

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
SEPTEMBER 19, 2002**

MEMBERS PRESENT: Dean Trefethen, Chairperson; Bill Colbath, Co-Chairperson; Richard Callaghan, David Ruoff, Tom Dolbec, Alternate (late); Frank Landford, Alternate.

MEMBERS ABSENT: Doug Cummings, Art Corte, Alternate

STAFF PRESENT: Steve Bird, City Planner; Tom Clark, Building Official; Kate Pelletier, Recording Secretary.

ITEM #1: NEW BUSINESS

A. Approval of minutes for regular meeting of August 15, 2002

MOTION:

David Ruoff made the motion to approve the minutes.
Bill Colbath seconded the motion.

Vote U/A

Dean Trefethen stated that there would be a non-public session held after the public meeting. He also stated that Bill Colbath would be abstaining from the Caldwell case and that Frank Landford would be leaving the meeting at 9:00pm and that the decision to proceed with their case with only the remaining board members would be left to the applicant. He reminded the applicant that he would still need three votes to be granted the variance.

Tom Clark asked if Mr. Caldwell would be able decide before the meeting started.

Dean Trefethen stated that he could decide before the first case, or after the first case was heard.

Mr. Caldwell asked if he could speak to Dean Trefethen privately in the hallway.

Dean Trefethen stated that he could not, but could speak to him at the podium.

Mr. Caldwell asked if he could be guaranteed that all Board members would be present at the next month's meeting.

Dean Trefethen stated that there were no guarantees that all Board members would present next month.

Mr. Caldwell stated that he would wait to decide until after the first case was heard.

ITEM #2: OLD BUSINESS

A. Kathleen L. White, 134 Court St, A/K/A Assessor's Map 21, Lot 7, zoned R-12 requests a variance from the terms of Article V, Section 170-16 to subdivide a parcel into three (3) lots, two (2) of which without frontage on a public right of way.

Dean Trefethen stated that the case had been tabled at the last meeting.

MOTION:

Dean Trefethen made a motion to take the case off the table.
Bill Colbath seconded the motion.

Vote U/A

Paul Connelly of Civilworks, 181 Watson Rd., stated that the case had been before the Board for three consecutive months and that only three of the five Board members present had been sitting on the case continuously since its first hearing three months ago. He requested that the case be continued until the next month's meeting.

MOTION:

Dean Trefethen made the motion to table the case until the next month's meeting.
Rick Callaghan seconded the motion.

Vote U/A

Dean Trefethen stated that he and Bill Colbath estimated that they would be able to start Mr. Caldwell's case before 9:00.

Bill Caldwell stated that his presentation would be thirty minutes long.

Dean Trefethen stated that it might be difficult to conclude the entire process with only four Board members and that at some point during the presentation, Frank Landford would have to leave.

Mr. Caldwell asked if the remaining members could still vote on the case after Frank Landford left.

Dean Trefethen stated that they could; however, he would still need three votes to be granted the variance.

Tom Clark stated that from his perspective, he personally would like to have the five Board members sitting on the case.

Bill Caldwell stated that he would make his presentation.

ITEM #3:

Z02-28 Grover & Phyllis Davison, 52 Constitution Way, A/K/A Assessor's Map K, Lot 21-26, zoned R-40 requests a variance from the terms of Chapter 126, Section 126-5.F to construct a side carport addition onto a mobile home within seven (7) feet from a side property line where a minimum of twelve (12) feet is required.

Grover Davison stated that he would like a carport because of his wife's health conditions and to be able to shelter his vehicle and keep ice off of the entryway into his home.

Dean Trefethen stated that Mr. Davison's neighborhood has had several requests for carports and that the Board's concern was that a carport could sometimes turn into a garage over time. He stated that he wanted Mr. Davison to understand that the carport would have to remain a carport if the variance was granted.

David Ruoff asked which side of the house the carport would be on.

Mr. Davison stated that it would be on the easterly side and would not extend beyond the existing driveway.

MOTION:

Bill Colbath made the motion to accept the case.

Rick Callaghan seconded the motion.

Vote U/A

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for Staff recommendations.

Steve Bird stated that the Planning Department supports the variance request, however, he noted that the concrete slab on which the home is situated is shifted to one side and therefore the requested variance is the minimum that could be asked for and still have a carport.

David Ruoff asked if previous variance requests in this neighborhood had certain conditions about the carport not becoming enclosed.

Steve Bird stated that at the last meeting there was a condition that the carport not become enclosed.

Rick Callaghan stated that with previous variance requests in this neighborhood, the adjacent lots were vacant and not next to other residences. He stated that he was concerned about this.

Bill Colbath stated that the decision to allow a carport on these lots should be made by the owner of the land on which the owners of the mobile homes lease from.

Frank Landford stated that there was a letter from the owner stating that a carport would enhance the property.

Tom Clark explained that Mr. Kaufman owns the property and the residents pay the park fee. He stated that the park was approved under the provisions of Chapter 126 and that the City views the lots as building sites and not lots of record. However, the owners still need to petition the Zoning Board of Adjustment for changes such as the one requested by Mr. Davison.

Rick Callaghan stated that all of the other requests the Board had granted had been unique properties, but he did not see the uniqueness of this property.

Dean Trefethen stated that he hoped that the next trailer park that was approved would be configured so that there was room for carports and garages.

Rick Callaghan stated that he did not see the unique hardship in this case.

Steve Bird stated that he could recall one or two cases that were very similar to this situation where the Board made sure there was adequate distance between the two units.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does (Rick Callaghan voted does not) face an unnecessary hardship. The way the unit was situated on the lot means nothing can be added to the structure without relief, constituting a hardship.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. The proposal will allow a reasonable use of the property without undue impact on others in the neighborhood.
3. It is the Board's conclusion that, if granted the variance will (Rick Callaghan voted will not) be in harmony with the spirit and intent of the zoning ordinance. The intent is to control density and this proposal accomplished that goal.
4. It is the Board's conclusion that, if granted the variance will not (Rick Callaghan voted will) result in a diminution in value of surrounding properties. The request

is to do something similar to others in the neighborhood, which has not caused any apparent harm.

5. It is the Board's conclusion that, if granted, the variance will not (Rick Callaghan voted will) be contrary to the public or private interests or rights. The proposal will allow an expansion of the property without undue impact on abutters.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted.

David Ruoff made the motion to approve with the condition that the carport cannot be enclosed at any time.

Bill Colbath seconded the motion.

Vote 4-1 (Rick Callaghan opposed)

ITEM #4

Z02-29 James Reale, 13-19 Sixth St., A/K/A Assessor's Map 30, Lot 113, Zoned RM-10 requests a variance from the terms of 1.) Article II, Section 170-6.B Definition of a Lot, to allow two (2) principal buildings on one lot; and 2.) Article V, Section 170-12 to establish a principal use in an accessory structure with a side setback of approximately two (2) feet where a minimum of fifteen (15) feet is required.

James Reale, 17 Lincoln St., passed out photographs to the Board members of 13-19 Sixth St. He stated that the property was presently a four-plex and that he would like to convert it into a duplex and add a garage apartment in the rear so that there would be three units instead of four. He explained that the property was in very poor condition and has only attracted poor tenants. He stated he purchased it to try to upgrade it and enhance the value of the surrounding properties. He explained that the configuration of the existing four units was an inefficient use of the space and that a duplex was not economical without improving the garage and renovating it into a dwelling unit. He stated that ultimately, it would enhance the neighborhood, would enhance property values, would reduce parking demand, traffic, noise, tenant turnover and the demand on City utilities. He stated that the type of tenants the property had attracted had caused many problems including numerous dealings with the police department.

Dean Trefethen asked if the main structure would be an up and down duplex and if the third unit would be above the garage.

Mr. Reale stated that it would be an up and down duplex and that the area above the garage, after being structurally repaired, would become a two-bedroom apartment.

Dean Trefethen asked if Mr. Reale would maintain the present roofline of the garage.

Mr. Reale stated that there would be an enclosed stairwell that would change the footprint slightly.

David Ruoff asked if Mr. Reale needed a variance only for the garage.

Dean Trefethen stated that he needed it to turn an accessory structure into a residential use.

Rick Callaghan asked what the garage space would be used for.

Mr. Reale explained that the space under the apartment would be used as four garage bays assigned to each tenant for parking.

Dean Trefethen asked Mr. Reale which other property he owned.

Mr. Reale stated that he owned the property across the street, 22-24 Sixth St.

Bill Colbath stated that there was a sizeable area within the building setback and asked why Mr. Reale would renovate the garage.

Mr. Reale stated that ultimately the garage had to be rebuilt anyway and that it would be more economical to do a structural repair and put another living unit above it.

Dean Trefethen asked why Mr. Reale couldn't demolish the garage and add on to the principal structure, thus eliminating the need for a variance.

Mr. Reale stated that the property didn't lend itself to that idea.

Dean Trefethen stated that he believed the property did lend itself to that idea.

Mr. Reale stated that adding onto the principal building would not leave any yard on the property.

Dean Trefethen asked if the idea to add on to the principal building had been considered.

Mr. Reale stated that it had, however, in meetings with the architect, it seemed more economical and a better use of the space to keep the existing structure on its existing footprint.

Steve Bird stated that with three units, the applicant would need six parking spaces. He noted the four spaces located inside the garage and one on the Mount Vernon St. side and asked where the sixth space would be.

Mr. Reale stated it would be in the northeast corner of the lot.

MOTION:

Rick Callaghan made the motion to accept the case.

Frank Landford seconded the motion.

Vote U/A

Public hearing opened.

Nicholas Edraos, 3 Mount Vernon St., stated that he was strongly in favor of the proposal. He stated that he's had many problems with the neighbors and that he was excited to see someone come along and renovate the property for the better.

Public hearing closed.

Dean Trefethen asked for Staff recommendations.

Steve Bird stated the Planning Department is in favor of the variance request and that the reduction from four to three units was a step in the right direction. He stated that the proposal would lessen the parking problems with the renovation of the garage and that the department encourages property owners to follow suit and upgrade their properties.

David Ruoff asked Tom Clark if there would be an issue with putting the dormers on the garage thus increasing the height.

Tom Clark stated that there would be a slight dormer on the Sixth St. side to allow for the exterior stairway, and that the dormer would not increase the overall building height.

Bill Colbath stated that he was concerned about turning an accessory structure into a principal structure. He stated that there was an opportunity to add the additional living space onto the existing principal structure and that he did not see a hardship in the case.

Steve Bird stated that if the applicant had proposed tearing down the garage and rebuilding it, the Planning Department probably wouldn't support the variance request. However, the applicant is reusing the existing building and not increasing the footprint at all aside from the dormer and stairway and the Planning Department views that as an improvement to the structure.

Dean Trefethen stated that if the structure was in reasonably good condition, he may be more apt to be in favor granting the variance, however, given the amount of work that needed to be done to the garage, he believed there were alternatives. He stated that all the improvements needed to attract better tenants could all be achieved regardless of what the Board decided.

David Ruoff stated that he agreed with Dean Trefethen.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance he does not (Frank Landford voted does) face an unnecessary

hardship. There are plenty of alternatives to upgrade this property and achieve the overall goal of the applicant's proposal without relief, therefore, no hardship exists.

2. It is the Board's conclusion that if granted, the variance will not (Frank Landford voted will) deliver substantial justice. The renovation of the property can be achieved without relief; therefore, no injustice exists by denial of the proposal.
3. It is the Board's conclusion that, if granted, the variance will not (Frank Landford voted will) be in harmony with the spirit and intent of the zoning ordinance. The intent is to maintain reasonable setbacks of residential units and to have only one principal structure per lot.
4. It is the Board's conclusion that, if granted, the variance will (Frank Landford & Dean Trefethen voted will not) result in a diminution of surrounding property values. The proposal would restrict the adjacent lots building opportunities because of fire and safety issues.
5. It is the Board's conclusion that, if granted, the variance will not (Bill Colbath & David Ruoff voted will) be contrary to the public or private interests or rights. The improvement of the property would be beneficial to the neighborhood and the City.

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied.

Dean Trefethen explained that there was a thirty-day appeal process.

ITEM #5:

Z02-30 William R. Caldwell, 29 Tanglewood Dr., requests an appeal from an administrative decision regarding the operation of a composting facility in connection with an agricultural use at 97 Spruce Ln. A/K/A Assessor's Map I, Lot 100, zoned R-40.

William Caldwell stated that after the City of Dover had dumped leaves and waste at 97 Spruce Lane from October 2001 through January 2002, Michael Moore of the City of Dover called Mark Morgan, Recycling Coordinator for the NH Department of Environmental Services. Mr. Moore asked Mr. Morgan if it was okay to dump leaves on the property and that the owners wanted to recoup their soil by composting. Mr. Morgan requested that the City send a letter to DES. Michael Moore sent a letter dated January 29th, to which Mr. Morgan replied on January 31st stating that the composting was a permitted and good use, however, the last two sentences of the letter stated that was subject to the farmer, the land, and his equipment. Mr. Caldwell stated that the City never noticed that in the letter and that the City never checked the farmer, the land or his equipment. He stated that composting facilities have to be a good distance away from residential homes due to the stench it causes and that the biggest reason for composting facilities being closed all over the country was due to the fact that they were located too close to residential homes. He referred to the NH Department of Agriculture guideline that states a composting facility should be a minimum distance of 500' from any

residence, 500' from any water source, and 300' from any lake, pond, well or wetland. He stated that there was between 32-45 homes within 500' of the Hebbard's composting facility. He stated that there were numerous illnesses that could be a result of composting and that several people in his neighborhood suffering from some of the symptoms of those illnesses. He explained that he obtained this information from Cornell University as well as other Universities across the country, Sierra Club, the Center for Disease Control, the National Research Council and others. He stated that dust particles from composting could travel great distances according to an article in US News and World Report. He explained that the Hebbards have animals drinking out of the storm drains on the property and that some people and cows had died from some of the illnesses caused by composting. He stated that the operation of composting was illegal and that Mr. Hebbard never had any intention of recouping his soil. He concluded that the operation should be shut down.

Robert Latture stated that in 2000, the City of Dover decided to dump hundreds of tons of municipal yard waste on the Hebbard's farm as part of an effort to save money and without a public hearing or studies. He explained that the Hebbards claimed they needed the compost to reclaim their land and that was the only reason they wanted the City of Dover to continue dumping on their land. He stated the Hebbards used reclaiming as a way to gain approval from the Solid Waste Advisory Committee and that the Hebbards real motive was to operate commercial business for profit, which is illegal due to a conflict with New Hampshire State Law prohibiting this type of venture as a farm related activity. He stated that the dumping continued for one season until the unbearable stench permeated the neighborhood, causing numerous reported health problems and a growing concern in municipal liability, which resulted in the City Council putting a stop to the operation. He explained that since then, the Hebbards continued to gather bags of leaves from neighbors. They received large quantities of vegetative and animal waste from landscapers, farms and citizens, and they continue to advertise and sell their compost. He stated that he's tried many ways to legally stop the composting business. He stated that he wanted the City to charge the Hebbards with a breach of contract for their misleading statements as to their intended use of the compost. He questioned Dover's liability and that if nothing were done he would seek a class action suit against the City. He stated that George Wattendorf said the City does not incur a liability by giving leaves to someone upon their request. Mr. Latture explained that the neighborhood had many visits from City Councilors, City Officials and the City Manager, Paul Beecher, who promised he would act to stop the composting, however they've heard nothing from Mr. Beecher since then. He stated that they then discovered through research of New Hampshire State Statutes that the Hebbard's composting business was not a legal farm activity, nor is compost a legal farm product. He stated that he wrote to the NH Commissioner of Agriculture, Steven Taylor, and explained the situation to him. Mr. Taylor replied that the composting operation at the Hebbard farm was not a legally defined farm activity, but was a commercial or industrial use. Mr. Latture stated that he wrote a plea to the Hebbards and their attorney, explaining their legal position and urging an end to the hostility in the neighborhood. He praised the Hebbard's efforts in his letter for bettering their composting process and offered suggestions for better composting management on their part and proposed a meeting to resolve problems, however the Hebbards never

responded. As a result, a complaint was filed with Tom Clark, Building Official, claiming the Hebbards were not zoned for a non-farm related commercial business. He stated that Mr. Clark refused to act on their complaint and called it only an allegation and requested evidence that the Hebbards were advertising compost for sale. Mr. Latture stated that he called the City Attorney, Mr. Wattendorf, who said the Building Official does not act on complaints unless he is brought proof that would satisfy a court of law. The matter was eventually turned over from the City of Dover to Attorney Robert Ciandella in Exeter. He stated that he received another letter from Mr. Taylor further clarifying his previous position, which was forwarded to Attorney James Schulte. He stated that Mr. Schulte wrote a rebuttal to that letter of which they were never notified. Mr. Latture claimed that Mr. Schulte's letter contained misleading information and damaging allegations about them, which were part of Attorney Ciandella's ruling against them. Mr. Latture stated that his decision was based on misleading information that was submitted to make it appear that the composting operation met State Law. He referred to NH State Statutes and the definition of agriculture and farming, meaning all operations of a farm, which includes the use of and spreading of compost on one's own land. He stated that there is nothing stopping anyone from making his or her own compost, but it is the intent of use that is defined under this law. He stated that the definition of farming also includes the production, cultivation, growing, harvesting and sale of any agricultural crops including any other plant grown and harvested. Mr. Latture stated that he had never seen compost grown, only made. He stated that a farmer can profit from what he grows and harvests on his farm, not act as a middle man to flog whatever he wishes using farm property as a retail outlet to avoid zoning and business law. He referred to another State Statute that addressed the sale of goods at roadside farm stands and that such sales are not considered agricultural if more than 35% of the goods come from off the farm, clearly to ensure that farms produce and sell their own goods and not become outlets for sales of imported goods. He stated that the Hebbards had claimed that a substantial portion of the manure and plant material had come from the Hebbard farm itself, however that was untrue as the majority of the material comes from outside the farm. He stated that the Hebbards also claimed that some of the compost is used at the farm, however the Hebbards had not reclaimed their land with the compost, as they previously said they would, because it is not their intention to do so. Mr. Latture stated that on June 1st, 2002, Attorney Schulte submitted a legal brief to Tom Clark that was used by Attorney Ciandella. He stated that he was shocked by the many deceptions and half truths the brief claims including the fact that the Hebbard farm generates manure, hay, leaves, brush, etc and that they are composting on site. Mr. Latture stated that they do produce manure, but they do not produce hay, no more leaves than the average person, and little brush. Attorney Schulte stated in his letter that the fact that materials are brought to the Hebbard farm from other farms or from residents does not change the essential character of the composting operation. Mr. Latture stated that cattle and chicken manure cannot be composted and that is why they needed the City's municipal yard waste in the first place. He disputed Attorney Schulte's argument that compost was a farm product and stated that commercial composting was not an agricultural activity. Mr. Latture referred to a summary of conclusion from Attorney Ciandella that stated that the Hebbard farm, as presently operated, constitutes a permitted use under Dover zoning. Mr. Latture stated that the Hebbards had misrepresented their contribution to the compost as well as their

end use of it and that Attorney Ciandella's decision is based on those and other misrepresentations. Mr. Latture stated that Tom Clark based his decision on the flawed decision of Attorney Ciandella. He offered some recommendations including vacating the decision of Tom Clark, that the case be thoroughly investigated by the Attorney General's Office because the City of Dover cannot impartially investigate the matter. He also recommended a cease and desist order be issued to the Hebbard farm in the interest of the neighborhood's health and safety until a comprehensive analysis of the compost and its airborne contaminant impact is determined. He stated that Henry Baker, Health Officer, had refused to involve himself in the matter even though he is required to do so by law. Lastly, he stated that the Planning Board has the authority to approve or disapprove the composting business and State Law mandates that they do so. He explained that when the composting operation started, there were no special exceptions, building permits, or planning board approval, to approve the change of use, even though law mandates such action. He recommended that the Board vacate Tom Clark's decision and asked the Board for their help.

Dean Trefethen asked if Mr. Morgan had visited the property.

Bill Caldwell stated that he visited last August.

Dean Trefethen asked if he had any further correspondence from Mr. Morgan after his visit.

Bill Caldwell stated there was a letter just recently reiterating the original letter of January 31st stating that it was a permitted use and that they promote composting.

David Ruoff asked if there was any evidence that the composting material came from other sources.

Bill Caldwell stated that one would have to see the happenings of the farm from his property. He explained that from any angle, the Hebbard's land is barren and there is no possibility of harvesting anything but manure.

David Ruoff asked who has seen trucks dropping composting material off.

Bill Caldwell stated that every single neighbor has seen it and he presented a picture of a truck dumping materials on the farm. He stated that when Tom Clark and Steve Stancel were visiting the property, they witnessed trucks dumping material there.

Rick Callaghan asked if there had been any environmental testing done.

Bill Caldwell stated that there had been no testing.

MOTION:

David Ruoff made a motion to accept the case.

Rick Callaghan seconded the motion.

Vote U/A

Dean Trefethen noted that David Ruoff was an Attorney with the Attorney General's office.

Public hearing opened.

Warren Lupien, 1 Berkshire Ln., stated that he did not see any proof that anyone had gotten sick from the composting. He stated that he was not sick and neither were any of his neighbors. He stated that in the beginning the composting facility did smell, but only on hot days. He explained that the Hebbard's have done an excellent job improving the composting facility. He stated that the neighbors were exaggerating and that he had never heard of anyone ever getting sick or dying from cow or chicken manure.

Attorney James Schulte represented Rick & Mary Hebbard. He referred to the NH State Statute addressing solid waste management. He stated that the chapter makes it clear that, as a result of a Federal mandate, leaf or yard waste may not be disposed in a solid waste landfill or incinerator. The same chapter also states that for yard waste, leaves, lawn cutting, brush and farm waste, the preferred method of disposal, as determined by the legislature, is composting. He stated that recycling and reuse is not an available process to deal with this type of material. He then cited the Commissioner's letter of July 5th, which said that one of the reasons why he believes composting may be an agricultural function is because the cultivation and conservation of the soil, including the use and spreading of compost, is clearly an agricultural and farming activity. He elaborated on the definition of farming by including the raising and sale of livestock, the breeding, boarding, raising, training and selling of horses, all of which generate manure. He explained that dealing with manure is a significant problem for local farms because it can cause significant surface and ground water contamination issues. He stated that a farmer could not take the manure to a landfill or incinerate it, which leaves composting as about the only other option. He explained that it is perfectly proper to compost manure and other materials so long as they are generated on the land that the composting operation occurs. He stated that there is no distinction in principal or in fact that can be made in this case that could justify overturning the decision of the Code Enforcement Officer. He explained that it is a farming and agricultural operation to prepare for market, to deliver to storage or to market, or to carriers any products or materials that come from the farm. He stated that the Statute doesn't indicate what the initial sources of the materials have to be, but he suggested that they had to be materials that are generated on the farm. He stated that it was clear from the Statute that the transportation to the farm of supplies and materials was an agricultural operation. Attorney Schulte also stated that when a farmer raises animals or produce any sort of crop, it is almost always going to be the case that the farmer will be bringing some materials into the farm, such as seed, fertilizer or feed. These materials are used in the farming operation and they generate other products like manure. He stated that it was appropriate to compost that manure and equally as appropriate, as an agricultural use, to market or sell either at wholesale or resale products from the farm. Attorney Schulte referred to another section of the State Statutes which

states that whenever agricultural activities are not explicitly addressed with respect to any zoning district or location, they shall be deemed to be permitted there either as a primary or accessory use, so long as conducted in accordance with best management practices. He stated that the Hebbards have done a superlative job with that where they are now being used as an example for other people who want to do farm composting. He stated that Mr. Latture was incorrect in his interpretation of the Statute that he presented to the Board and that any new establishment, reestablishment, or significant expansion may be made subject to special exception, building permit or any other local land use board approval, however, it does not say that any change is automatically subject to those approvals. It says that the municipality has the power to have the Planning Board recommend zoning provisions and adopt them if necessary. Attorney Schulte explained the definition of Class AA compost, which is the type of compost that the Hebbards produce and gave a brief description of the process of composting. He referred to several letters from the federal agency that supervises the composting facility and from the NH Department of Agriculture praising the Hebbards for their best management practices at the farm. Attorney Schulte explained that Mr. Hebbard had constructed a berm around his property, eliminating the risk of contamination in the stream or the storm drains on the property. He stated that the site had been inspected repeatedly by the City of Dover Health Inspector, Code Enforcement Officer, Police Department, Fire Department, Planning Department, Public Works Department, State of NH, and U.S. Department of Agriculture, all of which have found that the farm is a well operated, well maintained site, providing a needed service and operating safely. He explained that all farms bring in materials from outside the facility because no farms are self-sustaining. He stated that since the composting operation had begun, the Hebbards had only sold approximately \$2,000 worth of compost and had used approximately \$10,000 in compost material on their own land to reclaim their fields, in flowerbeds, in gardens, and had given some away to neighbors. He stated that there is no minimum requirement as to what needs to be generated from the site or what needs to be used on the site. He stated that enlarging the operation in scope does not change the character of the operations unless it creates traffic and parking concerns and that any farmer is entitled to do so.

David Ruoff asked if the composting was incident to Mr. Hebbard's farming operation.

Attorney Schulte stated that given the nature of what's being composted, it would be an agricultural activity. He stated that the only type of material being composted comes from farms and yard waste and that composting is an integral part of the farm.

David Ruoff asked who has the burden of proof in this case.

Attorney Schulte stated that the applicant has the burden of proof.

Rob Strand, 96 Spruce Ln., stated that Attorney Schulte wanted the Board to believe that most of the composting material came from the farm, when in the beginning 100% of it came from the City of Dover. He stated that it sat and rotted and smelled. He also stated that Rick Hebbard went to a Council Meeting and threatened to make the smell worse if the neighbors didn't like it.

Carol Manning, 12 Berkshire Ln., stated that she could smell the farm every day and that in the last year, she and her husband had been put on allergy medication and that her husband has asthma and can't breathe even with the windows open. She stated that she wanted the air tested and that there were many other neighbors that felt the same way she did.

Mary Hebbard, 97 Spruce Ln., stated that there were abutters who had considerable health concerns. One neighbor has Chronic Obstructive Pulmonary Disease and is not affected at all by the composting. She stated that there is another neighbor that has asthma and emphysema whose condition is not aggravated by the composting either. She stated that it has been a bad allergy season and that the neighborhood can't blame that on the composting. She stated that there was a problem in the beginning, but that they had worked very hard to correct the problem. She encouraged the Board to visit the site before making a decision to see that they had corrected the problems. She explained that she and her husband are reclaiming the land in sections and she felt it was fair to sell some of the compost to also reclaim some of the costs incurred from dealing with this matter.

Bill Colbath, 114 Garrison Rd., stated that he passes the site every day. He stated that sometimes there is a minor odor and not a stench.

Robert Latture asked if it was ethical for Mr. Colbath to speak at the public hearing.

Dean Trefethen stated that Mr. Latture couldn't debate someone during public hearing.

Bill Colbath continued by saying that the smell that was there had just about disappeared. He stated that from the beginning there was a stench, however, they purchased other materials such as a loader required to turn the material so they could eliminate the odor. He stated that they are making compost to use and selling a minor portion of it to recoup some of the costs they've incurred. He explained that they had done everything they were asked to do.

Edward Koza, 5 Berkshire Ln., stated that he had lived in that neighborhood for over forty years. He stated that prior to the composting operation, there were never any complaints about the farming operation. He stated that the complaints started when the City dumped leaves at the farm and they started to rot. He stated that with other composting facilities, the closest house is 1200' away and trees surround the entire area and they still have problems. He stated that 99% of the material comes from off site and that he believes it's a commercial operation.

John Bartlett, of Eliot, Maine, stated that he owns and operates a composting facility. He stated the Department of Agriculture classifies his facility as agricultural so long as 30% of his material is an agricultural product. He stated that they had problems when they began too and that everyone who operates a composting facility has gone through the same thing while learning how the operation works.

Delores Lyons, 98 Spruce Ln., stated that she had lived in the neighborhood for 28 years and that the neighborhood has been miserable for the last two years. She stated that the farm was too close to a neighborhood like theirs and that everyone wants to move because of the Hebbard farm.

Rick Hebbard, 97 Spruce Ln., stated that he would be happy to answer any questions.

Rob Strand, 96 Spruce Ln., stated that Mr. Hebbard claims that one third of the compost is being used on his farm to reclaim his land, however, it is actually being used to have a berm around his commercial compost business.

Bill Caldwell disagreed with an earlier statement that Mr. Hebbard hayed his own property. He stated that all the hay is taken from a property on the opposite side of Garrison Rd., which Mr. Hebbard does not own. He stated that the Hebbards had not used any of the compost on the farm until he filed his application with the Zoning Board. He stated that according to the EPA, there are certain illnesses that are caused by composting including, weakened immune system, allergies, asthma, diabetes and tuberculosis. He explained that several of his neighbors were suffering from the symptoms of some of these illnesses. He encouraged the Board to visit the property.

Dean Trefethen asked Mr. Caldwell if there were any instances of these illnesses in his neighborhood.

Mr. Caldwell stated that several of his neighbors have been sick and that his wife's allergies had been severe. He stated that they needed the air quality tested.

Dean Trefethen stated that he hadn't seen any proof that the composting was causing these illnesses.

Mr. Latture stated that possible health problems were a real concern and that the Board should take that into consideration. He stated that the Planning Board should meet to discuss the matter. He stated again that the final result of the Hebbard's composting was commercial and concluded that he did not feel it was ethical for Bill Colbath to have spoken at the public hearing.

Wil Colbath, 114 Garrison Rd., stated any tractor with a bucket on the front of it is registered as construction equipment, according to the State of New Hampshire.

Warren Lupien, 1 Berkshire Ln., stated that he did not see any proof of the illnesses Mr. Caldwell spoke of.

Attorney Schulte clarified the article that Mr. Caldwell read by stating that if a person already had such illnesses as allergies, asthma, or diabetes, one may become more susceptible to other illnesses due to a weakened immune system.