

DRAFT

Please note that all referenced attachments, comprising 48 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.

COPAKE PLANNING BOARD MINUTES of November 6, 2008

A regular meeting of the Copake Planning Board was called to order at 7:07 p.m. by Marcia Becker, Chair. Also present were Gray Davis, Chris Grant, George Filpovits, Skip Pilch and Jon Urban. John Brusie was excused. Planning Board Attorney Lawrence Howard and Town Engineer Doug Clark also attended. Lisa DeConti served as secretary of the meeting in order to record the minutes.

ZONING BOARD OF APPEALS – Referrals

None.

PUBLIC HEARING

None.

SUBDIVISION/SITE PLAN

2008-18 SITE PLAN REVIEW – Copake Valley Farm - 13 Lackawanna Properties LLC– Salvatore Cascino – Route 22

Ms. Becker asked Ms. Kirschner whether there was anything she wanted to add regarding the pending application. Ms. Kirschner referred to a letter she prepared for the Board explaining the farming proposal as requested by Attorney Howard.

Ms Kirschner went on to explain that the whole farm is in hay production and noted that there are photos of every square inch of land that they are allowed to farm. She went on to note that fences are being built and there is an intent to do intensive crop production. Ms. Kirschner said that Mr. Cascino's goal was to raise seed cattle and explained that seed cattle are foundation breeding cattle that people would buy to improve their herd. Ms. Kirschner informed the Board that Mr. Cascino would buy a number of cattle to begin with that are of medium quality and then would breed up. He would then use lesser quality cattle as beef cattle.

Ms. Kirschner continued to explain that Mr. Cascino would raise grain and lease land off-site. She made note of the fact that without any silos, Mr. Cascino would not attempt to get a written lease, contingent on Town Approval, whereas he would have to pay for land that he is not sure he would be able to use.

Ms. Kirschner pointed out that Mr. Cascino's cattle barns are the most environmentally sound cattle barns as recommended by John Thurgood and the New York City Water Shed area as well as someone that was referred to them from Cornell University. Ms. Kirschner noted that one of the discrepancies centered around wood pellets being ground up for the cattle bedding and went on to explain that the waste-wood products as well as sawdust that is not being used by local and regional saw mills is being consumed for wood pellets for use in stoves. She noted that the amount of wood available for any kind of bedding product in the area is shrinking rapidly.

She informed the Board that Walt Kiernan had been purchasing bedding in Pennsylvania and was told that this source is also drying up. She added that farmers have been talking about grinding up their corn stalks as well as waste from soy bean production for bedding inasmuch as their source is not there.

Ms. Kirschner told the Board that on Tuesday DEC solid waste people were present and she and Mr. Cascino spoke with them regarding the bedding issue with the wood pellets. She said that they completely understood the fact that Mr. Cascino could get the pellets out of New York City as there is no place to store them there and if he could use them for bedding he is being the opportunist.

Ms. Kirschner provided the Board with two pictures of the hay barn full of hay. She noted that the overflow is being but into the farm stand with tarps over it. She informed the Board that Mr. Cascino currently has a contract in Connecticut for the sale of five hundred (500) bales of hay a month and sells others locally on an ad-hock basis. She noted that Mr. Cascino is looking for more contracts and pointed out that every year he sells whatever he produces. She advised the Board that Mr. Cascino's primary goal is to intensive crop the farmland.

Ms. Kirschner informed the Board that at the present time, the farm is being fenced in with internal fencing as well as external fencing. She pointed out that the internal fencing is delineating the DEC Wetlands so that there will not be any inadvertent wetland violations and she also noted that during the summer months the wetlands will be used as pasture. Additional interior fencing would be built as needed.

Ms. Kirschner told the Board that Mr. Cascino wished to purchase cattle and she advised him against this inasmuch as there is no barn to put them in as the hay barn and the farm stand are both full.

Ms. Kirschner presented the Board with her letter explaining that in addition to the summarization of the matters discussed, it also addresses the determination regarding the waste-wood and bedding. She added that she spoke with Dick Forgea who gave his approval for the use of wood to be incorporated into the bedding. She noted that Mr. Forgea tabled the matter as he did not feel that anything further was needed regarding this.

Ms. Kirschner also discussed a letter from Daniel Briggs that she received whereas he states that Mr. Cascino engaged him in 2007. She also discussed a letter from Joseph Viscardi regarding

curb cuts stating that there was nothing outstanding that needs permits. She acknowledged that there are two permits for the hay barns as well as building applications. She also referred to an opinion letter regarding soil reconstruction and rock removal from Ag and Markets saying that this is completed regarding the activities that Mr. Cascino wants to complete on the farm.

In regard to the Board's request for money, Ms. Kirschner referenced the monies intended for an escrow account and advised the Board that this could be released and spent anyway the Board wished. Ms. Becker and Attorney Howard advised Ms. Kirschner that the check had not been deposited. Ms. Kirschner was informed by the Board that Mr. Cascino would be billed separately for expenses incurred in lieu of a negotiated addendum to the escrow agreement. Ms. Kirschner noted that the check could be deposited for expenses but Ms. Becker advised her that this would not be done without an escrow agreement and acknowledged that the check would be returned and billing for reimbursements would be done separately. The check was returned to Ms. Kirschner.

In conclusion, Ms. Kirschner presented the Board with the documentations discussed and noted that there had been a request regarding specific landscaping plans. She pointed out that Ag and Markets did not require landscaping to be submitted on farm activities. She advised the Board that she had taken some photos of the landscaping of the farm and in her opinion the landscaping of this farm is more attractive than any other landscaping on active "commercial" farms in the area. She made note of the fact that Mr. Cascino would not stop making his farm attractive with the addition of buildings.

Ms. Kirschner acknowledged that she was aware that the County had done a turn-down denial of the pending application and noted that this was fine inasmuch as they have to do what they have to do and the Town has to do what they have to do. However, she noted that what she found interesting in the letter was the fact that they turned the application down due to the fact that there is an existing Temporary Restraining Order (TRO). She pointed out that the TRO specifically states that it is there because Mr. Cascino hadn't gone to zoning and gotten the appropriate building permits which she believed needed to be done in the future. She also brought up the fact that the DEC matters needed to be addressed.

Ms. Kirschner expressed misgivings about the fact that she believed this to be circular reasoning inasmuch as the reason she is before the Board is to comply with Town Law so that the TRO issue could be resolved. She referenced this as circular reasoning inasmuch as the County Board denied the application due to the TRO and questioned how Mr. Cascino could do a proper application and meet the TRO requirements if they are denied a submittal. Her impression is that there is an overwhelming desire to deny because the Board does not trust Mr. Cascino. She acknowledged that the Board has to do what they have to do and there is nothing she can say that will change what will be done. Ms. Kirschner informed the Board that should they deny the application, Mr. Cascino is prepared to do an Article 78.

Ms. Becker informed Ms. Kirschner that no building permits can be issued until the legal problems are resolved. Ms. Kirschner acknowledged that this was understood from day one as she had spoken to Carl Whitbeck regarding this matter and he agreed that the Town had to go through the process and even if the building permits were granted, they could not be used until the TRO was resolved. Ms. Kirschner questioned how the TRO could be resolved if they were not granted permission to comply.

Ms. Becker advised Ms. Kirschner that the County letter would be read into the record as there are other reasons why this application was denied. Ms. Kirschner replied that she was not interested in listening to the reading of the letter as there were inconsistencies such as the Fire Code. She made note of the fact that they were willing to put in dry hydrants which none of the other farmers in the area were required to do. Attorney Howard informed Ms. Kirschner that even if the Town Board is not in agreement with the County Board, a super majority for approval is still required.

Ms. Kirschner prepared to leave and Attorney Howard asked if she planned to stay for the remainder of the meeting inasmuch as the Board would be voting at this meeting. Ms. Kirschner expressed the fact that there was no reason for her to remain. Attorney Howard advised her that he wanted to make sure that she understood that the voting would take place. Ms. Kirschner acknowledged that she was aware of that fact and requested to be notified of the decision.

Ms. Becker asked Mr. Urban to read the Columbia County Planning Board letter into the record as well as other documentation that needed to be recorded.

Mr. Urban asked if the Public Hearing was still opened it was clarified that the Public Hearing had been closed but any correspondence received ten (10) days prior to the meeting was still accepted. Ms. Becker acknowledged that although Mr. Spampinato's letter was received the day prior to the meeting she had discussed the matters two weeks prior and was expecting the letter which was to be entered into the record. Attorney Howard advised that the information in Mr. Spampinato's letter could be attributed to any escrow account and although he may have written it directed at this situation, it is relevant to any escrow situation.

For the Public Record, Mr. Urban acknowledged that he would be introducing a number of different pieces of information some of which he would read in its entirety and some of which he would make a general reference to.

Mr. Urban referenced Mr. Spampinato's letter in which Mr. Spampinato stated that he represented more than one client before the Copake Planning Board. As an attorney where the requested posting was ten thousand dollars (\$10,000.00) on a single application, Mr. Spampinato felt that it was unreasonable for the applicant to request a lower amount than the five thousand (\$5,000.00) asked for by the Board.

Mr. Urban then referenced a letter by the Copake Zoning Enforcement Officer, Edward M. Ferratto. Mr. Ferratto notes that the Zoning Enforcement Officer is a part-time position as the Town Budget does not allow for a full-time position. Mr. Ferratto believes that the Town suffers when the zoning enforcement officer's time is consumed by one or two property owners who are constantly in non-compliance with Town zoning ordinances. Mr. Ferratto urges all of the Town Boards to consider the limited resources when considering land uses in Copake.

The next letter read by Mr. Urban was a letter from Deborah Cohen of Copake dated October 27, 2008. Ms. Cohen referenced the flood lights on Mr. Cascino's property that Ms. Kirschner said were installed by Central Hudson. Ms. Cohen points out that this implies that Mr. Cascino was not involved in the decision to install flood lights on his property that violate the Scenic Corridor Overlay Zone Law. Ms. Cohen acknowledges that the flood lights on Mr. Cascino's property were installed at Mr. Cascino's request by

New York State Electric & Gas under their Private Lighting Marketing Program. Ms. Cohen notes that in this program, NYSEG customers pay NYSEG to install lighting of the customer's choice on NYSEG poles. Ms. Cohen explains that Mr. Cascino hired NYSEG to install these lights a few months after the SCOZ was passed into law and when NYSEG was notified by Copake's Zoning Enforcement Officer that this was a violation of the SCOZ, their representative's reply was that "we do what the customer tells us to do." Ms. Cohen believes that Ms. Kirschner's intent was to mislead the Planning Board into believing that Mr. Cascino has no control over a zoning violation on his property, however, Ms. Cohen notes that Mr. Cascino can have those lights removed or replaced at any time which he has chosen not to do.

Mr. Urban then referenced a seven (7) page letter written on October 27, 2008 from Edgar Masters documenting reasons for supporting a denial of this Site Plan Review Application. This letter was not read as reference would be made to it during the remainder of the meeting. Ms. Becker did note a correction to the first paragraph on page five (5) of this letter which referenced the widow of the man from whom Mr. Cascino bought the property who is acting as manager at this time. The letter states that her regular employment has been as a bank teller at the First Niagara Bank in Copake which was deemed incorrect.

The two most recent articles from The Independent newspaper which talk about the general proposal and application pending were entered into the record next.

The next letter to be entered into the record was a letter from Town Councilman Robert Sacks to Michael Meyers of the New York State Attorney Generals Office, Stephen M. Saland, Senator of the 41st Senate District and New York State Assemblyman Marc Molinaro. Mr. Urban noted that Mr. Sacks letter referenced the different sequences of events that led up to this application as well as the background of Mr. Cascino.

Mr. Urban then read the Columbia County Planning Board letter of October 22, 2008 where the Board disapproved the pending application.

The County Board found that the stated intent, scale and scope of this proposed farm operation will likely result in significant county-wide and intercommunity impacts. The County Board supports the "Right to Farm Law" in Columbia County and therefore finds that the inconsistencies in the application as well as the following issues concerning activity on this site may not be supportive of the Columbia County "Right to Farm Law" and as such, warrants recommendation of "Disapproval" at this time without prejudice for future resubmission.

The Board cited the Temporary Restraining Order (TRO) issued by Columbia County Judge Jonathan Nichols (Town of Copake, Columbia County New York v. 13 Lackawanna Properties, LLC Salvatore Cascino and Copake Valley Farm, LLC); Actions by the NYS Attorney General's Office; Compliance with the Town of Copake laws and regulations and Pending decision by the New York State Department of Environmental Conservation (NYSDEC) regarding the Beneficial Use Determination (BUD) on the proposed composting component on this site.

The following recommendation were offered: The New York State Department of Agricultural and Markets (NYSDAM) input is forthcoming, and therefore not considered as part of this recommendation and the County Board recommended that the Town of Copake officials work cooperatively with NYSDAM and process this application without conflict NYSAML 305-AA, Agricultural District Law.

Composting: The County Board referred to the Composting issue stating that this was temporarily halted by the Temporary Restraining Order in the Town of Copake v. Salvatore Cascino yet was an integral component of the ‘deep-bed composting pack barn’ proposed. The County Board recommended that the applicant clearly outline the components of the farm operation which are part of this review and that are proposed to be implemented while under the TRO. They also recommended that they clearly outline which components will occur upon at such time when the TRO is lifted and proposed site plan modification would be made and be subject of subsequent site plan review procedures.

Farm Operation: The size of the herd proposed to be 200-300- head of beef cattle was also an issue as the variant of 100 head of cattle is a 50% increase in the herd size and is significant in the fact that the number of cattle may trigger specific requirements for additional permitting from New York State Department of Environmental Conservation, namely in terms of requirements for a Confined Animal Feeding Operation (CAFO). They suggested that the applicant provide clarification on the actual size of the herd, as a 100 head of cattle variation is significant and will affect various components of the site plan.

Structures and uses: Structures and uses were referenced by the fact that the application materials, including site plans, application forms, narratives, Storm Water Pollution and Prevention Plan (SWPPP) as well as construction elevations and details should be in agreement in terms of existing uses, proposed uses and size of structures. It was unclear which buildings correspond in this application. The Board requested that all documents submitted for review should be revised so that they are consistent.

Certificates of Compliance: The County Board recommended that the applicant provide the documentation that the necessary approvals, inspections, etc. have been obtained for the existing structures.

Compost Machine Building: The submission included a drawing for a “Compost Machine Building” which should be delineated on the site plan and pertinent information should be provided.

Dry Well: The County Board suggested that the applicant needed to provide information on the “proposed dry well” located near the pond.

Emergency access: It was suggested that the local fire chief be asked to review the site plan and provide input.

Septic systems and wells: The County Board also recommended that the location of all existing and proposed wells and septic systems be delineated on the site.

It was noted that within thirty (30) days after final action is taken, the Town of Copake Planning Board shall file a report of the final action it has taken with the County Board. If the Town acts contrary to the County recommendation the reasons for the contrary action shall be included in the final report.

Doug Clark presented a letter from Larry Eckhardt, the agricultural consulting agent engaged by the Board noting that he basically looked at the plans and the site as though he was being a consultant to the applicant so as to advise him of agricultural practices. Mr. Eckhardt noted that the stated goal of the applicant was to set up and operate his farm in the most cost effective and economically feasible manner possible. Mr. Clark noted that Mr. Eckhardt's findings were that there was nothing cost effective or economical about these plans. He pointed out that the use of the high-poured concrete walls and the way the buildings were laid out were very expensive. The fencing placement which was all over the place and the way the various buildings were designed were viewed to be non cost effective as well.

Mr. Clark said that Mr. Eckhardt raised concerns about the animal health in regards to the ventilation and condensation within the barn with the pack-bed composting. It was noted that this was something that is important in any barn but more important in a barn with the compost in it.

Mr. Eckhardt didn't find the storage building with multiple compartments particularly useful with the proposed operation and noticed a lack of any way to store silage which is a basic type of feed for the cattle. Mr. Clark said that Mr. Eckhardt did a calculation for the two hundred (200) head of proposed cattle and concluded that you would need twenty-six thousand (26,000) bushels of feed per year and noted that each of the two silos holds one hundred and thirteen (113,000) bushels, over ten (10) times the capacity needed. Mr. Clark acknowledged that Mr. Eckhardt said that to fill each one of these silos with corn would take seven hundred (700) acres for each silo and soy beans would take twenty-two hundred (2,200) acres to fill each silo.

In terms of the composting Mr. Eckhardt was said to have reported that the quantities and sources as well as total production of compost had not been provided. Mr. Clark noted that Mr. Eckhardt did agree that the pack-bed composting, if done right, is a good approach. Mr. Clark pointed out that Mr. Eckhardt noted that using the compost for some of the land restoration is technically feasible, however, if the goal is to do things in a most cost effective manner, this is somewhat inconsistent.

Regarding the fences, Mr. Clark reported that Mr. Eckhardt suggested that grazing is a very cost effective method and Mr. Cascino only has one small paddock area which is more of a western feed lot operation.

In conclusion, Mr. Eckhardt's opinion was that he felt this was a vast, multi-faceted project with some lofty goals but is severely short on real details as to the long-term economic business sustainability. He noted that if he were hired to advise this person on their chances of success in this venture, he would require much more detail in the

quantities and types of products brought in for composting resources, the economics of end uses, and the need for such expensive construction designs. Mr. Eckhardt noted that if the goal is “cost efficient and economic feasibility,” this falls way short. He believed that it seems that many of the building plans are “money is no object” and are very over constructed for their intended use.

Mr. Clark proceeded to present his own documentation regarding this application. Mr. Clark made reference to the twenty-four (24) zoning ordinances of the Site Plan Check List and noted that there are inconsistencies and a lack of information in a number of these ordinances. Regarding the Site Plan Ordinance used for guidance in this process, Mr. Clark noted that there is a series of guidelines when considering the Site Plan Review and he organized his comments based on these.

His first reference was aimed at the arrangement, size, design and general compatibility of buildings. Mr. Clark noted that he has some concerns about the credibility of the application that he believes is lacking a coherent plan and doesn't seem to be clearly thought through. He also has some concerns that the applicant's attorney indicated that the applicant has a lack of farming and engineering experience. Mr. Clark expressed concern regarding the lack of technical representation before the Board to answer questions, and noted that the written correspondence and responses lacked this technical knowledge with the exception of the Storm Water Pollution Prevention Plan (SWPPP). Most responses were prepared by the applicant's attorney whom Mr. Clark noted was not qualified as an engineer or an agricultural consultant.

He also expressed concern regarding the applicant's record. Numerous comments from the public lead him to an opinion that this might not be the type of applicant for whom you would want to overlook some of the outstanding information and inconsistencies and proceed to waive normal site plan requirements so as to give this particular applicant the benefit of the doubt. It is Mr. Clark's opinion that there are a number of things that are non-agricultural such as the over-sizing of the grain silos which appears to be more of a commercial grain storage facility than something needed for the farm. He commented on the wood processing facility at the site that has already been registered for processing up to ten thousand (10,000) yards of wood waste a year. He believes that there is every indication that they could accept waste wood for a fee and sell excess wood at a price making it a commercial operation.

Mr. Clark noted that a lot of the construction salvage materials that he witnessed on-site which were said to be for use in the buildings didn't make sense. In terms of the composting, Mr. Clark noted that there was no information on the quantity of information to be taken in or the quantity of materials that would be sold as there is an implicit implication that compost is to be sold for wholesale distribution.

Mr. Clark pointed out that he went into detail in his report regarding the composting issue listing seventeen (17) questions of missing information needed to evaluate this in terms of composting. He noted that without knowing how much compost materials are being brought in or shipped out, there is no way to tell how many trucks would be coming in and out. Mr. Clark brought out the fact that if the compost is not handled properly and managed correctly, spontaneous combustion can occur. He also noted that there are many

questions relating to fire protection, such as truck traffic and water protection, that make the applicant's additional information on the composting necessary.

In reference to the hay storage buildings, Mr. Clark acknowledged that it doesn't make sense to store hay in a building in which you are grinding pallets that contain metal. He also brought out the fact that the applicant's original SEQR said that there are no flood plains on the site. However he noted that was wrong, and pointed out that the mapping is a zone 'A' map which is not the most accurate mapping available although it does show a flood plain just north of the farm road. Mr. Clark brought out the fact that the compost machine and the existing hay building is in the flood plain and would have to be either raised considerably in elevation or relocated out of the flood plain. Mr. Clark noted that the adequacy arrangement for vehicle access and circulation could be significant, given the unbounded levels of this operation and considering the grain and compost operations. He believes the truck traffic issue needs to be addressed. He also pointed out that there are some particularly sensitive resources on the site of the Storm Water and drainage facilities such as a protected trout spawning stream as well as wetlands, flood plains and aquifer.

Mr. Clark went on to note that there is concern that the manure and compost operations can leech pollutants into the ground-water if they are improperly managed. Mr. Clark also expressed concern that if the applicant is successful in avoiding any state permits and depending on the level of inspection provided by the applicant, this would basically be a self-inspecting operation. Mr. Clark felt that another matter of concern was the fact that a lot of construction wood contains preservatives and paint and could contaminate the compost.

Based on the incomplete information it is Mr. Clark's opinion that these water quality resources may be adversely impacted by this application. He also expressed concern about fire potential inasmuch as there is nothing to say that sawdust and wood chips couldn't be piled forty (40) feet in the air. He also noted that there is really no indication of where those storage areas are and how fire trucks could get to them.

A detailed list of all the documents referred to above can be viewed in the Minutes packet at the Town Hall.

Attorney Howard noted that the record has been closed as of ten (10) days prior to this meeting assuming the Board wanted to proceed to cast their vote. Apart from what the representative told the Board, Attorney Howard acknowledged that all of the information handed out by her at this meeting would not be considered unless the Board wished to delay their decision another month to consider this new information. Attorney Howard continued to note that it had been made clear that all materials needed to be received ten (10) days prior to the next meeting. Assuming the Board was going to proceed to make a decision, Attorney Howard's recommendation was to discuss any considerations that were required and to have any questions answered by Mr. Clark as well as himself as they relate to the review criteria. He then informed the Board that if someone wished, they could make a motion and it could be seconded with further discussion and then **the Board could** proceed to vote on that motion. He then advised the Board that after the vote was cast, there would need to be a written decision provided to the Town Clerk which he would draft based on the Board's decision and delivered by Tuesday, November 11, 2008. He

noted that a copy would also need to be sent to the applicant within five (5) days as required by law.

Attorney Howard advised the Board that if there were any questions about the process, he would recommend there be a discussion amongst the Board about any questions, concerns, opinions or comments regarding anything that was heard over the past five months. He went on to clarify that the BUD the client was requesting is a Beneficial Use Determination. That is an opinion from the Department of Environmental Conservation that would exempt the grinding of the wood from requiring a permit for composting. He noted that should the client receive a favorable Beneficial Use Determination, it doesn't change the zoning in the Town of Copake which states that composting is not a permitted use in this district and therefore wouldn't matter as it would still have to be a permitted use in this location to be approved by this Board. Attorney Howard explained that all of the confusion and all of the issues surrounding the composting other than what is limited to the agricultural operation would be beyond the scope of what is permitted in this district and can't be approved without other action from some other Board of this Town.

Mr. Grant asked for some clarification regarding a discussion that the intent was to compost and move the compost off the site to sell wholesale which he felt was inconsistent with an agricultural use. Attorney Howard advised that anything that goes beyond what would be used for agricultural and would be sold would be considered a commercial or wholesale composting operation and would not be considered an agricultural operation as defined by the Town of Copake.

Mr. Clark clarified this by explaining that if someone had a proposal where all the wood was generated on the farm and composted with the animal manure and all that product remained on the farm this would be considered an agricultural composting operation and the concerns would be totally different because one wouldn't have the chance to introduce contaminants into the final product. Citing the difference, Mr. Clark explained that concerns existed whereas tarped tractor trailers are arriving at the site presumably carrying clean wood that would then be ground up. He noted that the applicants have not limited anywhere in their discussions that they were or were not bringing in manure. He went on to explain that when you start working in huge quantities of materials from multiple sources of unknown origin with no over-site testing or inspection one would open themselves to the potential for serious problems.

Mr. Grant asked what the grinding registration was and Mr. Clark clarified that it was when waste-wood would be brought onto the site and ground up and he noted that if it was under the ten thousand (10,000) yards per year it could be done with a registration permit which was what was done. He then noted that if that quantity was exceeded ten thousand (10,000), a C & D Processing Permit would be needed. Mr. Clark acknowledged that in his opinion, that would make the operation a stand-alone commercial operation that collected pallets of clean wood that would be sold for landscaping purposes or mulch.

Attorney Howard wanted to make a distinction that although this could be permitted by the DEC it wouldn't mean it would be permitted by the Town of Copake as they are two separate processes. Mr. Clark noted that what makes things confusing and of further concern is that you could have the wood processing operation alone which is one issue, but when coupled with the composting issue where wood can be brought in from wherever, ground up and mixed with the compost, no one would know what is in the final product short of having it analyzed by a lab.

Mr. Clark noted that where the DEC is concerned, when unrecognizable wood and other materials are mixed with compost, a permit would then be required.

Mr. Grant asked what the Town of Copake Zoning Regulation says about the composting of wood. Ms. Becker noted that this was not allowed and Attorney Howard clarified that composting does not fit in the Town of Copake's definition of farm operation and whether or not the interpretation, that was obtained some time ago applies, it still doesn't fit within the definition as the definition has changed since it was interpreted and is not a permitted use. Mr. Grant acknowledged that inasmuch as it is not specifically stated that it is a permitted use, then therefore, it is not a permitted use to which Attorney Howard agreed. Attorney Howard said that the best use he could attribute this to would be a wholesale operation but noted that a wholesale operation is not permitted in the Town of Copake as well, and pointed out that none of the uses he could see would fit in this district.

Ms. Becker asked Mr. Pilch if he would talk about the credibility of the farm. Mr. Pilch expressed the fact that he had a number of concerns regarding this operation which, he noted, Mr. Clark already covered. Having farmed most of his life, Mr. Pilch noted that what has been presented to the Board didn't make much sense. He acknowledged that one of his biggest concerns was the lack of a house on the property as this is a five or six million dollar (\$5-6,000,000.00) project with no one there to over-see it. He pointed out that someone needs to be available as the possibility exists that one of the cows could get loose and onto Route 22 and someone could hit it and get killed. Mr. Pilch said that he was not able to think of someone farming in the area with an operation of this size with no one there to over-see it.

Mr. Pilch also brought up the fact of land leases and the over-sized facilities for crops and noted that it was the Board's responsibility to take into consideration the people of the Town of Copake and how this would affect them. Mr. Pilch noted that he doesn't see four thousand (4,000) acres of land in the area that would be readily available to be leased and if this operation was approved the Board would probably have to institute some sort of land competitiveness which could hurt some of the real existing farmers in the area. As for the cost of the operation and the facilities proposed, Mr. Pilch continued that hobby farming could be a possibility however, he didn't see any kind of monetary return on this anytime in the near future.

Mr. Pilch addressed the composting issue that has been tossed around considerably and noted that there needed to be a person and a dedication to do the deep-bed composting which would require a lot of training and diligence to produce the final product. Mr. Pilch referenced Mr. Ferratto's letter and questioned the fact that the Town does not have the resources to constantly monitor the wood that is brought in. In lieu of past records, Mr. Pilch expressed concern that things would be done correctly. He pointed out that he drives past the site nearly every day and although there is a TRO in place restricting pallets being brought in, the amount of pallets continue to grow.

Mr. Pilch brought up the fact that he visited the site with Ms. Becker and Mr. Clark and noted that there was activity going on in the rock quarry. He expressed the fact that he has many concerns regarding this project, the buildings and the possible breeding facility which was previously referred to as a feed-lot operation and pointed out the fact the application keeps changing. He also brought out the fact that the number of cattle keeps changing as well and pointed out that with all the changes that have taken place with the application he wasn't sure

what the intent of the applicant was which he believes raises questions for everyone on the Board.

Mr. Filipovits noted that he has been listening to Mr. Pilch and Mr. Brusie who have been farmers all their life, regarding this application and noted that this operation does not make sense to either Mr. Pilch or Mr. Brusie. He addressed the fact that Mr. Cascino has been a waste-hauler most of his life and is now saying he is going to be a farmer and Mr. Filipovits could see no credence in what Mr. Cascino is proposing.

Mr. Davis referenced the fact that the proposed grinder would be located inside one of the structures and questioned whether the grinder would be electric or gasoline operated. He expressed concern that the grinder would be located inside the Hay Storage Barn surrounded by hay and noted that carbon monoxide would be emitted from the grinder within a closed area. He pointed out that this concern had not been addressed by the applicant. Mr. Davis also questioned whether the proposed pallets would contain nails that would be ground up and used for bedding for the cattle. Mr. Clark clarified that a magnetic separator could be used but expressed concern that the chance of sparks could occur during the processing and agreed with Mr. Davis regarding the hay in the enclosed structure.

Mr. Davis again referred to the inconsistencies with the buildings in the drawings as well as inconsistencies with the square footage and noted that even after these inconsistencies were brought to Mr. Cascino's attention several times, they continued to appear. Mr. Davis pointed out that there needs to be consistency so that they can be cross-referenced as needed and noted that this was never rectified.

Ms. Becker wished to speak to the credibility of the application inasmuch as this was what she had been dealing with. She noted that things were missing in the information that has been provided and that she received things late. Ms. Becker also expressed concern about the lack of experience and the lack of expertise of the presentation as well as the lack of engineers from the applicant. Ms. Becker pointed out that the Board's engineer was responsible for determining that the buildings were in the one hundred (100) year flood plain and noted that Mr. Cascino should have had an engineer presenting materials to the Board.

Ms. Becker expressed the fact that inasmuch as the application lacks credibility it is difficult for the Board to believe what is being said to them and pointed out that the proposed operation doesn't seem to be compatible with an agricultural enterprise and doesn't seem to be what they are saying it is supposed to be.

Mr. Grant asked Mr. Clark for clarification regarding proximity to the Noster Kill and the Storm Water Plan. Mr. Clark addressed this by noting that this had been one of the better pieces of the application as it was prepared by an engineering firm and followed the procedures and protocol for normal road run-off and collection of roof run-off into gutters and storm water basins to manage that run-off. He noted that he found this part of the application acceptable, however, the part that was missing was that there is an assumption by the applicant's attorney that this manure will completely be soaked up in the animal bedding and that there is no need at any point in the operation to cure the compost and take it out and mix and screen it.

Mr. Clark noted that it is true that there is a state requirement in terms of CAFO regulation and that three hundred (300) head is called a medium CAFO that requires a submission of a plan to

deal with manure but he notes that this doesn't exempt the applicant from dealing with manure storage if they have a small CAFO as they have to follow best management practices. Mr. Clark noted that they still need a place to manage manure and he feels it is reasonable for the Board to ask to see that on the site plan. Mr. Clark pointed out that there are also provisions where the state can require a detailed plan and the conditions where you would ask for that are what the Board is presented with now whereas the operation is over an aquifer, adjacent to the Noster Kill and the wetlands. Mr. Clark shared Mr. Grant's concern regarding the Storm Water Protection Plan and noted that this is an area the Board is perfectly entitled to look at within the context of the Site Plan and items required.

Regarding the credibility of this application, Attorney Howard addressed the letter of October 28, 2008 that was sent to Ms. Kirschner where he requested that she provide material evidence that this will be a farm operation. He pointed out that the existence of leases or a narrative of who was approached as well as the possibility of leases in the future needed to be established as leases or ownership needs to be established by the applicant in order to make the silos legal. He pointed out that as otherwise it is not considered a legal silo.

Attorney Howard proceeded to address the matter of enforcement and noted that enforcement is a tremendous burden on a small town and the idea that the Town's part-time enforcement officer would have to spend all of his time monitoring what is going on and off of this particular property is beyond the scope of what he town can handle.

Mr. Davis questioned how Ms. Kirschner can appear before the Board and express concern that Mr. Cascino wants to put cattle on the farm and has no place to put it without making any effort to resolve the TRO and he asked what the time frame is for the TRO being resolved. Mr. Davis believes that this is premature as the TRO would need to be lifted before they could proceed. Although Attorney Howard has not represented the Town in that application he pointed out that Ms. Kirschner continually claimed that things needed to be done quickly and that the Board has unfairly been delaying the application when the reality is that nothing can be built until the TRO is lifted. He also noted that Ms. Kirschner suggested that if the Board approves these things, the TRO would be lifted and he pointed out that this is not the case as the TRO has it's own process and that process does not stay the Board's action and the Board could approve or deny this application regardless of the TRO as the TRO is not contingent upon approval of this site plan or any of these building permits. He noted that to suggest that they are trapped by this is not accurate.

Ms. Becker referenced some information provided to her regarding Section 232-23-A.3 of the Zoning Code which allows the Board to review a variety of general considerations as part of the site plan application. Ms. Becker noted that in this case, the Board has the right to consider the applicant's compliance history as well as general site plan considerations. She pointed out that the record has shown that the applicant has a long history of violating land use, environmental laws in multiple states and municipalities including the Town of Copake. Ms. Becker noted that these are part of the public record and anyone can view them if they so choose.

Ms. Becker asked is anyone would like to make a motion. On a motion made by Mr. Grant, and seconded by Mr. Urban, the Board voted unanimously to disapprove the site plan of 13 Lackawanna Properties LLC dated September 22, 2008 for a number of reasons.

Mr. Grant cited the first reason being the fact that composting is not permitted under Copake Town Law and therefore having a Site Plan that includes a deep-bed composting operation, a grinder that can handle ten thousand (10,000) cubic yards of wood and the applicant's stated intent to bring wood material from off-site, grind it up and ship it off and then sell it would seem inconsistent with Copake Zoning Law.

Mr. Grant cited the second reason being the deep concerns by the Board regarding the proximity of the operation to the Noster Kill which does not seem to be adequately addressed in either the Site Plan or the Storm Water Prevention Plan. He noted that as Mr. Clark pointed out, there are no provisions for handling the quantity of manure that will be generated at such close proximity to the Noster Kill Creek. Mr. Grant addressed the fact that if the Board's engineer is not satisfied with the Storm Water Prevention Plan or the Site Plan then the Board would be remiss in their duties if they approved the Site Plan without some further clarification or mitigation for this problem.

The Third reason cited by Mr. Grant was the fact that there seems to be a real credibility issue in terms of the application as it has changed from the very beginning. He noted that the first thing presented before the Board was a forty-five thousand (45,000) square foot barn which has been cut back inasmuch as zoning law does not allow structures of that size. He pointed out the inconsistencies on the site plan itself and on the operations that will be carried out on the site plan leading the Board to be concerned that this is not an agricultural operation that is being presented to them but rather a commercial operation that requires a whole different level of review and consideration by the Board.

Attorney Howard advised the Board that he will draft a written decision and provide it to the chair, the clerk, and to the applicant by either Monday or Tuesday of next week.

2006-23 SITE PLAN REVIEW – Roe Jan Community Library – Route 22

Ms. Becker advised that the Roe Jan Community Library needs to be referred to the County and the Board was prepared to do so inasmuch as a Negative Declaration was made to the SEQR at a Special Meeting that was held on October 11, 2008 and was then taken to the Department of Transportation by Ned Schenier.

Mr. Schenier gave an update and informed the Board that they keep tweaking the plan and noted that there would be more tweaking as they moved forward. He pointed out that even though the geothermal heating and cooling is a closed system, it seemed like a good idea to move it farther away from the septic system. He noted that more of that kind of tweaking would continue as more tests would need to be conducted to see what the best place for it would be.

Mr. Schenier advised the Board that a consultant was hired who will look over the site plan from the point of view of the Leed Certification and she may suggest some changes to the site plan, particularly in the grading and drainage areas. Mr. Schenier pointed out that they need to get as many Leed Certification points as they can as the Leed Certification Plan is not very appropriate for rural areas as one of the criteria is to be accessible to mass transportation and another is to be within walking distance. Mr. Schenier noted that the drainage issue could be beneficial to their

application and they wanted to make sure that they had a LEED Certification landscaping architect that would work closely with Mr. Demos.

Mr. Schenier also noted that the Columbia County Office of the State Highway Department has approved the road cut proposal and he said that there is a further review that will or has taken place at the State Level but he was not sure which at this point. Mr. Schenier also informed the Board that the Health Department approval had come through and he believed that all the other approvals needed had come through as well with the exception of the County Planning Board and the final clearance of what can be done on the roads.

Ms. Becker asked Mr. Schenier if the additional consultants and the additional tweaking procedures would make him want to wait before the application was presented to the County Board. Mr. Schenier advised her that he wished to proceed with the County Planning Board approval. He noted that the suggestions that the consultant would make would be trivial as they would appear on the map but would be important in terms of the environment. Attorney Howard advised that these details can be handled prior to final approval.

Ms. Becker asked Mr. Schenier if he or Mr. Demos could give her a letter outlining what is still being worked on so that she could give it to the County. He informed her that it was basically landscaping and nothing major. She also inquired about the Department of Transportation letter to which Mr. Schenier advised her that he did not believe that Joe Visconte would send the Department of Transportation letter without State approval. Mr. Schenier did note that he should be able to obtain a letter from Mr. Visconte stating that he approved the location. Ms. Becker told Mr. Schenier that everything would be brought to the County on Monday and Mr. Demos said that he would try to have a letter faxed to her by then.

Ms. Becker advised Mr. Schenier that they would be on the agenda for next month as we can not give final approval until they hear from the County.

Mr. Davis asked if this would impact the anticipated funding and Mr. Schenier noted that he believed it would not but pointed out that construction needed to begin this year and the question was that they needed to get onto the site to begin the drilling. Mr. Schenier thought that approval would happen this month and Ms. Becker advised him that there was not enough time to bring the application to the County after last month's meeting as they want the information twelve (12) days ahead. She did note that they would accept it on Monday. Attorney Howard advised the Board that a letter needs to be sent to the County referencing what had been done.

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

Attorney William Spampinato appeared representing Michael B & Barbara S. Braunstein for an application for a Major Subdivision Off Golf Course Road. He advised the Board he would be giving a status update as his intent is to keep the project moving.

He advised Ms. Becker that the first version of the draft preliminary plat had been delivered. He noted that the color coded print from last month was revised by Jeff Plass and put on a traditional plat plan lay-out with most or all of the information transferred to the traditional form.

Mr. Spampinato noted that the project engineer, Nick Demos, has a progress report. Mr. Spampinato and the Board reviewed the map and Ms. Becker asked if there would be a boundary line adjustment. Mr. Spampinato suggested increasing the size of one of the lots by asking the Board to allow them to move the boundary line to make the lot a little bigger. Ms. Becker asked if that would be part of this subdivision process or would that be done separately as a boundary line adjustment. Mr. Spampinato advised her that within the confines of this application they will apply to modify the boundary line to increase the size of the lot. Attorney Howard noted that within the present subdivision, lines could be moved to accommodate this. Mr. Spampinato advised the Board that the drawing has been modified to show the conserve lot as one piece as it was set up in the conservation easement that the lot could not be divided.

Mr. Demos approached the Board and informed them that he visited the property with Mike DeRuzzio from the Columbia County Health Department and made perc tests on Lots #2, #5, #4, #3 and Mosquito Island and suitable areas for systems were found on all of those areas. Mr. Demos said that he had a letter from Mr. DeRuzzio and would present it to the Board for their records. He noted that Lot #7, which would be permanently conserved, had not been done as there was no need to do a septic system in that area.

He pointed out that the pre-existing lot already has an approved septic system on it so no further testing was done on that lot as well as Lot #1 which has the existing home. He addressed the fact that Lots #2, #3, #4, #5 and #6 all had soil tests done and noted that Mr. DeRuzzio has written an approval letter.

Mr. Demos acknowledged that before he could finalize the septic system plans, he will need some contours done of the general area. He noted that there were proposed well sites and once the aerial contours were in, he would proceed with the final Storm Water Pollution Prevention Plan.

Ms. Becker asked if this was a straight sub-division with no site plan review inasmuch as no homes were being proposed at this point to which Attorney Howard acknowledged that it was. Ms. Becker also questioned whether this was the preliminary plat stage to which Mr. Spampinato acknowledged that it was a little early for that as well heads, among other things were needed. Mr. Spampinato also advised the Board that a commitment date for the two-foot interval had been set and the Storm Water Pollution Plan was in preparation so that they would be able to move as aggressively as they could. He also noted that they would keep the Board up-to-date on each step as it was completed.

Mr. Davis asked Mr. Spampinato if he could explain the Braunstein lake bottom rights and Mr. Spampinato noted that the deed came in from a source that owned the lake bottom which is apparently common in Copake Lake as close to half of the properties on Copake Lake own to the center of the lake and own the bottom. He pointed out that it is a non-navigable water and is not regulated by the DEC and has been litigated in the Supreme Court as a private lake. He also pointed out that the wetland shown on the map are unlineated so far and he noted that they are in the process of talking with EnCon regarding this. Mr. Spampinato believes that the conservation requirement has been satisfied and he specifically asked the Board procedure on the filing of it when it was classified to leave the Flexible Lot Zoning Regulation open inasmuch as there are some differences in the road regulations. Attorney Howard agreed that inasmuch as a Flex Lot provides flexibility this option might be beneficial to the applicant.

Mr. Grant questioned a road on the map and Mr. Spampinato clarified that this was a road that was built and inspected in 2002. He noted that the Town has the approval in its file after it was inspected by the Town Superintendent, Larry Proper.

Mr. Spampinato said that he would keep the board apprised and as soon as the fly-overs come in he will get that data filed and he will be down in December to file whatever additional information they have from the Health Department such as updated maps.

2008-22 MINOR SUBDIVISION – John J. Belfonte, Jr. – Anthony Street

Mr. Belfonte appeared with his attorney Jason Hover who informed the Board that the round-about had been enlarged to a one hundred (100) foot radius in order to provide better turn-around facilities. Mr. Hover noted that the original plan was to have a common driveway owned by all three lot owners but that was changed after speaking with the Attorney General as well as counsel. He advised that the driveway would now be owned by parcel #1 and parcels #2 and #3 would have rights of way across for ingress and egress as well as utilities. Mr. Hover went on to explain that they will also share maintenance dues as there will be a road maintenance agreement which will be on record before any lots will be sold.

Mr. Hover pointed out that a small portion at the top of the map was originally going to be owned one-third by each lot but it will now be included as part of parcel #3 and there are notes regarding the rights of access on numbers 6 and 7 on the map so in essence parcels #1 and #2 have a right-of-way over parcel #3 and parcels #2 and #3 have a right-of-way over parcel #1.

Mr. Belfonte's surveyor, Jeff Plass advised the Board that the site was approved by Mr. DeRuzzio. It was noted that the only lot that remained was the lot with Mr. Belfonte's residence as the rest of the property had been sold off and a deed from Mr. Belfonte to himself was put on separating parcel #2 out. It was clarified that parcel #4 and other lands on the map are not in Copake so the Board is dealing with three (3) lots.

Ms. Becker pointed out that last time the Board accepted the map as a preliminary sketch and the next step would be to schedule a Public Hearing. It was noted that the Declaration of Covenants and Restrictions that will go onto the lots has not been filed yet and Ms. Becker asked when the Board would be presented with them. It was decided that the Board would receive them within ten (10) days prior to the Public Hearing scheduled for next month's meeting.

On a motion made by Mr. Pilch and seconded by Mr. Grant the Board voted unanimously to accept the map as a Preliminary Plat and to schedule a Public hearing for the December 4, 2008 meeting.

MINUTES

On a motion made by Ms. Becker and seconded by Mr. Pilch the Board voted unanimously to accept the corrected minutes of the September 7, 2008 and October 2, 2008 meetings.

ADMINISTRATIVE

Keys for Board Members - Ms. Becker advised the Board that Mr. Brusie asked for keys to the office and she was advised by Town Clerk Vana Hotaling that Board Members were entitled to have keys to the front door and the Planning Board office. She also advised everyone that if they wished to have a key they needed to speak with Ms. Hotaling and check with Lisa DeConti before removing anything from the office. She also noted that anything removed from the office needed to be signed out.

Housing Resources – Ms. Becker advised the Board that she and Attorney Howard met with Housing Resources to figure out where they left off. She noted that Housing Resources expressed concern that there were now seven (7) Planning Board members and only two (2) know anything about the application. Ms. Becker noted that after discussion it was decided that if they came back to the Planning Board they would have a workshop explaining the whole application to the entire Planning Board so that everyone knows about it. Ms. Becker noted that Attorney Howard advised them that they should write a letter to the Board if they wished to return. Mr. Davis asked if Housing Resources gave any indication as to what their plans are and Attorney Howard advised him that they had not. Ms. Becker asked if there is a time where the Board could ask them to make a decision about their plans one way or another. Attorney Howard advised her that a letter could be sent advising them that if they don't return to the Board by a certain date, the application would be deemed withdrawn. He also suggested establishing a policy to this affect so that everyone is treated equally.

FOIL Requests – Ms. Becker advised the Board that there were eleven (11) FOIL requests made by Diana Wilson for the Housing Resources records from January 9, 2007 through September 18, 2008. Ms. Becker noted that the Town Board passed a motion to have all FOIL requests go through the Town Attorney.

Birch Hill Subdivision – Ms. Becker informed the Board that the Birch Hill Subdivision on Birch Hill Road at the Dam has been sold to William and Sondra Fernandez. She noted that the escrow account needs to be returned to the former owners and pointed out that the Board has no indication what the new owners plans are. It was decided that the file would be closed.

Wind Power – Ms. Becker presented the Board with a letter regarding Wind Power in the Town of Copake and its relationship to zoning.

Land Conservancy – Ms. Becker presented the Board with a letter from the Land Conservancy detailing all their good work and their plans for the future.

Landscape Planner Resume – Ms. Becker presented the Board with a resume from Landscape Planner Klempke Associates which would remain on file.

Meeting on Friday November 21, 2008 – Ms. Becker presented the Board with information regarding a conference that will explore how the residents will explore how the Hudson Valley can meet the climate change challenge.

Training Session – Ms. Becker advised the Board that there is a training session on November 17, 2008 in Cairo, NY to which Mr. Filipovits requested to attend.

Columbia County Planning Office – Ms. Becker presented the Board with a letter from Patrice at the Columbia County Planning Office which referenced a resolution exempting certain referrals mandated by General Municipal Law Section 239M.

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.**
- 2006-33 MAJOR SUBDIVISION – Birch Hill Road – Birch Hill Partners, LLC**
- 2007-11 MAJOR SUBDIVISION – FLS – Farm Road – Karen B. Cohen**
- 2008-07 SITE PLAN REVIEW - CATAMOUNT DEVELOPMENT CORP. – State Route 23**
- 2008-23 MINOR SUBDIVISION/BLA – Lawrence Linder and Sandra Batpie – Lakeview Road (Taconic Shores)**
- 2008-24 MINOR SUBDIVISION – Al Fair – Breezy Hill Road**

ADJOURNMENT

There being no further business, on a motion made by Mr. Grant and seconded by Mr. Davis the Board voted unanimously to adjourn the meeting. The meeting was adjourned at 9:35 p.m.

Marcia Becker, Chair

Please note that all referenced attachments, comprising 29 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:

Copake Valley Farm

September 28, 2003	Becker to CPB (1)
October 2, 2008	Clark to Becker (3)
October 15, 2008	Town of Copake (3)
October 17, 2008	Howard to Kimble (3)
October 22, 2008	Stalker to Becker (4)
October 27, 2008	Cohen to Becker (1)
October 27, 2008	Masters to Becker (7)
October 28, 2008	Howard to Kirschner (2)

Roe Jan Library

October 9, 2008	Clark to Becker (1)
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Braunstein

October 14, 2008	Spampinato (1)
October 16, 2008	DeRuzzio to Demos (2)

Administrative

October 16, 2008	Perry to CPB (1)
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