



**COPAKE PLANNING BOARD**  
**JULY 13, 2013**  
**MINUTES**

**Approved**  
September 5, 2013

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**Please note that all referenced attachments, comprising 14 pages, are on file with the Copake Town Clerk and in the Planning Board office. An annotated listing of those attachments appears at the end of this document.**

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A regular meeting of the Copake Planning Board was called to order at 9:40 a.m. by Marcia Becker, Chair. Also present were Chris Grant, Bob Haight and Steve Savarese. Gray Davis, George Filipovits and Jon Urban were excused. Lisa DeConti was present to record the minutes. Attorney Ken Dow was also present.

**ZONING BOARD OF APPEALS – Referrals**

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

Linda Chernewsky appeared before the Board representing Ms. Wang and Mr. Spencer and advised that the fifteen-hundred (1,500) gallon septic tank will be installed. Ms. Chernewsky informed the Board that the old one-thousand (1,000) gallon septic tank was removed and in the process it was noticed that the pipe coming out of the tank was not connected to the 'D' Box which was higher than the septic tank. Ms. Chernewsky made note of the fact that when the new septic tank was installed the 'D' Box was connected and dropped and the two laterals that were there remained.

Ms. Chernewsky informed the Board that perc tests were performed around the property and perc tests in the location of the existing septic tank as well as a spot toward the back of the property successfully perced. Ms. Chernewsky acknowledged that a split system will be engineered where the toilet flow will go directly into the septic tank with gray water then being pumped into a dry well in the back. Ms. Chernewsky made note of the fact that she was in contact with the Board of Health and they are aware of the situation.

Ms. Becker acknowledged that a height variance, left side-yard variance, right side-yard variance and rear yard set-back variance had been granted by the Zoning Board of Appeals. This was the only submission received for this application for this meeting. Ms. Becker pointed out that the only remaining item is the septic system information however conditional approval cannot be granted without this information. Ms. Chernewsky did inform the Board that this information would be provided as soon as it is completed. It was noted that Ms. Chernewsky would have to attend another meeting once this information is received. Ms. Chernewsky had no objections to this.

## **2. ZBA REFERRAL – EDWARD LEUSCHNER – Mansion Dr. [Taconic Shores] – (2012-31)**

Ms. Becker advised the Board that a ZBA referral for Mr. Leuschner had previously been reviewed however one of the variances requested from the ZBA at that time was omitted from the application so this application needs to be reviewed again. Ms. Becker acknowledged that a letter was written to the ZBA for the last review.

Ms. Becker reminded the Board that Mr. Leuschner owns two non-conforming lots on Mansion Drive on Robinson Pond in Taconic Shores that he wishes to develop. Ms. Becker made note of the fact that the last letter sent to the ZBA requested that the lots be combined onto one deed, screening be placed between the residence and the neighboring property and a detailed landscape plan focused on erosion control for Robinson Pond be submitted with pre and post construction details.

Ms. Becker explained that a porch was planned on the side of the structure that extends into the side-yard set-back and the new variance request is to allow an open deck porch for the main door entrance with a right side-yard variance of fifteen feet (15') requested. Attorney Dow pointed out that the steps to the door of the porch were inadvertently left off the previous variance.

In reviewing the submitted pictures Ms. Becker noted that there was no landscaping plan. Mr. Haight did point out that erosion control appeared to be included. Mr. Grant suggested advising the ZBA that the Board requested a landscaping plan. Ms. Becker will include this information in a letter to the ZBA.

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

Although no one was present on this application Ms. Becker informed the Board that she received an e-mail from Frank Peteroy, the project architect, who acknowledged a survey, asbestos assessment and DEC documents were needed. Ms. Becker made note of the fact that she advised Mr. Peteroy that septic location, design and capacity had also been requested. Ms. Becker did point out that the ZBA granted relief from the Density Control Schedule however the documents requested by the Planning Board were still outstanding and are needed before the project can be completed.

## **4. ZBA REFERRAL – ANTHONY CHIBBARO – Lakeview Road [Copake Lake] – (2013-8)**

Attorney Dow advised the Board that they can enter Executive Session if they wished to discuss this application with legal counsel. Ms. Becker did not feel this was necessary prior to entering documents into the record as Executive Session could be entered into later in the meeting if so decided.

Ms. Becker reminded the Board that this application was unanimously approved at last month's meeting with a condition that verification from a licensed engineer stating that the septic system is in good working order be received before approval is given. She acknowledged the submissions received prior to the meeting and read them into the record:

- A June 12<sup>th</sup> letter from Mr. Chibbaro asking Attorney Dow to review the conditional approval regarding verification from an engineer. Ms Becker noted that the drawing submitted were elevations and not the requested site maps.
- The Statement of Decision sent to Mr. Chibbaro from Ms. Becker regarding the unanimous approval and condition as he was absent from the prior meeting.
- A July 2<sup>nd</sup> letter from Mr. Chibbaro referring to the inspection of the septic system by an engineer
- Attorney Dow response to Mr. Chibbaro's letter.

Attorney Dow addressed the question as to whether the Board acted within their scope of authority when they attached the condition to Mr. Chibbaro's Site Plan Approval. Attorney Dow did extensive research in trying to determine whether this was permissible. Attorney Dow noted that initially there seemed to be some things that were in conflict. Attorney Dow referred to Town Code 232-23A.(3)(f) which stated: *The Planning Board's review of the site plan shall include, as appropriate, but is not limited to, the following general considerations: (f) Adequacy of water supply and sewage disposal facilities.* Attorney Dow then questioned what could be considered appropriate. He cited several cases where time after time after going to the courts there is a principle that comes down to anything that is imposed upon any zoning decision must be related to what the applicant is seeking to do with that project and relate to what is being asked for at the time. Attorney Dow did acknowledge that it could be a valid interest but if it is not connected to what is the applicant is asking for at that time it cannot be done. Attorney Dow's conclusion is that this request was beyond the authority of the Board to impose a condition of the state of the septic system in connection to an application for a deck or porch. Attorney Dow recommended that the Board revisit this and strike the condition as being beyond the Board's authority.

Mr. Grant felt that if this was Attorney Dow's position this is what the Board should do. Ms. Becker, who also spent a lot of time working on this, had a more broad interpretation of 'where appropriate' than Attorney Dow's strict interpretation of 'where appropriate'. She explained that the broad interpretation of 'where appropriate' considers 'site specifics' whereas the applicant shows the septic system and/or fields within one-hundred feet (60') of Copake Lake. Ms. Becker acknowledged that there is a one-hundred and fifty foot (150') set-back requirement to Copake Lake in the Town Code for health and safety reasons. She noted that Copake Lake is on the DEC impaired water body list registered with the State of New York and the only information the applicant provided about the septic system was a real estate listing form.

Ms. Becker also pointed out that the Comprehensive Plan in the Town of Copake calls for protection of Copake's water bodies so her interpretation of 'where appropriate' is broad in the understanding of what the requirement is. Mr. Grant agreed but acknowledged that the Code needs to be revised in order to clarify issues like this and as it is presently written there has to be a nexus between what is requested and the Site Plan Review. Attorney Dow did point out that Copake Code is subject to the law of the State of New York State and the things that Ms. Becker said are of interest to the Town but they cannot be considered in the scope of this application and anything outside the scope of the application can only be viewed as arbitrary and capricious.

Mr. Grant questioned when something would be considered appropriate. Attorney Dow acknowledged that this has to be subject to a State Law and is not appropriate to what is being applied for and not part of the application. Mr. Grant expressed concern that as a Board they need to know what is appropriate. Mr. Haight pointed out that a deck has no impact on a septic tank. Attorney Dow explained that something has to be there to mitigate something likely to happen as a result of going forward with this application such as the addition of a bedroom. Mr. Haight felt it appropriate to ask the location of the septic system on the Site Plan and Attorney Dow agreed. Ms. Becker made note of the fact that location and condition were requested of the applicant. Attorney Dow advised that the Board was not entitled to information regarding the condition of the septic system.

Ms. Becker asked Mr. Chibbaro if he would like to speak. Mr. Chibbaro approached the Board and expressed his appreciation to Attorney Dow for his research and informed the Board that he has been at this location for twenty-eight (28) years and has the best interest of the lake and will not do anything to jeopardize it. Ms. Becker asked Mr. Chibbaro if he had any other documentation regarding the septic system. Mr. Haight reminded her that the Board could only ask the location. Ms Becker also asked if there was plumbing in the out building on Mr. Chibbaro's property and was advised that there was none.

On a motion made by Mr. Grant and seconded by Mr. Savarese the Board voted unanimously to amend the prior decision and remove the condition requesting an engineer inspect the septic system on the Chibbaro property to show the septic system is in good working order.

Ms. Becker asked Mr. Chibbaro to initial the plans where he noted the location of the septic system as it had come to her attention that any changes should have been done by the person drawing up the plans. Ms. Becker will return any submissions not required by the Board to Mr. Chibbaro. Mr. Chibbaro provided the extra copies requested by the Board.

## **PUBLIC HEARING**

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

On a motion made by Mr. Grant and seconded by Mr. Haight the Board voted unanimously to waive the reading of the Public Hearing.

On a motion made by Mr. Savarese and seconded by Mr. Grant the Board voted unanimously to open the Public Hearing.

Ms. Becker acknowledged the new maps that were submitted and asked if anyone present wished to review them. Edgar Masters stepped up to review the maps and asked whether there were any changes to the previous maps he reviewed. He was advised that no changes were made. He made no further comments regarding them.

Mr. Rosenzweig's letter was read into the record. Ms. Becker asked if anyone else would like to comment on this application. Mr. Rosenzweig expressed concern that development on Mr. Cohen's subdivision would affect the rural charm of the Town.

Mr. Masters presented a letter to the Board and read it into the record. Mr. Masters expressed concern that the scenic ridgeline and area upon which the Cohen subdivision is located will be built upon and asked that sound judgment and good citizenship be considered in the placement of a structure in this area.

Mr. Grant questioned whether a response would be given to Mr. Rosenzweig and suggested informing him that right now this application is a minor subdivision and any further subdivision would trigger the conservation subdivision regulations and nonetheless there are guidelines that need to be followed in the code should this become a major subdivision. The Board will respond.

The Public Hearing remained open.

**2013-21      MINOR SUBDIVISION/BLA – JOSEPH SWIATEK – Island Drive – [Copake Lake]**

On a motion made by Mr. Grant and seconded by Mr. Haight the Board voted unanimously to waive the reading of the Public Hearing.

On a motion made by Mr. Grant and seconded by Mr. Haight the Board voted unanimously to open the Public Hearing for the minor subdivision of Joseph Swiatek. Joseph Swiatek appeared before the Board. Ms. Becker asked if anyone in the audience had any questions or comments regarding this application. There were none.

On a motion made by Mr. Savarese and seconded by Mr. Haight the Board voted unanimously to close the Public Hearing.

**SUBDIVISION/SITE PLAN**

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

Ms. Becker acknowledged two submissions:

- The new maps which were revised the 17<sup>th</sup> of June 2013 and
- A letter from neighbor Steve Rosenzweig
- Fire Safety Letter from CEO Ferratto

Ms. Becker made note of the fact that the SEQR needed to be read, the easement needs to be executed and a letter was needed from the Fire Department. Ms. Julie Cohen informed the Board that the Fire Department advised her that they have no authority to issue a letter and only Code

Enforcement Officer Ed Ferratto could supply this letter. Ms. Cohen made note of the fact that the Fire Chief and Mr. Ferratto visited the property together and Mr. Ferratto would issue a letter.

Mr. Haight made note of the fact that he visited the site and was amazed at how the road was done as far as hiding it as it was done very tastefully with only about ninety percent (90%) of the road being seen. Mr. Haight also made note of the fact that the house being built is set back into the hillside and it seems things are being done the way the Town likes. Supervisor Nayer commented that the road is freshly done and the stones are a lighter shade and in time as it ages it will probably be noticed less than it is right now.

Ms. Becker questioned whether an Agricultural Data statement had been filled out and was advised that none was submitted. Mrs. Eileen Cohen questioned what the document was and was advised that it is required by Ag and Markets. Mr. Grant noted that this form needs to be filled out according to New York State Article 25AA of the Agricultural and Markets law. Jeff Plass addressed the Board noting that he did not prepare the application and was not aware this had not been prepared. He acknowledged that the Ag Data Statement is part of the application and he will have no problem filling it out. It was noted that the surrounding farming neighbors will need to be given notification of this document. Ms. Becker advised that once filled out the Ag Data Statement will need to be reviewed by the Columbia County Planning Board. It was noted that the County Planning Board meeting will be on the following Tuesday, July 16<sup>th</sup> so they will need to be notified as soon as possible so that they can consider reviewing this application at that time. Mr. Plass will prepare this and get it to the office by Monday.

Mrs. Cohen questioned when it was discovered that this was needed. Ms. Becker advised her that she realized this a few days ago. Mr. Grant made note of the fact that he was not aware that this was in an agricultural district prior to this. Mrs. Cohen brought up the fact that they were never notified of this before for any of their other lands. Ms. Becker acknowledged that the easement has been executed, the SEQR needs to be read and the only outstanding item is the Ad Data Statement. Mr. Cohen questioned the fact that they have never received this statement when one of their neighbors such as Shag Bark Farms did anything on their land. Ms. Becker advised that this is only done during subdivisions. Mr. Haight questioned why this had not been done for the Flood and Vjjoba applications. Ms. Becker acknowledged that this had inadvertently been omitted from those applications.

The Cohens were displeased that this would delay their application another month and questioned whether there was anything else that would cause a delay. Ms. Becker clarified the next meeting is August 1. Mr. Grant noted that this was required by the State and should have been filled out by the applicant when the application was filed. Mrs. Cohen believed it was the Board's responsibility to have informed them that this was needed. Mr. Plass asked whether conditional approval could be given and was advised that it could be given but the maps could not be stamped until after they were reviewed by the County Planning Board. A letter was presented to the Board by CEO Ferratto and read into the record along with the pertinent code restrictions that apply. The SEQR was read.

On a motion made by Mr. Savarese and seconded by Mr. Grant the Board voted unanimously to make a Negative Declaration.

Ms. Becker acknowledged that the Ag Data Statement is the last item needed. Ms. Eileen Cohen requested this be entered into the record. The check list was reviewed and it was realized that conditional approval could not be given without a decision by the County Planning Board.

**2013 -19      SITE PLAN REVIEW – MICHAEL & EILEEN COHEN – High Meadow Road  
[Copake Lake]**

Ms. Becker pointed out that the same documents submitted for the Boundary Line Adjustment apply for the Site Plan application as well and acknowledged:

- The map
- The executed easment
- The Fire Department letter

Ms. Becker made note of the fact that the only outstanding item is the septic system information and questioned whether this has been designed as yet. She was advised by Mr. Cohen that it has not been. Ms. Becker acknowledged that the DOH letter had been previously entered and was agreeable to the septic information being submitted at a later date inasmuch as the system will need DOH approval when it is built. Ms. Becker believed that the Board can approve this application without the design of the septic as the perc tests have been approved by the DOH. Mr. Haight brought up the fact that this is new construction and needs to be inspected by the DOH. Ms. Becker asked that a set of ‘as built’ engineered septic system plans for the complex be submitted when available.

On a motion made by Mr. Grant and seconded by Mr. Haight the Board voted unanimously to approve the Site Plan for the Michael and Eileen Cohen residence Parcel Two at 17 High Meadow Road based upon the Bateman Architects drawings dated May 15, 2013 and the Subdivision dated June 17, 2013.

Ms. Becker will stamp three (3) sets of plans on Monday to be picked up at that time.

**2013-21      MINOR SUBDIVISION/BLA – JOSEPH SWIATEK – Island Drive – [Copake  
Lake]**

Ms. Becker acknowledged that the SEQR is outstanding and questioned whether there is an easement required across other lands of Swiatek. Mr. Swiatek made note of the fact that when the other subdivision was done there were four (4) separate deeds, one (1) for the right-of-way and the others for the lots. Mr. Swiatek referred back to the original subdivision when it was suggested that the right-of-way be incorporated into parcel #9 which was done. Inasmuch as both parcels 8 and 9 belong to Mr. Swiatek he brought up the fact that an easement can be granted at any time it is needed. Mr. Grant made note of the fact that a lot cannot be created without access. Dan Russell, who appeared with Mr. Swiatek, pointed out on the original subdivision map that an easement is created through the Homeowner’s Association. Ms. Becker requested a copy of the deeds in which the easement is stated. Copies were made and presented to the Board. The Fee in the amount of \$50.00 cash was also presented to the Board.

The SEQR was read. On a motion made by Ms. Becker and seconded by Mr. Savarese the Board voted unanimously to make a Negative Declaration.

On a motion made by Mr. Grant and seconded by Mr. Haight the Board voted unanimously to approve the Boundary Line Adjustment for the lot-line adjustment of lots 9 and 8 on 8-9 Island Drive at Copake Lake from a map revised July 3, 2013 stamped by Dan Russell, Surveyor. Ms. Becker will stamp the maps on Monday and Mr. Russell will pick them up.

**2013-17      SITE PLAN REVIEW *Workshop Building* – CAMPHILL VILLAGE – Camphill Rd. [Copake]**

No one was present for this application however, Ms. Becker acknowledged:

- receipt of the Permit Application from the Army Corp of Engineers
- the granting of a variance by the ZBA to build within one-hundred feet (100') of the wetlands
- two (2) updated maps with erosion control that had been requested
- elevations

On a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted unanimously to approve the Site Plan for the new Camphill Village Workshop Buildings on Ring Road in Camphill Village, Copake New York based upon Site Plans by Pat Prendergast revised April 25, 2013, building and drainage plans included on the Site Map dated May 8, 2013

**MINUTES**

On a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted unanimously to approve the minutes for the June 6<sup>th</sup> 2013 meeting.

**ADMINISTRATIVE**

**GRAY DAVIS RESIGNATION:** Ms. Becker sadly acknowledged Mr. Davis' letter of resignation. Mr. Haight questioned the procedure for this and was advised by Supervisor Nayer to forward the letter to the Town Board where it will be formally accepted. The Planning Board will then take requests for the position and make recommendations to the Town Board. On a motion made by Mr. Grant and seconded by Mr. Savarese the Board voted unanimously to accept Mr. Davis' resignation.

**GRAY DAVIS SITE PLAN:** Ms. Becker advised the Board that Mr. Davis requested that one of the rooms on his application be noted a fourth bedroom. Ms. Becker acknowledged that Mr. Davis' house will be connected to the community septic and has no impact on anything other than the flow rate which she gave to CEO Ferrato so he can keep track of this. Ms. Becker asked if the Board felt they needed to review this again. Mr. Haight did not feel this was necessary as long as it is noted.

**REQUEST TO BE ADDED TO NEXT MONTH'S MEETING:** Lindsay Lebrech requested to be added to the August agenda for a conference inasmuch as a potential buyer would like information on what can and cannot be done on a property he is interested in. Mr. Ferratto recommended she meet with the PB.

**SUPERVISOR NAYER:** Supervisor Nayer approached the Board and clarified that he did not tell Ms. DeConti to put him on the agenda but simply requested to be added. Supervisor Nayer brought up the fact that the issue of septic systems was previously addressed and he remembered being told that septic information would not be required for a deck Site Plan. He then read the minutes of the Chibbaro application and this was required. Supervisor Nayer expressed a concern that what is being done be done by the law as should an Article 78 be instituted against the Town, the Town needs to be in the right. He advised the Board that should questions arise Attorney Dow should be consulted before any decisions are made. Supervisor Nayer suggested that in instances where it is not appropriate to include the septic system in the Site Plan Review the Board might possibly suggest to the applicant that it would be to everyone's advantage to improve the system. Mr. Grant advised that the Board's intent was to acknowledge that the location of the septic system was within one-hundred feet (100') of the lake which is why the Board asked to have a look at the septic system. After hearing the interpretation from Attorney Dow he now knows what can and cannot be done in future applications. Ms. Becker noted that the issue is that the Town Code needs to be revised. A discussion ensued regarding the Ag Data Statement and the fact that it was not included in the past two (2) Major Subdivision applications and now needs to be included in the Cohen application. Ms. DeConti suggested attaching something to the applications. Attorney Dow cautioned against giving specific lists as different things can arise in the process that can have special exception uses that will pop up. Ms. Becker pointed out that a SEQR can trigger several specifics especially if it is the long form.

**SALVATORE CASCINO:** Mr. Haight questioned when Mr. Cascino's court date was and was advised that it is July 31, 2013. Ms. Becker advised the Board that there were a couple of articles regarding Mr. Cascino in their packet.

## **CARRY OVER**

The following matters were carried over to the next meeting:

- 2013-7            MINOR SUBDIVISION – JOYCE K. COWARD – Lakeview Rd. [Copake Lake]**
- 2012 -4            MINOR SUBDIVISION – MICHAEL FREED – Woodchuck Road  
[Copake Lake]**
- 2012 -14           SPR/BLUESTONE & TRAFFIC CIRCLE – CAMPHILL VILLAGE – Camphill  
Road [Copake Lake]**
- 2011-18            SITE PLAN REVIEW – DOMINICK SINISI – Lakeview Road [Copake Lake]**

## **ADJOURNMENT**

There being no further business, on a motion made by Mr. Grant and seconded by Mr. Haight, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 11:45 a.m.

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Marcia Becker, Chair

**Please note that all referenced attachments, comprising 14 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**

### ANTHONY CHIBBARO

|               |                            |
|---------------|----------------------------|
| June 12, 2013 | Chibbaro to CPB (1)        |
| June 27, 2013 | Becker to Chibbaro (1)     |
| July 2, 2013  | Chibbaro to Becker/CPB (1) |
| July 3, 2013  | Dow to CPB/Becker (3)      |

### MICHAEL & EILEEN COHEN

|               |                       |
|---------------|-----------------------|
| July 2, 2013  | Ferratto to Cohen (2) |
| July 10, 2013 | Rosenzweig to CPB (2) |
| July 12, 2013 | Masters to CPB (2)    |

### CAMPHILL VILLAGE

|               |                        |
|---------------|------------------------|
| July 10, 2013 | Sherwood to Smeele (2) |
|---------------|------------------------|