

The Millbrook Independent

Serving Millbrook and Stanfordsville and the Greater Millbrook Region

Will Dover Evade its own Zoning Law?

By Stephen Kaye and Tonia Shoumatoff

The Dover Zoning Board of Appeals (ZBA) is weighing a decision on whether a pre-existing use for processing solid waste was abandoned or whether that use is entitled to continue by a different company under a grandfathering doctrine. If the decision favors the grandfathering interpretation, the Dover Planning Board could be pre-empted from having to review the application which would also mean that the town would never have reviewed the site properly for the processing of hazardous materials.

The town of Dover's lawyer, John Liguori, who is also advising the ZBA, argued that a stipulation in which he participated effectively preempts the planning board from having to review Rasco's application because the stipulation binds the town to consider the project as grandfathered by a prior use on the same site.

The stipulation was designed to avoid the provision in the Dover Zoning Code that says "solid waste management facilities shall be prohibited in the Town of Dover" (Sec 145-50). It might also prevent the planning board from having an opportunity to review an application under SEQRA since it is not clear if a site plan review would trigger a SEQRA review.

The stipulation was written or reviewed by the lawyer for the town and was signed by three of the five town board members, including supervisor Ryan Courtien, and by the planning board chairman, David Wylock and RASCO, the company that wanted to continue the business of mixing contaminated soils with asphalt. According to the lawyer for the town, the stipulation was to avoid a lawsuit on the issue of whether Rasco was entitled to be grandfathered, and left the decision to depend on whether the prior user had abandoned its prior use.

Even if it got over the prohibition hurdle in the zoning law, the towns zoning law would have required Rasco to post security to guarantee the performance of all conditions to a permit and contribute to a fund to cover inspections. A positive finding by the ZBA on grandfathering would permit Rasco to evade the zoning law, would save Rasco the cost of preparing and filing the application, the cost of a SEQRA process, the imposition of restrictions on the operation and the posting of a bond and payment into an inspection fund. Because the prior use was antecedent to the zoning law, by being grandfathered, Rasco will evade the entire provisions in the zoning law that were specifically designed to regulate operations such as this.

Evelyn Chiarito, a resident of Dover and former Conservation Advisory Chair, stated in comments to the Millbrook Independent: "Even though the ZBA will not reach a decision until October 20th, from their discussion at the meeting last Wednesday, I expect they will decide in favor of Rasco. It would be very difficult for them not to, since Attorney Liguori advises both the Town Board and the ZBA. I believe this is a conflict of interest. The Town Board already very quietly signed a Stipulation with Rasco, prepared by Mr. Liguori, without any notice, public discussion or input which allows Rasco to process petroleum contaminated soil over our aquifer which serves 20,000 people in the Harlem Valley despite our town code prohibiting such uses. We should be concerned."

Chris Wood, Board Chairman for the Oblong Land Conservancy stated: "This proposed operation to process petroleum contaminated waste soil threatens to damage the aquifer that numerous Dover families depend on for their drinking water supplies, the sensitive Swamp River and the Great Swamp. It also constitutes a direct threat to our adjacent Preserve, which was donated by the generosity of the Carruth Family, who owned the land for generations, and entrusted Oblong to keep it and protect it."

He continued by saying "As a more general point the concern is that if this use is confirmed there is the

The Millbrook Independent

Serving Millbrook and Stanfordsville and the Greater Millbrook Region

enhanced possibility of an expansion of the use unless it is very closely monitored. There is also the prospect of illegal dumping of toxic materials that could take place in the future, as more contaminated material is carried to the Harlem Valley for disposal, and is not accepted by Rasco. The people of the Town of Dover accomplished a very remarkable achievement for such a small town with such limited resources, when its new zoning code was adopted.”

Jill Way, former Town Supervisor said in her written comments to the Board: “Additionally, I refer you to the definition of Solid Waste in the Dover Code, Section 145-74: ‘Any solid waste which receives a Beneficial Use Determination (BUD) from New York State Department of Environmental Conservation (NYSDEC) is still considered a solid waste for the purposes of these regulations.’

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

“Finally, operations of this sort that may have been conducted at this site prior to the 1999 Zoning Amendments ceased a number of years ago pursuant to actions taken by NYSDEC and the Town of Dover Building Inspector. Any argument that this operation be considered a pre-existing nonconforming use should not be entertained.

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

Attorney John Liguori stated at last week’s ZBA meeting that he thought the situation was nebulous: “There is no Certificate of Occupancy (C.O.) for any of the operations that existed on the Mid-Hudson Recycling Center in the files....does that mean that the building permits were issued in error? There were a number of Code Enforcement Officers in Dover during the ‘90’s and none of them ever raised the issue of a C.O. They would have had to raise the issue of whether it was a legal or illegal use. The stop work order issued by the Town does not indicate that the applicant intended to abandon the operation.”

A nearby landowner, John Dushas of Pegasus Farms, an equestrian operation, told The Millbrook Independent that he had not been impressed with the way the former operation, TT Materials had operated on the site. “I saw piles of uncovered soils there. To my mind the Town should try to get the site declared as a Superfund Toxic Waste site.”