

TOWN OF DOVER ZONING BOARD OF APPEALS SPECIAL MEETING HELD ON WEDNESDAY, November 3, 2010, AT 7:00 P.M. AT THE DOVER TOWN HALL:

PRESENT: Chair Marilyn Van Millon
Member George Wittman
Member Debra Kaufman
Member Anthony Fusco
Member Henry Williams

Also in attendance was Secretary to the Board, Maria O'Leary, and Attorney Thomas Jacobellis.

Chair Van Millon called the meeting to order at 7:00 p.m. and began with the Pledge of Allegiance. She then read the first item on the Agenda as follows:

PUBLIC HEARING – Pegasus Farms – Z 2010-04 - The applicant requests an interpretation of Section 145-74 to determine whether the term "Agriculture" includes "farm worker housing" as recognized under the NYS Agriculture and Markets Law. This property is located at 2699 Route 22, Dover Plains, NY, in the M District, Grid #7062-00-346325.

In attendance for this application was the engineer for the applicant, Richard Rennia, Jr.

MOTION: Member Fusco motioned to open the public hearing; seconded by Member Kaufman.

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| VOTE: Chair Van Millon – Aye | Member Fusco – Aye |
| Member Wittman – Aye | Member Williams – Aye |
| Member Kaufman – Aye | |

Mr. Rennia was sworn in.

Mr. Rennia: We submitted an application for the Board to make an interpretation of the definition of Agriculture and what it means and does it encompass everything that the NYS Agriculture and Markets Law considers that it should encompass.

There were no questions or comments from the Board members or the public.

MOTION: Member Wittman motioned to close the public hearing; seconded by Member Kaufman.

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| VOTE: Chair Van Millon – Aye | Member Fusco – Aye |
| Member Wittman – Aye | Member Williams – Aye |
| Member Kaufman – Aye | |

Chair Van Millon read the resolution then asked the applicant if he had any comments.

Mr. Renna: It was clear that it is inside the existing barn; how do you take it out when it's physically part of a barn that's there? Part of the NYS Agriculture and Markets Law allows you to put in a mobile home for farm worker housing.

Member Wittman: As long as it is not habitable, just the idea that there's no beds or other stuff in it.

Member Kaufman: You can get rid of the stuff inside the walls and bathrooms and kitchens.

Member Wittman: That's what we intended.

MOTION: Member Fusco motioned to accept the interpretation as written; seconded by Member Wittman.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

The resolution was adopted as written.

RE-OPEN PUBLIC HEARING - RASCO Interpretation - Z 2010-03 – The applicant seeks an interpretation of a determination of the Code Enforcement Officer regarding whether the use of the property as a cold-mix asphalt facility is pre-existing non-conforming. This property is located at 2241 Route 22, Dover Plains, NY and is located in the M district on tax map numbers 7061-00-580190 & 7061-00-5850063.

In attendance were Jack Nelson of Rasco and his attorney, Jon Adams.

MOTION: Member Kaufman motioned to re-open the public hearing; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Attorney Adams: (gave a handout to the Board members) I am going to limit my remarks to additional material that has been found in the Town records relevant to this application. I have a written statement; my remarks will simply follow this written statement so you can follow my comments.

Attorney Adams was sworn in.

Attorney Adams: On behalf of Rasco Materials, I have reviewed materials that were discussed at the last Zoning Board meeting of October 20, 2010 as supplemented by some materials that were referenced but the Board did not have time to go over but I think are part of the record that the Board is considering. These materials relate generally to all activities which took place on the parcels now known as the Mid-Hudson Recycling Park. Those five parcels contain at least four buildings and to some extent one can only understand some of these materials if one understands the references to the buildings in those materials. I say that because in some of the documents that refer to building 1, 2, 3 and 4, unless you know who occupies those buildings, you wouldn't have any understanding of the document. I note in the second and third paragraphs that Rasco has been occupying (subject to the Stop Work Order which is to some extent the subject of this matter) buildings 2 and 4; TT Materials, which is referenced extensively in the documents, also occupied those two buildings. I contrast PolyTech and Carbon Activation also mentioned in a lot of those documents occupied building 1, which was destroyed by fire in early 1996; then they subsequently had permission to relocate to building 3.

A common thread exists among these documents. That is to say these sites were under continuous scrutiny during the time of those documents by Terry Binotto, who was the then Code Enforcement Officer. He was sort of the guy who, I don't want to say "in charge", I'm trying to use layman's terms, everybody seemed to go to Terry in that point in time to find out if they can use it and how can they use it. Terry was very actively involved with this particular site and there was, what I would characterize as significant or intensive review on a continuous basis of the activities which took place at that building by the Code Enforcement Officer. Because of these significant involvements of the Code Enforcement Officer with the site, I reiterate what I stated in my memo on October 20 that deference should be given to the manner in which the then Code Enforcement Officer deemed what permits were necessary. He had more than a casual involvement with this particular site and the buildings on it. He had a significant involvement and carefully monitored the use. Perspective tenants knew that he was a contact person, he was able ascertain contemporaneously based on facts known to him now which you may not be able to replicate at this point in time because of the passage of 15 years. He made decisions of what he knew at that point in time.

I started trying to think of what analogy I can come up with in terms of my suggestion to you that heavy deference should be given to the fact finder who existed at that point in time. Some of you may be football fans, particular pro football fans and you are familiar with instant replay. They have a standard for the application of instant replay; the call on the field cannot be overturned simply because the person reviewing that tape thinks it should be overturned; they have a higher standard that has to be clearly irrefutable evidence that an error was committed by the person on the field. I'm suggesting to you based upon the totality of documents here, and there must be 30 or 40, and I suspect there are more documents. It seems apparent when you review these documents that you have uncovered a great number of documents; there are probably more documents out there that are no longer either in the file or in the microfilm file. I would certainly not

suggest to you that you now have a complete history of this property document-wise, but you certainly have a good history.

The file shows the history as to Rasco's predecessor, TT Materials, which I refer to as TT, and Allied Cold Mix commencing in 1992 and extending through March 2005. No document during that 13 years stated that the occupancy by TT or its predecessors was illegal. To the contrary, the pattern of correspondence and building permits as well as the involvement of the Planning Board at some points, it is entirely consistent with a legal occupancy by TT.

I'm going to go over 5 or 6 documents that I think are particularly relevant. For example, some of the PolyTech materials of interest are from a historical standpoint, but they're not directly relevant to the issue before you. One of the most significant documents was a document prepared by Allied Cold Mix Corp. when they prepared a long form EAF in 1993. On page 5, there is a listing of approvals required. At the very top of that page on the right hand side, you'll see a list of approvals required. Under the local approval section, they're all "no". In other words, we don't need any Planning Board approvals, Zoning Board approvals and so forth. More interesting is the handwriting and initials on the right hand side. We believe, and I've talked to somebody who's familiar with Terry and his style of handwriting, that the initials you see on the right hand side are dated March 8, which is a different date than the date on the EAF on the front page which is March 1, are Terry Binotto's; I can't tell that conclusively, but there may be people from the Board who may have known Terry and may have been familiar with his handwriting.

There are also other documents in the file that he signed which you can compare it to, to make your own determination, but it's my belief that those documents were in fact signed by Terry. That particular entry was a Terry Binotto entry. Equally important, in August, first of all let me give you concepts because the form that I'm referring to, the March 1 EAF form, was filled out for the benefit of the NYS Department of Conservation. It's a form filled as part of the application process for a solid waste management permit. DEC later that year finally circulated among interested or known agencies for declaration over the determination you can be the lead agency for purposes of environmental review. In your documents, you'll find an entry on September 14, 1983 (should be September 14, 1993) where Mr. Binotto is making a recommendation to the Planning Board on the subject of lead agency status. No where in that document does Mr. Binotto disagree with the statements as to approvals required. He does make some comments about buffer and so forth, but he does not challenge the opinions expressed on page 5 of the EAF that no local approvals were necessary. I'll continue my comments and then submit that to you.

In 1996, the documents that were part of the package reveal that Mr. Binotto as to TT Materials referred to the Planning Board on an advisory basis an issue whether TT could stock pile some materials in a certain location on the site. This was discussed by the Planning Board at its July 11, 1996 meeting and those minutes were part of your discussion. Following that discussion on July 20, 1996 (page 3) the Planning Board

issued a memo to Mr. Binotto stating that the Board did not see any problem with the applicant stock piling their end product with the suggestion that an inspection be conducted periodically. This is important simply because as you'll recall, I submitted a memo to you on October 20 saying that the law requires you to make presumption that the Zoning Code Enforcement Officer at all times acted within the confines of his responsibilities. At that point in time the Town of Dover Zoning Ordinance said that you can only issue permits and permit activities if, in fact, that activity was legal. While there's no express finding in the file, for instance had a Certificate of Occupancy been issued or did Terry ever expressly answer the question he raised himself in earlier correspondences if site plan necessary, this whole subsequent pattern of conduct was consistent with only one inference, and that inference is he made a determination that the occupancy was legal. He couldn't have done all the things he did in the 10 years without having first made that threshold decision that the occupancy was legal. All the documents were consistent with that.

I note that on November 30, 1994, the building permit, which was one of the documents in this new material that was issued to TT to alter the building. The file contains an application for that permit as well as a renewal permit issued one year later, but the originally issued permit was not in the file. There are gaps, I don't think there are fatal gaps, but there are small gaps. This building permit could never have been issued on November 30, 1994 without Terry having previously determined that the previous occupancy was legal.

January 6, 1998 there's a letter where Binotto indicates he inspected the premises and found certain deficiencies and asked for a timetable to correct those deficiencies. He didn't say at that time that the occupancy was illegal. He was simply doing his duty and making periodic inspections and asking for corrections.

On May 6, 1998, the Supervisor requested that Binotto inform TT that under the moratorium on solid waste facilities that were in existence, new equipment could not be brought on to the site by TT. Now, had there again been an issue of illegality, that issue should have been raised at that time, but it wasn't, there had to be an understanding at that time 12 years ago that the occupancy was legal.

In 1998 you also have a letter that also talks about additional discussions taking place between Binotto and TT and potential improvements to the structure. Binotto offered suggestions as to work that had to be done. Again, he's not saying, I'm sorry you can't do it because you're occupancy is illegal. In conclusion, no record of Certificate of Occupancy appears to exist for TT. It's probable that Binotto didn't deem it necessary absent any activity that requires a CO, and I think I discussed in prior submissions to you, if you read the Zoning Ordinance that was then in effect, you can occupy an existing building and didn't need a site plan unless it's played out elsewhere in correspondence you expanded or altered the building. We're not talking about circumstance for TT expanding or altering the building; they simply occupied a space.

For the benefit for counsel, I pointed out several applications that say that the absence of a CO cannot be deemed by you as determined for the issue; it's not even relevant to the issue. If the use was legal, and back then the site was zoned for industrial and this was an industrial use, that coupled with all the documents we have showing this extensive scrutiny of the site, my mind only permits one inference and that is that the use was deemed legal by the person primarily responsible for that interpretation, that is to say the Code Enforcement Officer. I think the additional material that was provided as a result of additional searches by Town officials is useful. I think it gives more contexts to this question and it also permits you to more readily answer this question.

Chair Van Millon: Is there anyone else who would like to address the Board with facts?

Chris Wood, Chairman of the Oblong Land Conservancy, was sworn in.

Mr. Wood: I didn't come prepared to make a statement tonight, but what I did bring with me is a letter from our counsel to submit for the record and we would like the opportunity to consider Mr. Adams' submission. Mr. Wood then read a letter written by Shannon Martin LaFrance dated November 2, 2010.

Next speaker, Evelyn Chiarito, was sworn in.

Ms. Chiarito read a memo to the ZBA dated November 2, 2010 with supporting documentation. Page 3 of her supporting document (letter to TT Materials dated 12/1/09) talks about a discussion of TT Materials participation in remediation of the Robert Wern site. Ms. Chiarito stated that the Robert Wern site is in Pawling where material was dumped by TT and it has never been remediated, it still remains there along side the road opposite Martin Furniture.

There was some material stored on Dover Furnace Road on the Tanner property with no permit and no permission. There was also material that was stored outside the Mica plant site and it was covered with a tarp and there are letters in DEC's file and they said that that was never permitted and when rain comes down, that can go into the ground, so it was an illegal use. They were asked then to remove it and they wrote back and said they remediated it and removed it and then a month later, there was another letter from DEC that said that they were out there and the material was still there.

I remember Terry Binotto. There was something going on in my neighborhood, I live in a residential neighborhood, where some person had a construction yard there so Mr. Binotto said to build a berm around it so the neighbors can't see it, so that was his solution; I'm not so sure that what he was doing here was totally correct. I really don't think it was Mr. Binotto's job as Code Enforcement Officer to market Mica plant, which I remember he did aggressively market it.

The minutes from the last meeting, some of us had asked about the public hearing being re-opened, but that wasn't in the minutes, so I'm not sure if it was somewhere else; it doesn't say that certain people did ask that that be kept open.

Chair Van Millon: That's because that was asked during the time that we were out of the meeting, it wasn't part of the meeting.

Ms. Chiarito: I had asked at the time if it were on the record and the reply was yes.

Chair Van Millon: If it wasn't on the video, we weren't on.

Ms. Chiarito: I can't see the video, I just know it wasn't in the minutes. However, we did ask because we thought it was strange that the material was coming in after the public hearing was closed. It didn't seem proper so then at the end of the meeting, you did re-open it.

Chair Van Millon: No, we made a motion to re-open the public hearing tonight.

Ms. Chiarito: Yes, but before that, when you started the review of the other information at that time, the public hearing had not been re-opened. Are you going to keep the public meeting opened tonight so that people are able to come in and review all of the information submitted?

Chair Van Millon: We'll make that decision at the end of the meeting.

Next speaker, Antonia Schoumatoff Foster, Town of Amenia, was sworn in.

Antonia Schoumatoff: I would like to make some comments and take off my hat as you know me as the HVA Watershed Manager and reporter for the media and I'm putting on my hat from 1992 to 1997 as the Chairperson of the Town of Amenia Conservation Advisory Council and also as having been employed by the World Peace Prayer Society and organizing the Amenia World Peace Festival and I would like to make a couple of comments on Mr. Adams' points about Mr. Binotto's putting his initials next to the approval of these uses. I do not hone the authority of a Building Inspector or a CEO to be able to make that kind of approval without a Planning Board review. I know it has never happened in Amenia that our Building Inspector would approve a major industrial use without it being gone through a major Planning Board review. I would also like to draw into question Mr. Binotto's motivation for approving the TT Materials with his signature. Why would he have done something outside of his authority if he did not have some kind of vested interest in it? There is some question, and you can probably do some investigation about his connections, let's just put it that way.

I had on my committee Laris Arny, and I also was the person who went to the Poughkeepsie Journal and Maurice Henchy with the facts about the Amenia Landfill having PCPs, which was reported to the Town and was not remediated. Possibly, the Mid-Hudson Recycling Center was the site of illegal dumping and I'll tell you why I am feeling this. There were 12 PRPs found in the Town of Amenia and Hazmat drivers were known to have made arrangements with highway superintendents to be able to get rid of hazardous materials. William Murphy, the Highway Superintendent of Amenia,

was subpoenaed to appear in exchange for giving the names of the PRPs; I was interviewed personally by the FBI and the EPA at that time because we had information in our files in Amenia in conjunction with the old Amenia Landfill. There were fellows who worked at the Amenia Landfill who stated that they saw trucks emptying out empty drums at 2:00 in the morning with orange fluid into the old Amenia Landfill. When Maurice Henchy came here in 1997, he investigated the whole thing and stated that this happened up and down the entire Route 22 corridor and it was an operation that was connected to the Gambino family. I have a big file of papers, I would be happy to give it to you so that you can see that case.

I did not know Terry Binotto personally, but I did know Frank Binotto because he had a contract for the World Peace Prayer Society, but he was fired because his contract, he violated it and he did things that made the Society uncomfortable with him and I can also substantiate that. That's all I have to say, I'd just like to draw some question about the sleazy connections of Mr. Binotto.

Chair Van Millon asked if there was anyone else who did not sign in and would like to address the Board.

Stancy Duhamel, Duell Hollow Road, Wingdale, was sworn in.

Ms. Duhamel: I have nothing but the utmost respect for the integrity of this Board. I know this is a bear of a file, it's a lot of files, the files are not as complete as we would like them to be, I would say that when there's no C of O and you're weighing evidence on both sides as to whether or not this has been an ongoing business, I would say that if nothing comes out clearly in favor of one side or the other, the tie is supposed to go to the runner and in this case, I would say the runner is the Town of Dover, the residents who live here and who fought very hard for a zoning law forbidding the solid waste industry from operating here.

I would also recommend very strongly, this is just my opinion but I think it is shared by others, that the ZBA engage independent counsel to advise on this matter because Hogan and Rossi clearly has a conflict of interest. They have drafted the stipulation agreement, without which I don't even think we would be here. So, there are enough questions in people's minds than whether or not this was clearly an existing ongoing pre-existing nonconforming use that the Town had to sign a stipulation agreement to get it to go through. I don't think that was done in a proper manner and I don't think it's proper to have Hogan and Rossi represent us through you having argued on behalf of Rasco as well.

Attorney Adams: I want to suggest procedure, I don't want to comment on any substance that was made tonight, but I would suggest this is a procedure for the Board. I think we have all the interested constituents here, I would ask the Board to close the public hearing tonight as to the verbal portion, but to provide everybody given the submissions ten days to respond to any new materials that have been submitted tonight in writing and then the Board will proceed with a decision.

Member Wittman: As far as responding to Mr. Adams' suggestion, if the rest of the Board is willing to do that, although I'd like to make a few statements before that. There is a lot of material that we have reviewed. Are there holes in the materials? Yes, there are holes; record keeping was not very good and for whatever reason, it's been very difficult to even read some of this stuff. However, there is nothing that seems to be coming in that's going to change the facts that are already in the record. There are a lot of issues that have been raised concerning the environmental part of this whole thing; if you go back to exactly what we're supposed to be doing, that's not part of it. What we're supposed to be reviewing here is whether this is a prior existing nonconforming use which dates way back.

I am very familiar with this site, not because I had anything to do with the people who operate there, but I go back into the late '70's on this site; I'm familiar with the fact that there was what I thought, and I was Chairman of the CAC for 7 years in the '80's and one of the things that I did as part of my duties there was to go down and look at what appeared to be a possible dumping site. This was reviewed and reported to the DEC and EPA along with a whole lot of other sites in the County and this was one of the sites that was cleared as not having any toxic materials in it, a lot of junk, but not any toxic materials, so there is no question there that this is a toxic waste dump.

As far as what was going on in these buildings there, I was familiar with it, I dealt with my job in the State of New York, I dealt with PolyTech Tire, I was not at all familiar with what was happening with TT Materials or any of the predecessors, and that was Carbon Activation. What I'm seeing in the file indicates that this is a site that goes back to World War II, an industrial site that was built either by or for the government and as far as whether people were operating in there legally or illegally, all of the material, and I have reviewed piles of materials and read them carefully, indicates that there was no question in anybody's mind from the early '90's right on through the current time as to whether all these people were operating there legally, whether they required site plan review, whether they required, actually there's a lot of references to CO's there's none of them that I can see, the only one that I can see there is one that was for the entire site, it's kind of an overall CO for the property. I've listened very patiently to all of the people who have presented here tonight, and I don't see anything that is new that is going to really change the record as it appears to me. I don't know how the rest of the Board feels about it. I am willing to go along with anything that you want to do.

Member Fusco: I agree. I don't see anything new.

Members Williams and Kaufman also agree.

Chair Van Millon: Do we want to entertain a motion to close the public hearing on Rasco at this time?

MOTION: Member Kaufman motioned to close the public hearing; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Member Williams: The recommendation that you stated with the material, are we going to move forward with that?

Chair Van Millon: That was my next statement, do we want to give the public ten days to absorb the new material tonight and then make a decision after that time or should we make a decision as to our determination tonight? I'd rather have the whole Board in agreement.

Member Wittman: I do, too if the rest of the Board members feel that they would like to review this material a little bit further and have both sides review it, but the public hearing is closed.

Attorney Jacobellis: The Board took a motion to close the public hearing. At that point the Zoning Board is now on the clock and has 62 days to make a decision or the applicant can receive the full approval. If the Zoning Board feels inclined to allow ten days for written comment from anybody in the public to review anything that was submitted here tonight or review the minutes, that's certainly permissible and the Board can then take deliberations at its next meeting. Nothing is required to keep it open for written comment, that's the Board's decision.

Chair Van Millon: I didn't hear any actual new material here tonight; nothing that we haven't seen or heard.

Member Wittman: Actually, a lot of it is actually restatements. Please don't let me try to push the issue here; if anybody here on the Board feels that they would like ten more days to review this thing, I'm perfectly in agreement with it.

Member Williams: I'm looking at the fact that there are people that came up and everybody spoke their words and new information was introduced to them, that they didn't have the opportunity to rebuttal or review or do anything with it. We're closing it and they may have something else to say and I don't feel comfortable with it.

Chair Van Millon: We'll give them ten days for any comments and the clock is on now; as of today, we have 62 days to make our determination on the interpretation.

MOTION: Member Wittman motioned to allow ten days to absorb new material; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

MOTION: Member Kaufman motioned to approve the October 6, 2010 minutes; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

MOTION: Member Wittman motioned to approve the October 20, 2010 minutes; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Chair Van Millon: LukOil is coming before us again.

Member Wittman: Are they supposed to get back to us?

Secretary O'Leary: They did get back to us, but I have to re-notice the public hearing and they didn't get back to me until last Wednesday at 3:30, so I didn't have enough time to get it in the paper and re-noticed, so that's why they're not here tonight, but they will be on in December 3.

Member Wittman: I was wondering if they had a new plan to submit. You're saying that the previous plan that they submitted is the one that they want to do.

Secretary O'Leary: We had sent them back to the ARB, but they still wanted that plan.

Member Wittman: ARB had a recommendation; I think they stuck by the 2' 5" maximum variance for the height. I didn't hear anywhere in there what we had suggested to them and I think that eluded to and maybe they even suggested it at the ARB and that is that I think LukOil still wants a 5' variance that I'm not really happy with. I think that the ARB suggestion to do the 2' or 2'.5" is the better one. I also think that if they push the signs down to avoid to having it go down and block everything down there, they can take the LukOil logo sign and put it along side the price sign; they can revert it horizontal, etc. I'm really concerned that we get what they want here and that it be as close as possible to the zoning with a minimal amount of variance that we can issue and still keep everybody happy and I think we can do this.

Member Williams: I don't recall him ever showing that he would have a financial loss if he made some of the changes that we discussed.

Member Wittman: I think we have to state at the next meeting that, "this is positively what we will allow and this is what we want. If you agree with that, we can do the following tonight." I would like to get this resolved and get the sign in compliance.

Chair Van Millon: I think there is a limitation as to how low the sign can be before it interferes with everybody else's and we need to tell them that we don't want them to go lower than that line.

Member Wittman: I think if we get firm about what we want, they will go along with it.

Member Williams: I agree and they started with it being a financial burden involved with moving the sign, and then all of a sudden there was a "we can maybe do this or we maybe can do that."

Member Wittman: If you agree with me, maybe we can iron it out with the applicant and say, "this is what we want."

MOTION: Member Williams motioned to adjourn the meeting at 8:10 p.m.; seconded by Member Kaufman.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Aye
Member Williams – Aye

Meeting adjourned at 8:10 p.m.

Respectfully submitted by:

Maria O'Leary
Secretary to the Zoning Board of Appeals