiring a swale and the cost involved is not worth doing. She also acknowledged that the foundation will be waterproofed, and the footing drains will be installed. Mr. Davis questioned whether there will be a crawl space or a full basement. Ms. Chernewsky advised him that she needs to go down four feet (4') for frost and if she goes down four feet (4') at the lake side it is actually higher than the backside because of the grade and she is trying to keep the top of the foundation one foot (1') above grade. Mr. Wagner did acknowledge that he would like to have a full basement with a full slab underneath it and proper drainage all around so the property can be protected. Mr. Davis made note of the fact that the water table in that location is very high.

Mr. Grant questioned whether Ms. Chernewsky had any elevations. Ms. Chernewsky provided them. Ms. Becker made note of the fact that a Grading and Drainage plan is required. Mr. Davis suggested making sure the drainage is pitched away from the house. Mr. Wagner acknowledged that this is exactly what is being planned.

Mr. Davis expressed concern that the footprint is being increased. Mr. Grant expressed the same concern. Mr. Grant visited the site and noted that the basement is built under the front part of the house and the addition extends out the back and is not on any foundation. Mr. Grant acknowledged Mr. Davis' concern that the house is larger than the original footprint. Mr. Wagner believes the house could be built back toward the road. Mr. Grant advised him that the design clearly extends the design of the original footprint and will require a variance according to Town Code. Ms. Chernewsky suggested making it smaller to avoid the time it would take to go to the ZBA. Mr. Grant advised them that if the non-conformity is increased the Board has no discretion in the matter and it has to go for a variance.

Mr. Filipovits questioned how the Board can claim the structure is being expanded when there is no record of what was being done. Mr. Grant pointed out that Town Code dictates that a variance is needed when expanding a non-conforming structure and the second is building a second story on top of an existing footprint and Mr. Grant believes both of those provisions are being violated. Mr. Wagner noted that the house is presently a two (2) bedroom structure of about nine hundred and fifty (950) square feet and the second story Mr. Grant was referring to was really an attic. Mr. Haight questioned whether Mr. Wagner was allowed to go up a second story. Mr. Grant acknowledged that he is but over the existing footprint. Mr. Wagner asked if the Board would allow the additional eight inches (8") on either side of the house. Mr. Grant advised him that the Board does not have the discretion to allow this without ZBA approval. Ms. Chernewsky acknowledged that she was already in front of the ZBA. Ms. Becker advised her that she did not need to appear at that time for a variance because it was determined that the Replacement section of the code could be followed. Now the Board was provided with the building elevations they realize that this is an expansion.

Ms. Becker wanted to discuss the replacement of the structure that is presently there versus putting an entire new foundation in. Ms. Chernewsky argued that the footprint is not being made bigger and a second story is within the code. Ms. Becker referred to the quote in the Code that states "the same space on the lot". Ms. Chernewsky believed everything else meets Code regulations. Mr. Grant did point out that the size of the structure is being slightly expanded and the Board does not have discretion to allow this.

Mr. Davis questioned whether the existing septic in the ground is the correct size for what is being proposed. Mr. Wagner assured him that the structure already has two (2) bathrooms and will remain two (2) bathrooms and the septic is sized properly. Mr. Filipovits noted that the Board has no problem with Ms. Chernewsky making the structure smaller to fit on the existing footprint.

Ms. Grant questioned if the footprint includes the addition on the back or just the basement. Ms. Chernewsky believed the addition is just a slab on grade. Mr. Davis brought up the fact that the Code states that the lot coverage is the footprint and he interprets the addition as part of the house. Ms. Chernewsky believed she has addressed the engineer's comments. Mr. Davis noted that he is over sensitive regarding removal of the trees and he is concerned that with the removal of some of the trees there will be some erosion concerns and he feels Mr. Wagner should be sensitive to the fact of how this will impact his neighbor's views. Ms. Chernewsky assured Mr. Davis that two of the trees being removed are already dead along with the one maple in the front of the house. Ms. Chernewsky also noted that whoever is removing the trees be licensed to do so. Mr. Wagner also pointed out that the root structure will remain so as to maintain erosion control.

Ms. Chernewsky gave Ms. Becker a copy of Jeff Gaylord's letter which she dated December 6, 2012. Ms. Chernewsky also presented the Board with three (3) copies of the Site Plan and the Erosion Control. Mr. Wagner questioned the fact that if the footprint of the original building consists of the front and the back could he come back to the Board for an addition in the future. Mr. Grant advised him that he would still need to go to the ZBA for a variance. Ms. Chernewsky advised him that a variance can be requested but will add time to final approval.

Ms. Chernewsky questioned the fact that if she agrees to make the plans of the house width smaller would she be able to receive conditional approval at this meeting. Mr. Grant advised that the structure can be made smaller or the same but not larger than what exists now. Mr. Grant noted that the final drawings would need to be seen and stamped prior to approval. Mr. Grant did acknowledge that if Mr. Wagner and Ms. Chernewsky decided to go before the ZBA for a variance the Planning Board should be able to approve the plans subject to approval of the pending variance at the next meeting. Ms. Chernewsky felt they should decrease the size of the house and proceed at the next meeting.

Ms. Becker asked Mr. Haight if he had any thoughts about the location of the septic tank and the pump station in regard to demolition and construction. Ms. Chernewsky acknowledged this is addressed on the demolition plan. Mr. Haight expressed concern about the water table should the footings be placed further down than the anticipated four feet (4') and he wanted to make sure they had a sediment pond in place should the water table need pumping. Mr. Wagner did not feel this would be an issue as he believed the water table to be considerably lower.

Mr. Wagner did note that he would like to have a full basement if possible so that he would be able to place a furnace in it. Ms. Chernewsky made mention of the fact that they are planning to have a door for access. Mr. Davis questioned whether a walk-out basement is being proposed. Ms. Chernewsky and Mr. Wagner acknowledged that there will be a three foot (3') access door. A discussion ensued regarding the use of a Bilko door but it was noted that this could not be put on the sides as it would encroach on the set-backs and could not be placed in the front as that is where the septic system is placed. Ms. Chernewsky did point out that access is needed to the basement and the only place it can be placed is underneath the deck and a single three foot (3') door cannot be considered a finished basement. Mr. Wagner suggested putting a door on the side but Ms. Chernewsky did not think this could be accomplished.

Ms. Becker expressed concern of possible damage that could be done to the pipes that go from the residence to the pump station of the septic tank during demolition and construction and asked how they can make sure nothing spills out. Ms. Chernewsky advised her that the pipes get capped and as long as a toilet is not being flushed at the time nothing will drain out. Mr. Davis questioned whether the septic tank will be pumped prior to demolition. Ms. Chernewsky assured him that the septic system has already been pumped. Ms. Becker acknowledged the tank was pumped in September according to the receipt from Bill Baldwin.

Mr. Grant questioned the basement to which Ms. Chernewsky advised will contain a furnace and storage. Mr. Grant addressed the Code definitions which stated that: *a basement shall be counted as one story determining the height of a building in stories when four feet (4') or more of its height, measured from floor to ceiling, is above average finished grade.*

Ms. Becker questioned whether this has been classified. Ms. Chernewsky presented the Board with the appropriate fee. A discussion ensued as to whether a variance would be requested from the ZBA. Mr. Wagner expressed concern that should they go before the ZBA and return to the Planning Board the variance could be rejected. He was assured this would not be the case as if everything is satisfied and a variance is granted the Planning Board is bound to it. Ms. Chernewsky believed they were already approved to replace the existing structure when they appeared before the ZBA prior to appearing before the Planning Board. Mr. Grant acknowledged that this was just an interpretation of the code and not a variance.

A discussion ensued as to whether or not they should appear before the ZBA. It was acknowledged that the ZBA process will only add an additional three (3) weeks to the process and the Planning Board can approve the application at the next meeting contingent on ZBA variance approval. Mr. Wagner questioned whether a variance would be needed for a full basement. Mr. Grant advised that a full basement can be included but can only be four feet (4') above the average finished grade. Mr. Davis expressed concern that this would alter the shoreline right next to the lake by taking the average. Ms. Chernewsky explained that this would be underneath the deck and would not have much of an impact and the deck would remain where it is now and not be lowered. Mr. Wagner asked if there could be four feet (4') going down into the ground. He was advised that this was permissible as long as it was not exposed.

Mr. Wagner questioned whether they would be able to go with the original plans if a variance were obtained from the ZBA. Mr. Grant acknowledged that this could be accomplished.

MINUTES

On a motion made by Mr. Grant and seconded by Mr. Filipovits the Board voted unanimously to approve the November minutes.

ADMINISTRATIVE

ISLAND AT COPAKE LAKE: Ms. Becker advised the Board that Attorney Dow drafted a letter in response to a letter received from Attorney Scott Shallo on behalf of the Island at Copake Lake Homeowners Association. Attorney Dow brought up the fact that the letter addressed both the regulation of the sewerage system and the Board's authority to make sure that any future development was adequate. Attorney Dow acknowledged that it is in the Town Code that the Board needs to determine that there is proper disposal and capacity for an existing septic system. A letter will be sent to the Association advising of this. Someone from the audience questioned whether the DEC has authority over the Association's System. Attorney Dow explained that under the Site Plan Review in the Copake Town Code Section 232-23(3)(f) the Planning Board's review of the Site Plan shall include as appropriate but not limited to the following general consideration of the adequacy of water supply and sewage disposal facility. It is expressly in the Code that when someone is applying for development or any kind of project requiring Site Plan Review, the Planning Board has to make a judgment about the adequacy of the sewage system or facility that is going to serve that proposal. The gentlemen questioned whether the Board questions the adequacy of the existing system. Mr. Haight addressed the fact that as long as the available remaining capacity shown by the HOA engineer's current use calculations is not exceeded by new projects or renovations, the Board does not have issue with it. Attorney Dow will send a letter to the Association explaining the Board's authority regarding this.

LEYVA SPR: Ms. Becker advised the Board that they are being asked to re-approve a Site Plan that has expired. Ms. Becker explained that the Site Plan for Ismael Leyva has expired, nothing has changed and there are no additions. Mr. Davis questioned whether a licensed engineer was involved in the project. Ms. Becker advised him that there was a licensed engineer involved. Mr. Davis was comfortable with this.

On a motion made by Mr. Filipovits and seconded by Mr. Haight the Board voted unanimously to renew the Site Plan approval for Ismael Leyva.

ZADRIMA RESIDENCE: Ms. Becker asked the Board if they were all familiar with the complete clearing of the Zadrима property. Ms. Becker acknowledged that the clearing of the land was in complete violation of the Site Plan approval and Mr. Zadrима will need to return for re-approval. Mr. Davis made note of the fact that Mr. Zadrима made no effort to contact the Planning Board or any of its members regarding this. Mr. Davis also acknowledged that a Stop Work Order has been issued and a permit to put in a foundation cannot be obtained. Mr. Davis also acknowledged that Code Enforcement Officer Ed Ferratto advised the applicant that the debris from the demolished house needed to be placed into an approved container and it was not to be burned and the debris was in fact burned in violation of the code. Mr. Davis will follow up on this. Mr. Filipovits questioned how the applicant can be trusted when he outright disregarded what he was advised to do by the Board. Attorney Dow referred to a similar ZBA case where the applicant had been dishonest and they weighed the interest of the community against the interest of the applicant finding that the variance application could not be denied on the grounds of dishonesty. Mr. Grant questioned whether a fine can be imposed. Ms. Becker advised that the Board cannot impose a fine but the Code Enforcement Officer might be able to do so. Mr. Haight believed the DEC was notified and Ms. Becker believed the DEC imposed two fines on two accounts, dumping and burning.

LYNN MAIN: Ms. Becker addressed the fact that Lynn Main has never come to the Board for a Site Plan Review and acknowledged that he has been contacted twice. Ms. Becker with the Board in agreement will send one final letter and then turn the matter over to the Town Board.

TERM EXPIRATIONS: Ms. Becker acknowledged that Mr. Urban's term is up at the end of December 2012 but Mr. Filipovits' term goes through December 2013. Mr. Urban has not acknowledged whether or not he will seek another term.

RUTH THOMAS: Ms. Becker acknowledged that the final Abandonment Letter has been sent to Ruth Thomas advising her that her application has been deemed abandoned.

OAK TREE AT 7 BIRCH HILL ROAD: Mr. Davis advised the Board that Mr. Ingersol from Sheffield MA acknowledged that the two-hundred (200) year old Oak Tree on Birch Hill Road is stressed because of all the work around it and he would be willing to donate his services to treat it. Mr. Davis thought he might speak with some people about taking up a fund to help him out with this.

CARRY OVER

The following matters were carried over to the next meeting:

- 2012 -4 MINOR SUBDIVISION – MICHAEL FREED – Woodchuck Road
[Copake Lake]**
- 2012 -14 SPR/BLUESTONE & TRAFFIC CIRCLE – CAMPHILL VILLAGE – Camphill
Road [Copake Lake]**
- 2012 -28 SITE PLAN REVIEW – LAWRENCE AND KATHRYN HOUSE– Pine Street
[Copake Lake]**
- 2008-21 MAJOR SUBDIVISION – MICHAEL B. & BARBARA S. BRAUNSTEIN– Off Golf
Course Road**
- 2011-18 SITE PLAN REVIEW – DOMINICK SINISI – Lakeview Road [Copake Lake]**
- 2011-27 SITE PLAN REVIEW – RUTH THOMAS – Route 7 [Copake]**

ADJOURNMENT

There being no further business, on a motion made by Mr. Filipovits and seconded by Mr. Grant, 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 10 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

VIJOBA REALTY

November 8, 2012 Roux to Gellert (1)
November 8, 2012 Gellert to CPB (2)
November 16, 2012 Dow to Becker (1)

JAMES & ANNE WAGNER

September 29, 2012 Baldwin (1)
November 5, 2012 Chernewsky (1)
December 3, 2012 Moore to Becker (2)
December 6, 2012 Gaylord to CPB (1)

MICHAEL FREID

December 4, 2012 Moore to Becker (1)