

September 21, 2006

The Town Board of Corinth held a workshop meeting on September 21, 2006 at 4:00PM at the Town Hall.

Present: Richard Lucia, Town Supervisor  
Charles Brown, Councilman  
John Major, Councilman  
Edward Byrnes, Councilman  
Mitchell Saunders, Councilman  
Rose E. Farr, Town Clerk  
Michael Hill, Town Attorney  
Fred Mann Jr., Code Enforcement Officer

Present: Joyce Day, Alex Pellizzi, Gayle Swinburne, Sigrid Koch, Arleen Springer, Mary Baugh, Barbara Weatherwax, Russell and Yvonne Melville, Attorney Jeff Baker, Attorney Michael O'Connor, Ralph Petuzzo, Meredith Smith (L A Group), Louise Kirkpatrick, Stanley Goldberg, Wendy Aronson, MD, Herbert Syrop, Nicholas Yannaci and Althea Rivette.

After Roll Call by the Town Clerk the following business was transacted:

Supervisor Lucia said that the board had received the following letter earlier today from Attorney Jeff Baker:

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September 21, 2006

Hon. Richard Lucia, Supervisor  
Town of Corinth  
600 Palmer Avenue  
Corinth, New York 12822

**Re: Town of Corinth Proposed Local Law for Composting Facilities**

Dear Supervisor Lucia:

As you know we represent Citizens for Safe and Responsible Industry and are writing to offer some suggestions on the draft local law being prepared to regulate composting facilities in the Town. Our suggestions are based upon our review of a draft of the law that was made available at the August 17, 2006 workshop meeting. These are only two suggestions and are not intended to limit our ability to comment on a draft law when it is formally released for public comment.

First, we suggest that the definition of "compostables" be strengthened by adding a specific reference to "paper sludge" in the list of materials that are not considered compostables. While the current draft includes "sludge", it is beneficial for the purposes of clarity that paper sludge, the by-product of paper-making, be specifically included.

Second, we are very concerned that the draft law does not provide for an increase in the amount of fines that can be imposed for violations of the composting provisions. Currently, fines under the Town land use law are consistent with Town Law § 268 and are limited to a maximum of \$350 for a first offense, between \$350 and \$700 for a second offense and between \$700 and \$1000 for a third offense. While those penalties may be appropriate for general violations of the land use law, they are inadequate for the regulation of a commercial composting facility where fines of that level could be absorbed as the cost of doing business. We strongly suggest that the Town adopt stiffer fines applicable to composting facilities. As discussed below, it is our opinion that the Town has the authority to increase the applicable fines.

While the amount of fines that can be assessed in a zoning code are limited by Town Law §268, towns are given the authority to amend or supercede any provision of the Town Law relating to matters in relation to which they are authorized to adopt local laws. (Municipal Home Rule § 10[1][ii][d][3]). In construing this provision, the New York Attorney General has stated, "it seems clear that a town may utilize its home rule powers to supercede general provisions of law in the Town Law and thereby amend

or supercede section 268(1) to increase the punishment provided by that section." (N.Y. Op. Atty. Gen. 84-32 (Informal)).

In designating a violation of a local zoning law as a misdemeanor under the aforementioned provisions of the Municipal Home Rule law, a town is bound by the provisions of the Penal Law governing the classification of misdemeanors and penalties for violations. (N.Y. Op. Atty. Gen. 84-32 (Informal)). Therefore, if the town classified the offense as a class A or B misdemeanor, the maximum fine possible under the Penal Law would be \$1000 and \$500 respectively. *Id.* However, if the local law designated the offense as an unclassified misdemeanor, the town would be authorized to set a minimum and maximum fine for a violation. Although a town is permitted to exercise discretion in this respect, the Attorney General has stated that "penalties for violation of a local regulation should have a reasonable relationship to the severity of the violation and should not be abhorrent to a sense of justice or shocking to the conscious... [t]he reasonableness of the fine will depend on the nature of the particular violation." *Id.*

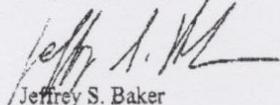
Alternatively, if the local law adopted pursuant to the aforementioned provisions of the Municipal Home Rule law imposed monetary civil penalties as an enforcement measure, it is apparent that the minimum levels set out in the Penal Law would be inapplicable. Thus, in such cases, the Town would only need to ensure that the designated penalty amount was reasonable under the circumstances given the nature and severity of the violation. (See *Waterbury v. Town of Oswego*, 251 A.D.2d 1060 (4th Dep't 1998)).

To gauge the reasonableness of a fine, reference can be made to the fines established by the State Legislature for similar activities. Violations of Article 27 of the Environmental Conservation Law, which regulates solid waste management facilities, may result in fines up to \$7,500 for each violation and an additional fine up to \$1,500 for each day the violation continues. [ECL § 71-2703(1)]. Depending upon whether the violation involves releases to the environment, the penalties can reach \$22,500 for the violation and for each additional day of the violation.

Therefore, we suggest the Town adopt a penalty policy in line with that established by the Legislature and at a minimum have fines up to \$7,500 with an additional \$1,500 for each day the violation continues. This will act as a strong incentive for owners of composting facilities to abide by the Town's rules and provides authority for the Town Justice to impose a fine commensurate with the seriousness of the violation but not be limited to an amount that the compost operator considers only a nuisance.

Thank you for your consideration of our suggestions.

Very truly yours,



Jeffrey S. Baker

cc: R. Hafner, Esq.  
M. Hill, Esq.

Supervisor Lucia asked Attorney Baker if he had anything additional to say to the board. Attorney Baker told the board not at the present time.

**Attorney Michael O'Connor**

Mr. O'Connor told the board that he had seen the proposed draft and didn't understand what happened. He said he was greatly disappointed and that the proposed draft would put Mr. Petruzzo out of business. He said it looks like the board is spot zoning. He suggested that the use DEC guidelines for noise. Mr. O'Connor said that the draft seems to deal only with outdoor composting. He said Mr. Petruzzo's is all done inside. He said the moratorium deals with both interior and exterior composting. He said there is no definition for sold waste. He asked if the Town Board had checked this out with any engineers. It was suggested that the Town Board use 6 NYCRR Part 360 Solid Waste Management Facilities in completing their revisions to the law. Attorney O'Connor said he strongly objects to this proposal because it does not deal with interior composting.

**Meredithe Smith (L A Group)**

Meredithe Smith handed out copies of 6 NYCRR Part 360. Meredith Smith gave the Town Board the following critique of what L A Group thought about the new draft.

**Town of Corinth**  
**Amending the Corinth Town Code**  
**Relating to Composting Facilities**  
**September 21, 2006**

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**Amendments:**

Article 1: Add "In accordance with §360-5 of New York State Law."

(D)(1). Add "all applicable governmental agencies."   
 Add "All composting facilities are to be considered a Type I Action under SEQR requiring a Full Environmental Impact Statement."

(D)(8) "Composting Facility" should be expanded to define storage, buildings, processing area/building, non-composting related buildings. No buildings or structures related to composting should be at a minimum of 100 feet from private water supply, ...

Composting facilities need to be demonstrated that they are hydraulically separated from reservoirs, reservoir stems, or controlled lakes.

Hydrogeologic analysis should be conducted as part of the special permit process to ensure any possible groundwater leaching will not contaminate any drinking water supply.

(D)(12) Placement of a fence within a 25' from the property boundary will interfere with the 100' wide vegetative buffer. Fence should be placed along the roadway right-of-way.

(23)(a) Consider adding "from food processing activities that occur onsite"

(24) Will this apply to local farmers and conflict with the local Right to Farm Law?

(24) (b) "The Town may at any time engage the services of an expert". Consider adding clause that costs may be inflicted on the permit holder if found in violation.

**Definitions:**

*Compostables:* Define types of sludge, i.e. paper, sewage, etc.  
Add medical wastes to types of waste

**Suggested Additions:**

Application fee:

- Set fee; and additional clause that all outside studies and/or consultants hired as a third party review by the Town are to be paid by the applicant. *Specific application for this process should be developed.*

Special Permit Process:

- To coincide with the permit application to NYSDEC under Part 360, application for Special Permit to the Town must be made simultaneously. Any correspondence to NYSDEC must be copied to the Town.
- The Town will be party to all administrative hearings held by NYSDEC and hearing costs occurred by the Town will be paid by the applicant.

Inclusion with the application for the Special Permit:

Facility Siting:

- Drainage control to prevent leachate run-off from the site. Compliance with state regulations for Storm Water Pollution Prevention Permit (SWPPP) and State Pollution Discharge Elimination System (SPDES).
- Proposed appearance of buildings and materials to be used.
- Odor and dust control methods. *on site*
- Description of the composition of the wastes involved, the anticipated quantity of each type of material, and how each will be handled at the site.

Traffic:

- Level of service of existing roadway, any existing roadway problems.
- Identification of daily traffic flow to and from the facility, including existing levels and post development.
- Identification of surrounding land uses and other traffic generators.

### **Councilman Saunders**

Councilman Saunders questions Land Use and Special Use Permit. Attorney Hill attempted to explain the difference to Councilman Saunders. Meredith Smith told Councilman Saunders that she too was mixed up with these. She explained to Councilman Saunders the way she distinguished them.

### **Attorney Jeff Baker**

Attorney Baker said he thought the draft was very good for a first draft. He agreed that there should be clarification made dealing with indoor composting. He did not feel that this was spot zoning but was regulating a particular industry throughout the Town. He agreed that Section 360 should be looked at but only for guidance. He felt that the board should enhance the enforcement provision and specialize the enforcement issued.

### **Attorney Michael Hill**

Attorney Hill spoke about the draft and how the Town Board members gave their input to his office before the draft was done. Attorney Hill said that the draft does cover only outdoor composting and he will have to revise it to include interior composting if that is what the Town Board wishes.

### **Ralph Petruzzo**

Mr. Petruzzo told the Town Board about his operation and how the draft would affect it.

### **Discussion**

Councilman Saunders told the board that he understood anything in operation before 2004 was grandfathered unless they were increased by 25%. Mr. Petruzzo said his business is smaller than it originally was. Attorney Hill told the board that Mr. Petruzzo needs to clarify the materials involved. Attorney O'Connor told the board the application is for mixed solid waste.

Attorney Baker told the board that he felt this triggers a DEC permit where it did not before.

Councilman Saunders questions two preliminary drafts submitted. He said the first one is entitled, "A Local Law Amending the Corinth Town Code Relating to Waste Disposal Facilities" and the second one is entitled, "A Local Law Amending the Corinth Town Code Relating to Composting

Facilities”. He said he didn’t know which one or both the Town was considering. Attorney Hill said he understood the town board members threw out the Preliminary Draft on Waste Disposal and the Preliminary Draft on Composting Facilities is the one that the board is presently reviewing. Attorney Hill told the board that as stated in the draft anything not mentioned in the draft relating to composting facilities it is not permitted. Therefore since solid waste is not mentioned it is not permitted.

Councilman Major said that he understood that as it stands now the Special Use Permits go to the Planning Board and the Town Board is trying to give the Planning Board the tools necessary to handle Special Use Permits.

Councilman Major asked the Town Attorney if he felt the town needed to strengthen the bulk of industrial zones. The Town Attorney reserved on that question but said it couldn’t hurt.

Councilman Saunders told the board that he understood their concerns but they need to look at the advantages and the new technology.

Councilman Major asked if L A Group and Attorney Hill could get together to compile a new draft taking into consideration all that has been discussed. Meredith Smith and Attorney Hill said that they would draft a new amendment for a meeting to possibly be held on October 11<sup>th</sup> if everyone is available.

### **SUPERVISOR LUCIA**

Supervisor Lucia said that there had been many rumors regarding Philmet and certain e-mails that were sent. Supervisor Lucia therefore read into record the following e-mail that was sent to both him and Mayor Winslow from Attorney Edward Burnbaum, attorney for Philmet:

Dear Mayor Winslow and Supervisor Lucia . . .

I was appalled to learn that attorney John C. Lemery, Esq. of Lemery Greisler LLC (who I understand has been appointed as special counsel to both the Town and Village to deal with perceived issues involving the Hudson River Mill plant property) called my client Sam Meth of Philmet Capital directly yesterday. Both of you have met me and contacted me on several occasions and know and understand that Philmet is represented by counsel.

In sum, Mr. Lemery told Sam that the Town and Village would make it exceedingly difficult for Philmet to develop the Hudson River Mill property, and that Philmet should accept an offer (presumably made on behalf of the Town and Village) to sell the property for \$4 million. In essence, Mr. Lemery said that Philmet could either accept the offer or face 20 years of protracted litigation which would preclude Philmet from finding some productive use of the Mill property and compel Philmet to continue to absorb the prohibitive costs of maintaining the property without any concomitant revenue. In addition to everything which has occurred over the past year, now it seems that the Town and Village of Corinth are dedicated to force Philmet out of ownership of the Property by threatening to withhold cooperation which any citizen and taxpayer is entitled to and target Philmet specifically for punitive action if Philmet refuses to capitulate.

We are frankly outraged by this uncalled for and unethical communication and the continuing campaign by the Town and Village which has been levied against Philmet and based on nothing more than mere speculation, paranoia and hysteria. Philmet has gone to great lengths up until now to assuage these uncalled for concerns but nothing has worked. In my personal experience, I have never seen politicians behave in such an unprofessional and one-sided fashion, particularly, where, as here, there has been absolutely nothing which Philmet has done to cause the local population to be concerned. If anything, Corinth's politicians, including both of you, have fanned the flames of dissension, clearly to advance your own collective political interests, by encouraging, rather than discouraging, uninformed and radical elements in their fantasized monologues.

Up until this event, which is truly the last straw, Philmet had resolved to cooperate with the Town and Village and to seek their advice and consent before any decisions were made or any action taken with regard to the Mill property.

However, Philmet no longer feels any obligation to do so. Corinth seems to want nothing less than conflict, and unfortunately, Philmet is now compelled to respond.

Edward H. Burnbaum, Esq.  
Novack Burnbaum Crystal LLP  
300 East 42nd Street  
10th Floor  
New York, New York 10017

Supervisor Lucia stated that a reply to this e-mail was sent and Supervisor Lucia read the following reply into the record:

September 14, 2006

**Via Email**

Edward H. Burnbaum, Esq.  
Novack Burnbaum Crystal LLP  
300 East 42<sup>nd</sup> Street, Fl 10  
New York, New York 10017

RE: Philmet/IP Corinth Site

Dear Mr. Burnbaum

Having read your e-mail to the Corinth Town Supervisor and the Corinth Village Mayor, I am compelled to respond.

First, let me address the issue of speaking directly with your client, Sam Meth of Philmet Capital ("Philmet"). Philmet retained the Saratoga Springs law firm of Jones & Ferradino to represent it in connection with ongoing matters regarding the Village of Corinth. Matt Jones spoke with me on two separate occasions regarding potential substantive discussions between Philmet and the Village and Town in regard to development of the mill site. Jones informed me only last week that he was no longer representing Philmet and that it had retained Mr. Ted Semyea of the Manhattan law firm of Etten & VanWinkle LLP. I called Mr. Semyea to request a meeting whereby substantive discussion could take place regarding development of the mill site. He informed me that he had nothing to do with the development of the site as it related to Philmet, but that he was retained by Philmet in connection with ongoing litigation with the seller, IP. I also spoke some time ago with attorney Robert Morris of the Glens Falls law firm Fitzgerald Morris Baker & Firth whereupon he informed me that he had met with your client and his firm would represent Philmet in connection with site development. Clearly, Philmet has consulted with a number of law firms/lawyers, but as far as the Village and Town knew, Mr. Jones who had been counsel to Philmet, was the last lawyer serving in that capacity.

Furthermore, the substance of the discussion you described my having with Sam Meth never transpired. Therefore, I would like to now take the opportunity to relate to you exactly what did occur.

One of the Village Trustees informed us that Sam Meth's sister believed someone should call her brother immediately in order to arrange a meeting to discuss the development of the mill site. To that end, the Village Mayor asked me to call Sam Meth and invite him to a meeting, and I did as requested. I told Mr. Meth that the Village would be very interested in sitting down with him and his colleagues to discuss the ultimate use of the mill site. At no time did I state that either the Village or the Town would make it difficult for Philmet to develop the Hudson River site. I did make it clear, however, that both the Village and the Town were opposed to the burning of municipal solid waste. Mr. Meth assured me that Philmet did not have that kind of use in mind.

He then went on to say that that Philmet intended to develop the landfill, and that the landfill was an integral part of its plans. When I asked what he intended to put in the landfill, his response was "sludge." I then told him that I was aware that the Town had long-term legislation in place that would prohibit the deposit of sludge in the landfill except as generated on-site, e.g. an operating paper mill, but I simultaneously suggested that if he had a development plan which would lead to new job opportunities and which would be a beneficial industry to the communities, then the Town might be open to such use of the landfill.

We then discussed the possibility of locating the Cascades Tissue Company at the mill site. He said that Cascades was no longer interested in the mill site because the electricity costs were too high. We next discussed Empire Zone rates which would allow for a very low delivery rate but he suggested that the commodity rate that would have to be paid was too high and that making the deal attractive to Cascade would require creating electricity at the site which would likely involve burning. I then asked him what he would propose to burn and he suggested wood chips or possibly sludge, whereupon I informed him that he should take a plan like that to the Village and the Town and openly discuss it. I suggested perhaps something could be worked out providing the user was in fact a paper company that would employ a reasonable number of people. His position was that in order to develop the site in any possible way the landfill had to be utilized and operated in some form because of the carrying costs.

I next asked him if he had any interest in selling the mill and he suggested a sale price of \$4M. I told him I knew the purchase price of the mill because the contract of sale had been provided to the Village and the Town officials. Therefore, the cost was a matter of public record. I said I was also aware of the fact that a lot of the equipment, steel and other items had been removed from the site. At no time did I tell your client that Philmet should accept the offer or face 20 years of protracted litigation. What I did say was that if Philmet's use of the site was incompatible with Town and Village ordinances, then litigation could ensue.

Your letter serves no useful purpose; the assertions therein are untrue, are not backed up by fact, and do nothing to serve your client's best interest.

Sincerely

John C. Lemery

JCL/kmc

Cc: B. Winslow  
R. Lucia

Councilman Saunders asked the Town Board members if anyone had had time to review the material Assessor Mary Ellen Hill-Pierce gave to them regarding the consolidation of the Town of Ticonderoga and how much money the citizens saved. Councilman Saunders told the board that he thought this was something that needed to be looked at.

**RESOLUTION #212**  
**EXECUTIVE SESSION**

On motion of Councilman Saunders and seconded by Councilman Brown, the following resolution was

ADOPTED Ayes 5      Lucia, Brown, Majors, Byrnes, and Saunders  
                         Nays 0

RESOLVED that this Board adjourned to Executive session on personnel at 5:30 PM without a decision being made.

With no further business, on a motion of Councilman Brown, seconded by Councilman Major, the meeting was adjourned at 6:00 PM. Carried unanimously

Respectfully submitted,

Rose E. Farr, RMC  
Town Clerk