

General Civil Case Filing Information Form (Non-Domestic)

Court _____ County Elbert Date Filed _____
☒ Superior MM-DD-YYYY
☐ State Docket # _____

Name of Plaintiffs:

SWEET CITY LANDFILL, LLC, a
Georgia Limited Liability Company,
RUSTY ADAMS, and JACK STOVALL,
JR.,

Name of Defendants:

ELBERT COUNTY, GEORGIA; The Board of Commissioners of
ELBERT County, Georgia; RUSSELL T. ("TOMMY") LYON, W. D.
ALBERTSON, FRANK EAVES, HORACE HARPER, JERRY
HEWELL, and JOHN HUBBARD, in their official capacities as members
of the Board of Commissioners of Elbert County, Georgia, and
GREENFIRST, LLC, a Georgia Limited Liability Company

Plaintiffs' Attorney:

George E. Butler II
Bar #099575

No. of Defendants 9

Check Primary Type (Check only ONE)	If Tort is Case Type (Check no more than TWO)
<input type="checkbox"/> Contract/Account	<input type="checkbox"/> Auto Accident
<input type="checkbox"/> Wills/Estate	<input type="checkbox"/> Premises Liability
<input type="checkbox"/> Real Property	<input type="checkbox"/> Medical Malpractice
<input type="checkbox"/> Dispossession/Distress	<input type="checkbox"/> Other Professional Negligence
<input type="checkbox"/> Personal Property	<input type="checkbox"/> Product Liability
<input type="checkbox"/> Equity	<input checked="" type="checkbox"/> Other Specify <u>Civil Rights</u>
<input type="checkbox"/> Habeas Corpus	
<input type="checkbox"/> Appeals, Reviews	Are Punitive Damages Pleaded? <input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> Post Judgment Garnishment, Attachment or Other Relief	
<input type="checkbox"/> Non-Domestic Contempt	
<input type="checkbox"/> Tort (If tort, fill in right column)	
<input checked="" type="checkbox"/> Other General Civil Specify <u>Land Use Challenge</u>	

[SAMPLE]

SHERIFF'S ENTRY OF SERVICE — SC-85-2

Civil Action No. _____

Date Filed _____

Plaintiff / Plaintiffs Attorney's Name and Address

George E. Butler II
132 Hawkins Street
Dahlonega, GA 30533

Name and Address of Party to be Served.

ELBERT COUNTY, GEORGIA
c/o Hon Tommy Lyon
Chairman, Elbert County Board of Commissioners
Elbert County Government Complex
45 Forest Avenue
Elberton, GA 30635

Superior Court ☒ Magistrate Court ☐
State Court ☐ Probate Court ☐
Juvenile Court ☐

SWEET CITY LANDFILL, LLC, a Georgia
Limited Liability Company, RUSTY ADAMS,
and JACK STOVALL, JR.,

Plaintiffs,

VS.

ELBERT COUNTY, GEORGIA; The Board of
Commissioners of ELBERT County, Georgia;
RUSSELL T. ("TOMMY") LYON, W. D.
ALBERTSON, FRANK EAVES, HORACE
HARPER, JERRY HEWELL, and JOHN
HUBBARD, in their official capacities as members
of the Board of Commissioners of Elbert County,
Georgia, and GREENFIRST, LLC, a Georgia
Limited Liability Company,

Defendants.

SHERIFF'S ENTRY OF SERVICE

PERSONAL

I have this day served the defendant _____ personally with a copy
☐ of the within action and summons.

NOTORIOUS

I have this day served the defendant _____ by leaving a
copy of the action and summons at his most notorious place of abode in this County.
☐ Delivered same into hands of _____ described as follows:
age, about _____ years; weight _____ pounds; height, about _____ feet and _____ inches, domiciled at the residence of
defendant.

CORPORATION

Served the defendant _____ a corporation
☐ by leaving a copy of the within action and summons with _____
in charge of the office and place of doing business of said Corporation in this County.

TACK & MAIL

I have this day served the above styled affidavit and summons on the defendant(s) by posting a copy of the same to the door of the premises designated in said
affidavit, and on the same day of such posting by depositing a true copy of same in the United States Mail. First Class in an envelope properly addressed to the
defendant(s) at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s) to answer said summons at the
place stated in the summons.
☐

NON EST

Diligent search made and defendant _____
☐ not to be found in the jurisdiction of this Court.

This _____ day of _____, 20 _____.

DEPUTY

IN THE SUPERIOR COURT OF ELBERT COUNTY

STATE OF GEORGIA

SWEET CITY LANDFILL, LLC, a Georgia Limited Liability Company, RUSTY ADAMS, and JACK STOVALL, JR.,

Plaintiffs,

v.

ELBERT COUNTY, GEORGIA; The Board of Commissioners of ELBERT County, Georgia; RUSSELL T. ("TOMMY") LYON, W. D. ALBERTSON, FRANK EAVES, HORACE HARPER, JERRY HEWELL, and JOHN HUBBARD, in their official capacities as members of the Board of Commissioners of Elbert County, Georgia, and GREENFIRST, LLC, a Georgia Limited Liability Company,

Defendants.

CIVIL ACTION FILE

NO. _____

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said Court and serve upon the Plaintiff's attorney, whose name, address, and phone number are:

George E. Butler II
132 Hawkins Street
Dahlonega, Georgia 30533
(706) 864-3200

an answer to the Complaint for Declaratory Judgment, which is herewith served upon you, within 30 days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This _____ day of December, 2009.

Pat V. Anderson
Clerk of Superior Court

By _____
Deputy Clerk

To Defendant upon whom this Complaint is served:

This copy of Complaint and Summons was served upon you _____, 20____.

Deputy Sheriff

ORIGINAL

IN THE SUPERIOR COURT OF ELBERT COUNTY

STATE OF GEORGIA

FILED & RECORDED

2009 DEC 16 PM 3:57

PAUL V. ANDERSON
CLERK
ELBERT SUPERIOR COURT

**SWEET CITY LANDFILL, LLC, a Georgia
Limited Liability Company, RUSTY ADAMS, and
JACK STOVALL, JR.,**

Plaintiffs,

v.

**ELBERT COUNTY, GEORGIA; THE BOARD
OF COMMISSIONERS OF ELBERT COUNTY,
GEORGIA; RUSSELL T. ("TOMMY") LYON,
W. D. ALBERTSON, FRANK EAVES, HORACE
HARPER, JERRY HEWELL, and JOHN
HUBBARD in their official capacities as members
of the Board of Commissioners of Elbert County,
Georgia; and GREENFIRST, LLC, a Georgia
Limited Liability Company,**

Defendants.

CIVIL ACTION FILE

NO. 09EV940 M

**VERIFIED COMPLAINT
FOR THE INVALIDATION OF A LAND USE DECISION AND/OR FOR
ALTERNATIVE DECLARATORY AND INJUNCTIVE RELIEF**

**COME NOW PLAINTIFFS, SWEET CITY LANDFILL, LLC, a Georgia Limited
Liability Company, RUSTY ADAMS, and JACK STOVALL, JR. ("hereinafter collectively,
Plaintiffs"), by and through their counsel of record, and file this their Verified Complaint for**

the Invalidation of a Land Use Decision and/or for Alternative Declaratory and Injunctive Relief, respectfully showing the Court the following:

I. Introduction

1.

This action constitutes a substantive and procedural challenge by Plaintiffs to a recent land use decision, whereby the Defendant Elbert County Board of Commissioners (“BOC”) on November 16, 2009, purported to amend §§62-51 through 62-55 of Article III of Chapter 62 (“Solid Waste”) of the Elbert County Code of Ordinances (hereinafter, “Solid Waste Disposal Ordinance”), which were originally adopted by the Board of Commissioners on August 14, 2006, to require a special use permit from Elbert County for new private waste disposal or storage sites or landfills.

2.

As a result of the purported amendment to the Solid Waste Disposal Ordinance (hereinafter, “Solid Waste Amendment”), the critical definition of what constituted a regulated “private disposal site” requiring a special use permit was fundamentally changed from “any landfill, waste disposal area, or waste storage area intended to be used by the owner or used by others for the disposal or storage of waste [as broadly defined elsewhere in §62-51] that is not owned or operated by Elbert County” to provide that thenceforth a regulated “[p]rivate disposal site, landfill, waste disposal area, and waste storage area” under the Solid Waste Disposal Ordinance shall mean:

[A] municipal solid waste landfill, is that term as defined in the Georgia Solid Waste Management Act in effect on the effective

date of this amendment, that is not owned or operated by Elbert County, but shall not include a private industry solid waste disposal facility, or a waste-to-energy facility receiving biomass or municipal solid waste, or any landfill or waste storage or disposal area associated with and under the same ownership as such a waste-to-energy facility located in Elbert County, as such facilities are defined in said act.

(Emphasis added.)

3.

Alternatively, Plaintiffs seek a declaratory judgment that either (i) the landfill gas waste-to-energy facility and co-owned municipal solid waste landfill being proposed for Elbert County by Plaintiff Sweet City Landfill, LLC, qualifies for the new “waste-to-energy facility” exemption purportedly created by the Solid Waste Amendment or (ii) that the Solid Waste Disposal Ordinance, As Amended, is *inter alia* facially unconstitutional and null and void and violative of the rights of Sweet City under the Commerce Clause of the U. S. Constitution.

II. The Parties

4.

Plaintiff **SWEET CITY LANDFILL, LLC** (“Sweet City”) is a Georgia limited liability company that received inadequate notice of the November 16, 2009, public hearing by the BOC that was purportedly held to adopt the Solid Waste Amendment; and, as a result, it had no representatives present at such hearing.

5.

Sweet City has a joint venture agreement, lease, and purchase option with Elberton Timberlands, LLC, for the development of a Landfill Gas Waste-to-Energy Facility (“LFG”) and related Municipal Solid Waste Landfill (“MSWLF”) and Materials Recovery Facility (“MRF”) on all or a portion of an approximately 5,250-acre tract in and around the intersection of Sweet City Road and Stinchcomb Road in Elbert County, Georgia, being more particularly described on the Exhibit “A” attached hereto and by this reference made a part hereof.

6.

Beginning in the Summer of 2009, Sweet City approached officials with Defendant Elbert County about its intent to site in Elbert County a state-of-the-art MSWLF, as defined in the Georgia Solid Waste Management Rules of the Department of Natural Resources (“DNR”), §391-3-4-.01(38), which would be comprehensively regulated by the Environmental Protection Division (“EPD”) of the DNR pursuant to the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. §§12-8-20 *et seq.*, and the aforesaid Georgia Solid Waste Management Rules found in Chapter 391-3-4 of the Georgia Administrative Code. That initial plan for an MSWLF has grown to include an LFG and MRF.

7.

The LFG/MSWLF/MRF being proposed by Sweet City would be located on proposed Site 2, as depicted on Exhibit “A,” which contains approximately 500 acres and is part of

Elbert County Tax Parcel 002 027 (the “Site”); and the Site lies within the outer perimeter of the five thousand two hundred fifty (5,250) acres now being leased by Sweet City Landfill, LLC, with a purchase option from Elberton Timberlands, LLC. A Site Plan for the proposed LFG/MSWLF/MRF is attached hereto as Exhibit “B” and by this reference made a part hereof.

8.

Plaintiff Sweet City fears the impact of both the Solid Waste Disposal Ordinance and Solid Waste Amendment on the viability of its proposed LFG/MSWLF/MRF.

9.

Sweet City anticipates at least a ninety percent (multi-million dollar) diminution in the value of the Site if the Solid Waste Disposal Ordinance and Solid Waste Amendment are allowed to stand, that is, unless its proposed LFG/MSWLF/MRF qualifies for the new exemption from the Solid Waste Disposal Ordinance created by the Solid Waste Amendment.

10.

Plaintiff **RUSTY ADAMS** is an individual citizen and resident of Elbert County, Georgia, whose address is 1500 Willow Oak, Elberton, Georgia 30635; he is a Member of Sweet City Landfill, LLC; and he received inadequate notice of the November 16, 2009, public hearing purportedly held by the BOC on the Solid Waste Amendment—and, as a result, he failed to attend that public hearing.

11.

Plaintiff **JACK STOVALL, JR.**, is an individual citizen and resident of Elbert County, Georgia, whose address is 1046 Flagstone Road, Elberton, Georgia 30635; he is a Member of Sweet City Landfill, LLC; and he received inadequate notice of the November 16, 2009, public hearing purportedly held by the BOC on the Solid Waste Amendment—and, as a result, he failed to attend that public hearing.

12.

Defendant **ELBERT COUNTY, GEORGIA** (“Elbert County”) is a political subdivision of the State of Georgia with the power to sue and be sued and may be served with process by serving Hon. Tommy Lyon, Chairman of the Elbert County Board of Commissioners, at his office located in the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

13.

Defendant **ELBERT COUNTY BOARD OF COMMISSIONERS** (“BOC”) is the governing authority of Elbert County, Georgia, and is empowered by general statute by the Georgia Constitution of 1983, As Amended, to enact and implement land use regulations. The BOC may be served with process by serving Hon. Tommy Lyon, Chairman of the Elbert County Board of Commissioners, at the address listed in Paragraph 12 above.

14.

Defendant **RUSSELL T. (“TOMMY”) LYON** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County,

Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

15.

Defendant **W. D. ALBERTSON** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

16.

Defendant **FRANK EAVES** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

17.

Defendant **HORACE HARPER** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

18.

Defendant **JERRY HEWELL** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government

Complex, 45 Forest Avenue, Elberton, Georgia 30635.

19.

Defendant **JOHN HUBBARD** is a resident of Elbert County, Georgia, and serves as a Commissioner on the Board of Commissioners of Elbert County, Georgia, which is the County's governing body; and may be served with process at the Elbert County Government Complex, 45 Forest Avenue, Elberton, Georgia 30635.

20.

Defendant **GREENFIRST, LLC** ("GreenFirst") is an Alabama Limited Liability Company, which is developing a proposed waste-to-energy facility ("W2E Facility") and associated solid waste landfill in Elbert County that is the subject of pending DRI Review #2081 with the Northeast Georgia Regional Commission and that would be a direct competitor with the LFG/MSWLF/MRF being proposed by Sweet City, and which actively and successfully lobbied the BOC to adopt the Solid Waste Amendment on its behalf; and it may be served with process by serving its Registered Agent, Corporation Service Company, at 40 Technology Parkway South, Norcross, Georgia 30092.

III. Jurisdiction & Venue

21.

This Court has jurisdiction to adjudicate this action based on the provisions of Art. VI, Sec. IV, Para's I & II, of the Georgia Constitution of 1983, As Amended, and O.C.G.A. §§9-4-1 *et seq.* and 9-5-1 *et seq.*

22.

This Court is a proper venue in which to adjudicate this action by virtue of the provisions of Art. VI, Sec. II, Para's II, III, IV, & VI, of the Georgia Constitution of 1983, As Amended, and O.C.G.A. §14-2-510.

23.

Defendants are all subject to the jurisdiction of this Court.

IV. Operative Facts and Applicable Law

24.

Prior to the purported November 16, 2009, public hearing on the Solid Waste Amendment, GreenFirst actively lobbied the County Attorney for Elbert County and the BOC in favor of amending the Solid Waste Disposal Ordinance in order to accommodate its proposed \$335 million W2E Project.

25.

Historically, nineteenth century landfills were characterized by constant burning of garbage so as to economize on landfill space, which led to the open storage of garbage prior to burning, the interim attraction of vermin, and the eventual production of noxious odors and smoke, which polluted the air. As a result, more modern so-called “sanitary” landfills of the early twentieth century banned burning and required that garbage be covered daily with a cover of soil or dirt, so as to minimize disease vectors like vermin and odors associated with storing garbage in the open and then burning it.

26.

Today's even more modern and heavily-regulated variation on the "sanitary" landfill, the so-called municipal solid waste landfill or MSWLF, goes even further and addresses the danger posed to groundwater by this modern practice of burying garbage.

27.

Despite the comprehensive statewide regulation of modern MSWLF's pursuant to the Georgia Comprehensive Solid Waste Management Act of 1990, As Amended, the Act does contemplate that local jurisdictions retain police-power rights to impose even more stringent regulations on municipal solid waste landfills, but may only prohibit or abate "nuisances." See O.C.G.A. §12-8-30.9.

28.

Accordingly, when Elbert County adopted its Solid Waste Disposal Ordinance in August of 2006 and required special use permits for any new "private [waste] disposal sites" in the County, it expressed a concern for protecting the natural environment in the County for the benefit of the "tourism industry," "the vacation home and retirement home industry," and "the public health, safety, and general welfare of the citizens of Elbert County"—expressing a general concern for assuring "no or minimal detriment to the environment, including but not limited to, noxious odors, runoff, or contamination of surface and ground water . . ."

29.

The W3E facility proposed by GreenFirst is a reversion to 19th century landfill burning techniques, which will be productive of noxious odors, not to mention the possibility of toxic

emissions with volatile organic compounds, heavy metals, dioxins, sulfur dioxide, and mercury. In addition, given the concern over the environmental and public health implications of greenhouse gasses, it is noteworthy that incinerators like that proposed by GreenFirst emit up to twice the carbon dioxide per kilowatt hour of electricity as coal-fired power plants.

30.

Ironically, while air pollution control devices in incinerators may capture and concentrate some of the toxic pollutants that would otherwise go up the smokestack, they do not eliminate them. The captured pollutants are transferred to other media such as fly ash, char, slag, and wastewater, creating further environmental hazards—with the result that materials that may be too toxic or hazardous to be disposed of in an MSWLF may now be landfilled in Elbert County by GreenFirst courtesy of the Solid Waste Amendment, pursuant to the new blanket exemption for “a private industry solid waste disposal facility, or a waste-to-energy facility receiving biomass or municipal solid waste, or any landfill or waste storage or disposal area associated with and under the same ownership as such a waste-to-energy facility located in Elbert County as such facilities are defined in . . . [the Georgia Comprehensive Solid Waste Management] Act.”

31.

That is because, on October 16, 2009, the County Attorney of Elbert County compliantly wrote a Memorandum to the County Administrator for the benefit of the BOC, a copy of which is attached hereto as Exhibit “C” and by this reference made a part hereof—

wherein he unilaterally declared that the sort of massive W2E Facility being proposed by GreenFirst would not pose any of the environmental problems traditionally associated with a “landfill,” despite the fact that incineration was one of the oldest and most obnoxious techniques associated with historic solid waste disposal facilities.

32.

In addition, the County Attorney breezily justified allowing the Waste-to-Energy Facility to have an exempted private industry landfill by analogy to the previous exemption “for the disposal of granite cuttings and granite spalls” for the granite industry, even though those particular industrial spoils are inert and innocuous minerals with no tendency to contaminate the groundwater; whereas, it is a well-known fact—with the obvious exception of the County Attorney—that the by-products of a garbage or “biomass” incinerator can be highly-toxic fly ash, char, slag, and/or wastewater.

33.

In short, the County Attorney—as the “draftsman” of the ’06 Solid Waste Disposal Ordinance and as the putative mind-reader of the intent of the individual Commissioners who voted in favor of it—opined that the definition of “private disposal sites” covered by the special use permit requirement “was broader than what was actually intended by the Board, and went beyond the concerns of the Board in adopting the Landfill Ordinance.” Accordingly, he suggested that the original Solid Waste Disposal Ordinance merely needed to be “clarifie[d]” to make it clear that waste-to-energy incinerators and their associated private industry solid waste disposal facilities or other associated landfills, including

potentially a full-fledged MSWLF, were never intended to be covered by the Solid Waste Disposal Ordinance!

34.

As a result, three days later at the October 19, 2009, meeting of the BOC the Solid Waste Amendment had its first reading; and at the same meeting the BOC voted unanimously in favor of authorizing the County Attorney and two Commissioners and the staff to entertain contractual proposals from GreenFirst concerning its proposal to build its W2E Facility in Elbert County and to receive and process any requests for the initiation of a DRI review for the potential development with the Northeast Georgia Regional Commission.

35.

Section 62-55 of the Solid Waste Disposal Ordinance provides that the Solid Waste Disposal Ordinance may be “amende[d] . . . only at a regular meeting of the Board, and only after an advertisement of said proposed legislative action is published in the legal organ of the County once, at least fifteen but not more than forty-five days prior to the date that the proposed legislation is considered. Said advertisement shall state the time, place, and purpose of the hearing thereon.” (Emphasis added.)

36.

Regular meetings of the Elbert County BOC are held on the second Monday of each month, which would have been November 9, 2009; however, contrary to the terms of the Solid Waste Disposal Ordinance, the public hearing held by the BOC at which the Solid Waste Amendment was purportedly adopted was held on November 16, 2009. On the copy

of the Solid Waste Amendment attached hereto as Exhibit “D” and by this reference made a part hereof, the “Authentication” section on the third page shows that it was originally contemplated that the “Public Hearing [would be] held on November 9, 2009,” and that the Solid Waste Amendment would be “adopted by Board of Commissioners on November 9, 2009”—but in both instances the numeral “9” is crossed out and replaced by the numeral “16.”

37.

Likewise, the only published notice of that hearing that appeared at least fifteen days beforehand was published in *The Elberton Star* on October 28, 2009, and a copy of that notice is attached hereto as Exhibit “E” and by this reference made a part hereof. There are a number of problems with that purported notice of a public hearing.

38.

For starters, its bold heading reads: **“NOTICE OF PUBIC HEARING.”**

39.

More importantly, consistent with the County Attorney’s stated opinion that the “amendment” in question was a mere technical clarification and confirmation of the original language and intent of the Solid Waste Disposal Ordinance, the advertisement does not adequately state the “purpose of the hearing,” as required by the Solid Waste Ordinance, but instead states only, in pertinent part, that the purpose of the proposed amendment to the Solid Waste Ordinance was “to clarify the intent of Sec. 62-51 through 62-55 by adding a definition of the terms ‘private disposal site’, ‘landfill’, ‘waste disposal area’, and ‘waste

storage area’ as used in said Chapter . . .”

40.

In fact, as even a cursory glance at the Solid Waste Amendment reveals, it first had to “delete” the prior definition of those terms—and then proceeded to fundamentally alter the scope and coverage of the Solid Waste Disposal Ordinance by exempting massive waste-to-energy solid waste disposal facilities, including (i) associated landfills that would be eligible to contain waste that is potentially toxic or hazardous and would threaten runoff or contamination of the surface and ground water, not to mention the generation of noxious odors and air pollutants, and (ii) possibly co-owned MSWLF’s.

41.

Sweet City’s proposed LFG/MSWLF/MRF project for Elbert County, which is the subject of DRI Review #2080 with the Northeast Georgia Regional Commission, consists of a Waste-to-Energy Facility involving the conversion of landfill gas or biomethane to energy (“LGF”), and an associated MSWLF, and a so-called Materials Recovery Facility and Sweet City contends that its LFG constitutes a waste-to energy facility as defined in O.C.G.A. §12-8-22(41), which the County Attorney in his October 16 Memorandum specifically indicated would be exempted by the Solid Waste Amendment—along with its co-owned MSWLF.

42.

Otherwise, Sweet City’s proposed “private disposal site” would be subject to the Solid Waste Disposal Ordinance, whose §62-53 (*i.e.*, subsections (2) through (11)) purports to prohibit all “private disposal sites” and deny them eligibility for a special use permit if they

are located within three miles of certain jurisdictional boundary lines or “cultural or historical site[s] . . . , as determined by the Board of Commissioners,” or “any primarily residential area, as determined by the Board of Commissioners,” or within three miles “of a lake or river or “state waters” as defined in O.C.G.A. §12-7-3(14), as may be amended from time to time, and as determined by the Board of Commissioners”—with “state waters” being defined as any stream that is not entirely contained within the limits of a single owner’s property. In addition, no private disposal site shall be located within one mile “of any residence or water supply well, as determined by the Board of Commissioners,” *etc. etc.*

43.

As a result of all the locational restrictions in Section 62-53 of the Solid Waste Ordinance, there is no single square foot of land within Elbert County that is eligible to be a “private disposal site”—leaving aside the provision in subsection (12) that the solid waste handling facility itself can be located no closer than “five hundred feet from the interior boundary lines of the subject property.” The Solid Waste Disposal Ordinance is an intentional ban on private landfills within Elbert County.

44.

While the Georgia Comprehensive Solid Waste Management Act reserves to local jurisdictions the authority to “regulate” private MSWLF’s, it did not reserve to them the right to enact blanket prohibitions that ban them from an entire jurisdiction.

45.

As explained in the County Attorney's Memorandum of October 16, 2009, the obvious desire on the part of the Board of Commissioners to ban all private landfills from Elbert County, which he faithfully expressed as draftsman through the provisions of §62-53, "was in response to concerns that a private company or companies might attempt to locate a traditional "landfill" in Elbert County, hauling in solid waste generated in other counties and/or states . . ." (Emphasis added.)

46.

Such an irrational animus against out-of-county or "foreign" garbage contravenes the Commerce Clause of the United States Constitution.

47.

In short, the Solid Waste Amendment was the result of intensive communication between representatives of Defendant GreenFirst and Defendant Elbert County, as indicated by some of the correspondence attached hereto as Exhibit "F" and by this reference made a part hereof.

48.

As a result, the arbitrary and capricious special exemption created for Waste-to-Energy Facilities and their associated landfills created by the Solid Waste Amendment had GreenFirst's name written all over it and represented in essence a decision by Elbert County to allow GreenFirst to site its proposed waste-to-energy facility on a specific 240-acre tract in Elbert County.

49.

Before making such a siting decision in favor of GreenFirst, Elbert County was obligated to pursue the DRI review process with which it had indicated its familiarity one month earlier on October 19, when it unanimously approved a motion to authorize “appropriate County staff to receive and process any requests for initiation of a Development of Regional Impact (DRI) to the Northeast Georgia Regional Commission for potential development.”

50.

In addition, O.C.G.A. §12-8-26(b) requires that the governing authority of any County must publish a notice with the time, place, and purpose of a public meeting once a week for two weeks immediately preceding the date of such a meeting, where it proposes to take action “resulting in a . . . privately owned municipal solid waste disposal facility siting decision.” In this case, when Defendant BOC adopted the Solid Waste Amendment, it knew full well that the immediate purpose thereof was to allow GreenFirst to site its \$330 million W2E Facility on 240 acres that it had located in Elbert County. No such public notice of the purpose of the November 16 meeting occurred.

51.

Meanwhile, by letter from the County Manager of Defendant Elbert County to the Engineer for Sweet City, dated June 12, 2009, the County Manager acknowledged the ongoing efforts by Sweet City to locate an MSWLF at the intersection of Sweet City Road and Stinchcomb Road in Elbert County.

52.

Accordingly, when Defendant BOC arbitrarily and capriciously adopted the Solid Waste Amendment, it did so with the specific intent of preferring GreenFirst over Sweet City—leading the County Attorney to acknowledge that not only was the GreenFirst W2E Facility itself exempted, but that the Solid Waste Amendment would allow GreenFirst to operate an actual landfill for the ash its incinerator would produce, regardless of how toxic. By contrast, the County Attorney reaffirmed at the same time that Sweet City’s plans for a landfill on Stinchcomb Road would continue to be banned by the blanket prohibition on private landfills contained in Section 62-53: “No, this is not going to open the door for another landfill on Stinchcomb Road or anywhere else.” (Emphasis added.)

53.

The historic rule in Georgia is that locally-adopted notice and hearing provisions will be strictly construed as a “due process” matter to invalidate land use decisions that ignore them. See, e.g., Grove v. Sugar Hill Investment Associates, Inc., 219 Ga.App. 781, 785, 466 S.E.2d 901, 905 (1996); McClure v. Davidson, *supra*, 258 Ga. at 710, 373 S.E.2d at 620 (1988); Brand v. Wilson, 252 Ga. 416, 314 S.E.2d 192 (1984).

54.

Pursuant to the Georgia Planning Act of 1989, O.C.G.A. §§50-8-7.1(b)(3) & (d)(3), the Department of Community Affairs (“DCA”) was required to create a so-called “development of regional impact” (“DRI”) review process, whereby local governments would be required to submit for review by their local regional development center any

proposed regulatory action involving a proposed development that satisfied the threshold standards for a DRI promulgated by DCA.

55.

DCA has promulgated minimum thresholds and procedures and guidelines to govern the review of DRI's by local governments in DCA Rules 110-12-3-.01 *et seq.*

56.

The applicable DRI process “must be followed by any local government” when an applicant requests “some type of local government action related to a project, such as, but not limited to, a request for rezoning, zoning variance, [*etc.*,]” and it appears that the proposed development may exceed the “thresholds established for that development category.”

57.

Before the local government may proceed with whatever action is being requested to further the DRI, it must first notify its Regional Commission (“RC”) and submit appropriate information about the project to the RC for review. The RC must move expeditiously to review proposed DRI's, including notifying the local government within five days of whether it considers the project in question to in fact be a DRI.

58.

If the RC determines that the project is a DRI, its public findings as to whether or not the proposed action is “in the best interest of the State” must be made public no later than 30 or 35 days after the RC's determination that the project is a DRI.

59.

One type of development that is considered a DRI in all regions of this State is “the construction of a New Waste Disposal Facility or Expansion of an Existing Facility by 50% or more.”

60.

Obviously, the W2E Facility proposed by GreenFirst requires DRI review by the Northeast Georgia Regional Commission; and that review process was belatedly begun in December '09 after the adoption of the Solid Waste Amendment that was a local government action specifically related to the W2E Facility and requested by GreenFirst.

61.

In the case of Grove v. Sugar Hill Investment Associates, Inc., supra, the Court of Appeals, analogizing the public notice and hearing requirements under the Zoning Procedures Act to those required under the Solid Waste Management Act, opined that the “implicit purpose” of such notice requirements is “to promote reasoned decisions . . . made after public discussion and to assure officials' accountability”:

A public airing must precede a decision if it is to have an unbiased, unencumbered effect on the decision. The purpose of the airing is to allow the presentation of all evidence and argument upon which a rational political decision can be made, not to give parties adversely affected by a decision merely an opportunity to reverse it. The score must be the result of plays made during the game, not after its conclusion.

COUNT ONE

Invalidation of Land Use Decision

62.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 61 above as if each of said paragraphs was restated and realleged in its entirety.

63.

The purported Solid Waste Amendment by the BOC is null and void.

64.

The Solid Waste Amendment is unconstitutionally arbitrary and discriminatory, in that *inter alia* it denied Sweet City its substantive and procedural due process and equal protection rights under Art. I, Sec. I, Para. I, and Art. I, Sec. I, Para. II, of the Georgia Constitution of 1983, As Amended.

COUNT TWO

Invalidation of Land Use Decision

65.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 64 above as if each of said paragraphs was restated and realleged in its entirety.

66.

The purported Solid Waste Amendment by the BOC is *ultra vires* and null and void as a denial of procedural due process to Plaintiffs in violation of Art. I, Sec. I, Para. I of the Georgia Constitution of 1983, As Amended, and in violation of the hearing and notice and

procedural requirements mandated by §62-55 of the Solid Waste Ordinance, O.C.G.A. §12-8-26(b), and DRI Review Process, which were designed to require minimum due process procedures to be afforded to the general public when local governments regulate the uses of property.

COUNT THREE

Declaratory Judgment

67.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 66 above as if each of said paragraphs was restated and realleged in its entirety.

68.

There is an actual, justiciable controversy between Plaintiff Sweet City and Defendants concerning whether or not the LFG/MSWLF/MRF being proposed for Elbert County by Sweet City qualifies for the new waste-to-energy facility exemption in the Solid Waste Amendment.

69.

This controversy over the proper interpretation of the Solid Waste Amendment has put Sweet City in a position of intolerable economic uncertainty, effectively preventing it from utilizing its existing Site and jeopardizing its economic interest by making it unsure as to whether to pursue or abandon its plans for an LFG/MSWLF/MRF in Elbert County, given the unreasonable and unnecessary financial risks associated with either course of action.

70.

Plaintiffs show that a Declaratory Judgment should issue pursuant to O.C.G.A. §§9-4-1 *et seq.*, declaring that its proposed LFG/MSWLF/MRF is not required to obtain a special use permit under the Solid Waste Ordinance.

COUNT FOUR

Preliminary and Permanent Injunction

71.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 70 above as if each of said paragraphs was restated and realleged in its entirety.

72.

Any future actions by the governmental Defendants to assist GreenFirst in getting its W2E Facility permitted and built threaten to cause Plaintiff Sweet City irreparable harm for which there is no adequate remedy at law.

73.

Plaintiff seek a Preliminary and Permanent Injunction, enjoining the governmental Defendants from taking any further actions to issue any permits, letters, or certifications to or for the benefit of GreenFirst predicated on the validity of the Solid Waste Amendment.

COUNT FIVE

Declaratory Judgment

74.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 73 above as if each of said paragraphs was restated and realleged in its entirety.

75.

There is an actual, justiciable controversy between Plaintiff Sweet City and Defendants concerning the validity and enforceability of the existing blanket *de facto* exclusion by the Solid Waste Disposal Ordinance of all private state-regulated MSWLF's.

76.

Plaintiff Sweet City is specially interested in that alleged prohibition due to its plans for an LFG/MSWLF/MRF on the Site.

77.

This controversy over the validity of the alleged blanket exclusion by the Solid Waste Disposal Ordinance of MSWLF's from Elbert County has put Plaintiff Sweet City in a position of intolerable economic uncertainty, effectively preventing it from acting on its valuable purchase contract and jeopardizing its economic interest by making it unsure as to whether to seek to cancel the option contract and lose the money that it has invested in pursuing the LFG/MSWLF/MRF or to spend more money thereon, given the unreasonable and unnecessary financial risks associated with the latter course of action.

78.

Plaintiff Sweet City shows that a Declaratory Judgment should issue pursuant to O.C.G.A. §9-4-1 *et seq.*, declaring that the Elbert County Solid Waste Disposal Ordinance is *ultra vires* and unconstitutional as a denial of substantive and procedural due process and equal protection in violation of Art. I, Sec. III, Para. I(a) of said Georgia Constitution, as a violation of the requirement under Art. IX, Sec. II, Para. I of said Georgia Constitution that “counties pass clearly-reasonable ordinances,” and a violation of the Uniformity Clause found at Art. III, Sec. VI, Para. IV(a) of said Georgia Constitution and the related provisions of Art. IX, Sec. II, Para. I, due to the preemptive effect of the Georgia Comprehensive Solid Waste Management Act.

COUNT SIX

Violation of the Civil Rights Act, 42 U.S.C. §1983

79.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 78 above as if each of said paragraphs was restated and realleged in its entirety.

80.

42 U.S.C. §1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

81.

At all times relevant hereto, the governmental Defendants were acting "under color of law" within the meaning of 42 U.S.C. §1983.

82.

The *de facto* and intended blanket exclusion of private landfills from Elbert County was motivated by the desire of the Defendants to limit, restrict and deny the flow of "foreign" garbage into Elbert County from without the County and without the State.

83.

Defendants' actions to limit, restrict, and deny the flow of commerce have been taken under color of law.

84.

Defendants' actions have deprived Plaintiff Sweet City of its right, secured by the Commerce Clause, to engage in interstate commerce. U.S. Const. Art. I, §8, cl. 3.

85.

Plaintiff Sweet City is authorized to bring this Count under 42 U.S.C. §1983 and the laws of the United States, and to recover its damages from Defendants including costs, expenses, and reasonable attorneys' fees under 42 U.S.C. §1988.

COUNT SEVEN

Reservation of Additional Federal Claims

86.

Plaintiffs hereby incorporate by reference Paragraphs 1 through 85 above as if each of said paragraphs was restated and realleged in its entirety.

87.

Plaintiff Sweet City expressly reserves the right to file an action in the United States District Court for the Middle District of Georgia, Athens Division, for all additional federal claims against Defendants arising from the facts stated herein under the Constitution and laws of the United States, including (but not limited to) the fact that Defendants' acts constitute a contract, combination, and conspiracy in restraint of trade in violation of the Sherman Act, 15 U.S.C. §1; Defendants' actions to date constitute a conspiracy and attempt to monopolize the solid waste market in the Elbert County region, in violation of Section 2 of the Sherman Act, 15 U.S.C. §2; and the threatened and attempted group boycott of Plaintiff Sweet City's waste disposal services by Defendants constitutes a *per se* violation of the Sherman Act, 15 U.S.C. §1.

WHEREFORE, Plaintiffs pray as follows:

- a. That process issue as provided by law;
- b. That a jury be impaneled to resolve any factual issues;
- c. That the Court enter a Declaratory Judgment in favor of Plaintiff Sweet City, as requested in Count Three;

d. Alternatively, that the purported Solid Waste Amendment by the BOC be invalidated and declared null and void, as requested;

e. That a Preliminary and Permanent Injunction issue against Defendants, as requested;


f. Alternatively, that the Court enter a Declaratory Judgment in favor of Plaintiff Sweet City as requested in Count Five;

g. That Plaintiff be awarded actual damages, as well as reasonable attorney's fees and litigation costs, pursuant to 42 U.S.C. §§1983, 1988, & 3613(c), as requested in Count Six;

h. That all costs of this action be taxed against Defendants; and

i. That Plaintiffs be granted such further and additional relief as this Court may deem just and proper.

Respectfully submitted this 16th day of December, 2009.



GEORGE E. BUTLER II
Georgia Bar No. 099575

132 Hawkins Street
Dahlonega, GA 30533
706-864-3200
404-873-2544

ATTORNEY FOR PLAINTIFFS

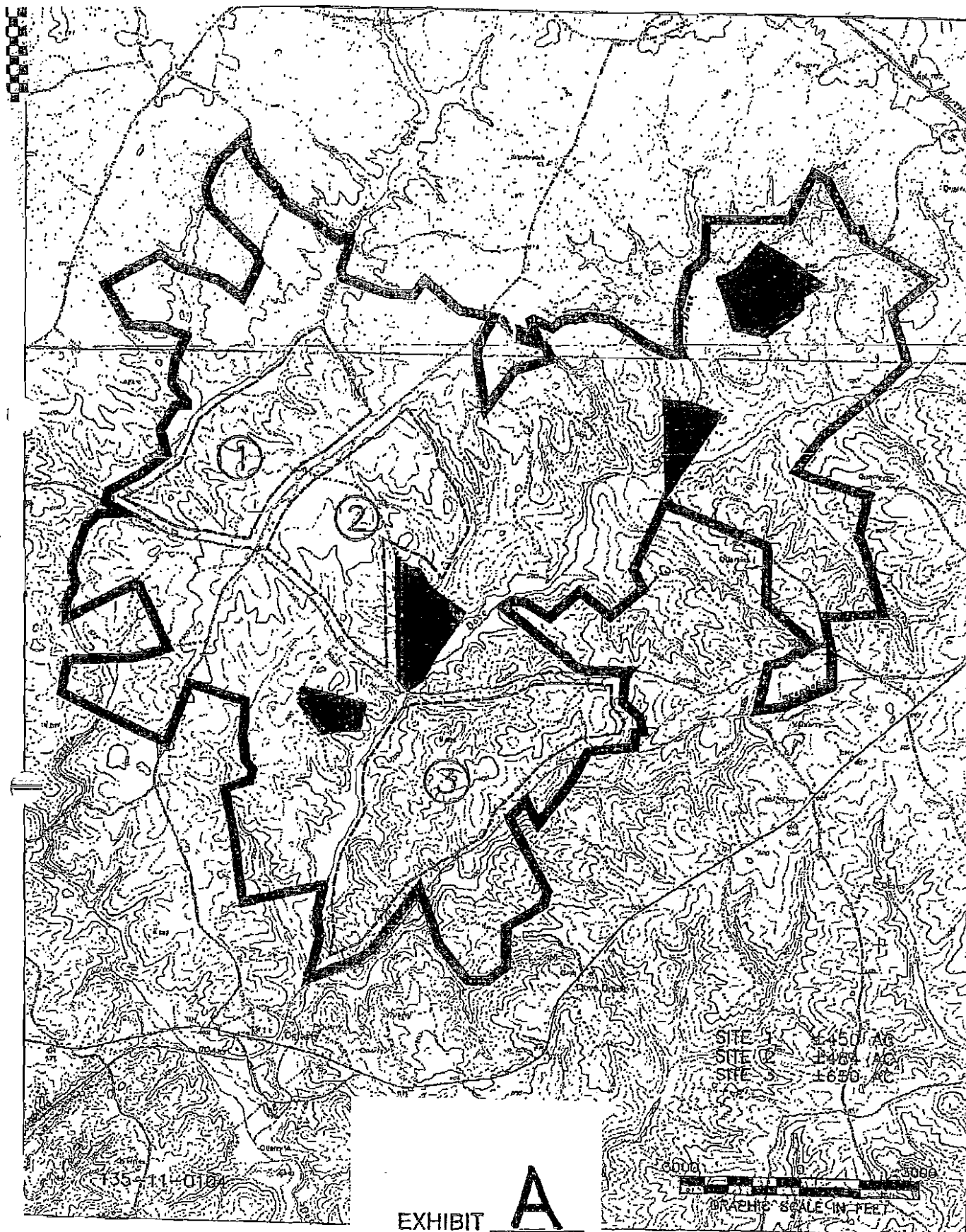
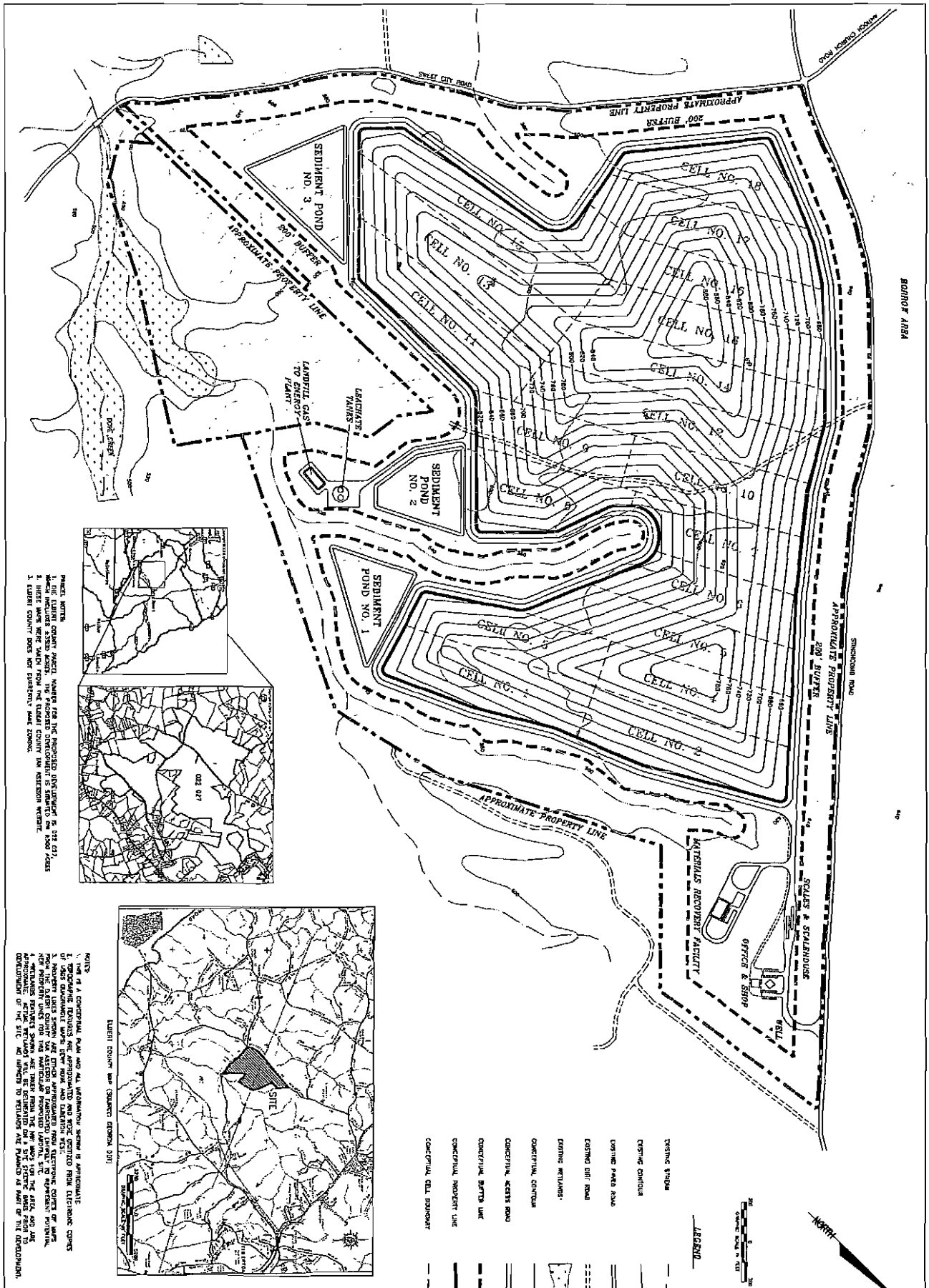
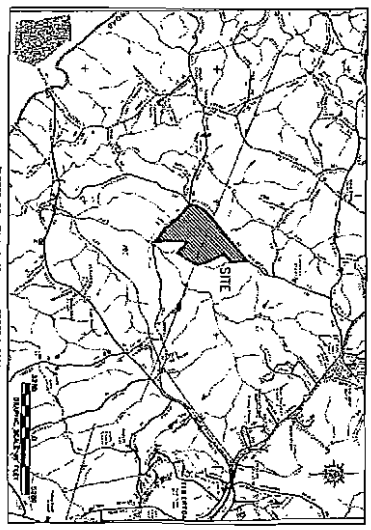
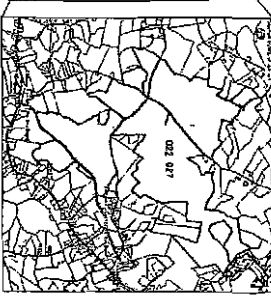
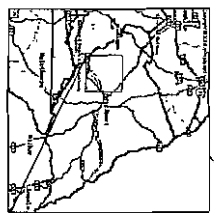


EXHIBIT **A**
(PAGE 1 OF 1)



PROJECT NOTES:
 1. THE ELBERT COUNTY PARCEL NUMBER FOR THE PROPOSED DEVELOPMENT IS 119 017.
 2. THE PROPOSED DEVELOPMENT IS LOCATED IN THE ELBERT COUNTY PARCEL 119 017.
 3. THE PROPOSED DEVELOPMENT IS LOCATED IN THE ELBERT COUNTY PARCEL 119 017.
 4. THE PROPOSED DEVELOPMENT IS LOCATED IN THE ELBERT COUNTY PARCEL 119 017.



- LEGEND
- EXISTING ROAD
 - EXISTING CONTIGUA
 - EXISTING PAVED ROAD
 - EXISTING DIRT ROAD
 - EXISTING WETLANDS
 - CONCEPTUAL CONTIGUA
 - CONCEPTUAL ACCESS ROAD
 - CONCEPTUAL BATTER LINE
 - CONCEPTUAL PROPERTY LINE
 - CONCEPTUAL CELL BOUNDARY

BILL DAUGHTRY
ATTORNEY AT LAW, L.L.C.



704 Elbert Street
P.O. Box 6267
Elberton, Georgia 30635

Telephone: (706) 283-5543
Facsimile: (706) 283-6968
daughtrylaw@yahoo.com

MEMORANDUM

TO: Mr. Bob Thomas, County Administrator

DATE: October 16, 2009

RE: Title 62 of the Elbert County Code of Ordinances (Solid Waste)

As you are aware, in August of 2006 the Board of Commissioners adopted an Ordinance amending the County's Solid Waste Code, Title 62, by creating new Code Sections 62-52 through 62-55 (informally known as "the Landfill Ordinance" and hereinafter referred to as the same). The purpose of that Ordinance in 2006 was to regulate the siting of landfills in the County, by requiring special use permits from any applicant wishing to locate a landfill in Elbert County.

It has recently been brought to my attention that the wording of the referenced Code Sections could be interpreted as not only regulating the siting of municipal solid waste landfills [as defined by State Law in O.C.G.A. § 12-8-22(20)], but also regulating the siting of waste-to-energy facilities [as defined in O.C.G.A. § 12-8-22(41)] and private industry solid waste disposal facilities [as defined in O.C.G.A. § 12-8-22(24)]. As that is not what was intended when the 2006 Ordinance was adopted, I recommend that Sec. 62-51 of the County Code be amended to more accurately reflect what was intended to be regulated in 2006.

I was County Attorney in 2006, and in that capacity I drafted the "Landfill Ordinance". Of our current Board of Commissioners, Commissioner Harper and Commissioner Hewell were on the Board at that time. The Landfill Ordinance was in response to concerns that a private company or companies might attempt to locate a traditional "landfill" in Elbert County, hauling in solid waste generated in other counties and/or states, and that the Board of Commissioners would have no authority to regulate the siting of such landfills. That was of particular concern due to Elbert County's tourism industry and vacation/retirement home industries, and a desire to protect the county's valuable natural resources. Those particular concern was actually referenced in the Ordinance. It was felt that a traditional "municipal solid waste landfill" would adversely affect the county's lakes and rivers, and would adversely affect the county's tourism and retirement home industries, if adequate steps were not taken to ensure that the location of such landfills would not be a significant factor. Specifically, it was believed that traditional landfills could likely result in contamination of lakes and rivers, groundwater contamination, noxious odors, vermin and insects, and so forth.

EXHIBIT C
(PAGE 1 OF 2)

Mr. Bob Thomas
October 16, 2009
Page 2 of 2 Pages

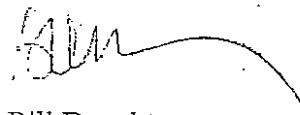
I have recently had waste-to-energy facilities explained to me, and its clear that such facilities do not carry with them the same concerns as with municipal solid waste landfills, especially in regard to the specific concerns that the Board had in 2006. I have recently had private industry solid waste disposal facilities explained to me also, and its clear that those facilities do not carry with them the same concerns either. As a matter of fact, the 2006 Ordinance specifically exempted "any area used exclusively for the disposal of granite cuttings and granite spalls" at the request of the Elberton Granite Association, and what was described in that exemption is probably the best example of private industry solid waste disposal facilities.

As the wording of the Landfill Ordinance was broader than what was actually intended by the Board, and went beyond the concerns of the Board in adopting the Landfill Ordinance, it is my suggestion that the Ordinance be amended to make it consistent with the legislative intent. Therefore, I have drafted the enclosed Ordinance which adds a definitions section and clarifies exactly what was intended to be regulated by the 2006 Ordinance.

Please call me if you have any questions or concerns.

Best regards.

Sincerely,



Bill Daughtry

cc: Elbert County Board of Commissioners

ORDINANCE NO. 2009-_____
OF THE ELBERT COUNTY BOARD OF COMMISSIONERS

TO AMEND CHAPTER 62 OF THE CODE OF ORDINANCES OF ELBERT COUNTY TO CLARIFY THE INTENT OF SECTIONS 62-51 THROUGH 62-55 OF SAID CHAPTER, BY ADDING A DEFINITION OF THE TERMS PRIVATE DISPOSAL SITE, LANDFILL, WASTE DISPOSAL AREA, AND WASTE STORAGE AREA AS USED IN SAID CHAPTER; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, on August 14, 2006, the Board of Commissioners of Elbert County approved and adopted Ordinance No. 2006-_____, which amended Chapter 62 of the Code of Ordinances of Elbert County to require a special use permit from Elbert County for new private landfills and waste disposal sites, to provide procedures and standards for the issuance of such permit, and for other purposes; and

WHEREAS, the Board of Commissioners of Elbert County has determined it to be necessary and appropriate to amend the provisions of said Chapter 62 to clarify that Sections 62-51 through 62-55 thereof are intended to apply to municipal solid waste landfills and to exclude certain other types of waste handling and disposal facilities; and

WHEREAS, the Elbert County Board of Commissioners has determined that it will promote the public interest to so amend Chapter 62 of the Code of Ordinances of Elbert County to cause the provisions of the foregoing Sections of said Chapter to carry out their original intent.

NOW, THEREFORE, BE IT ORDAINED BY THE ELBERT COUNTY BOARD OF COMMISSIONERS, AND IT IS HEREBY ORDAINED by authority hereof, as follows:

Section 1. Article III, Section 62-51, of the Code of Ordinances of Elbert County is amended to delete the following language at the end of said Section 62-51:

“Private Disposal Site means any landfill, waste disposal area, or waste storage area intended to be used by the owner or used by others for the disposal or storage of waste, that is not owned or operated by Elbert County.”

Section 2. Section 62-51 of the Code of Ordinances of Elbert County, titled “Definitions,” is amended to add the following definition to said Section:

“Private disposal site, landfill, waste disposal area, and waste storage area shall mean a municipal solid waste landfill, as that term is defined in the Georgia Solid Waste Management Act in effect on the effective date of this amendment, that is not owned or operated by Elbert County, but shall not include a private industry solid waste disposal facility, or a waste-to-energy facility receiving biomass or

municipal solid waste, or any landfill or waste storage or disposal area associated with and under the same ownership as such a waste-to-energy facility located in Elbert County, as such facilities are defined in said Act.”

Section 3. Article III, Sections 62-52 through 62-55, of the Code of Ordinances of Elbert County, are each amended to incorporate therein the definition contained in the foregoing Section 2 of this amendment.

Section 4. This Ordinance shall become effective upon its adoption.

Section 5. If any section, provision, sentence, or clause of this Ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect portions of this Ordinance not so held to be invalid, or to affect the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent of the Elbert County Board of Commissioners that this Ordinance would have been adopted and approved had such invalid portion not been included herein.

Section 6. Any and all ordinances or resolutions, or parts of ordinances or resolutions, which are inconsistent with this Ordinance shall be and are hereby repealed.

(This Space Intentionally Left Blank)

SO ORDAINED, this 9th day of November, 2009, by the Elbert County Board of Commissioners.

AUTHENTICATION:

Read first time on October 19, 2009.

Public Hearing held on November 9, 2009.

Adopted by Board of Commissioners on November 9, 2009.

ELBERT COUNTY BOARD OF COMMISSIONERS

By: Russell T. Lyon
Russell T. Lyon, Chairman

Attest:

Judy Vaughn
Judy Vaughn, County Clerk

(SEAL)

VOTE:

TOTAL IN FAVOR: 5

TOTAL AGAINST: 0

<u>BOARD MEMBER</u>	<u>YEA</u>	<u>NAY</u>
Russell T. Lyon, Chairman		(no vote required of Chairman)
W.D. Albertson	<u>✓</u>	
Frank Eaves	<u>✓</u>	
Horace Harper	<u>✓</u>	
Jerry Hewell	<u>✓</u>	
John Hubbard	<u>✓</u>	

I certify that this is a true and exact copy of the Ordinance adopted at the Board Meeting on November 9, 2009.

Judy Vaughn
Judy Vaughn, County Clerk

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EXHIBIT D
(PAGE 3 OF 3)

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Oct. 25

Officers responded to
a report of a "strong
unbearable odor" on
Church Hill Road coming
from a cooler behind a
building. The odor was
so strong that Elberton
firefighters, wearing air
packs, were called in to
open the cooler, which
was found to be half full
of a deer covered with
maggots and a thick black
fluid. The cooler and
deer were removed and
discarded.

Cadell Patton Jr., 52, of
College Park was charged
with DUI alcohol and
weaving over roadway.

the front of a store on
Calhoun Falls Highway.
A woman reported a
man borrowed a gas
can and some gas but
never returned on
Corinth Church Road in
Bowman.

Oct. 22

Barry Wayne Black, 51, of
2193 Ruckersville Road
in Elberton was charged
with theft by taking
motor vehicle and
driving on a suspended
license.

Two care engines, equipment
and tools were reported
stolen in a burglary on
Whiteside Drive.

A threat was reported on
Pulliam Mill Road in
Bowman.

A burglary was reported on
Dempsey Brown Road in
Dewy Rose.

Candice Paige Burrows,
17, of 3021 Deep Creek
Road in Bowman was
charged with weapon
on school grounds after
a razor blade was found

Elbert County Community Intervention Program

(Drug Reduction Program)

• For DUI - Possession of Drugs

• Underage Possession of Drugs or Alcohol

Weekend Classes - Classes Held Monthly - Pre-registration required
Arranged by appointment only. Mon. - Thurs.

Next Classes: Sat. & Sun, Nov. 7 & 8 - 8:30 a.m. - 4:30 p.m.

Mon. & Tues, Nov. 9 & 10 - 8 - 9 p.m.

Location: 50 Chestnut St., Elberton, GA • 706-213-2048 Call Kathy Tied

PUBLIC NOTICE

The Elbert County Board of Health
meeting will be held at
The Elbert County Health
Department on
Wednesday, October 28, 2009
at 2 p.m.

NOTICE OF PUBIC HEARING

The Elbert County Board of Commissioners
will hold a public hearing on Monday,
November 16, 2009 at 5:00 PM in the
Commission Chambers of the Elbert County
Government Complex, 45 Forest Avenue,
Elberton, Georgia to hear the following:
Proposed text changes to The Elbert County
Code of Ordinances, Chapter 62 Solid Waste;
more particularly described as follows: to
clarify the intent of Sec. 62-51 through 62-55
by adding a definition of the terms "private
disposal site", "landfill", "waste disposal area",
and "waste storage area" as used in said
Chapter; to provide for severability; to repeal
conflicting ordinances; to provide an effective
date; and for other purposes.

The proposed changes are available for
inspection at the County Commissioner's
Office, 45 Forest Avenue, Elberton, Georgia.
Hearings will be conducted pursuant to
O.C.G.A. Section 50-14-1, Section 2-38 (l) (5)
of the Elbert County Code of Ordinances, and
Section 62-55 of the Elbert County Code of
Ordinances. Persons with special needs
relating to handicapped accessibility shall
contact County Clerk Judy Vaughn before
November 16, 2009 at 45 Forest Avenue,
Elberton, Georgia, (706)283-2000.

BOC Accepting Insurance Bids

Elbert County Board of
Commissions
is accepting bids of
Employee Workers Compensation
Insurance Plan
for the calendar year 2010.
Interested parties should contact
Judy Vaughn, County Clerk at
45 Forest Avenue,
Elberton, Georgia 30635,
706-283-2000
for additional information.
Bids are to be submitted by
12 noon on November 24, 2009.



Elbert County Project

Wednesday, October 14, 2009 7:11 AM

From: "Norman, Bob" <bob.norman@JonesCork.com>

To: "'daughtrylaw@yahoo.com'" <daughtrylaw@yahoo.com>

Bill, my address at Jones Cork and phone and fax information is shown below. Lori Branigan is my Assistant and you can talk to her if you ever need to reach me and I am not available. My e-mail is bob.norman@jonescork.com. Please send me the ordinance we discussed as quickly as possible and I will review it and get back to you as to its potential effect. We look forward to working with you on this project.

Lori Branigan | Assistant to Robert C. Norman, Jr.

bob.norman@jonescork.com

Jones, Cork & Miller, LLP

Extension: 543

Fifth Floor, SunTrust Bank Building

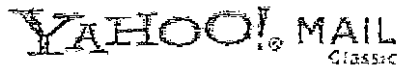
435 Second Street

Macon, Georgia 31208-6437

Phone: (478) 745-2821 ext. 562

Fax: (478) 743-9609

lori.branigan@jonescork.com



RE: Elbert County Project

Wednesday, October 14, 2009 7:58 AM

From: "Norman, Bob" <bob.norman@JonesCork.com>
To: "'Bill Daughtry'" <daughtrylaw@yahoo.com>

Bill, the Ordinance refers to written application forms for applying for a special use permit for a landfill. Were forms developed, and if so do you have copies you can send me to go along with the Ordinance? Thanks.

From: Bill Daughtry [mailto:daughtrylaw@yahoo.com]
Sent: Wednesday, October 14, 2009 10:37 AM
To: Norman, Bob
Subject: Re: Elbert County Project

Hi Bob,

Attached please find a copy of our 2006 Ordinance that required a Special Use Permit from the County for the siting of all landfills.

I'm about to go into a meeting, so when I return (around noon) I'll review our Code of Ordinances to make sure that there are no other ordinances that may possibly come into play.

Please call me if you have any questions or concerns. Thanks.

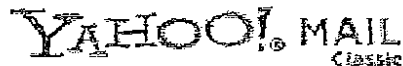
BILL DAUGHTRY, ATTORNEY AT LAW, LLC
P.O. Box 6267
704 Elbert Street
Elberton, Georgia 30635
(706) 283-5543
telefax (706) 283-6968
daughtrylaw@yahoo.com (general email)
daughtrylaw@elberton.net (for document transmittal only)

--- On Wed, 10/14/09, Norman, Bob <bob.norman@JonesCork.com> wrote:

From: Norman, Bob <bob.norman@JonesCork.com>
Subject: Elbert County Project
To: "'daughtrylaw@yahoo.com'" <daughtrylaw@yahoo.com>
Date: Wednesday, October 14, 2009, 7:11 AM

Bill, my address at Jones Cork and phone and fax information is shown below. Lori Branigan is my Assistant and you can talk to her if you ever need to reach me and I am not available. My e-mail is bob.norman@jonescork.com. Please send me the ordinance we discussed as quickly as possible and I will review it and get back to you as to its potential effect. We look forward to working with you on this project.

EXHIBIT F
(PAGE 2 OF 3)



Ordinance Amending Definitions in Landfill Ordinance

Friday, October 23, 2009 1:10 PM

From: "Bill Daughtry" <daughtrylaw@yahoo.com>
To: "Norman Bob" <bob.norman@JonesCork.com>
Cc: "Bob Thomas" <bobthomas@elberton.net>
1 File (38KB)



EC Notice...

Mr. Norman,

There has been a scheduling conflict with our November 9th meeting date, so that meeting has been moved to the following Monday, November 16th. The public hearing on the Ordinance to amend our Landfill Ordinance will be held on November 16 at 5:00, and the second reading will be held at the meeting following the public hearing. Please inform Mr. Kaufmann and his staff of this change. Attached is a copy of the Notice of Public Hearing for your records.

BILL DAUGHTRY, ATTORNEY AT LAW, LLC
P.O. Box 6267
704 Elbert Street
Elberton, Georgia 30635
(706) 283-5543
telefax (706) 283-6968
daughtrylaw@yahoo.com (general email)
daughtrylaw@elberton.net (for document transmittal only)

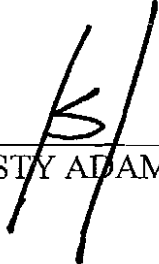
EXHIBIT F
(PAGE 3 OF 3)

VERIFICATION

STATE OF GEORGIA)
COUNTY OF ELBERT)

BEFORE ME, the undersigned officer duly authorized by law to administer oaths, personally appeared **RUSTY ADAMS**, who first being duly sworn on oath, averred that the facts contained in the foregoing Complaint are true and correct to the best of his present knowledge and recollection.

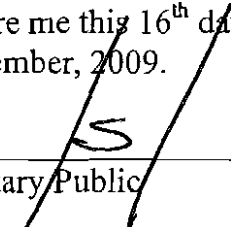
This 16th day of December, 2009.



RUSTY ADAMS

SWORN TO AND SUBSCRIBED

before me this 16th day of
December, 2009.



Notary Public

My Commission Expires:
July 19, 2012

[NOTARY SEAL]