

STATE OF NEW YORK
SUPREME COURT : COUNTY OF COLUMBIA

TOWN OF COPAKE, COLUMBIA COUNTY,
NEW YORK,

Plaintiff,

-against-

13 LACKAWANNA PROPERTIES, LLC, SALVATORE
CASCINO, and COPAKE VALLEY FARM, LLC,

Defendants.

DECISION
FINDINGS OF FACT
CONCLUSIONS OF LAW
Index No. 0864-06
RJI 10-06-0547

Hon. Jonathan D. Nichols, Acting Justice Supreme Court

The issues in this action having duly come on for trial before me as Acting Justice of the Supreme Court held in and for the County of Columbia at the Courthouse in the City of Hudson on February 25, 2009, February 26, 2009, March 11, 2009, and March 25, 2009; and having heard the allegations and proofs of the respective parties; and due deliberation having been had thereon;

NOW, after hearing Victor M. Meyers, Esq., attorney for the plaintiff, and Dennis B. Schlenker, Esq., attorney for the defendants, I do hereby make the following findings of essential facts which I deem established by a preponderance of the credible evidence:

FINDINGS OF FACT

1. At all times herein mentioned, the plaintiff Town of Copake (hereinafter “the Town”) was a municipal corporation organized and existing under the laws of the State of New York and situated within the County of Columbia.

2. At all times herein mentioned, the defendant 13 Lackawanna Properties, LLC (hereinafter “Lackawanna”) was a domestic limited liability company registered in New York, having its office at 9 Pryer Lane, Larchmont, New York.

3. At all times herein mentioned, the defendant Copake Valley Farm, LLC (hereinafter “CVF”) was a domestic limited liability company registered in New York, conducting business at 13 Lackawanna Road in the Town of Copake, New York.

4. At all times herein mentioned, the defendant Salvatore Cascino (hereinafter “Cascino”) was the sole member and manager of defendants Lackawanna and CVF.

5. At all times herein mentioned, Lackawanna was the owner of approximately 310 acres of real property with improvements thereon situated on State Route 22 in the Town of Copake (hereinafter “the Premises”), more fully described in a certain deed dated November 26, 1997 and recorded in the Columbia County Clerk’s office on December 1, 1997 in Book 302 of Deeds at Page 2475.

6. At all times herein mentioned, the Court takes judicial notice that the Town, under the authority delegated to it by the laws of the State of New York, has in effect a duly adopted zoning law set forth in Chapter 232 of the Copake Town Code (hereinafter “Zoning Law”) which identifies and describes the various zoning districts within the Town and lists specific uses of property that are permitted within the various zoning districts within the Town.

7. Section 232-7 of the Zoning Law provides:

No building or premises shall be erected, altered or used except for one (1) or more of the uses authorized under the Table of Use Regulations for the zoning district in which the property is located.

8. The Premises is situated in an "R" district, which, with certain exceptions, limits the use to residential and agricultural purposes as set forth in the Table of Use Regulations.

9. At all relevant times herein mentioned, the Town, under the authority delegated to it under the laws of the State of New York, adopted and has in effect a local law regulating the dumping and depositing of solid waste in the Town, as set forth in Chapter 194 of the Copake Town Code.

10. Section 194-3 of the Copake Town Code provides:

No person shall cause to be dumped, deposited or thrown any solid waste in or upon any highway, highway right-of-way or land within the Town of Copake, except at the Columbia County Transfer Station.

11. Section 129-9 of the Copake Town Code provides:

A. It shall be unlawful to erect, construct, enlarge, alter, improve, remove, demolish or use any building or structure or portion thereof in violation of any provision of law, as well as any regulation or rule of the municipality, or to fail in any manner to comply with a notice, directive or order of the Building Inspector or to commence the erection, construction, enlargement, alteration, improvement, removal, demolition or use of any building or structure or the installation of heating equipment without having applied for and obtained a permit. However, no permit shall be required for the performance of necessary repairs which are not of

a structural nature and which are done in conformance with the Uniform Code.

12. At all times herein mentioned, CVF was registered with the Solid Waste Commission in Westchester County under the heading of hauler classification "Class A Haulers of All Solid Waste Permitted Under Law"

13. Commencing in 2003, Stanley Gansowski, (hereinafter "Gansowski"), a resident of the Town, observed construction and debris material deposited on the Premises, including bricks, cement blocks, concrete, tile and glass.

14. In the summer of 2006, Gansowski observed piles of bricks deposited on the Premises, which were then bulldozed and covered over with ground up material.

15. On December 8 and 10, 2005, Gansowski observed bricks, concrete, asphalt and rebar deposited on the Premises and covered over.

16. In 2006, Gansowski observed construction and demolition material deposited on the Premises and covered over and buried with top soil.

17. On or about July 30, 2007, Gansowski observed construction and demolition debris deposited on the Premises, including concrete, steel, and asphalt, which was spread throughout the Premises and then buried and covered over.

18. On September 27, 2005, Edward Ferratto, the Zoning Enforcement Officer for the Town, observed household garbage beside a mulching machine next to the most northerly building on the Premises.

19. On September 27, 2005, Ferratto observed blue and clear plastic and tin foil on the Premises in the area between the Nosterkill and Weed Mine Road.

20. On September 27, 2005, Ferratto observed a truck unloading fill on the Premises in the area between the Nosterkill and Weed Mine Road, north of Lackawanna Road.

21. On October 10, 2005, Ferratto delivered a Stop Work Order to Cascino for dumping construction and demolition debris.

22. Prior to November 2006, there existed on the Premises two separate buildings constructed in relatively close proximity to each other, one of which was used as a produce stand and the other as a garage (hereinafter the "farmstand buildings").

23. On November 4, 2006, Ferratto observed pressure treated trellis work being installed on many sides of the farmstand buildings and joining the two buildings.

24. Cascino did not apply for a building permit for this work, which was necessary under the Copake Town Code.

25. Ferratto hand delivered to Cascino a Stop Work Order dated November 4, 2006 to stop work on the farmstand buildings which he also posted on the Premises.

26. Ferratto either hand delivered or mailed to Cascino an Order to Remedy Violation letter dated November 4, 2006.

27. On November 15, 2006, Ferratto observed work going on at the farmstand buildings and issued another Stop Work Order which he personally delivered to Cascino.

28. On December 5, 2006, Ferratto observed additional work completed on the farmstand buildings, including joists on the north side, lattice work on the top, and bracing. He also observed forms between the two buildings that were going to be used for poured cement.

29. In May, 2007, Ferratto observed a cement truck pouring cement in the area between the two farmstand buildings.

30. On November 7, 2006, Ferratto observed the construction of a bridge at the southerly end of the Premises off the east side of Route 22 between Route 22 and Weed Mine Road and a roadway leading to and over the bridge for which permits had not been issued.

31. The roadway was widened from 10 or 12 feet to 25 feet, the same width as the bridge and no building permits had been applied for or issued.

32. On November 14, 2006, Ferratto issued a Stop Work Order for the installation of the roadway without a building permit or a Department of Transportation permit.

33. On August 30, 2000, a building permit was issued for the construction of a garage on the Premises which was restricted for farm equipment use only.

34. A Certificate of Compliance for the garage was issued on August 23, 2006, which contained a restriction for farm equipment storage only.

35. On many occasions in 2005 and 2006, Ferratto saw trucks stored in the garage.

36. On February 7, 2006, Ferratto observed tractor trailers unloading rocks and crushed stone and filling in the area east of the Nosterkill between the Nosterkill and Weed Mine Road and north of Lackawanna Road.

37. Nancy Heaslip is a Senior Wildlife Biologist with the New York State Department of Environmental Conservation (hereinafter "DEC") who was familiar with the Premises since December 2003 when she began investigating alleged wetlands violations.

38. On March 29, 2004, Heaslip observed on the Premises bits of blue plastic, like from plastic bags, glass and other odd colored material that was obviously not part of the natural soil.

39. On December 20, 2004, Heaslip observed on the Premises material, which included broken concrete and brick, within 100 feet of the wetland, just west of the railroad bed between the railroad bed and the wetland.

40. On December 20, 2004, Heaslip observed on the Premises large piles of leaves, some in bags, which looked like general yard waste on the east side of the Nosterkill north of Lackawanna Road.

41. On September 9, 2005, Heaslip observed that additional fill had been brought in near the wetland.

42. The roadway constructed by Cascino between Route 22 and Weed Mine Road, which included a new bridge, went through a wetland.

43. Charles Spadaccini was employed by CVF as a truck driver commencing in 2004.

44. Cascino owns a recycling business known as Bronx County Recycling, located at 475 Exterior Street in the Bronx. The business recycles dirt, rock, crushed concrete and stone, screens it, and makes four road products which are sold back to contractors.

45. Since 2004, Spadaccini brought material from Bronx County Recycling to the Premises, sometimes twice a day.

46. The truck that Spadaccini operated was kept on the Premises in the garage.

47. Spadaccini dumped the material that he brought to Copake in various places on the Premises.

48. Spadaccini brought brick, concrete, and crushed concrete to the Premises from the Bronx.

49. In 2004, Spadaccini brought up approximately 10 loads of crushed concrete which he dumped in a pile on the Premises. (T2:175-176.)

50. Spadaccini drove a 2001 Kenworth truck, which he left in the garage on the Premises approximately 80% of the time in 2004 and 2005. (T2:178-180.)

51. In 2006, Spadaccini left the truck in the garage in the winter. (T2:182.)

52. Spadaccini would pick up the truck in the morning at the garage, drive to the Bronx, get his instructions where to deliver loads that day, and then return the truck to the garage in Copake when done with his daily deliveries, except in the summer months.

53. In 2004, Spadaccini brought two loads of leaves from Port Chester, New York to the Premises, and there were other drivers for Cascino who also brought up leaves to the Premises during that same period of time.

54. The truck that Spadaccini drove held about 35 yards of material. (T2:186.)
55. In 2006, Spadaccini hauled wood pallets from the Bronx which were taken off the trailer at the Premises. (T2:187-188.)
56. Spadaccini brought up construction material for the new barn which he deposited on the west side of the Premises along Route 22. (T2:188-189.)
57. Spadaccini never transported cows or cattle in the trucks; he never saw cattle on the Premises. (T2:189.)
58. The trucks were used not only to bring materials to Copake, but also to bring materials elsewhere. (T2:203.)
59. Spadaccini would use the trucks to make deliveries in the New York City vicinity and then he would return at night and drop off his truck at the Premises. (T2:203-204.)
60. Lackawanna purchased the Premises of approximately 300 acres in 1997 from Duksa.
61. Cascino is physically present and operating the Bronx County Recycling office on a daily basis, six days a week from 6:00 am to 6:00 pm.
62. Cascino understands the procedure for applying for a building permit in the Town of Copake.
63. When Cascino purchased the Premises, the farmstand buildings consisted of two separate buildings constructed approximately 20-25 feet apart.

64. Cascino rented out the farmstand buildings once or twice in 2003 or 2004 for one year. Other than the period when the farmstand buildings were rented, the buildings were vacant and unused.

65. After he purchased the Premises, Cascino did work on the interior of the farmstand buildings and also he built a trellis on the outside of the buildings for which he did not apply for a building permit.

66. CVF owns the two large trailer trucks shown in the photographs identified as Exhibits 21, 22, 24, and 25, which were used to haul dirt or material from Bronx County Recycling to the Premises.

67. Cascino brought up approximately 150,000 to 200,000 yards of dirt from the Bronx to the Premises. It was hauled from the Bronx to the Premises in the two large tractor trailers shown in the photographs.

68. For a period of time, the trucks were used exclusively to haul dirt from the Bronx to the Premises. The trucks hold 30 yards of material and sometimes they made two runs a day back and forth between the Bronx and the Premises bringing material.

69. Cascino also brought up 10,000 to 20,000 yards of Item #4, which is crushed concrete, from the Bronx to the Premises, some of which was deposited on the road.

70. Cascino did not obtain a permit to expand the existing road which he widened by approximately 10 feet.

71. Cascino did not apply for a permit to deposit the 150,000 to 200,000 yards of fill.

72. Cascino did not apply for a permit from the Town in order to construct the new steel bridge on the expanded roadway between NYS Rt. 22 and Weed Mine Road.

73. In 2000, Cascino applied for and received a building permit to construct the garage which was restricted for farm equipment use only.

74. The garage was completed at the end of 2002, which is when Cascino started using it.

75. Cascino received a Certificate of Compliance for the garage in August 2006, which restricted the use of the building to farm equipment storage only.

76. Cascino had concrete poured at the farmstand buildings in May of 2007 although he did not have a permit to do so.

77. Cascino brought up approximately 100 trailer loads of leaves in his trucks from Westchester County to the Premises.

78. After the instant lawsuit was commenced, Cascino put a pile of wood pallets, logs, stumps, and other material next to the building where the grinder is located. The wood pallets were brought up from the Bronx.

79. Cascino brought up bricks to the Premises from the Bronx.

80. Cascino did not have a permit to construct a retaining wall.

81. A prior lawsuit brought by the Town in 2003 was settled with an Order on Stipulation dated December 26, 2003, whereby Cascino agreed that the Premises would only be used for agricultural purposes and that he would apply for building permits for any further construction on the Premises.

82. The Peterbilt tractor trailer was used exclusively to bring dirt from the Bronx to the Premises.

83. The building materials that were brought up to the Premises were for buildings Cascino proposed to build and whose building is contingent on Cascino prevailing in the Article 78 proceeding commenced against the Town challenging the Town's denial of site plan application.

84. Ralph Shadic, the building inspector for the Town, stated that a building permit is required for renovation of an existing building, even if the building has the same use, which applies to the farmstand buildings.

85. In 1998, Edgar Masters, a Town resident, and then a member of the Town Planning Board, observed plastic bags, plastic bottles, household debris, paper, and leaves spread over 15-25 acres of the Premises.

86. On many occasions starting in the early 2000's and up until the present, Masters observed large trucks backing up, dumping, and leaving piles of dirt on the Premises. The trucks dumping such materials were serviced at the garage on the Premises restricted to only farm equipment use.

87. Cascino submitted a site plan application for review by the Planning Board to construct what was purported to be a large barn, but which the Planning Board concluded was

to be a commercial operation, with drawings showing tractor trailer trucks and front-end loaders in the building.

88. Cascino was advised in writing that his plan appeared to be a commercial enterprise which is not permitted in the "R" zone where the Premises is located.

89. Laura Sager, Executive Director of the Columbia County Soil and Water Conservation District since 1997 stated that her agency has no record of receiving a document bearing the title "Agricultural Grade Modification" (Ex. G). The stated purpose on the document was to establish CVF as an agricultural district within the meaning of the New York State Agriculture and Markets Law. Establishment of an agricultural district is not a duty that the Columbia County Soil and Water Conservation District is charged with. The document had the incorrect address for the agency and was never received by that agency. Exhibit G is of no probative value as to the actual use of the Premises by the defendants.

CONCLUSIONS OF LAW

1. The defendants violated § 232-7 of the Copake Zoning Law by using the Premises, which is located in an "R" district within the Town, for the following purposes which are not permitted by the Zoning Law:

a. The defendants deposited solid waste on the Premises, including garbage, refuse, and construction and demolition debris;

b. The defendants stored, maintained and serviced trucks, trailers, construction equipment and machinery other than farm machinery on the Premises;

c. The defendants used the Premises as a site for the operation of the waste hauling business and recycling business conducted by the defendants;

d. The defendants stored and maintained construction materials on the Premises;

e. The defendants transported soil, gravel, stone, and other materials to and from the Premises;

2. The defendants violated § 194 of the Copake Town Code by dumping and depositing solid waste on the Premises, including but not limited to trash, litter and construction debris, including wood pallets, glass, dirt, rebar, rock, concrete, asphalt, bricks, plastic bags and bottles, and leaves.

3. The defendants violated § 129-9 of the Copake Town Code by:

a. Enlarging and altering the existing farmstand buildings without obtaining a building permit;

b. Constructing a steel bridge over the Nosterkill without obtaining a building permit;

c. Enlarging the existing farm road on the Premises without obtaining a building permit; and

d. Constructing a stone wall without a permit.

4. The defendants' uses, occupancy and acts taint and corrupt the general area so as to destroy the peaceful and quiet enjoyment of the residents of the Town in the vicinity, and have endangered, impaired and imperiled and threaten to endanger, impair and imperil the health of the public, have defeated and defeat public policy, have constituted, constitute and will constitute an open, public and continuous nuisance in the Town, and have been and will be subversive to, and have caused and will cause irreparable injury to, the health, safety and welfare of the residents of the Town.

5. The defendants violated the December 26, 2003 Order on Stipulation.

6. Plaintiff shall submit a Judgment pursuant to this Decision, on notice to the defendants' attorney which shall provide as follows:

A. Permanently enjoining and restraining the defendants, their agents, servants and employees, and all others claiming under and through the defendants, from using or permitting the use of the defendants' Premises in violation of the provisions of the Zoning Law of the Town of Copake, and directing that such violations be terminated and abated;

B. Permanently enjoining and restraining the defendants, their agents, servants and employees, and all others claiming under and through the defendants, from dumping or depositing solid waste on the defendants' Premises as defined in Chapter 194 of the Copake Town Code, including but not limited to garbage, refuse and construction debris;

C. Permanently enjoining and restraining the defendants, their agents, servants and employees, and all others claiming under and through the defendants, from operating any commercial or industrial enterprise, including commercial composting, at the defendants' Premises;

D. Permanently enjoining and restraining the defendants, their agents, servants and employees, and all others claiming under and through the defendants, from construction or excavation on the Premises without building permits;

E. Permanently enjoining and restraining the defendants, their agents, servants and employees, and all others claiming under and through the defendants, from using the garage building situated on the Premises for the maintenance, repair and storage of trucks, tractor trailers, and other equipment and machinery utilized in the defendants' businesses, including but not limited to, the defendants' waste hauling and recycling businesses;

F. Ordering the defendants to forthwith remove the steel bridge constructed over the Nosterkill;

G. Ordering the defendants to forthwith restore the farm road to its pre-existing condition prior to the widening of the road;

H. Ordering the defendants to forthwith restore the farmstand buildings to their pre-existing condition prior to 2006, including the removal of the concrete slab and all exterior joists, trellises and lattice work;

I. Ordering the defendants to forthwith remove all wood pallets stored on the Premises;

J. Ordering the defendants to forthwith remove all construction material stored on the Premises;

K. Ordering the defendants to forthwith remove all the fill material deposited on the premises, with such removal involving the removal, at a minimum, of 150,000 cubic yards of fill material;

L. Ordering the defendants to forthwith remove the stone wall erected on the Premises after the commencement of this action;

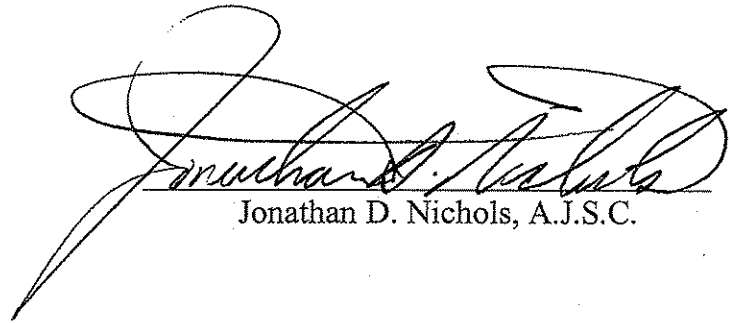
M. Ordering the defendants to forthwith remove all solid waste as defined in § 194 of the Copake Town Code heretofore deposited on the Premises, including but not limited to

trash, litter and construction debris, including glass, rebar, dirt, rock, concrete, asphalt, plastic bags and bottles, and bricks; and

N. Ordering the defendants to pay the costs and disbursements of this action.

Dated: November 3, 2010

at Hudson, New York



Jonathan D. Nichols, A.J.S.C.