

STATE OF NEW YORK
NEW YORK STATE BOARD ON ELECTRIC
GENERATION
SITING AND THE ENVIRONMENT :

In the Matter of the Petition of
Beacon Harbor, LLC, :

Petitioner,

For a Declaratory Ruling with respect to
The Application of the Definition of
“Local Actions Not for the Construction
or Operation of the Proposed Major
Electric Generating Facility” as set forth
In Rule § 1000.2 (r) of the Public Service
Law, Pursuant to §204 of the State
Administrative Procedure Act (SAPA)

NOTICE OF
: PETITION FOR
DECLARATORY
: RULING

- against -

The New York State Board on Electric
Generation Siting and the Environment,

Respondent,

_____ :

PLEASE TAKE NOTICE, upon the Verified Petition of Beacon Harbor, LLC, by its Member, Victor Gush, sworn to the 12th day of September, 2012, and upon all of the prior facts, pleadings and proceedings had herein, Petitioner, by its attorneys, Lynch & Hetman, PLLC, will move the New York State Board on Electric Generation Siting and the Environment (hereinafter the “Board”) by the submission of the within Petition, for a Declaration pursuant to §204 of the State Administrative Act (SAPA) and Article 10 of the Public Service Law, that that the prohibition of the use of the Petitioner’s premises located along the Port Road and the River Road, Town of Bethlehem, as a waste to energy facility which utilizes municipal solid waste (“MSW”) as its primary feedstock or fuel, pursuant to § 128-9 (A) of the Zoning Ordinance of the Town of Bethlehem, and the prohibition against the import of MSW generated and collected outside the

Town of Bethlehem pursuant to § 97-11 (A) of Chapter 97 of the Code of the Town of Bethlehem, are each local laws that directly impact the right to construct and operate a major Electric Generating Facility, and which this Board has authority to supplant under the processes of Article 10, all for the reasons more fully stated in the accompanying papers, together with such other and further relief as to this Board seems just and proper, and it is further

September 12, 2012

YOURS ETC.,

Lynch & Hetman, PLLC

By: 

Peter A. Lynch, Esq.
Attorneys for Petitioner
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111 State Street, First Floor
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Tel. No. (518) 463-1252

To:
The New York State Board on Electric
Generation Siting and the Environment
Attn: Gary Brown, Chair
c/o Counsel's Office
The New York State Public Service Commission
Agency Building Three
Empire State Plaza
Albany, New York 12223-1350

New York State Public Service Commission¹
Gary Brown, Commissioner
Attn: James D. Austin, Deputy Director of Office of Energy
Efficiency and the Environment
Agency Building Three
Empire State Plaza
Albany, New York 12223-1350
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¹ Electronic Copy to be sent to Public Information Coordinator, Public Service Corporation (for placement on the DPS Website). James Denn, NYS Department of Public Service, 3 Empire State Plaza Albany, NY 12223 518-474-7080 Email: james.denn@dps.ny.gov

New York State Department of Environmental Conservation
Attn: Joseph Martens, Commissioner
625 Broadway
Albany, New York 12207
Tel. No. (518) 474-2121

New York State Department of
Environmental Conservation
Attn: Christopher Hogan
Division of Environmental Permits
625 Broadway, 4th Floor
Albany, New York 12233-1750

New York State Commissioner of Health
Attn: Nirav R. Shah, M.D., Commissioner
Corning Tower
Empire State Plaza
Albany, New York 12237
Tel. No. (518) 474-2011

New York State Energy Research and Development Authority
Attn: Francis J. Murray, President and CEO
17 Columbia Circle
Albany, New York 12203-6399
Tel. No. (518) 862-1090

New York State Commissioner of Economic Development
New York State Urban Development Corporation
d/b/a Empire State Development Corporation
Attn: Kenneth Adams, President and CEO
633 Third Avenue
New York, New York 10017
(212) 867-7060
and
30 South Pearl Street
Albany, New York 12207
Tel. No. (518) 292-5100

Town of Bethlehem
Attn: John Clarkson, Supervisor
Michael Morelli, Director of Planning
And James Potter, Esq., Town Attorney
Town Hall
445 Delaware Avenue
Delmar, New York 12054
Tel No. (518) 439-4955 Ext. 1164

New York State Ag & Mkts
Attn: Darrel J. Aubertine, Commissioner
10B Airline Drive
Albany, New York 12235
Tel. No. (518) 457-3880

New York State Department of State
Attn: Ceasar A. Perales, Commissioner
99 Washington Avenue
Albany, New York 12231
Tel. No. (518) 474-4750

New York State Department of State
Division of Coastal Resources &
Waterfront Revitalization
99 Washington Avenue
Albany, New York 12231
Tel. No. (518) 474-6000

New York State Attorney General
Department of Law
Attn: Eric T. Schneiderman
The Capitol
Albany, New York 12224-0341
Tel. No. (518) 474-7330

New York State Department of Transportation
Joan McDonald, Commissioner
50 Wolf Road
Albany, New York 12205
Tel. No. (518) 474-4152

New York State Office of Parks, Recreation and
Historic Preservation
Peebles Island State Park
P.O. Box 189
Waterford, NY 12188-0189
Phone: (518) 237-8643

Town of Bethlehem Public Library
Attn: Librarian
Delaware Avenue
Delmar, New York 12054
Tel No. (518) 439-9314

Hon. Gerald Jennings, Mayor
City of Albany
City Hall
Eagle Street
Albany, New York 12207
Tel. No. (518) 434-5100

City of Albany Department of Water & Supply
Attn: Robert Cross, Commissioner
10 North Enterprise Drive
Albany, NY 12204
Tel. No. (518) 434-5300

City of Albany Water Board
Attn: Anthony Ferrara, Chairperson
Water Department
35 Erie Boulevard
Albany, NY 12204
Tel. No. (518) 434-5300

Hon. Daniel McCoy
Albany County Executive
112 State Street
Room 200
Albany, New York 12207
Tel. No. (518) 447-7040

Albany County Legislature
c/o Clerk of the Legislature
112 State Street
Room 710
Albany, NY 12207
Tel No. (518) 447-7168

Albany County Sewer District
Attn: Richard J. Lyons
Executive Director
P.O. Box 4187
Albany, NY 12204
Tel. No. (518) 447-1611

annexed hereto as Exhibit "1".

3. Respondent, The New York State Board on Electric Generating Siting and the Environment (hereinafter "Board") is the duly organized Board with the power to adopt rules and regulations to the procedure to be used in certifying the siting of major electric facilities pursuant to Article 10 of the Public Service Law (hereinafter Article 10), enacted August 4, 2011, and the rules and regulations thereunder as set forth in Part 1000 and 1001 of the rules and regulations established under the Public Service law.

THE PROJECT

4. Petitioner, through its affiliate, intends to file an application for a Certificate of Environmental Compatibility and Public Need to construct and operate a Major Electric Generating Facility (hereinafter the "Facility") as defined in Rule 1000.2 (v) on the premises.
5. In essence, Petitioner plans to construct and operate a waste to energy facility, in which the feedstock or fuel for the facility will consist primarily of municipal solid waste (MSW).
6. Through a process known as Advanced Thermal Treatment Technologies, the Facility will convert the MSW into a combustible, BTU-rich gaseous fuel known as "syngas". The syngas is then directed to a boiler and furnace which combusts the syngas, converting its thermal energy to steam. The steam is then directed into a turbine generator for the production of clean, safe, renewable, base load, utility-scale electric power.
7. Petitioner seeks to construct and operate a facility that will process up to 1,500 tons of MSW/diem.
8. Upon information and belief, the Town of Bethlehem generates and collects approximately 100 tons of MSW/diem.
9. In order to operate the proposed waste to energy facility, Petitioner will have to import MSW produced outside of the geographic boundary of the Town of Bethlehem into the Town of Bethlehem.

DECLARATORY RULING INTRODUCTION

10. As more fully appears below there are certain local restrictions adopted by the Town of Bethlehem which restrict the ability to construct and operate a Facility.
11. Rule 1000.2, defines those local actions which are outside the processes of Article 10, as “Local Actions Not for the Construction or Operation of the Proposed Major Electric Generating Facility”.
12. Petitioner seeks a declaratory ruling as to whether the local restrictions at issue, more fully described below, are subject to the processes of Article 10 as local actions for the construction or operation of a Facility, or, whether such local restrictions are outside the processes of Article 10 as “Local Actions Not for the Construction or Operation of the Proposed Major Electric Generating Facility”.
13. This Board has the jurisdiction to issue a declaratory ruling on the within Petition in accord with the State Administrative Procedure Act (“SAPA”) § 204.
14. Petitioner seeks this declaratory ruling in advance of filing the formal application for the Certificate under Article 10 of the Public Service Law.

LOCAL RESTRICTIONS AT ISSUE

15. There are two fundamental local restrictions at issue.
16. First, the Town of Bethlehem adopted the Zoning Ordinance of the Town of Bethlehem as Chapter 128 of its local Zoning Code, on August 24, 2005, as amended August 23, 2006 (hereinafter referred to as the “Ordinance”).
17. Pursuant to the Ordinance, the premises herein is zoned Heavy Industrial (I).
18. Pursuant to Ordinance §128-9 (A) uses which are not specifically identified in the Schedule of Uses, a copy of which is annexed hereto as Exhibit “2”, “shall be deemed prohibited”. The foregoing Schedule of uses does not list a waste to energy facility, or a Major Electric Generating Facility, as either a permitted use or as a special use in any zoning district within the Town, including the Heavy Industrial Zone (I).
19. It is Petitioner’s contention that the prohibition against use of the premises as a waste

to energy facility constitutes a local restriction which unduly burdens the right to construct and/or operate a waste to energy facility on the premises.

20. Second, pursuant to § 97-11 (A) of Chapter 97 of the Code of the Town of Bethlehem, “only solid wastes generated and collected within the Town of Bethlehem and which are not otherwise prohibited will be accepted at any solid waste facility within the Town”; a copy of § 97-11 (A) is annexed hereto as Exhibit “3”.
21. As a result of the prohibition against the import of MSW generated and collected outside the Town, there will not be sufficient feedstock or fuel to service the proposed facility.
22. It is Petitioner’s contention that the prohibition against the import of MSW generated and collected outside the Town of Bethlehem constitutes a local restriction which unduly burdens the right to operate a waste to energy facility on the premises.

BOARD AUTHORITY TO SUPPLANT LOCAL LAW

23. Pursuant to Public Service Law section 168 (3) (e), Rule 1000.2 (r), and Rule 1000.31 and this Board has the jurisdiction to effectively supplant any local law which it deems unduly burdensome to the construction or operation of a facility.

DECLARATION SOUGHT

24. Petitioner seeks a declaration that the prohibition of the use of the premises as a waste to energy facility pursuant to § 128-9 (A) of the Zoning Ordinance and the prohibition against the import of MSW generated and collected outside the Town of Bethlehem pursuant to § 97-11 (A) of Chapter 97 of the Code of the Town of Bethlehem, are each local laws that directly impact the right to construct and operate a major Electric Generating Facility, and which this Board has authority to supplant each of the cited local laws under the processes of Article 10.

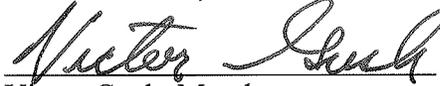
WHEREFORE, Petitioner seeks a declaration of its rights, to wit:

1. That the prohibition of the use of the premises as a waste to energy facility pursuant to § 128-9 (A) of the Zoning Ordinance of the Town of Bethlehem, and the prohibition against the import of MSW generated and collected outside the Town of Bethlehem pursuant to § 97-11 (A) of Chapter 97 of the Code of the Town of Bethlehem, are each local laws that directly impact the right to construct and operate a major Electric Generating Facility, and which this Board has authority to supplant each of the cited local laws under the processes of Article 10.
2. Such other and further relief as to this Board seems just and proper.

DATED: September 12, 2012

YOURS ETC.,

Beacon Harbor, LLC



Victor Gush, Member

LYNCH & HETMAN, PLLC



Peter A. Lynch, Esq.

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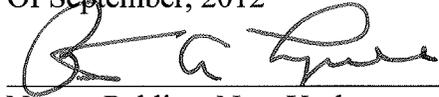
STATE OF NEW YORK
COUNTY OF ALBANY ss: VERIFICATION

Victor Gush, being duly sworn, deposes and says that deponent is a Member LMV Associates of Albany, LLC, a Member of Beacon Harbor, LLC, Petitioner in the within administrative proceeding; that deponent has read the foregoing Petition, and knows the contents thereof; that the same is true to deponent's knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true.



Victor Gush

Sworn to before me this 12 day
Of September, 2012



Notary Public – New York
My Commission Expires _____

PETER A. LYNCH
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02LY4711048
QUALIFIED IN ALBANY COUNTY 2014
COMMISSION EXPIRES AUGUST 31, _____

EXHIBIT "1"

EXHIBIT "2"

Chapter 128: ZONING

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 8-23-2006 by L.L. No. 4-2006. Editor's Note: This local law superseded former Ch. 128, Zoning, adopted 10-28-1944, readopted 3-23-1988 by L.L. No. 2-1988, as amended. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 53.
Flood damage prevention — See Ch. 69.
Freshwater wetlands — See Ch. 72.
Subdivision regulations — See Ch. 103.
Trailers and trailer camps — See Ch. 115.

ARTICLE I Introductory Provisions

§ 128-1. Short title.

This chapter shall be known and may be cited as the "Zoning Law of the Town of Bethlehem."

§ 128-2. Authority.

This chapter is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York and the Town Law of the State of New York, in conformance with the Town of Bethlehem Comprehensive Plan duly adopted by the Town Board. As stated herein, specific sections of Article 16 of the Town Law have been superseded by this chapter pursuant to the authority of § 10 of the Municipal Home Rule Law.

§ 128-3. Severability.

If any part of this chapter is declared to be invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of said chapter as a whole or any other part of said chapter. The Town Board hereby declares that it would have adopted this chapter and each part thereof irrespective of the fact that any one or more of the parts may be declared invalid.

§ 128-4. Supersession of inconsistent laws.

To the extent that this chapter is inconsistent with Town Law § 261-b, 261-c, 265-a, 267-a, 274-a, 274-b, 276, 277 or 278 or any other provision of Article 16 of the Town Law, the provisions of this chapter are expressly intended to and do hereby supersede any such inconsistent provisions.

§ 128-5. When effective.

This chapter shall take effect upon the effective date of the local law, filed with the Secretary of State, that governs this chapter. Editor's Note: This chapter became effective September 1, 2006.

§ 128-6. (Reserved)

ARTICLE II General Provisions

§ 128-7. Interpretation and applicability.

In interpreting and applying this chapter, the requirements contained herein are declared to be the minimum standards applicable to land development as regulated herein. Further, this chapter shall not be deemed to

affect, in any manner whatsoever, any easements, covenants, or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or land, or upon the erection, construction, establishment, moving, alteration, or enlargement of buildings, than is imposed by other ordinances, local laws, rules, regulations, licenses, certificates, or other authorizations, or by easements, covenants, or agreements, the provisions of this chapter shall prevail.

§ 128-8. Purpose and objectives.

A. The purpose and objectives of this chapter are:

- (1) To guide the future growth and development of the Town in accordance with the Town of Bethlehem Comprehensive Plan by encouraging the establishment of population densities that will reflect a beneficial influence considering the most appropriate use of land relative to population trends, existing land use, environmental considerations, topographical features, soil types, economic activity, and building development and recognizing such conditions and trends both within the Town and in surrounding areas.
- (2) To secure safety from fire, flood, panic, and other dangers; provide adequate light and air; prevent overcrowding of the land; and avoid undue concentration of population.
- (3) To conserve the value of land and buildings in accordance with the character of the district and its suitability for particular uses; protect the economic stability of the entire Town; and provide for orderly and beneficial growth commensurate with the availability and capacity of public facilities and services and the ability of land and natural resources to accommodate such growth.
- (4) To establish the most beneficial relationship between land use, buildings, and the circulation of traffic throughout the Town, with particular regard to the lessening of congestion, the safe and efficient movement of vehicles and pedestrians, the provision of adequate parking facilities, and convenient access appropriate to the prospective use.
- (5) To guide public policy so as to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public improvements and guide private enterprise in building development, investment, and other economic activity relating to land use and buildings.
- (6) To safeguard natural, agricultural, historic and scenic resources; prevent the contamination of public and private drinking wells and aquifers, lakes and ponds, and freshwater wetlands and watercourses; and preserve the integrity, stability, and beauty of the community.
- (7) To assure privacy for residences and freedom from nuisances and harmful, unsightly uses and protect the community against unsightly, obtrusive, and noisome land uses and operations.
- (8) To facilitate, as far as environmental conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.

B. The regulations contained herein have been made in accordance with the Comprehensive Plan of the Town of Bethlehem, with reasonable consideration as to the character of land and the extent of development in each district, as well as the suitability of each district for particular uses.

§ 128-9. Conformity required.

- A. Uses. Following the effective date of this chapter, any use not identified in the Schedule of Uses, § 128-99 of this chapter, shall be deemed prohibited. No building or lot shall be used for any purpose or in any manner except in conformity with all regulations, requirements and/or restrictions specified in this chapter for the district in which such building or lot is located. Where permitted uses are identified by generic words or descriptions, the Zoning Board of Appeals shall determine whether a specific use shall be construed to be part of such generic class. In making such determination, the Zoning Board of Appeals shall consider to what extent the proposed use is similar to the class of use indicated in the Schedule of Uses.
- B. Buildings. After the effective date of this chapter, no building shall be erected, moved, altered, rebuilt, enlarged, designed or arranged to be used for any purpose or in any manner except in conformity with the regulations, requirements and/or restrictions specified in this chapter for the district in which such building is located.
- C. Lots. After the effective date of this chapter, no lot shall be built upon unless it is a buildable lot as defined herein.

ZONING

128 Attachment 1

Town of Bethleheim

Schedule of Uses

[Amended 10-8-2008 by L.L. No. 3-2008; 2-8-2012 by L.L. No. 1-2012]

	Rural ¹ (R)	Residential Large Lot (RLL)	Residential "A" (RA)	Residential "B" (RB)	Residential "C" (RC)	Core Residential (CR)	Multi- family (MR)	Rural Riverfront (RR)	Hamlet (H)	Commercial Hamlet (CH)	Rural Hamlet (RH)	General Commercial (C)	Mixed Economic Development ¹¹ (MED)	Heavy Industrial (I)	Rural Light Industrial (RLI)
Residential Uses															
One-family dwelling	BR	BR	BR	BR	BR	BR	BR	BR	BR	BR	BR	BR ¹⁴	BR ¹⁴	BR ¹⁴	BR
Single-family attached dwelling ¹⁵					SP ¹⁶		SP ¹⁶		SP ¹⁶	SP ¹⁶	SP ¹⁶		SP ¹⁶		BR
Two-family dwelling	BR				BR		SP	SP	SP	SP	SP				BR
Three- or four-family dwelling	BR				BR		SP	SP	SP	SP	SP				BR
Multifamily dwelling	SP						SP	SP	SP	SP	SP		SP ^{2b}		SP
Senior citizen housing							SP		SP	SP	SP				
Accessory apartment ⁶	BR	SUP	SUP	SUP	SUP	SUP		SUP	SUP	SUP	SUP				BR
Nonresidential Uses															
Adult business use ⁹														SUP	
Agriculture, agricultural use	BR	SP ³	SP ³	SP ³	SP ³	SP ³	SP ³	BR	SP ³	SP ³	BR	SP ³	SP ³	BR	BR
Airport														BR	SUP
Animal hospital, animal clinic	SP								SP	SP	SP	SP		SUP	SP
Appliance repair	SP									SP	SP	SP		SP	SP
Automobile salvage and reclamation yards and facilities														SUP	
Banks and financial institutions															
Bed-and-breakfast	SP	SP	SP ¹²	SP	SP	SP ¹²	SP	SP	SP	SP	SP	SP	SP ^{2b}	SP	SP
Beverage bottling, distribution and warehousing															
Broadcasting facilities, FCC licensed	BR									SP		SP			BR
Build storage of materials														SUP	
Business office	BR		SP ¹²			SP ¹²			SP	SP		SP		SP	BR
Car wash														SP	BR
Cemetery, public	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SP ^{2b}	SUP	SUP
Club, fraternity, lodge	SP		SP ¹²			SP ¹²	SP							SUP	SP
Cold storage facilities	SP													SUP	SP
Commercial bakery, no retail sales	SP													SUP	SP
Commercial recreation	SUP							SUP			SUP	SUP		SUP	SP
Concrete and asphalt plants														SUP	SP
Conference center														SUP	SP
Conservancy	SP	SUP	SUP	SUP	SUP	SUP	SUP	SP	SP	SP	SP	SP	SP ^{2b}	SP	SP

BETHLEHEM CODE

	Rural' (R)	Residential Large Lot (RLL)	Residential "A" (RA)	Residential "B" (RB)	Residential "C" (RC)	Core Residential (CR)	Multi-family (MR)	Rural Riverfront (RR)	Hamlet (H)	Commercial Hamlet (CH)	Rural Hamlet (RH)	General Commercial (C)	Mixed Economic Development ¹¹ (MED)	Heavy Industrial (I)	Rural Light Industrial (RLI)
Contractors' yards, offices and storage buildings, including general contractors, landscape contractors, plumbers, electricians, heating, ventilating and air-conditioning contractors, masons, painters, refrigeration contractors, excavators, roofing contractors, and other such construction occupations	SP													SP	SP
Convenience store, mini mart	SP								SP	SP	SP	SP	SP ^{2b}		SP
Day camp, vacation campground ⁴	SP							SP							SP
Day-care center	SP	SP	SP ²²	SP	SP	SP ¹²	SP	SP	SP	SP	SP		SP ^{2b}		SP
Distribution centers	SP													SP	SP
Educational institution	SP	SP	SP ¹²	SP	SP	SP ¹²		SP	SP	SP	SP		SP ^{2b}		SP
Fabrication shop	SP													SP	SP
Farm equipment rentals, sales and repair	SP								SP	SP	SP	SP	SP ^{2b}		SP
Fitness clubs	SP														SP
Food processing establishment	SP														SP
Garage, commercial	SP									SP		SP			SP
Garage, commercial storage	SP									SP		SP			SP
Grain storage, processing and distribution														SP	SUP
Heavy equipment sales, rental and service														SP	SP
Home occupations ⁵	BR	SP	SP	SP		SP		SP	SP	SP	SP				BR
Hospital									SP	SP	SP				
Hotel, motel										SP	SP	SP	SP ^{2b}		SP
House of worship	SP	SP	SUP	SUP	SUP	SUP	SUP	SP	SP	SP	SP	SP	SP ^{2b}	SP	SP
Ice production, storage, sales and distribution															
Indoor theater									SP	SP	SP	SP			
Industrial park															
Inn	SP							SP	SP	SP	SP		SP ^{2a}	SP	SP
Junkyard															
Kennel ⁶	SUP										SUP	SUP		SUP	SUP
Laboratories for research, testing and experimental purposes, including offices for research and development													SP ^{2a}	SUP	SUP
Laboratories, medical										SP	SP		SP ^{2a}	SP	SP
Laundry, dry-cleaning service									SP	SP	SP	SP	SP ^{2b}	SP	SP

ZONING

	Rural' (R)	Residential Large Lot (RLL)	Residential "A" (RA)	Residential "B" (RB)	Residential "C" (RC)	Core Residential (CR)	Multi-family (MR)	Rural Riverfront (RR)	Hamlet (H)	Commercial Hamlet (CH)	Rural Hamlet (RH)	General Commercial (C)	Mixed Economic Development' (MED)	Heavy Industrial (I)	Rural Light Industrial (RLI)
Library, museum or art gallery									SP	SP		SP			
Lumberyard, mill	SP													SP	SP
Manufacturing of computers, computer peripherals, electrical appliances, electronic equipment, medical instruments, and other similar products from previously manufactured components; manufacturing of precision instruments and equipment, such as watches, electronics equipment, photographic equipment, optical goods and similar products													SP ^{2a}		
Manufacturing of products and merchandise involving the use of chemicals, processes or materials that might constitute a potential explosive or environmental hazard														SP	
Manufacturing of articles or merchandise from previously prepared or natural materials such as cardboard, cement, cloth, cork, fiber, glass, leather, paper, plastics, wood, metals, stones and other such prepared materials; printing and publishing														SP	SP
Marina								SUP					SP ^{2b}	SUP	
Mining, mineral extraction'	SUP													SUP	SUP
Mortuary, undertaker, no cremation									SP	SP	SP			SUP	SP
Motor vehicle repair shop	SP									SUP	SUP	SUP		SP	SP
Motor vehicle sales	SP									SUP	SUP	SUP		SP	SP
Motor vehicle service station	SUP									SUP	SUP	SUP		SUP	SUP
Nursery	BR								SUP	SUP	SUP	SUP		SUP	BR
Nursery school	SP		SP ²	SP	SP	SP ²	SP	SP	SP	SP	SP		SP ^{2b}		SP
Nursing home, convalescent home							SP			SP					
Office park													SP ^{2a}		SP
Outdoor drive-in theater	SP								SUP		SUP				
Outdoor theater															
Packaging facilities															
Processing or production of oil, natural gas, geothermal resources or other hydrocarbons														SP	SUP
Professional office	BR		SP ²	SP	SP	SP ²			SP	SP	SP	SP	SP ^{2a}		BR

BETHLEHEM CODE

	Rural' (R)	Residential Large Lot (RLL)	Residential "A" (RA)	Residential "B" (RB)	Residential "C" (RC)	Core Residential (CR)	Multi- family (MR)	Rural Riverfront (RR)	Hamlet (H)	Commercial Hamlet (CH)	Rural Hamlet (RH)	General Commercial (C)	Mixed Economic Development ¹¹ (MED)	Heavy Industrial (I)	Rural Light Industrial (RLI)
Public transportation terminal									SUP	SUP	SUP	SUP	SUP		SUP
Public utilities												SP	SP ^{3b}		
Religious camp or retreat	SP							SP							SP
Residential care facility	SP						SP	SP	SP	SP	SP	SP			SP
Restaurant, no drive-through	SP							SP	SP	SP	SP	SP			SP
Restaurant, with drive-through										SUP	SUP	SUP			
Retail business	BR								SP	SP	SP	SP			BR
Riding academy	BR							SUP							BR
Service business	SP								SP	SP	SP	SP			SP
Shopping center, shopping mall										SP	SP	SP			
Slaughter plants, packing houses, animal by-products rendering, and other such animal processing activities														SUP	
Taxi service	SP														
Telecommunication facilities, collocated facilities ²⁰	BR	BR	BR	BR	BR	BR	BR	BR	BR	BR	BR	BR	BR	BR	BR
Telecommunication facilities, noncollocated facilities ²⁰	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP ^{2b}	SUP	SUP
Trucking business, fuel delivery, no bulk storage	SP														
Transportation terminal, delivery service, moving and storage facilities, truck maintenance														SUP	
Wellness center	SP		SP ²	SP	SP	SP ²			SP	SP	SP	SP	SP ^{2b}	SP	SP
Wholesaling, warehouse, self-storage facilities														SP	SP

KEY:

BR -- Designates a use allowed by right, subject to building permit and certificate of occupancy for certain improvements.

SP -- Designates a use allowed subject to site plan approval.

SUP -- Designates a use permitted subject to special use permit and site plan approvals and the special permit criteria of § 128-69F in addition to the criteria of Article VIII for certain designated uses.

Any use which is not designated BR, SP or SUP is prohibited.

NOTES:

¹ Rural District structures for nonagricultural and nonresidential uses limited to 4,000 square feet or less. Agricultural uses are exempt from this size limitation.

^{2a} Permitted as a primary use.

^{2b} Permitted as a secondary use. See § 128-37 for special rules regarding limitations on secondary uses in a Mixed Economic Development District.

³ In the RLL, RA, RB, RC, CR, MR, H, CH, C and MED Districts agricultural uses in existence as of the effective date of this chapter and agricultural uses located in a county agricultural district are permitted by right. For new agricultural uses,

the seasonal planting of crops will be exempt from site plan review. For instances where site plan review is required, the Planning Board shall refer to Site Plan Process Guidelines as set forth by the Commissioner of Agriculture and Markets.

⁴ Subject to criteria in § 128-64.

⁵ Subject to criteria in § 128-50.

⁶ Subject to criteria in § 128-73.

⁷ Subject to criteria in § 128-77.

⁸ Subject to criteria in § 128-76.

⁹ Subject to criteria in § 128-74.

ZONING

- ¹⁰ See special rules for telecommunication facilities in § 128-61.
- ¹¹ See § 128-37 for special requirements regarding approval of a development master plan prior to site plan review and limitations on the amount of permitted floor area for permitted secondary uses.
- ¹² Adaptive reuse of existing residential structure only as defined in §§ 128-27 and 128-30. Expansion of the existing building footprint is permitted up to 15% of the total lot area.
- ¹³ Allowed as accessory use to a motor vehicle service station.
- ¹⁴ One-family dwellings that were in existence as of the effective date of this chapter shall be considered a use permitted by right. All other one-family dwellings shall be prohibited.
- ¹⁵ See § 128-100C for special requirements applying to single-family attached dwellings.
- ¹⁶ In the Residential C District single-family attached dwellings shall be permitted only in buildings containing four or less dwelling units.

EXHIBIT "3"

SOLID WASTE FACILITY

Any facility within the Town of Bethlehem distinguished as a depository or holding or transfer point for solid wastes, including but not limited to sanitary landfills, landfills, transfer stations, recycling facilities, construction and demolition debris landfills, materials recovery facilities, incinerators, waste-to-energy plants or such other facilities that are or shall be designated as such by any law, rule or regulation of the United States, the State of New York or any ordinance, rule or regulation of the Town of Bethlehem. This term shall also include those dumps or dumping grounds or approved waste excavation material disposal sites referred to in Article I of this chapter.

WASTE EXCAVATION MATERIAL

As defined in § 97-1 of this chapter.

§ 97-11. Rules and regulations.

- A. Only solid wastes generated and collected within the Town of Bethlehem and which are not otherwise prohibited will be accepted at any solid waste facility within the Town or at any public dump or dumping ground authorized pursuant to Article I of this chapter.
- B. The Town may contract from time to time with another municipality or private person to accept solid waste, and such waste may be accepted at a solid waste facility within the Town in accordance with such a contract.
- C. All vehicles used to collect or transport solid waste shall be equipped with a means of covering the waste and/or of keeping such waste within the hauling body so as to comply at all times with the pertinent provisions of the New York State Vehicle and Traffic Law relating to littering and/or throwing refuse on highways, as set out in §§ 1219 and 1220 thereof, and any amendments thereof or additions to said act.
- D. No vehicle shall be allowed to enter or discharge solid waste at any solid waste facility within the Town unless it displays an appropriate permit sticker.
- E. Any person entering or utilizing a solid waste facility shall adhere to the rules and regulations of said facility, as well as all other laws, ordinances, rules or regulations of the State of New York, County of Albany, Town of Bethlehem or other governmental entity in regards to the collection, transportation or disposal of solid waste, and also must follow the instructions of the attendant on duty.
- F. Access to any solid waste facility shall be limited to those times as posted and when authorized personnel are on duty.
- G. All persons who collect, transport or dispose of solid wastes in the Town of Bethlehem must obtain a permit for such purposes from the Town of Bethlehem in addition to such other permits or approvals that may be required by law, rule or regulation of the State of New York, County of Albany, Town of Bethlehem or other governmental entity.
- H. No waste excavation material shall be deposited or accepted for deposit at any solid waste facility or other location within the Town unless a permit therefor has been issued pursuant to Article I of this chapter.
- I. No municipal solid waste facility within the Town shall be used for the collection or disposal in any manner of any hazardous waste, nor shall any person collect or dispose of any hazardous waste at any municipal solid waste facility with the Town. However, notwithstanding this provision, the Town of Bethlehem may operate or sponsor, and enter into contracts related thereto, one or more collection days so that household hazardous waste generated by Town residents may be accepted for disposal by or on behalf of the Town.
- J. The Superintendent of Highways may, by way of regulation approved by the Town Board, establish such additional, other or further rules, requirements and procedures concerning the collection,

