
**COURT OF APPEALS
STATE OF NEW YORK**

METRO ENVIRO TRANSFER, LLC,

Petitioner-Appellant

-against-

THE VILLAGE OF CROTON-ON-HUDSON and THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CROTON-ON-HUDSON

Respondents-Respondents

PROPOSED BRIEF *AMICUS CURIAE* BY THE NEW YORK STATE
CONFERENCE OF MAYORS AND MUNICIPAL OFFICIALS

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PRELIMINARY STATEMENT

The New York State Conference of Mayors and Municipal Officials (“NYCOM”) submits this brief *amicus curiae* in support of Respondents-Respondents Village of Croton-on-Hudson and the Village Board of Trustees of the Village of Croton-on-Hudson (hereinafter “the Village”), seeking to affirm the decision and order of the Appellate Division, Second Department, dated May 10, 2004, which reversed the judgment of the Supreme Court, Westchester County, Hon. Francis A. Nicolai, entered February 20, 2003. The decision annulled Respondent’s resolution dated January 27, 2003 which declined to grant any further extensions of Appellant’s local special use permit in connection with its solid waste transfer station located in the Village; declined to grant Appellant’s application for renewal of the special use permit; and ordered Appellant to cease accepting waste and close its facility at midnight on February 17, 2003.

INTEREST OF THE *AMICUS*

The Conference of Mayors is a not-for-profit, voluntary membership association consisting of 567 of the State’s 616 cities and villages, thereby representing the overwhelming majority of such municipalities. NYCOM’s mission is to “improve the administration of municipal affairs in New York State by providing courses of training for municipal officials in service in New York State cities and

villages.” Additionally, NYCOM provides its members with legislative advocacy at both the state and federal levels on issues of concern to all local governments. In its nearly 95-year existence, NYCOM has consistently been granted permission to submit briefs *amicus curiae* to this Court, the four New York State Appellate Courts, the Federal Courts in New York State, and the United States Supreme Court.

The issue in this case strikes at the very heart of municipal home rule authority. Further, it is an issue of statewide importance, affecting villages and cities throughout the State. In dispute is the power of municipalities to govern the health, safety and welfare of their residents. The court below properly upheld this power by finding that the Village did not need to wait for actual harm to occur because of various permit violations in order to deny renewal of the permit. It was sufficient that the conditions, to which the appellant agreed, were violated. If this Court overturns the ruling of the Appellate Division, it would dramatically change the long-held public policy of New York State which recognizes the authority of local governments to adopt and enforce laws to protect property and care for the safety, health, comfort, and general welfare of its inhabitants. A reversal of the lower court would impair the ability of local governments to regulate potentially hazardous activity in the absence of actual injury, regardless of substantial evidence of probable adverse impacts. Such a decision would usurp the constitutionally granted home rule authority and local police power of municipalities. Both of these rights empower local governments to make determinations on behalf of, and in the best interest of, local residents and enforce the laws that result from those determinations.

STATEMENT OF FACTS

Metro Enviro Transfer, LLC (“Metro Enviro”) was granted two separate permits: one from the Village and one from the New York State Department of Environmental Conservation (“DEC”) to operate a solid waste transfer station in the Village. Prior to the issuance of the permits, the Village held discussions with Metro Enviro. After a lengthy review process, Metro Enviro agreed to conditions

to address potential adverse impacts on the neighborhood and the Village issued the permit. Subsequently, Metro Enviro developed a long series of violations of its operating permit from the Village. After extensive hearings, the Village Board revoked its permit and shut down the facility. Metro Enviro brought an Article 78 proceeding challenging this action. Metro Enviro's principal argument is that the many admitted permit violations did not have a verifiable adverse environmental impact. The Supreme Court granted the petition and annulled the shutdown order. The Appellate Division, Second Department, reversed and reinstated the shutdown order stating that the Village was not required to wait for actual harm to occur as a result of the permit violations in order to deny renewal. It was sufficient that the conditions, established after a lengthy review process to address potential adverse impacts on the neighborhood, were violated. Metro Enviro moved by Order to Show Cause to this Court for leave to appeal which was granted on December 16, 2004.

ARGUMENT

POINT I

PUBLIC POLICY RECOGNIZES THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT LAWS THAT PROTECT THE HEALTH, SAFETY, WELFARE AND PROPERTY OF THEIR INHABITANTS.

The public policy of a state is found in its Constitution and laws. Matter of Validation Review Associates, Inc., 223 A.D.2d 134, 646 N.Y.S.2d 149 (2d Dept.1996); Haag v. Barnes, 11 A.D.2d 430, 207 N.Y.S.2d 624 (1st Dept.1960); Melodies, Inc. v. La Pierre, 4 A.D.2d 982, 167 N.Y.S.2d 703 (3d Dept.1957). The New York Constitution provides every local government with the ability to regulate the care, management and use of its property. N.Y. Const. Art IX § 2(c) (ii) (6). The Statute of Local Governments §10(6), empowers every local government to adopt, amend and repeal zoning regulations. It is the intention of the Legislature through the Municipal Home Rule Law to implement the provisions of Article IX of the State Constitution and the Statute of Local Governments, thereby enabling local

governments to adopt and amend local laws for the purpose of fully and completely exercising the powers granted to them under the terms and spirit of the law. N.Y. Mun. Home Rule §50(1).

A. The Municipal Home Rule Law

The Municipal Home Rule Law provides that a county, city, town, or village has the power to adopt and amend local laws not inconsistent with the provisions of the Constitution or any general law, relating to the government, protection, order, conduct, safety, health, and well-being of persons or property therein. N.Y. Mun. Home Rule §10(1)(ii)(a)(12). This provision includes, but is not limited to, the power to adopt local laws providing for the regulation or licensing of occupations or businesses.

N.Y. Mun. Home Rule §10(1)(ii)(a)(12).

“In addition to any other powers conferred upon villages, the board of trustees of a village shall have management of village property and finances, may take all measures and do all acts, by local law, not inconsistent with the provisions of the constitution, and not inconsistent with a general law except as authorized by the municipal home rule law, which shall be deemed expedient or desirable for the good government of the village, its management and business, the protection of its property, the safety, health, comfort, and general welfare of its inhabitants, the protection of their property, the preservation of peace and good order, the suppression of vice, the benefit of trade, and the preservation and protection of public works.” N.Y. Village §4-412(1) (a).

The Municipal Home Rule Law must be construed liberally, and the powers therein granted are in addition to all of the other powers granted to local governments by other provisions of law. N.Y. Mun. Home Rule §51. By specific mandate, courts are required to take judicial notice of all local laws and of rules and regulations adopted pursuant thereto. N.Y. Mun. Home Rule §52.

B. The Police Power

The New York State Legislature is authorized by the New York State Constitution to delegate to municipalities the power to exercise the police power in matters of local concern. Hempstead v Goldblatt, 9 N.Y.2d 101, 172 N.E.2d 562, 211 N.Y.S.2d 185 (1961); Schmidt v Flynn, 200 N.Y.S.2d 1009 (1960); Carollo v Smithtown, 20 Misc. 2d 435, 190 N.Y.S.2d 36 (1959). This delegation

authorizes local government to protect the lives, health, and safety of their citizens. N.Y. Const. Art. IX; N.Y. Mun. Home Rule §10(1)(ii)(a)(12); People v. Van De Carr, 199 U.S. 552, 26 S. Ct. 144, 50 L. Ed. 305 (1905); Lane v. City of Mount Vernon, 38 N.Y.2d 344, 379 N.Y.S.2d 798, 342 N.E.2d 571 (1976); Wulfsohn v. Burden, 241 N.Y. 288, 150 N.E. 120 (1925); Armstrong v. Warden of City Prison, 183 N.Y. 223, 76 N.E. 11 (1905); Molnar v. Curtin, 273 A.D. 322, 77 N.Y.S.2d 553 (1st Dept.1948); City of Albany v. Anthony, 262 A.D. 401, 28 N.Y.S.2d 963 (3d Dept.1941).

The police power has been defined as the “inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice. It is a fundamental power, essential to government, and it cannot be surrendered by the legislature or irrevocably transferred away from government.” Black’s Law Dictionary, 8th Edition, 1999, p. 1196.

Of all the powers of local government, the police power is one of the most expansive. People v. Christian, 96 Misc. 2d 1109, 410 N.Y.S.2d 513 (City Crim. Ct. 1978); People v. Munoz, 22 Misc. 2d 1078, 200 N.Y.S.2d 957 (Spec. Sess. 1960); Stewart v. Strauss, 11 Misc. 2d 433, 177 N.Y.S.2d 863 (Sup.1958). It extends to all the great public needs. People v. Munoz, at 1080. The police power of municipalities is necessarily broad, in order to give a local legislative body of any community the ability to protect its citizens. People v. Brown, 175 Misc. 989, 27 N.Y.S.2d 241 (Co.Ct.1941).

Municipalities enjoy wide discretion in determining what precautions in the public interest are necessary or appropriate in the exercise of their police power, and this power is frequently exercised for the public health and comfort, or the public health and general welfare. Wulfsohn v. Burden, at 298; People v. Munoz, at 1080; Nappi v. LaGuardia, 184 Misc. 775, 55 N.Y.S.2d 80 (Sup. 1944).

For example, in People v. Van De Carr, at 558, the United States Supreme Court upheld the right of a municipality to regulate certain occupations which may become unsafe or dangerous where unrestrained, as an exercise of the police power, with a view to protect the public health and welfare.

Within constitutional limits, the legislative body of a municipality is the sole judge as to what laws should be enacted for the protection and welfare of the people, and as to when and how the police power which it possesses is to be exercised. Taintor v. Hattemer, 72 N.Y.S.2d 537 (Sup.1947). This is especially clear in the area of zoning. It is well settled that a municipality by authority of its police power may enact legislation in response to the needs and objectives of the community. Local governments are, by definition, the level of government closest to, and most responsive to the people. Local governments are in the best position to determine the type of legislation that best fits local health and safety needs, and have been granted that discretion by the State Legislature. Any such legislation must be reasonably related to the community policy sought to be effectuated and, furthermore, may not be either arbitrary or unduly oppressive. Stubbart v. Monroe County, 58 A.D.2d 25, 395 N.Y.S.2d 307 (1977); People v. Goodman, 31 N.Y.2d 262, 338 N.Y.S.2d 97, 290 N.E.2d 139 (1972).

The operation of a solid waste transfer station is a business which can be subject to regulation by the State and localities. Town of Clarkstown v. C & A Carbone, Inc., 182 A.D.2d 213, 587 N.Y.S.2d 681; 80 N.Y.2d 760, 591 N.Y.S.2d 138, 605 N.E.2d 874 (1992); 508 U.S. 938, 113 S. Ct. 2411 (1993); Town of North Hempstead v. Incorporated Village of Westbury, 182 A.D.2d 272, 588 N.Y.S.2d 293 (2d Dept.1992); Town of Islip v. Zalak, 165 A.D.2d 83, 566 N.Y.S.2d 306 (2d Dept. 1991); Eastern Transfer of New York Inc. v. Cahill, 268 A.D.2d 131, 707 N.Y.S.2d 521 (3d Dept. 2000). In the present case, the Village used the police power to incorporate conditions, limitations, and restrictions into a special use permit which allowed the Appellant to operate a waste transfer facility in the Village. Those conditions, limitations, and restrictions were included in the special permit to protect the safety of the community and the environment from the threat of harm. Appellant did not object to the terms of the permit until after it violated numerous conditions.

Municipal legislative action cannot be declared unconstitutional unless it is clearly arbitrary and unreasonable. City of Rochester v. Gutberlett, 211 N.Y. 309, 105 N.E. 548 (1914); E. Fougere & Co. v.

City of New York, 224 N.Y. 269, 120 N.E. 642 (1918); People v. Gerus, 19 Misc. 2d 389, 69 N.Y.S.2d 283 (Co. Ct.1942); In re McIntosh, 211 N.Y. 265, 105 N.E. 414 (1914); Zenith-Godley Co. v. Wiley, 121 N.Y.S.2d 795 (Sup.1953). Here, the Village's actions were neither arbitrary nor unreasonable.

C. Special Use Permits

The zoning enabling statutes empower municipal legislative bodies to authorize a planning board or other designated administrative body to grant special-use permits. N.Y. Village § 7-725-b (2). The board authorized to issue special-use permits has the authority to impose reasonable conditions and restrictions that are directly related to and incidental to the proposed permit, and upon its granting of the special-use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the municipality. N.Y. Village § 7-725-b (4).

Generally, any conditions attached to the issuance of a special permit or exception by a village board must be authorized by the zoning regulation, Schlosser v. Michaelis, 18 A.D.2d 940, 238 N.Y.S.2d 433 (2d Dept.1963), and any conditions imposed must be reasonable under the circumstances. Marriott Corp. v. Zoning Bd. of Appeals, 57 A.D.2d 840, 394 N.Y.S.2d 46 (2d Dept. 1977); Rosenbloom v. Crowley, 7 A.D.2d 193, 181 N.Y.S.2d 333 (4th Dept 1959). Conditions imposed must be so clear and definite that there is no doubt as to the extent of the use permitted. South Woodbury Taxpayers Assoc. v. American Institute of Physics, Inc., 104 Misc. 2d 254, 428 N.Y.S.2d 158 (Sup.1980); Bernstein v. Board of Appeals, 60 Misc. 2d 470, 302 N.Y.S.2d 141 (Sup.1969).

When a village board of trustees reserves to itself the power to grant special use permits, the grant or denial of such a permit is left to the discretion of the board. While the municipal board is free to consider matters related to the public welfare, the only limitation upon the exercise of its discretion is that its determination must not be arbitrary or capricious, and must be supported by substantial evidence. Retail Property Trust v. Board of Zoning Appeals of Town of Hempstead, 281 A.D.2d 549, 722 N.Y.S.2d 244 (A.D. 2001).

Normally, a reviewing board is required to grant a special use permit unless there are reasonable grounds for denying it. Carrol's Development. Corp. v. Gibson, 53 N.Y.2d 813, 422 N.E.2d 581, 439 N.Y.S.2d 921 (1981). Unlike a variance, which allows the use of property in a manner otherwise prohibited by a zoning ordinance, a special use permit authorizes the use of property in a manner expressly permitted by the zoning ordinance under certain stated conditions. North Shore Steak House v. Board of Appeals, 30 N.Y.2d 238, 282 N.E.2d 606, 331 N.Y.S.2d 645 (1972); Orange & Rockland Utilities. v. Town Bd., 214 A.D.2d 573, 624 N.Y.S.2d 640 (1995); J.P.M. Props. v. Town of Oyster Bay, 204 A.D.2d 722, 612 N.Y.S.2d 634 (A.D. 1994).

The classification of a use as one that is permitted in a particular district subject to the granting of a permit is tantamount to a legislative finding that, if the conditions of the zoning ordinance are met, the proposed use is compatible with the standards and objectives of the zoning ordinance and will not adversely affect the neighborhood and the surrounding areas. Lee Realty Co. v. Village of Spring Valley, 61 N.Y.2d 892, 462 N.E.2d 1193, 474 N.Y.S.2d 475 (1984); North Shore Steak House v. Board of Appeals, at 244; Orange & Rockland Utils. v. Town Bd., at 574; Twin County Recycling Corp. v. Yevoli, 224 A.D.2d 628, 639 N.Y.S.2d 392 (1996). Thus, the reverse is also true, that if the conditions of the zoning law are violated, the proposed use is incompatible with the standards and objectives of the zoning law and will adversely affect the neighborhood and the surrounding areas.

Generally, in the absence of a material change in conditions or evidence of a violation of the terms of the permit, a renewal should be granted without unduly burdening the applicant. Atlantic Cement Co., Inc. v. Williams, 129 A.D.2d 84, 516 N.Y.S.2d 523 (1987); Twin County Recycling Corp. v. Yevoli, at 1000.

In the present case, the village board of trustees originally issued the special use permit after an extensive environmental review process. A number of specific conditions, limitations, and restrictions were incorporated into the permit as a result of that review process. The permit also provided that if any

of the conditions, limitations, or restrictions contained therein were violated, the village had the right to revoke the permit. The appellant agreed to be bound by the terms of the permit and then failed to live up to the conditions. Based on a finding of substantial evidence, the Appellate Division reversed the lower court and reinstated the shutdown order.

POINT II

THE FACT THAT NO INJURY IS KNOWN TO HAVE OCCURRED IS NOT DETERMINATIVE AS TO THE VALIDITY OF THE REGULATION ENACTED TO SAFEGUARD THE HEALTH AND SAFETY OF THE RESIDENTS OF THE MUNICIPALITY.

Appellant admits to violating the permit conditions which it agreed to be bound by, but argues that since no injury is known to have occurred because of these violations, the village unfairly revoked its permit. The courts have consistently found that municipalities do not need to wait until a disaster occurs before curing a dangerous condition. Town of Southport v. Ross, 284 A.D. 598, 132 N.Y.S.2d 390 (3d Dept.1954) (where ordinance provided that no house trailer should remain upon premises other than a trailer camp for more than four weeks in every 12 months); Wiggins v. Town of Somers, 4 N.Y.2d 215, 173 N.Y.S.2d 579, 149 N.E.2d 869 (1958) (where ordinance prohibited dumping of garbage originating outside of town within said town). The fact that no injury has actually occurred in a particular case is not determinative as to the validity of the regulation enacted to safeguard the health and safety of the residents of the municipality. For example, in City of Rochester v. West, 164 N.Y. 510, 58 N.E. 673 (1900), the court held that the fact that no injury occurred by reason of the erection of the billboard in question, or that it is improbable that any such injury will occur there from is not controlling upon the question under consideration.

The ordinance must be reasonably related to some manifest evil which, however, need only be reasonably apprehended. For example, in Lighthouse Shores, Inc. v. Town of Islip, 41 N.Y.2d 7, 359 N.E.2d 337, 390 N.Y.S.2d 827 (1976), the Court found that restrictions as applied to vehicular traffic on

private walkways, were not arbitrary, since they were related to the reasonable public purpose of protecting the fragile ecology of the island from deterioration, and, under the strong presumption of constitutionality accorded municipal enactments, substantiating evidence of overuse by motor vehicles and consequent damage to beach areas was not overcome beyond a reasonable doubt.

The validity of a statute is not to be determined by what has been done in any particular instance, but by what may be done under it. Stuart v. Palmer, 74 N.Y.183 (1878); Sheldon v. Town of Highlands, 73 N.Y.2d 304, 539 N.Y.S.2d 722, 536 N.E.2d 1141 (1989); Gilman v. Tucker, 128 N.Y. 190, 28 N.E. 1040 (1891); Gulest Associates, Inc. v. Town of Newburgh, 25 Misc.2d 1004, 209 N.Y.S.2d 729, (Sup.1960). It is equally true that the validity of a statute or ordinance is not to be determined from its effect in a particular case, but upon its general purpose and its efficiency to affect that end. When a statute is obviously intended to provide for the safety of a community and an ordinance under it is reasonable and in compliance with its purpose, both the statute and the ordinance are lawful, and must be sustained. Jewish Reconstructionist Synagogue of North Shore, Inc. v. Incorporated Village of Roslyn Harbor, 40 N.Y.2d 158, 386 N.Y.S.2d 198, 352 N.E.2d 115 (1976); Springfield L. I. Cemetery Soc. v. City of New York, 271 N.Y. 66, 2 N.E.2d 48 (1936); Pinelawn Cemetery v. Cesare, 64 A.D.2d 607, 406 N.Y.S.2d 862, (2d Dept.1978); Whittaker v. Village of Franklinville, 265 N.Y. 11, 191 N.E. 716 (1934); People v. Gerus, 19 Misc.2d 389, 69 N.Y.S.2d 283 (Co.Ct.1942); McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1153, 6 L.Ed.2d 393, (1961); People v. Acme Markets, Inc., 37 N.Y.2d 326, 372 N.Y.S.2d 590, 334 N.E.2d 555 (1975).

Discretion and the authority to use that discretion to determine what precautions are necessary to protect the public interest are the basic tenets of the municipal police power. Wulfsohn v. Burden, at 298; People v. Munoz, at 1081; Nappi v. LaGuardia, at 184 Misc. 782 - 783. A reversal of the decision of the Appellate Division would mean that municipalities must await actual injury before taking decisive action against violations, effectively shackling municipal governments from righting an impending and

dangerous wrong. Furthermore, a reversal would undermine the New York State Constitution and nearly 200 years of case law and deny the use of the police power by municipalities. An affirmation of the Appellate Division decision would serve as a ringing endorsement of the powers granted to municipalities by the State Constitution.

CONCLUSION

**THE AMICUS RESPECTFULLY REQUESTS
THAT THE COURT AFFIRM THE DECISION
OF THE APPELLATE DIVISION,
SECOND DEPARTMENT AND REAFFIRM
MUNICIPAL AUTHORITY TO ENACT
AND ENFORCE LOCAL LAWS IN THE
BEST INTEREST OF THE PUBLIC.**

Dated: March 28, 2005

Respectfully Submitted



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AFFIDAVIT OF SERVICE

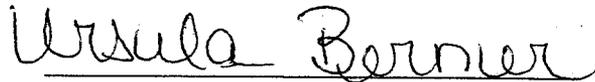
STATE OF NEW YORK) ss.:
COUNTY OF ALBANY)

Ursula Bernier, being duly sworn, deposes and says:

I am not a party to this action, am over the age of 18 and reside at 30 Columbia Gardens, Cohoes, N.Y. 12047. On the day of March, 2005 I served three copies of the proposed brief *amicus curiae* enclosed in a properly addressed wrapper by dispatching the same by overnight delivery service, Federal Express. Said papers were deposited into the custody of the overnight delivery service prior to the latest time designated by the overnight delivery service for overnight delivery addressed to the last known address of the addressees below:

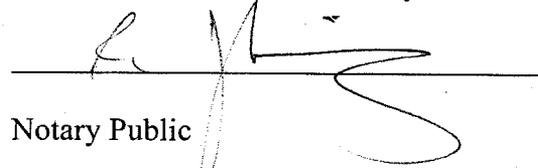
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Ursula Bernier

Sworn to before me this th day of March, 2005



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Commission Expires April 17, 20 07