



COPAKE PLANNING BOARD

SEPTEMBER 5, 2019

MINUTES

DRAFT

Please note that all referenced attachments, comprising 136 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 7:02 p.m. by Bob Haight, Chair. Also present were Marcia Becker, Julie Cohen, Ed Sawchuk, Steve Savarese and Jon Urban. Chris Grant was excused. Town Board Liaison Richard Wolf, Town Supervisor Jeff Nayer, and Attorney Ken Dow were also present. Lisa DeConti was present to record the Minutes.

ZONING BOARD OF APPEALS – Referrals

2019-22 ZBA REFERRAL – RANDY & SUSAN COHEN/BYRNE – Washington Road [Copake Lake]

- ZBA Request for Area Variance dated August 14, 2019
- Building Permit Denial dated July 24, 2019
- List of Abutters
- Town & County Tax Statement
- Elevations and Floor Plan
- Site Plan

Linda Chernewsky appeared representing the applicant. Ms. Chernewsky informed the Board that the applicants plan to demolish their existing house inasmuch as there are mold issues caused by the high-water table. She explained that the applicant plans to rebuild a new structure on the existing footprint and will be adding a screened-in porch. Since the applicant's property is on a corner lot Ms. Chernewsky pointed out that the dimensions on her plans show that there are two (2) front yard and two (2) side-yard set-backs to be considered. Ms. Chernewsky noted that she is before the Zoning Board of Appeals (ZBA) for the replacement of a non-conforming structure due to this fact.

Ms. Chernewsky went on to explain that the applicant owns two (2) adjacent lots with separate Tax Map numbers which they do not plan on merging. Ms. Chernewsky received a referral from the Building Inspector for relief from the Town Zoning Code Section 231-20B(2)b, Replacement of a non-conforming structure, Table 1, Density Control Schedule for Front and Side Yard Variances.

Ms. Chernewsky pointed out that the bedroom count will remain the same on the new structure and the same septic system which was installed around 2017 will be used. Ms. Chernewsky is aware of the fact that inasmuch as this will be a new structure the septic system will need to be tested once the structure is complete and hooked up to the system. She also noted that the well being used is on the separate lot owned by the applicant. Ms. Becker questioned whether a new system was required when a new structure is being built. Ms. Chernewsky pointed out that the bedroom count is not being changed and the existing system which is fairly new is a one-thousand (1,000) gallon tank and sized appropriately for three (3) bedrooms. Ms. Becker asked if there is any documentation regarding this. Ms. Chernewsky told her that this will be supplied to the Building Inspector once she received the Building Permit to start construction on the new house. Mr. Haight brought up the fact that once the structure is rebuilt the septic will need to conform to the existing Code. Ms. Chernewsky noted that the system is appropriate for what is being constructed. Ms. Becker pointed out that documentation to this fact needs to be given to the Planning Board.

Mr. Haight asked whether the new structure will be within the existing footprint. Ms. Chernewsky explained that she discussed this with the Building Inspector and inasmuch as they are decreasing the deck they will be slightly increasing the length of the new structure by two (2) feet with the width remaining the same.

Ms. Becker questioned what would happen if the applicant was to sell the adjacent lot inasmuch as their well is located on it. Ms. Becker seemed to think there is a section in the former Zoning Code stating that increasing a non-conformity wasn't allowed if the applicant had the potential to merge adjacent lots as this would alleviate the non-conformity. Ms. Chernewsky noted that if the applicant decided to sell their lot at some point they could sell it with the well on it. Ms. Becker did not see how the Board could approve an application under these circumstances.

Ms. Chernewsky pointed out that the well on the adjacent lot is what is presently being used. Attorney Dow noted that the ZBA will take into consideration whether the applicant has other options and the fact that the applicant owns an adjacent lot is something the ZBA will take into consideration when making their decision. Attorney Dow also pointed out that the applicant's adjacent lot is not a totally independent lot inasmuch as the well is already located on it. However, Attorney Dow did feel it should be pointed out to the ZBA that a variance is not the only way the applicant can accomplish what they are requesting.

Ms. Becker also requested information regarding the septic system and whether it complies with the appropriate standards for a new structure. Ms. Chernewsky made note of the fact that the system is a one-thousand (1,000) gallon tank and sized appropriately. Mr. Haight pointed out that the fields also have to comply with the new code and that needs to be addressed.

A letter will be sent to the ZBA pointing out the fact that the applicant owns an adjacent lot and the septic needs to conform to the existing Code.

PUBLIC HEARING

2019-19 BOUNDARY LINE ADJUSTMENT – ANNA HELEN BOHLING STICKLER – County Route 7 [Copake]

- SEQRA (Parts 1, 2 & 3)

Mr. Haight opened the Public Hearing and asked if anyone would like to speak on this application. Being none.

On a motion made by Mr. Haight and seconded by Mr. Savarese 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)

- Letter from Timothy Rode/Zarin & Steinmentz dated August 26, 2019
- Letter from Timothy Rode/Zarin & Steinmentz dated August 30, 2019
- History of GRJH proposed site from Leigh McBride & Richard McCormick dated September 5, 2019
- Letter from Zarin & Steinmetz/Dan Richmond/Timothy Rode dated August 30, 2019

Before re-opening the Public Hearing Mr. Haight requested that anyone that previously spoke not repeat themselves.

Attorney Dow wanted to make note of the fact that comments have been made objecting to the time limits set by the Board for anyone speaking on this application. Attorney Dow pointed out that after a review of past minutes he discovered that tonight's meeting is the 17th time the Public has been invited to speak on the GRJH, Inc. application. He also noted that for the past 2 years there were many instances where the people were allowed to speak repeatedly. Attorney Dow just wanted it to be well understood that there has been an enormous opportunity to participate on this entire process. Attorney Dow also made note of the fact that the Planning Board opened the Public Hearing early on in the process to give the Public many opportunities to speak rather than open it to the public at the very end of the process for a meeting or two as is done by other Boards. In light of some of the things that have been said regarding the opportunity to speak, Attorney Dow just wanted it to be understood that there has been ample opportunity for the public to be heard during this process.

Save Craryville Director and Hillsdale Resident JAMIE CARANO ... Ms. Carano had issue with the Phase I Study submitted by the applicant. Ms. Carano's issue is that the Phase I submission from the applicant concerned asbestos and not sub-surface contamination. Ms. Carano also noted that the Negative Declaration and Special Use Permit made by the ZBA was based on this submission. She also noted that the former site had previously been used as a Gas Station and Auto Repair Shop. Ms. Carano's made

claim that the Radar tests performed by the applicant were inconclusive, inadequate and incomplete. She strongly urged that these issues be considered.

Hillsdale Resident LEIGH McBRIDE...Ms. McBride presented a history of the GRJH Site. Ms. McBride noted that in 1936 Clayton Carl was the Proprietor of the Craryville Garage. In 1947 it was deeded to his wife. Ms. McBride noted that this was remembered by many lifelong residents to the area. She continued to note that in 1960 the property was deeded to Doris Carl and in 1961 was conveyed to Sam and Roberta Flaum who operated it as the Craryville Garage and simultaneously operated by Ezra Link as a gas station. Ms. McBride made claim that there are aerial photos showing this. Ms. McBride then noted that in January of 1977 the property was sold to Frank and Lida Pancheri and conveyed by them in October 1977 to Cardone, Peron and Brown Inc. Ms. McBride continued to note that in January 1983 the property was conveyed back to the Flaums and approximately 10 months later in September 1984 was sold to Alberta and Martin Gunther who planned to open an antique dealer/furniture refinisher establishment. Ms. McBride noted that in December of 2016 the site appeared to be abandoned when purchased by the applicant. Ms. McBride also noted that the lift appears to still be present on the property and she had concerns that there was still hydraulic oil present at the site. She also was in favor of soil samplings being done on this site.

Save Craryville Attorney TIMOTHY RODE... Mr. Rode wanted to make known to the Board that on behalf of nine (9) Craryville/Hillsdale Residents an appeal to the Building Inspector's July determination regarding the Special Use Permit was filed with the ZBA. It is Mr. Rode's opinion that the Special Use Permit has expired and ask that the ZBA re-open the SEQRA process due to new information that came to light. It is also Mr. Rode's position that under NYS Town Law Section 267A this appeal automatically stays any proceedings in furtherance of the Special Use Permit and in their view includes the Site Plan proceeding. In his view continuing the Site Plan Process would be clear error.

It was also Mr. Rode's opinion that Under NYS Law and Copake Town Code this Board is required to determine whether the Site Plan adequately protects the health and safety of the community, does not create any undue hazard and reasonably protects adjacent land from uses and the environment.

Mr. Rode referred to Town Code 232-21J(16) which reads: *Review of site plan. Approval of a site plan shall be contingent upon a determination by the Planning Board that the site plan adequately protects the health and safety of the community and does not create any undue hazard, and, to the extent reasonably feasible, protects adjacent land uses and the environment, is compatible with neighborhood character and is consistent with the Comprehensive Plan. The Planning Board's review of the site plan shall include, as appropriate, but is not limited to, the following general considerations and, specifically, conformity with applicable specifications, regulations, and guidelines within this chapter related thereto (16) Adequacy of control measures to prevent ground water or surface water contamination.* Mr. Rode referred to this and felt the Town should take this into consideration when determining whether the project can provide adequate control measures to prevent ground water or surface water contamination. Mr. Rode feels the Board still lacks critical information necessary to evaluate determination under this legal frame.

Mr. Rode acknowledged that Save Craryville has retained the Civil Engineering Firm of Nelson and Pope who have reviewed historical documents and confirm that for the better part of three (3) decades it was used both as a gas station and auto repair shop. Mr. Rode noted that in the past the Board recognized the need for a sub-surface investigation into the type of soil underneath the property. Mr. Rode also made claim that the magnetic testing done by the applicant was incomplete and inconclusive. Mr. Rode he pointed out that the magnetic testing did not detect the lift that sits on the site.

Mr. Rode brought up the fact that Civil Engineers Nelson and Pope feel the appropriate next step to take is to schedule a Phase II Environmental Site Assessment that would include soil sampling, a soil vapor study and a ground water sampling to see if the prior use impacted ground water.

Save Craryville HydroGeologist PAUL RUBIN... Mr. Rubin made claim that there is a sand and gravel aquifer beneath the proposed site and stated his work is supported by NYS Geologists and NY Rural Water Association which he feels has not been supported by the Applicant. He feels on-site testing is needed by the applicant. He noted that based on topography as well as the water table gradient and slope, water flow is generally from North to South. Mr. Rubin feels the applicant has not made the effort to research this nor conducted testing on the site and feels paper studies are not sufficient. He states that Save Craryville has performed off-site investigations and has confirmed the presence of a substantial sand and gravel aquifer beneath the site which he feels negates conclusions by the applicant's paper studies. Mr. Rubin made a presentation of a map showing his claims. Mr. Rubin noted that the Heffernan well has been in use since about 1800 and to the best of the present owners knowledge has never gone dry. He notes that this well must be fed by an upgraded source and any contaminate would be carried into said well. Mr. Rubin feels that a typical soil sequence described as low permeability silt loam from 0 to 17 inches above bedrock as depicted by the Soil Survey of Columbia County may not be accurate. Mr. Rubin noted that Ms. Patota did not analyze the specific site conditions and relied on maps prepared by the NY Rural Water Association for Columbia County which he feels is not adequate in making a determination. He feels the project should be either denied or placed on hold until site testing and analysis is conducted.

Ms. Becker asked if Mr. Heffernan is south of Bert's Inn. Mr. Heffernan noted that he is directly across the street from the Inn and in reference to his well he notes that he can put a shovel in the ground and reach water and he feels there is no chance that gasoline will not seep into his well.

Mr. Sawchuk asked how long his well has been in use and has it ever gone dry. Mr. Heffernan acknowledged that he drilled a new well about 8-9 years ago and it has never gone dry as there is a spring in his yard.

Hillsdale Resident BARBARA SMITH... Ms. Smith once again reiterated her previous concerns regarding the Traffic Study and notes that the Board is in receipt of many issues that were never considered buy the DOT.

Mr. Haight noted that there are some new issues that need to be considered by the Board, however many of the comments surrounded past issues. Considering this Mr. Haight made a motion to close the Public Hearing.

Mr. Sawchuk asked if Attorney Dow had any input regarding the stay of the Board regarding the Appeal to the ZBA. Attorney Dow did research this and concluded that this does not operate as a stay on this Board in a parallel concurrent review. Attorney Dow cited this in different cases. Attorney Dow pointed out that the Planning and Zoning Boards are two independent authorities, one to do a Special Use Permit and the Planning Board, a separate entity, doing a concurrent and independent Site Plan Review which are not dependent upon each other. Attorney Dow noted that it has been a practice in Copake to try to expedite things by allowing these processes to go on concurrently and independently with one not relying upon the other. Attorney Dow referred to the Berkshire Mountain Resort application which received Site Plan Approval in August and a ZBA Special Use Permit in November.

Mr. Urban made note of the fact that the Planning Board might be reliant upon information reported to the ZBA and approved by the ZBA which might turn out to be inadequate. Attorney Dow acknowledged that the Board can proceed with any questions and can request any information they might feel is needed however it is a different review and not concurrent with the ZBA process. Attorney Dow pointed out that the stay surrounds whether the Special Use Permit is expired and does not address any of the substantive issues. Attorney Dow also made note of the fact that inasmuch as an appeal has been brought to the ZBA on this other issue which is not part of the Planning Board's Review, there is no stay operating here.

Mr. Rode did not agree with Attorney Dow's interpretation and noted that the Save Craryville position is that the two proceedings are dependent on each other because if the Special Use Permit has expired the Planning Board shouldn't grant Site Plan Approval. Attorney Dow advised him that this is not policy in the Town as applications have been done concurrently and independently and the Planning Board has approved Site Plans prior to the issuance of a Special Use Permit. He did note that no Building Permit can be issued until both the Site Plan and Special Use Permit have been approved however each Board can proceed on their processes on their own.

Mr. Haight made a motion to close the GRJH Public Hearing permanently which was seconded by Ms. Becker. A Roll Call Vote was taken. It's results are as shown below:

Ms. Cohen	Mr. Haight	Ms. Becker	Mr. Sawchuk	Mr. Savarese	Mr. Urban
Nay	Yes	Yes	Nay	Yes	Nay

The vote was 3 to 3 and the motion was not carried

Mr. Haight noted that the Public Hearing will remain open until the next meeting.

SUBDIVISIONS/SITE PLANS

2019-5 ZBA REFERRAL/SPR– KEVIN & GLORIA ANDERSON – Washington Road [Taconic Shores]

- Letter from Evan Hogan/NYSDEC Permits dated August 30, 2019

Linda Chernewsky represented the applicant. Ms. Chernewsky submitted a non-jurisdictional determination letter from the DEC stating that they received pictures of the pipe and they went to the Biologist of the Bureau of Ecosystem Health and they said that there was no problem as long as there is not over 1 acre of disturbance. Ms. Chernewsky noted that the applicant's property is not even an acre.

Site Plan was carried over until clarification was received from the DEC. Ms. Chernewsky pointed out that approval was received from the ZBA.

The Board proceeded with Site Plan and reviewed the Check List. Mr. Haight asked whether there were any questions regarding the Check List. There were none.

- **On a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted unanimously to approve the Site Plan for Kevin and Gloria Anderson on Washington Road in Taconic Shores dated January 2019.**

Ms. Chernewsky will bring in copies of the Site Plan for Mr. Haight to sign.

2019-19 BOUNDARY LINE ADJUSTMENT – ANNA HELEN BOHLING STICKLER – County Route 7 [Copake]

- SEQRA (Parts 1, 2 & 3)

Dustin James appeared to represent the applicant for a Boundary Line Adjustment. Mr. James explained that the applicant wishes to combine Parcel A2 with Parcel B. He pointed out that Parcel B is presently just under an acre and once combined with Parcel 2 will be approximately 6.2 acres leaving Parcel A1 with 15.4 acres remaining. Attorney Dow asked if there will be any new parcels created and Mr. James acknowledged that no new parcels are being created.

Ms. Becker noted that the Subdivision Check List was reviewed last month and a Public Hearing was set. There was a question as to whether an Agricultural Data Statement was needed. Ms. Becker pointed out that at last month's meeting Surveyor Dan Russell made note of the fact that none of the farms in the area receive an Agricultural Exemption. After discussion and review of the Zoning Map it was decided that an Agricultural Data Statement was not required. Attorney Dow noted that if an applicant's property does not come within five-hundred feet (500') of an Agriculture District it does not need an Agricultural Data Statement.

The SEQRA was reviewed. Ms. Becker read Part 2 of the SEQRA into the record. After review the Board made a determination of Part 3 of the SEQRA.

- **On a motion made by Ms. Becker and seconded by Mr. Haight the Board voted unanimously to make a Negative Declaration.**

With no further discussion.

- **On a motion made by Mr. Haight and seconded by Mr. Savarese the Board voted unanimously to approve the Boundary Line Adjustment for Anna Helen Bohling Stickler from a Survey Map dated May 24, 2019**

2019-21 BOUNDARY LINE ADJUSTMENT – ROGER F. EDELMAN LIVING TRUST – Trout Brook Road [Copake]

- Application for Boundary Line Adjustment dated August 21, 2019
- List of Abutting Owners
- Part I of the Short Environmental Assessment Form (SEQRA) dated August 21, 2019
- EAF Mapper Summary Report dated June 11, 2019
- Letter of Agency from Bert Poucher, Trustee
- Letter of Agency from Sal Cascino, Member
- Agricultural Data Statement
- Site Map
- Tax Statement for Roger F. Edelman Trust
- Tax Statement for 13 Lackawanna Properties LLC
- Bargain and Sale Deed between Roger F. Edelman and Bert Poucher
- Indenture dated January 17, 2006
- Survey Map

Dustin James represented the applicants for a Boundary Line Adjustment between the Roger F. Edelman Trust and Salvatore Cascino. It was noted that the land in question is separated by the street and Mr. Cascino will retain all the land on one side of the Road and subdivide the parcel on the opposite side of the Road.

Mr. Haight noted that a Public Hearing will need to be set for next month's meeting.

The Minor Subdivision Check List was reviewed. Mr. Haight noted that inasmuch as the location of the property is on Route 22 this application needs to be sent to the New York State Department of Transportation (NYS DOT).

Mr. James will return next for month's meeting.

**2019-20 BOUNDARY LINE ADJUSTMENT – LYN MAIN – North Mountain Road
[Copake]**

- Application for Boundary Line Adjustment dated August 6, 2019
- List of Abutting Owners
- Consent of Authorization to Act dated August 6, 2019

Wesley Chase appeared representing Lyn Main on North Mountain Road. Mr. Chase explained that this is a multi-step process as he is working with the Columbia Land Conservancy and Scenic Hudson to help preserve the development rights through a Conservation Easement.

Mr. Chase made a color-coded presentation to show what Mr. Main wishes to accomplish. He noted that there are presently four (4) separate Tax Parcels that will eventually become three (3). He explained that there are presently two separate farms and Mr. Main wishes to subdivide off one (1) lot making three (3) separate lots. Mr. Chase explained that everything will be under a Conservation Easement with the exception of Lot 1, the 9.55 parcel to be created in addition to a couple of Farm Complexes on the Conservation.

Mr. Haight made note of the fact that this application also needs to be sent to the NYS DOT. Ms. Becker requested a color-coded copy of the presentation made by Mr. Chase.

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

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

- No new submissions from the Applicant

Alicia Metz appeared representing GRJH. Mr. Haight asked if there were any new submissions. Ms. Metz acknowledged that there were none.

After the Public Hearing Mr. Haight asked if the Board had anything they wanted to discuss. Mr. Urban has concerns regarding the new information brought up regarding the prior use of the applicant's property. Mr. Haight questioned why the Public Hearing should remain open inasmuch as the applicant did not have any new information to present. Mr. Urban felt that the new information presented at tonight's meeting was relevant. Mr. Haight noted that new information can still be sent in. Attorney Dow did acknowledge that once the Public Hearing is closed submissions are closed as well.

Mr. Haight asked Mr. Sawchuk why he felt the Public Hearing should remain open. Mr. Sawchuk pointed out that the information which was received by the public took a lot of work and was a commitment from the community done voluntarily. He feels this is a substantial financial commitment made by them and is a battle of the experts. Mr. Haight acknowledged that once submitted the information is for the Board to consider. Ms. Cohen felt it couldn't hurt to hold the Hearing open one more month to give everyone time to digest the information that was brought up.

Mr. Sawchuk asked if the Town Engineer can take a deeper look into the issues brought up. Mr. Haight acknowledged that he spent many hours researching the property and pointed out that the reason the ground radar was requested was to try and resolve this. He also made note of the fact that it isn't like the Board has been ignoring this. Mr. Sawchuk felt a Phase II should be considered. Ms. Becker suggested discussing this with the Town Engineer.

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]

- E-mail from David Weiner dated August 8, 2019
- Letter from Agriculture and Markets dated June 17, 2019
- Letter from Robert Somers/Agriculture and Markets dated September 5, 2019

Mr. Haight noted that inasmuch as the submissions weren't received until late this afternoon this application was tabled until the Board was able to review them.

2019-18 BOUNDARY LINE ADJUSTMENT– PAUL AND NANCY MILLER– County Route 7A [Copake]

- Application for Boundary Line Adjustment dated July 19, 2019
- Part I of the Short Environmental Assessment Form (SEQRA)
- EAF Mapper Summary Report dated June 11, 2019

Martin Schmidt of Holtz Survey approached the Board and advised them that he was here to represent Paul and Nancy Miller. Ms. DeConti advised him that she had contacted the applicant several times and had not heard back from them. The Board reviewed the application.

Mr. Schmidt advised the Board that Mr. and Mrs. Miller have a two-hundred and sixty (260) acre parcel that they would like to subdivide twenty-eight (28) acres from. Mr. Haight questioned whether there had previously been a major subdivision done on this property. Ms. Becker believed there was. It was noted that nothing had been built yet. Mr. Haight also noted that a few Site Plan approval extensions were received for this however the last one expired. Ms. Becker pointed out that nothing was ever built on this. Mr. Schmidt noted that the property was owned by someone else at that time.

Ms. Becker suggested Mr. Schmidt review the Subdivision Check List prior to next month's meeting.

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

Please note that all referenced attachments, comprising 136 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

RANDY & SUSAN COHEN BYRNE

July 24, 2019	Building Permit Denial (2)
July 22, 2019	Short Environmental Assessment (SEQRA) (7)
August 14, 2019	Request for Area Variance (2)

GRJH INC.

Public Comments

August 26, 2019	Zarin/Richmond/Rode to Haight/CPB (3)
August 30, 2019	Rode to ZBA/CPB (55)
September 5, 2019	Rubin to Haight/CPB (17)
September 5, 2019	McBride/McCormack to CPB (8)

ROGER F. EDELMAN LIVING TRUST

August 21, 2019	Short Environmental Assessment (SEQRA) (4)
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KEVIN & GLORIA ANDERSON

August 30, 2019	Hogan/DEC to Anderson (2)
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ROGER F. EDELMAN LIVING TRUST

August 21, 2019	Short Environmental Assessment (SEQRA) (4)
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13 LACKAWANNA PROPERTIES

June 17, 2019	Latham to Nayer (2)
July 12, 2019	Weiner to CPB (3)
September 5, 2019	Somers to CPB (23)

PAUL & NANCY MILLER

September 4, 2019	Short Environmental Assessment (SEQRA) (4)
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