

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

X

THE TOWN OF RIVERHEAD,

Plaintiff,

-against-

**LONG ISLAND COMPOST CORP.,
CHARLES VIGLIOTTI AS PRESIDENT
AND CEO OF LONG ISLAND
COMPOST CORP., GEORGE CARLTON
CAFFREY, YUNEE SOHN, JAE RYUNG
KANG, KUM NIM CHOI, SOO KYUNG PAK,
DONG SUK CHUNG, YOUNG SIK MUN,
KYE PO CHOI, YOUNG A. HONG, and
BRIAN LEE,**

Defendants.

X

**AFFIRMATION IN
SUPPORT**

Index No. 98-13674

ADAM B. GROSSMAN, an attorney at law duly admitted to practice before the
Courts of the State of New York hereby affirms the following under penalty of perjury

1. I am the Town Attorney for the Town of Riverhead, the Plaintiff in the
above referenced matter.
2. I am fully familiar with all the facts and circumstances surrounding this
proceeding.
3. This Affirmation is being submitted to the Court in support of the Town of
Riverhead's request for a permanent injunction against the Defendants from composting
at the site and additionally ordering the removal of the compost pile from the site.

4. I additionally wish to submit this second Affirmation to the Court to clarify the specific violations of the Riverhead Town Code by the Defendants.

5. First, I would like to refer the Court to Riverhead Town Code section 108-21, "Agricultural A District" which is the zoning classification of the subject property. I wish the Court to note that composting and/or the handling of solid wastes in any way is not a permitted use within Agricultural A District nor a special permitted use with Town Board approval. (See annexed Exhibit "A").

6. Secondly, section 103, "Solid Waste Management" of the Riverhead Town Code was included as an exhibit in Ernest T. Bartol's application. However, it seems Mr. Bartol's office conveniently only included part of the chapter, section 103-1 through 103-5 of the Riverhead Town Code, and did not include sections 103-6 through 103-57 which is annexed Exhibit "B" to this affirmation.

7. Regardless of the zoning classification of the property as Agricultural A not allowing the use proposed by the Defendants, I would like to specifically bring to the Court's attention section 103-9 of the Riverhead Town Code, methods of disposal under Solid Waste Management. In subsection B., it states as follows:

B. It shall be unlawful for any person to transport, carry or convey solid waste collected or generated outside the town over any public highways within the Town of Riverhead or to deliver the same to a solid waste facility or recycling center, except as may be authorized by a special permit of the Town Board or by a contract entered into by the town.

8. At no time had the Defendants established that the compost pile was generated exclusively within the Town of Riverhead nor was the compost pile generated

on the farm site. Mr. Vigliotti, in his letter to Supervisor Villella dated June 2, 1998, referred to his business having over 40 sites on the East End (see Exhibit "C" to Petition).

9. Additionally, he acknowledged his responsibility and that of his business for the odors emanating from the site. Regarding the severity of the odors and the nuisance it created, I respectfully refer the Court to annexed Exhibit "C" which is a portion of the minutes of the June 2, 1998 Town Board meeting at which the letter from Mr. Vigliotti was read by the undersigned into the record. Mr. John Franco appeared before the Board to bring to the Board's attention the severity of the odors at the site.

10. In response to Mr. Bartol's affirmation, I wish once again to state that at the meeting that was held between Supervisor Villella and myself, Leroy Barnes, Administrator of the Riverhead Town Building Department, Mr. Vigliotti and Mr. Bartow on June 1, 1998 that it was agreed at that meeting by all parties that the compost pile was to be removed. After said removal, further discussions would take place regarding future composting by Mr. Vigliotti and Long Island Compost within the Town of Riverhead. A promise was made to Supervisor Villella, Mr. Barnes and myself by Mr. Vigliotti to remove the compost pile within a matter of days and thereafter he did nothing.

11. It was only after two weeks had passed and daily phone calls received at Riverhead Town hall regarding the severity of the odors at the site that the Town of Riverhead commenced this litigation. Between June 1, 1998, the date of the meeting and June 16, 1998, the date this litigation was commenced, Mr. Barnes was repeatedly in touch with Mr. Bartol who continued to assure Mr. Barnes that the compost pile would be removed. Nothing of the kind ever occurred.

12. Therefore, Mr. Bartol's claims that there was no authorization to remove the compost pile was false and to the contrary he was given explicit authorization to remove the compost pile by myself, the Town Supervisor and the Administrator of the Building Department.

13. Mr. Bartol in his Affirmation in Opposition cites Chapter 44 of the Riverhead Town Code. Specifically section 44 -4, "Right to Farm" under Agricultural Lands Preservation. It cites under subsection B., as pursuant to right to farm "Disposal of Organic Waste on the Farm". Mr. Bartol's analysis is entirely misplaced. Since this section refers to disposing of organic wastes on the farm as cited by Mr. Bartol in section 22, of his Affirmation in Opposition, Mr. Bartol takes a huge leap interpreting disposing of organic waste on the farm to be the equivalent of composting and thereafter taking another leap by stating that compost material transported to the site from outside the Town borders is the equivalent of disposing of organic wastes on the farm.

14. I respectfully submit that section 44-4 in no way precludes the Town of Riverhead from any and all regulation of composting activities on the farm particularly when the composting activities are not being conducted by the owner of the property nor is the compost material generated on the farm itself.

15. For the Court's further information, it was explained to myself by Mr. Vigliotti at our meeting that in fact the compost material was transported from another location outside Riverhead Town to this farm in Riverhead and that it was the intention of Mr. Vigliotti to sell most of the compost material generated and the farmers who own the property would keep a small portion of the compost material in exchange for the use of

their land. So in fact, even if arguably the farmer did have the right to compost on the site which I would dispute, an outside party contracting with a farmer to compost on the site material not generated on the farm in no way is a protected activity pursuant to section 44-4 of the Riverhead Town Code.

16. Mr. Bartol's further reference to protection from odor or nuisance claims is similarly misplaced. Regarding Mr. Bartol's discussion of Town Code section 103-9, it is the position of the Town of Riverhead that in fact as defined in section 103-4, the compost material deposited at the site by Mr. Vigliotti does fall within said definition and that it was most certainly was not yard waste as alleged by Mr. Bartol in his Affirmation in Opposition.

17. In section 39 of Mr. Bartol's Affirmation in Opposition, Mr. Bartol cites section 305-a (1) of Agriculture and Markets law which similarly is misplaced by Mr. Bartol as applying to this situation. Said section as quoted by Mr. Bartol says nothing about compost activity of any kind by a farmer.

18. Lastly, Mr. Bartol's claim that a Summons and Complaint was necessary to bring this proceeding is incorrect and in fact the Special Term Clerk's Office approved the Order To Show Cause and Supporting Affirmation before the undersigned purchased the index number for this proceeding. However, should the Court wish to have any further papers in support of this Order To Show Cause, I will prepare such documents at the request of the Court.

WHEREFORE, your Deponent respectfully requests that a permanent injunction be issued against the Defendants ordering the removal of the compost pile and permanently enjoining the Defendants from composting at the subject premises together with such other relief as the Court deems just and improper.

Dated: Riverhead, New York
August 21, 1998

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