



COPAKE PLANNING BOARD

JANUARY 7, 2009

MINUTES

DRAFT

Please note that all referenced attachments, comprising 4 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 7:05 p.m. by Marcia Becker, Chair. Also present were Chris Grant, Gray Davis, George Filipovits, Skip Pilch, Jon Urban and Planning Board Attorney Lawrence Howard. John Brusie was not present as he tendered his resignation prior to the meeting. Lisa DeConti was present to record the minutes.

ZONING BOARD OF APPEALS – Referrals

1. BOUNDARY LINE ADJUSTMENT – MARK & LISA NIELSEN – Southwest Colony Road

Ms. Becker informed the Board that the Zoning Board of Appeals denied the application for Mark and Lisa Nielsen and they would not be able to build their Cabana fifty feet (50') from the lake.

2. HEIGHT AND SIDE YARD SET-BACK VARIANCE – SHARON AND JED LUCHOW – Grant Drive and County Route 7

Ms. Becker advised the Board that the Luchow Site Plan Review needed to be completed inasmuch as the Board previously asked for more information regarding the septic and well. She pointed out that new documentation regarding this has been received.

Ms. Becker informed the Board that she received a phone call from Jeff Nayer immediately after the Zoning Board of Appeals meeting advising her that approval was needed for this applicant as soon as possible inasmuch as the builders were ready to proceed. Mr. Nayer assured her that the architect would provide the septic information the Board requested. Ms. Becker acknowledged that the septic information had recently been received, however it did not appear to be in compliance with regulations. Ms. Becker pointed out that a “reputed” septic system appeared on the map with a five hundred (500) gallon septic tank which does not comply with a proposed three (3) bedroom home. She also noted that the well was located on someone else’s property.

Mr. Grant questioned whether this application was still before the Zoning Board. Ms. Becker clarified that the Zoning Board approved the application and a building permit has already been

issued. Mr. Grant questioned what could be done inasmuch as the permit had already been issued. Ms. Becker advised that the permit could be pulled. Ms. Becker pointed out that the Site Plan application has not been approved by the Planning Board. Mr. Grant suggested having a stop-work order issued as there are concerns that the septic is too close to the lake.

Mr. Davis questioned whether conditional approval was an option. It was decided that Ms. Becker would speak with the designer regarding this and the matter would be left open.

3. AREA VARIANCE WITHIN 100 FOOT SET-BACK OF WETLAND – ROLANDO COHEN & LINDA LARACH – Pond Hill Road

Ms. Becker informed the Board that Rolando Cohen and Linda Larach were seeking an expansion for a house in DEC wetlands on Pond Hill Road. Ms. Becker explained that there are three individual lots which the owners are combining into one lot. She acknowledged that the size of the lot is not an issue but noted that the entire structure is within one hundred feet (100') of a DEC Wetland.

Ms. Becker referred to the Set-Back Law that stated that the proposed addition to the existing house shall not come closer to the Wetland than one-hundred fifty feet (150') [232-9.P.]. She advised the Board that a request is being made before the Zoning Board for an area variance to remodel the existing house and construct the deck and the handicap ramp within the one hundred foot (100') set-back to a wetland. Mr. Grant questioned whether the applicants are expanding the house or just putting in a ramp. Ms. Becker believed the footprint was being expanded some. Mr. Davis clarified that a master bedroom and master bathroom were being added.

Mr. Grant questioned whether DEC approval was needed before the Board could proceed. Ms. Becker acknowledged that this is the case. Attorney Howard advised the Board that he had been asked whether approval could be granted without DEC approval. He advised them that approval could be granted contingent on DEC approval and the Planning Board could grant approval contingent on DEC approval.

After a discussion of the project's expansion, it was the Board's decision that Ms. Becker would write a letter advising that alternatives should be considered. Ms. Becker pointed out that there was a lot of space on the property to pursue other options, for example, expanding toward Pond Hill Road away from the Wetland. Mr. Grant believed that a variance could be granted if there was a real reason as to why alternatives could not be considered.

PUBLIC HEARING

2009-9 MINOR SUBDIVISION – CARL CAMPBELL & KRISTA PROPER – Bloody Hill Road

Ms. Becker acknowledged the fact that a Public Hearing had been opened at the last meeting for Carl Campbell and Krista Proper who were not able to appear at that time. She noted that the Public Hearing had been left open and will remain open as the applicants were not prepared to appear at this month's meeting either. Ms. Becker informed the Board that Mr. Campbell and Ms. Proper planned on appearing at next month's meeting.

**2009-14 BOUNDARY LINE ADJUSTMENT/SITE PLAN REVIEW – KAREN S. SMITH
and Maarten de Kadt – Route 7A**

On a motion made by Mr. Filipovits and seconded by Mr. Davis the Board voted unanimously to wave the reading of the notice for the Public Hearing. On a motion made by Mr. Davis and seconded by Mr. Filipivots the Board voted unanimously to open the Public Hearing. Ms. Becker asked if anyone wished to speak on this application. Being none, on a motion made by Mr. Pilch and seconded by Mr. Urban the Board voted unanimously to close the Public Hearing. Ms. Becker advised the Board that James Tomaso provided letters from all the neighbors after the scheduling of the Public Hearing, none of whom objected to the Boundary Line Adjustment.

SUBDIVISION/SITE PLAN

**2009-14 BOUNDARY LINE ADJUSTMENT/SITE PLAN REVIEW – KAREN S. SMITH
and Maarten de Kadt – Route 7A**

Mr. Davis asked for clarification of this application. Ms. Becker reminded the Board that the applicants wished an equal exchange of property inasmuch as the applicant's shed was presently located on the neighbor's property. Inasmuch as all the requirements had been met on this application Ms. Becker asked if Mr. Grant would read the SEQR.

After the reading of the SEQR, on a motion made by Ms. Becker and seconded by Mr. Filipovits, the Board voted unanimously to make a Negative Declaration. On a motion made by Mr. Davis and seconded by Mr. Pilch the Board voted unanimously to approve the Boundary Line Adjustment for Karen S. Smith & Maarten de Kadt and William Flynn and Susan Flynn, merging Parcel 1 with Parcel 2A and Parcel 2 with Parcel 1A, dated October 14, 2009 on a survey map by James Tomaso.

2009-10 MINOR SUBDIVISION – GLORIA LYONS – County Route 7

Gloria Lyons appeared before the Board and presented the revised maps for the property she wished to sell to her neighbor Jay Hoag. Ms. Becker advised Attorney Howard that this was the property with a lot that was half in the "R" Zone and half in the "R-2" Zone that she spoke of with him about previously. Ms. Becker acknowledged that a readable map had been provided by Engineer Doug Clark.

Ms. Becker explained that with Mr. Hoag purchasing an additional half of an acre from Ms. Lyons it organically followed the division in the Zones. She acknowledged that Ms. Lyons would keep her house and 1.33 acres which remains mostly in the "R-2" district and the boundary line issues in the "R" Zone were resolved with Mr. Hoag combining the additional property he is purchasing from Ms. Lyons with the lands he presently owns in the "R" Zone. The Board was in agreement that these actions comply with regulations.

Ms. Becker asked if Mr. Urban would read the SEQR. After the reading of the SEQR, on a motion made by Ms. Becker and seconded by Mr. Grant, the Board voted unanimously to make a Negative Declaration. On a motion made by Mr. Davis and seconded by Mr. Filipovits the Board voted unanimously to approve the Boundary Line Adjustment for Gloria Lyons to be merged with the lands of Jay and Rosa Hoag on a subdivision map by Daniel Russell dated January 4, 2010.

MINUTES

Ms. Becker asked for a motion to approve the minutes of the December 3, 2009 with one correction. She noted that the following paragraph which is on page 5 of the December 3, 2009 minutes, regarding Motor Vehicle Storage which reads *five (5) junk cars and registered cars* should read *unregistered cars*.

The following paragraph should read:

Ms. Becker reminded the Board that recommendations had been made by the Planning Board as well as the Zoning Board of Appeals and Zoning Enforcement Officer regarding Motor Vehicle Storage. She advised the Board that the Town Board ignored these recommendations and passed a law at the end of the last Budget Meeting on November 12, 2009 saying **that five (5) junk cars and unregistered cars per lot can be in the business district**. She also pointed out that under the Town Board decision any Motor Vehicle Storage area could have sixty (60) vehicles behind the fence, fifty (50) per acre up to two hundred (200) per business. She pointed out that none of these need to be licensed. Ms. Becker believed this to be an irresponsible act of Government and asked if the Board wished to do anything about this. Ms. Gabaccia informed the Board that the original task force recommendation was written up incorrectly, tabled, revised and then voted on. Ms. Becker suggested writing a letter stating that it was reviewed by the Board and recommendations were made which were ignored. Ms. Gabaccia agreed with this. Ms. Becker informed the Board that she had discussed this with Attorney Howard who advised that there were conflicts in the zoning that needed to be straightened out. Mr. Brusie questioned whether this was the responsibility of the Comprehensive Planning Board. Ms. Becker believed this would be the case eventually and pointed out that the permits have to be issued every year and they would be issued according to this law. It was agreed that a letter would be written to the Town Board expressing disappointment in the fact that recommendations were ignored and items were added without the Board's knowledge. It was the Planning Board's opinion that the enactment of Local Law 3 was negligent.

There being no further changes, on a motion made by Ms. Grant and seconded by Mr. Filipovits the Board voted unanimously to accept the minutes of the December 3, 2009 meeting as amended.

ADMINISTRATIVE

REGULATION 232-23, 232-24 (2) (A) [5] CONFLICT: - Ms. Becker brought up the fact that there appears to be a conflict within the Zoning Codes. She quoted Regulation 232-24 – **Nonconforming uses, structures and lots:** *Any modification of a nonconforming building or structure is subject to a site plan review and approval by the Planning Board in accordance with 232-23.* She then referred to the first paragraph of **Regulation 232-23 – Site plan review and approval** where it states: *that for any structure greater than 35,000 usable square feet or floor space, including an agricultural building or any building costing more than \$400,000, the Building Inspector shall require site plan approval pursuant to this section.* Mr. Grant clarified that in accordance with 232-23 means it is accordance with the Site Plan Review regulations, not with the first paragraph. Ms. Becker asked attorney Howard if he agreed with Mr. Grant. Attorney Howard assured her that he did agree with this and believed that he might have already written a letter regarding this to previous Chair, Edgar Masters. He believes that it is clear that the intent is subject to the Board's approval not just a referral. Ms. Becker questioned the \$400,000 and 35,000 square foot ruling to which Mr. Grant clarified was the normal standard, however, an additional standard needs to be considered if it is on a nonconforming lot. Attorney Howard added that this would make a Site Plan Review apply to another category or condition. Attorney Howard asked when this had been amended and Ms. Becker responded that it had been amended in June 8, 2006. Attorney Howard clarified that the change had been intentional.

CATAMOUNT ROAD SITUATION: - Ms. Becker advised the Board that during the Hotel Resort Project Site Plan Review approval, there was a clarification and modification of the road ownership by the Swiss Hutte and Catamount Development Corporation. She noted that the Swiss Hutte gave the part of Catamount Road that they owned to the Town of Copake and Catamount Development Corporation gave a little bit of land from the parking lot they owned to the Town of Copake in order to make it a Town road. Ms. Becker pointed out that the Town Board accepted it as a Town road and the Subdivision Map was filed with the County Clerk, however, the parties involved never filed their revised deeds. She noted that the Hotel project is on hold and the ownership of the road is in the process of being sorted out. Mr. Davis questioned who was maintaining the roads. Ms. Becker clarified that the Swiss Hutte is only taking care of the part they owned. Attorney Howard asked if the Swiss Hutte was objecting to the exchange. Ms. Becker acknowledged that this was not the case and the only issue is that the deeds had not been filed as the agreement to do this had been tied up with other agreements that went along with the Hotel Development. She pointed out that what needs to be done is to extrapolate the agreement that pertains to the road swap and noted that this was the information that she recently sent to Carl Whitebeck who was the attorney at that time, as requested by Reggie Crowley. Ms. Becker is not aware of where it presently stands after Attorney Whitbeck was not re-hired as the Town Attorney.

CARRY-OVER LETTER UPDATE: – Lisa DeConti gave an update regarding the Agenda Carry-Over letters that had been sent to update the Planning Board files for the new year. She clarified that Al Fair withdrew his application, Michael and Eileen Cohen's application has been approved as the required documentation has been submitted and Kevin O'Neill responded with a request to remain active. She noted that there had been no response from Larry Linder, Track Associates,

Stephen Kahn, John Hilliard or James and Loredana Kelly and letters will be sent to them advising them that their applications have been deemed abandoned.

JUNK YARD AND MOTOR VEHICLE STORAGE UPDATE: – Ms. Becker reminded the Board that at the last meeting it was decided that a letter would be written to the Town Board regarding the bad law that had been passed. Ms. Becker then informed the Board that she asked Attorney Howard to review it and give some explanation as to what the law said. Attorney Howard reviewed the letter that he sent to the Planning Board referring to *Amendment 156: Junk Yard and Motor Vehicle Storage Areas* and found it to have several significant problems some of which it had before it was amended and some of which were created by the amendment. He pointed out that there is a major conflict and the zoning as well as confusion in the language which could potentially lead to law suits. Depending on how the major conflicts are sorted out, Attorney Howard advised that this could open up this type of use anywhere in Town.

Regarding the major conflict between this and the zoning, Attorney Howard advised that this use is not in the use table and, as such, is not permitted. He acknowledged that there are a few Junk Yards and/or Motor Vehicle Storage areas which are presumably non-conforming uses but pointed out that the idea of creating a license or amending a law that has been on the books, creating a license, is problematic. He noted that this could be an indirect way of regulating the existing business but pointed out that this is not a good approach as this could cause other problems. He brought up the theory of a business not renewing their license and questioned what would then be done about it as they are still a non-conforming use. He questioned whether they would be sued with the attempt to close them down since they don't have a license. He believed this is not a good legal stance to approach this problem. Attorney Howard pointed out that not only are they not permitted in the use table, Chapter 156 specifically says it doesn't override the zoning in the law. He noted this as a fundamental problem.

The other problem Attorney Howard referred to is the language in the new definition which uses the terms Commercial District and Residential area. Referring to the Commercial Districts, Attorney Howard felt it could be assumed that this refers to the zoning district but noted that when using the term Residential Area instead of Residential District, there is confusion as to what the zoning is. In trying to apply this law, Attorney Howard felt there could be confusion if a license is given to someone in a Commercial District as an argument could be given that it is a Residential Area because there are four (4) houses in this area and only one business in this area. He believed this could create another opportunity for law suits by people opposed to these uses.

He also sees a significant problem with some of the new language that incorporates numeric limitations on the amount of unlicensed vehicles as those limitations all apply to Motor Vehicle Storage areas and not to Junk Yards. He noted that there is no difference in the application process for Motor Vehicle Storage areas or Junk Yards and questioned why someone would apply for a Motor Vehicle Storage Area license that has numerical limitations on it rather than a Junk Yard license which does not with no criteria as to the Town granting one over the other. Attorney Howard felt these numerical limits have no weight. Attorney Howard pointed out that assuming the conflict between the zoning and the license could be sorted out in favor of allowing these uses, they could be built anywhere in Town. He noted that there is no lot size limit, no location limit or no district limit. Attorney Howard also made note of the fact that he felt there would not be many new business applying for this and believed this was to deal with the existing

ones but acknowledged that this process could open the door to have them anywhere in the Town. It was Attorney Howard's opinion that the amended Chapter 156 added to the problems and confusion.

Mr. Grant asked Attorney Howard if zoning prohibited Junk Yards with the exception of the existing one and asked if the new law that was written was invalid. Attorney Howard advised that if he had a client that wanted a Junk Yard, he would ask for a license as a provision had been adopted for a license in the new law. He also pointed out that he believed the Planning Board would prevail on the Zoning Laws should they not want to grant approval but noted that the argument is there for someone in any district to claim there is a local law providing for a license for a Junk Yard. Mr. Grant pointed out that either the Town Board needs to agree to amend the Zoning to permit Junk Yards in certain areas or repeal this new law. Ms. Becker noted that the Town did not listen to all the recommendations made by all the Town Board's and she believed this is a problem that needs to be fixed. Attorney Howard made note of the fact that regulation is needed and acknowledged that there are ways of putting it into the zoning without opening it up to everybody under the sun. He also suggested that a license could be incorporated in a way that would be more feasible.

Ms. Becker asked Attorney Howard if a letter should be presented to the Town Board again advising the Town of the ramifications. Mr. Grant suggested speaking with Ms. Gabaccia about bringing this before the Town Board advising them of the potential problems that can arise with this amendment. Mr. Grant asked if there was a way to have this apply only to anything that has been grandfathered. Attorney Howard believed the best way to deal with this is to put the licensing into the zoning, but pointed out that the non-conforming issue might cause problems. Mr. Grant suggested the issuance of a special use permit granted annually for a non-conforming use. Ms. Becker acknowledged that these recommendations were made but were not accepted. The Board was in agreement that Ms. Becker approach Ms. Gabaccia about how best to deal with the Town. Mr. Grant suggested Attorney Howard look at the law and revise it. Ms. Becker advised him that this could not be done without the Town's approval. Ms. Becker acknowledged that the Town could be advised of Attorney Howard's recommendations, however, Attorney Howard noted that the best recommendation would be to repeal the Chapter 156 and the amendment.

PLANNING BOARD VACANCY: – Ms. Becker brought up the fact that recommendations were made to the Town Board for reappointments. Chris Grant was reappointed to the Planning Board for an additional term and Lisa DeConti was reappointed as secretary. However, she pointed out that nothing was said regarding the Land Use Attorney or Town Engineer. Ms. Becker noted that the Planning Board has the right to hire its own experts and acknowledged that the Board unanimously agreed to re-hire Attorney Lawrence Howard and Engineer Doug Clark. Mr. Grant asked Attorney Howard if he remembered receiving a signed letter by Angelo Valentino who was supervisor at the time of his appointment. Attorney Howard acknowledged that he did have a copy of the letter but noted that the present Board could make changes if they desired. Attorney Howard advised that the Planning Board's interpretation was correct in the fact that they can hire experts as they wished, however, the Town Board could force a fight if they chose, as they write the checks. Ms. Becker pointed out that the money had already been appropriated for experts in the 2010 budget under contractual. Attorney Howard advised that if the Town was not in agreement with who the Planning Board hired they could refuse to make payment. Ms. Becker

informed the Board that she spoke with Daniel Tompkins regarding this and the fact that it would not be cost effective to start with a new attorney inasmuch as Attorney Howard had been working on several cases since he began with the Board under Angelo Valentino's appointment. Mr. Davis agreed that having Attorney Howard remain the Land Use attorney would be most cost effective. A discussion ensued regarding the Assistant County Attorney and whether or not he is being considered as a candidate for Planning Board attorney. The Board was in agreement that Attorney Howard remain as Land Use Attorney.

BRAUNSTEIN UPDATE: – Ms. Becker informed the Board that Mr. Braunstein is still working on his project and wishes to remain active even though he is not ready to return at this time.

ELECTION OF OFFICERS FOR 2010: – Ms. Becker advised that the Board has to elect their officers for 2010 and asked if the present officers are willing to remain in their positions. All Board members agreed to remain in their present positions, Chris Grant as Vice Chair, Gray Davis as Secretary and Jon Urban as Treasurer.

FLOOD OVERLAY MAP: – Ms. Becker informed the Board that there is a problem with the Flood Overlay Map inasmuch as it is taped together in many places and asked for the Board's approval to have Doug Clark make another Flood Overlay Map. The Board unanimously agreed to have Mr. Clark draft a new map.

AROUND-THE-CLOCK COMMITTEE: – Ms. Becker asked if the Board was aware of the Around-The-Clock Committee who is working feverishly to restore the village of Copake. Ms. Becker informed them that this is Leslie Woods initiative from the Economic Advisory Board who is working with the County Highway Department and Dean Knox who is going to re-do the village in 2011 putting in sidewalks, street lamps, bike shoulders and paths between buildings, trying to get businesses to come into the villages. Ms. Becker acknowledged that someone is renting the gray building on the corner near the theater and someone will be re-opening the Hub.

SHAGBARK FENCING: – Ms. Becker informed the Board that she met with the Environmental Committee regarding the fencing being put up by Shagbark Farms and the fact that they are planning to double the amount of fencing they have already put up. She noted that the Environmental Committee is willing to help the Board become proactive in dealing with this issue. Mr. Davis brought up the fact that he was speaking with someone regarding another town that had a similar issue with fencing and would find out how this was dealt with by them. Ms. Becker brought up the fact that the Board had previously discussed allowing for wildlife corridors. Mr. Grant noted that the Columbia Land Conservancy is looking into doing an overall wildlife protection. Ms. Becker also noted that the Comprehensive Planning Committee is going to do an agricultural protection plan as well. Linda Gabaccia informed the Board that she met with the newly revised Conservation Resources Committee who now has Susan Winchell Sweeney who can do GIS mapping. She pointed out that the first thing they will be tackling is agricultural and farm land protection and may be able to look into this issue as well. Mr. Grant believed there are some bigger issues like maintaining open spaces and corridors for animals but

noted that the Planning Board is limited in what they can do. It was also noted that Harvey Webber was bringing this issue to the County Environmental Committee. Mr. Urban believed that Shagbark Farms is trying to create these corridors and suggested that someone contact them to discuss what their plans are regarding this. Ms. Becker questioned who should contact them. Mr. Grant believed it should not be the Planning Board at this point as they have limited legal authority unless something in the Comprehensive Plan says that the owner shall submit some kind of master plan to the Planning Board showing corridors and habitats. Mr. Urban noted that Shagbark Farms is not doing anything they are not supposed to be doing. Mr. Grant agreed with him with the exception of the height of the fencing. Ms. Becker pointed out the impact on the wildlife is significant but Mr. Grant advised her that this is not within the Planning Board's Zoning Code. Attorney Howard advised that something could be put in the Code about the corridors. Mr. Grant noted that this would have to be consistent with the Comprehensive Plan to which Attorney Howard agreed. Mr. Urban felt that Shagbark Farms might be willing to work this out and asked if it would be inappropriate for someone from the Board to contact them. Attorney Howard advised that this would be appropriate if it was not on behalf of the Planning Board. Diana Wilson suggested contacting Erik Kiviat regarding this. Mr. Grant suggested contacting the Environmental Committee but it was noted that they do not have a budget. Ms. Wilson pointed out that she was advised that although there is a lot of other property around where deer, fox, coyote and other animals could roam it does not mean that they will necessarily survive in those areas as they might not be the areas common to them. She also brought up the fact that this is becoming a safety issue as deer have been seen racing back and forth along the fencing when they are not able to get into the land which, in turn disrupts traffic. Mr. Grant asked if the Comprehensive Committee could look into this. Ms. Becker agreed.

PERMIT AND LICENCE ISSUING: – Ms. Becker asked Attorney Howard who in the Town is allowed to issue permits and licenses. Attorney Howard responded by telling her that it depends on the regulations. He advised her that it could be the Building Inspector or the Town Board and noted that the regulation should say who it is in each instance.

OUTDOOR WOOD BURNER UPDATE: – Ms. Becker asked for an update on the Outdoor Wood Burners. Linda Gabaccia advised her that she needed to give Attorney Howard the revisions the Town Board recommended. She noted that the Town felt the wood burners did not need to be restricted by zone and believed the set-back resolved that issue. She also noted that the Board eliminated the suggestion of chimney height in relation to the ridge of the road. Other than that, Ms. Gabaccia advised that it is pretty much what was put together by Attorney Howard. Ms. Gabaccia did note that the Town believed new ones would be subject to a Site Plan Review. Attorney Howard explained that the option of a Site Plan Review is due to the fact that the Planning Board does not handle special permits and the Zoning Board does. He also noted that the Planning Board is the right Board to be addressing these issues and believed they should also be the ones granting or denying special permits but noted that the current zoning is older and has the ZBA doing that. Attorney Howard advised that any new amendments done to the Zoning Code should shift approval authority for special use permits to the Planning Board as the issues they address granting special permits are the same issues addressed during a site plan review. He noted that that special permits give greater authority to place additional conditions on those activities. Ms. Gabaccia noted that the Town Board did not go for the screening. Attorney Howard advised that inasmuch as they are subject to a Site Plan Review, the Board could ask for

screening. Ms. Becker pointed out that there is a law that she found under Prohibited Acts that should be considered regarding this. Ms. Becker referred to **232-10 [Prohibited Acts] of the Supplementary Regulations Code** which stated that *excessive smoke, fumes, gas, odor, dust or any other atmospheric pollutant beyond the boundaries of the lot whereon a use is located is prohibited*. Ms. Becker believed there is an area consideration. Mr. Grant advised that you would then have to get into what is excessive and this would be hard to make a case of. Ms. Becker referred back to the Code that stated that *smoke is excessive when the shade or appearance of such smoke is darker than No. 2 on the Ringlemann Smoke Chart, published by the United States Bureau of Mines*. Attorney Howard pointed out that this regulation has been in effect and questioned whether it has ever been used. He noted the reality is that the new law will be the one used. Ms. Gabaccia felt that density should be an issue but noted that the Board voted to not restrict according to density. Attorney Howard advised that a lot-size limitation could be used regardless of the zone, however, Ms. Gabaccia pointed out that the Town Board was not in favor with this.

SALVATORE CASCINO: – Mr. Davis questioned what had transpired with Salvatore Cascino. Attorney Howard acknowledged that this is waiting for Judge Nichols. Mr. Davis asked if Mr. Cascino was working on his house. Ms. Becker told him that Mr. Cascino had the foundation in for his house but that was all. Ms. Gabaccia believed that Mr. Cascino had slowed down in a lot of ways. Mr. Filipovits asked about the status of the Article 78 and Ms. Becker informed him that it has not been decided by the Judge as yet. Attorney Howard clarified that it is waiting for Judge Nichols to make a decision.

WILLIAM SPAMPINATO: – Ms. Becker informed the Board that Bill Spampinato had closed his Hudson office and is working out of his home in Copake Lake.

“THE LAST HARVEST”: – Ms. Becker informed the Board that Ellen Epstein from the Columbia Land Conservancy sent a recommendation of a great planning book called “*The Last Harvest*,” a case study of a traditional neighborhood development project in Pennsylvania written by journalist and architect Witold Rybczynski if anybody is interested in reading.

NEW TOWN ATTORNEY: – Ms. Gabaccia informed the Board that the new Town Attorney bills on an hourly basis.

CARRY OVER

The following matters were carried over to the next meeting:

**2009-9 MINOR SUBDIVISION – CARL CAMPBELL & KRISTA PROPER –
Bloody Hill Road**

**2008-07 SITE PLAN REVIEW - CATAMOUNT DEVELOPMENT CORP. –
State Route 23**

**2008-21 MAJOR SUBDIVISION – Michael B. & Barbara S Braunstein – Off Golf
Course Road**

ADJOURNMENT

There being no further business, on a motion made by Mr. Grant and seconded by Mr. Urban the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 8:45 p.m.

Marcia Becker, Chair

Please note that all referenced attachments, comprising 4 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

December 28, 2009 Kevin O'Neill to Lisa DeConti (1)
December 19, 2009 Becker, Brusie, Davis, Filipovits, Pilch & Urban to Town Board (1)
December 19, 2009 Becker, Brusie, Davis, Filipovits, Pilch & Urban to Town Board (1)
December 19, 2009 Becker, Brusie, Davis, Filipovits, Pilch & Urban to Town Board (1)