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 19,2010
7:00PM

☑ Co-CHAIR David Wylock
☑ Co- Chair Valerie LaRobardier
☐ Member John Fila
☐ 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 and Michelle Zerfas for the office of Joseph Berger.

For the Applicants: John Nelson, Frank Peduto and Jon Adams for RASCO, Supervisor Courtien 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 7:00 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

Attorney Michael Liguori from Hogan & Rossi was invited to give a review of the history of this site. There seems to be a mis conception as to what is applicable to this application and what isn't. Hopefully Mr. Liguori can clear this up. If there are any comments from the Public, there will be an opportunity to speak, but no cross examination will take place.

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

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

Motion approved

Michael Liguori-

The Applicant requested a meeting with the Town Board in 2009 in order to resume the use of the cold mix asphalt plant, at the Mid Hudson recycling facility. In 2005, a stop work order was issued by the Building department which sited the expiration of a DEC operating permit and alleged a zoning code violation. The substance of the conversations was we'd like to resume the use, we don't want to litigate with the town as to being able to resume, and if there is a way to do that without litigation that's what they would like to do. Certainly it was not a threat but a reality, the use is profitable, he would not comment on the desirability, but basically what was done – the question was "Did this use cease?"

He researched the case law and was fresh off a case in the Town of North Salem, not a litigation but an application he was on the other side of, where it was the same argument on the cessation of non conforming uses.

Many zoning codes have the provision that says if the use ceases for longer that 1 year then you are not entitled to resume your preexisting non conforming use. What has to happen is that there needs to be an affirmative act on behalf of the land owner to evidence the intent to cease the use. His example was if a gas station and currently not in operation, but the tanks are in the ground, and you're just not running, you've been re zoned and have not been operating for a year, you need to do something physically to evidence cessation of the use, because cessation has an element of intent. The court looks at Did you intend to stop the use and what physical act did you take to stop the use? So in the case of a gas station, if you take out the pumps and tanks, closes shop and signage is gone, that's what the court looks at for cessation of use.

In this circumstance, we had the opposite, an applicant that has all of the materials they need to resume their operation, no equipment was removed from the property, the use began some time in the early 90's between 92-94, which was prior to the 1999 amendment to the Town Code which rendered the use illegal. In addition to not taking an affirmative act, they were able to show the Town, that they had vigorously pursued their DEC approval for a period of 3 years. So when faced with the case law on the issue and what the applicant has done, Supervisor Courtien asked him (Liguori), what are the Town's chances of success? What would the cost be? He (Liguori) advised the Town Board and the Supervisor that based on case law the chances of success would be marginal at best for litigation. If they were successful, it would be great, but based on the criteria; they satisfied the intent not to cease their use.

The risk was if we went to court and loose, they would be back and it would be as if the use would just continue. This was an opportunity to require the applicant to go to the Planning Board. To not risk an opportunity for Planning Board review, it made sense to enter into a stipulation agreement with the applicant, where by the building inspector determined the use did not cease. In that stipulation was the requirement for the applicant to go to the Planning Board. That's where we are today.

Co-Chair Wylock- in the early 90's – this was before the Planning Board?

A: RASCO was not the operator who started the use, it was a company called TT Material which had a pretty nefarious background, if you look at the file, and there were some violations, probably not the best tenant in the town of Dover. When TT Materials came to Town and made an application for their Building permits to begin the use, there was a referral to the Planning Board for a determination, at the time it was Chairman Taylor who sent a letter to the Building Inspector to say the board was not viewing this as a change of use because manufacturing and processing had been going on, on this property since the early 40's. It started as a magnesium plant, and from that point on there was a history of manufacturing and processing uses. In addition, the building was built, the site was in use and it was the determination of the Board that there really wasn't anything for the Planning Board to review. So there's a letter in the file that indicated that to Terry Binotto, based on that TT was able to legitimately start their use.

Member Johnson- What year did TT Materials close?

A: TT Materials essentially went out of business.

Q: What year?

A: He did not recall off hand. But essentially RASCO was their largest creditor so they essentially took them over, that's his understanding as to how RASCO came into the picture.
Q: How long of a period was it from TT going out of business to RASCO taking over?
A: it appears from the Town records that there was never an interruption in business.

Co-Chair Wylock to Mr. Nelson- How long did you run business before you ceased operation?
A: He was on site for about 8 months
Member of the Public: What year?
A: 2005
Member Johnson- Just to get this straight- he has heard this a few different ways and being on the board for so long, with the non conforming use and the year- what you're saying is if some where in town there was a restaurant or lawn mower shop, anything like that no matter where it is, it shuts down, but still keeps the tables and chairs inside 10 years later they can open back up?
A: According to the case law there needs to be intent-
Q: 1 case?
A: No this isn't 1 case, so you understand when we were discussing this with the Town Board and Supervisor-
Q: So pretty much the Law in our zoning that says if a non conforming use stops for more that 1 year that law is really no good in the zoning law-if the building is still standing?
A: To an extend there needs to be an overt intent to cease the use
Q: So you're saying the law is really nothing in the zoning code?
A: if there is intent then it holds up. What happens is the court system looks at these things -
Member Johnson- Was amazed because in 15 years he never heard this
Attorney Liguori- It's not new, not something that came out of case law in 2009 this is from-
Member Johnson- I'm sure there is case law that supports it the other way
A: there are some cases that go the other way, but the overwhelming majority requires the overt act.
Member Johnson- What are your thoughts, Victoria?
A: She was not going to second guess the Town Attorney.
Member Johnson- Well you represent the Planning Board
A; she did look into the conforming use issue case law several months ago and the courts do read intent into the statue, generally. She was not sure as to which cases he specifically looked at, but they read intent into statute.
Jon Adams- One thing that was said that is the key is the cessation of use was involuntary there was a stop work order and that involuntary cessation rather than a voluntary cessation distinguishes it from the circumstances just outlined. The Stop work order directed TT to stop work for the lack of permits. TT was in the process of renewing their permits and there was continuous activity during the period of 2003-2005, 2006, and 2009 to renew that permit. There was a continuity of activity there was never a cessation of activity directed towards continuing, preserving the right to use the property. That circumstance he believes is material from distinguishing this from other cases where there is voluntary discontinuance of use.
Member Johnson- Did not see how this was a voluntary discontinuance of use when permits have expired and there are problems with them. When you don't keep your permits up and they're not renewed, he did not see how that was voluntary.
Jon Adams- there was nothing voluntary in this situation, they would have continued if they were permitted to continue. It's not as though they
(At this point- both were speaking at the same time)
Member Johnson- you had valid permits, there was a stop work order, and the permits were taken away and it took 5 years to get permits, that's not voluntary. If it was voluntary, your permits would have been kept up and the place would have never been shut down for 5 years. You pull your gas tanks out or you can get rid your permits – it sounds like you lost your permits-
Jon Adams- you're arguing case law- it's been established from different attorneys.
Member Johnson- But neither of them represents the Planning Board

Co-Chair Wylock- Did some research he referred to John Nolan's Book "Well Grounded", He is the Dean of Pace University Law School probably a pre-eminent Attorney in Land Use the definition of *abandonment- Time was considered relevant to the issue of abandonment , there was not enough allowed to establish it. Further more the mere failure to continue the non conforming use was not sufficient to establish abandonment.*

Planner Ley- The outstanding question she had relates to how they were going to address the movement of dirt across the site. She knows that in the permit #45, mentions that you need to make sure that roads are kept clean. She was wondering if there were any measures in place as part of the site plan that would be used to make sure the roads were kept clean and the dirt was not tracked out of the building. Will there be tracking pads or something like that?

A; Frank Peduto- There are several areas where that will be addressed, they will also submit a material handling plan for you.

1- Material coming in the vehicles is covered
2- Speed is reduced to 5 mph
3- Trucks are not overloaded

The opportunity to lose material from a vehicle is mitigated. Once material is brought into the building it is deposited in the covered building. The building will be dry, vehicles will exit the building. Part of maintenance will be to be sure that on a daily inspection material that may have fallen. Could a clump of dirt fall? Sure, would a clump of dirt impact the environment? Not hardly. But that is not a reason to not maintain it. The area in front of the garage will be swept the material will move from building A to Building B and to change something that we had said earlier- to satisfy the concern it will only move by truck, there won't be front loaders moving it from building A to B. These in a series of controls will be applied to make sure that at the end of every day none of the pcs has left itself on the ground and there will be a maintained roadway inside the facility.

Planner Ley- How will you keep the dirt from inside the facility will there be block around the piles to separate it?

A: Building A is the processing building and everything that comes in there is pcs, they will be segmented in the bins. Just to separate them into batches, that can be mixed. There will be aggregate in the building, and that will be mixed. Once the material is processed, temporarily as it comes out of the machine can be on the ground, picked up and placed into a truck and when the batch is full moved into the storage building. With in that building there will be bins to hold the material and that will also keep the material from sliding into the area where the trucks will be moving.

Attorney Polidoro to Planner Ley- Can you explain what a tracking pad is?

Planner Ley- A tracking pad is what you would typically see at the exit of a construction site it is the large boulders that the trucks would drive over before they went on to the roadway to make sure that all the dirt that was stuck to the tires got knocked off.

Frank Peduto- He believed some is already down there, but is worn, it will be replaced. There are predescribed distances for facilities like this. What you have is crushed stone; big crushed stone the truck wheels go over it and knock the dirt off, so the dirt doesn't enter the highway. There is a restriction on vehicles coming on a public road and depositing dirt.

Co-Chair Wylock- There is a section of vehicle traffic law pertaining to that.

Planner Ley- Was asking if there was going to be a tracking pad in place by the building where the dirt will be stored. It sounds as though you will have the dirt in bins

A: Yes, the equipment inside the building will move it into place.

Attorney Polidoro- The equipment inside the building – will they leave the building?

A: other than for possible maintenance, no a front loader is the type of machine .

Planner Ley- If we could get this all written down?

A: He will prepare a Material Handling plan.

Elaine LaBella, Director HVA read:

We appreciate the extension of the public hearing and also thank the Board for welcoming comments from the public during the past three meetings. We are most grateful for the opportunity to submit comments about this application to this Board,

1. We appreciate the Board's careful scrutiny of this application and support requiring a full SEQRA review, the proposed activity will take place adjacent to the Great Swamp, a county designated Critical Environmental Area, a geographic area with exceptional and unique environmental characteristics,
2, During the course of this hearing, information has been presented about the potential environmental risks posed by the use of asphalt products containing encapsulated Petroleum Containing Soils (PCS), It is readily apparent, by observing any road or parking lot, that asphalt products do eventually break down over time. What is the fate of the encapsulated PCS after the asphalt degrades? Will the encapsulation break down and allow the petroleum products to leach into the surrounding land and water? Because a significant amount of development is occurring or proposed for the Route 22 corridor, which is adjacent to the Swamp River and its tributaries and adjacent wetlands, we recommend that the Board consider enacting a zoning ordinance prohibiting the use of reusable cold-mix asphalt product containing pcs, including the applicant's Earth-Pave, in the Town of Dover. We greatly appreciate the opportunity to comment on this important matter.

She also wanted to add:

She is concerned that even after the applicant just spoke, he is still not able to satisfactorily provide information as how the material is going to be kept out of the environment. Until the applicant submits a materials handling plan, this application is incomplete.
The applicant mentioned that if a clump falls on the ground, will it pollute the environment, well maybe 1 won't, but 1 an hour, 1 a day after day after day the cumulative effect will yes indeed ultimately pollute the environment. So there are questions:

1- can the sides of the loaders be modified, so that nothing can fall out of the sides
2- Can the storage buildings be designed so that no clumps will be pulled out of the bins as the material is being moved, so they won't fall on the ground and then be tracked out of the building, onto the site, onto the road onto the driveways
3- If the applicant does install tracking pads, but those tracking pads could possible hold the pcs materials, the material handling plan should include the monitoring and cleaning out of these tracking pads.

Co-Chair LaRobardier- Every member of the Public is allowed to speak, and if they have a comment that is their personal opinion, there's still allowed to express that. If that person gives professional credentials and then speaks on a scientific nature, she would appreciate it if the data was provided to support their statement. If there is no documentation to back up the statement then it should be made without mixing in their professional credentials.

Tonia Shoumatoff-

Read a letter submitted by David Reagon

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

I am a resident of Wassaic, not far up the road from Dover, and I am currently chair of the Amenia Conservation Advisory Commission. I am, however, writing you as a private citizen with concerns that have been shared with me by residents of both Amenia and Dover Plains over the application before your board concerning the RASCO Materials Site Plan.

In 1999 The Chazen Companies did a study of the Harlem Valley entitled "Harlem Valley Watershed Investigation, Dutchess County, NY" which used material gathered by many volunteers from towns in the area and profiled the present uses and future needs of water users in the four towns of Pawling, Dover Plains, Amenia, and Northeast. The most important conclusion that I have drawn from this study is that we all share the same valuable water resources, both surface and subsurface, and that we all bear the common responsibility of taking care of it. All four communities have made water usage and protection a priority in all their planning decisions, but they don't often consider that water respects no boundaries and flows where the laws of nature dictates. Accordingly, as your neighbor and fellow water consumer, I am urging you to apply a very hard look at the RASCO proposal and require a full SEQRA review. From what I have read, if properly conducted, a cold mix asphalt operation that RASCO proposes will not constitute a threat to the environment. I am worried about what happens to the adjacent wetlands and water supply when someone makes a mistake or decides to circumvent the rules. All four communities

in this valley have had multiple instances of illegal dumping and the citizens have had to pay dearly to clean up the mess. Thank you for taking the time to consider what I have said.
Sincerely,
David Reagon

Tonia Shoumatoff:

She has been privileged for the past 10 years to conduct shore line surveys of all of the 4 water bodies of the Ten Mile River water Shed, which is actually the most pristine water shed in the entire Housatonic water shed 2,000 square miles this is 200 square miles. Tomorrow morning they are about to start an assessment of water quality of the Swamp River, with Pawling Corporation helping, they received an Iroquois Grant. The will be sampling in 5 sites up and down the Swamp River, taking water quality with Smith Labs and split samples with the Carey Institute. The water quality sampling that will be done will be a baseline study and the results will be accepted by the DEC.

She felt it was true that this application has regional implications and she has noticed that there have been members from the Pawling and Amenia Communities. She urged the Board that this application has an implication for other Towns as well. Which also might indicate some liability on your behalf, from those other towns, so she thought it should be taken into consideration quite seriously.

Also she has been part of the process with the Town of Amenia; she was on the CAC and the HVA and with the Town of Pawling where they worked with municipal officials to redo their water protection and wetland ordinances to provide more protection and buffers. For Amenia, they looked at Dover. Dover had exemplary water shed protection laws at the time; they were state of the art. They looked up to Dover. They thought the laws were wonderful and that they would bring them to Amenia, who now have 100 buffers. She wanted to encourage the Board to take a hard look at this and realize it is a watershed wide and regional issue, not just for the Town of Dover.

Elizabeth Ellington

Resident on Woodside Drive- This project is close to her home. She works for a construction company who removes oil tanks, septics and things like that. They remove what is referred to as “dirty dirt” and it has to be done with an environmental company, She has been on those sites and has seen what happens and good intentions aside, dirt does get dropped, it does get caught in the wheels of the trucks. With the loaders and excavators however large or small, they will be tracked outside the buildings, you can’t promise they wouldn’t. She has seen it. Her biggest concern is what is going to be done about containment of runoff, when it rains. Where is all of that going to go- it will go in the water, in the ground, that greatly concern her.

Co-Chair Wylock –

There is a storm water report that is required; our Engineer will be on top of that every step of the way.

Evelyn Chiarito:

Resident of the Town of Dover for 27 years, and has been through a lot of trauma with the Town of Dover government.

To: Co-Chairs David Wylock & Valerie LaRobardier and Members of the Planning Board:

RE: Rasco Materials Site Plan, Rt. 22, Dover Plains,

Thank you for extending the public comment period on the Rasco application and being so patient and listening intently to the serious concerns of citizens and organizations regarding the Rasco PCS project and its serious potential environmental effects. Your attention and consideration is truly appreciated.

My greatest concern is the pure water we all require and want to maintain. The 1999 Chazen Companies study of the Harlem Valley aquifer indicates that the Harlem Valley towns from Amenia to Patterson all share the same aquifer, which provides water for 20,000 people (water does not respect town lines).

This project sits in the middle of the Great Swamp (a designated CEA), the 2nd largest wetland in the State of New York, and the Swamp River which flows into the Ten Mile River to the Housatonic River and into Long Island Sound and has the potential to pollute all of those water bodies. The Great Swamp and Swamp River are a valuable resource to all the towns through which it wends its way, both north and south. It provides recreation, canoeing, fishing, hunting, and great scenic beauty, habitat for numerous critters and plants, all attracting the tourist business, as well as a safety net for flooding. Tourism is a big business for Dutchess Co.

Possible accidental MTBE contamination, and the fact that the applicant states that when the material leaves their facility, it is no longer their responsibility, is frightening. Where then is the incentive to be absolutely sure that there is no MTBE present.

So, what does that mean? It appears to me that the individual homeowners, taxpayers will be responsible. As we have seen time and time again, once cluster illnesses begin showing up, no one will respond, not DEC, not any State of NY agency, not Town of Dover, not any Dutchess County agency. It is simply a fact, that no one takes responsibility as we have seen so many times i.e.: the Sarney site in Amenia (which took years to get cleaned), the Casino site in Dover Plains (DEC fine but no cleaned up), the Wern Pawling site, Hopewell with MTBE water contamination, and numerous others we read about. The residents, taxpayers are left in the lurch.

It is said that past behavior is the best predictor of future behavior. This applicant does not come before you with clean hands as they were well aware of the condition left at the present site. There is no way we can completely trust that this operation is without accident, and at the last planning board meting, the applicant stated that once Earth Pave leaves their premises, it is not then their responsibility.

It appears there will be no record of where Earth Pave ends up, so do we know whose responsibility it is or will become? Someone needs to provide a safety net. And, even if responsibility is placed on an agency and one accident occurs, how do you reverse/remedy it?

Rt 22 is a very busy 2-lane truck route with few passing lanes. This adds another very troubling question. We already have numerous gravel trucks, entering and exiting along Rt 22 in our town, then add Dover Knolls site under construction with heavy truck traffic in and out, now add Cricket Valley under construction, large trucks in and out, and Rasco trucks filled with PCS, in and out of the same driveway, sometimes crossing southbound traffic, with no ability of northbound trucks and traffic to bypass them, as well as school busses from the adjacent schools in and out. Sounds to me like a great recipe for disastrous traffic accidents.
No one has ever done a cumulative traffic study for our Valley.

Air quality needs to be evaluated especially since it is in such close proximity to our two Dover schools and given the fact that our valley air quality is already rated very poor , which doesn't mean that we should make it worse.

After reading the November 23, 2009 town board minutes I find that it is so unfortunate that Councilman Galayda who proposed the Stipulation and Councilman Frame and Supervisor Courtien agreed, since apparently they were fearful that Rasco would sue the town so they agreed to grandfather the operation. A "poor" town should be able to find free representation, and not be at the mercy of solid waste facilities as defined by our Town Code. When challenged on Sec.
145-50 our former town board sought legal representation form Pace Environmental Litigation Clinic for free. There is no excuse for our town board not using every avenue possible.

We do need more businesses in Dover, but this project is not a business, they are using us as a dumping ground of material in a kind of minimally semi-acceptable form. It even had "Contaminated" in its title but it's SAFE!!!!!! Will we next accept "nuclear waste."? And we won't even know. I do think it is incumbent on our town boards to protect the future of our town and of the residents and taxpayers who make up this community, and we do not deserve to have possible water contamination pushed on us threatening our health welfare and safety and devaluing our homes.

With all the questions raised and high likelihood of contamination, this project needs to go through the full SEQR process.
Respectfully Submitted

Evelyn and Joseph Chiarito

Michelle Zerfas of Berger Engineering

1. *Topography is referenced to a map prepared by another surveyor. The map should be included in the package with a seal or the surveyor should seal figure 3.*
2. *Provisions for sewage and water should be provided.*
   The applicant is proposing a well and a storage tank for the sanitary waste. This will need to be shown on the plan and approved by the DCHD.
3. *The proposed use will bring truck delivery product very close to the ditch located near building A. Storm water treatment should be provided along the road near Building A. This may include a bio retention swale or combination of grass swale and bio-retention. The discharge points for these treatments should be provided with dense vegetation so the discharge does not flow directly into the stream/ditch.*
   The proposal for a berm and bio- retention areas is acceptable. A section view is provided, however additional detail in plan view is required to show what will be constructed.
   A silt fence or other erosion control practice should be installed on the downhill side of berm.
4. *Truck exiting Building A may need additional area than what is shown to make the turn out to the right. A turn around area should be provided if needed and the appropriate erosion control for construction provided as well.*
   Provided. Silt fence should be provided prior to construction at location of drive enlargement
5. *The waivers requested should also have a reason for each waiver provided in narrative form.*
   It is recommended that the following waivers not be allowed and information should be provided:
   - *Table showing*
     - *Area of structure…..*
     - *Estimated number of employees*
     - *Number of Parking spaces…..*
     - *Plans for disposal of construction waste…..*
   - *Outdoor storage areas or a note saying no outdoor storage will be provided*
   - *Lighting details*
   - *Sign details*
   - *Location of Septic and water supply*
   - *Storm Drainage system*
   - *100 year flood plain or a note saying none exist onsite*
   - *A grading plan for truck turnaround if recommended.*
   - *Loading and unloading areas*
6. *State whether any wetlands either federal or state are located on the site and if not based on what information.*
7. *The condition of the building both structural and environmental are a concern. The building should be inspected to assure that it is structurally safe and the site should be reviewed to see if there are any environmental issues.*
   Structural evaluation has been provided from Spectra dated 10/10/06 and updated in 2010. The report is acceptable for structural analysis with a stipulation that all recommended improvements be done and an inspection and certification of the repairs by New York licensed structural engineer be completed and submitted to town prior to a C.O. being issued. A note stating such should be added to the plans. A concern was observed during the site walks , the area of previous and potential future deposition of the liquid emulsion under the conveyor belt for the processing machine should be cleaned up, cracks in the concrete floor repaired and sealed, and the area contained with a small berm so that any future leaks of the liquid emulsion will not travel into the underlying soil and then may migrate via subsurface to the Great Swamp, or will not mix with surface water and travel out the entrance bay to the Great Swamp.

8. ***the*** *following is a list of comments related to the Contingency Plan dated 10/2005, rev 3/2010*
   a. *The report lists several potential instances where adjoining neighbors may need to be contacted. A list of these properties and all current contact information should be provided. The report should indicate when the list should be updated and who is responsible for doing so.*
   b. *A more detailed list of safety equipment that includes the quantity and locations should be included. Who is responsible for the maintenance of all protective gear, monitoring systems, and first aid equipment and when will it occur?*

c. *In addition to smoke detectors are carbon monoxide detectors going to be installed?*
d. *The plan states that the most qualified person will administer first aid prior to professional services arrival onsite. What if any employee training will be provided?*
e. ***Section 3.1.4 Unacceptable or Hazardous Wastes should be expanded or a new section should be added that summarizes the process for testing the loads when they arrive on-site. What is the procedure when a load not meeting the permit allowed criteria is discovered after it is off-loaded?***

The O&M has not been seen by Engineer Berger

A: Mr. Peduto is preparing a response to Engineer Berger. In most cases it is just an expansion on some particular items. There is one question - #5 suggests that those items have not been submitted and they have. He has submitted an updated structural assessment.

Co-Chair Wylock – the structural report was late for our deadline; we did not get this report until Friday.

Mr.Peduto- Understood- but it was accepted by the Engineer.

Co-Chair Wylock- Joe also makes this comment:

In addition to smoke detectors are carbon monoxide detectors going to be installed?

Co-Chair Wylock and Member Villano have a lot of experience in smoke detectors and smoke detectors and dust and dirt don't mix, it would be a waste of money and you would be better off with a "rate of rise heat detector".

Mr. Peduto There is no heat source other than the motors.

Co-Chair Wylock – flame, if there were a fire.

– Is the alarm system going to be tied to a central station?

A: No

Co-Chair Wylock-Then you'll have fire suppression extinguishers available something more than the little 2 pound units.

Mr. Peduto- Mr. Berger does have a copy of their engineering report but does not see that here in his comments along with the O&M manual. They will address the comments raised here, and submit those items also.

When an engineering report is submitted to DEC , there is the original report, when they have questions , you respond to those questions and supply additional information, what they don't require s that each time a new issue is raised, you write another report, you just keep building on the original report. What will happen in the end if approved, with final comes a final engineering report.

To confirm that all repairs are made, it all has to be in the DEC permit, that it is confirmed and certified and offered to them before they say it's a go.

Attorney Polidoro- so at what stag is the final engineering report issued, is that once or if you receive approval from this Board?

A: No, it comes after. It becomes the document that certified everything we put into place. You don't get a "COC" or a "permission to proceed or operated" until that is submitted and accepted.

Attorney Polidoro- so when you submit the draft engineering report are you also going to submit copies of correspondence with DEC that amend the report even though it's not in the report, so we can get an understanding of what the final would look like?

A: He could, he's put us on notice, he could, but it is lengthy. It became 5 questions this week ten questions next week, its technical reviews, more of this more of that, changes here, changes there, some of it is minutia, some of it significant. We started with a canopy and pad

up front and that all got changed- it was all removed- everything went inside. Forget outside activity, that was mid stream.

Attorney Polidoro- Was only asking because it seems that since the application started, things have been coming in piece meal, instead of getting everything you gave DEC all at one time.

A: The O & M manual he believes is the same as when this started, engineering report is a work in progress, that's the way they go.

Attorney Polidoro to Engineer Zerfas- Is this something that Joe is reviewing, the engineering report?

A: She was unsure if he had gotten a copy of it

Mr.Peduto- He (Joe Berger) had acknowledged that he had gotten one.

Planner Ley- A number of comments had been related to where this product will be used in the future and whether or not people are going to be notified, she just wanted to point out that in the DEC document dated January 15, 2009, regard the BUD items 17 & 18 require that the purchaser and user of this product sign a release saying that they had been notified of where this product came from and what is in it. Rasco is required to keep a copy of all of these signed releases. That issue has been addressed by DEC and this document is available in the Planning Board office

Member Johnson- Victoria, is there something in the zoning for a non conforming use and how much it is allowed to expand?

A*: 145-25 b The Planning Board may issue a special permit allowing an expansion of a nonconforming use or structure by up to 50% of its area at the time of the adoption of this chapter, provided that all other requirements can be met, and that such expansion does not reduce any nonconforming setbacks by more than 20%. Expansion or introduction of uses prohibited by § 145-10C shall not be permitted.*

Member Johnson- So this is much more than 50% expansion, if 5 years ago they just used that little building, and now it's the little building, the scale, the office, the big building for storage, we're at 300% expansion

Attorney Polidoro- do we have an existing-

Mr.Peduto- He felt the assumption is incorrect, when they were operating, they used building A the processing Building and Building B the storage building, they had the office and the weigh scale, that was there in 2005.

Member Johnson- the weight scale went in without Planning Board approval, it was not there in 1999 when TT owned it, that and the office went in with out planning board approval and we were inside building B, that's 22,000 square feet it doesn't look like it's ever been used aside from the garbage in there, that you said you were going to clean up. It doesn't look like there was a drop of asphalt in there for storage, and you just said you were going to put up a canopy and a pad for storage outside, then you decided, now you were going to use building B. He does not understand how this is under the 50%.

A: He was mis understood, building A was always building A and building B was always building B. A was always processing and B was always storage, the entrance to the canopy-

Member Johnson- B looks like there was never a drop of asphalt in there

A: That was filled with processed material which is the pcs mixed with asphalt and brought over there to cure.

Member Johnson- There was no asphalt staining

A: there is not asphalt as you probably understand asphalt.

Member Johnson- there was no trace of old product in there. When we went on the site walk we were told, now we have decided to bring the storage inside building B. this looks like well over 50% expansion, plus the scale and office that were never approved, a bathroom building that was never approved, he thought this was expanding quite more that 50%.

Jon Adams- Chairman- the issue that one of the members is raising is an issue that Mr. Hearn would have reviewed as part of his review before signing the same document the Town Board authorized that was a function of his review, he was satisfied that this was a legal non conforming use, he found no expansion and there is no factual basis that would permit anyone else to infer something there is no evidence of. Mr. Hearn has a function of making that determination that is his and his alone, were not here to revisit determinations that the Code Enforcement Officer makes, legally makes.

Member Johnson- Did Mr. Hearn say what buildings were in operation in 2000, 2001, 2002, 2003, 2004, no he didn't. All of the Board members were down there they saw building B, and he thought it was well over the 50% expansion.

Jon Adams- We have a written agreement the Board needs to observe that agreement and if you would appreciate the perimeters of that agreement as to this application is to review the site plan the issue that is now being raised is not a site plan issue. The site plan standards of this Town clearly set the perimeters of review for this board and he asks that this Board respects that agreement. If Mr. Johnson wishes to communicate with Mr. Hearn on that subject, that is his prerogative, but he did not think that this Board is for testing that issue.

Member Johnson- to the Town Attorney- Do you know which buildings were used back In 2004?

A: It was raised by Mr. Hearn that any expansion is an issue, when they reviewed the plans that were in their possession for the site, the Plans in Mr. Hearn's office, he didn't raise it at all. Certainly if there were, it would have been asked that in addition to site plan approval from the Planning Board, that the applicant obtain a special permit from the Town Board.

Member Johnson- It looked like building B was part of carbon activation

Mr. Nelson- Pointed out the 2 buildings in question on the plan that was projected. The processing building and the dark building
He was a customer in the facility in the early 90's and that building was always used for storage, and the other always for processing. They did not ask for any expansion of use what so ever.

Attorney Polidoro- We are still in a continued Public Hearing on this application and the Board has not done a determination of significance, so until that is made, it is not a complete application and the Board can not close the Public Hearing, it needs to be continued. While the Public Hearing is open the Board should make sure it has enough information to make a determination of significance, for example the Great Swamp and water quality has been brought up as a potential issue. The board needs to make sure that the applicant has either mitigated all the significant impacts through project design or that they've provided the Board with enough information to show that there won't be an impact

Co-Chair Wylock – Mr. Adams- we have your letter, thank you we also have a letter on record with the Supervisor and Town Board requesting that the Code Enforcement Officer site the property owner for any violations on the site. Prior to the Board approving any application, that is still pending.

As far as the Structural report- we only received that Friday afternoon. Mr.Peduto, you serve your client well but someone in your office has a problem making our meeting deadlines. Our Meeting deadline was the 14th we received it on the 16th which was too late for our next meeting.

Mr. Adams- at some point they would like to bring the public Hearing process to a conclusion, we have had 3. He wanted to concur from the comments made that the issues that need to be addressed have been established and bring this phase to an end?

Co-Chair Wylock – He would not make that comment yet, no.

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

Co-Chair Wylock asked for a motion to continue the Public hearing, since they missed the deadline for May3rd, they will be the only application for review on May 17th

Motion made by Peter Muroski to continue the Public Hearing to May 17, 2010 2nd by Valerie LaRobardier

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

Motion approved

Mr.Peduto- Since they want to be sensitive to submission dates, what specifically does the Board require and by when. What do we owe you?
Co-Chair Wylock- The deadline for the next regular meeting, May 3rd, has passed
Mr.Peduto the deadline for the 17th is what
Secretary- There is only 1 deadline per month for both meetings once the 14th has passed the next deadline is May for June

Co-Chair LaRobardier- If we artificially make it for May 3rd for the 17th so they can give us what they need to do that.

Motion made by Valerie LaRobardier to extend the deadline for the May 17th meeting to May 3rd 2nd by Michael Villano

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

Motion approved

Mr.Peduto- what specifically does the Board need?
A: The updated plans that respond to Berger's comments regarding storm water run off treatment
The Material Handling Plan

The O & M report
ESC Details for the plans and respond to Engineer Berger's comments

2. **MINUTES** 3/15/2010

Motion made by Valerie LaRobardier to accept 03/15/2010 2nd by Michael Villano

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

Motion approved

Motion made by Peter Muroski to adjourn @ 8:18 2nd by Valerie LaRobardier

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

Motion approved

Respectfully submitted,

Betty-Ann Sherer

This meeting may be viewed in full on the Town of Dover web site by going to www.townofdover.us
Full Audio may be requested for a fee by completing a FOIL request form from the Dover Town Clerk
This meeting may now be viewed at Cablevision Channel 22 for residents who have that provider-Please check local listings for meeting re broadcast times

Please call the Planning Board Office with any questions 845-832-6111 ext 100

final