



COPAKE PLANNING BOARD

MARCH 2, 2017

MINUTES

DRAFT

Please note that all referenced attachments, comprising 6 pages, are on file with the Copake Town Clerk and in the Planning Board office. An annotated listing of those attachments appears at the end of this document.

A regular meeting of the Copake Planning Board was called to order at 7:00 p.m. by Bob Haight, Chair. Also present were Marcia Becker, Julie Cohen and Jon Urban. Ed Sawchuk arrived later in the meeting. Chris Grant and Steve Savarese 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

NONE

PUBLIC HEARING

2017-3 BOUNDARY LINE ADJUSTMENT – MICHAEL & EILEEN COHEN – High Meadow Road [Copake]

- Revised Survey
- Agricultural Data Statement

On a motion made by Ms. Becker and seconded by Mr. Sawchuk the Board voted unanimously to open the Public Hearing.

Mr. Haight asked if anyone wished to speak on this application. Being no one, on a motion made by Mr. Haight and seconded by Ms. Becker the Board voted unanimously to close the Public Hearing.

SUBDIVISION/SITE PLAN

2016-27 ZBA/SPR – PETER & VIRGINIA CARPANINI/CARP INC. – Lakeview Road [Taconic Shores]

- Sewage Disposal System Upgrade Design
- ZBA Approval

Linda Chernewsky appeared before the Board and submitted the new septic design for Peter and Virginia Carpanini. Ms. Chernewsky explained that the reason she did not submit a letter from the Department of Health (DOH) is because they consider this an upgrade to an existing system. She did acknowledge that she is submitting a letter from the engineer explaining the proposed system. Ms. Chernewsky also noted that she is waiting for the DEC permit as they are also waiting to see the proposed design. She also acknowledged that the existing structure is a two (2) bedroom structure and will remain two (2) bedrooms.

Ms. Chernewsky explained that the existing system was a five-hundred (500) gallon metal tank that was failing with two (2) concrete baffles that are not adequate for today's standards. Mr. Haight asked why the DOH would not approve this as a new system. Ms. Chernewsky explained that they consider this an upgrade to an existing system. Ms. Chernewsky also pointed out that inasmuch as the system is existing the homeowner is allowed to replace a similar system however they want to upgrade the system to something that meets today's standards.

Mr. Haight questioned whether the new system will be replaced in the same area as the previous system and was advised by Ms. Chernewsky that the new system is being placed in the same location as the previous one. Ms. Becker asked whether the system is a pumping system and was advised that it is.

Ms. Becker asked whether the lighting was added to the plans and Ms. Chernewsky told her that they are added to the plans she is submitting to the Building Department. Ms. Chernewsky also noted that any lighting will be pointed downward. Ms. Becker asked whether the required variances had been granted and was advised by Ms. Chernewsky that they were.

On a motion made by Mr. Haight and seconded by Ms. Becker the Board voted unanimously to approve the Site Plan for Peter and Virginia Carpanini/ Carp Inc. on 1040 Lakeview Road and the septic plan dated February 8, 2017 subject to DEC approval.

2017-5 ZBA REFERRAL/SPR – RYAN WALSH AND JOHN BARBATO – Memory Lane [Copake Lake]

- Site Plan
- Septic Location
- Pictures
- Floor Plan

- Window and Lighting Schedule
- List of Abutting Owners
- ZBA Approval

Ryan Walsh appeared before the Board explaining that he would like to enclose a porch on a non-conforming structure on a non-conforming lot and add a light on the sliding doors to the porch. Mr. Haight advised him that any lighting needs to be pointed downward.

Mr. Walsh made note of the fact that the lot coverage is approximately 3.2% of the total lot and the septic system is a one-thousand (1,000) gallon concrete tank. Ms. Becker questioned whether any verification is needed for the septic system and Mr. Haight advised that none is required because no bedrooms are being added nor is anything being torn down and rebuilt. Ms. Becker pointed out that a bathroom is being added and the addition of a den could be considered a bedroom. She also advised that a one-thousand (1,000) gallon tank is adequate as long as it is in good condition. Ms. Cohen asked whether the septic had been inspected when the property was purchased. Mr. Walsh explained that he did not have the property inspected inasmuch as he had a prior relationship with the previous owners.

Mr. Walsh pointed out the right-of-way on the survey and acknowledged that the right-of-way has been in effect for many years. Ms. Becker asked if this is in the deed and was advised by Mr. Walsh that it is. Mr. Walsh continued to explain that the existing driveway is used to access his property as well as that of his neighbors. Ms. Becker questioned whether the roof will be changed and Mr. Walsh told her that a new roof is planned.

On a motion made by Mr. Haight and seconded by Ms. Becker the Board voted unanimously to approve the Site Plan for Ryan Walsh and John Barbato on 7 Memory Lane dated June 16, 2016.

2017-9 SITE PLAN REVIEW – CAMPHILL VILLAGE (*Village Green*) – Camphill Road [Copake]

- Application for Site Plan Review
- Site Plan
- List of Abutting Owners
- Short form EAF

Pat Prendergast appeared along with Jos Smele representing Camphill Village. Mr. Prendergast presented plans of the previously approved Village Green that had a big expansion off the front of the building with changes to the parking. Mr. Prendergast noted that as the project progressed it became apparent that this would be over budget so Camphill is now proposing an expansion approximately half the size of the previous one. He noted that the approved parking will remain the same and a smaller addition is planned for the front of the building with a separate addition planned off the kitchen and café.

After examining the Site Plan and the previously approved Master Plan the Board advised that the expansion being added to the Kitchen and café area will need a variance inasmuch as it is increasing the development within one-hundred 100 feet of a water-body as per Town Code 232-9P(1) which reads: *No development shall be permitted closer than 100 feet to a stream, creek, wetland or other body of water.*

The Check List was reviewed. It was noted that no lighting is planned for this project and the Board requested a copy of the elevations.

On a motion made by Mr. Haight and seconded by Ms. Becker the Board voted unanimously to approve the Site Plan for Camphill Village's Village Green dated May 19, 2016 subject to ZBA approval of Town Code 232 -9P(1).

A letter will be written to the ZBA advising them that the applicant needs relief from Town Code 232-9P(1).

**2017-3 BOUNDARY LINE ADJUSTMENT – MICHAEL & EILEEN COHEN –
 High Meadow Road [Copake]**

- Revised survey
- Agricultural Data Statement

Ms. Cohen recused herself to present the application for Michael and Eileen Cohen. Ms. Cohen explained to the Board that she is withdrawing the application for the Cohen Family Partnership and the portion that was to be conveyed to the Cohen Family Partnership will remain with Parcel 2.

Ms. Becker questioned whether this should be classified as a Minor Subdivision however the Board acknowledged that the subdivision had already been done and this is just a Boundary Line Adjustment.

Ms. Becker also asked whether there will be any changes in the Road Maintenance Agreement and was advised by Ms. Cohen that the Road Maintenance Agreement will remain the same. Mr. Haight asked how the Road Maintenance Agreement would be handled in the event that ownership of the road switches from Parcel 3, who presently owns the road, to Parcel 2. Ms. Cohen explained that in that event of a road change Parcel 2 would buy the road from Parcel 3. However Ms. Cohen acknowledged that there is no intent to sell at this time.

On a motion made by Mr. Haight and seconded by Mr. Urban the Board voted unanimously to approve the Boundary Line Adjustment of Michael and Eileen Cohen from subdivision map #04-230, revised and dated February 26, 2017

MINUTES

Mr. Haight asked whether there were any corrections or changes to the February 2nd minutes. Ms. Cohen advised the Board that the Cohen Family Trust is being withdrawn from the Boundary Line Adjustment approved during this meeting.

On a motion made by Ms. Becker and seconded by Mr. Urban the Board voted unanimously to approve the minutes of the February 2, 2017 meeting minutes as amended.

ADMINISTRATIVE

TOWN OF COPAKE DRAFT SOLAR ENERGY LAW: The Board reviewed the draft of the Town's Solar Energy Law. Ms. Becker asked whether this would be added to the Zoning Code or stand on its own. Attorney Dow believed that this would most likely be an amendment to the Zoning Code. Ms. Becker asked whether the number of large scale solar energy systems could be limited. Mr. Haight acknowledged that he has had inquiries to do solar energy systems on one-hundred (100) acres parcels. Attorney Dow told the Board that this couldn't be done. Mr. Haight did note that the size of large scale systems will be limited.

Attorney Dow acknowledged that if a homeowner or farm wishes to install solar on site it would require minimal review. He clarified that there are three scales; Residential, Commercial which are used to make money and on-site such as something used for farm use. Ms. Cohen asked whether a system for a group of homeowners such as on Golf Course Road at Copake Lake or Taconic Shores would be considered large or small scale. Attorney Dow advised that this would be considered utility scale as it would be used by multiple users off-site and this would require slightly more of a review than that of a residential user. Ms. Becker suggested that this option should be reviewed more. Attorney Dow did note that variances can also be obtained for variations in the scale. He explained that there are Small Scale operations for up to 10 kilowatts which would require minimal site plan. Attorney Dow went on to explain that there is also a Utility Scale operation that would use up to 15 acres and would have restrictions such as needing a one-hundred foot (100') buffer with no component may be located within 150 feet of a roadway. He added that this would need more of a Site Plan Review. Then there are the Large Scale Commercial operations which would need a more detailed Site Plan Review.

Ms. Becker asked what would constitute an unclassified utility scale operation and was advised that something like a Resort Hotel would fall under this category. Ms. Cohen asked how these categories were decided on as she didn't feel they were adequate. Mr. Haight advised that they referred to a law that was drafted up by the town Sharon New York. Attorney Dow explained the different categories and noted that a small scale unit would require a minor review process whereas an unclassified system that is not a utility scale that is being sold back into the grid or being used by multiple off-site users it wouldn't need a special use permit but would require plans and drawings signed by a professional engineer of the whole layout and would require a slightly enhanced review. He did add that anything that requires 50 kilowatts would require a special use permit. Attorney Dow did point out that anything using multiple parcels would require a Major review process.

Ms. Becker asked for clarification to 232-42H(4) on page 5 which reads: *Screening shall be provided when practicable from adjoining lots through the use of architectural features, earth berms, landscaping, fencing or other screening which will harmonize with the character of the property and surrounding area. The proposed screening shall not interfere with normal operation of the solar collectors.* She questioned why screening could not just be required. Ms. Cohen pointed out that screening could not be required for solar panels on a roof as that wasn't practical. Attorney Dow did not that this is only for small scale units as commercial units need to be screened or cannot be built.

Attorney Dow brought up the fact that it has to be a joint acknowledgement between the applicant and the property owner as people are finding out that they are losing their agricultural exemptions when a Change of Use permit is issued by the ZBA.

Ms. Becker also questioned Code 232-44B2(k) which reads: *The decommissioning plan applies to applicant and all subsequent owners* and asked whether this would be a deed restriction. Mr. Haight made note of the fact that should the commercial operation fail the Town would go after the property owner for decommissioning. Attorney Dow did point out that some kind of a financial guarantee would accompany the project. The issue of tracking bonds associated with these projects was also brought up and what would be done if the ownership changed hands. Mr. Urban believed this should be tied to the land but questioned how the Town can require and track this.

Ms. Becker then questioned Code 232-44D1(d) on page 9 which reads; *Any site containing a utility-scale solar energy system shall be enclosed by perimeter security fencing, to restrict unauthorized access, at a height of 8feet with HIGH VOLTAGE warning placards affixed every 100 feet* and commented that this would be an unsightly fence. Mr. Haight explained that a berm is needed and the fence could be on the other side of the berm. Attorney Dow pointed out that this is addressed under 232-44D(j) which goes into more detail about the screening. He also made note of the fact that this can be further addressed. It was Ms. Becker's opinion that utility scale operations should not be allowed in the Town.

Mr. Haight referred to Code 232-44D(h) which reads: *When proposed on an active farm located within the New York State Certified Agricultural District in Copake, a utility-scale energy system may occupy up to 20% of any farmed parcel but in no case shall exceed 10 acres* and advised the Board that he had been contacted by someone that wants to put a utility-scale solar energy system on one-hundred (100) acres on Rasweillers Farm near Birch Hill Road.

Ms. Becker questioned whether lot coverage should be considered as she felt the solar panels were an impervious surface. Ms. Cohen pointed out that any rain runs off the solar panels and into grass.

Attorney Dow advised the Board to draft up a response and present it at their next meeting so that it can be approved and submitted to the Town Board at their April meeting.

CAMP PONTIAC ZBA RULING ON SEPTIC SYSTEM: Mr. Haight brought up the fact that the ZBA ruled that a Site Plan Review by the Planning Board was not required as the code referred to a building which a septic system is not. Ms. Becker believed that a septic system should have had a review by the Planning Board and referred to the definition of building in the Town Code which reads: *Any structure which is permanently affixed to the land, has one or more floors and a roof and is intended for the shelter, housing or enclosure of persons, animals or chattel* and the definition of structure which reads: *A static construction of building materials, including buildings, stadiums, sheds, display stands, storage bins, signs, reviewing stands, gasoline pumps, mobile homes, tanks, fences and poles and any fixtures, additions or alterations thereto.* Ms. Becker felt that a septic system is a structure under the Code definition. Attorney Dow clarified that the Code reads that a building is a structure that contains one or more floors and a roof and is intended for shelter, housing or enclosure of persons, animals or chattel which a septic system does not. Ms. Becker had concerns that this had a thorough review by the ZBA.

LETTER FROM THOMAS GOLDSWORTHY: A letter was received from Thomas Goldsworthy who suggested that the Town consider limiting the number of Utility Scale Solar Energy Systems and also that these systems require a ‘license to operate’.

MARINER TOWER ESCROW: Ms. DeConti explained to the Board that Supervisor Nayer advised her that there is an outstanding Escrow for General Dynamics for a Radio Frequency Engineer that was supposed to be hired by the Planning Board for the Cell Tower. Supervisor Nayer wanted the Board’s input as he wants to know if he should return the Escrow or not. Ms. Becker’s recollection was that a Radio Frequency Engineer was supposed to be used however it was very difficult to find one and when one was found he was not very reliable and the work never got done. Ms. DeConti asked if the Board had any objections to Supervisor Nayer returning the Escrow or if they wanted to go forward with a Radio Frequency Engineer.

Ms. Cohen asked what the Radio Frequency Engineer was for and was advised by Ms. Becker that it was to satisfy a section of the Code. Mr. Sawchuk asked if the work had been performed as he had concerns of what would happen if the Escrow was given back and a bill was received. Ms. Becker clarified that the work had never been done. Ms. Cohen questioned whether the work needed to be done at this point. Ms. Becker felt it did need to be done. She did refer to the minutes

Ms. Becker will research this further but made note of the fact that she didn’t know if one could be found as they were very hard to find.

Mr. Haight questioned what could be done if it the Radio Frequency Engineer found that the frequency was more than it should be. Mr. Haight felt we couldn’t hold them to anything at this time and the Escrow should be given back.

Attorney Dow referred to Town Code 230-G which reads: *Public safety and welfare review. For the purpose of ensuring the continued public safety and welfare, the applicant/provider shall comply with the following post-approval provisions for the site plan* and then to 230-G(3) which reads: *The applicant shall pay for an independent consulting radio-frequency engineer chosen and hired by the Planning Board to review the materials submitted by the applicant, including a review of the background levels of EMF radiation around the facility and at appropriate distances from it and/or any repeater locations utilized in connection with the applicant's wireless facilities.*

Attorney Dow also referred to Town Code 230-G(2) which reads: *On or before the fifth anniversary date of the issuance of the site plan permit, the applicant/provider shall submit a certification to the Town Planning Board that there has been no change, or unapproved change, to the site plan for which the permit was issued. Included with the five-year certification from the applicant/provider will be the following* and said it isn't too late to have this done. Ms. Becker agreed however no one was sure who owned the towers at this time as it was sold by Mariner Tower. Ms. Becker did suggest that a letter needs to be written to the owners asking them for their five year certification.

Ms. Becker will research her notes and Ed Sawchuk will see if he can locate a Radio Frequency Engineer. This will be held over until next month's meeting.

ALPER ARTICLE 78 UPDATE: Attorney Dow reported that oral arguments for the Catamount vs Alper case took place two weeks ago. Attorney Dow said he expects that decisions should come at the end of the month. Attorney Dow did note that if there is a 3-2 decision the losing party can appeal to the New York State Court of Appeals.

Attorney Dow did acknowledge that there are two issues, one being whether the action was commenced on time because of the confusion over the filing of the minutes. However Attorney Dow argued that on August 14th the Site Plan was approved and the Site Plan minutes were filed within two weeks after that and they never paid any attention to that, letting time run out. Noting that anything can happen, Attorney Dow said he would be surprised if this was reversed on the Planning Board.

Attorney Dow did acknowledge that the case against the Zoning Board is much more complicated because the legal question is a very tangled one because there is an old statute in a Court of Appeals decision that said a two to two vote results in a default denial with the law being changed the following year.

Ms. Becker questioned whether the Planning Board decision would be overturned if the ZBA decision is overturned by the Court inasmuch as approval was given subject to ZBA approval. Attorney Dow said the Planning Board approval might be affected but the substance of the Planning Board decision would be upheld.

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]**

ADJOURNMENT

There being no further business, on a motion made by Mr. Haight and seconded by Ms. Cohen, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 9:20 p.m.

Bob Haight, Chair

Please note that all referenced attachments, comprising 6 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

PETER & VIRGINIA CARPANINI/CARP INC.

January 5, 2017 ZBA Action Taken on Appeal (2)
March 2017 Sewage Disposal System Upgrade Project Description (1)

RYAN WALSH & JOHN BARBATO

March 1, 2017 ZBA Action Taken on Appeal (2)

CAMP HILL VILLAGE [VILLAGE GREEN]

February 9, 2017 Short Form EAF (1)