

Regular Town Board Meeting & Public Hearing 6-8-17

Supervisor Nayer opened the Public Hearing at 6:50pm with 6 people in attendance. The purpose of the hearing was to present A Local Law to Increase Veterans' Tax Exemptions and to establish a Gold Star Parent Exemption. Supervisor Nayer closed the Public Hearing at 6:51pm. The regular June meeting followed at 7:00pm.

Members Present: Supervisor Nayer, Councilperson Miller-Simmons, Councilperson Mettler, Councilperson Sullivan and Councilperson Gansowski.

A motion was made by Councilperson Mettler and seconded by Councilperson Gansowski to waive the reading of the minutes of the Regular Town Board Meeting May 11th and approve the minutes as written. Motion was carried.

A motion was made by Councilperson Sullivan and seconded by Councilperson Miller-Simmons to waive the reading of the Special town board meeting June 1st and accept the minutes as written. Motion was carried. Councilperson Mettler abstained do to being absent from the meeting.

Announcements:

Town Clerk's Office will be closed on Fridays for the months of June & July, K.I.S.S. Program will be at the Town Hall from 6-12-17 until 6-30-17, Columbia County Clean Up Day will be on Saturday, June 17 from, 8am-noon, Music in the Park begins June 17th at 7:00pm.

Correspondence:

From Grant D. Langdon – a copy of a letter sent to the Copake Fire Company regarding the anniversary of two fires in June of 1987 & 1990. A letter to the Town Board regarding Chairman of the Board of Supervisors denying his request.

From Nelson R. Alford, Jr., Hillsdale Town Attorney – a Public Hearing on proposed Local Law # 2 of 2017 to be held June 13, 2017 at 6:45pm.

Department Head/Committee Report:

Deb Cohen, Chairperson Copake Broad Band Committee reported that Bill Mulrain from Fairpoint attended their May Meeting and explained Fairpoint's plans to expand Broad Band in Copake in connection with the four million dollar grant that they received plus one million of their own money. Also through a lot of public pressure the Public Service Commission has agreed to hold a Public Hearing on the acquisition of Fairpoint Communications by Consolidated Communications.

Public Forum:

Heather Cannelto, Herington Fuels expressed that it has been disheartening with the process they have had to go through this past year regarding the large increase in their property taxes. When they went to the Grievance Board they received a very small reduction in their assessment with no explanation of how they arrived at this number. This is the question that she has been trying get an answer on for the entire year, no documentation has been presented to herself or their Attorney. Supervisor Nayer advised Mrs. Cannelto that if she has requested documentation, the Assessor should be providing this to you and if he doesn't Supervisor Nayer will speak to him and make sure he does give it to you. Mrs.

Cannetto closed by saying it is very disheartening that a property owner and the Town can't come to an agreement without going to court and that the process has taken over a year, Mrs. Cannetto added that they submitted their appraisal and was advised that the Town was going to have an appraisal done of which they have never seen.

New Business:

Supervisor Nayer advised that the Town had to do emergency repairs to the Toolcat to the amount of \$1,700.00 and had to wait for almost two months for the parts. Supervisor Nayer stated that the toolcat is becoming unreliable and requested Bill to get an estimate for a replacement machine. A new Toolcat would be about \$51,000.00 and they will allow \$10,000.00 for trade-in. Supervisor Nayer asked all the Board Members to talk to Bill and get a better handle if they want to move forward on this matter. The money would come out of the equipment reserve fund.

Supervisor Nayer would like to replace the flag poles that we hang the American Flags on with poles that will not tangle. Estimates for about 85 6' pole is about \$900.00. Councilperson Gansowski asked if the flags could be flown all summer. Supervisor Nayer stated he didn't think the flags would last a season due to the high winds we get.

A motion was made by Councilperson Mettler and was seconded by Councilperson Gansowski to purchase 85 new flag poles for approximately \$900.00. Motion was carried.

Old Business:

Supervisor Nayer reported that on June 1st at the special Board Meeting Trout Unlimited gave a presentation on culvert replacement grants that are available to the Town. They will get back to the Board on what funding is available to the Town.

Supervisor Nayer reported that the Town Board and LURC have completed their preliminary work on the proposed zoning changes and it has been forwarded to the Town's Attorney for review. Following the Attorney's review it will come back to the Board and then Public Hearings will be scheduled.

Resolutions:

The following resolution was offered by Councilperson Miller-Simmons and seconded by Councilperson Mettler:

"A Local Law to Increase Veterans' Tax Exemptions and to Establish a Gold Star Parent Exemption"

WHEREAS, the Town Board of the Town of Copake finds that it is appropriate and desirable to increase certain real property tax benefits to veterans and veterans' families, as authorized by the New York State Real Property Tax Law; and

WHEREAS, to such end, the Town Board finds it appropriate and desirable to enact Local Law Number 3 of 2017, "A Local Law to Increase Veterans' Tax Exemptions and to Establish a Gold Star Parent Exemption"; and

WHEREAS, all legal prerequisites to the enactment of such Local Law have been timely completed, including notice to the public and the holding of a public hearing;

It is hereby RESOLVED, that Local Law Number 3 of 2017, "A Local Law to Increase Veterans' Tax

Exemptions and to Establish a Gold Star Parent Exemption” is hereby enacted.

Resolution # 4	Supervisor Nayer	yes
Dated June 8, 2017	Councilperson Miller-Simmons	yes
Copake, New York	Councilperson Mettler	yes
	Councilperson Sullivan	yes
	Councilperson Gansowski	yes

Budget:

Supervisor Nayer advised the Board that he was able to negotiate a rate of 6.75 cents per Kilo Watt for three years with Viridian for supply charges to electric bills. We were paying 7.35cents prior.

Councilperson Report:

Councilperson Miller-Simmons report Park Summer Program signups are still coming in and attendance will be up from last year.

Councilperson Gansowski reported that the ZBA had five new applications before them and five public hearings scheduled this month.

Public Forum:

Lindsay LeBrecht thanked the Town for their support of the shoreline cleanup and advised the Town Board that there has been a lot of graffiti at the south shore triangle.

A motion was made by Councilperson Mettler and was seconded by Councilperson Miller-Simmons to enter into executive session to discuss litigation regarding the Ben-Meir Article 78 and two Tax Cert for Thomas and FJHC, LLC. Motion was carried.

A motion was made by Councilperson Gansowski and was seconded by Councilperson Miller-Simmons to return to the regular meeting. Motion was carried.

A motion was made by Councilperson Miller-Simmons and was seconded by Councilperson Sullivan to agree to the following settlement agreement with Ben-Meir and to authorize Attorney Dow to initiate the settlement and authorize the Supervisor to sign the agreement on behalf of the Town Board.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF GREENE

ALON BEN-MEIR,
Petitioner,
-against-
TOWN OF COPAKE ZONING BOARD OF APPEALS and Index Nos. 16-00711
TOWN OF COPAKE, 16-00712
Respondents.

ALON BEN-MEIR and DEANNA KORY BEN-MEIR,

Petitioner,
-against-
TOWN OF COPAKE ZONING BOARD OF APPEALS and Index No. 16-00713
TOWN OF COPAKE,
Respondents.

STEVEN ROSE 2117, LLC,
Petitioner,
-against-
TOWN OF COPAKE ZONING BOARD OF APPEALS and Index No. 16-00714
TOWN OF COPAKE,
Respondents.

ORDER, STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (“Agreement”) entered into and effective as of the latest date on the signature page, and any counterparts thereof (the “Effective Date”), by and between ALON BEN-MEIR, DEANNA KORY BEN-MEIR and STEVEN ROSE 2117, LLC as the Petitioners herein, and TOWN OF COPAKE ZONING BOARD OF APPEALS and

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TOWN OF COPAKE, as the named Respondents herein, in settlement of the instant consolidated Actions interposed by Petitioners.

RECITALS

WHEREAS, Alon Ben-Meir, is the fee simple owner of real property located at 22 Howard Drive in the Town of Copake, County of Columbia and State of New York bearing tax map number 186.-2-76 (hereinafter the “22 Howard Drive Property”);

WHEREAS, Alon Ben-Meir and Deanna Kory Ben-Meir, are the fee simple owners of real property located at 2103 County Route 7 in the Town of Copake, County of Columbia and State of New York, bearing tax map number 186.-2-29.2 (hereinafter the “2103 Route 7 Property”);

WHEREAS, Alon Ben-Meir, is the fee simple owner of real property located at 2111 County Route 7 in the Town of Copake, County of Columbia and State of New York bearing tax map number 186.-2-67 (hereinafter the “2111 Route 7 Property”);

WHEREAS, Steven Rose 2117 LLC, is the fee simple owner of real property located at 2117 County Route 7 in the Town of Copake, County of Columbia and State of New York bearing tax map number 186.-2-29.112 (hereinafter the “2117 Route 7 Property”);

WHEREAS, the 22 Howard Drive Property, 2103 Route 7 Property, 2111 Route 7 Property and the 2117 Route 7 Property may be referred to herein as a “Subject Property” and are collectively referred to herein as the “Subject Properties”;

WHEREAS, Plaintiffs applied to the Copake ZBA for the issuance of four separate special use permits to utilize each of the Subject Properties as a Boarding House and/or Tourist House, as such terms are defined under the Copake Zoning Code;

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WHEREAS, following a lengthy public hearing and months of study, the Copake ZBA accepted and adopted a Final Environmental Impact Statement pursuant to the New York State Environmental Quality Review Act (“SEQRA”);

WHEREAS, on July 28, 2016, the Copake ZBA proceeded to pass four Resolutions, each by a vote of 3-2, denying Plaintiffs special use permits to utilize any of the Subject Properties as Boarding Houses or Tourist Houses as defined in the Town Zoning Code;

WHEREAS, plaintiffs thereafter commenced the above captioned four separate Article 78 proceedings challenging the determination of the Copake ZBA denying the issuance of a special use permit for the operation of each of the Subject Properties as a Boarding House and/or Tourist House;
WHEREAS, the Parties realize the uncertainty and time-consuming nature of litigation and desire to avoid spending additional time and incurring additional expense in litigation; and
WHEREAS, the Parties hereby desire to resolve any and all disputes existing between them, including, without limitation, those disputes relating to and arising out of the use of the Subject Properties as a Boarding House and/or Tourist House, and enter into this Settlement Agreement to fully resolve all such disputes without further need, cost or expense of litigation and without any admissions of liability or responsibility on the part of any Party;
NOW, THEREFORE, for the full resolution of the instant consolidated Action, in consideration of the mutual promises contained herein, the parties to this Agreement hereby state, confirm, warrant, represent and agree as follows:

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SETTLEMENT TERMS AND CONDITIONS

A. Recitals. The foregoing recitals, which the Parties to this Agreement hereby warrant are true and accurate, are incorporated by reference into these Settlement Terms and Conditions.

B. Issuance of Special Use Permit. Promptly upon the entry of this Order and Stipulation of Settlement Agreement, with service of notice of entry, the Town of Copake Zoning Board of Appeals will issue four separate Special Use Permits authorizing the Petitioners to operate each of the four Subject Properties as a Boarding House, subject to the terms, provisions, conditions and reservations set forth herein below. Petitioners will comply with all conditions, restrictions, and provisions of such Special Use Permits, as set forth herein.

C. Boarding House Conditions. The Special Use Permit issued for each of the four Subject Properties will contain the following conditions and restrictions:

1) The maximum number of occupants permitted in the Subject Properties is as set forth below;

A) 22 Howard Drive Property - 10

B) 2103 Route 7 Property - 10

C) 2111 Route 7 Property - 8

D) 2117 Route 7 Property - 10

2) During the period each year commencing with the Saturday of Memorial Day weekend and ending at the conclusion of Labor Day weekend, the minimum term of any rental of any Subject Property shall be seven (7) nights, and the minimum term of any rental of any Subject Property during the remainder of the year shall be two (2) nights.

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3) Any and all advertisements or listings for any of the Subject Properties shall explicitly state the applicable occupancy limit, and shall also expressly state the applicable minimum term of rental, in accordance with 1) and 2), above.

4) Each of the four Subject Properties will be separately and independently advertised for rent as a single-family dwelling, and no such advertisement, in any form, whether online or otherwise, shall contain any reference to the other three Subject Properties, nor shall any such advertisement encourage the joint or simultaneous renting of any of the other Subject Properties by related groups of renters.

5) The phone number of the property manager for each of the four Subject Properties will be made available to the immediate neighbors for communication regarding the rental of the Subject Properties.

6) The following terms, conditions, restrictions and provisions shall apply to each Special Use Permit issued hereunder:

- i. Petitioners will not rent multiple properties owned by them or their entities, including 22 Howard Drive, 2103 County Route 7, 2111 County Route 7, and 2117 County Route 7, to the same group or to groups that are related, for simultaneous or overlapping periods.
- ii. All advertisements, including any forthcoming advertisements on websites such as Vrbo.com and Homeaway.com, will specifically state that the Subject Property is surrounded by residential properties and that loud noises and disturbances will not be permitted.

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- iii. The rental agent will vet each prospective rental tenant. Each prospective tenant will be informed that the Subject Property is surrounded by residential properties and that loud or excessive noise will lead to their eviction from the premises.
- iv. Applicants will employ a vetting process in an attempt to rent to families, as opposed to raucous-type groups. During vetting, potential renters shall be informed that the Subject Property is not for them if they plan on being loud or disruptive. Upon contact being made, the rental agent shall ask the potential renters a series of questions in order to better understand their intentions. Such questions include but are not limited to, what the renter's plans are, why they are coming to the area, why they wish to stay at the Subject Property and exactly who will be staying at the property. Thereafter, the rental agent again informs the potential renters that the Subject Property is surrounded by residential properties and that loud or excessive noise will lead to their eviction from the premises.
- v. Prior to the confirmation of any reservations, renters will be asked their intended occupancy and will be reminded that there is a maximum occupancy for the Subject Property. The maximum occupancy will be explicitly stated in the rental agreement, which will state that a violation of the maximum occupancy will result in the immediate eviction of tenants. Renters will also be required to list the names of all intended occupants of the Subject Property, their age, email address and phone number. When rented and occupied,

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Petitioners' agents will visit the Subject Property daily to verify that the maximum occupancy restrictions are being complied with. If renters are caught in violation of the occupancy restrictions, they will be evicted from the premises.

- vi. The rental agreement terms for the rental of a Subject shall include language notifying the tenants that the Subject Property is located in a residential neighborhood and that the disturbance of neighbors with loud noise or music will result in the eviction of the tenants. The rental agreement terms shall also state that renters shall not make loud noise outside, including but not limited to the playing of music, between the hours of 10:00 p.m. and 7:00 a.m. It is noted that these limitations are more restrictive than the Town of Copake noise ordinance, which prohibits loud noise outside between 11:00 p.m. and 7:00 a.m.
- vii. Plaintiffs will utilize the services of a rental agent who lives in close proximity to the Subject Properties. The rental agent/property manager and/or the head of the maintenance crew will greet all renters at check in and explain to all renters the house and community rules. The rental agent/property manager and/or head of maintenance crew will visit the Subject Property on a daily basis to check in on the renters.
- viii. All renters will be provided with (a) explicit directions to the rental property to avoid unintended impact on neighbors, (b) the rental agents' telephone numbers and (c) a complete list of rules and regulations to minimize untoward unsupervised behavior.

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- ix. The rental agent will be on call 24 hours a day, seven days a week, should any problems arise. A maintenance crew will also be at the property on a regular basis and the head of the maintenance crew will likewise be readily available as a point of contact, if needed.

- x. Signs will be posted on the Subject Properties notifying the renters that they are in a residential neighborhood and that noise levels must be kept in compliance with the local noise ordinance.
- xi. Plaintiffs will maintain a set of comprehensive house rules governing the operation and conduct of renters at the Subject Properties. In particular, the rules will address and govern which boats and docks the tenants may use, the safety rules on Upper Rhoda Pond, and the requirement that noise levels be kept to a normal level while outside. The list of house rules will be given to all tenants both before and during their occupancy. The rental agreement and comprehensive house rules will prohibit renters from making loud noise outside, including but not limited to the playing of music, between the hours of 10:00 p.m. and 7:00 a.m.
- xii. Plaintiffs will clearly mark which kayaks/canoes they own and which floating dock their renters may use to prevent future renters from using watercraft owned by neighboring residents. The plaintiffs will also provide enough life jackets for the safe use of the watercraft.

D. Prior Contracts Exempted. Notwithstanding any provision of this Agreement, any contract or agreement for rental of any of the Subject Properties that has been executed by Petitioners prior to the Effective Date of this Agreement shall not be subject to the minimum

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rental term or the occupancy limit set out herein, provided that written notice of any such prior rental contract or agreement, which shall specify the Subject Property, the dates of rental, the number of persons who will occupy the Property, and the name of the contracting renter, be provided to Respondents by mailing or delivery of such notice to the Copake Town Clerk within five (5) business days of the Effective Date of this Agreement.

E. Release and Extinguishment of Any Building Department Violation. The Town of Copake, by and through the Town's Building Department, will withdraw, release, and relinquish any and all pending or unresolved zoning violations that have been issued against any of the Subject Properties.

F. Releases and Discontinuance of Action. This Agreement shall finally settle and resolve all claims and defenses that were asserted or could have been asserted in the instant consolidated Action, by any of the Parties, and discontinue the instant consolidated Action. Concurrent with execution of this Agreement, the Parties agree and, through their respective counsel, shall sign a Stipulation of Discontinuance, discontinuing the instant consolidated Action with prejudice as it pertains to the Parties to this Agreement.

G. Warranties and Indemnification. Each party to this Agreement represents and warrants that: (a) it is authorized to execute, deliver and perform this Agreement; and (b) this Agreement constitutes a legal, valid and binding obligation of such party enforceable against such party in accordance with its terms.

H. Governing Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of New York without regard to choice of laws.

I. Sole Agreements and Modifications.

1. This Agreement constitutes the sole and entire Agreement between the parties hereto with respect to the matters covered hereby and this Agreement supersedes any and all

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Prior or contemporaneous agreements, understandings or undertakings, whether oral or written, by or between the parties regarding such subject matter contained herein.

2. No term or provision of this Agreement may be varied, changed, altered, modified, discharged, terminated or amended orally, but only in instrument in writing signed by all the parties to this Agreement. The waiver by any party hereto of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any breach or other provision of this Agreement, nor shall any failure to enforce any provision of this Agreement constitute or operate as a waiver at such time or any future time of such provision or of any other provision of this Agreement.

J. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution of this Agreement and transmission thereof by facsimile shall be binding on the party signing and transmitting same by facsimile to the same extent as if a counterpart bearing such party's original signature had been delivered. Notwithstanding the foregoing, the parties shall exchange original counterparts of this Agreement promptly following execution thereof.

K. Severability. The provisions of this Agreement are severable, and if any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, such holding shall not effect or impair any other provision of this Agreement.

L. Further Assurances. Upon the full execution of this Agreement, the parties agree to take all steps reasonably necessary to carry out all of the provisions of this Agreement including but not limited to, the filing of releases in the forms referenced above.

M. No Admission of Liability. The Parties enter into this Stipulation and Agreement of Settlement expressly for the purpose of avoiding the cost, expense and uncertainty of trial.

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Nothing in this Agreement, nor anything contained in any discussions, negotiations or conversations giving rise to it, shall be construed or interpreted to mean that any Party admits to the validity of the claims of the other Party, the lack of merit of any defense, or that any Party has engaged in any wrongdoing. This Settlement Agreement may not be offered or submitted as evidence in any action or proceeding brought by any person or entity, whether bound by it or not, except in an action brought to enforce the terms of this Settlement Agreement.

N. Headings. Headings of this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meanings hereof.

O. Notices.

1. All notices to any party herein for purposes of this Agreement, shall be considered delivered to said party upon receipt of said notice by way of hand-delivery, overnight mail or first class mail, addressed to the parties as set forth below:

Party:

Addressed to:

All Petitioners

Paul M. Freeman, Esq.

Freeman Howard, P.C.

441 East Allen Street

P.O. Box 1328

Hudson, New York 12534

Respondents

Kenneth J. Dow, Esq.

31 Kinderhook Street

PO Box 25

Chatham, NY 12037

2. Any party may at any time notify the other parties of a change of its address for notices by mailing a registered or certified letter, by overnight mail, or by hand delivery containing the particulars of such change to the others at the addresses set forth above.

P. Binding and Inure. This Agreement shall apply to, be binding upon, and inure to the benefit of the parties, their officers, directors, agents, servants, employees, corporate affiliates and/or subsidiaries, predecessors, heirs, executors, administrators, successors, and assigns.

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Q. Acknowledgment. The parties acknowledge that this Agreement has been executed following a review of the content of the instant Stipulation and Agreement of Settlement with the advice of their respective counsel and for purposes of construction hereof, this Agreement shall be deemed to have been drafted by all parties.

IN WITNESS WHEREOF, the parties hereto, acting pursuant to due power and authority have caused this Stipulation and Agreement of Settlement to be executed in their respective names by themselves or in their respective representative capacities.

By: _____
ALON BEN-MEIR date

By: _____
DEANNA KORY BEN-MEIR date

By: _____
JON STROM, CHAIRMAN date
TOWN OF COPAKE ZONING BOARD OF APPEALS

By: _____
JEFFREY B. NAYER, SUPERVISOR date
TOWN OF COPAKE

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SO ORDERED.

E N T E R

Dated: _____, _____
at Catskill, New York.

HON. LISA M. FISHER

Motion was carried.

Supervisor Nayer advised that pertaining to the two Tax Certs there was just a brief discussion.

A motion was made by Councilperson Miller-Sweeny and second by Councilperson Mettler that the bills from General Abstract # 6 and the bills from Highway Abstract # 6 be paid. Motion was carried.

A motion was made by Councilperson Gansowski and was seconded by Councilperson Miller-Simmons that the meeting be adjourned. Motion was carried.

Respectfully submitted,

