

**Town of Copake  
Zoning Board of Appeals  
Minutes- January 27, 2011**

The regular monthly meeting of the Zoning Board of Appeals of the Town of Copake, was held on Thursday, January 27, 2011, at the Copake Town Hall, 230 Mountain View Road, Copake, NY. The meeting was called to order by Chairman Jeff Nayer at 7:00 PM.

Present at this meeting were: Jeff Nayer, Frank Peteroy, Mike DiPeri, Hilarie Thomas, Leslie Wood, and alternate Dustin Bessette. An audience of about 10 were present including Marcia Becker, Chair of the Copake Planning Board, Tal Rappleyea, Copake Town Attorney, and Ed Ferratto, Zoning Enforcement Officer.

**Minutes:**

*Frank made a motion to waive the reading of the November 30, 2010 minutes, this was seconded by Leslie. This motion carried, unanimously.*

Jeff asked if typo's had been corrected, reply was yes. He then asked for a motion to approve.

*Leslie made a motion to approve the November 30, 2010 minutes as corrected, this was seconded by Mike. The motion carried, unanimously.*

*Frank made a motion to waive the reading of the March 25, 2010 minutes, this was seconded by Leslie. The motion carried, unanimously.*

Jeff asked if the concerns addressed by Frank regarding these minutes were addressed, Frank responded that the corrections that he requested had been made. Jeff then asked for a motion to approve.

*Frank made a motion to approve the March 25, 2010 minutes as corrected, this was seconded by Leslie. The motion carried, Jeff abstained as he was not present at this meeting.*

*Mike made a motion to waive the reading of the minutes of December 23, 2010, this was seconded by Hilarie. The motion carried, unanimously.*

Jeff asked that a correction be made to page 2 for the owner name of application # 2010-02 Abraham be corrected to Ibrahim, the reply was yes corrections were made. He then asked for a motion to approve.

*Dustin made a motion to approve the minutes of December 23, 2010 as corrected, this was seconded by Mike. The motion carried, Leslie abstained as she was not present at this meeting.*

**Correspondence:**

The following correspondence was either reviewed or read;

- A. Carl Ritchie, 12/28/10, (Braunstein)
- B. Clark Engineering, 1/6/11, (Braunstein)
- C. Copake Planning, 12/2/10, (Wetter)
- D. Copake Planning to Building Inspector, 12/4/10, (Wetter)
- E. Copake Planning to ZBA, 1/8/11, (Staskel)
- F. DEC & County Health Dept info, (Wetter)
- G. Spampinato to ZBA, 1/10/11, (Braunstein)
- H. Clark Engineering, 11/15/10 (Wetter)
- I. Copake Planning, 12/1/10, (Martin Westfall)
- J. Dept of Health Waste Water Treatment System
- K. Copake Planning to ZBA, 1/6/11, (Zadrima)
- L. Copake Planning Minutes, 1/8/11
- M. Copake Planning to ZBA, 1/8/11, (DEC Permits)
- N. Training: County Ag & Farmland Protection

Having reviewed the correspondence, the ZBA prepared for the four applications that were scheduled for this meeting. The Westfall letter was discussed briefly, and the matter turned over to the ZEO for further investigation. A notification letter was also discussed, it was received by Planning from DEC. Discussion continued that these residents have not yet filed an application for a Building Permit, Planning or Zoning.

**Closed Public Hearings:**

1. Application # 2010-11, Wetter/Goldberg, 1 Lakeshore Dr. , Taconic Shores, amendment to the Taken Form is requested.

Jeff briefly updated the ZBA members of the situation. Mr. Wetter had received approval from the ZBA for replacing his steel septic tank with a new 1500 gallon tank about 75 feet from the lake. He could not get the approval from DEC for the 1500 gal tank. After some revisions to the site plan, they finally got permission from the Planning Board for a 1000 gallon tank. but was having some difficulty with the Dept of Health which requires that a 5 bedroom house has a 1500 gallon tank. Mr. Wetter was granted permission from DEC for replacement of the septic tank with a new 1250 gal tank., and was granted permission from the BOH for the 1250 gal tank with the stipulations that all documents show that the Wetters' have approval for a 4 bedroom not 5. Skip Pilch, the builder, presented the ZBA

with the stamped and approved plans proving that it has been revised to a 4 bedroom along with the approval from DEC. Now they need the ZBA Action form to amend the 1500 gallon tank for a 1250 gallon tank.

Tal continued to explain the proper handling of this type of situation. In order to make an amendment to the decision that was made by the ZBA in the form of Action would need to be unanimously agreed upon to re-open and amend this closed Public Hearing. If the ZBA does not unanimously agree to re-open and amend the closed Public Hearing, then the applicant will need to begin the application process from the beginning.

*Frank made a motion to re-open the Public Hearing, this was seconded by Mike. This motion carried, unanimously.*

Discussion ensued, when all questions had been satisfied Jeff asked for a motion to amend the action form:

*Frank made a motion to amend the Action Form for a 1250 gallon septic tank, placed 75 feet from the lake, and the house will remain four bedrooms, no larger. This amendment will be contingent on the final approval from the Planning Board and DEC, seconded by Mike. The motion carried, unanimously.*

Jeff asked for a roll call of vote to approve: Frank, yes; Hilarie, yes; Jeff, yes; Leslie, yes; and Mike, yes. The amended Action form will be filed with the Town Clerk, with copies to Building Inspector, Zoning Enforcement Officer, Copake Planning, the applicant, and the ZBA file.

2. Application # 2010-14, Zadrina, Golf Course Rd, Amendment to Action Form to include the omitted footprint variance.

Jeff explained to the ZBA members that this was a referral from the Planning Board as there had been the omission for approval for the enlarged footprint. Jeff reviewed the tape of the Public Hearing to which the architect was very clear that the footprint would need to be enlarged. The stamped and approved revised site plan was reviewed, and Marsha explained the changes. The height was lowered, they have redesigned the driveway, lowered the foundation, but the footprint hasn't been changed. She continued that the architect, DeLeo was very cooperative throughout the process.

*Leslie made a motion to re-open this public hearing, this was seconded by Frank. The motion carried, unanimously.*

*Leslie made a motion to amend the Action Form to include approval for an enlarged footprint with the stipulation that silt fencing of hay bales be used to prevent erosion into the lake during construction, this was seconded by Mike. The motion carried, unanimously.*

Jeff asked for a roll call of vote to approve: Frank, yes; Hilarie, yes; Jeff, yes; Leslie, yes; Mike, yes. The amended Action form will be filed with the Town Clerk, with copies to Building Inspector, Zoning Enforcement Officer, Copake Planning, the applicant, and the ZBA file.

3. Application # 2010-04, Michael & Barbara Braunstein, Golf Course Road, Copake Lake, Area Variance, Lake setbacks for septic and bridge.

Jeff reminded the ZBA Board that the 62 days allowed for coming to a decision was coming to a close, he asked the board if there were any questions or concerns remaining, for the Board to address with the applicant.

Jeff asked about the floating dock, he expressed concerns about the location, the positioning of the docks with their proximity to the inlet and the depth of the water. He wants the docks to be moved over 300 feet, by doing this you can accomplish what you want and it does not impede on others access through the inlet. Discussion ensued as to how many lots the docks would serve. Braunstein replied that possibly 4 lots, to which Jeff asked why then do you need 5 docks. Spampinato responded that the Zoning request was for the footings not the docks, but they would comply with the stipulation contingent on Planning Board approval, but we are stipulating that it will be 3 docks not 5. Tal responded that the ZBA had the authority to stipulate any reasonable request to whatever they thought was appropriate. Both Spampinato and Demos interjected that this would be cutting into lot # 7, that because of the steepness of the grade they would be losing 300 feet of frontage, and that they would need to realign lot 7 because of it, we have already reconfigured lot 7. Jeff responded that he had walked the property when he measured it and disagreed that it was not topographically steeper, and that if they were to move them over 50 to 60 feet and eliminate the docks width there would be very little impact to lot 7. Spampinato expressed concern that this would create an unusable lot as it would be less than the required acreage. Jeff asked of the area adjacent, to which Demos stated that this was an area designated for picnicking, and a little water front area for people to enjoy the lake, etc. Jeff points out that the way this is drawn right now there is no water front. Both Jeff and Hilarie expressed grave concern with the plan to clear cut all the trees for the parking area. Mr. Braunstein agreed that 5 docks would not be needed, even if the HOA property had to be deeded. The maps were reviewed and measurements scaled, it was agreed that the 3 docks would be moved away from the inlet, over 180 feet, west from the NE corner point of the mainland lot 6, they would be 20 foot docks, not 30 with a 6 foot width to allow a buffer to the inlet and island. This would be contingent on DEC approval, and Planning Board site Plan approval. Hilarie requested that the same soil and erosion silt fence/ hay bales for prevention stipulation to be put in place prior to construction.

Jeff then read the letter dated 1/6/11, from Copake Engineer, Doug Clark. To which he expressed many concerns for the proposed island septic pumping system as well as the storm water drainage, and lack of information about the bridge. Mr. Demos, responded that Columbia County Dept of Health from Michael DiRuzzio dated 1/11/11, did not have the same concerns with the system. Jeff read the letter, to which there were concerns

although different from those of Clark Engineering. Mr. Demos responded that as of yet he has not provided any additional information to either Clark and BOH.

Frank asked to have his prepared memo read into the minutes: Jeff gave him the floor, Memo dated 1/27/11.

*Application: Area Variance re: Braunstein Major Subdivision, REF: PRN Survey dtd 27 Oct 08, (Draft Copy) outlining 128.129 Acres. with Lot #6, in two(2) parcels, 4.5ac, Mosquito Island, (MLS) & 4.6 acres on the upland (mainland) totaling 9.1 acres. DEC Wetland # H-23, undelineated.*

*Land Under Water (LUW) is 11.9 acres + 3.8 acres=15.7 acres*

*"The site is located along Copake Lake which is a tributary to Taghkanic Creek in the Hudson River Drainage Basin." (CE)*

*Plans & Reports referenced:*

*Survey, PRELIMINARY PLOT PLAN, SUBDIVISION OF PROPERTY...*

*Plass, Rockerfeller & Nucci, LLC (PRN) dtd 27 October 2008 noted as "Draft Copy" without signature & seal.*

*Hudson River Valley Engineers, PLLC*

*Wetland Delineation Report - Copeland Environmental, LLC*

*General Background Referenced:*

*Columbia County Board of Health (CCBH)*

*New York State Plumbing Code (NYSPC)*

*NYS Department of Health - SEC 75A (NYSDH)*

*Department of Environmental Protection (DEC)*

*Town of Copake Zoning Laws 232, 2010 (TCZ)*

*Town of Copake Tax Maps & Tax Rolls*

*Clean Water Restoration Act, S787, June 2009*

*Black's Law Dictionary (BLD)*

*Individual Home Sewage Treatment Systems, AE-982 (Revised), 2006, Thomas F, Scherer, EAE*

*A Comparative Guide to the Eastern Public Trust Doctrines*

*Penn State Env'tl Law Rvw vol 16, No. 1, Fall 2007 R.K.Craig*

*CRS Rpt to Congress, #33263, 26 Jul '07, The Wetlands*

*Coverage of the CWA Revisited, R.Meltz, C. Copeland*

*The Public Trust Doctrine, Application to Lands & Waters in the South Shore, Penn State Env'tl Law Rvw, (vol 16:1), 4/22/08*

*Livingston Patents.....Capt. F. Ellis 403, 1878*

*Property evolved from the Livingston Patents, which may have included the land under water (LUW) 1684/1686, granted by Gov. T. Dongan. Woven into this were Indian deeds & surveys. (It was a common practice to deed the LUW to the upland owner.) the property is taxed for the land mass only. Apparently, the LUW is not a taxable commodity, though listed as two parcels below the water of 11.9 acres & 3.8 acres = 15.7 acres.*

*The property line separation is 39.11 feet-under water PRN*

*It is proposed to erect a bridge of 63 feet +/-, to make the connection. The application is to transport by pipe, and 2 pump stations, effluent approximately 860 feet. All, but about 250 feet, would be within restrictive set back requirements. Pump #1 is located on Mosquito Isl., & pump #2 is on the mainland (upland). Together, they would periodically pump effluent from a septic tank located on the island to an engineered sand filtration/ septic system on the upland parcel.*

*Effluent is the "black water" from the septic process that is to leach into the filtration system properly set back from a water body.*

*The effluent system of 2 inch diameter piping, sleeved & insulated, is to be attached to a newly constructed vehicle bridge.*

*Effluent has been known to freeze. It requires a consistent slope for drain back, to the pump station #2.*

*NYSPC, CCBH require 1/4 inch minimum slope for 2 1/2 inch pipe or less, for gravity systems.*

*Pump station 2 is located at the 17.60 % rise. After a cycle, about 140 gallons of remaining effluent will drain back from the "D" box into pump pit - #2, equal to about half the size of the familiar 275 gallon oil tank. It is about 330 feet down from the "D" box at a 48 foot drop back to pump station #2.*

*Scaled from the computerized plans (P6), the distance from pump #1 to pump #2, thence to the distribution box is about 965 feet. This does not account for manhole drops, etc, but does include the rise for the difference in elevation, estimated at 85//feet. It measures the hypotenuse which is at 17.60 % rise at the location of pump #2.*

*The 2 inch effluent pipe would be connected in 100 foot lengths. On that basis, there is a minimum of a dozen points of failure. The effluent line is at the southwest corner of Copake Lake. The spillway for the lake water is at the northwest corner. There is approximately 6,200 feet of shoreline that could be affected by the plume of influence should the system malfunction. This does not include the area around the 2 islands. & surrounds.*

*Several years ago, about 1985-6, Odessey Farm ( now defunct), in Copake North, had a mechanical failure in their manure control system - they had 7-900 cows. This spill proceeded to kill the fish in the Roe Jan Kill, one of the prized trout streams of New York State, & Columbia County. A fine of \$25,000.00 - one dollar for each restocked trout was levied.*

*Applying a 50 foot rolling plane of intrusion along the line of the sewage system pipe on both sides, it was found that the effluent line is within the 50 feet s/b of the wetlands for approximately 335 feet.*

*Copake Zoning Law - 232.9.G, Sewage Systems, makes note of the responsibilities of Town & the CCBH.*

*"No person shall undertake to construct any new building or structure in the Town without first meeting the requirements for a system, or facilities, for the separate disposal of waterborne sewage, domestic or trade wastes in accordance with applicable regulations of the Town and the Columbia County Department of Health." (Italics added).*

*This commonality in the sewage section, effectively places the Town into a form of "Guardianship" in the application of the County Health rules. With this link, it permits the Town to render care & management of property, the office, the authority, the duty..... the legal right to apply the rules of the CCBH. (Black Law Dictionary)*

*The Columbia County Board of Health spec limit for 'effluent' piping is 50 feet from a wetland & watercourse, stream & lake.*

*NYS Dept. of Health, Sect 75A, table 2, has it at 50 feet from water & 10 feet to Property Line.*

*The plan noted shows about 335 feet of pipe within the 50 foot plane. Also, the minimum distance from a property line is 10 foot which the effluent line crosses twice.*

*The wetlands delineated generally follow the shoreline of the uplands in the vicinity of the work. There are designated wetlands on both sides of the water body that must be crossed.*

*Recently, Congress passed legislation redefining "Waters of the United States": Clean Water Restoration Act -111th Congress (s.787 as approved by Senate EPW June 2009).*

*Section 502 of the Federal Water Pollution Control Act (33 USC, 1362) is amended-*

*(3) by adding at the end of the following:*

*(25) WATERS OF THE UNITED STATES (A) In General---*

*The term 'waters of the United States' means all waters subject to the ebb & flow of the tide, the territorial seas, and all interstate and intrastate waters, including lakes, river, streams (including intermittent streams), mudflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, and natural ponds, all tributaries of any of the above waters, and all impoundments of the foregoing."*

*This version coincides generally with:*

*Table A-1: Definitions of "Waters of the United States"*

*Current Corps/EPA Regulations (33CFR /328.3 and 40 CFR/ 122.2)*

*America's Commitment to Clean Water Act*

*111th Congress ( HR 5088 as introduced)*

*This legislation (excerpted) seeks to:*

- 1. to reaffirm the original intent of Congress in enacting the Federal Water Pollution Control Act Amendments...  
to restore & maintain the chemical, physical & biological integrity of the waters of the United States.*
- 2. to clearly define the waters of the United States that are subject to the Federal Water Pollution Control Act ....*
- 3. to provide protection to the waters of the United States to the maximum extent of the legislative authority of Congress under the Constitution.*

*Congress found (excerpt of the 24 findings) :*

*(6) protection of intrastate waters, including geographically isolated waters, is necessary to restore and maintain the chemical, physical, and biological integrity of all waters in the United States:*

*Copake Lake is such a lake, as are the wetlands defined as H-23.*

*(14) (A) millions of individuals in the United States enjoy recreational activities that depend on intrastate water, such as waterfowl hunting, bird watching, fishing, and photography, and....*

*(B) those activities and associated travel generate hundreds of billions of dollars of income each year for the travel, tourism, recreation, and sporting sectors of the economy of the United States.*

*(20) approximately half of all threatened and endangered species in the United States depend on wetlands.....*

*From the Penn State Environmental Law Review (Vol 16.1) page 84 New York Statutes:*

*N.Y. ENVIRONMENTAL CONSERVATION LAW, Chap. 15-1601 (West 2008)*

*"All the waters of the state are valuable public natural resources held in trust by this State, and this State has the duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment...."*

*Public Trust Doctrines excerpt:*

*"II. Classification Issues in the Eastern States with Respect to Their Public Trust Doctrines*

*As a matter of state law, states can expand upon the federal public trust doctrine, and they have done so in several ways.... applying its public trust doctrine to more waters than federal law requires....*

*Can protect more public uses...have done so most often to protect public rights of recreation..."*

*Various types of watercraft that ply the waters of Copake Lake. Canoes, kayaks, pontoon, trolling flats, motorboats for water skiing, sailboats of the "Cat" class are a known recreational use. The mast on this type of sailboat about 20 ft (ref video)- it cannot sail under a 6 ft bridge. The clearance severely restricts the type of watercraft used, not to mention the hazard to snowmobilers and skiers in winter.*

*Dredging this 40 foot wide waterway may not be such a bad idea, so that center-boards stay in place. It has filled in over time, clearly it is just a process that the Lake interests can pursue.*

*It should be noted that the level of Copake Lake is artificial. Its true level is much lower. Prior owners set a dam to the present level to capitalize on lake rights, lakefronts, & eliminate the public beach. Consequently, what shows a weeds on the early maps were probably marshlands, which today are considered wetlands, and substantially now covered with water.*

*Three unique activities are occurring here:*

*1. the Town of Copake Zoning Laws, the Columbia County Board of Health, and the New York State Department of Health Regulations are being compromised in regards to the health, safety, and welfare rules.*

*2. The intent to transport a pollutant, the effluent, from a private septic system via a pipeline across the waters of the United States and the State of New York, and*

*3. The intent to compromise the Public Trust Doctrine, reinforced by the passage of the Clean Water Restoration Act S 787, June 2009; and to vacate the 'jus publicum' rule of the New York State Public Trust Doctrine, its obligation to hold certain natural resources for the benefit of all, which coincidentally goes back to emperor Justinian who rules the Eastern Roman Empire from 527 to 565 A.D..*

**At the conclusion, Jeff asked if anyone else had comments or question, prior to the board's acting on the requested variances needed per Copake Zoning, 232-9.P; which include: installation of the septic and septic line within 150 ft of the lake, utility and driveway easements within 100 ft of the lake, the bridge footings and bridge being placed within 100 ft of the lake and the footings for the dock system also within 100 ft of the lake. Each of these variances will be handled separately, and on their own merit. He also added mention that the many letters received, although taken into consideration should not be basis for a**

vote. The Board was cautioned that fact, and only fact were to be the basis for vote. Are we ready to vote on this, yes.

The septic system and pipeline variance was the first to be decided.

Jeff read the permitted actions for granting a variance;

a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall consider:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Answer: It could have an undesirable effect, if the house were placed on the mainland instead of the island its effect would not be as great. We would like to include Frank's memo and comments here.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue other than an area variance.

Answer: if the house were placed on the mainland rather than the island, and it wouldn't need to cross the lake and go through the wetlands.

3. Whether the requested area variance is substantial.

Answer: Yes it is very substantial, with the septic being the largest, seepage to the wetlands by this proposed system could be very detrimental to entire lake. there are lots of other ways to use the land besides building on the island, this system has the potential to expose some 200 feet of wetlands to pollution, the footage or percentage of encroachment into that minimum set back area, as it is designed is 100%encroachment. No matter what the applicant contends the septic system and the pipeline are connected, one cannot exist without the other. There is no other way for the effluent to be transported from the pumping station on the island ( point A) to get to the leaching fields on the mainland ( point B ) other than the pipeline.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Answer: It will have an adverse effect on the environment, there will be a disruption that the excavation and digging, and cutting of the trees will impact the entire area, the lack of clean out and lack of manholes, the slope of the land for pumping from the island to the mainland, and the potential for freeze, if the pipeline breaks the system could continue to pump and this could go undetected for months. We make note of Doug Clark Engineer's concerns as well, to which he questions the type of pipe, the lack of clean outs, concerns with movement, and thermal exposure in connection with the joints used with the pipeline. It could easily pose a hazard to the health of the lake and neighborhood.

**5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.**

**Answer:** The applicant's response to what if the house were built on the mainland instead of the island; that there would be no view, and that they could only look at trees and that it wouldn't be as financially profitable; is totally unacceptable, it shows total disregard for preserving the habitat for the wildlife, (particularly the bald eagle that has taken up residency on the island) and including the vernal pool on the island, the owner has owned this undeveloped land for some 30 years.

**c. The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.**

**Jeff asked for a roll call of vote to approve the granting of the variance to allow the construction of the septic system and pipeline within 150 feet of the lake. Frank, nay; Hilarie, nay; Jeff, nay; Leslie, nay; Mike, nay. The requested area variance for this has been denied. The Action Taken form reflecting this will be filled with the Town Clerk, copies also going to Building Inspector, Zoning Enforcement Officer, Copake Planning Board, the applicant, and the ZBA file.**

**The second variance to be decided is for the bridge footings and the bridge to be placed within 100 feet of the lake.**

**Jeff read the permitted actions for granting a variance;**

**a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.**

**b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall consider:**

**1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

**Answer:** The footings are in the wetland, the proposed bridge will only be 6 feet high, it will impact others who enjoy using the lake, and it will be obtrusive to the neighborhood, although it will be 6 foot from the land, with the surface and support placing it at 10 foot high it will impede on the other peoples enjoyment of the lake, and include all the other comments that we had discussed before.

**2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue other than an area variance.**

**Answer: if the house were placed on the mainland rather than the island, and it wouldn't need to cross the lake and go through the wetlands, therefore the bridge would not be needed, include our prior comments here as well. Note is referenced to Frank's prior comments.**

**3. Whether the requested area variance is substantial.**

**Answer: Yes it is very substantial, the silt and runoff during construction could make the shallow inlet more shallow, the road to the lake is on the slope it will also contribute to this, because of our climate, salt and sand will be used on the roadway and bridge eventually getting into the lake, as well as oil from vehicles, all of which have a very big impact on wildlife and the environment. All comments that we said prior need also be included.**

**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

**Answer: it will have an adverse effect on the entire lake, our comments from before to be included here as well.**

**5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.**

**Answer: Certainly this is self created, including all our comments from before. The design will be encroaching almost 100% the setback entirely throughout.**

**c. The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.**

**Jeff asked for a roll call of vote to approve the granting of the variance to construct the bridge footings/abutments and construction of the bridge all within 100 feet of the lake. Frank, nay; Hilarie, nay; Jeff, nay; Leslie, nay; Mike, nay. The requested area variance for this has been denied. The Action Taken form reflecting this will be filled with the Town Clerk, copies also going to Building Inspector, Zoning Enforcement Officer, Copake Planning Board, the applicant, and the ZBA file.**

**The third variance to be decided is for the driveway/roadway will be 100 feet of the lake**

**Jeff read the permitted actions for granting a variance;**

**a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.**

**b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to**

the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall consider:

**1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

**Answer: Include all the other comments that we had discussed before, but note that this has a particularly grave influence on the vernal pool, which is the home for amphibians, frogs, salamanders, turtles etc. the importance being that although it dries up during the summer season, during the spring it is the protected home of the eggs and young of these creatures, the driveway will be located in a way so that salt, sand, oil and runoff will either go into the pool or lake. It also impinges almost entirely on the encroachment to the 100 feet of the lake.**

**2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue other than an area variance.**

**Answer: all our prior comments, the driveway on the slope of close to 18%, will be a racetrack, Copake Zoning 232-9.Q, requires the grade to be 10%, this one is substantially more, it will be very very steep.**

**3. Whether the requested area variance is substantial.**

**Answer: Yes it is very substantial, the silt and runoff are one issue, but the bridge and all of the island driveway will be within the encroachment area, nearly 75 %. All comments that we said prior need also be included.**

**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

**Answer: include all our previous comments, it will have an adverse effect on the area.**

**5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.**

**Answer: Certainly this is self created, including all our comments from before. the design will be encroaching the setback entirely throughout.**

**c. The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.**

**Jeff asked for a roll call of vote to approve the granting of the variance to allow the construction of the driveway, within 100 feet of the lake. Frank, nay; Hilarie, nay; Jeff, nay; Leslie, nay; Mike, nay. The requested area variance for this has been denied. The Action Taken form reflecting this will be filled with the Town Clerk, copies also going to Building Inspector, Zoning Enforcement Officer, Copake Planning Board, the applicant, and the ZBA file.**

**The fourth is to allow for the utility easements within 100 feet of the lake.**

**Jeff read the permitted actions for granting a variance;**

**a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.**

**b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall consider:**

**1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

**Answer: Include all the other comments that we had discussed before.**

**2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue other than an area variance.**

**Answer: All our prior comments.**

**3. Whether the requested area variance is substantial.**

**Answer: All comments that we said prior need be included.**

**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

**Answer: Include all our previous comments.**

**5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.**

**Answer: Include all our comments from before.**

**c. The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.**

**Jeff asked for a roll call of vote to approve the granting of the variance to allow for the utility easements within 100 feet of the lake as per town Code. Frank, nay; Hilarie, nay; Jeff, nay; Leslie, nay; Mike, nay. The requested area variance for this has been denied. The Action Taken form reflecting this will be filled with the Town Clerk, copies also going to Building Inspector, Zoning Enforcement Officer, Copake Planning Board, the applicant, and the ZBA file.**

**The final variance is for the 10 foot wide pedestrian access from common parking area cul-du-sac and docks, which will be a total of 3 docks, 20 foot long, 6 foot wide, with 10 foot in between. These are to begin at point no closer than 180 feet from the NE Corner of Mainland Lot # 6.**

**Jeff read the permitted actions for granting a variance;**

**a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.**

**b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall consider:**

**1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

**Answer: they have agreed to move the docks over by 60 feet, our recommendations include erosion control to include planting trees and shrubs.**

**2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue other than an area variance.**

**Answer: yea there are other ways that they could do it but have compromised with the moving of the docks, and down sized to three.**

**3. Whether the requested area variance is substantial.**

**Answer: No**

**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

**Answer: No**

**5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.**

**Answer: Yes, but they have compromised.**

**c. The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.**

Jeff asked for a roll call of vote to approve the granting of the variance to allow the construction of the 10 foot pedestrian path access and for the docks, which will be a total of 3 docks, 20 foot long, 6 foot wide, with 10 foot in between. These are to begin at point no closer than 180 feet from the NE Corner of mainland lot # 6, within 100 feet of the lake. Erosion Control will include planting of shrubs and trees. Frank, yes; Hilarie, yes; Jeff, yes; Leslie, yes; Mike, yes. The requested area variance for this has been approved, contingent upon approval from; DEC, and Copake Planning. The Action Taken form reflecting this will be filled with the Town Clerk, copies also going to Building Inspector, Zoning Enforcement Officer, Copake Planning Board, the applicant, and the ZBA file.

Tal read the resolution into the minutes, dated 1/27/2011, which will suffice as the notice of action after signed, and filed with Town Clerk, and applicant.

Whereas, Michael and Barbara Braunstein (the "Applicants") filed an application with the Town of Copake Planning Board for approval of a major subdivision of lands which they own located off Golf Course Road and adjacent to Copake Lake, Copake, Columbia County, NY, and

Whereas, the Planning Board thereafter declared itself the lead agency for SEQRA purposes and determined that certain portions of the application, as presented, would require several area variances and referred those matters to the Town's Zoning Board of Appeals (ZBA), and

Whereas, the subject property is located in a R2 (residential) District. In accordance with the Copake Town Zoning Law, minimum lot sizes in an R2 District are 30,000 square feet and since the subject matter property adjoins Copake Lake, the Town Code prohibits construction and development within 100 feet of the water and for construction of the septic systems within 150 feet of the water and

Whereas, as part of the major subdivision the Applicants have proposed, among others, a parcel (hereafter referred to as Lot 6) with a total acreage of 9.6 acres, consisting of 4.3 acres on the "mainland" and 4.52 acres of land known as "Mosquito Island" immediately adjacent thereto. Mosquito Island is separated from the mainland by a narrow waterway approximately 63 feet in width, which is part of Copake Lake; and

Whereas, it is the Applicants' plan to construct the proposed home for Lot 6 on Mosquito Island and in order to gain access to the Island portion of Lot 6, the applicants have proposed the construction of a bridge. Applicants also proposed that the infrastructure consisting of sewer pipes and electrical wiring would be run from the home building site underground along the driveway, on and under the deck of the bridge and then underground and on to the proposed subsurface sewer system located on the mainland portion of Lot 6 and connect the electrical wiring to the public utility supply; and

Whereas, the applicants specifically applied for the following area variances for relief from the minimum setback from Copake Lake:

1. Complete relief from the minimum set back of 100 feet for the construction of a

portion of the private driveway from the home site on Mosquito Island across and on both sides of the narrow waterway to the mainland:

2. Complete relief from the minimum set back of 150 feet for the construction and burial of the septic pipeline which will conduct the sewer waste from the home site on Mosquito Island, across and on both sides of the narrow waterway to the leech field located on the mainland portion of Lot 6.
3. Complete relief from the minimum set back of 100 feet for the construction burial of the electrical, telephone, cable and other typical residential utility services from the home site on Mosquito Island across the narrow waterway to the mainland:
4. Complete relief from the minimum set back of 100 feet for the construction of bridge footings, abutments and a bridge across and on both sides of the narrow waterway to the mainland:
5. Complete relief from the minimum set back of 100 feet for the construction of a portion of the pedestrian walkway access easement from the cul-de-sac located on the mainland portion of the project down to the edge of the waters of Copake Lake and construction/installation of a 'common subdivision removable dock system,' to be located adjacent to and approximately 75 to 100 feet west of the proposed above-mentioned bridge; and
6. Complete relief from the minimum set back of 100 feet for the construction or reconstruction of wetlands, shoreline protection features, and such other necessary and or require construction or remediation as the Town of Copake and New York State Department of Environmental Conservation may require pursuant to any and all permits it may require.

Whereas, the applicants appeared before the ZBA on multiple occasions from April 2010 through December 2010, except the months of July and August when the Applicants did not appear, discussing the various aspects of the variance application, offering modifications to the project to address concerns and providing numerous sets of maps and plans;

Whereas, the ZBA referred the application to the Columbia County Planning Board (CCPB) in accordance with the requirements of General Municipal Law 239(1) and (m). The CCPB notified the ZBA that the application is a "local matter" with no jurisdiction to conduct such a review as being outside of the parameters of review in accordance with the agreement between the CCPB and the Town of Copake as set forth in the General Municipal Law 239-m-3-c; and

Whereas, the ZBA scheduled, duly noticed and held a public hearing on the application opened on October 28, 2010, and November 30, 2010. Several members of the public testified at such public hearing and provided several arguments both in favor of and against the granting of the variances; and

Whereas, the Town of Copake Zoning Law and NYS Town Law 267-b set forth the criteria for reviewing and granting or denying area variances to wit:

- a) The Zoning Board of Appeals shall have the power, upon an appeal from a

decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

b) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider; (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

(c) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

**4. Imposition of Conditions.** The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and, incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

Whereas, following the close of the public hearing, the ZBA undertook the above review and balancing test and examined each of the criteria in depth.

**THUS THE ZBA HEREBY**

**FINDS AND DETERMINES** that based upon the Town Zoning Law and Comprehensive Plan, Copake Lake and its continued health are of utmost importance to the Town, resulting in the protective measures, including greater minimum setback requirements for septic systems and components thereof, than are required by the various state and federal agencies having jurisdiction over activities on and around Copake Lake; and the ZBA further

**FINDS AND DETERMINES** that based upon the testimony of the public and the Applicants, the narrow water way between Mosquito Island and the mainland has been utilized by the public and many residents on and around Copake Lake, for boating, including row boats, motor boats of all sizes including pontoon boats and

sail boats of all sizes, fishing, snowmobiling, cross-country skiing, snowshoeing and other assorted and normal recreational uses. If the variance is granted a large segment of the public and neighboring properties and residents will be unable to continue the long established customary uses of the area and many of the above listed uses will be lost. Copake Lake is a major asset for Copake. It is a major economic draw for tourists, vacation homes and recreation for local residents. This project would have a major impact on the ability of the neighboring properties and the community as a whole to enjoy the lake; and the ZBA further

**FINDS AND DETERMINES** that based upon the size of Lot #6 and the proposed configuration of the subdivision as a whole, any home that might be built on such Lot could easily be constructed on the mainland portion thereof such that there would be no encroachments on the minimum setbacks required in the Copake Zoning Law; and the ZBA further

**FINDS AND DETERMINES** that each of the variances requested include a request for complete relief from the minimum setbacks contained in the Copake Zoning Law, in other words the encroachment into the minimum setback is proposed to be ( and necessarily must be due to the nature of the proposal, regardless of any potential project changes) is 100%; and the ZBA further

**FINDS AND DETERMINES** that based upon testimony of the public and personal knowledge of ZBA members and testimony and reports of the Town Engineer, there exists a wetland and vernal pool on Mosquito Island and in the specific location in which the proposed driveway, septic lines, utility lines and bridge are to be located. Vernal pools provide a breeding ground for many amphibians in particular frogs and salamanders. Because a vernal pool does not remain wet all year, it is unable to support fish and other animals that endanger the amphibian eggs. Thus, these pools are of particular interest as a rare habitat that should remain preserved. The proposed road, septic lines, utility lines and bridge for the building site on Mosquito Island run between the vernal pool and the lake. Clearance on each side is only a few feet. If the road is moved closer to the lake, the runoff of oil and salt from the road endangers the lake. If the road is moved closer to the vernal pool, it endangers the pool. Additionally, the construction phase during which the ground will be substantially disturbed will necessarily negatively impact both the lake and the vernal pool. Additionally, runoff of sand and salt applications to the road and bridge will also have a negative impact on the lake. Further, the proposal for septic to be pumped uphill hundreds of feet, with some of that distance being above ground and directly over the waters of Copake Lake, poses a threat to the health and safety of people who live on and around and use the lake. The ZBA deems that the testimony and documentation submitted by the Applicant in conjunction with this portion of the proposal was insufficient to adequately assure that system overflows or breakage would not occur, thereby causing raw sewage to be deposited near or directly into Copake Lake; Town Engineer noted a number of concerns with plans as submitted; and the ZBA further

**FINDS AND DETERMINES** that the proposed location of the home building site for Lot # 6 is the sole cause for the need for each of the variances sought, except the variance request for the location of the boat dock; and the ZBA further

**FINDS AND DETERMINES** that based upon the testimony and submissions of the Applicants, the benefit sought to the Applicants is limited to one of financial gain based upon the increased value of Lot # 6 if the Applicants were able to offer the Lot for sale with the building envelope being located on Mosquito Island as opposed to an alternate location on the mainland; and the ZBA further

**FINDS AND DETERMINES** that it is clear that upon the balancing of the benefit to the Applicants if the variances are granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, the ZBA must determine that the detriment to community far outweighs the benefit to the Applicant; and the ZBA further

**FINDS AND DETERMINES** that based upon the nature of each the requested variances there appear to be no conditions, reasonable or otherwise, that might be imposed that would adequately mitigate the impacts described above, except the variance for the construction of the removable boat dock system; and the ZBA further

**FINDS AND DETERMINES** that as it relates to the removable dock system, the criteria for review and balancing of the impacts to the community with the benefit sought by the Applicants weigh in favor of the Applicant since there appear to be no impacts associated with the same, if a reasonable condition of approval is granted, to wit, the location of such removable dock may be located No closer than 180 feet from the NE corner of mainland lot #6, 3 docks that are 20' by 6' with 10' slips between. Erosion control measures are to be included. Alone, the proposal does not impact the environmental concerns recited herein and coupled with the concern of approval from DEC concerns complied with for the docks and the Pedestrian walkway, the impacts to the community and their ability to continue to use the lake in the customary manner described above, would be greatly mitigated, if not entirely removed.

**NOW THEREFORE IT IS HEREBY**

**RESOLVED**, that the application for the area variance for the boat dock shall be approved upon the condition that the location for such dock be moved no closer than 180 feet from the NE corner of mainland lot # 6. and upon the condition that the Applicant comply with all DEC or other jurisdictional agencies with respect to wetlands which may be disturbed by such construction; and be it further

**RESOLVED**, that the application for each of the other area variances, including the

proposed driveway, proposed septic lines, proposed utility lines, proposed bridge, footings, and abutments and for the miscellaneous unspecified and conjectural DEC requirements, shall be denied.

*Leslie made a motion to accept the all encompassing Resolution, this was seconded by Mike. This motion carried, unanimously.*

Mr. Spampinato immediately requested for an Article 78 preparation the following: tape recordings, attorney's draft of resolution, Doug Clark, Engineering letter of 1/6/11, tape recordings of all Public Hearings, full copy of the file.

### **Public Hearings:**

**Application # 2010-18, Robert J Staskel, 53 Snyder Pond Road, Area Variance, to build a garage.**

Mr. Staskel was present and came forward to answer questions.

*Leslie made a motion to open this public hearing, seconded by Mike. The motion carried, unanimously.*

He explained to the ZBA members that he wanted to build a garage, but because of the steep incline of his property there was no other place to build it except in the front of his house which is not permitted by zoning law 232-8.D.2.3.

Jeff and Hilarie who had visited the property agreed that the property did have a very steep grade behind the house. The plans were reviewed. The lot coverage percentage was also reviewed, concluding that this would not be an issue. Jeff read the referral from the Planning Board. It is a conforming lot, therefore does not need site plan approval. The proposed garage will be within the allowable height. Leslie asks for the dimensions of the proposed garage; will be 24 x 36. Both the front yard and side yard setbacks will be met. Frank asks as to the location of the well, it was established that it is located uphill from the proposed location of the garage. Jeff asks if anyone wished to speak to this issue, with no one coming forward, he asked for a motion to close the Public Hearing.

*Hilarie made a motion to close the Public Hearing, seconded by Frank. This motion carried, unanimously.*

Jeff quickly review the application before the board members; the garage of 24' x 36' would be built in front of the house.

Jeff read the permitted actions for granting a variance. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of

the neighborhood or community by such grant. In making such determination, the board shall consider;

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Answer; No.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue other than an area variance.

Answer; No property is to steep.

3. Whether the requested area variance is substantial.

Answer; No.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Answer; No.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

Answer; Yes, but influenced by the slope of the property.

c. The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

*Leslie made a motion to close the Public Hearing and call for a vote, this was seconded by Mike. This motion carried, unanimously.*

Jeff asked for a roll call of vote to approve this area variance to build a garage in front of his house: Frank, yes; Hilarie, yes; Jeff, yes; Leslie, yes; Mike, yes. The Action Taken form to be filed with Town Clerk, with copies to Building Inspector, Zoning Enforcement Officer, Copake Planning Board, the applicant, and the ZBA file.

**New Business:**

**New Applications:**

There were no new applications to review at this time.

**Old Business:**

1. Walton Letter received 11/30/10.

**Frank recused himself from the Board during this discussion.**

**Jeff read the letter and explained that they have received a citation for violation of law 232-14.C & H, for their sign by the Zoning Enforcement Officer and are requesting an interpretation, which is their right under law 267.B. Mr. Kevin Cullen came forward to represent the Walton's for this interpretation review. He submitted several signed affidavits from some 85 local citizens attesting that the building has always had a sign.**

**Marsha Peteroy asks to have clarification, what it means to be grandfathered, as when she questioned the legality of the sign replacing the Disbrow Equipment/Capital Tractor/Globe with Jim's Auto Body in 2007. She also wanted it on record that she never used the word "hate" when she complained about the sign, as it was read in the Walton Letter.**

**Jeff read section 232-14. H from the Town Zoning Code...*An existing sign that is to be reused for a different business or any other change shall be considered new and require approval.....* He questions whether or not permits had been granted, however why after 14 years are you issuing a citation. Jeff asks Tal Rappleyea, Town Attorney, about stature of limitations. Jeff continues to read section 232-14.C from Town Zoning Code...*Signs attached to buildings shall be limited to 10% of the area of the face or side to which it is attached.....***

**Mr. Cullen presented the board with a copy of the building permit issued 12/15/07, and stated that Mr. Walton had gone to the Planning Board on 12/14/07 to which received a waive for a site plan review. Questions arose as to whether the sign was included in this request or was it just assumed that it would be replaced with the building.**

**Ms. Becker, Planning Board Chair, clarified that the old building which was Jim's Auto Body had the old sign painted on it, the new building was built and the new sign replaced the old. She questions what is his business, auto body, or new & used car sales, auto repair? What type of permit does he have?**

**ZEO Officer, Ferratto answers that complaints had initiated his investigation. To which he discovered that the building permit and site plan showed no evidence of replacing the sign. In reading the zoning law, he discovered that although a sign had always been there it had in fact been changed by different business' and without permits. He questions the fact that all prior signs had been for a business located on that property, however the business at the location now, is it in fact Jim's Auto Body or something else. Can a sign be placed on a building advertising a business that is across the street from the building to which the sign is attached? He concluded that he had cited them for 232-14.H, J, K, & R as well. Leslie asked for the date of when the sign that is in question was painted on the building. Answer 2007 or 2008. Discussion ensued as to whether this building was part of Jim's Auto Body, to which Leslie and Ed agreed that just because you purchase the property across the street doesn't mean you can add it to your business according to zoning law.**

**Ms. Peteroy asked what is the business in the building to which the sign is painted. Mr. Cullen quickly responded that the business within was in fact, part of Jim's Auto Body.**

Ms. Peteroy continued that she the owner of a business was required to get a permit to replace her sign at the end of the driveway, why wasn't there a permit required to replace theirs. Mr. Cullen declared that the permit was issued after the roof blew off the old building, the new building was put up within 3 months.

Discussion ensued. Leslie admitted that the Economic Advisory Committee has also received complaints, with questions as to how we can make Copake more beautiful. She continued that however, we might not go through zoning and enforcement but by speaking with the owner and compromise instead. We all want the best thing for Copake, and I know that Jim also wants the best thing for Copake. I can't help but wonder if the best thing for Copake could be a better sign. Although we can't required it, but perhaps there is a way that we could get it to be a better sign. He has made improvements, I agree he needs to make more improvements.

Mr. Cullen asked the board if the ZBA wanted Jim's Auto to place a bill board up instead of on the building and also made it clear that Mr. Walton was very willing to spend up to \$500.00 to repaint the sign by a professional sign painter. It was suggested by Hilarie to make it a contest to come up with a compromising design for an agreeable more attractive sign. Ms. Peteroy replied that she would rather see it as it is rather than what it could become.

Jeff reminds everyone that this is merely an interpretation. Hilarie suggests that the a sign advertising the business within that building has been there almost forever. Dustin asks if t it is really only visible after the corn has been cut down, not visible in the summer. Ms. Peteroy clarified that only every third year is there corn planted in that field.

Tal commented that we cannot regulate the content of signs, protected by the first amendment, freedom of speech. We can regulate the size & location only. He continued by making reference to the definition of non-conforming use; 232-24 A. He points out that the two laws may be contradictory and/or competing, which is it non-conforming use OR continuation of non-conforming use. Non-conforming use suggests that the building shall not be enlarged, shall not be modified, and was not discontinued for a period of 12 consecutive months. In fact due to structural damage whether wind or fire, the restoration was completed within one year. It is a two step process, is it a pre-existing non-conforming use or not? He makes reference to Laches Document, you have waited so long to assert your right, that now your rights have been waived. Four years is a long time. It is a pre-existing, non-conforming use, you are dealing with the sign itself, not the content of the building.

Jeff suggested that the Walton's could work with the Round the Clock Committee and the Economic Advisory Board, to improve the look of the sign, we can't require it, just suggest it. They could draft a design show it to you and come to a compromise for all. Jeff concluded that the ZBA needs to make a determination and asked Tal for advice. Tal instructed the board members to first determine if this is a pre-existing, non-conforming use, that will end the discussion because it will be grandfathered. But, if you determine

that it is not a pre-existing, non-conforming use, then you have to look at 232-14.H to determine whether this is a change that would require Planning Board approval.

*Leslie makes a motion to affirm the interpretation as the sign is a pre-existing, non conforming use, solely for the use of the business that is physically in that building. This was seconded by Dustin. The motion carried, unanimously.*

2.. Elections - tabled

3. Sliding Fee-Bylaws change has been tabled.

4. Application Form on the Website, tabled.

**Adjournment:**

*Hilarie made a motion to adjourn this meeting, this was seconded by Mike . The motion carried. The meeting adjourned at 10:30 PM.*

**The next meeting will be held on Thursday, February 24, 2011, at 7:00 PM.**

Respectfully Submitted,

**Theresa A Traver, Recording Secretary**