



# COPAKE PLANNING BOARD

**JULY 6, 2017**

## **MINUTES**

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### **DRAFT**

**Please note that all referenced attachments, comprising 37 pages, are on file with the Copake Town Clerk and in the Planning Board office. An annotated listing of those attachments appears at the end of this document.**

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A regular meeting of the Copake Planning Board was called to order at 7:00 p.m. by Bob Haight, Chair. Also present were Julie Cohen, Steve Savarese, Jon Urban and Ed Sawchuk. Chris Grant and Marcia Becker were excused. Lisa DeConti was present to record the minutes. Town Attorney Ken Dow and Town Board Liaison Terry Sullivan were also present.

### **ZONING BOARD OF APPEALS – Referrals**

#### **2017-33      ZBA REFERRAL/SITE PLAN REVIEW – SUSAN PESCOPO/VINCE MOONEY – Lakeview Road [Taconic Shores]**

- Application for Site Plan Review
- Building Permit Denial
- ZBA Request for Area Variance
- Letter of Agency
- 2017 Tax Statements
- Site Plan

James Hughes appeared before the Board representing Susan Pescopo and Vince Mooney. He explained that the applicants would like to remove an existing wood deck and construct a pre-manufactured sunroom on a slab on grade with frost footings. Inasmuch as the structure is non-conforming the Building Inspector has referred the applicant for Site Plan Review. This application has also been referred for Zoning Board approval for a reduced side-yard offset.

The Board reviewed the Site Plan for the applicants and after discussion had no issue with what was being proposed.

On a motion made by Mr. Savarese and seconded by Ms. Cohen the Board voted unanimously to approve the Site Plan for Susan Pescopo and Vincent Mooney subject to receipt of the survey and approval from the ZBA.

A letter will be written to the ZBA advising them that the Planning Board had no issue with this application and has approved it subject to receipt of the survey and ZBA approval.

**2017-35          ZBA REFERRAL – MATTHEW WAGMAN – Lakeview Road [Copake Lake]**

- Building Permit Denial
- ZBA Request for Area Variance
- Letter of Agency
- Deed
- Site Plan
- Pictures

The Board reviewed the application of Matthew Wagman who is proposing a deck at the bottom of a staircase from Lakeview Road towards Copake Lake. Mr. Haight made note of the fact that the applicant has been granted a twenty foot (20') easement for this purpose.

After discussing this application the Board advised that a letter will be written to the ZBA advising them that they had no issue with this application.

**2017-36          ZBA REFERRAL/SITE PLAN REVIEW – ABBY HOLDRIDGE – Lakeview Road [Taconic Shores]**

- Application for Site Plan Review
- Building Permit Denial
- Site Plan

Abby Holdridge appeared before the Board for the extension of an existing deck. Ms. Holdridge explained that the deck presently measures twelve foot by twelve foot (12'x 12') and she would like to increase it to approximately twelve foot by twenty four foot (12'x 24').

The Board discussed this application and had no issues with it. On a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted unanimously to approve the Site Plan for Abby Holdridge on Lakeview Road in Taconic Shores subject to ZBA Approval.

A referral letter will be written to the Zoning Board advising them that they had no issue with this application and approved it subject to ZBA approval.

## **PUBLIC HEARING**

NONE

## **SUBDIVISION/SITE PLAN**

### **2017-22      ZBA REFERRAL/SITE PLAN REVIEW – EMILY K. WEISS – High Ridge Drive [Copake]**

- Approval form from the ZBA
- Revised Site Plan

Christopher Bellamy once again appeared before the Board representing Emily Weiss who is replacing an open deck with a three (3) season room and will also be adding an additional bathroom.

Mr. Bellamy advised the Board that approval from the ZBA had been granted and submitted a revised Site Plan with the changes the Board requested he make at the May meeting. The Board reviewed the changes and acknowledged that everything was in order.

On a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted unanimously to approve the Site Plan for Emily Weiss from a Site Plan dated June 22, 2017.

Mr. Haight will stamp the approved Site Plans.

### **2017-27      SITE PLAN REVIEW – FRED & ELOISE SILVERMAN – Blue Bird Road [Copake Lake]**

- Revised Site Plan Review

Linda Chernewsky once again appeared before the Board to represent Fred and Eloise Silverman for the replacement of a non-conforming structure with a modular. Ms. Chernewsky presented the updated Site Plan. She explained that the walk-way is being extended on the Bluebird Road side of the house inasmuch as Mrs. Silverman has trouble getting around so she is trying to avoid the need for her using the steps. She continued to explain that the house is being placed closer to the garage however the set-backs are still being met.

Ms. Chernewsky advised that due to the fact that the existing house is one point seven-three feet (1.73') away from the property line and she would like to move the proposed house closer to Bluebird Road to give a little more space on the opposite side. Mr. Haight asked whether the applicant was before the ZBA and was advised by Ms. Chernewsky that the Building Inspector didn't require an appearance before them.

Mr. Haight asked whether an engineer stamped letter had been received stating that the Septic Tank was in proper working order and sized appropriately. Ms. Chernewsky acknowledged that she will be submitting a letter from Engineer Charlie Vineni who reviewed the documentation submitted by Ed Van Nostrand and was satisfied with what he reviewed. Mr. Haight questioned whether Mr. Vineni worked for Mr. Nostrand and was advised by Ms. Chernewsky that he did not. Mr. Haight questioned whether this was adequate as Mr. Van Nostrand was not a certified engineer. Ms. Chernewsky explained that Mr. Van Nostrand worked for the Health Department for over twenty years inspecting septic systems. Mr. Haight advised her that this was done under the Health Department's liability and with Mr. Van Nostrand being in the private sector now this would not protect the Town. Mr. Haight had issue approving a letter from an engineer who was not working under someone whose work he was reviewing. Ms. Chernewsky pointed out that Mr. Vineni and Mr. Van Nostrand had worked together in the past and he was familiar with Mr. Van Nostrand's work and was comfortable enough to furnish his stamp on this system.

Ms. Chernewsky also noted that Mr. Vineni had no issue with providing his stamp however he was unsure of what exactly he was stamping as he was not stamping plans. Mr. Haight explained that this is a letter stating that the septic system is in good working order and sized appropriately for the applicant's house. Attorney Dow clarified that the letter takes the place of a full set of plans and by stamping a letter the Engineer is giving his full certification of their office that the system is in good working order and adequately sized. Ms. Chernewsky will supply the stamped letter.

After discussion, on a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted unanimously to approve the Site Plan for Fred and Eloise Silverman on Bluebird Road at Copake Lake dated June 2017 subject to receipt of the Engineer stamped letter stating that the septic system is in good working order and adequately sized for the proposed structure.

Mr. Haight will stamp the maps once the conditions are met.

**2017-31          SITE PLAN REVIEW – 13 LACKAWANNA PROPERTIES – Lackawanna Road  
[Copake]**

- Application for Site Plan Review
- Tentative Tax Assessment Roll
- Building Permit Denial
- Scope of Work
- Letter from Nicholas Demos, PE dated October 18, 2013
- Building dimensions from Nicholas Demos, PE
- Site Plan

**2017-32      SITE PLAN REVIEW – 13 LACKAWANNA PROPERTIES – Lackawanna Road  
[Copake]**

- Application for Site Plan Review
- Tentative Tax Assessment Roll
- Building Permit Denial
- Scope of Work
- Letter from Nicholas Demos, PE dated October 18, 2013
- Letter from Nicholas Demos, PE dated October 23, 2013
- Letter from Nicholas Demos, PE dated October 30, 2013
- Building dimensions from Nicholas Demos, PE
- Site Plan

Frank Peteroy appeared before the Board representing 13 Lackawanna Properties and advised the Board that he is presenting two (2) applications for existing buildings that the Court ordered be submitted for the proper permits.

Mr. Haight advised the Board that his son was hired by the applicant in the past to remove dirt from the property and as of Saturday will be working for the applicant once again removing more dirt from the property. He also made note of the fact that he in no way benefits from this arrangement. He asked the Board if anyone had a problem with this and wanted him to recuse himself. No one had issue with this.

Attorney Dow asked Mr. Peteroy for clarification of the Court order. Mr. Peteroy explained that the Court ordered that three (3) buildings receive the proper building permits. Mr. Haight clarified that he was advised by Supervisor Nayer and Building Inspector Lee Heim that Judge Nichols ordered this and the first step in the process is to appear before the Planning Board however he was not given any documentation from the Court. Mr. Peteroy will provide a copy of the Court Order.

Attorney Dow requested that a copy of the Court order be submitted since the Board would be acting on the result of a Court order and as such should be aware of what it says. He noted that the Board would need to know whether it says that the applicant **NEEDS** to apply for a building permit or **MUST** apply for a building permit or whether it is permissive or whether it might direct anybody. He explained that a Building Permit is contingent upon the Planning Board and questioned whether it might give any direction to the Planning Board.

Attorney Dow brought up the fact that a whole plan was submitted some time ago which the Planning Board considered at that time and found it was not approvable and under the general principals this Board made a determination and once a determination has been made an applicant cannot come back with the same project. He noted that a binding determination has already been made several years ago by the Planning Board rejecting the project and that unless there is something in the Court order that gets it past that the Board is in the same spot they have been in for a while.

Mr. Haight acknowledged that he was not here in 2008 when this was first reviewed however in reading what had transpired he noted that the application had not been approved inasmuch as it could not be proven that this was a farm operation. He made note of the fact that he spoke with the Town Assessor this week and he verified that the applicant is receiving a farm exemption for all the buildings because they have a lease agreement with a local farmer. Mr. Peteroy acknowledged that he has submitted a five year look back of farm exemptions for the past five years. Attorney Dow pointed out that the farming plan that was submitted was not a viable, legitimate farming plan and the plan that was proposed is not consistent with actual farming practices and the applicant didn't have any agricultural expert standing up for it and the Town expert stated that it did not make sense and is not a legitimate farming plan as the buildings were totally inappropriate.

Mr. Peteroy questioned whether or not this was a Department of Agriculture judgment and not the judgment of the Planning Board. Attorney Dow pointed out that the last thing this Board has is their determination which was upheld by the Court which was that the plan was not consistent with agricultural purposes. Mr. Peteroy noted that this is a plan that is being submitted today and if it doesn't fit that concept than that is what has to be judged and not what has occurred a half a dozen years ago. What he is submitting today is for these particular buildings. Attorney Dow asked whether these buildings are the same buildings being proposed. Mr. Peteroy acknowledged that the buildings are there and the Court ordered that they seek a permit for them.

Mr. Haight questioned whether the two buildings in the applications submitted are existing buildings or will they be newly constructed. Mr. Peteroy advised that the buildings are already existing. Mr. Haight asked why they are being submitted in two separate applications and was advised by Mr. Peteroy that they are two separate buildings in two separate locations, are two different sizes and the purposes are generally the same and being used for equipment and hay storage.

Mr. Peteroy noted that the Building Inspector questioned a modification in one of the buildings however he has not contacted the engineer that created the drawings prior to this meeting however he will contact him to update the drawings to suit what was built.

Mr. Urban asked whether these buildings were built without a building permit and was advised by Mr. Peteroy that they were. Mr. Urban questioned whether the sizes of these buildings were being changed at this time. Mr. Peteroy clarified that Building one is built pretty much to size however Building two seems to have been slightly modified as there seems to have been a utility shed built onto the back of it.

Attorney Dow asked if Mr. Peteroy could describe Building one and he explained that Building one is approximately sixty feet by sixty-five feet (60' x 65') and is one story that is approximately twenty-two feet (22') high and is being used for hay storage. Mr. Peteroy did acknowledge that he did see hay stored in this building last fall as well as equipment and a truck on occasions when he was doing the survey. He continued to note that on the West side of the building toward Route 22 they built a six foot or eight foot (6' or 8') addition that houses some utilities which he seems to think is for the greenhouse that are in the future plans for the farm stand. Attorney Dow asked when these buildings were built and Mr. Peteroy said that he was not sure but thought they were built approximately five (5) years ago and noted that the drawings are dated 2013. Mr. Haight asked whether all of the other buildings had building permits and Mr. Peteroy said that as far as he knew they did.

Mr. Urban asked whether the farm stand had a building permit and Mr. Peteroy advised him that the Court has given no direction on that except to tear it down.

Mr. Peteroy made note of the fact that there is also a garage which needs a building permit.

Ms. DeConti asked whether these buildings were on the original plan reviewed in 2008 and was advised by Mr. Peteroy that he could not relate to that plan.

Mr. Haight asked whether a Site Visit was a possibility and was advised by Mr. Peteroy that this was possible and he would be happy to meet everyone there if they would like. The Board was in agreement that Mr. Peteroy be present. Mr. Peteroy could direct the Board to the buildings that exist. On the master plan that Mr. Peteroy is presenting to the Board he noted that they are up to item #9 in terms of different things that are planned to do. Mr. Peteroy acknowledged that he did not show the house or the garage on his plans as he had nothing to do with them as they are a residential use.

Mr. Haight suggested Mr. Peteroy submit a plan with just the two existing buildings on it that are being reviewed at this time as any future buildings are not being approved. Mr. Peteroy was in agreement with this. Ms. Cohen asked that a copy of the Court Order be submitted to the Board. Mr. Peteroy asked for clarification as to whether Mr. Haight wanted only the two buildings being proposed or whether any existing buildings can be left on. Mr. Haight felt any existing buildings can be left on the plan. Ms. DeConti questioned whether an approval with the existing buildings on it would constitute their approval as well. Mr. Haight clarified that the Board would only be dealing with the two planned buildings however a complete site plan would need to have all the existing buildings on it. Mr. Peteroy felt this defeats the purpose of the long-term intent of the proposed complex by not showing the master plan. Attorney Dow felt the Board would need to view the plan in its entirety. Mr. Peteroy suggested labeling any future buildings as 'Future Buildings.' Ms. DeConti made note of the fact that the Camphill Village application was approved as a complete Master Plan and then each building needed to come back before the Board for Site Plan to be reviewed as a separate application and was not sure whether this needed to be done in this instance.

Attorney Dow asked how this differs from the Master Plan that was rejected several years ago. Mr. Peteroy said that he believed that Mr. Cascino had a forty five thousand (45,000) square foot building on the plan at that time which has since been corrected and brought down to the twenty five thousand (25,000) square foot limit. He added that the hay barn is partially in the buffer zone and after speaking with the Army Corp of Engineers he was advised that they will not review this until other issues are resolved by the owner.

Mr. Haight made note of the fact that the Court Order might clarify the number of buildings planned by the applicant. Using the sixty foot by sixty-five foot (60' x 65') foot hay storage building as an example Attorney Dow pointed out that during the prior Site Plan process the agricultural expert said the configuration of the building being proposed is completely inappropriate for the purpose of that proposed use. Attorney Dow advised that an Agricultural expert be consulted for this application as well so as to determine if the use being proposed is an appropriate use inasmuch as the Board has already made the determination that the things being proposed are not suitable for the proposed use. Mr. Peteroy clarified that in his research it was his belief that the Agricultural experts consulted during the previous process were referring to the

forty-five thousand (45,000) square foot building proposed years ago. Mr. Haight made note of the fact that during the Site Visit all buildings need to be viewed as they will all be placed on the Master Plan that the applicant is hoping to have approved. Attorney Dow noted that these buildings were built without permits and questioned whether they were built in direct defiance of the denial that was issued several years ago. Mr. Urban pointed out that Building one is fairly new. Attorney Dow made note of the fact that the Master Plan denied by the Board several years ago will need to be reviewed to make sure that the buildings being proposed by the applicant are not part of that application.

Mr. Haight asked if the Board would like to set a date for the Site Visit to the applicant's property. A tentative date of July 22<sup>nd</sup> at 10 am was agreed on. All Board members will be contacted regarding this. Mr. Urban asked if the Board could visit the site as a whole as that would constitute a quorum. Attorney Dow advised that the Board can visit the site as a whole however their only limitations are that they cannot conduct business or discuss the merits of things while there.

#### **2017-34      SITE PLAN REVIEW – BARARA J. MOJICA – Lakeview Road [Copake Lake]**

- Letter from Robert Hardwick Bixby dated June 1, 2017
- Application for Site Plan Review
- 2016-2017 School Tax Statement

No one appeared regarding the application for the Boundary Line Adjustment of Vaeth v. Mojica. Attorney Dow advised the Board that a Court Order was issued in favor of the applicant and it ordered the Board to adjust the Boundary Line with respect to the said property in all matters consistent with the order.

Attorney Dow reminded the Board that this matter was discussed several months ago regarding a Boat House that was built approximately one foot (1') on the adjoining lot belonging to their neighbor. He added that the applicant's attorney inquired about doing a Boundary Line Adjustment however inasmuch as both lots were non-conforming the Board was not able to accomplish this.

Attorney Dow also noted that the matter of Adverse Position was brought up in Court and how this would affect a decision for a Boundary Line Adjustment by the Planning Board. He added that if the Court determines through Adverse Position that one owner owns the land under the Boat House that through Adverse Position they do own the land the Boundary Line Adjustment has been done and the Planning Board would just abide by the Court's decision and the Board would just need to correct the Boundary Line to reflect the correct ownership.

Attorney Dow said that the Ms. Mojica was supposed to have applied to the Board for Boundary Line Adjustment. Mr. Haight advised that a letter be written to the applicant advising them that in order to accomplish a Boundary Line Adjustment a correct survey needs to be submitted.



## MINUTES

The June 1, 2017 minutes could not be approved inasmuch as there was not a quorum of Board members that were present at that meeting

## ADMINISTRATIVE

**MONOLITH SOLAR BUILDING PERMIT EXPIRATION:** Mr. Haight advised the Board that Monolith Solar's Building Permit expires on September 21, 2017 and they haven't satisfied the conditions of the approval. He explained that last year when the permit was due to expire the Building Inspector notified the applicant that the Town would take legal action if the conditions of the Site Plan are not met. He continued to explain that the Building Inspector received a letter from them Monolith saying that they should be receiving bids within the next week. Mr. Haight noted that the Building Inspector renewed the permit however the conditions have still not been met. Mr. Haight felt another letter should be sent to them and questioned whether it should come from the Building Inspector or the Planning Board. Mr. Haight also felt the applicant should have to return to the Planning Board.

Attorney Dow acknowledged that it would be the responsibility of the Building Inspector and not the Planning Board to enforce this. Ms. Cohen referred to Town Code 232-23A(9) which reads: *Once a site plan is reviewed, approved, stamped and dated by the Copake Planning Board, the conditions for approval shall be valid for three years. If no construction has begun after three years, the site plan must be resubmitted to the Planning Board for review and re-approval.* It was noted that construction was accomplished however the conditions have not been satisfied. Mr. Haight made note of the fact that the applicant has not done everything to comply with the Building Permit as Planning Board conditions are part of the Building Permit.

Mr. Haight explained that the Building Inspector has already given the applicant another Building Permit and questioned what could be done if the Building Inspector did not grant a third one. Attorney Dow felt the applicant has three (3) years to comply with the conditions however he was not aware of what the Building Permit requirements were. Attorney Dow pointed out that if this was a building the applicant could not operate without a Certificate of Occupancy however that is not the case in this instance and in this instance the applicant would probably not be allowed to generate electricity. Mr. Haight pointed out that electricity is already being produced. Attorney Dow believed that this is not a permitted use at this time and the applicant is operating in violation.

Attorney Dow questioned what the Building Permit was for and Mr. Haight advised him that the Building Permit was for the project to be built however a final permit is to be issued on completion. Attorney Dow suggested that a letter be written to the applicant informing them that they are not authorized to operate this facility until they comply with the conditions of the Site Plan and unless they comply immediately action will be taken to remedy the situation which would involve having the electricity shut down as the use is not an authorized use as they are operating in violation and can be subject to daily fines. Attorney Dow will discuss this with Building Inspector Lee Heim. Attorney Dow advised that an Order to Remedy is also an option.

**ATTORNEY DOW LETTER TO LEE HEIM:** Attorney Dow advised Building Inspector Lee Heim that the Planning Board does not need to review work done to non-conforming buildings when the work consists only of repair and maintenance unless there is a dimensional or structural change to the building or an increase in bedrooms that could affect the minimum septic capacity.

**2017 PLANNING & ZONING SUMMER SCHOOL:** Ms. DeConti advised the Board that Supervisor Jeff Nayer requested that anyone registering for the 2017 Planning and Zoning Summer School have their applications in no later than Wednesday for approval by the Town Board.

**STEVEN SMITH E-MAIL:** Mr. Haight advised the Board that a letter was received from Steven Smith regarding the GRJH Inc. application.

**TOWN OF EGREMONT PUBLIC HEARING:** The Egremont Planning Board will hold a Public Hearing on July 12<sup>th</sup> at 7:30 PM to consider the application of Karner Brook LLC for a special permit to allow for office and/or retail spaces at their property on 71 Main Street, Egremont.

A Public Hearing was also held on June 21, 2017 to consider the appeal, as per court order, of Kayvan Hakim, 13 Nicholson Road, Egremont of a decision of the Egremont Building Inspector for denial of request for zoning enforcement of the Egremont Zoning bylaw 4.3.3 as it pertains to Catamount Development Corporation.

## **CARRY OVER**

The following matters were carried over to the next meeting:

**2016-18            ZBA REFFERAL/PRELIMINARY SPR – GRJH INC./THOMAS CASEY –  
State Route 23 [Craryville]**

No one was present for this application.

## **ADJOURNMENT**

There being no further business, on a motion made by Mr. Haight and seconded by Mr. Savarese, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 8:20 p.m.

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Bob Haight, Chair

**Please note that all referenced attachments, comprising 37 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**

SUSAN PESCOPO AND VINCENT MOONEY

May 11, 2017	Building Permit Denial (2)
June 10, 2017	ZBA Request for Area Variance (2)
June 22, 2017	Application for Site Plan Review (1)

MATTHEW WAGMAN

May 11, 2017	Building Permit Denial (2)
May 12, 2017	ZBA Request for Area Variance (2)

ABBY HOLDRIDGE

June 26, 2017	Application for Site Plan Review (1)
	Building Permit Denial (2)

EMILY WEISS

June 26, 2017	ZBA Action Taken on Appeal (2)
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13 LACKAWANNA PROPERTIES [BLDG 1]

October 18, 2013	Demos to Cascino/Copake Valley Farm (3)
	2017 Tentative Assessment Roll (1)
May 15, 2017	Schematic Plot Plan (1)
May 17, 2017	Building Permit Denial (2)
May 20, 2017	Application for Site Plan Review (1)

13 LACKAWANNA PROPERTIES [BLDG 2]

October 18, 2013	Demos to Cascino/Copake Valley Farm (1)
October 23, 2013	Demos to Cascino/Copake Valley Farm (5)
October 30, 2013	Demos to Cascino/Copake Valley Farm (1)
	2017 Tentative Assessment Roll (1)
May 15, 2017	Schematic Plot Plan (1)
May 17, 2017	Building Permit Denial (2)
May 20, 2017	Application for Site Plan Review (1)

BARBARA MOJICA

May 31, 2017	Application for Boundary Line Adjustment (1)
June 1, 2017	Bixby to CPB (2)