

**Town of Dover Planning Board**

Town of Dover  
126 East Duncan Hill Road  
Dover Plains, NY 12522



(845) 832-6111 ext 100

Planning Board Meeting  
Monday April 5, 2010  
7:00PM

- Co-CHAIR David Wylock
- Co- Chair Valerie LaRobardier
- Member John Fila @ 7:35
- Member Brian Kelly
- Member James Johnson
- Member Peter Muroski
- Member Michael Villano

Also, in attendance representing the Planning Board were Planning Board Attorney Victoria Polidoro, Planner Ashley Ley, Barbara Kendall and Michelle Zerfas for the office of Joseph Berger.

For the Applicants: John Nelson, Frank Peduto and Jon Adams for RASCO, Nina Nastasi for Tattoo Mamma, Lloyd Scharffenberg, Hector Perez and Rich Rennia Jr. for Camp Berkshire, Rich Mrs. Quesada and Rich Rennia Jr. for El Universal Rosemary Stack for Domain, Councilwoman O'Neill and as well as other interested Members of the Public.

Meeting Called to Order

The regular monthly meeting of the Town of Dover Planning Board was called to order by Chair Wylock at 7:08 PM and began with the Pledge of Allegiance

**Public Hearings:**

**1. RASCO MATERIALS SITE PLAN-7061-00-585063 & 7061-00-580190**

Applicant: RASCO Materials, Property Owner Howland Lake Partners, LP  
Plans Prepared by Frank Peduto of Spectra Engineering  
Property located at Wingdale Industrial Park, 2241 NYS RT 22 Wingdale

Application for Site Plan on 3.0 acres in the M district

Continued Public Hearing

Frank Peduto, Jon Adams & John Nelson present

Frank Peduto -

Rasco is intending to process and recycle petroleum contaminated soil for beneficial re use. They take the material in and all of the operation is done indoors.

About this time one year ago they had received a DEC permit, they went through an extensive process. Since they were last before the Planning Board, certain items have been raised, and they feel they have addressed them.

Since the last meeting additional submissions have been requested and provided.

There has been a revision to:  
 the contingency plan,  
 noise analysis  
 a more in depth grading and berm plan has been submitted

Last Tuesday 3/30/10 a structural assessment was done, they are in the process of updating the report. Engineer Joe Berger and his staff were present, since then a draft report was sent to Joe Berger for his comment.

At the last meeting, comment letters were submitted by the HVA and Oblong Land Conservancy and they raised concerns.

All concerns have been addressed through their (Spectra's) Engineering report process with the DEC.

One of the many DEC requirements will be to have a Monitor.  
 All laboratory analysis must be submitted to Department of Health certified labs.

There is concern about how the material moves in and out-

- 1- Material comes in via covered truck, brought inside a processing building, deposited to be processed through the cold mix operation.
- 2- Once that is done it is then transported a very short distance by truck to the next building which is enclosed.
- 3- The material never has, if any, opportunity to be dropped on the roadside. Part of the maintenance operation everyday is to maintain the road which will be graded to avoid any storm water contamination to the local creek.
- 4- The road will be built up as well as a small berm, so all storm water is directed away from the one swale that does take water and meander through the property which may ultimately end up at the Great Swamp about a mile or more away.
- 5- The opportunity for material to enter this would be slim to none due to the way this will be operated.
- 6- The area where the storm water will end, in a woodland area there will be a bioretention area to take the water and allow it to infiltrate the ground.
- 7- This water will be clean and not water that has come in contact with any of the material.

Co-Chair Wylock-Remind all members of the Public to address all comments to the Board and not to engage in cross fire discussions.

### **Motion made by Valerie LaRobardier to open the Public Hearing 2nd by Michael Villano**

VOTE: Co-CHAIR DAVID WYLOCK – AYE  
 MEMBER JOHN FILA – absent  
 MEMBER JAMES JOHNSON - absent  
 MEMBER MICHAEL VILLANO– AYE

Co-CHAIR VALERIE LAROBARDIER- AYE  
 MEMBER BRIAN KELLY - absent  
 MEMBER PETER MUROSKI - AYE

*Motion approved*

Ben Schwartz:

Runs a farm in Wassaic NY, Member of the North East Organic Farming Association. His business depends on clean water to succeed. Originally from Rockland County where recently a local reservoir was polluted by petroleum contaminated soils. These are similar types of soils as RASCO plans to use. Concerned with the Cold Asphalt application, after some research, they have been known to leech into the aquifer, after a process of freezing and thawing over several years. Even a small amount of petroleum can have a negative effect on our ground water. So he is concerned for the agricultural community and the community in general.

Co-Chair LaRobardier requested Mr. Schwartz to provide a citation with respect to the chemicals being known to leech. - He agreed

Elaine LaBella:

Director of Land Protection for the Housatonic Valley Association, Her associate Tonia Shoumatoff NY water protection Manager is also present 19 Furnace Bank Road, Wassaic  
Comments were submitted at the March 15<sup>th</sup> Meeting, and after further review and the additional information provided by the Applicant, there are additional comments  
She read the following:

April 5, 2010

RE: RASCO MATERIALS SITE PLAN-7061-00-585063 & 7061-00-580190

Applicant: RASCO Materials, Property Owner Howland Lake Partners, LP  
Property located at Wingdale Industrial Park, 2241 NYS RT 22 Wingdale  
Application for Site Plan on 3.0 acres in *the M district*

Dear Mr. Wylock, Ms. LaRobardier and Planning Board Members:

The Housatonic Valley Association (HVA), founded in 1941 is the oldest non-profit watershed conservation organization in the nation, and is dedicated to preserving and protecting the natural character and environmental health of the Housatonic River and its 1,948 mile watershed, which includes the Swamp and Ten Mile River watersheds in New York. Our work in surface and groundwater protection issues is extensive.

We submitted comments to this Board on March 15, 2010, expressing our deep concerns about the proposed cold asphalt operation involving the storage and use of petroleum contaminated soil (PCS) at the Wingdale Industrial Park. Upon further review, we have the following additional comments and recommendations:

1. The application, as submitted, lacks sufficient information to assure the Town that no contamination of the site and adjacent land and water resources will occur. *We strongly urge the Planning Board to require a full SEQRA review of this application.*
2. We ask that the Board request the Department of Environmental Conservation (DEC) to conduct a thorough analysis of the site to account for any remnant contamination that may be present and provide a cleanup plan if any contamination is found.
3. The material handling plan presented at the March 15, 2010 public hearing showed that contaminated materials will be transported around the site by open loaders without any devices to ensure that the PCS will not spill onto the ground. The loaders will traverse the site and move in and out of the open storage buildings, tracking more contaminated materials out onto the ground. This is completely unacceptable and we ask the Board to require the applicant to present a **material handling plan** which contains all contaminated material at all phases of the operation.
4. According to the maps and wetland identifications included in *EXHIBIT 23.0, Wetland Delineation Report* by the Cricket Valley Energy Center, LLC on November 4, 2009, wetlands appear to be present on and adjacent to the RASCO site.  
Figure 1, Site location Map, shows that the site drains from southeast to northwest onto the proposed Cricket Valley site and down to the east side of the railroad tracks.  
Figure 2 shows that a wetland, designated Wetland 3, lies in the path of the drainage from the RASCO site.  
Figure 8 is two photographs of Wetland 3 along the railroad tracks.  
Figure 4 shows wetlands along the south side of the Cricket Valley site and northwest corner of the RASCO site, designated as PEM 1E, which are present on the east side of the rail line near the southern boundary of the site.

Based on this information, The RASCO project may have detrimental impacts on wetlands; the applicant should present a complete wetland identification and boundary delineation. *We urge the Town to require the applicant to establish a permanently protected riparian buffer with a minimum width of 100' adjacent to all wetlands. Within such buffer area no disturbance should occur, and no clearing or grubbing should be permitted.*

5. We ask the Board to require the applicant to provide the necessary information to allow for an accurate determination of the storm water impacts of the project. We also urge the applicant to employ techniques, as permitted in the New York State Storm water Management Design Manual, to infiltrate storm water rather than simply shunt it off into large storm water basins.

In conclusion, we ask that this application be deferred until the applicant can answer the many questions about the environmental impact of this project and satisfy the Board and Dover residents that there will be no harm to the Swamp River and its environs.

We greatly appreciate the opportunity to comment on this important matter.

Sincerely,

Elaine E. LaBella  
Director of Land Protection  
Tonia Shoumatoff  
New York Watershed Manager

Evelyn Chiarito:  
read comments for the CRGD President Carolyn Handler into the record:

April 5, 2010

Dear Co-Chairs David Wylock and Valerie LaRobardier, and Members of the Planning Board:

The Coalition for the Responsible Growth of Dover (CRGD) is concerned to learn that a solid waste facility has received clearance from Dover Town Supervisor Ryan Courtien and Dover Planning Board Chair David Wylock to submit a Site Plan to the Town of Dover Planning Board.

Dover specifically forbids solid waste operations within our borders. Our code specifically states in section 145-50 (A) Solid waste management facilities and industrial uses: "Limitations on solid waste management facilities. Solid waste management facilities, as defined in Environmental Conservation Law § 27-0701 and 6 NYCRR 360-1.2(b) (158), with the sole exception of municipally owned and operated facilities, shall be prohibited in the Town of Dover."

As we understand it, the Rasco Site Plan has been submitted to the Planning Board only because Supervisor Courtien and Planning Board Chair Wylock signed a Stipulation Agreement on December 1<sup>st</sup>, 2009, agreeing to grant Rasco "ongoing concern" status, thereby appearing to grandfather a solid waste business that was issued a Stop Work Order from our Code Enforcement Officer in the same year that DEC withdrew its Permit to continue operations. The only thing that appears to have continued on the site is the arrival of additional solid waste materials, which only now seems to be under investigation.

CRGD, founded by residents of Dover and further supported by residents of Dover and the surrounding area, would very much like to hear directly from Supervisor Courtien and Chairman Wylock, two senior leaders of our community, how they came to agree to open the door to the possibility of a solid waste business operating in our Town by signing the Stipulation on behalf of the residents of Dover.

We are disturbed not only by the process by which a company like Rasco has been allowed to proceed with the submission of a Site Plan, but also by the potential negative environmental impact of having Petroleum Contaminated Soils (PCS) brought onto a site in the Great Swamp Critical Environmental Area. The site is adjacent to wetlands, and is over a sole source Aquifer that supplies drinking water to a larger community beyond the borders of Dover, but the Applicant seems to be unaware of the very environment within which they are planning to operate. To wit: how is it that Cricket Valley Energy is proceeding with a full-blown SEQRA [process] which naturally includes delineating the surrounding wetlands, and Rasco appears to only have been required to fill out a short-form EAF, initially seeming to maintain they were not adjacent to wetlands? And they are in the same Industrial Park. Is this the kind of corporate neighbor and member of the community we

have invited to live along side us? And operate a business that takes in Petroleum Contaminated products above the Harlem Valley Aquifer?

As to actually using the final product, Earth Pave, in our community, one of the obvious considerations is the life of the product. What longevity studies has Rasco presented? Cement starts to disintegrate after 100 years, and is composed primarily of limestone, clay and iron ore. Earth Pave has petroleum in it. In fact its *raison d'etre* is to dispose of a contaminated substance at a profit, a business model that makes all the sense on paper, but perhaps not to a community if it entails manufacturing it over an aquifer or laying it down over or near groundwater sources. At a minimum, more research should be done by the Town and Planning Board before allowing it to be used above our Aquifer or within our groundwater recharge areas.

Most of us support recycling, and capitalism, and the kind of entrepreneurial spirit that gives birth to business ideas, successful or otherwise. Most of us try to balance conservationism and capitalism in the business world; in fact CRGD's letterhead is printed on recycled paper which is manufactured and sold at a profit. And at the bottom of that paper it clearly states that the paper is recycled. Most products today that use recycled materials boldly state that fact and proudly display the universally recognized symbol of recycling; many go further and proclaim the percentage of recycled waste in that product. We find it interesting that Earth Pave has received a "Beneficial Use Determination" from DEC which allows the product they produce "to be sold as a newly manufactured product, not as a waste product." Perhaps we can expect that not only would Rasco not advertise what percentage of Earth Pave contains recycled petroleum products; it may not plan to advertise that it contains PCS at all.

CRGD's concerns can be illustrated with the following question: If you were buying Earth Pave to put down in your driveway or patio, and you drew your drinking water from a nearby well, wouldn't you want to know that you might have laid down a product made from Petroleum Contaminated Soil over the source of your drinking water? Wouldn't you want to make that decision aware of the contents and longevity of your ground surface product? We realize we raise concerns about an outcome Rasco does not expect, or it would not offer the product on the market as a safe "household" item. But we sometimes find ourselves taking a "disaster aversion" approach when it comes to the safety and well-being of our community, and we raise these issues in order to address them as a community. We believe that transparency of process and dialogue with interested parties and stakeholders often yields the best results for all involved. We realize that taking the Smart Growth approach sometimes takes longer, but we believe it results in the best possible solution..

In addition to requesting that the Planning Board demand a full SEQRA review of the Site Plan, we will request that Michael Merriman review his determination and explain his findings under SEQR which led to the issuance of a Permit. In the Environmental Notice Bulletin Region 3 Completed Applications 6/28/06, it is stated above his name, and under the heading,

State Environmental Quality Review (SEQR) Determination:

Project is an Unlisted Action and will not have a significant impact on the environment. A Negative Declaration is on file. A coordinated review was not performed.

We do not understand his conclusion that the project will not have a significant impact on the environment, given the location of the Industrial Park adjacent to wetlands.

We thank the Dover Planning Board for keeping open the Public Hearing on Rasco consideration so we were able to comment, and we sincerely hope that the Town of Dover will respect its own municipal code and deny the operation of solid waste facilities within its borders unless municipally owned and operated.

Sincerely,  
Carolyn Handler  
President, Coalition for the Responsible Growth of Dover

Co-Chair Wylock - Responded to some comments made:

- 1- Allowing a site plan application to come before the Planning Board, can be submitted by anyone, there is no guarantee that it would be approved automatically, all are considered with an open mind.
- 2- The Stipulation Agreement which was signed in December 2009, signed by the Supervisor Authorized to do so by the Town Board, on the opinion of the Code Enforcement Officer, who stated this is a preexisting non conforming use. Based on those 2 signatures, he signed the stipulation agreement; which was later ratified by the Planning Board. This was by the interpretation handed down by the Code Enforcement Officer
- 3- Regarding the Short form EAF, that is incorrect- a Long Form EAF was submitted January 2010
- 4- DEC Regional Director Mr. Janeway was here on March 1, 2010 to explain how they arrived at their conclusions, and the information from that meeting is available in the minutes.

Evelyn & Joseph Chiarito  
Dover Plains, NY 12522

April 5, 2010

Re: Rasco Materials Site Plan

To: Co-Chairs David Wylock and Valeria LaRobardier and Planning Board Members

My husband and I are taxpayers and residents of the Town of Dover for the past 27 years and have always been involved with town issues. Years ago, I served as CAC Chair and was involved in numerous environmental issues, attended environmental training and planning and zoning workshops by the Dutchess County Planning Federation.

I was also very active in opposing the Palumbo Dump proposal years ago which would have brought construction and demolition to our town running the risk of polluting our water source, affecting our health, and devaluing our homes. Clean water is of great concern to most folks and they certainly stated that very clearly at that time arriving in huge numbers at hearings. Also, the Master Plan survey showed that folks were concerned that their water not be polluted.

Currently, I am very concerned about the proposed Rasco petroleum contaminated soil operation to be located at the old Mica Plant location on Route 22 adjacent to and in the Great Swamp (second largest wetland in the State of New York) and slow flowing Swamp River. This has the potential to pollute those water bodies and the whole Harlem Valley aquifer which supplies about 20,000 people in the valley.

For me, and I think as well other folks, the Rasco proposal just recently came to light as I saw it noticed in the Poughkeepsie Journal. It certainly appears that it has been kept secretly under wraps until now. So much for the alleged transparency in town government As I'm sure you know, we no longer have a local newspaper. We do have a town web site which I check frequently and I never saw anything about this project on that site. The town web should be responsible to advise town residents about important proposals.

I was shocked that Supervisor Courtien and Planning Board Chairman Wylock signed the "Stipulation Agreement" on behalf of our town grandfathering the Rasco PCS business, especially when we passed legislation after the Palumbo fiasco to prevent our town having to host every environmental damaging solid waste proposals which seem to come our way (Section 145-50(A) Solid waste management facilities and industrial uses - also see definition of solid waste).

Also, it appears to me that IT Materials was out of business for over one year thereby losing their use. I would like to have this explained.

I believe we were and currently are a targeted town since we are considered a "poor town" and businesses unwelcome in other towns target our town, where it seems they are finding an open door in town government. I can only guess why that is and it would be great if Supervisor Courtien and Chairman Wylock could explain their reasoning. If the reasoning is to avoid a law suit, Section 145-50(A) was already challenged and stood up. Why is our Town attorney unaware of section 145-50(A)?

Since it appears to me that this project will produce a potentially polluting material which may be used all over our town, and the whole Harlem Valley and contaminate our aquifer, will increase Rt. 22 traffic and air pollution from trucks is located in and adjacent to the Great Swamp and Swamp River, 2nd largest wetland in

the State of New York, a designated CEA, and can have a negative effect on our community health, welfare, safety and home values. There is no question in my mind that this application should go through the SEQRA process.

Respectfully Submitted,  
Evelyn and Joseph Chiarito

A copy of the Glynwood Center report was also submitted to the Board by Ms. Chiarito.

Co-Chair Wylock – There have been no secret dealings or meetings or anything underhanded with this application. The RASCO people came before the Board in January; the Public Hearing was set a sign was posted.

Co-Chair LaRobardier- We acted on the recommendation of the Code Enforcement Officer.

Joy Godin - East Duncan Hill Road, Member of the Dutchess County Board of Health, Here to read and email addressed to Supervisor Courtien and Co-Chair Wylock written by Stancy Duhamel dated March 29, 2010

Sent: Monday, March 29, 2010 3:54 PM  
Subject: Rasco Stipulation signed by you and the Code Enforcement Officer

Hi Ryan and David,

It has been brought to my attention by an Interested Party that by signing the Rasco Stipulation you have helped clear the way for a Petroleum Contaminated Soil (PCS) Recycling business to be considered in the Town of Dover, based in or adjacent to the Great Swamp and Swamp River, and above the Harlem Valley Aquifer.

As you know, solid waste projects are not allowed in Dover, and I am sure you did everything you thought you could do to prevent a project which otherwise would have been denied under our municipal code. Residents of Dover have made it clear that we will go out of our way to exclude any solid waste projects and as such have written it into our code to exclude such projects. I have read the FOIL'ed records of the Dover Planning Board Meetings and Public Hearings, and have questions for you and for DEC as well. I was dismayed to find that on a project with potentially quite serious environmental consequences, the Applicant has not approached the process with the professionalism, transparency and seriousness with which CVE has conducted itself, and CVE is handling PCS.

Compared with CVE, the relative lack of transparency on the part of Rasco is problematic, especially when combined with the lack of a coordinated review between DEC and the Town of Dover before a DEC permit was issued. Did Rasco disclose to DEC that a Stop Work Order was issued by the Town? Did the Town? Did DEC inform Dover that the Applicant applied for a permit? Then again, DEC is understaffed and it may have been a mistake to issue the Permit in the first place if the adjacent wetlands weren't clearly delineated and considered as part of a coordinated review at DEC. And as far as the Board of Health goes, I have approached Joe Napoli to request that in fact He does put something in writing on the water and wastewater facilities as part of the review process.

That Rasco was shut down 5 years ago naturally raises a lot of questions over your decision to grandfather the business, and I trust you will be able to shed some light on the steps you took to arrive at that decision. Are you available for a conference call walk me thru the process, ie~did you have full blown Town and Planning Board meetings at the end of which yeti were empowered by a majority of our elected and appointed officials to sign~on behalf of Dover, or did you exercise something like Executive Privilege? I am led to believe the Code Enforcement Officer's signature is not legally binding, as the Applicant maintains, so I don't need to include Georg= Hearn unless you'd like to.

It would appear that the alternative method of determining whether the project is grandfathered is to take it thru the courts. That route would necessarily involve legal fees, and I am curious to know the amount of the legal fees our Town Attys estimated it would cost to argue that the project was not grandfathered, and moreover should not be located above our water supply.

If a conference call is untenable given the situation. =I understand and am comfortable asking these questions in a public forum, at both a Planning Board and Town Board meeting. Some of these questions have been raised in my discussions with interested parties, and I think residents would like to understand the process better as well.

I have read HVA and Olc's comments on Rasco to the Planning Board - the community is fortunate that OLC is a contiguous=property holder, was given notice and commented, and circulated its comments. For the Applicant to state that the public has had plenty of time to comments since the application was published in local newspapers is just one indication of=its lack of transparency; we have no local newspapers and a statistically insignificant percentage of approximately 9500 residents actually go to Town or Planning Board meetings. OLC had no problem communicating directly with the residents of Dover. Additionally, this is the kind of information that could be sent by the Town Board to residents via the Town of Dover website

i realize I have raised many questions and concerns, and I appreciate your willingness to respond, even if its to direct me to raise these issues in a public forum. At a minimum I would expect that a long form EAF be completed by the Applicant, and that the project be subjected to a full blown SEQRA review. Of course actually approving the product for use at Dover Knolls or CVE, given their locations in the Great Swamp CEA and over the Harlem Valley Aquifer, would require further research. Or not: it=may be that the product has not been around long enough to make an informed decision: Cement breaks down after 100 years and, simply put, I would=not use contaminated cement above or in the vicinity of the water supply of our children's children.

Thanks very much for your consideration of this matters  
Respectfully,  
Stancy DuHamel  
Wingdale, NY

Co-Chair Wylock - Paragraph 3- "have approached Joe Napoli to request that in fact He does put something in writing" When the applicant first came before the Board, they proposed having a port- o john with dry hand wipes for the workers there, we insisted that was not sufficient and since then they have agree to have a trailer that will have full facilities, as well as a holding tank for waste water with an alarm system to alert when full.

There is no such thing as "executive privilege" and as for a local newspaper, the only local paper we have is the Poughkeepsie Journal. There is no other paper for us to get news out to the Public.

Member of the Public- Would like to correct the newspaper statement there is the Millbrook Independent, she is a writer for the paper and it is distributed in Dover Plains.

Co-Chair Wylock - The Poughkeepsie Journal is the official newspaper for the Town of Dover. Also all surrounding adjoining property owners were notified in writing.

Attorney Polidoro -

There seems to be some confusion, she believed that at first the applicant had submitted a short form EAF and has since submitted a long form EAF. This is the document that the Board looks at to determine whether or not they will adopt a negative declaration or positive declaration. What she feels everyone is referring to as the "full blown SEQRA review" is a positive declaration. That would require the preparation of an environmental impact statement. This Board has not reached that step yet; they are gathering information to determine whether or not they want to go that route. No decisions have been made yet as far as SEQRA is concerned.

Amy Farrell

Village of Pawling- for over 25 years

Concerns for the water, that she will be drinking, that might be affected by this project. Already because she lives in the village, the water there has been an issue. To contemplate it getting further contaminated, most of the water that she is drinking comes from ground water or wells in

the village. The idea of having pollutant added to her water is of great concern. She hopes the Board really looks at this issue carefully, it's not only a Town of Dover issue, it is the whole valley.

Mark Chipkin

Volunteer for the Nature Conservancy, Pawling Nature Reserve which extends into the Wingdale / Dover area. Also a science teacher and has had a lot of fun playing with the little creature who live in the swamp, near this development

He is unclear, people are talking about cement, and he thought this was an asphalt mix. He does not know much about asphalt, but his neighbors are always repaving. He thinks that they repave because the oils and chemicals in it dry up and leech out into the ground. Because of that they have to reseal it, and put those oils back into it. In this particular case, they're producing a product of contaminated oil and soil, and that concerns him. It will leech no matter where it is used. That's what happens with asphalt. He lives near RT 22, water is a concern, all of these creatures all of the amphibians and reptiles that use the aquatic environment are all sensitive to this kind of chemical. Many of them are dying because of the fact of things leech into the water. The swamp comes down into Pawling, and he is thinking of the bigger picture that this looks like we're going pretty fast with this application. Just from his point of view, from what people are saying, if it is a viable industry and it works, great. But right now it seems like it doesn't have enough of a track record and we're taking a big chance to go through this quickly. SEQRA could go into this and he hopes it is something that is done. This company this industry does not have a clear track record, when he "googled" it he could hardly find anything about soil asphalt mixes, he's sure it's out there, but it seems new. We don't want Dover to be the experimental place where we found out that it doesn't work. He was concerned when the applicant said, "I think the Great Swamp is about a mile away" He would want the applicant to know exactly where everything is, every stream, every wetland. He knows some of the Board members can find this information. He also want the Board to find a track record for this company because he thinks it's important if they are reputable and if there are other Towns that have this type of process. If they're not then it needs to be searched and watched by someone to see if soil and contaminants are spreading. It is true there is no real newspaper; anything the Board can do to be creative about getting the word out would be respectful. He would feel really good about a Board that went the extra mile and said we're going to post it in these places. This is a very important project

Sibyll Gilbert

Has heard many good comments here, will try not to be redundant. She has spoken before and her comments tonight are personal  
Previously she spoke as a representative of the Oblong Land Conservancy; she is also on the Board for FrOGS and CAC for Pawling

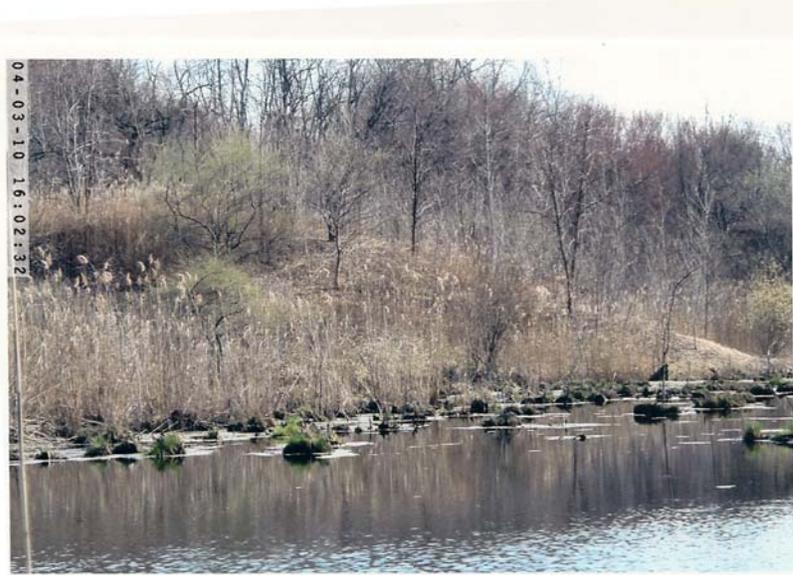
One issue not mentioned is air quality. The contaminated soils do produce emissions of petrochemicals. That can affect ambient air quality in the neighborhood. So there should be an examination of the cumulative impacts of this in addition to the Cricket Valley emissions. The best way to scope this all out is to get all of these concerns on the table and scope it out through the SEQRA process. On Saturday (April 3) she visited neighbors, at the Wern site where TT Material dumped this processed material as fill, and they used it illegally in a wetland. This was probably the worst case scenario. There's an estimated 20" of fill of this stuff on RT 22, in Pawling, and its never been cleaned up. Still there and this is what DEC and the State has done and the Town there is no government that has been able to effect a clean up of this site. He visited with George Walters a neighbor, and she was able to photograph the site (2 photos submitted). The first is a photo looking south of the neighbors property and you can see this huge berm filled into the wetland,

Then she took photos the surface of the wetland, it is coated with a thick algae, it is bubbling and like a mosaic of colors, very peculiar looking stuff. This is taken after a major flooding event. The water was really diluted. Mr. Walters told her in the summer the gook on the surface, turns black and forms big bubbles. He is a Senior Citizen and says he wants it cleaned up, who is

responsible. Recently he developed a urinary tract infection and he was told to have his well water tested. He showed her a copy of the test results and it was contaminated with Coliform and he has an order to not use the water. The well is 140' deep and serves 2 homes. She feels this is just the tip of the iceberg. If further tests were done to test for petrochemicals they would find more stuff in the well. Certainly in the wetland area, which is obviously contaminated? The owner of this property said he obtained the fill for free from TT Materials and that no one told him that he can't put it in the wetland. The best remedy is to get all of the concerns on the table in a scoping process and really examine all the facts before any permit is granted. The Board should be aware that DEC is in a crisis given the current budget and they have always been understaffed. We can't count on them to monitor this.



Photos submitted by Sibyll Gilbert labeled "Wern Site, Pawling, Contaminated fill"



Michael Purcell  
Pawling, NY

Speaking as a private citizen, but also is a Member of FrOGS, Pawling CAC also on other Boards.

He spends a lot of time on the Swamp River and has been involved in some wild life studies; there are species of special concern. There are threatened species, adjacent to the site there are endangered herbaceous plant, called side-oats grama grass, it grows along the railroad tracks. He wanted to talk about hydrology and the soils there. People talk about wetlands, but what makes it a wetland is the soils what they are called is hydric soils. Because the water is contained in these soils oxygen can't get in and supply the roots, they become hydric and only certain plants can grow there. One way to find out these things is to use the National NRCS website. The USDA website has a soil web survey that you can do - any place in the United States. You can get aerial maps of the soils, polygons for Dutchess County. He noticed on the site it gives the characteristics of the soils and at the lowest point it sweeps in and is comprised of Wayland soil which is hydric and in the summer when the water table drops and in these soils the water table will stay high. They are alluvial soils in the hill sides and are commonly found, so there are a lot of Wayland soils along the Swamp River. This is one polygon. If you look further at the other polygons in the area, you can type in what your land uses are going to be and if you go to the Storm Water Manual, it show that all of the soils with exception of 1 polygon of Stockbridge soils are very limited. They are very limited for storm water management, infiltration or ponding. That's a bit of a concern, if there were contamination, and then what do you do? The nature of the swamp is that August when the water table is low; areas that were recharge areas, water will run out of the soil into the streams and the Swamp River. That's when you call it a discharge area. As the water table drops, in the summer time, when you get precipitation, these areas become recharge areas, because the water table drops. Water is the most soluble thing on earth; it dissolves anything you throw at it. The problem with hydrocarbons especially aromatic hydrocarbons, you might find in PCS soils, they can travel very rapidly once they are in the aquifer. Especially the Harlem Valley Aquifer, it's made up of carbon and limestone. Which is easily fractured, that extends and is called calcareous bedrock, carbon or calcium carbonate at one time it was a salt water sea from Millerton to Brewster. Now we have these big limestone deposits and water travels freely through these cracked rocks. If there are pollution sources coming into an area, through precipitation cycles, it can pollute the aquifer. It doesn't take much to contaminate a well- you can contaminate a pretty large lake with a teaspoon of oil.

He also thought about the use of the soils, you can't really change the characteristics of, you can put a berm in, or build a pond, but you can't change the characteristics of the soil. If the USDA says that the soil isn't good for infiltration, then no matter what you do to it, it isn't going to change it. Have soil scientists, you can have free soil reports, through USDA and get all of the characteristics of the soils.

Storm Water Management this product has to be capped with an impervious layer, once in place, if used as a black top- so it would be useless in a low impact development site. The State is strongly recommending now, in development projects. You can have pervious pavers to infiltrate ground water as much as possible. So if this product is made and can be used for driveways, if there are large developments going in, it might not help the storm water situation. He knows that Dover, Wingdale and parts of Pawling flood pretty frequently. He can give the Board maps on the soil polygons.

Sharon Kroeger  
Amenia

The Last Past President of the Ten Mile River Commission

This is a group that was put together some years back, to monitor and sort of watchdog the watershed and aquifer. Late in the 90's when the Chazen report came out that identified the importance of the aquifer and the fact that we're all using it for drinking water. And that all the parts of it are connected. You can't really isolate a section and say you can do something and it

won't affect the other part, because it's really not true. We set up this ten Mile River Commission and had representation from each of the four towns, Northeast Amenia, Dover, and Pawling, CAC representation, it wasn't by individual, and it was by who was the Chair. There were 9-10 non-profit groups, these were permanent groups concerned with the environment, management land and water. During that time things got good, there was progress the Thorne Dam was rebuilt, the Town of Amenia didn't have to worry about being flooded out, the Webatuk had been so cleaned up that it tested for drinking water. On the other side of Rattle Snake Mountain, that tributary was somewhat better off, the farmers north were not putting as much nitrates in so everything was looking better. The Amenia landfill was cleaned up; finally we really began to relax when the Housatonic Valley Association began to take more ownership of the NY side of the watershed. Now we have a River Keeper, which is very nice. Some of them have been a little off in watching until the situation here in Dover began to worry them. A lot of them are seriously worried, because it's like a nightmare in Public Administration. If you look at the role of the agencies that are supposed to do what they're supposed to do and the pressures that are on small towns. Dover has a lot of pressure on it. It appears that the types of decision making that is going on don't measure up to the type of standard you would expect. Goodness knows you don't want to see a huge set of court cases in here, article 78's. It is entirely possible. She did not think that any town that she knew of that would be able to have a situation where a permit for manufacturing toxic soil products is stopped and they put a hold on it and they can't do any more and they wait a while, no body is fined and no body has to pay the piper, and no body has to fix it up or clean it up, that's very strange. Why isn't the owner of that property supposed to take care of all the damage that's there if the person who is renting isn't held liable, then why isn't the owner held liable.

Co-Chair Wylock - At the Last Planning Board meeting the Board approved and sent a letter to the Town Board asking that they direct the owners of this property, Howland Lake Partners to clean up the entire site including where Cricket Valley intends to go and if there are any violations there, they are to be cited by the Code Enforcement Officer.

Ms. Kroeger-That's impressive, that means that a small town in a democracy can find citizenship to get their heads together to problem solve. She thinks the DEC is somewhat remiss here. They are not doing a holistic view of this situation. The whole Great Swamp is there and it's impossible not to look at all that. How can you grandfather something that is not on going, it wasn't on going so how the words grandfathering could even apply I, even in a small town is hard to understand. The watershed as a whole, is wondering why the Federal EPA is not looking more closely at this. The words MTBE (methyl tertiary-butyl ether) don't seem to be on any of the documents that she had a chance to read. There are people involved in this who think that good clean gasoline is a simple problem to solve. Now that we know how serious MTBE is, she would think the Health Department would want to get there too. So they will keep watching now, and maybe have to get more commissions going, this may very well be the important case study.

Tonia Shoumatoff

Hamlet of Wassaic

Speaking as a former volunteer of the Harlem Valley Aquifer Study under Russell Urban Meade.

Along with Sharon Kroeger was one of the volunteers, they assessed all of the water, sources of water contamination throughout the Harlem Valley. She went from business to business, from Amenia, Wassaic area assessing the watershed. She had interviewed Paul Thompson, Town Historian, as well as several other historians. Historically all of the sources of contamination in Amenia were from old gas stations, for the aquifer, and they closed down all those little small pumps. The soils were contaminated they were considered impediments for the aquifer also some of the dry cleaning operations as well. She just wanted to make the point that the primary sources of pollution for the Harlem Valley Aquifer were small gas stations.

Linda French

Dover Plains, NY

She has attended all of the meetings, although she had missed March 15, she attends all of the Planning Board meetings. She wanted to compliment the Board; they do a magnificent job of being very thorough. They are transparent, these meetings are televised, and you can watch them on Channel 22 and watch them. These meetings, Town Board, ARB and ZBA meetings can all be watched and see what is happening in the Town of Dover. She comes to the meetings, hears the questions that come up, Willie Janeway of DEC was here. He spoke to everyone, gave his explanation. They may be tight with their funds but he did come to a meeting. People are saying, there will be more traffic on RT 22, it's a truck route. We are in the middle of a truck route. She passes trucks all the time, escorted by police, there are escorted wide loads, the road seems to be in good shape. Also it is a contaminated site, it's been leeching stuff into the ground, it has not been cleaned up and now an applicant is here and it's a situation. She would like to see sites like this get cleaned up for the aquifer and the people. There are a lot of them and she would like to see all of them addressed. There are things sitting in the great Swamp that shouldn't be and are in the process of being cleaned up. She just wanted to compliment the Board; she feels they are transparent and the Town is transparent and that they try the best they can.

Co-Chair Wylock - received a phone call at 5:00 this afternoon and read the following comment letter emailed to him from Former Supervisor Jill Way

Dear Co-Chairs Wylock, LaRobardier and Members of the Planning Board:

I have recently learned that an application for Site Plan approval has been submitted to the Planning Board from Rasco. I further understand that Rasco intends to process solid waste. Please be advised that Section 145-50 of the Town of Dover Code specifically prohibits additional solid waste facilities to be permitted in the Town of Dover with the sole exception of municipally owned and operated facilities.

Additionally, I refer you to the definition of Solid Waste in Section 145-74. "Any solid waste which receives a Beneficial Use Determination (BUD) from New York State Department of Environmental Conservation (NYSDEC) is still considered a solid waste for the purposes of these regulations."

This amendment to the code was adopted in 1999 to protect the Town due to the unprecedented number of existing and proposed solid waste facilities within our jurisdiction. Section 145-50 was the Subject of much public comment over a four year period. The public raised countless and warranted environmental concerns during that time. Both before and after the adoption of the new zoning, the Town was sued by applicants that were proposing solid waste facilities. With the expert pro-bono assistance of the Pace Environmental Litigation Clinic, the Town Board prevailed on those challenges.

Finally, operations of this sort that may have been conducted at this site prior to the 1999 Zoning Amendments ceased a number of years ago pursuant to actions taken by NYSDEC and the Town of Dover Building Inspector.

Any argument that this operation be considered a pre-existing nonconforming use should not be entertained.

Please do not set a dangerous precedent by allowing a solid waste facility to be sited in the Town of Dover in this manner and contrary to the Town of Dover Code.

Sincerely,

Jill Way

Supervisor, Town of Dover 1996 – 2007

There were no further comments from the Public

Michelle Zerfas:

The site was walked with the Structural engineer

An interim report was received, not a final

They are looking for- A berm is shown, a grass swale type treatment is requested as well

Vibration: more information is requested, an opinion from the Consultant with respect to start up to get a base line opinion prior to start

Any repairs in report should be done prior to a C/O

Question: What happens when a "hot load" comes through?

Planner Ley:

The Applicant submitted a memorandum which addressed most of her previous comments.

An updated noise analysis was submitted.

Vibration is still an outstanding issue. At a previous Planning Board meeting it was discussed a study after start of operation at the facility, she suggested there be a condition in the final resolution that states:

*The operation of the facility shall comply with the requirements of §145-40.D, "Vibration." Within three (3) months of the issuance of a Certificate of Occupancy by the Town of Dover Building Inspector and commencement of operations, the Applicant shall prepare a vibration analysis to demonstrate compliance with this provision. The vibration analysis shall be submitted to the Town of Dover Building Inspector, or his or her designee, for review and approval. A copy of the vibration analysis shall be transmitted to the Planning Board. Should the operation of the facility not comply with §145-40.D, the Applicant shall propose and implement vibration mitigation measures under the direction of the Town of Dover Building Inspector, or his or her designee*

It is understood the Applicant will be addressing that the building can structurally handle the vibration that is expected with the intended use of this facility

With respect to a comment made by one of the speakers regarding the movement of soil on the site- it was a good point and is something that should be addressed

Attorney Polidoro –No additional comments at this time

Co-Chair LaRobardier- Agreed with the movement plan and thinks it could be something incorporated into the documents just like the safety and containment plans.

Feels it is important for it to be realized that the Board is not talking about fill, they are not talking about manufacturing fill to be put into any place that is in the Swamp River. When you listen to the comments, you really have to sort out what applies to the application and what does not, and be careful about what you're considering.

Member Fila- Feels at this point he needs to really listen, there is a lot more information that needs to come, and recommends the Board continue the Public Hearing.

Pete Muroski- Thanks all for coming and speaking. There were some interesting and valuable points that were made

One comment to be made on the structural integrity of the storage building, the vibration studies should tell the story if these buildings are sound for the process.

Planner Ley- there will be 2 separate studies the structural analysis that is being updated to address whether or not the building is sound enough to handle the vibration. Then a vibration study to be done after to address whether or not the vibration being produced comply with the Town of Dover environmental performance standards.

Co-Chair Wylock – how was it determined the number of trucks that would be coming in on a daily basis?

Engineer Peduto- They were being optimistic, it would be wonderful if that many trucks were coming through. But it was really backing into the number by the limitations that DEC had placed on the amount of material that could come in , not only what can be on site at any one time but how much can come in per day. No more than 500 tons per day could be taken in. The number is generated from that, realistically- it's highly unlikely to happen. In this type of a business, it's based on where the source is and how much is at the source. If there is a gas station that was contaminated, and there were 500 tons of soil, that they were to accept, then that might happen with in a day or two and then nothing would happen for three more days as far as material moving in and out. It's a sporadic environment. There may be 10 trucks today and 1 tomorrow. It was balanced out by the math.

Q: Does the Client have any other operations in the Area?

A: No not in the immediate area

Q: Who will inspect this in coming loads point of origin etc?

A: As explained in the Engineering report, when material is identified at the source, the first thing that happens if there's a spill is it is either brought to a land fill or we try to recycle and reuse it. They contact RASCO. Rasco sends them the forms and they need to provide testing. Rasco needs to be sure that before it leaves the site of origin that the level of contamination is with in the levels that they are allowed to accept, through the DEC permit. That information is in hand before the material is even on a truck. People just can't drive up without being expected, if they don't have the information in advance they have to turn around and go back. When they arrive we'll have the testing results and if it complies with the permit allowance, then the material can be deposited here for processing,

Q: Is there any kind of certification that the people who do the inspections have to have at both the point of origin and at your yard?

A: They would be knowledgeable in how to read a report. There is a visual examination of the material. If it's too "dirty" like plastic, wood or other debris, it may not be accepted. It could be accepted because it will be separated, wood and plastic need to be separated before this process is done.

Q: What do you do with the material that is separated?

A: That is placed in a large dumpster and sent to a local land fill that is identified to take such material whether it's C&D or other permitted debris by a licensed hauler- it wouldn't be RASCO.

Q: What would prevent some one from burying lead or asbestos in the middle of a load covered by material that would be acceptable by you?

A: At some point you do have to rely on somebody. If it is a petroleum spill, the DEC is on site anyway. They are technically, but don't have to be part of the process, they would be indirectly because they are aware of the site. The material gets sent to a laboratory, they look at the lab results. They don't test for every single contaminate, but part of the process of evaluating contaminated sites, understanding the source. That is where the state agency enters the picture. They (RASCO) can only go so far. The testing will tell them what contaminants are in it, focusing primarily on the petroleum contaminants. The source of this material is known to be contaminated by petroleum spill. This is how the process begins; it is tested initially, and then tested later.

In response to Mr. Chipkin- He would be glad to share information if Mr. Chipkin would forward his email. Others have alluded to this but he wanted to clarify- this is not a new technology, this technology is old by most standards. Personally, he recalled when this technology was brought to DEC in the early 90's a significant amount of testing was done. Dover is not a test case. Research on the technology, does it work, how does it work, what are the interactions that are taking place. The reference to asphalt driveways breaking down and leeching – the 1 test that makes this material pass is a leeching test. The whole technology is centered around a water based liquid asphalt emulsion , surrounding the minerals in the soil pushing out water which evaporates and then solidifying in a chemical reaction, so that this material the actual petroleum no longer leeches. That is the concept. How do we confirm that? When RASCO is done processing the material, it gets moved, sits for 7 days. Why 7 days? 7 days is actually for a safety factor- because 15+ years ago when this process first came on the scene, testing was done to say what happens after you process on day 1, day 2, day 3 etc. What was learned was that probably at 5 days, it sets up and does not leech a safety factor

was added to make it 7 days. It has to be tested before it leaves the site. Once it is tested and it passes; now the material can be sold to a vender. Someone said it's not transparent- DEC has made this nothing but transparent. There is a form that has to be signed by the purchaser and that form says "I understand that this material is earth pave and a cold mix asphalt and it was generated by its source of petroleum contaminated soil" Nobody picks this material and has no idea what it is. They know exactly what it is, it's all part of the process that was required by DEC. DEC did a ton of work on this.

Q: If and when Dover Knolls begins their demolition is this the type of material you would be taking in?

A: Demolition, not likely, not unless it was petroleum Contaminated, even then if it is mixed with demolition debris probably not. No, that is not the type of material they take in.

Member Fila- Members of the Public mentioned MTBE- That's a gasoline component? A: Yes.

Q: Is gasoline one of the petroleum products that you intend to use?

A: Yes, it would. The typical petroleum is gasoline fuel oils diesels etc.

Q: Can you provide us with a list of the contaminants, that are testes for and the levels allowed?

A: He did not know if the Board already had that information, but would provide it. In reference to MTBE in the last 4-5 years, MTBE is no longer an additive to gasoline, that's a big help to all of us especially those who are concerned with ground water . One unique properties of MTBE is it is miscible I water, but you don't get large amounts of MTBE in soil- it doesn't adhere to soil well. It usually isn't an issue in soil- it doesn't adhere but soil- absolutely. Not a big contaminant for soil and because it is no longer used in gasoline it's not as ubiquitous from new sources.

Q: (Co-Chair Wylock) Why do you get that terrible odor?

A: That's the odor of hydrocarbons. Hydrocarbons, diesel compounds, Naphthalene, Florentine, etc those are all compounds of hydrocarbon. They all make up in various percentages, original petroleum, the odors are a result of the hydrocarbons, and they're not MTBE.

Q: Co-Chair LaRobardier- Is there some way to tell the Board what would happen if someone did happen to sneak something in that was not on the manifest, what if the original inspector is not a diligent as he should have been, so the load comes in good faith with the inspection form that says it's all ok, what do you do when you discover it is not or can you discover that it's not?

A: Can they, good question- realistically if it is discovered that it is suspect. That batch would have to go to a land fill. DEC say we have to either treat it or if it doesn't pass for whatever reason, it must be disposed of at a permitted landfill. If they take it and it's bad, they own it. Once a load is accepted, that's it.

Q: If you get a dirty load in, do you report it to DEC?

A: That's a requirement.

Mr.Chipkin- In terms of contaminants- with his own well, a simple test for Coliform bacteria is maybe \$20.00; more complicated tests are more money like chlorine or lead. If you can't afford the test, when you talk about emulsifiers going around the soil and protecting it, he feels a lot better about the project. He would feel even better about this project if it were in Nevada or New Mexico, not Dover, but in a dessert where people, streams and waterways are not surrounding this. He does not agree when it is said it's their problem when they find the contaminants, it's our problem because it is getting paved into our neighborhood.

A: When they find a problem, it is not just processed and paved it is brought to a permitted facility.

Member Fila: At earlier meetings, it was discussed what is called a "hazardous material or Hazardous substance" you had a qualification that was different because it was a petroleum based product, if it's found in water than a hazardous substance maybe something else- there are different standards for petroleum based - here's the question- Are you familiar with Dover's definition of Hazardous substances and material- he believes it's different than DEC's

145- 74-

HAZARDOUS SUBSTANCE/MATERIAL -- Includes any of the following:

- A. Petroleum.
- B. Any substance or combination of substances designated as a hazardous substance under Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1321).
- C. Any substance listed by the New York State Department of Environmental Conservation which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment when improperly stored or otherwise managed.

HAZARDOUS WASTE -- All materials or chemicals listed as hazardous wastes pursuant to Article 27 of the Environmental Conservation Law and all toxic pollutants as defined in Subdivision 19 of § 17-0105 of the Environmental Conservation Law.

He suspects that this is more stringent than the guidelines that DEC uses.

A: It's not; the distinction is hazardous substance versus hazardous waste. A hazardous substance is what is contained. A fuel truck driving down rt 22, to bring fuel to a local gas station- that's a hazardous substance, Hazardous waste is when those substances get discharged, spilled, leaked, to the environment. Once that material enters the environment, through air or soil, that material is no longer a hazardous substance, it is hazardous waste. That's a significant distinction. That is why in NYS petroleum contaminated soil is not considered a hazardous waste. That has been the definition since they took over the program in the mid 80's. So there is a hazardous substance which is very consistent, with the State definition

Member Fila- There's a possibility that Dover's definition is more stringent- so it is suggested that you look at that

A: Ok

Tonia Shoumatoff:

Thanked the Planning Board and totally trusts their integrity in evaluating this application. There was a private meeting with Mr. Nelson, the HVA, FrOGS, and Oblong, to request information about the cold asphalt process. During that meeting, Mr. Nelson was very kind and courteous, very forth coming with all sorts of information. He mentioned that there is a screening process that happens with the soil after it comes into the enclosed area basically the hard rubble and rocks get screened out. She was wondering how the rocks are going to be disposed of, how will they be transported, presumably they will also have the petroleum contaminated substance on them as well and where will they be stored?

With the MTBE's when they requested Mr. Nelson give them a sense of which of the soils might have the MTBE's he said basically soils preceding 2004 when MTBE was banned as an additive to gasoline. If they were asked to clean up a gasoline station that was older then 2004, those soils would have MTBE in them. The research she had done on MTBE, she just spoke to Joel Tiner (?), and he referred her to Deborah Hall, it is true what was said about the soils, but it is also very volatile and once it gets into the watershed it does move very quickly. There are 8 sites within Dutchess County with MTBE contaminated soils, some of which were from the IBM area.

There were no further comments from the Board  
There were no further comments from the Public

### **Motion made by John Fila to continue the Public Hearing to April 19, 2010 2nd by Valerie LaRobardier**

VOTE: CO-CHAIR DAVID WYLOCK – AYE  
MEMBER JOHN FILA – AYE  
MEMBER JAMES JOHNSON - absent  
MEMBER MICHAEL VILLANO– AYE

CO-CHAIR VALERIE LAROBARDIER- AYE  
MEMBER BRIAN KELLY - absent  
MEMBER PETER MUROSKI - AYE

*Motion approved*

**2. SINGH DBL - 7160-00-001179**

Applicant: Baljit Singh --Plans Prepared by: Jordan Valdina of Synergy Design Engineering  
Property located at 1827 Route 22, Wingdale  
Application for Site Plan approval  
Continued Public Hearing  
No one was present for this application

**Motion made by Valerie LaRobardier to open the Public Hearing 2nd by Michael Villano**

|                                   |                                   |
|-----------------------------------|-----------------------------------|
| VOTE: Co-CHAIR DAVID WYLOCK – AYE | Co-CHAIR VALERIE LAROBARDIER- AYE |
| MEMBER JOHN FILA – AYE            | MEMBER BRIAN KELLY - absent       |
| MEMBER JAMES JOHNSON - absent     | MEMBER PETER MUROSKI - AYE        |
| MEMBER MICHAEL VILLANO– AYE       |                                   |

*Motion approved*

There were no comments from the Public  
There were no comments from the Board

**Motion made by Valerie LaRobardier to continue the Public Hearing to June 7 2010 2nd by John Fila**

|                                   |                                   |
|-----------------------------------|-----------------------------------|
| VOTE: Co-CHAIR DAVID WYLOCK – AYE | Co-CHAIR VALERIE LAROBARDIER- AYE |
| MEMBER JOHN FILA – AYE            | MEMBER BRIAN KELLY - absent       |
| MEMBER JAMES JOHNSON - absent     | MEMBER PETER MUROSKI - AYE        |
| MEMBER MICHAEL VILLANO– AYE       |                                   |

*Motion approved*

**Discussions:**

**3. TATTOO MAMMA - 7059-04-723344**

Applicant: Christina Nastasi  
Property located 1465 Rt 22, Wingdale  
Applicant seeks site plan Special permit for change of use for a tattoo shop and retail store in the HC district  
3/22 received ARB approval

**Christina Nastasi present**

There were no comments from the Board  
Escrow has been paid  
ARB granted approval

**RESOLUTION GRANTING SPECIAL PERMIT AND SITE PLAN AMENDMENT APPROVAL  
TATTOO MAMMA**

**April 5, 2010**

**Property Address: 1465 Route 22, Wingdale**

WHEREAS, the applicant, Christina Nastasi, has submitted an application for special permit and site plan amendment approval for a change of use to operate a service and retail establishment in an existing building located at 1465 Route 22, Wingdale NY in the HC District (the “site”); and

WHEREAS, a site plan entitled “Change of Use Site Plan, Prepared for Tattoo Mamma”, prepared by Zarecki & Associates, L.L.C., dated February 9, 2010, last revised March 3, 2010, has been submitted for the Board’s review; and

WHEREAS, retail businesses are permitted in the HC District with site plan and special permit approval provided that the retail use does not occupy more than 20% of the floor area and only includes sale of items produced on the premises and customary accessories to such items, with which the applicant has represented she will comply; and

WHEREAS, service businesses are permitted in the HC District with site plan and special permit approval; and

WHEREAS, the application for a change of use to a service and retail establishment is a minor project, which pursuant to Section 145-63A of the Code, shall be presumed acceptable if it complies with the applicable health laws and other provisions of the zoning law; and

WHEREAS, on March 1, 2010, the Planning Board classified the action as a Type II action under SEQRA and waived the public hearing; and

WHEREAS, pursuant to Section 239-m of the General Municipal Law, the application was referred to the Dutchess County Department of Planning and Development, which responded by letter dated March 9, 2010 that it was a matter of local concern; and

WHEREAS, on March 22, 2010, the Architectural Review Board approved the proposed change in signage.

**NOW THEREFORE BE IT RESOLVED, that the Planning Board hereby grants the applicant the requested waivers from Section 145-65B (1), (15) & (18) of the Town Code; and**

**BE IT FURTHER RESOLVED, that the Planning Board finds that the applicant’s proposed use of the property for a service and retail establishment satisfies the criteria set forth in Section 145-63A of the Code, and hereby grants the applicant a special use permit for a service and retail establishment, subject to the following conditions:**

- 1. Payment of all fees and escrow.**

**BE IT FURTHER RESOLVED, that the Planning Board hereby approves the site plan entitled “Change of Use Site Plan, Prepared for Tattoo Mamma”, prepared by Zarecki & Associates, L.L.C., dated February 9, 2010, last revised March 3, 2010, subject to the following conditions:**

- 1. Payment of all fees and escrow.**
- 2. Written acknowledgment from the Dutchess County Department of Health that the SDS and water supply are adequate for the proposed use.**

**Moved by:** Peter Muroski                      **Seconded by:** Michael Villano

David Wylock                      AYE  
Valerie LaRobardier              AYE  
John Fila                              AYE  
James Johnson                      absent  
Brian Kelly                           absent  
Peter Muroski                       AYE  
Michael Villano                      AYE                                      Planning Board Co-Chair

**A letter for Engineer Joe Zarecki was received and was stated as sufficient documentation from Engineer Berger**

- 4. CAMP BERKSHIRE - ESC- 7161-00-343242**  
Applicant Hector Perez Property Owner Greater NY Corp of Seventh Day Adventist  
Plans Prepared by Renna Engineering Design PLLC  
Property located at 680-1 Berkshire Road, Wingdale  
Application for Erosion Control Permit to affect 7.61 acres  
of a 193.536 acre site in the RU district within the AQ overlay district

Lloyd Scharffenberg, Hector Perez and Rich Renna present  
Rich Renna:

This is the existing Camp Berkshire Site, they has been here in the past establishing their existing conditions map, they also discussed a future Master Development Plan. This particular project does not have anything to do with that Master Development plan. On the north end of the main campus they propose to create a level playing field area that can be multi purpose and include a new location for their "air dome"

The project proposes to have a disturbance of 5.7 acres.

- It would be a cut and fill of 10,000 cubic yards
- Cut from a high spot to a low spot and level it out

Those 2 items require a Chapter 65 ESC permit from the Town

- There are no proposed structures, sidewalks paved roads, if there were any thing new, it is understood the applicants would need to apply for Site plan Approval

- Access to this area would be via walking access from the main campus
- the final site area is to be seeded and mulched for a lawn area
- With the transfer of existing woods and brush area additional run off would be created

That run off is proposed to be treated with a vegetated wet swale that would control the quantity of runoff and water quality

Q: Will this be on the same property that the air dome is?

A: Yes these are the Con Edison power lines and the air dome is usually set up in this area, beneath the lines. Everybody would prefer to NOT have it there including all of the members who come and use the facility

The Camp desires to move it from that location due to the hilly terrain they don't have another large or flat enough location.

Q: When do they erect the Air Dome?

A: Spring

Lloyd Scharffenberg:

A: Normally it goes up in May to October

Q: Every year?

A: They have had it 2 years now, they used to use a tent, but with the air dome it hold in the sound and noise better. It is also better in bad weather

Another reason for moving the Air Dome, they are not directly under the power lines, but it does create some static electricity.

Even with the walls when it is on the South end of the property, they are closer to the neighbors. If it is moved to the north end, it would be more in the interior of the camp, further away from the neighbors and because of the terrain it would be on the west side of the ridge, and the noise won't travel around the lake and hit the people on the east side of Lake Ellis.

They feel it would make them better neighbors as well as being a better location for all.

Q: Are there facilities/ utilities there?

A: there is electricity to run the blowers. For the lights all of the exits are checks as per code

Q: What is the capacity of it?

A: approximately 1,800

Q: Although this is not directly related to the erosion control permit, there are concerns about this being a temporary structure. It's up for close to 6 months per year; temporary is a short period of time

A: This was the understanding from talking with the Code Enforcement Officer that a tent or other things, beyond 6 months is not temporary but up to 6 months was legitimate. They certainly have checked before hand on those issues not to circumvent anything. As well as exiting issues etc.

Co-Chair Wylock - We would like to do a site walk

Site Walk set for Sunday April 18, 2010 @ 10:00

Q: Member Fila- Where it is now is well hidden will it be more visible in the new location from the road?

A: where they are moving it may be more visible from the road

Q: Will it be visible from across the lake?

A: no, when they got the dome they intentionally got brown instead of white, although it would retain the heat more, but brown would blend into the landscape more that a large white dome would.

Q: Member Muroski- Right now it's set up on a lawn area?

A: yes

Q: For how many years?

A: 2 years

Q: From May to October?

A: yes

Q: is there site preparation, the lawn just dies where it is put up?

A: yes

Q: so it is in place during the whole growing period from May through October?

A: yes there is lawn when it starts

Q: So when you pick it up is it bare soil left?

A: pretty much, there are remnants of stuff that comes back

Q: Have you ever noticed any erosion after that happens once you take it down since there's no vegetation on it.

A: no - it's in a flat area, there's not a lot of run off

Comments from Engineer Berger:

**Comments:**

1. *The proposed disturbance is over five acres which will require a phasing plan or written approval from the DEC granting permission to disturb over 5 acres at one time.*
2. *Please provide all information required by Chapter 65 as outlined on the Erosion Control Plan Checklist. If the information is not provided a written waiver must be submitted with justification.*
3. *Is existing structure in area of proposed grading to be removed or relocate? Is there any existing sewage disposal for this structure and if so is it in the area of re-grading?*
4. *Is there any proposed emergency access road being provided to the recreation area?*
5. *Grading is proposed area shown as parking on Master Plan, what will be the surface of this area at end of proposed work? Future plans for surface?*
6. *Unified Sizing Criteria for Water Quality Volume, Appendix D of the SWPPP report*
  - *Per Chapter 4 of the NYS Storm water Management Design Manual "A minimum Rv of 0.2 will be applied to regulated sites." Adjust calculations accordingly.*
7. *Water quality wet swale is proposed. Per Chapter 6 of the NYS Storm water Management Design Manual*
  - *Maximum longitudinal slope to be no greater than 4%; revise accordingly.*
  - *Check dam interval to be related to slope.*
  - *What is the water table elevation in the wet swale?*
  - *Provide calculations for wet swale design.*
  - *Provide plant list.*
  - *If the portion of wet swale in drainage area 2 is included in treatment of area 1, the entire area contributing to the swale should be included in the WQv calculation.*
8. *Review Tc for Pre and Post in undisturbed area.*
9. *Suggest redirecting drainage from undisturbed area above field to further out around field.*
10. *Clarify measures that will be employed to control discharge rate from drainage area.*

- 11. Provide swale velocity calculations and measures to prevent erosion.
- 12. Construction entrance, check dams, rip rap outlet protection, and inlet protection details are shown on the plans but the proposed locations are not shown. The size and location of these practices should be shown on the plans.
  - Check dam interval to be related to slope.
  - Additional diversion swales may be required with cut and fill operations progression.
- 13. Provided method of permanent stabilization should disturbed slopes exceed 1v:3h.

**Note:**

The NOI should be updated to the latest form prior to submittal to the DEC.

Michelle Zerfas:

This will need to be phased

In the plans there's an existing building

A: it's a foundation; it was an old clay tennis court, now it's a slab and a wall for basket ball and hand ball no building.

Q: Was there septic?

A: not known of

Q: Materials if removed to be disposed of properly

A: The wall is wood the slab is concrete

**RESOLUTION SETTING AMOUNT OF ESCROW DEPOSIT**

GRID: 7161-00-343242 Project Name: Camp Berkshire ESC

**WHEREAS**, pursuant to the Code of the Town of Dover, the Planning Board may require an applicant for an Erosion Control Permit to deposit an initial sum of money and additional sums as needed into an escrow account for the purpose of covering the reasonable and necessary costs of reviewing the application in advance of the review of the application; and

**WHEREAS**, **Camp Berkshire** has filed an application for an Erosion Control Permit

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Board of the Town of Dover hereby determines that in connection with the aforesaid Camp Berkshire ESC Application, the applicant shall deposit \$ \$3,000.00 into an escrow account in advance of the review of the application.

Dated: April 5, 2010

Moved by: Peter Muroski      Seconded by: Valerie LaRobardier

**Resolution Approved/Disapproved:**

- David Wylock      Aye
- Valerie LaRobardier      Aye
- John Fila      Aye
- James Johnson      absent
- Brian Kelly      absent
- Peter Muroski      Aye
- Michael Villano      Aye

Planning Board Co-Chair

Date Filed with Dover Town Clerk: April 6, 2010

**Motion made by John Fila to classify this application as an unlisted action under SEQRA 2nd by Peter Muroski**

VOTE: Co-CHAIR DAVID WYLOCK – AYE  
MEMBER JOHN FILA – AYE  
MEMBER JAMES JOHNSON - absent  
MEMBER MICHAEL VILLANO– AYE

Co-CHAIR VALERIE LAROBARDIER- AYE  
MEMBER BRIAN KELLY - absent  
MEMBER PETER MUROSKI - AYE

*Motion approved*

*Planner Ley*

Q; Have you contacted the NY Natural Heritage Program to check for threatened or endangered species?

A: No, not for this project, but it was done a few years ago for a building that was going to go here (pointing to the map) They checked for both wetlands and endangered species and it was no for both.

Q: Could you resubmit that letter and confirm that is still the case?

A: yes

Engineer Rennia- Could Public Hearing be set, the comments seem to be minor technical comments, this way we can get public comment as well?

A: Attorney Polidoro- Her only concern was whether or not the Code Enforcement officer was going to treat this as a structure or non structure; if it is a structure it then triggers site plan review. We can ask Mr. Hearn for something in writing If the applicant has something in writing for his opinion that this is temporary.

A: he did inspect it and they talked to him a head of time, but not sure if it was in writing, it did not require a building permit because it was a temporary structure.

Co-Chair Wylock- we will have site walk and move forward from there

5. **EL UNIVERSAL- 7059-04-756319**

Applicant Daniel Quezada Plans Prepared by Rennia Engineering Design PLLC  
Property located at 1456 Route 22, Wingdale  
Application for Special Permit as per March 11, 2010 G.T.Hearn letter  
Parcel in the SR district with in the AQ overlay district on .872 acres of land

Mrs. Quezada

Rich Rennia- This survey for this parcel has just been received, and has yet to e submitted It appears as it is within the power of the Board if you would issue a special permit.

Applicant is requesting a reissuance of a special permit to allow for the non conforming restaurant use to be modified to a Deli/ Mini market use.

Located in the former Stradas / El Savior/ Paddlefish/ back to L & M

The first thing is to get the Board’s feeling on whether you will entertain the re issuance of the special permit. Next they would like to take the survey and work it into a site plan for the next meeting

Seeking comments and guidance on what was submitted.

Co-Chair Wylock

Q: What is your definition of a mini mart?

A: tough area because there is no definition in the Town Code

As far as the applicant is concerned is to have a deli to buy sandwiches and prepared food for breakfast lunch and dinner along with accessory items, not a full supermarket, but a few home items.

Q; Eating on premises?

A: yes the seating will be kept in there- eat in or take out. The big difference is that it would not be a bar room operation. In speaking to Mr. Hearn that would be the biggest item to say that this use would be a less of an impact. There will not be bar patrons outside at 2: 00 in the morning

Q: Will there be a ABC License?

A: Yes

Q: Off or on premise

A: Off premise

Co-Chair Wylock We'll need to see more information

Joe Berger

**Comments:**

*14. The letter states that a full survey is currently being completed.*

*15. A complete review of the application cannot be completed until the existing survey and proposed site plan have been provided and meet the requirements of the submission check list enclosed herewith.*

*16. If the plans do not meet the requirements of the check list written waiver requests should be provided with justification.*

*17. The existing survey should show the location of the well and septic sewer.*

*18. A letter should be provided from the project engineer or the DCHD stating that the existing SDS has adequate capacity for the new proposed use.*

Ashley Ley's Comments:

AKRF, Inc. has reviewed the following documents and plans for the above referenced application:

1. Dover Application Forms, dated 3/9/10
2. Short EAF, dated 3/10/10
3. Aerial Image Plan, prepared by Rennia Engineering design. PLLC, dated 3/8/10
4. Letter from Richard Rennia, Jr. PE to Chairman Wylock, dated 3/9/10

The applicant proposes to occupy an existing building for use as a cafe/deli and mini market. The project is located at 1456 Route 22, Wingdale, and is in the SR Zoning District. The building was formerly occupied by Stradas Italian Restaurant, which was a pre-existing non-conforming use. The proposed use, which could be considered a "Restaurant," or perhaps "Retail Business," would also be non-conforming, Pursuant to §145-26, "Change of nonconforming use," a nonconforming use of a structure may be changed to another nonconforming use which is of the same or lesser impact by issuance of a special permit by the Planning Board. In determining whether a use is of greater or lesser impact, the Planning Board shall consider the impact criteria listed in §145-63.

Therefore, additional detail should be provided by the Applicant so that the Planning Board may evaluate whether or not the proposed use is a lesser non-conforming use. In particular, traffic, parking, water usage, and potential impacts to residential areas should be considered. A site plan should also be provided.

Have you reviewed the definition of retail business under the town code?

It lists delicatessen, liqueur store convenience store variety store, it may fall within that

A: He met with the Code Enforcement officer and went through the definitions, as to what it would be, it was his determination that it would be in the same use category

Q: in reviewing the PB must determine if the use is of greater or lesser impact and you must consider the criteria listed in 145-63 if the applicant could provide some information as to how the use would be less of an impact each of those criteria. In particular the Board will need to review traffic, parking, water usage and the potential impact to the resident adjacent to the area

Attorney Polidoro-

The use that they are proposing is not permitted in this district, neither was a restaurant, the restaurant was a non conforming use and now they are looking to change to another use that is not permitted. This board has to review the criteria to determine if the new use is going to be less or of an impact than the prior use. If it will be a greater impact you can not grant a special permit, only if it is less than or equal to.

Co-Chair Wylock

A site walk was done on a different parcel in that area a few years ago, there is a water line that comes down off the hill, and does that water line feed that building?

A: not that he knows of- the survey shows a well on site

Co-Chair Wylock One of the Board members thought that Stradas was being served by that water line

A: There is a well on site and he has been told that this is their water supply. It is a public water supply and is under health Department review. There is a UV filtration system.

No further questions from the Board

A site walk may be set after site plan has been reviewed

**Motion made by John Fila to set escrow on EI Universal for \$ 1,000.00 2nd by Valerie LaRobardier**

VOTE: CO-CHAIR DAVID WYLOCK – AYE  
MEMBER JOHN FILA – AYE  
MEMBER JAMES JOHNSON - absent  
MEMBER MICHAEL VILLANO– AYE

CO-CHAIR VALERIE LAROBARDIER- AYE  
MEMBER BRIAN KELLY - absent  
MEMBER PETER MUROSKI - AYE

*Motion approved*

**RESOLUTION CLASSIFYING THE ACTION AND REFERRING THE APPLICATION TO THE  
DUTCHESS COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT**

**EI UNIVERSAL**

**April 5, 2010**

**Property Address: 1456 Route 22, Wingdale**

WHEREAS, the applicant, Daniel Quezada, has submitted an application for special permit and site plan amendment approval for a change in nonconforming use to convert a former restaurant into a “café/deli & mini market”, located at 1456 Route 22, Wingdale, in the SR District (the “site”); and

WHEREAS, the applicant has not submitted a site plan with the application; and

WHEREAS, neither restaurants nor retail businesses are permitted in the SR District; and

WHEREAS, pursuant to Section 145-26 of the Code, a nonconforming use of land may, upon issuance of a special permit from the Planning Board, be changed to another nonconforming use which is of the same or lesser impact; and

WHEREAS, the application was accompanied by a Short Environmental Assessment Form (“EAF”); and

WHEREAS, in accordance with the New York State Environmental Quality Review Act (“SEQRA”), said Board is required to determine the classification of the proposed action.

**NOW, THEREFORE, BE IT RESOLVED, that the Planning Board hereby classifies the application as an unlisted action under SEQRA; and**

**BE IT FURTHER RESOLVED, that pursuant to Section 239-m of the General Municipal Law, the Planning Board hereby authorizes and instructs the Secretary to the Board to refer the application to the Dutchess County Department of Planning and Development for review and comment upon receipt of a complete special permit and site plan submission from the applicant.**

**Moved by:** Valerie LaRobardier                      **Seconded by:** John Fila

|                     |               |
|---------------------|---------------|
| David Wylock        | <u>AYE</u>    |
| Valerie LaRobardier | <u>AYE</u>    |
| John Fila           | <u>AYE</u>    |
| James Johnson       | <u>absent</u> |
| Brian Kelly         | <u>absent</u> |
| Peter Muroski       | <u>AYE</u>    |
| Michael Villano     | <u>AYE</u>    |

Planning Board Co-Chair David Wylock

**6. ZONING AMENDMENT**

LETTER FROM THE TOWN CLERKS’ OFFICE:

March 4, 2010

Hon. David Wylock, Co-Chairman  
Hon. Valerie LaRobardier, Co-Chair and  
Members of the Town of Dover Planning Board  
126 East Duncan Hill Road  
Dover Plains, New York 12522

Re: Knolls of Dover Final Environmental Impact Statement;  
Review of Local Law Per Section 145-69 of the Zoning Code

Dear Co-Chairs Wylock and LaRobardier and Members:

On Wednesday, February 24, 2010, the Town Board took several actions on the Knolls of Dover Project, which included (i) declaring the Final Environmental Impact Statement (FEIS) complete; (ii) setting public hearings on the FEIS, Master Development Plan Design Standards and the proposed Zoning Text and Map revisions included therewith for March 24, 2010 with written comments to be accepted until March 31, 2010; and (iii) referring the recent version of the Zoning text amendment to the Planning Board pursuant to the provisions of Chapter 145-69.

Enclosed for the Planning Board's review, therefore, is Chapter 145-16 as proposed for amendment by the Applicant. Note importantly that the Planning Board's comments are not required to be submitted by March 31, 2010, that is the limit for comments for the public only.  
Thank you very much.

Caroline Reichenberg, Town Clerk  
cc: ) Hon. Ryan Courtien, Supervisor  
Ms. Betty-Ann Sherer, Planning Board Secretary

Co-Chair Wylock - Requested an extension of deadline from the Supervisor and Town Board and it was granted to April 9.

We had discussed the amendment at length when initially submitted.

Member Fila- recalls the discussion, and does not recall there being any substantive change to the amendment

Planner Ley- There were minor changes, there were also some changes that in a way were in response to the Planning Board comments.

Attorney Polidoro- They accepted that the reservoir should be protected and the AT, but the skeleton of the law is the same.

Co-Chair Wylock - the meat of it is still there, which would be to have the Town Board take over the Subdivision and Erosion Control Permits to the project.

Attorney Polidoro- Right, in this version the Town Board would have subdivision and ESC. there is still an issue with the whole site plan amendment being reviewed. They still have the 10% limitation which is a pretty big variation for a project of this size. 10% is 100 extra units if there are 1,000 units. We had asked them to pare that down and maybe approach it in a different way. The first time around we had asked them to consider a worst case scenario and to plan for more than they really wanted so if they wanted to change their project by 10% on any of these numerated fields, then they could do it easily and we would have already reviewed the impacts.

Co-Chair LaRobardier- 10% wasn't for the total it was 10% different maybe for one part of it.

Attorney Polidoro- Right if there were a change, it said as long as it didn't increase traffic or school children by 10% then it didn't require a Public Hearing and it wouldn't require additional SEQRA review. We thought that from a more conservative point of view that it would be better to plan for that 10% upfront, and then the applicant would have wiggle room down the road.

Planner Ley- With the traffic I think we had changed it to be -

Co-Chair LaRobardier- It was her understanding that it wasn't going to grow 10%

Attorney Polidoro- That was one of the concerns the first time around, another concern was with the mix of units, who does site plan review, the role of the ARB. We had proposed that they keep the ARB involved in the process and that if they wanted to create a design code, perhaps amend the Town code to have design guidelines for hamlet areas or this type of development rather than having a private design code just for Dover Knolls for consistency in the Town. All of these big issues are still there. They did make some minor changes.

There is a new section on vested rights- what this section does is it says: For 15 years following the approval of the Master Development Plan, from the Town Board, the applicant has vested rights in the project.

Normally when doing a project, (Just an example) if lets say Rasco materials was starting fresh, and they were building a new building, they had their approvals, 6 months went by, and the Town changed the law and said no more Rasco Materials. They wouldn't be able to build their project unless they had obtained vested rights. You get that by putting your shovel in the ground and starting construction. Once you do that you have a right to finish your project as planned. So what the applicant is trying to do is protect themselves by saying we put all this time and money into this project and we want to make sure that we get something that the Town isn't going to change the law within 1 or 2 years until we get a shovel in the ground. Once the applicant gets the shovel in the ground, they do acquire vested rights.

One concern is that the 15 year period is kind of long, that means that they could wait up to 14 1/2 years before they put a shovel in the ground, so that's just a concern for the Town. Do you want that to be allowed, maybe it can be shortened to 2 or 3 years. The other issue with this section is that it is overly broad; it says "all Town Local Laws ordinances enactments and other town zoning planning environmental rules etc. wouldn't apply. It's too broad and could cause complications down the road so instead of saying instead of the zoning law applying it says ALL town laws regulations ordinances, they try to encapsulate any type of possible town legislation. So

the problem with that is that it is so broad - if you want to put a stop sign in you have to pass a local law and what this says is that for 15 years you can't put a stop sign in or change a speed limit - she was unsure if it was considered how broad that statement is.

Member Fila- Would it control dog control laws and things of that nature?

A: It sounds like it- it includes all town laws.

Co-Chair LaRobardier- So it says no town laws can be enacted for 15 years?

Attorney Polidoro:

It says:

1#. Vested Rights- For fifteen (15) years following the approval of a Master Development Plan by the Town Board, an applicant, or its successor(s) in interest, shall obtain vested rights to complete the development shown on said Plan. All Town local laws, ordinances, and enactments, and all other Town zoning, planning, environmental rules, requirements or regulations, which are in effect at the time of the Town Board approval of a Master Development Plan, shall remain applicable to said Plan for fifteen (15) years, absent clear and convincing evidence of a necessity directly relating to the public health, safety or general welfare. Upon the expiration of the aforementioned fifteen (15) year period or any time prior thereto, the Town Board shall have the right in its discretion to extend the vested rights granted hereunder based upon the level of progress by the applicant, or its successor(s), in completing the full-build-out of the Master Development Plan. Nothing in this provision shall prohibit, preempt or otherwise prevent in any way an applicant from obtaining vested rights to complete any part of its approved Master Development Plan by common law or otherwise."

That was the only new section she was concerned with that had not been addressed the first time around. The concern of not wanting to go through the process that in 2 years a new town board changes the law is understood, but 15 years is a long time.

Member Muroski- What would you recommend-

A: She thought it would have to be an informed decision after discussions with the engineer and Planner to see what it takes to get a project like this in order.

If you have an approval for phase 1 and you put your shovel in the ground you can finish your phase- phase 2 you get your approval put your shovel in the ground and you can finish- what this says is that there is approval for the whole master plan for 15 years, not just each individual

Co-Chair LaRobardier- It doesn't say they have it to sit and do nothing; they are protected when they start to do phase 2 and 3 it doesn't say that no building at all will take place, for 15 years-

Attorney Polidoro - No it doesn't say that

Co-Chair LaRobardier It's there something in between?

Attorney Polidoro - was looking at worst case, a shorter number of years

Co-Chair LaRobardier a shorter number of years still wouldn't protect all three phases what about saying that the first phase has to start in a shorter amount of time

Attorney Polidoro - The first time around we suggested putting an expiration date of 4 years to balance the rights of the developer and his investment and the town laws changing what was suggested was Pg 5 ... 4 years for approval the town board may grant an extension after a duly noticed ph. This way the phases don't get stale and the master dev plan expires after 15 years.

Co-Chair LaRobardier - that makes sense this is different than vested rights.

Member Fila- is unsure about the Board abdicating completely the Planning Boards role in this and making this political as opposed to leaving it as a planning process he strongly objects to it. He has seen no evidence of bias on this Board and being entirely excluded from this the most important

process in the history of the town, is without justification probably without precedence perhaps illegal, as a board we should talk about how this is not in the Town's best interest.

Attorney Polidoro The first time we talked about this in the first report, and the report was adopted unanimously with one abstention so what we were suggesting perhaps you would like to resend this report with an updated cover letter.

Member Fila would like to make the letter stronger; this is essentially the last chance. Do we have an opportunity with findings?

A: Ashley Ley- the opportunity was with the FEIS PH and the comments raised then should be in the findings

Co-Chair Wylock - spoke last year at the PH as a private citizen about taking the authority away from the Planning Board he has not changed his mind. There is no justification, no valid reasoning, other than the applicant does not want to come before the PB. If he has to quote the comment made to him by their Attorney- he would.

Secretary- the Board has until the 9<sup>th</sup> of April to respond

Member Fila - if the board sees some rational to this, if you read what the law is prefaced with, what the Town Board says, the reasoning is because to avoid complications, or something like that. they felt the elected officials should have the control as opposed to appointed officials. Even stretching that for site plan, it hard to stretch to subdivision and erosion control, there's no expertise there. Essentially the town is left to be planned entirely by a planner.

Member Muroski - I think we have the right credentials, and does not understand that decision either.

Co-Chair Wylock - March 27 letter

Supervisor Courtien & Members of the Town Board:

I was unable to attend the recent Public Hearing on the, Knolls of Dover FEIS and the proposed Zoning Amendment related to that project. As you recall I spoke at length at the Public Hearing on these matters last summer where I stated my objections to the proposed Zoning Amendment. My feelings have not changed since that time and I believe that the developer continues to exhibit a total lack of respect for the Planning Board and its ability to handle subdivision and erosion control matters on their project. They, the developers knew or should have known how the town code read when they purchased the property at the former Psychiatric Site. However, since that time they have attempted to and in one instance succeeded in stripping the Planning Board from decision making in this application. I am aware that they are disturbed that the Planning Board required them to go thru a Chapter 65 process after they received a, STOP WORK ORDER, issued by the Code Enforcement Officer. For the Planning Board to not require the developer to go thru the Chapter 65 process would have been an omission on the Planning Boards part. This is nothing more than petty pay back and an insult to the Planning Board individually and collectively. .

I strongly urge the Town Board to step up and support the Planning Board and recognize it for its ability, competence and past performance to handle any application that comes before that board. For the Town Board to acquiesce to the wishes of this applicant once more indicates to me that the Town Board does not want the Planning Board to have any decision making in the, Knolls of Dover project. There may be questionable legal issue if the Town Board approves this amendment and I strongly urge your office to get a legal opinion from the New York State Attorney Generals Office on this matter. If that office rules in favor of the amendment, then the Town Board should consider abolishing the Planning Board and assume all of its duties.

In conclusion, I would like to believe that the Town Boards priorities would be to support the Planning Board instead of bowing to the wishes of a developer who apparently believes that they can write their own set of laws to suit their needs.

He continued:

This current board was in office 1 month and they amended a law to take us out of site plan, one of the first actions they took a year s ago they wanted to take this too, now they're back If they want to do the PB work he has boxes and boxes of things in hi s basement he could bring here and deposit them right outside the Supervisors door and they can take over our job.

Member Fila - Would second that approach

Co-Chair Wylock - Lets call a spade a spade, the tail has been wagging the dog for over 2 years. So do we re affirm the comments made 1 year ago, if we don't then it indicates that the board doesn't care or doesn't want to get involved with this project

Member Fila - he would not reaffirm them as written he would make them stronger.

Member Villano- at a minimum the Board should reaffirm the previous comments. Updating th cover with the concerns on the vested rights, even if a better clarification of what the intent behind it was, because it can be read several different ways

Co-Chair Wylock - this has nothing to do with whether or not we approve of or even like the project we have waited a long time to see something happen on that property- it's a question of the process the applicant is trying to use - To VP can you prepare a cover letter to update the concerns

Attorney Polidoro- yes the concerns are the vested rights, and reiterate more strongly the Boards position. The only issue is that there in no other meeting before this letter is due- so it will be drafted and sent to the Board for their comments and then be sent with the original document submitted to the Town Board.

Co-Chair Wylock - It will be sent to all of the members and the absence of their comments will not hold the letter back.

**Motion made by John Fila to authorize Attorney Polidoro to write a cover to re affirm the previous Planning board comments to the Town Board as well as reiterate in a stronger language a adjourn 2nd by Michael Villano**

VOTE: Co-CHAIR DAVID WYLOCK – AYE  
MEMBER JOHN FILA – AYE  
MEMBER JAMES JOHNSON - absent  
MEMBER MICHAEL VILLANO– AYE

Co-CHAIR VALERIE LAROBARDIER- AYE  
MEMBER BRIAN KELLY - absent  
MEMBER PETER MUROSKI - AYE

*Motion approved*

Co-Chair LaRobardier- and we will all be able to review and comment- A: yes

Comments on the FEIS- There were no comments on the FEIS

Co-Chair Wylock - it seemed as though the applicant replied as cursory review- Comment 26 the first floor apartments- he objects to it strongly last year comments were made you have a walk able business district- you don't want to start out having apartments on the first floor once you do you'll never get the tenants out they'll never become stores

Comment 27 Commercial space- he was unsure of the square footage of the power house and store house, but those 2 totaled with a 40,000 square foot grocery store, almost equal the total proposed, we did want a larger store there.

56 57,58, 59- no satisfactory answer in terms of parking enforcement, fire lanes the applicant says there's no need for code or parking enforcement- there's problems with that now in town . Infrastructure- the HOA will never be able to maintain the infrastructure a major break down in the water or sewer plant could bankrupt a HOA- there should be a water / sewer district

Attorney Polidoro- Will there be a PB report on the FEIS?

Co-Chair Wylock - No his comments were made on the record.

7. MINUTES 9/21/09, 10/05/09, 11/16/09, 12/07/09 & 3/15/2010

Secretary- With respect to the minutes- we have minutes going back as far as September which have not been approved and the question is can they be approved if not all of the members who were present then are not here now.

Attorney Polidoro- this question cones up a lot- and the question is it the form or the content that is voted on- we always take the position of voting on the content  
It's ok to not approve them they can be filed and then put on the website

Co-Chair LaRobardier- moved that the Board votes on the minutes as filed, to wait for Brian and Jimmy to return, they may have forgotten if they are accurate.

Attorney Polidoro- A disclaimer should be put on the minutes to state they are filed not approved and final

**Motion made by Valerie LaRobardier to FILE, not approve the minutes of 9/21/09, 10/05/09, 11/16/09 and 12/07/09 2nd by John Fila**

VOTE: CO-CHAIR DAVID WYLOCK – AYE  
MEMBER JOHN FILA – AYE  
MEMBER JAMES JOHNSON - absent  
MEMBER MICHAEL VILLANO– AYE

CO-CHAIR VALERIE LAROBARDIER- AYE  
MEMBER BRIAN KELLY - absent  
MEMBER PETER MUROSKI - AYE

*Motion approved*

The minutes of March 15, 2010 have been tabled to the April 19, 2010 meeting

**Motion made by Valerie LaRobardier to adjourn 2nd by Michael Villano**

VOTE: CO-CHAIR DAVID WYLOCK – AYE  
MEMBER JOHN FILA – AYE  
MEMBER JAMES JOHNSON - absent  
MEMBER MICHAEL VILLANO– AYE

CO-CHAIR VALERIE LAROBARDIER- AYE  
MEMBER BRIAN KELLY - absent  
MEMBER PETER MUROSKI - AYE

*Motion approved*

Respectfully submitted,

Betty-Ann Sherer

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