

BRAYMER LAW

PLLC



May 3, 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,

I represent a group of concerned citizens who are opposed to the proposed zoning change that will make recycling facilities a permitted use in the Village's Industrial Zone. The group has gathered a petition signed by over 2,000 people voicing opposition to this zoning change. Enclosed for your consideration is a position paper drafted by members of the group.

While the Mayor has repeatedly stated that this zoning amendment will not allow Sungeel Corporation's battery recycling facility to be permitted in the Village, that statement is contrary to the explicit language of the proposed zoning amendment, which is to permit recycling facilities "as-of-right", without any review by the Village Planning Board. If you want to protect the Village from waste recycling facilities and garbage incinerators that allegedly can be sited in the Village under the current zoning code, then **impose a moratorium** on this type of use until stringent restrictions can be put into place that effectively protect the Village.

There are numerous concerns from residents about the impacts of the zoning change, and this Board has not fully considered those impacts. Your own Planning Board refused to issue a report on the proposed zoning change because it did not have enough information. The Board should **delay any vote** on the zoning amendment until the Planning Board and the public has had a fair opportunity to review all of the information and raise their concerns to the Village Board. A public hearing, with hundreds of people over Zoom, on such an important controversial topic is a disservice to your constituents. Again, if this local law has nothing to do with Sungeel Corporation's proposed battery recycling facility, then why rush to pass a weak, and potentially more dangerous, zoning change during a global pandemic?

If the Board proceeds with adopting this zoning amendment at Monday night's meeting, **my clients will commence an action challenging the adoption of this local law.** There are several grounds for such a challenge. One of the grounds is that the Village Board has not fulfilled its obligations as the lead agency pursuant to the State Environmental Quality Review Act ("SEQRA"). If all you do for the SEQRA review is fill out the environmental assessment form at Monday night's meeting, then you will have not taken the required "hard look" at the potential adverse impacts of the proposed zoning amendment. **A zoning amendment of this magnitude, which impacts all of the Village's land that is zoned Industrial (approximately 562 acres), requires the preparation of an environmental impact statement ("EIS").** An EIS is prepared by experts to review all of the information, analyze the risks, and present options for mitigating the environmental harm; the environmental assessment form that you will fill out at the Village Board meeting falls far short of being a full environmental assessment of the impacts from the proposed zoning amendment.

Require the Preparation of an EIS Before Adopting the Local Law

In order to adequately review the impacts of the proposed zoning change, the Village Board must issue a SEQRA "positive declaration", which will result in the preparation of the EIS to fully analyze the impacts of the proposed change. To issue the SEQRA positive declaration, the Village Board must find that there would be a "moderate to large" impact in one of the areas in Part 2 of the Full Environmental Assessment Form ("EAF"). For example, the zoning amendment, which allows recycling facilities anywhere in the Village's Industrial zones, has the potential to result in a "moderate to large" adverse impact on human health (#16g), air emissions (#6c), and solid waste processing (#16i).

Recycling facilities, such as Sungeel Corporation's battery recycling facility, have the potential to emit harmful toxic air emissions. With respect to Sungeel Corporation's battery recycling facility, the April 20, 2020 letter from the Village's own consultant states that:

"The process includes a rotary kiln dryer, which heats the Lithium-ion batteries (LIB) using indirect heat from a natural gas fired burner in a rotary kiln to temperatures between 550-600 degrees Celsius (1,022-1,112 degrees Fahrenheit)."

"The emissions from this process include combustion emissions from natural gas combustion including particulate matter (PM), carbon dioxide (CO₂), carbon monoxide (CO), sulfur dioxide (SO₂), nitrogen oxide (NO_x), and hydrocarbons. The emissions from the actual drying of the battery cells are defined as process emissions and include ammonia, formaldehyde, hydrogen chloride, sulfuric acid, fluoride compounds, several metal compounds, and polychlorinated dibenzo-p-dioxins (PCDD)). Of these potential process emission air contaminants, there are several NYSDEC classified as highly toxic air contaminants (HTACs) including formaldehyde, PCDD (dioxins), and metal compounds."

The negative air impacts caused by allowing these kinds of facilities to be permitted through the proposed zoning amendment must be analyzed in an EIS. These impacts alone are enough to require the preparation of an EIS.

Also of importance is that the zoning amendment as currently proposed is contrary to the future land use plan for the Village (#17c), which indicates that the Village's Industrial zones are meant to be for "mixed use" purposes, like commercial office parks, not heavy industrial uses. As you well know, the Village has already experienced past pollution from IBM operations that significantly harmed the health of many residents. My clients sincerely urge you not to allow the Village to be subjected to the possibility of future contamination by permitting waste recycling facilities, including but not limited to Sungeel Corporation's battery recycling facility.

Finally, the proposed zoning amendment - permitting recycling facilities without any restrictions - poses a threat to the existing community character of the Village (#18e), which is mostly dense areas of relatively smaller residential structures. Additionally, the proposed zoning amendment has the potential to cause adverse impacts to the use and enjoyment of public resources (#18d), such as Logan Field, George Johnson Park, the public swimming pool, the carousel, and the Susquehanna River, which are all in close proximity to an Industrial zone.

All of these potential impacts demonstrate that the Village must require the preparation of an EIS before rushing to adopt changes to the zoning code that allow a potentially dangerous new use to be permitted in the Village.

Amend the Proposed Local Law to Effectively Protect the Village

If this Board wants to effectively protect the Village, then your zoning amendments should **incorporate the recommendations that were issued by your own County Department of Planning and Economic Development**. These recommendations included nine changes that would have strengthened your current proposal. The first recommendation, and arguably the most important, is to allow Recycling Facility, not "as-of-right" (noted by the letter "P" in your proposed zoning amendment), which does not require any review by the Village Planning Board, but with a special use permit and/or site plan review approval (noted by the letters "SP"), after review by the Village Planning Board. Failure to incorporate these supplementary requirements at the time that you permit recycling facilities is a grave omission that leaves the Village open to further harm, and less options for oversight of incoming facilities.

Sungeel Corporation's Battery Recycling Facility is Currently Prohibited

Contrary to the Mayor's previous comments that Sungeel Corporation's battery recycling facility is already permitted in the Village, **the battery recycling facility is currently**

prohibited by the existing zoning code.¹ The NYS Department of Environmental Conservation (“DEC”) amended its negative declaration to acknowledge that, even though the facility has a permit from DEC, the facility must “comply with all local requirements, including any applicable zoning and or special permit requirements”. Why would the Village Board amend the zoning code to permit the facility to be sited in the Village?

According to DEC, the batteries at the facility would be “discharged. . . dismantled . . . heated . . . cooled, shredded, ground up and the metals will be separated”. As such, the operation proposed by Sungeel Corporation would likely meet the definition of a recycling facility because it would be a “facility used for the receiving, temporary storage, disassembling, and processing of a single category of pre-sorted recyclable objects” (Local Law’s definition of Recycling Facilities), namely batteries.

The Village’s current zoning code allows only certain, specific activities to be conducted in the Industrial zoning district. Any uses “not listed” are “expressly prohibited” - meaning that if the activity is not in zoning code’s list of allowed uses, then the use is not allowed, even if the use will be inside an existing building. Zoning Code § 300-22.3 (available at <https://ecode360.com/26797942>). The Village’s current zoning code does not list a recycling facility as an allowed use (the proposed local law would add it to the list). Therefore, Sungeel Corporation’s recycling facility is expressly prohibited by the Village zoning code. The facility does not meet the definition of any of the other allowed uses that are listed in the zoning code.²

By amending the current zoning code to make “Recycling Facilities a Permitted Use in Industrial Zones” (the title of proposed local law), Sungeel Corporation’s battery recycling facility would be allowed in the Village. **The Village Board can reject the proposed zoning amendment and the battery recycling facility would not be permitted in the Village.**

¹ In a recent message to the public, the Mayor changed course and acknowledged that “Recycling Facilities” are not “in the codes use tables”. A copy of the Mayor’s May 2, 2020 message is enclosed for your reference. That message also discusses air emissions, fire hazards, vehicle and truck traffic, and noise impacts from industrial businesses. These impacts, as they relate to the Village’s current and past realities, should be reviewed in an EIS before the zoning amendment is passed allowing a new type of industrial business in the Village.

² “Manufacturing: waste products or materials” is an allowed use, only with a special permit, in the Industrial zones, but the Village Code definition section states that the term “*Manufacturing*’ shall not include the handling of any waste products and materials.” Therefore, the *handling* (and dismantling of) *waste batteries* is not “Manufacturing” per the plain language of the Village zoning code, and is not currently permitted.

In conclusion, my clients respectfully request that you do not pass the proposed local law during Monday night's meeting. Thank you for your time and attention to this important matter.

Sincerely,

/s/ Claudia K. Braymer

Claudia K. Braymer

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cc: Robert H. McKertich, Village Attorney
Clients
Members of the press
(all via e-mail)