



# **COPAKE PLANNING BOARD**

## **NOVEMBER 1, 2018**

### **MINUTES**

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#### **DRAFT**

**Please note that all referenced attachments, comprising 46 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 7:22 p.m. by Bob Haight, Chair. Also present were Julie Cohen, Chris Grant and Marcia Becker. Steve Savarese, Jon Urban and Ed Sawchuk were excused. Attorney Ken Dow and Town Board Liaison Richard Wolf were also present. Lisa DeConti was present to record the Minutes.

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

##### **2018-23      ZBA REFERRAL – DIONISIO FONTANA – 5 Island Drive [Taconic Shores]**

- Building Permit Denial dated August 29, 2018
- ZBA Request for Area Variance Dated October 13, 2018
- Letter of Agency dated July 28, 2018
- Application for Permission to Inspect the Property from DEC dated September 10, 2018
- Joint Application Form From US Army Corps of Engineers dated October 12, 2018
- Short Environmental Assessment Form (SEQRA)
- DEC Permit dated October 24, 2018
- Pictures

Linda Chernewsky appeared before the Board representing Dionisio Fontana for the removal of a shed, the replacement of a new twelve foot by sixteen foot (12' X 16') structure and a six foot (6') high Stockade Fence. Ms. Chernewsky explained that the applicant wishes to construct a shed and Stockade Fence on an adjacent lot to which he wishes to place a three (3) bedroom house on.

Ms. Becker made note of the fact that the applicant's property is on the lake. Ms. Chernewsky acknowledged that she walked both properties with a representative of the DEC and received DEC approval for the shed. Ms. Becker had concerns that the shed is larger than the existing shed and is being placed close to the water. Ms. Chernewsky pointed out that the new structure

will be replacing the existing structure in this location. Ms. Cohen asked whether this will be put on a foundation. Ms. Chernewsky explained that there is existing gravel driveway that will be used to put the shed on.

Ms. Chernewsky said the proposed shed will be eight feet nine inches (8'9") away from the existing neighbor's shed and noted that the neighbors never received any variances for their shed. Ms. Becker questioned the distance of the shed placement from the water and Ms. Chernewsky advised her that the distance is forty-three feet six inches (43'6") from the water. Mr. Grant noted that the appeal to the ZBA is that this is within one-hundred feet (100') of the water.

Ms. Becker referred to Town Code 232-11G and 232-11G(1) which reads:

*Sheds. A single enclosed shed on a lot or parcel shall be exempt from the side and rear yard setback requirements otherwise applicable to an accessory building and shall be permitted with a building permit, provided that such shed conforms to all of the following standards:*

- (1) The shed may not be closer than 10 feet to any property line and shall not be located in the front yard.*
- (2) The shed footprint shall be allowed up to 192 square feet in size and no horizontal dimension (neither length nor width) may exceed 16 feet. The height limit shall be 10 feet.*
- (3) No permanent foundation or concrete slab may be installed.*
- (4) Storage shall be limited to personal property of the owner or occupant of the premises.*
- (5) Storage containers designed or intended to*
- 6) No future conversion to a garage or living space or use other than storage shall be permitted, except in conformity with all requirements for new construction of a garage or living space, and subsequent to the issuance of a building permit therefore.*

Ms. Chernewsky acknowledged that this will be a pre-fab shed. Mr. Haight questioned whether this will be a garage inasmuch as there is an over-head door. Ms. Chernewsky explained that this is for lawn equipment.

Ms. Becker had issue with the fact that there are other areas on the property where the shed could be put and felt it didn't need to be placed this close to the water. She felt that inasmuch as the existing structure is being demolished the replacement structure could be placed closer to the road. Mr. Haight questioned why the replacement shed could not be placed as far back as the existing shed and Ms. Chernewsky explained that this was due to the proximity of the existing driveway. She also explained that there is a lot of stone on other areas of the property. Mr. Grant did make note of the fact that a shed can be built as long as the proper variances are received.

Mr. Grant acknowledged Ms. Becker's concerns and recommended that in the letter to the ZBA it could be noted that they look for alternative locations that don't violate set-back from the water and the set-back from the side. Ms. Chernewsky did point out that everything was reviewed by the DEC and a Permit was issued. A letter will be written to the ZBA expressing the Board's concerns.

**2018-24      ZBA REFERRAL – DIONISIO FONATNA – 11 Island Drive [Taconic Shores]**

- Building Permit Denial dated ???, 2018
- ZBA Request for Area Variance Dated October 13, 2018
- Application for Site Plan Review Dated October 12, 2018
- Letter of Agency dated July 28, 2018
- Letter of Approval from Michael DeRuzzio of the Department of Health dated December 26, 2017
- Application for Permission to Inspect the Property from DEC dated September 10, 2018
- Joint Application Form From US Army Corps of Engineers dated September 10, 2018
- Short Environmental Assessment Form (SEQRA)
- Site Plan and Pictures

Ms. Chernewsky also represented Dionisio Fontana for a proposed three (3) bedroom house, a new septic system and aluminum stairs. Ms. Chernewsky explained that she is before the Zoning Board of Appeals (ZBA) for side yard set-backs as per Town Code 232-8, a septic within one-hundred and fifty feet (150') of a water body as per Town Code 232-11B(2) and development within one-hundred feet (100') of water as per Town Code 232-11D(2). Ms. Chernewsky did point out that the structure is under the required lot coverage.

Ms. Chernewsky explained that the septic system was revised after meeting with the DEC as they wanted to see if the house could be place more out of the wet-land buffer and the house was moved back as far as they could from the water. She also noted that the DEC is still reviewing the application and they are still waiting for a response from them. Ms. Chernewsky also acknowledged receipt of approval from the Department of Health.

Ms. Chernewsky pointed out that the house will be small at twenty-seven feet eight inches (27'8") by thirty-two feet (32') long. Mr. Haight advised that this would need Site Plan Review as they do not meet the set-backs and are creating a non-conformity. The Building Department will be notified of this. Mr. Grant suggested finishing up with the ZBA and after hearing back from the DEC Ms. Chernewsky can proceed with Site Plan Review.

Mr. Grant referenced what the letter to the ZBA should say. Ms. Becker noted that this is a really small lot and according to the Town Code the applicant is allowed to build on it and he is doing the most he can by building as far back as he can from the water. Mr. Grant suggested a letter be written to the ZBA acknowledging that the Board reviewed the plans inasmuch as the side yard set-backs are tight, they should take note of any recommendations from the DEC Permit. A letter will be written to the ZBA acknowledging this.

Ms. Becker questioned whether the Board had any comments regarding the stairs. Ms. Chernewsky pointed out that they will be stabilized and the DEC and ZBA are aware of this. Ms. Becker also questioned whether a variance was needed for the stairs and was advised that none is needed inasmuch as they are not permanent.

**2018-25      ZBA REFERRAL – DONALD DUKSA – County Route 7A [Copake]**

- Public Hearing from Town of Ancram
- Resolution for Public Hearing for Area Variance
- Variance Application dated October 9, 2018
- Building Permit Denial dated October 6, 2018
- Map
- Pictures

The Board reviewed the application for Donald Duksa and felt that it had no negative impact on the Town. A letter will be written to the Town of Ancram advising them of this.

**PUBLIC HEARING**

**2018-17      MINOR SUBDIVISION – JOE FLOOD / J&J TWIN OAK LLC– Route 22 & Yonderview Road [Copake]**

On a motion made by Mr. Haight and seconded by Ms. Cohen the Board voted unanimously to open the Public Hearing. Mr. Haight asked if anyone wished to speak on this application. Being none, on a motion made by Mr. Haight and seconded by Mr. Grant the Board voted unanimously to close the Public Hearing.

**2017-38      SITE PLAN REVIEW – GRJH INC. – State Route 23 [Craryville]  
(Open since November 2, 2017)**

The applicant was unable to have their updated Site Plan prepared for this meeting so the Public Hearing was postponed until the December 6<sup>th</sup> meeting.

**SUBDIVISIONS/SITE PLANS**

**2018-17      MINOR SUBDIVISION – JOE FLOOD / J&J TWIN OAK LLC– Route 22 & Yonderview Road [Copake]**

- Revised Survey
- Short Environmental Assessment Form (SEQRA)
- Road Maintenance Agreement

Joe Flood's son-in-law Ken Burdick appeared before the Board to represent him. Ms. Becker acknowledged the addition of the Zoning District on the Survey Map and receipt of the Road Maintenance Agreement.

Part I of the Short Environmental Assessment Form (SEQRA) was submitted and reviewed. After review, on a motion made by Mr. Haight and seconded by Ms. Cohen the Board voted unanimously to declare a Negative Declaration for the subdivision of J&J Twin Oak LLC.

On a motion made by Mr. Haight and seconded by Mr. Grant the Board voted unanimously to approve the Minor Subdivision of J&J Twin Oak LLC from a revised Survey Map dated September 20, 2018.

Mr. Burdick will bring in the Subdivision fee on Saturday when Mr. Haight will stamp the maps.

**2018-26            BOUNDARY LINE ADJUSTMENT – EDGAR MASTERS – Route 22 & Yonderview Road [Copake]**

- Application for Boundary Line Adjustment
- Survey Map
- Boundary Line Adjustment Fee

Edgar Masters appeared before the Board with Matt Linehan to subdivide three (3) acres from the one-hundred and forty nine acres he owns in Copake Falls in the RU zone, the bulk of which is on the west side of Route 22 with about fifteen or sixteen acres on the east side of Route 22. Mr. Masters explained that Bain Road comes into the proposed subdivision and makes a loop to come out. He also noted that Mr. Linehan plans on building an agricultural building for his crops in the area where the concrete foundation of the previous barn is. Mr. Masters also made note of the fact that there are no other abutting neighbors as he owns all the property around the proposed subdivision.

Ms. Becker questioned whether an Agricultural Data Statement needs to be sent and asked whether there are any other farms within five hundred feet (500') of the property. Mr. Masters noted that Shagbark Farms abuts the property but not the subdivision.

Mr. Haight asked the location of the barn Mr. Linehan wishes to build and whether there will be any water going to it. He was advised that this is just north of the existing concrete pad and there is an existing well on the property that is being used at this time. Mr. Haight had concerns as to whether a septic is needed or not. Mr. Linehan explained that water is only needed to run the potato washer he uses.

On a motion made by Mr. Haight and seconded by Ms. Becker the Board voted unanimously to classify this application as a Minor Subdivision and set a Public Hearing for next month's meeting.

Ms. Becker also noted that a Short Form SEQRA needs to be filled out and questioned whether an Agricultural Data Statement will need to be sent as well. After a discussion Attorney Dow advised the Board that the applicant does need to fill out an Agricultural Data Statement to be sent to Shagbark Farms advising them of the subdivision, as any property that has boundaries within five-hundred feet (500') of a farm needs to be sent one.

The Check List was reviewed. It was noted that the Zoning District needs to be added to the Survey Map. Mr. Masters will have this added.

**2017-31 SITE PLAN REVIEW – 13 LACKAWANNA PROPERTIES [BUILDING #1] – Lackawanna Road [Copake]**

**2017-32 SITE PLAN REVIEW – 13 LACKAWANNA PROPERTIES [BUILDING #2] – Lackawanna Road [Copake]**

- Building Permit Application dated October 1, 2018
- Building Permit dated October 1, 2018
- Drawing
- Agriculture and Markets Letter dated October 5, 2018
- E-mail from Frank Peteroy dated October 20, 2018
- E-mail from Salvatore Cascino dated September 21, 2018
- Pictures
- Letter from Nicholas Demos dated October 30, 2013
- Letter from Nicholas Demos dated October 23, 2013
- Drawings

David Weiner, Administrative Assistant to Mr. Cascino and Architect Frank Peteroy appeared before the Board to represent Salvatore Cascino and 13 Lackawanna Properties. Mr. Haight advised that the applicant previously submitted a Master Plan that was denied by the Board and after a Court Order Mr. Peteroy appeared submitted an application for buildings that were built without permits to which Site Plan Review was required. Mr. Haight acknowledged that the Board asked for a survey of the farm with all existing buildings and that by State Law all future buildings need to be added as well.

Mr. Weiner explained that he was under the impression that applications were being submitted for two (2) buildings originally built as bins however once a roof was added permits were required which put them before the Planning Board. Mr. Weiner acknowledged that Mr. Haight's explanation clarified his understanding of how Site Plan Review of these two (2) buildings are tied into the Master Plan. Mr. Weiner asked the Board whether the Master Plan as a whole needs to be approved before permits can be given for the two (2) buildings in question. Mr. Haight advised him that this is the case.

Mr. Haight also brought up the fact that a permit for a Barn had recently been issued from the Building Department because the Building Inspector did not know that any additional buildings were tied to the Master Plan which hasn't been approved as yet. He also noted that he was the one that spoke with the Building Inspector and advised him that no permits can be issued until the Master Plan is approved. Mr. Weiner acknowledged that neither he nor Mr. Cascino was aware of this.

Mr. Weiner remembered having discussions with Mr. Cascino who always wanted a twenty-five thousand square foot barn that he won't be applying for in the near future. He also noted that several things have been addressed regarding the Court Case which are not on the current Master Plan. Mr. Haight suggested revising the Master Plan to update the changes. Mr. Weiner was in agreement with this.

Mr. Haight also brought up the fact that the Master Plan submitted last year was very similar to the original Master Plan that was turned down by the Board and eventually wound up in Court. It was Mr. Weiner's opinion that this plan is substantially different than the original plan. Ms. Becker also agreed that the best thing for Mr. Weiner to do is to submit a revised plan to be reviewed by the Board. Mr. Peteroy asked whether the Board wanted renderings of the original plan or the new plan. He was advised that the new plan is what is needed.

Attorney Dow brought up the fact that during the Court case part of the issues was that some of the buildings were not believed to be what they were claimed to be for and there was an Agricultural Expert who said that the buildings were unsuitable for what they were purported to be.

Mr. Weiner asked whether the proposed barn he spoke of earlier needs to be put on the Master Plan inasmuch as there is no specific time for this to be built. Ms. Becker advised that not including this could fall under Segmentation which is not allowed.

Mr. Weiner had issue with the fact that this may not be built for three to five (3-5) years or so. Attorney Dow advised that it should be acknowledged as it needs to be part of the plan that the applicant has probable intention to build this in a probable place. He added that the applicant is not strictly bound to this but noted that it needs to be acknowledged. Mr. Haight clarified that if a new Master Plan is approved any future barns or buildings applied for will undergo Site Plan Review at that time. Mr. Weiner acknowledged that they could commit to location to which Attorney Dow advised could be amended. Mr. Weiner noted that he understands the concept and that if there is an intention for something it should be placed on the plan and if not it is left off the plan and should stay off.

Attorney Dow clarified that if a four (4) building plan is submitted and the applicant wishes to add another building then the plan needs to be reviewed as a whole and not just as one (1) building and if the entire plan does not support the additional building then it cannot be added. Mr. Weiner had concerns that inasmuch as there are several other buildings that the applicant constructed in the absence of a barn the addition of a barn might be considered to overcapitalize the Master Plan and not be allowed. Ms. Becker pointed out that buildings have been built without building permits which is why this issue is being raised.

Mr. Haight asked whether the building permit recently issued by the Building Inspector was for a building that was on the previously submitted Site Plan. Mr. Weiner acknowledged that it is not

and would need to be added. Mr. Peteroy asked whether the topography should be omitted and Mr. Haight advised him that this is not necessary and that any existing and future buildings should be accounted for.

Attorney Dow acknowledged Segmentation in the Town Code which reads as follows:

*E. Segmentation of Site Plan. The site plan application and associated maps shall include all proposed phases of development. Site plan approval shall be based on the total planned project in order to facilitate the assessment of all potential development impacts. The Planning Board may require statements or testimony under oath to ascertain the full scope of planned development or for other Board purposes, and shall consider applications incomplete where the Board finds reason to believe the application applies to only a segment of the total development. In such situations, the Planning Board shall return such application to the applicant together with a letter stating the basis for its determination.*

Mr. Weiner noted that it was his understanding that when this application was presented to the Board in 2017 that the use of the building was in question however he is under the impression now that the question is that the Master Plan needs to be considered and approved. Mr. Haight asked whether any Board members had issue with the agricultural use of the two buildings that were built without building permits. Mr. Grant brought up the fact that the question is whether there were any substantial changes since the Courts upholding the Board's decision of the last Site Plan.

Ms. Becker addressed the fact that it is in the record that at the time of the original Site Plan Review of the Master Plan an Agricultural Expert was consulted and he concluded that the buildings were way overbuilt and were not suitable for usual agricultural use. Mr. Weiner referred to the letter of October 5, 2018 that was submitted and states that the agricultural use of the two (2) buildings in question are of agricultural use. Mr. Grant pointed out that the Board will have to review it to see if there are any changes since then. Mr. Haight asked whether these two (2) buildings were built when the application was in the Courts. Ms. Becker advised him that these two (2) buildings were not on the original Master Plan submitted in 2008 and were built later however the plans for these two buildings were included in that decision.

Attorney Dow asked for clarification that these two (2) buildings were reviewed by the Expert and the Plan was denied and got built anyway. Ms Becker acknowledged this to be correct. Mr. Weiner questioned whether these two (2) buildings were on the Plan. Mr. Grant clarified that there was a Site Plan including these and it was denied and an Article 78 was filed against the Town for a decision which then went to the Supreme Court of New York State and the Towns decision was upheld. It was Mr. Weiner's belief that these two (2) buildings were designed in 2013.

Attorney Dow acknowledged that the threshold issue was that the purpose of the buildings was that they were found not to be suitable for agricultural purposes. Mr. Haight questioned which two (2) buildings these were. Mr. Grant noted that until this can be straightened out there was no sense continuing this discussion.

Mr. Weiner brought up the fact that the only buildings in question at this time are the two (2) buildings that were built without building permits and these buildings were evaluated by the

experts at Agriculture and Markets. Mr. Grant noted that without the original Site Plan to refer to the buildings cannot be compared. Mr. Weiner questioned how this affects the use of the building.

Mr. Peteroy questioned how this affects the decision of the Courts whereas the applicant needed to file for permits within sixty (60) days of the Court Order and that the applicant needs to get permits for everything constructed on the property. Mr. Haight made note of the fact that the last time Mr. Peteroy was before the Board Mr. Haight had asked for surveys of the property and these have not been submitted as yet. Mr. Peteroy will provide these.

Mr. Weiner asked Mr. Haight if his question was regarding whether the two (2) buildings in question are the buildings that were deemed not for agriculture use. Mr. Haight advised him that until he can review the 2008 Plans he does not know whether they are the same buildings or not. Attorney Dow agreed that the Board needs to see the old plan that was denied and the new plan that is being submitted to see what the differences are. Attorney Dow noted that on the old plan there were a couple of proposed buildings that were found to be not proper agriculture buildings. Attorney Dow noted that it needs to be reviewed as to whether these are still on the plan and whether they are suitable. Attorney Dow pointed out that the question is whether the applicant is proposing two (2) buildings that have different construction and different purposes. He added that even if they are in the same location they could be reconsidered if the construction and purpose are different.

Mr. Weiner brought up the fact that a site visit was done by the Board and the issue in question was whether these buildings were of agricultural use and an agricultural expert from Ag and Markets reviewed this. Attorney Dow clarified that if the original proposed building construction and layout were not appropriate however different buildings are shown to be agricultural buildings this might resolve the issue however that might not be the only issue.

The original 2008 Master Plan will be reviewed.

**2017-41      BLA/MINOR SUBDIVISION – FRANK AND MARCIA PETEROY – Route 22 & Old Highway 5645 [Copake]**

- E-mail dated October 23, 2018

Frank and Marcia Peteroy appeared before the Board to subdivide a three (3) acre lot from the original parcel. Mr. Haight asked where the entrance to the property is and Mr. Peteroy explained that the entrance is the same entrance Copake Veterinarian uses. He also noted that Copake Vet has an easement across this property. Ms. Cohen suggested that the Board receive a copy of this easement. Mr. Grant made note of the fact that the easement needs to be amended and Mr. Peteroy noted that the deed will need to be rewritten as well. Mr. Peteroy made note of the fact that the road is a New York State Right-of-Way. He also clarified that the boundary line between his property and the Newman's has been re-established.

Mr. Grant asked whether there is any plan to build on the property and was advised by Mr. Peteroy that there are no plans to that effect at this time. A discussion ensued as to whether the

property needed to be tested by the Department of Health. Ms. Becker questioned whether the Board will be creating a lot that will be buildable once subdivided. She noted that the final plat application shall include the following information: On-site sanitation and water supply facilities to be designed and meet the minimum specifications of the DOH and a note to that effect shall be stated on the plat and signed by a licensed engineer.

Mr. Grant noted that a copy of the easement agreement be submitted. The Check List was reviewed. Mr. Haight pointed out that a measurement was missing on the Survey Map. It was also noted that the Zoning District needs to be added to the Survey.

A Public Hearing will be set for next month's meeting.

## **MINUTES**

On a motion made by Mr. Haight and seconded by Ms. Cohen the Board voted unanimously to approve the minutes of the October 4, 2018 meeting.

## **ADMINISTRATIVE**

**COMMENTS FOR JULIE COHEN'S BOARD APPOINTMENT:** The Board could not proceed on this matter inasmuch as there was not a quorum without Ms. Cohen.

**BREWERY PUB/RESTAURANT:** A letter was received from the Town of Hillsdale Planning Board advising that an application was made for Site Plan Review for a property located at the intersection of Anthony Street and White Hill Lane for a Brewery Pub/Restaurant and five (5) residential apartments. Documents are at the disposal of the Copake Planning Board should they wish to examine the details of the project.

**CATAMOUNT SKI AREA:** A response was received from the Columbia County Planning Board approving the Catamount Zip Line.

## **CARRY OVER**

The following matters were carried over to the next meeting:

- 2017-38      SITE PLAN REVIEW – GRJH INC. – State Route 23 [Craryville]**
- 2018-11      MINOR SUBDIVISION – COPAKE LAKE GOLF, LLC – Golf Course Road [CopakeLake]**
- 2018-23      SITE PLAN CONFERENCE – MIKE FALLON – County Route 7A [Copake]**

## **ADJOURNMENT**

There being no further business, on a motion made by Mr. Grant and seconded by Ms. Cohen, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 9:09 p.m.

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Bob Haight, Chair

**Please note that all referenced attachments, comprising 46 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**

DONALD DUKSA

October 19, 2018                      Variance Applicatin (1)  
October 6, 2018                      Building Permit Denial (1)

DIONUISIO FONTANA [SHED]

August 29, 2018                      Building Permit Denial (2)  
September 9, 2018                      Short Environmental Assessment Form (3)  
September 10, 2018                      DEC Permission to Inspect Property (1)  
October 12, 2018                      Request for Area Variance (2)  
October 12, 2018                      Joint Application for DEC & Army Corps of Engineers (2)

DIONUISIO FONTANA [HOUSE]

December 26, 2017                      DeRuzzio to Prendergast (1)  
August 29, 2018                      Building Permit Denial (2)  
September 10, 2018                      DEC Permission to Inspect Property (1)  
September 10, 2018                      Short Environmental Assessment Form (3)  
September 10, 2018                      Joint Application for DEC & Army Corps of Engineers (4)  
October 12, 2018                      Request for Area Variance (2)  
October 12, 2018                      Application for Site Plan Review (1)

J&J TWIN OAK LLC

October 31, 2018                      Short Environmental Assessment Form (5)

13 LACKAWANNA PROPERTIES

October 1, 2018                      Building Permit & Application (4)  
October 5, 2018                      Latham to Cascino (2)  
October 18, 2013                      Demos to Cascino (3)  
October 23, 2013                      Demos to Cascino (5)  
October 30, 2013                      Demos to Cascino (1)