

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF SPECIAL MEETING
SEPTEMBER 26, 2002**

MEMBERS PRESENT: Dean Trefethen, Chairperson; David Ruoff, Rick Callaghan, Frank Landford, Alternate.

MEMBERS ABSENT: Bill Colbath, Co-Chairperson, Doug Cummings, Tom Dolbec, Alternate.

STAFF PRESENT: Tom Clark, Building Official; Kate Pelletier, Recording Secretary.

Note: Prior to the meeting, a site walk was conducted by the Board.

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.

MOTION:

Dean Trefethen made the motion to take this case off the table.

Rick Callaghan seconded the motion.

Vote U/A

Dean Trefethen stated that the Board had conducted a site review and that it was indicated at the site walk that there were additional comments people wanted to make. He instructed the public to comment only on new information and to keep the discussion related to the topic at hand.

Public hearing opened.

Bill Caldwell, 29 Tanglewood Dr., stated that he brought pictures with him for the Board to view. He stated that some pictures depicted zoning violations on the road.

David Ruoff asked Mr. Caldwell to pass the pictures around to the Board members.

Bill Caldwell stated that it was apparent from the site walk that the Board could now see that the majority of the material being composted did not come from the farm.

Robert Latture, Birch Dr., asked Dean Trefethen to explain why Mr. Colbath speaking at the last public hearing was ethical.

Dean Trefethen stated that he would address that after the public hearing.

Bill Caldwell stated that the applicant usually has the burden of proof; however in this case, he did not know why the Hebbards did not have to prove that a substantial amount of the material being composted came from their farm.

Pat Wilson, Rainbow Dr., stated that no one should have to account for themselves to the general public when they are engaging in lawful and environmentally sound business.

Public hearing closed.

Dean Trefethen stated that Mr. Colbath recognized that he had a conflict of interest with this case due to his longstanding friendship with the Hebbards and stepped down from the case. By stepping down, he became a private citizen and did not lose his rights as a citizen of Dover because he sits on the Board. He stated that Mr. Colbath's statements were nothing more than reiterating statements that were already made. He stated that the Board members are not friends, nor do they socialize together, speak on the phone or discuss cases. They discuss and decide cases in open forum. He stated that Mr. Colbath's testimony had no bearing on his decision concerning the case.

David Ruoff stated that the Board had heard a lot of evidence they did not need to hear in order to resolve the issue as the jurisdiction of the Board is very limited. He stated that the Board does not have general, equitable powers and hearing the evidence about all that is wrong in the neighborhood is not legally correct for the Board to rely on. He stated that the question was whether or not composting was an agricultural use on a farm. He stated that there was a lot of animosity in this case and that any emotional pitches from the opposing parties did not sway him. Whether or not composting is a health hazard was also irrelevant in deciding if composting was an agricultural use. He stated that he did not rely on Attorney Ciandella's memo and tended to form his own opinion through reading and research. He stated that the Dover Zoning Ordinance did not define agriculture or composting and when the Ordinance does not provide an answer, the Board looks to the State Statutes. He stated that the composting was incident to farming but is enhanced by the materials being brought in to the farm. He stated that the statutes clearly state that farming technologies improve and change and that the USDA recognizes that as well. He stated that the composting practice at the Hebbard farm does qualify as an agricultural use.

Frank Landford stated that he reread through all the material and that it was his opinion that the composting practice did qualify as an agricultural use.

Rick Callaghan stated that he agreed with Frank Landford and David Ruoff. He stated that in the case of an appeal, the Board takes the place of the Building Official and the Board has to consider health and other issues to make a decision. He stated that in this particular case, there was no substantiated evidence of negative health affects coming from the farm. He stated that in reading the Statutes, he determined that marketing is allowed of products made from the farm and that the statutes support marketing, even though the it is not specific as to how much, where it comes from or how it gets there. He stated that there was a lot of information provided that was not relevant to the issue of

composting being an agricultural use. He stated that in his opinion, composting was an agricultural use and that he supported Tom Clark's decision.

Dean Trefethen stated that when the Hebbard's composting process started, there were serious problems and that they were not prepared for what they were getting involved in. He stated that the problems were in the process of being dealt with and that the original goal of reclaiming the land was beginning to happen. He stated that the Board could not put a timetable on that process, nor was that relevant to the matter at hand. He stated that both sides of the argument are equally as guilty for creating the animosity that existed in the neighborhood. He stated that, in doing extensive research of the statutes, he believed composting was an agricultural use and that his interpretation of the statutes was the complete opposite of the applicant's interpretation. He stated that in reading the letters presented, the farm had clearly gone from problematic to a farm that's used as an example to others. He stated that composting was an extension of the farm and that composting was clearly an agricultural use.

David Ruoff stated that Mr. Colbath's comments did not sway his decision at all and that he and Mr. Colbath disagree frequently.

Rick Callaghan stated that Mr. Colbath's testimony did not influence his decision either.

Frank Landford agreed.

MOTION:

Rick Callaghan made the motion to uphold the administrative decision.

David Ruoff seconded the motion.

Vote U/A

Dean Trefethen explained the appeal process to the applicant.

MOTION:

Rick Callaghan made the motion to adjourn.

Frank Landford seconded the motion.

Vote U/A

Tom Clark stated that the Board was not in place to determine what the regulations governing composting facilities are or if a composting facility is accessory to a farm or if a composting facility is a commercial operation or not. He stated that the Board has to decide only if a composting facility is an allowed agricultural use. He stated that he is convinced by the State Statutes and through his own experience that a composting operation is an allowed agricultural use in the R-40 zoning district.

Public hearing closed.

David Ruoff stated that he hadn't had the opportunity to read over all the material presented and that he thought that these materials should have been presented prior to the meeting.

Rick Callaghan stated that he would like some time to do more research.

Tom Clark stated that if the Board were going to table the case, a site walk would be a good idea.

Dean Trefethen stated that he did not want to table the issue until the regular October meeting and that he wanted to have a special meeting and conduct a site walk.

Frank Landford stated that he heard a lot of information, very little of which had to do with the case. He stated that there was a lot of animosity between neighbors, but encouraged them to put aside their feelings and get on with the issue at hand.

MOTION:

Dean Trefethen made the motion to table the case until the special meeting on September 26, 2002 at 6 p.m. for a site walk, beginning at 29 Tanglewood Dr., followed by the special meeting at 7 p.m. in the Council Chambers.

David Ruoff seconded the motion.

Vote U/A

MOTION:

David Ruoff made the motion to adjourn.

Bill Colbath seconded the motion.