



May 13, 2020

Via E-Mail Only

Mayor Linda Jackson
Village Board Members
1009 East Main Street
Endicott, NY 13760

Re: Opposition to Local Law Making Recycling
Facilities a Permitted Use in Industrial Zones

Dear Mayor Jackson and Village Board Members,

As you know, I represent a group of concerned citizens who are opposed to the zoning change purporting to make recycling facilities a permitted use in the Village's Industrial zoning districts. Due to numerous procedural errors, the local law that was voted on last Thursday, May 7, 2020, is invalid. For the reasons set forth below, **the Village Board must immediately rescind the local law**. A lawsuit to annul this local law will cost the Village precious time, resources and funds.

The procedural errors by the Board include:

1. **Failure to submit a complete package to the County for review.**

According to NYS General Municipal Law § 239-m, the referral package to the County must include:

“all materials required by and submitted to the referring body as an application on a proposed action, **including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act**”.

At Thursday's Board meeting, the Board reviewed and updated Part 1 of the Environmental Assessment Form (EAF), and you had before you numerous maps, documents, and other correspondence that were not sent to the County as part of the GML § 239-m referral package. Additionally, Parts 2 and 3 of the EAF were completed at Thursday's meeting, so those documents could not have been provided to the County prior to its review in mid-April.

Accordingly, a **valid County review was not done, and the local law is invalid.** See LCS REalty Co., Inc. v. Incorporated Village of Roslyn, 273 A.D.32d 474, 475 (2d Dept. 2000). Therefore, the **local law making recycling facilities a permitted use must be rescinded.**

2. **Failure to provide notice to all of the adjoining municipalities.**

NYS Village Law § 7-706 requires that “written notice of any proposed regulations, restrictions or boundaries of [zoning] districts, including amendments thereto, affecting property within five hundred feet of . . . the boundary of a city, village or town . . . [or] county” must be sent to the Clerk of such municipality. This requirement “shall be in addition to the requirements” of General Municipal Law 239.

Here, no written notice was given to the Clerks of the municipalities with properties that are located within 500 feet of the Village’s Industrial zoning districts (specifically, the Town of Vestal). Therefore, the local law voted on at Thursday’s meeting is invalid. Accordingly, the **local law must be rescinded.**

3. **Failure to obtain a report from the Village Planning Board.**

Village Zoning Code § 300-61.3 states that the “Planning Board must review all proposed Zoning Ordinance text amendments and **prepare a report that evaluates the proposed amendment** in light of adopted plans, the relevant provisions of this Zoning Ordinance and the review criteria of 300-61.7”.

Here, the Planning Board prepared no such report, and did not evaluate any of the review criteria. Accordingly, the vote on the local law was premature, and violates the Village’s own Zoning Code. Accordingly, the **local law must be rescinded.**

4. **Failure to meet the review criteria.**

Village Zoning Code § 300-61.7 states that:

“In reviewing and making decisions on Zoning Ordinance text amendments, the Code Enforcement Officer, Planning Board and governing body must consider at least the following criteria:

A. Whether the proposed Zoning Ordinance text amendment corrects an error or inconsistency in the Zoning Ordinance or meets the challenge of a changing condition;

B. Whether the proposed Zoning Ordinance text amendment is in substantial conformance with the adopted plans and policies of the municipality; and

C. Whether the proposed Zoning Ordinance text amendment is in the best interests of the municipality as a whole.”

Ostensibly, according to the Mayor, the local law was proposed in order to respond to a problem with the zoning code that allowed recycling facilities anywhere in the Village (despite the fact that recycling facilities were not a permitted use anywhere in the Village under the then-existing code). However, the local law does nothing to establish safety standards or establish protections for the Village. In addition, the local law, allowing recycling facilities, was not “in substantial conformance” with the Comprehensive Plan. The Comprehensive Plan indicates that the Village’s Industrial zones are meant to be for “mixed use” purposes, like commercial office parks, not heavy industrial uses like waste recycling facilities.

Moreover, the Village has already experienced past pollution from IBM operations that significantly harmed the health of many residents. Contrary to the Mayor’s statements that the Sungeel battery recycling incinerator facility is good for the Village, allowing more contamination by permitting waste recycling facilities in the Village is not “in the best interests of the municipality as a whole”. Therefore, the local law making recycling facilities an allowed use **failed to meet the review criteria and must be rescinded.**

5. Failure to comply with SEQRA.

“In February, [the] village attorney presented a long list of questions to the New York State Department of Environmental Conservation [about] the incoming battery recycling company Sungeel.” Village Website, DEC Answers To Village Questions, Apr 24, 2020 | Projects & Improvements, From Mayor Linda Jackson.

The Village Attorney raised questions about the “potentially severe environmental and safety impacts of the project”. The Village Attorney referenced the Village’s prior experience suffering from pollution, the history of environmental injustices within the Village, the potential threat to the health and safety of Village residents, and the Village’s Aquifer Protection Law.

Despite the information in EAF Part 1, all of the comments submitted by the public, as well as the information from the Village’s attorney about potentially harmful impacts from the potential Sungeel incinerator facility, the Board failed to recognize any impacts whatsoever from the local law on **human health, community character, community plans, aesthetic resources, and historic resources.** The majority of the Board elected to mark “No” for these impacts on EAF Part 2.

In a confused and preordained process, the majority of the Board segmented the review of the battery recycling incinerator facility from the review of the proposed zoning amendment. The two proposals are reasonably related actions and should have both been considered by the Board in its SEQRA review. **The Board’s review failed to comply with SEQRA, and the local**

law must be rescinded. See New York City Coalition to End Lead Poisoning, Inc. et al. v. Vallone, 100 N.Y.2d 337, 349 (2003).

6. Protest Petition requires a supermajority vote that was not achieved.

A formal protest petition against the changes was filed with the Village. A valid protest petition requires a supermajority to pass the zoning amendments. The Board's vote, 3-2 in favor of the zoning amendment, did not achieve a supermajority. Therefore, when the protest petition is validated, the vote will not be enough to pass the zoning amendment. The local law should be rescinded immediately.

7. Violations of Open Meetings Law.

At Monday's meeting (on May 4, 2020) members of the Board were moving around the room to talk to Board members who were present in the room physically. When three Board members are speaking together, it is an impermissible side-meeting of a majority of the Board. The public could not hear or see the Board members, and are not able to participate in viewing that meeting, as is required by the Open Meetings Law. Violations of Open Meetings Law can invalidate Board action, and subject the Board to an award of attorney's fees by the people challenging the Board in a lawsuit. The Board must rescind the local law due to the violations of Open Meetings Law.

Thank you for your time and attention to this important matter.

Sincerely,

/s/ Claudia K. Braymer

Claudia K. Braymer

cc: Robert H. McKertich, Village Attorney
Rob Tiberi
(all via e-mail)