



COPAKE PLANNING BOARD

SEPTEMBER 7, 2017

MINUTES

DRAFT

Please note that all referenced attachments, comprising 7 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 Julie Cohen, Marcia Becker, Steve Savarese and Jon Urban. Chris Grant and Ed Sawchuk were excused. Lisa DeConti was present to record the minutes. Attorney Ken Dow and Town Board Liaison Terry Sullivan were also present.

ZONING BOARD OF APPEALS – Referrals

NONE

PUBLIC HEARING

NONE

SUBDIVISION/SITE PLAN

**2017-42 BLA/MINOR SUBDIVISION – EDWARD & LINDA NIELSEN – Birch Hill Road
[Copake Lake]**

- Application for Boundary Line Adjustment
- Survey Map

Edward Nielsen appeared before the Board to request a Boundary Line Adjustment on an existing parcel that would add approximately one-hundred feet (100') to the rear and sides of the parcel. Mr. Nielsen explained that there was a right-of-way on the side of the property that he is now relinquishing. Mr. Haight asked Mr. Nielsen whether the right-of-way was owned by anyone other than himself. Mr. Nielsen acknowledged that he was the sole owner of both parcels as well as the right-of-way.

The Check List was reviewed. Mr. Nielsen explained that the final map will have the correct coordinates and footages that the preliminary sketch does not have.

On a motion made by Ms. Becker and seconded by Mr. Savarese the Board voted unanimously to classify this survey as a Minor Boundary Line Adjustment and set a Public Hearing for next month's meeting.

Mr. Nielsen will bring the final survey maps to the October meeting.

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

- Application for Minor Subdivision
- Survey Map

Frank Peteroy appeared before the Board to request a Minor Subdivision of his property on the Northeast corner of Route 22 and Old Highway #5645. A discussion ensued regarding the zoning district of Mr. Peteroy's property. It was decided that the property was within both the BR and B2 zoning districts.

Mr. Peteroy explained that he would like to divide the existing property into two (2) parcels with Parcel 1 approximately fourteen point three (14.3) acres and Parcel 2 approximately two point eight-three (2.83) acres.

Mr. Peteroy acknowledged that he will have a survey map prepared and made note of the fact that Parcel 2, which was previously Old Route 22, shares a common driveway with the Copake Veterinary property. Mr. Peteroy pointed out that he also owns the driveway portion that the Copake Veterinary property uses. He also noted that there is an existing foundation on Parcel 2 and clarified that the new survey map will show everything that exists on the property.

Ms. Becker asked whether Mr. Peteroy has any documentation that shows the ownership of the right-of-way to the strip on Old Route 22 as Parcel 2 has no other access to Route 22. Mr. Peteroy explained that the triangular entrance to Copake Veterinary is owned by New York State and this in turn grants him access to Route 22. Ms. Becker asked whether Mr. Peteroy will provide some documentation regarding this portion of the property. Mr. Peteroy will provide this.

Mr. Haight asked whether Mr. Peteroy will have his survey prepared for the next meeting as a Public Hearing would need to be set. Mr. Peteroy said that a survey map would not be prepared by next month. Mr. Becker advised that a perc test and water test would need to be done for Parcel 2. Mr. Peteroy felt this might not be needed as no building will be taking place on the property at this time. Mr. Haight acknowledged that this would be needed should any building take place on this parcel.

On a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted unanimously to classify this as a Minor Subdivision.

2017-39 BLA/MINOR SUBDIVISION CONFERENCE – JOSEPH FLOOD – Route 22 & Yonderview Road [Copake]

- Survey Map Dated March 19, 1995 and Board Approved March 16, 2013

Joe Flood appeared before the Board to discuss the possibility of subdividing his property. Mr. Flood advised the Board that someone would like to purchase his property and plans on keeping it as a farm operation. Mr. Flood explained that he would like to subdivide the three (3) acre portion of property where his office is located, the three (3) acre portion of property where his home is located and also retain another three (3) acre parcel should a family member want one in the future with the remaining portion being sold.

Ms. Becker acknowledged the fact that should these subdivisions take place this would then be considered a Flexible Lot Subdivision. Ms. Becker believed this has been addressed previously. Mr. Haight clarified that Mr. Flood is asking for relief from the Flexible Lot Subdivision inasmuch as he is selling the remainder of his property to a local farmer. Ms. Becker asked whether there would be a deed restriction acknowledging that this would remain farmed land. Mr. Haight noted that should the new owner wish to subdivide the property in the future it would have to come before the Board and could be dealt with at that time. Mr. Urban agreed with Mr. Haight and felt the responsibility would then be transferred to the new owner of the property. Ms. Becker felt there should be some documentation addressing this. Mr. Flood made note of the fact that a large portion of his farm cannot be seen from Route 22.

Mr. Flood advised the Board that since his father purchased the property in 1968 several Boundary Line Adjustments were done to be cooperative to their neighbors. He acknowledged that his father also sold property to the Town for their Town Garage and he also donated land to the Town for this. Mr. Flood also brought up the fact that when he wanted to provide land for his daughters, Town restrictions required that he provide more of his tillable land to access the road than was his intention.

A discussion ensued regarding the Flexible Lot Subdivision codes. Mr. Flood made note of the fact that in 1980 when his father purchased some adjoining land he was advised to merge the parcels and made note of the fact that this parcel was not all purchased at one time. Ms. Becker suggested that the Board review the Town Code Regulations to see if there is a way this could be accomplished. The Board went over several of the Town Codes to see how this could be accomplished. This application will be reviewed at a later date.

2017-38 SITE PLAN REVIEW – GRJH INC. – State Route 23 [Craryville]

- Stormwater Polution Plan
- Revised Site Plan with Floor Plan

Alicia Metz appeared representing GRJH Inc. The issue of parking was addressed. Ms. Metz acknowledged that Civil Architectural Engineer Steven Smith added the appropriate parking spaces however he advised her that most people that stop to fuel their automobiles and do not usually park their cars.

The Floor Plans were reviewed. Mr. Haight acknowledged the space for a vendor. Ms. Meltz advised him that there are no immediate plans for a co-brand vendor however they wanted to address this on the floor plan in the event they wanted to add one in the future. After review it was noted that the floor plans need to be reversed as the drive-thru and vendor area are in the incorrect place. Mr. Urban made note of the fact that the vendor space seemed small. Ms. Meltz advised him that space could be rearranged if it were taken from other outlets on the floor plan.

Ms. Meltz acknowledged the changes and additions from last month's meeting. She noted that the sign dimensions were addressed.

Ms. Meltz made note of the fact that Mr. Smith accounted for forty eight (48) parking spaces which includes two (2) employees, and bike racks and picnic tables were added. Mr. Haight asked if the Board would like some of the parking spaces banked. The Board was in agreement with this. Mr. Haight suggested banking the eleven (11) spaces at the front of the parcel on Route 22 and leaving it as grass.

Ms. Meltz also noted that the Stormwater Prevention Plan and the Lighting Schedule are included along with the Vegetation Screening which accounts for six to eight foot (6'-8') Blue Spruce trees. Ms. Becker made note of the fact that Blue Spruce do not always survive in this area. Ms. Meltz advised her that they would research the appropriate species of native evergreen trees.

Mr. Haight questioned a structure at the entrance of Route 23 as this would appear to hinder access to tractor trailer trucks and large vehicles. Ms. Meltz will address this with Mr. Smith. Ms. Meltz noted that three (3) Bollards were added.

Ms. Meltz will advise Mr. Smith that if any adjustments will be made to the interior floor plan they should be made when the interior floor plan is flipped and the eleven parking places on Route 23 are banked.

Mr. Haight asked Ms. Meltz what the status was on the State and Town entrance permits. Ms. Meltz advised him that they were filed for today and the Department of Health permits will be filed for shortly. Ms. Meltz will notify us when the permits are received.

Ms. Becker asked whether the Agricultural Data Statements were done. Ms. Meltz will address this and Ms. DeConti will process them when they are received. Ms. Becker also had concerns that a co-brand vendor such as Dunkin Donuts or Subway might increase traffic as people would go there specifically for these vendors. Ms. Meltz advised her that this usually doesn't increase traffic and the only concern might be an increase in bathroom use. Mr. Haight brought up the fact that ZBA approval was for a gas station and the traffic flow was based on this. Ms. Meltz believed that approval was granted for a Convenience Store as well as Gas Station. Ms. Becker asked what Co-brand vendors were usually used. Ms. Meltz advised her that Dunkin Donuts and Subway were the most popular. She did note that if a national vendor is not used they sometimes contract with a sub-vendor that makes pizza or chicken. Ms. Becker questioned whether the Board will need to address the traffic aspect of a vendor even though one is not contracted with. Mr. Haight pointed out that there is a space accounted for on the floor plans. He suggested reviewing the flipped version of the floor plans and make the decision at that point, as the size of the vendor space might change.

The following items need to be addressed next month:

- Reverse Floor Plans
- Entrance off Route 23
- Bank 11 spots on Route 23
- Native Evergreens to replace Blue Spruce Trees
- Median on western end of Route 23
- Parking lot elevations and which way the flow is going on the storm drains.
- DOH, State and Town permits
- Ag Data Statements

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

- Court Order
- Definition of the word ‘Efficacy’
- Pictures

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

- Court Order
- Definition of the word ‘Efficacy’
- Pictures

Frank Peteroy appeared before the Board representing Salvatore Cascino and 13 Lackawanna Properties and submitted the Court Order of March 3, 2017 along with pictures of the existing buildings on Mr. Cascino’s property.

Mr. Haight addressed the Site Plan that was denied in 2008 and asked how much had to be different before it could be considered a different Site Plan for the Board to once again review. The Board looked over the 2008 Site Plan and the Site Plan recently submitted for review. In Ms. Becker’s opinion the recently submitted Site Plan is the same project that was denied in 2008 and 2012. She also made reference to last month’s meeting where Mr. Peteroy said it was Mr. Cascino’s intention to build the same project.

Referring to the 2008 Decision, Attorney Dow seemed to remember the project being submitted as an agricultural operation. He also remembered the testimony of an Agricultural Expert who noted that while the applicant tried to propose things as agricultural structures and operations the testimony before the Board was that these were inappropriate and not suitable for agriculture and could not be treated as agricultural. He added that it all came down to what purposes, what

configurations, what sizes and what operations these things were being proposed for. In order for the applicant to treat these as agricultural buildings and structures, etc. they had to show it had a bona fide purpose and this wasn't done. Attorney Dow did not remember why this was the conclusion. Mr. Peteroy referred to a letter that concerned the barn and the way the barn was set up and he was not sure if this applied to the twenty-five foot building and might have applied to the forty-five foot building. He thought the expert's testimony referred to whether cattle could be housed in the proposed building as he didn't feel it was appropriate for this purpose.

Mr. Peteroy had no issue with the Court's decision however he argued that the current Site Plan is a different project and different type of operation. Ms. Becker continued to argue that the present plan is the same project as the prior one. Ms. Becker felt this was a waste of the Town's time and resources to be reviewing this project once again after being denied twice. Mr. Peteroy made note of the fact that this was being reviewed inasmuch as there was a Court Order to do so. Ms. Becker clarified that the Court Order stated that the applicant had to comply with the Town Code and apply for a building permit which he did. Ms. Cohen pointed out that the Building Permit was denied inasmuch as it was the same structure.

Mr. Haight questioned whether the applicant had a farm operation when the prior applications were submitted. Ms. Becker advised him that the applicant was growing corn and producing crops at that time.

Mr. Haight asked how much the plan had to change to be considered a new, different plan. Attorney Dow advised him that it wasn't just a change in the plan but is the entirety of the circumstances. He made note of the fact that there was a prior Determination which is binding unless there is a reason to revisit it such as the circumstances changed or the project has changed. Attorney Dow was not aware of the specifics of the project such as what was proposed, why it was proposed and why it was denied. Ms. Becker pointed out that the project was denied and taken to Court all the way up to the Court of Appeals and the Town's Decision was upheld.

Ms. Becker then made note of the fact that the applicant again submitted the plan in 2012 and, she believed under Attorney Dow's council, was advised that the Board did not have to review it inasmuch as it was the same plan. She objected to the fact that the same plan is once again being submitted. Mr. Peteroy argued that they are dealing with this plan under a Court Order. Ms. Becker pointed out that the Court Order just stated that the applicant had to apply for a Building Permit. It was Mr. Peteroy's understanding that the Court Order's intent was for the Board must effectuate the process. Ms. Becker clarified that the Court Order stated that the applicant must apply to the Town's Building Inspector and/or Planning Board or Zoning Board of Appeals, if required, for such permits as may be required under the Town Code and the Board needed to review the project and make a decision. It was Mr. Peteroy's belief that under the Court Order the Board needed to review the project and not deny the applicant the permits.

A discussion ensued regarding the Court Order. It was Mr. Peteroy's opinion that the Board was to approve the Site Plan as per the Court Order. Ms. Becker made note of the fact that they weren't dealing only with the two (2) buildings directed in the Court Order, they were dealing with a Site Plan that had previously been denied twice. Attorney Dow did not see the Court Order as demanding an outcome at all it is just a directive of things that have to be done to resolve this overriding problem and the Boards and the Building Inspector need to make the decisions they have to make. He did note that the Board shouldn't reject this just because it is similar however he noted that the applicant should come forward with a reason why this needs reconsideration and what is different about the situation as things do change.

Attorney Dow brought up the fact that there was an Agricultural Expert that stated that the configuration of buildings was not compatible with what they were planned to be and didn't make sense and didn't warrant approval.

Ms. Becker asked where the Board goes from here. Mr. Peteroy acknowledged that there are two applications before the Board that the applicant was directed to apply for. Attorney Dow pointed out that these buildings have already been built. Mr. Peteroy added that he supplied Agricultural maps, a five year look-back for the assessed use of the property along with a page out of the Assessor's manual defining agricultural uses. He noted that he provided a copy of the Court Order for the record.

Attorney Dow brought up the fact as he remembered, that the fundamental problem was that there was the determination that what was being proposed was under the guise of being agricultural and the buildings being proposed were being proposed as agricultural buildings and agriculture uses. However, the agricultural experts said that they were a sham as they were not suitable to agriculture and did not work as agriculture. The gist of the rejection was that the plan proposed agricultural activities and the agricultural experts said these configurations and these buildings were unsuitable for what they claimed them to be suitable for. It was that the whole thing was presented as promoting agricultural uses and the agricultural experts said that this was false and did not work as an agricultural use. He added that this was the last decision that was made.

Attorney Dow made note of the fact that it is the burden of the applicant to give an initial basis for reconsidering the project and to show the Board why these buildings and configurations now ARE appropriate for agriculture uses when the last time they were not. He suggested the use of an Agricultural Expert for this.

Mr. Peteroy commented on the fact that in the assessment of a farm, intent of a farm does not apply itself to buildings it applies itself to the product. Ms. Becker disagreed with this as some agricultural buildings are included. Mr. Peteroy argued that it is any building the farmer wants to put in. Attorney Dow disagreed with Mr. Peteroy as this was the basis of the original argument when an agricultural expert said this was not true. He commented on the fact that you can't put a building on a farm that is designed for chemical processing and call it a hay barn. Attorney Dow referred to the fact that the Town had an experts the last time and they called the process a sham. Attorney Dow advised Mr. Peteroy that the burden is on the applicant to prove otherwise. Ms. Becker suggested asking the applicant if he is willing to pay for Agricultural Experts to review this. She advised that an escrow would need to be set up and the Town would hire a consultant to review it if this is what the applicant wants to do.

Mr. Peteroy asked if the Board wanted an expert to provide an opinion on every building on the property. Mr. Haight made note of the fact that this was done for the 2008 plan and the Board would want an expert this time to tell us how this plan being presented to us is a different plan and how these buildings are different in use than what was previously denied. Mr. Peteroy argued that the applicant is not applying for any other buildings other than the two buildings required by the Court. He said he can apply for the cow shed or the stables if the Board wanted. Attorney Dow made note of the fact that there was a lack of coherence and credibility during the last review as buildings didn't seem to be what they were being presented to be. Attorney Dow continued to bring out the facts that there was a lack of coherence and credibility as there wasn't a clear 'this is what we do' 'this is the purpose' 'this is how these building fit into that purpose'.

They didn't present a coherent plan that fit in with actual agricultural practices. Attorney Dow advised Mr. Peteroy that these are the obstacles that need to be overcome.

Mr. Peteroy disagreed because in the applications he made from October until now, the reason each one was separate is because each one of them is individual and he researched the analysis on what a cow barn should be and if the applicant wants to build it out of steel and block that is the applicant's choice. Attorney Dow said this was not necessarily correct when there is a credibility issue and referred to the 2008 Court Decision that stated: 'the credibility gap widened when the applicant seeks site plan approval for a cattle operation and then presents a site plan that looks like a composting operation' 'the proposed agricultural buildings are designed in highly unconventional ways without any explanation offered for deviation from standard farming practices.' Mr. Peteroy argued that this is not under this application. Mr. Peteroy asked why it would need to look like a broken down hay barn. Attorney Dow pointed out that there is a credibility history of all kinds of deceit such as something being presented that looks nothing like a hay barn. He added that the applicant hasn't overcome this problem. Attorney Dow advised Mr. Peteroy that the application can be rejected if it is similar to the previous one without a reason why it has changed. Attorney Dow once again suggested the use of an Agricultural Expert to accomplish this and move forward with the application.

Mr. Haight questioned what the hopper was and was told this was part of the grinder. Mr. Haight made note of the fact that this is still on the plan. Mr. Peteroy responded saying that it needs to be on the plan inasmuch as it is physically on the farm. Mr. Haight asked if it was a building and was told that it is a piece of machinery physically attached to the property. Ms. Becker advised Mr. Peteroy that if there are any other buildings on the property they should be shown on the Site Plan. Mr. Haight pointed out that the sizes of the buildings need to be added to the Site Plan as well.

Ms. Becker advised Mr. Peteroy that if he wanted to go forward with this application experts would need to be hired such as an agricultural expert to look at the plans. Mr. Peteroy asked whether the applicant would be able to hire his own Agricultural Expert. Attorney Dow made note of the fact that the Board needs to have its own experts verify the legitimacy of the applicant's claims. Mr. Haight believed that a Farm Expert would be included in the applicant's part of the burden to prove to the Board the difference between these two plans and why the present plan is now Agriculture and different from the 2008 Site Plan. Ms. Becker also suggested that the applicant has the right to choose a different identity for the plan and not a farm from some other enterprise that the applicant is involved with. Mr. Haight made note of the fact that the Board is not denying the application but giving the applicant the chance to come before the Board with additional information.

Mr. Peteroy wanted to submit a list of barns approved by the Board, some within a twenty-four hour period of time. Ms. Becker made note of the fact that the Board is not looking at only one building but a Site Plan as a whole. Mr. Peteroy felt this was an appropriate time to bring this up inasmuch as none of these questions were asked of these other applicants. Mr. Haight brought up the fact that none of those applicants were turned down by the Courts either which changes the scenario. It was Mr. Peteroy's opinion that the Courts are encouraging the Board to approve something. Attorney Dow clarified that the Courts are demanding that the applicant apply for the appropriate permits as these buildings were built without permits. They are not encouraging the outcome.

**2017-40 BLA/MINOR SUBDIVISION – JON URBAN – Leroy Avenue
[Copake Lake]**

- Application for Minor Subdivision
- Survey Map
- Short EAF

Board Member Jon Urban recused himself so that he could submit an application for a property he owns on Leroy Avenue at Copake Lake. Mr. Urban explained to the Board that when the property was purchased he had planned to reduce the size of the building to fit the lot however this proved to be a challenge so he approached his neighbor, Millie DeSalvo who is willing to sell him the lot at the rear of his property.

Mr. Urban continued to explain to the Board that he would like to merge the two properties so that the house can be placed in the middle of the lot. Mr. Urban made note of the fact that Parcel 2 is part of a 33 acre parcel at this time.

A question arose as to whether Parcel 2 was its own parcel or still a part of the 33 acre parcel owned by Ms. DeSalvo. Ms. Becker advised Mr. Urban that he would not need to come before the Planning Board if he was combining two parcels he already owns. Mr. Urban acknowledged that he does not own Parcel 2 at this time. Ms. Cohen looked up the Tax Map number for Parcel 2 and confirmed that it is still part of the 33 acre parcel and would need to be subdivided.

A discussion ensued as to whether this would be a subdivision or a Boundary Line Adjustment. It was decided that this would be a Boundary Line Adjustment. Ms. Becker made note of the fact that either way the process is reviewed the same.

The Check List was reviewed. On a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted unanimously to classify this as a Boundary Line Adjustment and set a Public Hearing for the October 5th meeting.

MINUTES

On a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted to approve the August 3, 2017 minutes.

ADMINISTRATIVE

MAJOR SUBDIVISION: Attorney Dow questioned whether the lot count for a Major Subdivision includes the original parcel or not as if you start out with one lot and divide into two you have only created one lot.

BARBARA MOJICA: At the request of the applicant the Public Hearing that was to be set for the September meeting was postponed to the October meeting.

CARRY OVER

The following matters were carried over to the next meeting:

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

ADJOURNMENT

There being no further business, on a motion made by Mr. Haight and seconded by Mr. Urban, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 10:05 p.m.

Bob Haight, Chair

Please note that all referenced attachments, comprising 7 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

13 LACKAWANNA PROPERTIES

August 29, 2017 Court Order (5)

JON URBAN

September 7, 2017 Short Form EAF (4)