

Discussions:**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*

Willie Janeway Regional Director for DEC Region 3 was invited to discuss Planning Board concerns with the Howland Lakes Site

Co-Chair Wylock thanked Mr. Janeway for responding to his letter, there was a site walk January 16, 2010 and The Board was shocked at the site. There are bags of carbon, barrels of unknown substances, abandoned cars and trucks, and a tent like structure all within proximity of the Great Swamp. It was understood that someone from DEC did visit the site prior to the permit being issued. He was unsure if something was overlooked, if the site was in this condition, or if this was outside the scope of the inspection. He felt that DEC and The Town should work together to get the site cleaned up, before the application moves forward; certainly prior to the Application of Cricket Valley Energy. The Landowner not the applicant should be held accountable; it has the appearance of an environmental nightmare.

Willie Janeway, Regional Director for DEC:

He began with thanking the Board for their service.

They (DEC) are familiar with the site and reviewed the site walk photos submitted to him by Engineer Berger. He acknowledges that there are problems with the site and the photos capture that. The question is now how do we work together- Town, DEC and other Stakeholders in moving forward in seeing improvements on this property. He does make note of the Great Swamp and the resources here, and their great importance. DEC does look hard at those resources when reviewing permits and try to look at changes to make sure environmental concerns are addressed.

This site- there are a number of different issues going on- There is the Cricket Valley Power Plant Project and within the context of that review, that may provide an opportunity to look at options for clean up and moving forward on some parts of the property. That proposal does not engage the entire property, but that could help address some of the site issues. One issue, front and center for this property is the existence of a current permit from DEC for operation here. They (DEC) are aware of the history of some of the compliance issues and violations and have made modifications to the permit to put in place conditions to address that. The applicant is in a position of not being able to move forward not because of not having approval from DEC but it is not valid for them to move forward until they have local approvals. The issues between you (The Planning Board) and the applicant on the local level are your jurisdiction, not ours; you need to sort through them with them.

He also noted that as well as having a permit from DEC they have a BUD (Beneficial Use Determination) this is providing authority of the Department for the operation to go with regard to the materials that come into the site and how they will ultimately be used.

There is some product and some contaminated soil that they (DEC) believe is on the site. It is referred to in the materials from the Planning Board about the drums of activated carbon on site - they (DEC) are aware of them and are concerned about them, they (DEC) hope that

You (?) on local level are able to work with them (?) to determine whether or not you are able to move forward- moving to operation would be one way to resolve those issues. If such an approval is not granted, he suggests that whether or not granting that approval, there should be another path in place for moving forward in resolving the issues. At this point DEC's position is that they (the Applicant) have met their permit conditions and they are looking to move forward and need local approvals. Without local approval, they can not move forward. There are times when it is the other way around; an applicant may have local approval, but not DEC. We need to coordinate, if there are other questions for him (Mr. Janeway) to answer or for him to take back to his department, he would make sure the Department will help. They (DEC) are limited on help, staff has been reduced and asks for patience if there are more technical questions, it may take some time to give attention to those questions, but they will do so to the best of their ability.

Unless noted otherwise, questions in this section were answered by Mr. Janeway

Member Fila- on the BUD in existence, has that been in place for a while?

A: He was unsure exactly how long - he believes more than 1 year, and he can check.

Q: Aren't there 3 categories in a BUD- based on chemical composition, each increasingly stringent characteristics of hazardous material.

A: He was not familiar with the 3 different categories- he could talk to technical staff on that. He does know the site is not considered a hazardous waste site. BUD's tend to be fairly customized to the site and the material in the process. Some have asked if the BUD and the Permit are still valid given the lack of activity on the site. If a project does have all of its permits and for an extended period of time does not operate, at some point those permits do lapse. That doesn't trigger and take effect if there haven't been other local approvals. The applicant is not penalized for not having local approvals- so if it takes the time period plus a day- the applicant is not penalized.

Member Fila- It's not "hazardous material" as it comes out, but might be hazardous as it goes in?

A: He would not comment on whether it would be legally or technically "hazardous material" or not- he does not have that expertise.

Q: But it is not hazardous material as it comes out? A: Correct.

Co-Chair Wylock-We were told" contaminated" going in. Afterwards leaving stabilized and encapsulated and then can be reused.

Co-Chair LaRobardier- The DEC permit/approval that they have, that's just for their operation on their site, correct?

A: Their operation and their site with regard to the jurisdiction of DEC as with most applicants they need other approvals from other entities and their approval from the Department should not prejudice the Planning Board in anyway, for their decision making for what is their authority.

Co-Chair LaRobardier- What DEC was called in for was assistance on the problems we saw, they are on the same site, but not part of their(Rasco) application, above and beyond their

approval we need some sort of input from DEC as to what the next step might be to get this clean up orchestrated. It can't really be on 1 application.

A: there are multiple things in front of the Town as a site, with Rasco in particular, they do have some untreated material on site that is theirs that is awaiting treatment, they have DEC approval to proceed with that treatment and in a vacuum we would say the sooner they can do that, the better. We recognize that you may or may not give approval. Scenario A- if you give approval with conditions with changes you feel are appropriate, they move forward then and are able to treat that, if they are not able to - if you deny it and they can't move forward under our permit, then we have to look at an alternative scenario.

Q: What if there were no applications before us, would we be able to get any kind of help from the DEC to get the site cleaned up?

A: The opportunity right now is in part because there are applications before the Board. Through out the Hudson Valley there are approximately 1000 "Legacy "sites. Ranging from places with pcb's, oil to the other end of the spectrum in terms of the variety of issues. There are also a variety of clean up programs and incentives that the State has to encourage the clean up and redevelopment of those sites. They almost universally require a cooperative partner or government stepping in and we then clean it up using a revolving fund, then the Attorney General tries to collect the money back for that fund for the next clean up. He did not believe given what is on this site - a state initiated "superfund" hazardous waste clean up as it doesn't appear to rise to that level. So that would cycle back to the primary opportunity to work with the applicant.

Member Villano- DEC would provide an on site monitor- do you have any idea of how often the monitor is there? It's understood that it is not full time.

A: He (Mr. Janeway) spoke to the monitor and neglected to ask that specific question - but he will. He (the monitor) is familiar with this site. Usually monitors divide their time anywhere from 3-5 sites, that gives a sense as to how much time might be spent looking a site.

C0 Chair Wylock- Would it be unusual for the town and DEC to work together to get this property cleaned up? It shouldn't be the applicant- most of this has been there for 7-8 years, it would be the responsibility of the property owner. Would this be unusual for DEC and the Town to go after the property owner?

A: It wouldn't be unusual, the question is to what degree - are there violations that warrant that approach. Are there other things that we could do to work together? One thing we could all agree on is the long term continuation of the status quo is not in any of our interests. We, as the State of NY, and you as in the Town, want to find a way to resolve any issues and achieve clean up, and have some more productive use of that property. Whether it is tax base, community base or good neighbor. Any discussion we can have for those common goals would be worth while. (At this time the site walk photos were projected for the Public to view.)

It was believed that this site was not used for over 10 years around the time of the tire fire.

Engineer Berger- Wanted to point out that in the BUD it states:

This BUD is only applicable to virgin petroleum contaminated soil (PCS) that is determined to be non hazardous as defined in 6NYCRR 371 and 40 CFR section 261

In order for the permit to be - they can only bring in non hazardous, but low level contaminated material and it is listed in the BUD. It is only petroleum and can not have any of the by products.

Mr. Nelson- In the permit there is a list of criteria, if you look at the levels; we can only take in low level virgin petroleum contaminated.

Mr. Janeway- We do have facilities that in their operation do end up having compliance issues with us, if they have brought in something that exceeds those standards, they have to reject that load and one of the reasons why we have monitors they have to pay for is to make sure we have that independent unscheduled verification. And we can work on the violation or shut them down.

Member Fila- Do they have to test it on site? A: Mr. Janeway- was unsure specifically.

Mr. Nelson- Prior to the soil coming in there is some paper work that is required, there is a certain amount of testing that has to be done by a certified laboratory, the test results are sent to us and compared to a table. We then have to prove it they do have to give us a letter, there's an analytical soil representative, there are manifests to track it, and it's a fairly sophisticated process to get it to come in. They just can't pull up and say we're going to show up with a truck and the analytical, it's all got to be submitted ahead of time. It needs to be approved and an appointment has to be made.

Co-Chair Wylock - Approved by whom- A (Mr. Nelson) - by us

Q: Do you go to the site where the material comes from? A: We don't have to go to the site, we can ask for the history of the site, sometimes industrial sites have a long history of different operations, if there's the possibility of the material not properly being characterized the material, we could then visit the site ourselves.

Engineer Berger- Within the permit, the permitted shall provide weekly reports, logs of what came in and all of the testing that was done. So the permitted is required by either faxes acceptable, but weekly reports to DEC on all information see page 6 of the permit.

Mr. Nelson- with the requirements, it's tough to make a mistake and if you do it's very costly, they don't send you a bill but you do get punished monetarily.

There was a brief discuss of a site in Westchester.

Attorney Polidoro- Many times when we work on a project that also requires DEC review, we know DEC puts restrictions - what we're not sure of is how frequently there will be review of those restrictions or follow through on the site. So we would like incorporate those restrictions into our approval and at times the applicants frown upon the conditions, they feel DEC has already done it and that the Town doesn't need to - do you have any policy or best practices?

A: Mr. Janeway was unsure if DEC did or not. He asked if we could follow up with the technical staff. Linkage could be discussed, if the department feels the need to modify the permit, then that rolls through then there has to be modification at the Town level. There should be ways to reference and link in and carry forward with the DEC permit. We (DEC) do not have an issue with cross linkage, but the specific technical details should not be redundant.

Planner Ley- Are you aware of any past cleanups on this site or existing violations?

A; He is aware of past violations, that we (DEC) feel have been addressed with changes on the permit, in terms of how they would need to work going forward.

Attorney Polidoro- Knowing that the applicant would need local approvals- DEC did not do a coordinated review, and now the planning Board has to go through and look at everything, is that general policy, in the future, could we receive notice?

A: Yes going forward it would be in the best interest to have coordinated reviews rather than separately, unless it is discussed to be separate. He was not aware that the previous review was uncoordinated.

Planner Ley- Were the wetlands reviewed within the permit for this application?

A: He did not have information on that. It would have been standard practice to know that there is no activity within the wetlands and the 100' buffer of state wetlands. It would have been reviewed, if not a mistake might have been made.

Mr. Nelson- I believe we are far enough away from the wetlands, I know there were wetlands maps submitted, DEC looked under every rock they could have. We went through a review for about 4 years, I'm sure if there were a wetlands issue, it would have been in their review.

Mr. Janeway- It is our preference, and we make this clear to people, not to do a wetlands review as a result of the proposal being modified so that it doesn't need a wetlands permit, we would much rather have the proposed activity stay outside the buffer.

Co-Chair Wylock - How does the Board feel about going on record and asking Our Attorney to draft a letter to the Town Board, requesting that they look into working with DEC and contacting the property owner, Howland Lakes, and getting after them to clean up the existing site? There are obviously violations of the Town Code on site, like the abandoned cars etc. This would be a step in the right direction

Member Fila- Wouldn't we need to site specific violations in order to do that?

Co-Chair Wylock- The Code Enforcement officer would need to inspect the site and document the violations

Motion made by John Fila to Authorize Attorney Polidoro to draft a letter to the Town Board 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

Mr. Adams- Due to the technical nature of this application - Their Engineer is not able to be present; he requested further discussion of this application take place at the next meeting at March 15 as it could be part of the Public Hearing taking place that night.

Co-Chair Wylock - Thanked Mr. Adams for submitting the documents requested. He also shared the comments submitted from the circulation received from DOT and Fire Department.

As well as this letter from the Code Enforcement Officer:



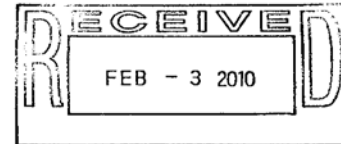
TOWN OF DOVER, NEW YORK
BUILDING AND ZONING DEPARTMENT
George T. Hearn, Code Enforcement
Officer

126 East Duncan Hill Road
Dover Plains, New York 12522



February 3, 2010

Town of Dover Planning Board
Att. D. Wylock, Chairman
126 E. Duncan Hill Rd.
Dover Plains, NY 12522



Re: RASCO

Dear Chairman Wylock:

I understand your board is reviewing the application of RASCO to operate their soil manufacturing facility.

I would suggest that since the buildings are over 50 years old and there are no maintenance records for them and the fact that some of the support post show sign of being hit by heavy equipment, they should be inspected by a structural engineer to determine if they are safe for their intended use.

Yours truly,

George T. Hearn
Code Enforcement Officer

Co-Chair Wylock then addressed the structural report, it is 3 years old. At that time the structural engineer did note there were signs of deterioration and there could be more. Based on Mr. Hearn's letter and we do have 2 state certified inspectors on our Board, who could unfortunately not be here tonight, they concur with that opinion. Engineer Berger has contacted Noviello Engineering to conduct a structural inspection of the site. The quote we

have is \$2,500.00, and they would submit a report to the Board within 2 weeks of the inspection. He felt it would be in the best interest of the Town to proceed with that inspection.

Mr. Nelson- With all due respect, Spectra has performed an inspection of the building and structurally it's concrete and the support beams - there has been no activity in there, and to think the building has deteriorated to the point that the beams have rusted and rotted, they would have had to have been very flimsy to begin with. Any work we (RASCO) do there has to be supervised by an engineer, he has to be on site the entire time, and when the work required in that report is complete, the engineer then has to prepare a final report and sign off. To bring in another engineer at this point, is not cost effective. We already have 1 engineering firm there, why not just let them inspect again and recertify that report, would that be enough to satisfy the Board?

Co-Chair Wylock - If they did another inspection, they could just give the same report from 3 years ago.

Mr. Nelson- When the Engineer puts his signature on the report, you can rely on it, as being accurate.

Mr. Adams- Could there be a cap on that? A: Yes. Q: You mention a figure and while we disagree I ask for a considerable cap.

Co-Chair LaRobardier- We have a bid and if Engineer Berger is comfortable with the reputation of the engineer if he wants to replicate the scope of work fine, we have a quote and that would be it.

Mr. Nelson- That work has been done and he does not believe that in 3 years time, the condition has changed much, and they could get Spectra to update their report.

Attorney Polidoro- The report left open several recommendations the Board is trying to get a follow up, have any of those recommendations been done? A: (Mr. Nelson) we have applied for a permit for those repairs and the CEO indicated they needed site plan approval. There will be repair to the columns and trusses and a professional engineer will be supervising. Upon completion he has to inspect the entire building and submit a report to DEC with his stamp on it. This is just another engineer when there's already on in place.

Member Fila- Has no objection to the applicant using any firm as long as it meets the scope of effort.

Co-Chair Wylock - Ask the board to support retaining a structural engineer to inspect along with the Building inspector and report back to the Board. He has concerns with the business going into operation and structurally there being an accident- then the board did not do due diligence

Member Fila- If we select the engineer and something happens then we have more of a liability.

Co-Chair LaRobardier- Any Engineer could come up with the same thing, their engineer said they need to do work, in the end it gets inspected.

Engineer Berger- The report is 4 years old and agrees to have it updated- it's the Board's decision as to who does the review. Spectra is a very reputable firm and the Engineer is reputable and the report is thorough, but it shouldn't wait till after. After 4 years it should be done before hand. Whether or not it is their engineer - Planner Ley agreed. The one concern is if a structure needs to come down that does affect site plan.

Mr. Nelson- This is a pre engineer shed on the side of the building, 2 of the walls will remain 1 is bowed out and will be torn apart and put back together, plum with a new roof and skin, same size and structure.

Co-Chair Wylock asked for:

a Motion for the Board to engage Noviello Engineering to conduct a structural inspection of the site, at a cost not to exceed \$2,500.00 and an escrow be set for this Inspection

Attorney Polidoro- So these are your options:

Either the Board asks for an update the existing inspection to bring it up to Engineer Berger's standards, under the applicant's cost and we get to review it

Or

The Board can hire its own consultant and then the report comes to the Board

Co-Chair Wylock prefers to hire a separate consultant to go on site with the Building Inspector and Engineer Berger

Motion made by Valerie LaRobardier to hire the inspector to bring the report up to standards 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

Reminder Public Hearing was set for Monday March 15th