



**COPAKE PLANNING BOARD**  
**JANUARY 5, 2012**  
**MINUTES**

**Approved**  
February 2, 2012

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**Please note that there are no referenced attachments, on file with the Copake Town Clerk and in the Planning Board office.**

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

**ZONING BOARD OF APPEALS – Referrals**

**1. SITE PLAN REVIEW – KEN FREED – Lakeview Road [Copake Lake] – (2011-7)**

Linda Chernewsky appeared before the Board representing Ken Freed. Ms. Becker acknowledged that Mr. Freed's application had been approved as a ZBA Referral and Site Plan in March of 2011. She informed the Board that the Builder built something that was not in compliance with the Permit and a Stop-Order was issued. She advised them that Ms. Chernewsky was contacted by Mr. Freed and a new application has been submitted.

Ms. Chernewsky explained that Mr. Freed had received a permit for a one-story addition but constructed a two-story addition. She advised them that she redrew the plans to represent what had been built. Ms. Chernewsky advised the Board that she attended the Public Hearing and conditional approval was granted by the ZBA. She noted that the footprint has not been changed and a height variance was not required. Ms. Chernewsky acknowledged that the ZBA requested that she get a notarized letter stating that there was Fire Rated Sheet Rock used in the Utility Room and a new septic system had been installed, and presented the Board with a copy of the letters. Ms. Chernewsky noted that an inspection had also been done by the Building Inspector. Ms. Chernewsky also presented the Board with an affidavit from the Contractor.

Mr. Davis asked if the septic had been upgraded because of the increase in the number of bedrooms. Ms. Chernewsky explained that the Variance had been written for a twelve-hundred and fifty (1,250) gallon Tank and inasmuch as the price difference between the twelve-hundred and fifty (1,250) and the fifteen hundred (1,500) gallon tank was minimal Mr. Freed decided to have the fifteen hundred (1,500) gallon tank installed. She noted that the fields were also replaced and based on the information and perc tests that were done the standards meet the standards required for a five (5) bedroom home. Mr. Davis asked if the structure is a five (5) bedroom structure. Ms. Chernewsky explained that the additional room had been referred to as a storage room but she advised Mr. Freed to consider this an optional bedroom.

Ms. Becker questioned the affidavit from the Contractor regarding the wall between the furnace and the addition. Mr. Davis explained that the letter confirming the use of fire rated sheet rock had been provided. Ms. Chernewsky also explained that the affidavit detailed the actual septic perc rate. Ms. Becker acknowledged that this satisfies the conditions set forth by the ZBA and questioned whether the Board had any concerns. She questioned the fact that the Board had never seen a floor plan and asked if Ms. Chernewsky had one. Ms. Chernewsky presented this to the Board.

Ms. Becker questioned the fact that they do not have a recent Site Map detailing the new details. Ms. Chernewsky advised her that a new Site Plan had not been prepared because the minutes stated that the Site Plan was acceptable. She made the changes on the previous one. Ms. Becker noted that the second story had to be noted as did the upgraded septic system. Ms. Becker questioned whether anything was outstanding. Mr. Urban noted that everything the Board talked about was included. Ms. Chernewsky explained that she just reapplied.

Mr. Grant questioned where the leeching fields were located. Ms. Chernewsky acknowledged that they were placed in the front. Mr. Davis questioned whether the deck was placed over the fields. Ms. Chernewsky explained that the tank was placed underneath the deck and the fields were moved to the outside deck and the lines were replaced inasmuch as a new tank had been installed.

Ms. Becker acknowledged that everything had been satisfied, the Variances had been granted and there were no real changes to the Site Plan. Ms. Chernewsky asked if a new set of Plans were needed. Mr. Grant advised her that revised plans should be resubmitted.

It was questioned whether a new motion was needed. Mr. Urban suggested a motion be made. On a motion made by Mr. Grant and seconded by Mr. Filipovits, the Board voted unanimously to approve the revised Site Map for the Ken Freed residence on Lakeview Road on Copake Lake from a Site Map based on a Site Plan previously approved and stamped by the Planning Board on April 30, 2011 with Floor Plans attached by Morris Associates dated November 7, 2011.

Ms. Becker will re-stamp the maps. Ms. Becker advised Ms. Chernewsky that two (2) additional sets of plans will be needed for her to stamp. Ms. Chernewsky will supply these.

## **PUBLIC HEARING**

None.

## **SUBDIVISION/SITE PLAN**

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

Ms. Becker advised the Board that property owner and Board member, Jon Urban would not be able to speak on this application. Mr. Urban recused himself from the Board regarding participation on the Copake Lake Golf LLC application and acknowledged that Attorney Lawrence Howard would represent him.

Attorney Howard addressed the Board requesting feedback regarding the two (2) lot Subdivision for the applicant. Attorney Howard explained that the edge of the Golf Course property, which has been expanded with a recent purchase, will require the relocation of Golf Course Road creating two (2) additional parcels on the other side of the relocated road with the remaining property staying part of the larger parcel.

Attorney Howard informed the Board that the Engineer prepared a Road Profile with the grades for the changed road and will be providing information regarding the intent to connect to the existing septic treatment system servicing the Homeowner Association. Attorney Howard continued to explain that Mr. Urban has permission (system capacity) to connect four (4) homes to the Septic System with one already connected. The addition of these 2 lots will equal five ( 5) home sites. The two (2) homes closest to the lake will connect to the System and the remaining two (2) anticipated homes will install their own septic systems.

Mr. Grant questioned where the current Sewer System terminates and whether the Sewer pipes would have to cross over the existing creek. Attorney Howard explaining that he does not expect this to be a problem as the Engineer has not completed his plan and intends to address this issue. Mr. Davis pointed out that this is more of a concrete or culvert type of situation and is not a free-standing ridge so enough soil may be able to be put around it for it not to be an issue. Mr. Grant believed that there might be many DEC Permits required for this. Attorney Howard pointed out that the bank would not be disturbed but Mr. Grant made note of the fact that there would still be construction within the one-hundred foot stream bed. Mr. Grant clarified that the Taghkanic Creek is a secondary water supply for the Town of Hudson and they are very concerned about the quality of water. Surveyor Jeff Plass explained that he spoke to the Engineer who has solved this issue before and doesn't expect this to be a problem.

Ms. Becker questioned whether this would need a variance from the Town of Copake. Attorney Howard noted that there might be a possibility to move one-hundred feet (100') back from the lake and was not sure that the installation of a pipe would be considered construction. Mr. Grant clarified that the law refers to any disturbance within the buffer and is not restricted to construction. Attorney Howard will address this with the Engineer prior to the next meeting.

Mr. Grant believed that DEC permits might also be needed for the construction of the road that is being moved and Attorney Howard pointed out that the road is actually being moved further from the lake. Ms. Becker questioned the location of the proposed houses and which would and would not be connected to the existing Septic Treatment System. Mr. Davis made note of the fact that the two (2) homes that would not be connected to the Septic Treatment System will have plenty of room to install their own systems.

Attorney Howard presented the Board with the Erosion and Sediment Control Plan, Road Construction detail and Preliminary Subdividson Sketch. Mr. Grant brought up the fact that before any Public Hearing can be scheduled ZBA issues need to be resolved. Attorney Howard questioned whether any variances were anticipated by the Board. Mr. Grant advised him that a variance to build (develop) within one-hundred feet (100') of a water body would be required referencing the road and the sewer as the Board has no information as to how this would be handled. Attorney Howard questioned whether the sewer line is considered a system. Ms. Becker made note of the fact that this was the case regarding the Braunstein application.

Ms. Becker addressed the fact that no perc tests would be required inasmuch as connections will be made to the existing Sewer Treatment System. Ms. Becker made note of the fact that this needs to be classified as the continuation of a Major Subdivision, a SEQR will be required, a letter from the Highway Superintendent needs to be submitted and requirements from the DEC need to be clarified.

Mr. Grant questioned the legality of Parcel One (1) and wondered if it can be retained as part of the overall parcel or is a non-conforming lot being created. Attorney Howard explained that the intent is to have it be part of Parcel One (1) and the Town definition of a lot does not prevent that from being done. He added that the parcel can be stamped for no development or construction so that it cannot be built upon. Mr. Grant made note of the fact that the Board is not allowed to create a non-conforming lot. Attorney Howard explained that the argument would be that a non-conforming lot is not being created inasmuch as it will remain part of the larger parcel. Ms. Becker brought up the fact that this had been done in the past. Attorney Howard noted that Town Code definition does not need to include the word contiguous when referring to parcel size and his opinion is that you are free to do that should you wish.

Mr. Grant asked Town Attorney Dow if he would be able to research and confirm this as under the Zoning Code the Planning Board is not allowed to create a non-conforming lot which is any lot that is less than thirty-thousand (30,000) square feet in this district. Mr. Grant clarified his concern as to whether you can have a non-contiguous parcel be considered a part of a larger lot or does the subdivision in this case create a need for a new deed and therefore a new lot. Attorney Dow would look into this.

Inasmuch as there is an open question as to whether any variances are needed Attorney Howard asked the Board whether the Public Hearing can be scheduled at this time pending any variances. Mr. Grant did not feel the Public Hearing should be scheduled until things were clarified and noted that the Planning Board Public Hearing can be held concurrently with the ZBA Public Hearing.

Attorney Howard made note of the fact that the lots were large enough to install their own septic systems and wondered if they could proceed in this manner. Mr. Urban noted that it was better to use the contained Septic System but if that was not possible they could proceed with private septic systems on each lot and just move forward with a variance for the Road. Attorney Howard advised the Board that the forthcoming Plans would include the septic layout and questioned whether a Public Hearing could be set on that condition.

Ms. Becker questioned how this could be accomplished without a perc test. Mr. Plass advised her that perc tests were performed and inasmuch as they were not adequate an engineered system needed to be designed and approved. Mr. Grant explained that either way the application would need to go through the review process and noted that the Planning Board's preference is to let the ZBA make their decisions and run the Public Hearing's concurrently. Attorney Howard questioned whether the amount of disturbance that would be created by the small area of road needed was concern for a ZBA variance. It was decided that this would be forwarded to the ZBA.

Attorney Howard asked the Board if there were any other issues. Mr. Davis questioned whether any trees would be taken down and asked for a plan regarding this as he wondered whether some of the older trees could be saved. Mr. Plass explained that the plan that is being presented shows the only positioning that could be done for the road to meet Town requirements and most of the trees would need to be removed. Mr. Urban made note of the fact that several of the larger trees would remain. It was decided that a landscape plan would also be presented. Attorney Howard did point out that due to the grade of the land work might need to be done in the specific areas of concern and trees might

need to be removed in the process. Mr. Grant requested that the stream and the one-hundred foot (100') set-back from the lake and stream be included on the map to see if there are any conflicts.

Ms. Becker advised the Board that Mr. Urban's application can be classified as a Major Subdivision and accepted as a Preliminary Sketch. On a motion made by Mr. Davis and seconded by Mr. Grant, the Board voted unanimously to classify the Copake Lake Golf LLC application as a continuation of a Major Subdivision and accept it as a Preliminary Sketch.

Mr. Grant questioned how utilities would reach Parcel 7. Mr. Plass explained that all utilities would be placed underground. The Plans were stamped and dated.

#### **2012-4            MINOR SUBDIVISION – ROBERT KITCHEN – Farm Road**

Robert Kitchen and Taylor Mickle appeared before the Board regarding a Minor Subdivision request. Mr. Kitchen advised the Board that Ms. Mickle showed an interest in purchasing a portion of his property estimated at 1.3 acres and he would like to do a Lot Line Adjustment regarding this. Mr. Kitchen explained that the Lot Line Adjustment would not cross the stream. Ms. Mickle made note of the fact that a survey has not been done at this time.

Ms. Becker acknowledged receipt of the application and made note that this would be a Minor Subdivision which would require a SEQR and a Fee in the amount of Fifty Dollars (\$50.00). Ms. Becker presented Mr. Kitchen with a Check List for him to follow before returning next month.

Ms. Becker asked if there were any deed restrictions. Mr. Kitchen advised her that the only restriction was one that stated that any further subdivision would have to be approved by the Town of Copake. Ms. Becker advised that a Field Survey of the Boundary Lines would be needed and should include: the subdivision name and the name of the Town and County it is located in; the North Arrow on the map; the Name and Address of the Record Owner and Subdivider; the Zoning District [which is 'R']; Widths of any existing or planned Rights of Way, Farm Roads, Easements, Common Driveways or Planned Roads.

Ms. Becker advised Mr. Kitchen that a Public Hearing will need to be set when he returns next month. Ms. Mickle asked whether she needed to provide anything other than her deed. Ms. Becker advised her that there was nothing she needed to provide but did note that a notation needed to be made on the map saving the newly subdivided lot would be merged with the lands of Ms. Mickle for the Board to proceed with the Subdivision. Ms. Becker advised Mr. Kitchen and Ms. Mickle that once the parcels are merged they need to be filed with the County Clerk at the Department of Real Property in Hudson. Ms. Mickle questioned whether she would receive a tax deduction inasmuch as her property is within a Flood Zone. Ms. Becker directed her to the assessor as she believed property within a Flood Zone is assessed differently.

#### **2012-4            MINOR SUBDIVISION – MICHAEL FRIED – Woodchuck Rd [Copake Lake]**

Jeff Plass appeared before the Board representing Michael Fried who wishes to subdivide a parcel of land in the 'R-2' district on Woodchuck Road and Red Fox Lane into three pieces. Mr. Plass presented the Board with the application and acknowledged that Mr. Fried's property was

on the other side of the Golf Course and had a Boundary Line Adjustment a couple of years ago which was merged to his original parcel. Mr. Plass informed the Board that at this time Mr. Fried wishes to subdivide his property into three (3) pieces for his three (3) children in the future.

Ms. Becker asked Mr. Plass if he had a map of the original parcel showing what was previously added. Mr. Plass provided this information. It was clarified that the present parcel is now one lot to be subdivided. It was established that there is a 'Right-of-Way' off of Woodchuck Road and Ms. Becker advised Mr. Plass that the Board would need to review the language regarding this.

Ms. Becker made note of the fact that each lot will need a septic system and well. Mr. Plass explained that the only way to perform a perc test on the parcel on which the tennis court is built would be to dig up the recently improved tennis court. Mr. Davis questioned whether the test could be performed on the side of the court. Mr. Plass explained that there is not enough property on the sides for this. Mr. Plass did point out that there is a possibility of doing a septic system within the Golf Course property. Mr. Plass explained to the Board that Mr. Fried had concerns as to whether the Tennis Court parcel could be subdivided without a perc test as he did not wish to dig up his tennis court. Mr. Plass suggested the possibility of notes being added to the survey stipulating no building can be done without a perc test.

Ms. Becker clarified that the issue for the Board is whether Parcel 1 could be subdivided without a Septic System Plan in place. Ms. Becker questioned whether the deed could be restricted saying the parcel could not be built on without Septic System acknowledgment. Mr. Davis made note of the fact that if the land does not perc a raised or built-up Engineered System could be used.

Ms. Becker advised Mr. Plass that inasmuch as the Board would need to see all the 'Rights-of-Way' they would need to review the deed to see whether they are duly filed. Mr. Plass explained that they cannot be filed until the Subdivision is approved and would provide written details regarding this. Mr. Grant advised that the previous deed would need to be reviewed so that the Board knows whether there are any other restrictions that might restrict further subdivision. Mr. Plass would provide this information. Ms. Becker noted that perc tests would be needed for the other two parcels and asked Town Attorney Dow to research whether notes regarding the tennis court parcel would be sufficient. Mr. Grant was not sure this could be done. Ms. Becker acknowledged that Town Law does not permit this but was not sure whether restrictions could be placed on the parcel on the subdivision map by the Board.

Ms. Becker referred to Town Code 197-21A.(3) which stated that "*All on-site sanitation and water supply facilities, to be designed to meet the minimum specification of the State or County Board of Health, and a note to this effect shall be stated on the plat and signed by a licensed engineer*" Mr. Plass questioned whether a letter from an Engineer stating that a system can be designed to meet the minimum specifications would be sufficient. Mr. Becker advised that this could be but this would need to be clarified by Town Attorney Dow.

Ms. Becker asked if the Board was ready to accept this application as a Preliminary Sketch. On a motion made by Mr. Davis and seconded by Mr. Filipovits the Board voted unanimously to classify Mr. Fried's application as a Minor Subdivision from a Subdivision Map prepared by RMF Partners submitted by Plass, Rockefeller and Nucci dated December 10, 2011 and accept it as a Preliminary Sketch.

Mr. Plass presented the Board with the application fee. Town Attorney Dow will research the issues in question.

Dan Russel appeared before the Board representing Phil Gellert and presented them with a letter giving him the authority to represent the applicants. Mr. Russel informed the Board that the property he is referring to is owned by Vijoba Realty which belongs to Mr. Gellert's wife. Mr. Russel explained that the property in question surrounds a subdivision of property the Board approved in 2008 which started out as eleven (11) acres and was increased to thirteen (13) acres. Mr. Russel noted that there is a driveway going up to the house site which was recently sold to a gentleman named Ed Miller under corporation name of Yonderview LLC and upon his purchase Mr. Miller decided he would like to build a little closer to the property line than Town regulations allow.

Mr. Russel continued to explain that Mr. Miller wishes to do a Lot Line Adjustment adding to his original thirteen (13) acres and is in discussions with Mr. Gellert to purchase an additional three (3) acre parcel. Mr. Russel wished to ask the Board's opinion as to whether they would approve this subdivision which would require a shared (common) driveway coming off the existing driveway.

Ms. Becker researched the Town Code regarding 'rear lots', 'flag lots' and 'common driveway' and believes this application fits the 'common driveway/rear lot' regulations. Ms. Becker referred to Town Code 232-8N.(1) which stated that: "*Within the R District, it is the policy of the Town of Copake to encourage maximum flexibility for development. Accordingly, it may be desirable to locate some residences on rear lots without requiring compliance with otherwise applicable road frontage requirements. The R District is hereby declared an open development area under Town Law § 280-a, Subdivision (4), in which building permits may be issued for structures or lots that have no public or private road frontage and gain access by right-of-way easement over other lands, under the conditions contained in this section*" and noted that up to three (3) rear lots can be created and "*may have a deeded 'Right-of-Way' easement over other lands*". Ms. Becker also noted that the Code stipulates that "*the accessway or right-of-way must provide safe access for fire, police and emergency vehicles*" which Ms. Becker believed might be an issue with the driveway in question and would require feed-back from the Fire Company.

Ms. Becker continued to refer to the Code which states that "*The proposed rear lots must not result in damage to important natural resource and landscape features identified in the Master Plan and this chapter, including but not limited to wetlands, agricultural land, scenic views, steep slopes and ridgelines*" Ms. Becker then referred to the definition in the Code for 'Common Driveways' which is a 'Right of Way' serving more than one property.

Ms. Becker informed Mr. Russel that she believed this could be done but visual impact would need to be considered. Mr. Russel asked if this would be considered pending a Site Plan Review. Ms. Becker agreed.

Mr. Russel questioned whether this could all be done on one map at the same time or should the Lot Line Adjustment be done first and then proceed to the Subdivision. Mr. Grant did not see any reason why both tasks could not be accomplished at the same time. Mr. Russel noted that this could not be done before a perc test could be performed. Ms. Becker advised him that the merger could be done without a perc test. Mr. Russel would review this with his client and will contact the Fire Chief for his input.

Mr. Russel informed the Board that in dealing the Town of Hillsdale he was told that the County will not approve a shared driveway off a County Road which is in direct conflict with the Town Zoning, however the State and Town will.

## **MINUTES**

Ms. Becker asked if there were any changes to the Minutes of December 1, 2011. No changes or corrections were needed. On a motion made by Mr. Grant and seconded by Mr. Davis the Board voted unanimously to accept the minutes of the December 1<sup>st</sup> meeting.

## **ADMINISTRATIVE**

**ABANDONMENT LETTERS:** Ms. Becker advised the Board that letters were sent to Michael Braunstein and AmeriStop stating that if we did not hear from them their applications would be deemed abandoned.

**VACANCY ON PLANNING BOARD:** Ms. Becker advised the Board that there is a vacancy on the Planning Board due to the fact that Mr. Pilch's term expired and asked if anyone wished to resign their position on the Board as the size of the Board could be reduced to the previous five (5) members. Mr. Filipovits informed her that he would be willing to resign his position as he had no plans on reapplying for his position when his term expired in December 2012. Ms Becker acknowledged that the Planning Board could recommend to the Town Board that they wish to reduce the number of Board Members to the previous five (5) which would require a change in the Town Law or the Board could remain at the present seven (7). Ms. Becker did note that it is the Town Board's preference for the Planning Board to remain a seven (7) member Board. Mr. Grant questioned whether the Board should continue to operate with a vacancy on the Board. Ms. Becker informed him that Deb Cohen applied for the position. Attorney Dow did advise that should the Town Board reduce the Planning Board to five (5) members it would be at their discretion to determine which term they would eliminate. Attorney Dow would research this if the Board wished. Ms. Becker asked whether the vacant seat should be filled as it is presently a seven (7) member Board. Mr. Urban made note of the fact that this is not a priority right now and brought up the fact that there are times that members are absent. He felt that should the Board feel they wish to appoint Ms. Cohen to the position and Town Board is agreeable the matter can be visited again when Mr. Filpovits' term is up in December. Ms. Becker advised the Board of procedure which stipulates that Ms. Cohen, who is not available this coming Saturday, would need to be interviewed and asked if four members would be available on January 14<sup>th</sup> at 9:30 am. Ms. Becker will contact Ms. Cohen regarding this.

**MARK FRANK APPLICATION:** Ms. Becker advised the Board that she has not received anything regarding the Mark Frank application regarding his final submission.

**COPAKE LAKE GOLF LLC:** Ms. Becker informed the Board that Mr. Urban's application should not have been accepted last month as a Preliminary Sketch and the previous motion needed to be rescinded.

On a motion made by Mr. Davis and seconded by Mr. Grant the Board voted unanimously to rescind the prior motion for Copake Lake Golf LLC made at the December 1<sup>st</sup> meeting.

**TROYETSKY LANDSCAPING PLAN:** Ms. Becker informed the Board that the Troyetsky Landscaping Plan has been submitted should anyone wish to see it. After review there were no objections to Mr. Troyetsky's Plan.

**CAMPBILL UPDATE:** Ms. Becker informed the Board that nothing new has been received by Camphill Village.

**CODE REFERENCE 232-1C.(4):** Ms. Becker advised the Board that there is a Code Reference for the protection of trees in wooded areas which states: *"To protect and enhance existing wooded areas and waterways and to preserve where appropriate the essentially rural character of the Town"*. However, Mr. Grant pointed out that there is no ordinance that says trees cannot be cut down.

## **CARRY OVER**

The following matters were carried over to the next meeting:

- 2010-2            SITE PLAN REVIEW CONSULTATION – AMERISTOP – Route 23**
- 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. Davis and seconded by Mr. Filipovits, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 8:30 p.m.

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Marcia Becker, Chair

**Please note that all referenced attachments, comprising 7 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**

### STUART TROYETSKY

November 18, 2011 Urban to Becker (1)  
November 30, 2011 Davis to Becker (1)

### CAMP HILL VILLAGE

November 30, 2011 Clark to CPB (1)  
November 28, 2011 DeRuzzio to Clark (2)  
November 22, 2011 Clark to Becker (2)