



# COPAKE PLANNING BOARD

JUNE 3, 2010

MINUTES

**Approved**  
July 8, 2010

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## APPROVED

Please note that all referenced attachments, comprising 5 pages, are on file with the Copake Town Clerk and in the Planning Board office. An annotated listing of those attachments appears at the end of this document.

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A regular meeting of the Copake Planning Board was called to order at 7:00 p.m. by Marcia Becker, Chair. Also present were Chris Grant, Gray Davis, George Filipovits, Skip Pilch, Steve Savarese and Jon Urban. Lisa DeConti was present to record the minutes. Jeff Nayer, Zoning Board of Appeals Chair attended.

## ZONING BOARD OF APPEALS – Referrals

### 1. SET-BACK VARIANCE [Request for relief from 150' set-back from lake for Mosquito Island septic system] – MICHAEL B. & BARBARA S. BRAUNSTEIN – Off Golf Course Road

Ms. Becker informed the Board that the application for Michael B. & Barbara S. Braunstein was referred back to the Planning Board from the Zoning Board of Appeals. Ms. Becker explained that the Braunsteins are asking for a variance from the one hundred and fifty foot (150') set-back from a water body for a septic system as well as a variance from the one hundred foot (100') set-back requirement for the bridge. Ms. Becker believed that the Board did not have enough information at this time to comment on the one hundred foot (100') set-back variance for the bridge. Mr. Grant felt that the Board should wait for the DEC to review this. Mr. Urban advised the Board that although the Town regulations called for a one hundred and fifty foot (150') set-back from a body of water, the County and the State require only a one hundred foot (100') set-back.

Ms. Becker noted that there were valid issues discussed during the Zoning Board meeting. She advised the Board that the ZBA questioned the life span of a sand filter septic system and was told by Mr. Braunstein's engineer Mr. Demos that it was thirty (30) years. Ms. Becker also noted that the subject of the road height around Copake Lake was brought up by the Zoning Board. A question was raised regarding the possibility of a substantial flood submerging Mosquito Island. Mr. Davis noted that there is a point where the water would breach the top of the dam and pointed out that the dam is lower than Golf Course Road and possibly Lakeview Road. Mr. Urban suggested having an engineer look into these questions.

Ms. Becker suggested that the Town Engineer, Doug Clark, review the application and advise the Planning Board. She also questioned whether another type of system could be proposed or if this system is adequate. Ms. Becker felt Mr. Clark would also be able to evaluate this matter. The Board was in agreement with this. Ms. Becker would contact Mr. Clark regarding this.

Mr. Grant questioned whether Mr. Braunstein would be responsible for the expense of the Town Engineer. Ms. Becker explained that this could be taken out of the Board's Consultant budget and if the expense became extraordinary the expense would then become the responsibility of the Braunsteins.

**2. VARIANCE [Modification of a non-conforming structure on an undersized lot in the 'R-2' Zone] – JOHN HOUSEMAN – Copake Lake**

John Houseman appeared before the Board and explained that he would like to extend his house six feet (6') out the back. Mr. Houseman noted that inasmuch as his lot is twelve feet (12') on one side, ten feet (10') on the other and one hundred thirteen feet (113') in the back, he would need to request a variance. Mr. Houseman explained that he wished to add a six foot (6') extension to the back of his house and would like to build a pitched a roof over the extension and the existing house. His roof is presently flat.

It was noted that Mr. Houseman's lot is an undersized lot. Mr. Grant questioned why Mr. Houseman needed to appear before the ZBA. Mr. Houseman explained that his lot is too narrow and the regulations call for a thirty foot (30') set-back on each side of his house. He pointed out that nothing would change regarding the set-back as he would only be extending his house toward the back. Ms. Becker noted that the question was whether they were increasing the non-conformity on the lot with the addition.

Mr. Houseman believed the non-conformity is not being increased as he is only extending his house from a length of twenty feet (20') to a length of twenty six feet (26'). Mr. Savarese pointed out that, technically, this is an increase in the non-conformity but he noted the question in play was whether this increased the impact on the neighbors adversely. Ms. Becker pointed out that by extending his house six feet (6') to the back, Mr. Houseman was increasing the non-conformity to the lot inasmuch as he is increasing the length of the non-conformity.

A discussion ensued as to whether Mr. Houseman's set-backs were at eight feet (8') or the twelve feet (12') he presently has. Ms. Becker believed that this should be brought to the Town Attorney, Tal Rappleyea, for clarification. The Board was in agreement with this. Ms. Becker would contact Attorney Rappleyea.

**3. VARIANCE – [Modification of a non-conforming structure on an undersized lot in the 'R' Zone] – MARK FRICKEY – Route 7, West Copake**

Mark Frickey appeared before the Board and presented them with the necessary maps. Ms. Becker explained that Mr. Frickey is in need of a variance for the modification of a non-conforming structure on an undersized lot in the three (3) acre 'R' Zone. Ms. Becker advised the Board that she had given Mr. Frickey the Site Plan Review Check List so that he would be able to fill it out with the required information.

Ms. Becker explained that Mr. Frickey cannot meet the rear set-back required in the zoning. Jeff Nayer, Zoning Board Chair, explained that inasmuch as the rear of Mr. Frickey's property was considered the point, Mr. Frickey needed to request a side-yard set-back.

Mr. Frickey explained that he wished to place a garage on the side of his house replacing the Mud Room and also wished to place a sun-room at the back of his house replacing the deck. Mr. Frickey noted that this would result in a thirty-nine foot (39') side-yard set-back where a fifty foot (50') set-back is required, increasing the existing non-conformity. Ms. Becker noted that the number of bedrooms would not be increased and a letter was received stating that the septic tank is a one thousand (1,000) gallon concrete tank sized for three (3) bedrooms.

Mr. Grant pointed out that this applicant will be referred back to the Zoning Board and noted that this case is a non-conforming structure where the non-conformity is being increased. Mr. Grant advised Mr. Frickey that he would need to argue his case before the Zoning Board of Appeals as it is up to the ZBA to decide whether there are alternatives that can be used.

## **PUBLIC HEARING**

**None**

## **SUBDIVISION/SITE PLAN**

### **2010-8 MINOR SUBDIVISION – ALICE BELT – Empire Road**

Alice Belt appeared before the Board with Randi Shadic and Charlie Miller representing the Fire Department. Ms. Belt explained to the Board that although her property is up for sale, she wished to donate a 1.699 acre portion of her property to the Fire Department. She went on to explain that there is a pond on that portion of her property, connected to the driveway of the parking lot belonging to the Town, Peck insurance and First Niagara Bank that is used by the Fire Department for water in the event of a fire.

Mr. Grant asked if there is an existing easement on the property allowing the Fire Department access and asked whether the Town owned the road. It was noted that the Town owned a portion of the parking lot abutting the property. It was also noted that there was no easement. Mr. Shadic explained that the Fire Department had always been allowed access to the pond by Ms. Belt and prior owners of the property.

Mr. Grant questioned whether it would be advisable to formalize the present agreement with Ms. Belt by an easement rather than conveying the land to the Town, which would transfer the easement to any further owners. Mr. Shadic expressed concern that an easement might make it difficult for Ms. Belt to sell the property as a new owner might not want to purchase property that has an easement connected to it.

Ms. Becker pointed out that this parcel would be undersized as well as land-locked and the Board cannot create an undersized lot, nor can they create a land-locked lot. Mr. Shadic questioned whether the land can be attached to the existing portion of the parking lot owned by the Town. Ms. Becker noted that this would solve the problem if the existing parking lot and donated parcel equaled three (3) acres. Mr. Nayer noted that the Town leased the parking lot and

does not own it. Mr. Nayer also questioned why the parcel cannot be given to the Town. Ms. Becker pointed out that the Town is not the Fire District and is a separate entity. Mr. Shadic noted that there would be no problem if the parcel was given to the Town as the Fire District and Town work together. Mr. Shadic brought up the fact that the Fire Department has no reason to construct any buildings on the parcel if that was a concern and would just use the parcel as an outlet to the water body.

A discussion ensued as to whether the Town Supervisor would be able to create an undersized lot for the benefit of the Town. Mr. Grant pointed out that the Supervisor cannot break the law. Ms. Becker advised that this would have to be presented to the Town Attorney prior to approval from the Planning Board. Mr. Grant pointed out that an easement would be beneficial to both parties as Ms. Belt would be able to sell her property and the Fire Department would not be taking on a tax burden and would have full access to the pond. Mr. Grant also advised that it could be written into the easement that the Fire Department has the ability to dredge the pond and maintain it to their standards. If both parties were not in agreement with the easement, the matter would have to be presented before the Town Attorney. Mr. Shadic and Ms. Belt were not comfortable with an easement at this point. The question arose as to whether the Town Attorney knew a way to circumvent zoning for the benefit of the town.

A discussion ensued as to the merging of the parcel from Ms. Belt's property with the parking lot. That was viewed as the best option by Ms. Belt and Mr. Shadic, however, it is not known whether this would equal the proper size for the zoning district. Ms. Belt and Mr. Shadic were advised that if that was not an option, they had the choice of an easement across the parcel or would have to increase the parcel size to three (3) acres which would need to include legal road frontage so as not to land lock the parcel.

Mr. Grant questioned where the B-1 zoning district began and ended. If the parcel in question was in the B-1 zoning district instead of the 'R' district, a smaller parcel could be subdivided from Ms. Belt's property. Ms. Becker noted that Doug Clark could put the zoning line on this map to clarify this. Mr. Grant noted that the boundary line would need to be on the map before any further subdivisions could be done and was in agreement with having Mr. Clark look into the matter. It was decided that Mr. Clark would locate the boundaries on the maps. It was also decided that the Board would present the matter to the Town Attorney for advice and then speak with the Town Supervisor, if needed.

## **PARCEL REVIEW and/or CONSULTATION**

### **LINDSAY LEBRECHT & SCOTT DECKER – Adams Drive [Copake Lake]**

Mr. Decker advised the Board that he had a potential client who owns two lots equaling 13,750 square feet on Adams Drive at Copake Lake in the 'R-2' zoning district. He went on to explain that the potential client is only interested in the property if he would be able to expand the present house. He noted that the property is on the community water system as well as the community septic system. Ms. LeBrecht explained that there were two (2) Home Owners Associations, Copake Lake Estates and the Presidents in this area. The lot in question belongs to the Presidents Home Owners Association.

A rough sketch of the lot and proposed addition was shown to the Planning Board by Mr. Decker who explained that there are fifty five feet (55') from the house to Adams Drive. No paperwork was submitted at this time. Mr. Decker went on to explain that the potential client wishes to extend out eight feet (8') toward the road, extending the present twenty-four foot (24') structure to a thirty-two foot (32') structure and upward two stories, adding an additional bedroom. The proposed renovation would create a twenty-one hundred (2,100) square foot house. Mr. Decker also pointed out that the property is not on the lake but the second house in from the lake. Mr. Decker advised the Board that they would remain within the height restrictions.

Ms. Becker questioned whether the community septic limited expansion. Mr. Decker advised her that the community septic system was recently upgraded so that homeowners would be able to upgrade their homes. Ms. LeBrecht acknowledged that the house was already connected to the community septic.

Mr. Davis commented on the fact that the potential buyer wished to add an additional bedroom to the existing home. Ms. LeBrecht advised him that she looked into this and that the additional bedroom would not be an issue. Mr. Davis asked what the capacity of the community septic system is as the Board has limited knowledge of the system. Mr. Decker advised him that Russ Stein is in charge of the potable water system but was not sure who was in charge of the septic system. If this project was subject to a Site Plan Review the Planning Board would require verification of the size and capacity of the septic system. Mr. Grant suggested contacting Mr. Stein so that the Board could be advised of the size and capacity of the system for future use. Mr. Decker could contact Mr. Stein and provide the Board with a letter stating that they don't have any issues with this particular expansion should it come under review. The sewerage treatment system is on the property across Route 7, owned by Dr. Feinberg. The President of the President's HOA is Rich Pawlowski.

Ms. Becker advised Mr. Decker that although the lot is undersized, the structure is conforming and doesn't see any need for a variance at this time, based on the rough sketch shown. The Board would need documentation from the homeowner's association stating that they would not object to another bedroom being added should a Site Plan Review be required. Mr. Pilch noted that the Board should also be advised as to how many additions can be added to the existing septic system.

## **MINUTES**

Ms. Becker asked the Board for a motion to approve the minutes of the regular meeting of May 6, 2010 and the minutes of the special meeting of May 22, 2010. No changes or corrections were needed. On a motion made by Mr. Savarese and seconded by Mr. Pilch, the Board voted unanimously to accept the minutes of the May 6 and May 22, 2010 meetings.

## **ADMINISTRATIVE**

**ZADRIMA:** - Ms. Becker advised the Board that a variance has not yet been applied for by the applicants. She noted that she wrote to the Zoning Board of Appeals referencing his house but no further action had been taken.

**PASACH:** - Ms. Becker informed the Board that Lloyd Pasach moved the garage toward Route 7 so that he was one hundred feet (100') feet from the lake.

**SALT DOME:** - Ms. Becker noted that the letter regarding the Salt Dome was in the packet.

**NO PARKING:** - Ms. Becker advised the Board that there was a proposed new No-Parking area in front of the Bank.

**NEW LOCAL LAW:** - Ms. Becker advised the Board that the Town Board is proposing a new local law regarding reimbursement costs that she would like the Board to review. Ms. Becker acknowledged that the Board already has four places in their zoning where the Board can be reimbursed for consultant costs. She noted that the Board already has an Escrow agreement and Escrow return procedure and form. Ms. Becker was confused by what the Town Board was proposing and asked for the Board's opinion. She noted that under the present policy, the Board billed the applicant's after a project reached an extraordinary expense stage. Mr. Filipovits believed that under Town Law the Planning Board has the right to choose their own consultants. Mr. Grant reviewed the proposed law and questioned whether the authorized charge to an applicant would be mandatory. He expressed concern that the Town would still be able to hire a consultant if the client was adversarial to the Town and not willing to take on the responsibility of hiring a consultant. His worry was that the Board could wind up without a consultant on a very difficult case. Mr. Davis noted that on the projects he deals with in his professional life, consultants are billed to the clients. Ms. Becker acknowledged that the Town Zoning and Town Code will be reviewed by the Comprehensive Planning Board in the next year and felt this added more confusion to this process. She expressed concern that the costs of consultants would be transferred to the applicants. Mr. Urban brought up the increasing costs of the Salvatore Cascino application as well as the Housing Resources application and felt that applicants should pay on a periodic basis. He suggested postponing an applicant's project if they had outstanding bills with the Town. Mr. Pilch was in agreement with this. Ms. Becker pointed out that Salvatore Cascino is the only applicant that has never paid for his consultants. Mr. Grant questioned what could be done if the applicant refuses to pay for the consultant's expense. Mr. Grant suggested adding an exception clause to the law that allows the board to hire a consultant if they deem it necessary to protect the health, safety and welfare of the Town. Mr. Nayer noted that if an applicant is paying for a consultant, they can use a consultant of their own choosing. Mr. Filipovits expressed concern that the Town Board could refuse the hiring of a consultant that the Planning Board needed. It was suggested to put a limit on the expense. Mr. Grant disagreed with that as once that limit is reached the applicant could pick a consultant of their own choosing.

**COPAKE LAKE BUILDING:** - Ms. Becker provided the Board with pictures of homes in Copake Lake that show zoning violations. Ms. Becker questioned what authority the Board has in dealing with zoning violations that have occurred previously.

- Mr. Grant pointed out that although the Bulkhead on the Tom Taylor property was a clear breach in the zoning, it has already been addressed. Ms. Becker noted that the violation in this situation was cited and a fine was instituted.
- Mr. Davis addressed the next violation clear-cutting of all trees and brush on the Minello property and noted that the DEC said there was nothing they could do in this matter. Mr. Davis felt that some planting could be done to prevent the soil from washing into the

lake. Ms. Becker questioned whether this was a violation of Town Code 232-9.P [*One-hundred-fifty-foot setback from lake or stream*] *No development shall be permitted closer than 100 feet to a stream, creek, wetland or other body of water.* Mr. Grant did not feel cutting down trees is considered development. Ms. Becker looked up the definition of development in the Town Code which read: *Any man-made change to improved or unimproved real estate, including but not limited to the construction or alteration of buildings, fences, walls, signs, or other structures, as well as mining, dredging, filling, paving, excavation or drilling operations.* Mr. Grant did not believe this to be a violation and suggested bringing this to the attention of the Comprehensive Plan Committee who could determine whether there is anything that could be done regarding this situation. Mr. Davis believed a buffer needs to be created around bodies of water. Ms. Becker noted that this is required within the Site Plan Review. Mr. Grant pointed out that not everything is subject to a Site Plan Review. Mr. Davis addressed the fact that some communities have restrictions whereas only four (4) trees could be cut down during the course of a year and anything over five feet (5') off the ground and over five inches (5") in diameter would need a permit to be cut. Ms. Becker acknowledged that the only way to proceed with this matter was to make a recommendation to the Comprehensive Plan Committee so that they can address new zoning to accommodate issues like this. Mr. Urban addressed the fact that he would be willing to use his manpower and resources to circulate information to every person that lives at the lake so that they would be aware of the ramifications certain actions have on the lake. Ms. Becker believed that Denise Chickery, Vice President of the Copake Lake Conservation Society, should address this matter by writing a letter to the Town Board to make them aware of situations like this. Mr. Davis brought up the fact that the CCLS operate on private donations and they don't want to do anything that could potentially impact people making donations or contributions to CCLS. Ms. Becker would help Denise draft something to make homeowners aware of how their actions could be detrimental to the environment around them.

- Ms. Becker questioned what could be done at the Zigler residence. She made note of the fact that there was a Site Plan Review in this instance and the Board could deal with this issue inasmuch as they are clearly in violation of the Site Plan Review approval. Ms. Becker will notify the Zoning Enforcement Officer regarding this.

**JULY MEETING:** - Ms. Becker advised the Board that the July Planning Board meeting will be held on July 8<sup>th</sup> as the regularly scheduled meeting falls on the Fourth of July weekend. She noted that Mr. Grant will chair the meeting as she will not be available on that date.

**ZBA TRAINING SESSION:** – Ms. Becker informed the Board that the Zoning Board of Appeals will be having a training session that will be taught by Town Attorney Tal Rappleyea on Saturday, July 17<sup>th</sup>. She noted that the two hour training will go toward Board members training requirements. She believed the subject matter will be on ZBA procedure. Mr. Nayer informed the Board that the training is free and the time was set for 9 to 11 am.

**ZBA SITE PLAN REVIEW REFERRALS:** – Ms. Becker acknowledged the fact that the Planning Board has been receiving a lot of Site Plan Referrals from the Zoning Board of Appeals. Inasmuch as the Zoning Board doesn't have to follow the same Check List followed by the Planning Board, Ms. Becker asked the Board if they were comfortable with what the Planning Board is asking from the ZBA. Ms. Becker referred to the earlier referral with Mark Frickey and

asked the Board if they were comfortable with what is being asked by the ZBA. She pointed out that Mr. Frickey presented the Board with a hand drawing. Mr. Grant pointed out that a drawing such as the one presented by Mr. Frickey would not be acceptable for a Site Plan Review and if they were to proceed with a Site Plan Review they would have to follow Planning Board procedure. Mr. Grant noted that all ZBA cases have to move onto the Planning Board for opinion or approval. He addressed the procedure pointing out that ZBA cases come to the Planning Board for an opinion or approval and are then sent back to the ZBA for their decision. After that, the applicant is sent back to the Planning Board for a Site Plan Review.

**COHEN FAMILY PARTNERSHIP:** - Ms. Becker advised the Board that a Building Permit was given for the Cohen Family Partnership addition and renovation which shouldn't have been given without a variance from the ZBA. Ms. Becker asked the Board how they feel about proceeding to correct mistakes that have been made regarding building permits. Ms. Becker wanted to know if the Board was in agreement with pursuing these matters or if they believed these matters should be ignored. Mr. Grant felt that the Planning Board is like an officer of the Town and is not here to let mistakes slip through. In the instance of the Cohen Family Partnership, the survey wasn't entirely accurate and was incomplete when presented to the Building Inspector. Mr. Davis noted that the fault was not with the Building Inspector and was with the surveyor who submitted inaccurate information. Mr. Davis pointed out that the Building Inspectors would have no way of knowing that a stream was included in a drawing if it wasn't informed of it by the surveyor. Mr. Grant noted that the Building Inspector accepted an incomplete survey and the Town Code states that streams and culverts need to be identified before approval. Ms. Becker asked if the Board was in agreement with following up on these matters and whether they felt that any correspondence should be sent by the Board as a whole. Mr. Urban suggested a less formal route in pursuing these matters. Mr. Grant suggested bringing the matter up to the Town Board by writing a letter and documenting what has transpired and how it is not serving the best interests of the Town. Ms. Becker would speak with Ralph Shadic regarding this and the matter will then go through the process to the Zoning Enforcement Officer. Ms. Becker will also notify the Town Board by letter so as to inform them. Ms. Becker was informed by Town Board Liaison, Ms. Gabaccia, who was advised by Attorney Rappleyea to document these issues so as to keep a record of them.

**CASCINO:** - Mr. Davis asked if anything was being done to rectify the asbestos that had been dumped on the Salvatore Cascino property. Ms. Becker had no other information other than the fact that there is some activity going on right now. Ms. Becker noted that Mr. Cascino was recently caught doing something in Ancram. Mr. Davis was concerned that the longer the asbestos is left on Mr. Cascino's property, the higher the chances are of increased contamination of the water system. Ms. Becker suggested writing a letter to the Town Board on this matter. Mr. Davis volunteered to draft the letter on this subject.

## **CARRY OVER**

The following matters were carried over to the next meeting:

- 2005-18      SITE PLAN REVIEW AND MAJOR SUBDIVISION - Approximately 112 +/- Acres on Land Bounded by Mountain View Road and County Route 7A - Housing Resources of Columbia County, Inc.**
  
- 2008-21      MAJOR SUBDIVISION – Michael B. & Barbara S Braunstein – Off Golf Course Road**
  
- 2010-2      SITE PLAN REVIEW CONSULTATION – AMERISTOP – Route 23**

## **ADJOURNMENT**

There being no further business, on a motion made by Mr. Davis and seconded by Mr. Filipovits, the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 9:00 p.m.

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Marcia Becker, Chair

**Please note that all referenced attachments, comprising 5 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**

May 8, 2010	Becker to Nayer/ZBA (1)
May 8, 2010	Becker to Nayer (1)
May 20, 2010	Becker to Knox (1)
May 2010	Additional No Parking Zone on Route 7A Law (1)
May 2010	Fees, Consultant Review Law (1)