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July 20, 2010

Dover Planning Board
126 East Duncan Hill Road
Dover Plains, NY 12522

Re: Rasco Materials, LLC, 2241 Route 22, Wingdale, NY (the "site" or "property")
Site Plan application (the "application")-Conditioned Negative Declaration
("CND")

Dear Chairman Wylock and members of the Dover Planning Board:

I have conferred with the Oblong Land Conservancy ("Oblong") and have been instructed to submit the following comments on the CND issued by the Board for the Rasco application on Oblong's behalf. For the reasons stated herein, the final CND should not be adopted.

Impact on Community Character:

As stated by at least two of the Dover Planning Board members on June 21, 2010, the Board's adoption of the State Environmental Quality Review Act ("SEQR") determination is premature given the fact that the Board has stated that it is unsure of whether the use proposed by the applicant is a lawful, permitted use under the Town Code. Oblong has provided the Planning Board with the law and the facts that demonstrate that the use proposed by the applicant is not a lawful, pre-existing, nonconforming use entitled to the protections of Article VI of the Dover Zoning Law. The cases recently cited by the applicant's attorney in his June 17, 2010 letter to the Board are not helpful for the applicant. The Dover Town Board "settlement" stipulation *can be* collaterally attacked where the Town Board had no authority to render it. Moreover, the applicant failed to avail itself of available administrative and judicial avenues of review with respect to the stop work order issued by the Dover Building Inspector in 2005 and, therefore, review of the issue is waived and the issue may not be raised as a defense in a subsequent action. *See Village of Westhampton Beach v. Cayea*, 38 A.D.3d 760 (2d Dept. 2007)(By withdrawing their administrative appeal challenging a stop-work order issued to them, the defendants relinquished any right they possessed to administrative review of the stop-work order, their claims that the work complied with the building permit and village code, and their claim of

vested rights. In addition, by failing to exhaust their administrative remedies, they waived their right to judicial review of those issues).

Rasco has not reasonably relied to its detriment on the Town's actions and the Town's boards will not be equitably stopped from making decisions contrary to the December 2009 Town Board stipulation. The decision in *Town of Putnam Valley v. Sacramone*, 16 A.D.3d 669 (2d Dept. 2005) illustrates the well-established principle that estoppel generally will not bar a municipality from enforcing and applying its zoning regulations despite prior error. There, a building permit allowing the owner to increase the height of a building was issued in error. Under such circumstances, estoppel may not be invoked against a municipal agency to prevent it from discharging its statutory duties nor for the purpose of ratifying an administrative error. *Parkview Assocs. v. City of New York*, 71 N.Y.2d 274 (1988). Estoppel is not available to preclude a municipality from enforcing the provisions of its zoning laws and the mistaken or erroneous issuance of a permit does not estop a municipality from correcting errors, even where there are harsh results.

It is clear that the Town amended its Master Plan and its Zoning Law over ten years ago to prohibit all new solid waste management facilities ("SWMF") due to the adverse impacts such facilities were having on the Town of Dover and its residents. It is also clear that the Town determined after years of research and comments by the public that such SWMFs will have an adverse impact on the Town's character. To state in the Rasco environmental assessment form ("EAF") that there will only be a small to moderate impact if the proposed facility is granted site plan approval by the Planning Board is arbitrary and capricious and in conflict with the Town's findings when the Zoning Law was amended. The proposed action is not a lawful, pre-existing, nonconforming use. It will conflict with officially adopted plans, goals and laws. The proposed use is not compatible with land uses located within a quarter mile of the project. The potential impact of the proposed SWMF is large.

Impacts on the Valley Bottom Aquifer System ("VBAS"):

The proposed use appears to lie over the VBAS which is part of the Principal Aquifer Zone. Neither the EAF nor the CND appear to acknowledge this fact or whether the proposed use will comply with Section 145-15 of the Dover Zoning Law. This may be an oversight in the Planning Board's review of the project but any errors should be corrected.

In closing, on Oblong's behalf I respectfully request that the Planning Board ensure that all questions posed in the EAF be answered rather than left blank. This will, at the very least, ensure that someone has considered the questions.

Sincerely,

Shannon Martin LaFrance

SML:fhs

Cc: Dover Zoning Board of Appeals
Chris Wood

