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Johnston Zoning Board of Review

100 Irons Avenue, Johnston, Rhode Island 02919
(401) 231-4135 — Fax: (401) 231-4181

April 27, 2010

Rhode Island Resource Recovery Corporation
Rhode Island Central Genco, LLC
c/o Richard Licht, Esquire
Adler, Pollock, and Sheehan P.C.
One Citizens Plaza
Providence, RI 02903

Bk: 2068 Pg: 267
INST: 00091281

Dear Applicant:

The following decision has been rendered on your petition, heard by the Zoning Board of Review of the Town of Johnston on March 25, 2010 for a Special Use permit and Dimensional Variances for the construction of an electric power generating plant, high transmission lines, electrical power substation, and office building on the subject premises on Shun Pike, on Assessor's Plat 31, Lots 45, 46, 47, 49, 55, 58, and 61. Special Use permit being required pursuant to Article III, Section D, Table III D-1; Subsection 5.1, 5.2, 5.3, 5.5, and 5.13 and Dimensional Relief under Article III, Section F, Table III-F-1 of the Zoning Ordinance of the Town of Johnston.

At the hearing, Stephen Galowitz, David Bibayan, and Thomas Sweeney testified on behalf of the Applicant, all of whom the Board accepted as qualified expert witnesses.

Stephen Galowitz described the project and testified that the project consisted of the installation of a 42-MW, landfill gas-fired combustion turbine combined cycle electric generation plant and the construction of a landfill gas treatment system. Mr Galowitz testified that an affiliate of Applicant currently operates an electric generation plant at the Central Landfill. Mr. Galowitz explained that the existing plant is in the area which the Rhode Island Resource Recovery Corporation ("RIRRC") needs for the expansion of the landfill and, therefore, Applicant entered into an agreement with RIRRC to relocate the plant. Mr. Galowitz explained that the project will save Rhode Island Resource Recovery \$5,000,000 per year in operational costs. Additionally, Mr. Galowitz explained the significant environmental benefits of the project which include (i) capturing the landfill gases greenhouse will reduce methane emissions, (ii) capturing the landfill gases will reduce odors in the neighborhood, (iii) creating renewable energy will reduce the need to use fossil fuels for electricity production and (iv) the new gas cleanup system will remove impurities like sulfur from the gas which are currently being admitted into the atmosphere.

Mr. Bibayan testified about the process and explained how the gas is cleaned and converted into electricity. Mr. Bibayan further explained the need for dimensional variances. Mr. Bibayan testified that the relief for the setbacks is due to the constraints of Shun Pike and the topography of the landfill and RIDEM wetlands permit. Additionally, Mr. Bibayan testified that the height of the poles for the CTCC Electric Generation Plant and the easement area is dictated by the height of the transmission lines, code requirements, safety concerns and regulations of National Grid. Mr. Bibayan testified that the height of the stacks on the gas turbines is dictated by (i) safety concerns due to the fact that the by-product of the turbine process produces an excess amount of heat which feeds stem-

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driven electric generators, and (ii) the operational necessity to have the stacks sufficiently higher than the air intake handlers. The height of the building that houses the steam turbine is dictated by the size of the machinery.

Mr. Sweeney submitted a report of his findings which was incorporated into the record and further testified that he is familiar with the site and that the proposed use is currently being operated at the landfill. Mr. Sweeney explained that the site is in an industrial zoning district and there is a 550MW facility located in close proximity to the proposed site.

There was no contradictory expert testimony presented.

After completion of testimony and evidence at the public hearing for with due notice was given and a record kept, and after having considered the premises and surrounding area, the Zoning Board of Review of the Town of Johnston taking into consideration its knowledge and expertise and after taking into consideration all of the testimony at the public hearing, makes the following findings and decision:

1. The subject property in known as Assessor's Plat 31, Lots 45, 46, 47, 49, 55, 58, and 61, and contains approximately 116.78 acres.
2. The Applicant has a contractual right to seek the relief requested and the Owner of the subject premises has joined in on the petition.
3. The Applicant is proposing construction of an electric power generating plant, high transmission lines, electrical power substation, and office building on the subject premises on Shun Pike.
4. A special use permit and dimensional variances are required for the proposed use.
5. The Dimensional Variances are petitioned under Article III, Section F, Table III-F-1 as below:

	DIMENSION	MINIMUM REQUIRED	PROPOSED	RELIEF REQUESTED
SETBACK:	— FRONT	50'	20'	30' Lots 49, 45, 46
	— LEFT	50'	20'	30' Lot 46
	— RIGHT	50'	20'	30' Lots 49, 55
	HEIGHT	40'	80'	40' Lots 58, 55, 49, 46, 45
	HEIGHT	40'	120'	80' Lots 47, 61

6. The premises in question are located in an Industrial zone.
7. The area surrounding the subject property contains Industrial use parcels.
8. The Board found as a fact that the Applicant did not create its own hardship. The hardship was created by DEM regulations and wetlands.
9. The Board found that there are already power creating technology plants on the area thus the addition of this use at the subject premises will not alter the general character of the area and will be compatible with the neighboring uses.

10. The Board found that the granting of a special use permit will be environmentally compatible with neighboring properties because the expert testimony which was not rebutted was that the cleansing of the gases emitted from landfill to generate the energy are not toxic.

Based upon the foregoing, the Board grants the application for a Special Use permit and Dimensional Variances.

As to the Special Use Permit:

1. That granting of the special use permit is compatible with neighboring uses and will not adversely effect the surrounding neighbors use and enjoyment of their property;
2. That granting of the special use permit is environmentally compatible with the neighboring properties and protection of property values;
3. That granting of the special use permit is compatible with the orderly growth and development of the Town of Johnston, and is not environmentally detrimental therewith;
4. The board has considered the best practices and procedures to minimize the possibility of any adverse effect on any neighboring property in the Town of Johnston and the environment including but limited to a consideration of soil erosion, water supply protect, septic disposal, wetland protection, traffic limitation, safety and circulation;
5. The purpose of this zoning ordinance as set forth in the comprehensive plan will be served by said special use permit;
6. The special use permit will substantially serve public convenience and welfare;
7. That granting of the special use permit will not result in or create a condition that will be inimical to the public health, safety, morals and general welfare of the community.
8. This special use permit does not give the Applicant any consent to expand the project beyond the scope in the application . Any expansion beyond such scope shall subject applicant to review of this application by the Zoning Board of Review; and potential withdrawal of said approval; and the Applicant understands the Town shall not be liable for any damages in detrimental reliance on this Special Use permit if Applicant expands the project beyond the parameters of what was testified to at the hearing.
9. The Applicant shall use only licensed tradesmen.
10. The Applicant shall take every precaution necessary as required by law to assure that hazardous chemicals that may be emitted or created as a result of this process be handled and either disposed of or changed in a proper fashion consistent with the law.
11. Applicant will pay prevailing wages for all work done on the project.

As to the Dimensional Variances:

1. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant;

2. The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
3. The granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this Ordinance or the Comprehensive Plan upon which this Ordinance is based;
4. The relief granted is the least necessary.
5. This variance is subject to all the conditions and Stipulations discussed during the hearing and any representations or assurances testified to by Applicant are incorporated in this Decision as a condition of this approval.

This grant shall be active with a building permit/certificate of occupancy within one (1) year of the date hereof, unless extended by the Board, or it shall become null and void.

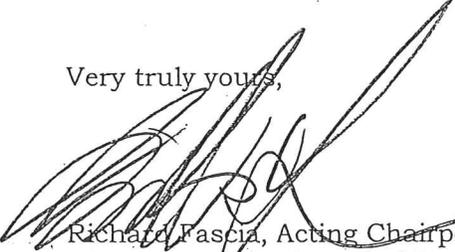
Motion to grant was made by Member Pilozzi and seconded by Alternate Member Frezza.

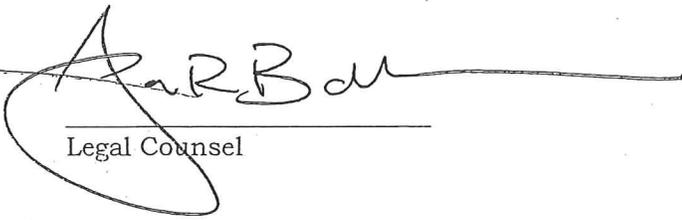
Alternate Member Cardillo:	Aye
Alternate Member Frezza:	Aye
Member Anzelone:	Aye
Member Pilozzi:	Aye
Vice Chairperson Fascia	Aye

- Chairperson Aurecchia recused himself

Very truly yours,

Approved as to form:


Richard Fascia, Acting Chairperson
Johnston Zoning Board of Review



Legal Counsel

cc: Bernard J. Nascenzi, Director of Building Operations
John O'Brien, Acting Chief for Statewide Planning
Counsel of Record

VINCENT P. BACCARI JR.
TOWN OF JOHNSTON
TOWN CLERK
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