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August 25, 1988

BY HAND

Thomas S. Moore, Chairman
Alan S. Rosenthal
Howard A. Wilber
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Fifth Floor (North Tower)
East West Towers
4350 East West Highway
Bethesda, Maryland 20814

Re: Docket No. 50-322-OL-3 (Reception Centers)

Dear Mr. Chairman and Members of the Board:

This is to inform you of a significant development which affects the appeal now before this Board regarding the Shoreham Licensing Board's May 9, 1988 decision on the adequacy of LILCO's reception centers. Specifically, I am referring to an August 22, 1988 decision by Judge Collins of the Supreme Court of the State of New York, Nassau County, finding that LILCO's plan to use certain property in Bellmore, New York, as one of its reception centers violates local zoning laws. A copy of the Court's decision is enclosed herewith. In Suffolk County's view, this decision requires reversal of the Licensing Board's ruling that LILCO's reception centers are adequate and that LILCO has complied with NRC regulatory requirements.

Some history is in order. In September, 1986, LILCO proposed as part of its emergency plan the use of three LILCO-owned properties as reception centers for monitoring and decontaminating evacuees in the event of a Shoreham emergency. Among the three sites was a LILCO operations center located in

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the village of Bellmore, which in turn is located in the Town of Hempstead (the "Town"). After informing LILCO through both correspondence and legislative resolution that its proposal and preparations to use the Bellmore property as a reception center in the event of a Shoreham emergency violated the Town's zoning laws, the Town filed suit in the Supreme Court to enforce those laws on August 14, 1987. A copy of the Town's nine-count complaint is also enclosed herewith for your convenience.

The Town subsequently moved for summary judgment. The Court's August 22 decision rejected all of LILCO's defenses and granted summary judgment to the Town on every count of the complaint.

In essence, the Court ruled that, contrary to LILCO's emergency plan, LILCO cannot use, prepare to use, or represent that it will use the Bellmore property as a reception center. This ruling is fatal to the Licensing Board's finding that LILCO has adequate reception centers, as the Bellmore property was one of the three centers which LILCO relied upon in advancing its position before the Licensing Board. In light of the Court's ruling, LILCO may no longer rely on the Bellmore property for that purpose.

The Licensing Board was aware of the pendency of the Town's suit when it issued its May 9 reception center decision. However, since the Court had issued no ruling, the Licensing Board declined to address the issue, stating:

> Although alleged local zoning violations have not been litigated in this proceeding to date, it is possible that a decision by the New York State Courts on the issue may impact the reception center issue. However, the dimensions of any such impact are not before us now and we refrain from any speculation in that regard.

Partial Initial Decision on Suitability of Reception Centers, LBP-88-13, ___ NRC ___ (May 9, 1988) (slip op. at 108). The New York State Supreme Court has now ruled, and the impact of that ruling is that the Bellmore property on which LILCO relied is no longer available to serve as a reception center.

In light of this ruling, the Licensing Board's decision should be vacated and any further proceedings on the reception center issue should be held in abeyance until LILCO comes forward with a new reception center plan. Nevertheless, if this Board decides to go forward with the oral argument now scheduled for September 14, the County will be prepared to address the issues raised by the New York State Supreme Court's ruling. In addition, if this Board believes that briefing of the matter would be appropriate, the County suggests that it would be most efficient and expeditious for the parties to file initial briefs simultaneously, with reply briefs due one week later.

Finally, in accordance with this Board's August 12, 1988 Order, I reiterate that I will be presenting the Governments' argument on September 14, if there is to be such argument. Counsel for the State will be present, however, to answer any questions this Board may have on the issues before it.

Sincerely,

David T. Case

David T. Case
Counsel for Suffolk County

Enclosures

cc: All Parties
Shoreham Licensing Board
Docketing and Service Section

TA 14090

MEMORANDUM

SUPREME COURT : NASSAU COUNTY IAS PART 22

TOWN OF HEMPSTEAD & BERT A. MAYER, Commissioner of the Department of Buildings : BY COLLINS, J.

Plaintiff, : Index #23779/87

- against - : Motion Date: June 20, 1988

LONG ISLAND LIGHTING COMPANY, and any of its agents, officers, servants, employees, successors & assigns & anyone acting by, through or under the Long Island Lighting Company,

Defendants

W. Kenneth Chave, Jr., Esq.
Hempstead Town Attorney
Town Hall Plaza,
Hempstead, N.Y. 11550

Hunter & Williams, Esq.
Attorney for Defendant
100 Park Avenue,
New York, N.Y. 10017

The Town of Hempstead and Bert A. Mayer, Commissioner of Buildings of the Town of Hempstead, hereinafter referred to as "Town" have commenced an action against the Long Island Lighting Company, hereinafter referred to as "LILCO", seeking a permanent injunction to restrain certain alleged building and zoning violations.

Subsequent to this action having been instituted, the Town has moved for summary judgment in its favor.

The facts are as follows: LILCO owns a parcel, acquired in 1961 for utility purposes, located at the southwest corner of Newbridge Road and Sunrise Highway, Bellmore, known as 2400 Sunrise Highway, Bellmore, New York. This is known as the "LILCO Bellmore Operation Centers". The Building Zone ordinance of the Town places the parcel in two different use districts. The frontage along Sunrise Highway up to a depth of 100 feet is in "Article XVI - X Business Districts (X)" and the balance of the parcel is in "Article VII B Residence District (B)".

LILCO admits that the Bellmore Operations Center has been identified in its nuclear emergency plan for the purpose and uses set forth by the Town in its complaint (General Population Reception for evacuees in the event of radiological emergency at the Shoreham Nuclear Power Station; the reception to be for Suffolk County residents for the purpose of radiological assessment and the decontamination of persons and vehicles) but denies the plans include

and have included drills and exercises and the storage of related equipment, structure and supplies.

The Town alleges: that prior to July 27, 1987, LILCO installed or caused to be installed on the property, near the southerly property line (in a "B" Residence Zone) a Trailer with stabilizer bars and with connections to electrical and water supplies; with said utilities being intermittently connected or disconnected by LILCO. This LILCO denies;

that the trailer contains decontamination facilities consisting of nine sinks and twenty showers. LILCO denies that the trailers are to be used exclusively for decontamination purposes. By inuendo, therefor, it admits that the proposed use is such as charged by the Town;

that this activity should not take place "until a permit has been duly issued therefor". LILCO states this allegation is, in fact, a legal conclusion, requiring no response but is nonetheless denied.

LILCO admits that no building permits have been issued to them pursuant to the Town Code. LILCO denies having knowledge or information as to whether the property is zoned as alleged by the Town or the Building Zone Ordinance. Consistently, therefore, LILCO denies that the activity at their premises should not have taken place until a permit had been duly issued and is, therefore, illegal.

LILCO pro forma denies the Code of the Town was, and is, in full force and effect on the dates complained of by the Town. As well, LILCO denies that the siting of the trailer, the addition of stabilizing bars and the utility connections constitute the commencement of work for the erection of a structure within the meaning of the Zoning Code.

The Town alleges: that LILCO has installed plumbing and/or drainage and a water supply in connection with the siting of the trailer. LILCO denies this and admits that no plumbing permits have been issued to it.

The Town, in substance, alleges that the installation of utilities without a permit and the placement of the trailer and its proposed use as a decontamination unit is not an expressly provided use and are illegal. In sum, LILCO denies that any of its conduct is illegal on the premise that no special permission, or permits, are required of it for what has been done at the site.

The Town permits public utility buildings and/or structures in any residence or business district when permitted by the Board of Zoning Appeals, LILCO holds a Special Exception permit for its entire

parcel under Zoning Board Case No. 553 of 1961 which permits . . .

"construction and maintenance of an operations headquarter consisting of an office and assembly room, warehouse, garage, storage platforms, storage rooms, truck parking, and storage areas" to be "constructed . . .in accordance with the plot plan received by the Board of Zoning Appeals"."

This proposed use was never presented to nor passed upon by the Board of Zoning Appeals and, therefore, the Town maintains such use is beyond the scope of the permit.

Further, the use is neither an expressly permitted use in a "Business District" nor is it provided for within the Special Exception issued in 1961.

The Town seeks an order from this Court:

(1) permanently restraining and enjoining LILCO or anyone acting under, or through, LILCO from using this trailer or permitting it to be used in violation of the laws and ordinances of the Town;

(2) directing LILCO to permanently remove the trailer and connections thereto as well as any other equipment, supplies or structures relating to the evacuation, reception, radiological assessment and decontamination uses;

(3) restraining LILCO from using the area for drill exercises; the storage of equipment and supplies and the installation of and/or the capability to introduce the trailer structure;

(4) directing LILCO to remove the Bellmore Operations Center from its planning documents and from, in anyway, representing that the present and proposed reception-evacuation, radiological assessment and decontamination uses are permitted and lawful.

LILCO admits that it has identified the Bellmore Operations Center in its nuclear emergency plan for the proposed uses set forth in the Town's complaint.

LILCO admits that it has a Special Use permit for its entire parcel of land but denies that consideration by the Board of Zoning Appeals was, or is, required.

Further, LILCO seeks to have the complaint dismissed for failure to set forth a cause of action; and alleges that the action is barred by estoppel, laches, doctrine of unclean hands and waiver; that the claims of the Town are nonjusticiable for lack of ripeness and some have been rendered moot.

LILCO contends the application of the local zoning ordinances invoked by the Town is preempted by Federal regulation in the area of nuclear safety: and

that the State of New York, the County of Nassau and the Town of Hempstead have each abdicated their responsibility to devise a nuclear emergency plan under Federal Law and have had a full and fair opportunity to voice objections to LILCO's nuclear emergency plan in hearings before the Nuclear Regulatory Commission.

Some of the defenses raised by LILCO are sophistical, whereas, all are without legal merit.

1. The complaint meets all of the criteria set forth in the CPLR and does, indeed, set forth a viable cause of action, i.e., the allegation that the admitted installation and proposed use are not permitted as a matter of right and without a permit and are not contemplated and/or included within the Special Exception granted by the Town to LILCO in 1961.

The Town has submitted evidentiary facts to support the allegations of the complaint. LILCO has not denied either the installation or any proposed use and rests its case on untenable legal arguments individually addressed by this Court within this decision.

The Town has a duty pursuant to Sections 261 and 268 of the Town Law to commence this litigation. When a use has been commenced and its continuance is projected and admitted, injunctive relief is the proper remedy.

LILCO has been notified of the alleged violations and there is nothing before this Court to indicate that there has been an abatement of the violation.

2. The equitable defenses proffered by LILCO of estoppel, laches, unclean hands and waiver cannot be asserted against a governmental body seeking to perform its duty. Insofar as the defense of "estoppel" is concerned, LILCO was notified promptly as to the Town's position. This eliminates a factor of "reliance", which, if present could perhaps create an exception of the doctrine that estoppel cannot be effectively applied to a municipality exercising its sovereign power. N.Y. STATE INSPECTION, SECURITY AND LAW ENFORCEMENT EMPLOYEES, DISTRICT COUNCIL 82 v. CUOMO, 480 NYS 2d, 1, 6; affirmed 485 NYS 2d 719; HAMPTONS HOSPITAL AND MEDICAL CENTER v. MOORE, 436 NYS 2d 239, 241-42.

Addressing the defense of "laches": It is hornbook law that this defense cannot be applied against a municipality in the exercise of a sovereign duty.

COMMISSIONER OF SOCIAL SERVICES v. JERRY B. 481 NYS 2d 981, 983. INCORPORATED VILLAGE OF WESTBURY v. SAMUELS, 260 NYS 2d 369, 372.

With respect to the defense of "unclean hands:, this defense is likewise meritless. The action of the Town does not sound in fraud, illegal or unconscionable conduct.

The final equitable defense of "waiver" is likewise untenable in law or fact. The Town acted prudently, conscientiously and expeditiously to enforce the Town codes. The Town notified LILCO and, after non-compliance with said notice, instituted this litigation.

3. The affirmative defense that this action is "nonjusticiable for mootness and lack of ripeness" is unavailing.

The necessary elements of a justiciable controversy are (a) a legally protected interest and (b) a present dispute. These elements are self-evident and present in this litigation. The Town has an interest, albeit a duty, to protect against violation of its codes and ordinances adopted for the common good. LILCO, to its credit, does not deny the proposed use of the Bellmore site and, in fact, would be hard put to do so in view of the "trailer". The issues are far from moot and certainly ripe enough to litigate.

4. The defense that the Town is "preempted" because of the "Emergency Plan" is contrary to the established law. In other words, because nuclear power is Federally regulated, LILCO maintains that the duly enacted local laws may be disregarded and discarded.

Unlike LILCO, the Federal government does recognize the validity of local governmental jurisdiction. To sustain this premise, LILCO must demonstrate a Congressional intent to preempt State law. LILCO has not met this criteria and, indeed, cannot. PACIFIC GAS & ELECTRIC CO. v. STATE ENERGY RESOURCES AND DEVELOPMENT COMMISSION, 461, US 190,206. JONES v. RATH PACKING CO., 430 US 519,525. NEW YORK DEPT. OF SOCIAL SERVICES v. DUBLINO, 413 US 405,413. SILKWOOD v. KERR-McGEE CORP., 464, US 238,255.

LILCO's argument of "preemption" was raised against Suffolk County relative to that County's refusal to adopt an emergency evacuation plan. The District Court found against LILCO. CITIZENS FOR AN ORDERLY ENERGY POLICY v. SUFFOLK COUNTY, 604 Fed Supp 1084; affirmed 813 Federal 2d 570.

The Nuclear Regulatory Commission has recognized zoning laws as a legitimate function of local government, although the same may negatively impact on the utility's operation of licensing a Nuclear Power Plan.

5. LILCO raises another incredible defense to this action. Town is "preempted" from enforcement of its zoning laws because it has "abdicated" its responsibility to prepare a Nuclear Response Plan.

The Town has no duty to define, promulgate, recommend or adopt a Nuclear Response Plan. The Nuclear Regulatory Commission has so stated. See: 44 Fed. Reg. 75, 169; and Citizens for an Orderly Energy Policy v. Suffolk County, 604 Fed Supp at 1094-96.

For all of the foregoing reasons, the Court makes the following determination:

Motion for plaintiff for summary judgment is granted.

Cross-motion by defendant for partial summary judgment dismissing the third, fourth, fifth, sixth, seventh, eighth and ninth causes of action is denied.

Motion by plaintiff for a protective order pursuant to CPLR §2004, 3103 and 3122, is denied as academic in light of the decision reached upon plaintiffs' motion for summary judgment as is the cross-motion by defendant for an order pursuant to CPLR §3124 compelling the production of certain documents.

Settle Judgment on Notice.

Dated: August 22, 1988

X X X J.S.C.

TA#14090
EKF/cb

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

- x

TOWN OF HEMPSTEAD, and BERT A. MAYER, Commissioner of the Department of Buildings of the Town of Hempstead,

Plaintiffs,

- against -

LONG ISLAND LIGHTING CO., and any of its agents, officers, servants, employees, successors and assigns, and anyone acting by, through, or under the Long Island Lighting Co.,

Defendants.

- x

VERIFIED COMPLAINT

Index No.

The plaintiffs, by their attorney, W. Kenneth Chave, Jr., Town Attorney of the Town of Hempstead complaining of the defendants respectfully allege as follows:

FIRST: That at all times hereinafter mentioned, the plaintiff, Town of Hempstead, was and still is a domestic municipal corporation with its principal office at Hempstead Town Hall, Town Hall Plaza, Main Street, Hempstead, New York.

SECOND: That at all times hereinafter mentioned, the plaintiff, Bert A. Mayer, was and still is the Commissioner of the Department of Buildings of the Town of Hempstead, duly appointed and acting in such capacity and as such official is charged with the enforcement of the Building Zone Ordinance of the Town of Hempstead.

THIRD: That upon information and belief at all

times hereinafter mentioned the defendant, Long Island Lighting Company, hereinafter LILCO, was and still is a domestic corporation with its principal office at 175 East Old Country Road, Hicksville, New York.

FOURTH: That upon information and belief the defendant LILCO generally operates as a utility which supplies electricity and gas to its customers within the County of Nassau and the Town of Hempstead.

FIFTH: That upon information and belief the defendant LILCO by virtue of its corporate capacity and contractual obligations does have, and may have, officers, agents, servants, employees, successors and assigns, and those acting by, through, and under LILCO all of whom are named as defendants herein so that the plaintiffs may have complete relief in the event of a judgment in plaintiffs' favor.

SIXTH: That upon information and belief the defendant LILCO is the owner of the premises located at the southwest corner of Newbridge Road and Sunrise Highway in the unincorporated hamlet of Bellmore, New York which is also known as Section 56, Block W, Lot 1295 on the Land and Tax Map of Nassau County and which is known also by street address 2400 Sunrise Highway, Bellmore, New York.

SEVENTH: That upon information and belief the above-described real property and improvements thereon

are popularly known as the "LILCO- Bellmore Operations Center".

EIGHTH: That the legislative body of the Town of Hempstead, to wit: the Town Board, has heretofore enacted a certain ordinance known as the "Building Zone Ordinance of the Town of Hempstead" which was first effective on January 20, 1930 and which has been subsequently amended, revised, and reenacted and which is hereinafter referred to as the "Building Zone Ordinance."

NINTH: That the above-mentioned "Building Zone Ordinance" has divided the unincorporated areas of the Town of Hempstead into certain enumerated use districts the boundaries of which are shown on the "Building Zone Map of the Town of Hempstead, Nassau County, New York" which Official Map is part of the zoning ordinance.

TENTH: That pursuant to the above-mentioned ordinance and map the defendants' parcel herein is in two different use districts. The frontage along Sunrise Highway up to a depth of 100 feet is in "Article XVI - X Business Districts (X)" and the balance of the parcel is in "Article VII B Residence Districts (B)."

ELEVENTH: That the legislative body of the Town of Hempstead, to wit: The Town Board, has heretofore enacted and has from time to time amended a certain ordinance

known as the "Code of the Town of Hempstead."

TWELFTH: That the applicable portions of the "Building Zone Ordinance of the Town of Hempstead" and the "Code of the Town of Hempstead" were and are in full force and effect on the dates hereinafter complained of.

THIRTEENTH: That upon information and belief the defendant LILCO has designated its Bellmore Operations Center as a General Population Reception Center for evacuees in the event of a radiological emergency at the Shoreham Nuclear Power Station.

FOURTEENTH: That upon information and belief as a consequence of the abovementioned designation, the defendant has included its Bellmore property in its emergency response plans which will include and have included drill(s) or exercise(s) and the location and storage of related equipment, structure, and supplies. And, in the event of a radiological accident, the subject parcel will be site of the reception of Suffolk County residents for the purpose of radiological assessment and the decontamination of persons and vehicles.

FIFTEENTH: That upon information and belief sometime prior to July 27, 1987 the defendant LILCO installed or caused to be installed on its Bellmore property near its southerly property line a trailer with stabilizer bars with connections to electrical and water supplies; with said utilities being intermittently connected or disconnected by LILCO.

SIXTEENTH: That upon information and belief the trailer is located in the "B-Residence Zone" of the Town of Hempstead.

SEVENTEENTH: That upon information and belief the trailer contains decontamination facilities consisting of nine sinks and twenty showers.

EIGHTEENTH: That the siting of the trailer, the addition of stabilizing bars, and the actual connection to utilities constitute the commencement of work for the erection of a structure within the meaning of §256.C of the Zoning Code.

NINETEENTH: That pursuant to §256.C of the Zoning Code such activity should not take place "until a permit has been duly issued therefor."

TWENTIETH: That the defendants have not been issued any building permits as provided for in §86-9 and §86-13 of the Town Code.

TWENTY-FIRST: That the defendants LILCO's construction and improvement of the structure-trailer without the benefit of a building permit is illegal.

AS AND FOR A SECOND CAUSE OF ACTION

TWENTY-SECOND: That the plaintiffs repeat and reallege paragraphs "FIRST" through "SEVENTEENTH" as if more fully set forth herein.

TWENTY-THIRD: That upon information and belief

in connection with the siting of the within described structure-trailer, the defendants have installed plumbing and/or drainage and a water supply.

TWENTY-FOURTH: That §86-10 A and B of the Town Code require that plumbing, drainage and water supply all be installed in a structure pursuant to a permit.

TWENTY-FIFTH: That no plumbing permits have been issued by the Town to sanction the work performed by the defendants in connection with the structure-trailer herein.

TWENTY-SIXTH: That in consequence of the foregoing, the defendant LILCO's installation of plumbing or drainage, and water supply without the benefit of a permit is illegal.

AS AND FOR A THIRD CAUSE OF ACTION

TWENTY-SEVENTH: The plaintiffs repeat and reallege each and every allegation contained in paragraph "FIRST" through "SEVENTEENTH" as if more fully set forth herein.

TWENTY-EIGHTH: That §63 of the Building Zone Ordinance provides that a lot or premises in a Residence "B" District may be used for certain enumerated purposes and no other.

TWENTY-NINTH: That the use of the structure-trailer in a Residence B zone as a decontamination unit is not an expressly provided for use.

THIRTIETH: That in view of the foregoing, because the decontamination structure-trailer use is not expressly

provided for the defendant LILCO's use as such is deemed to be prohibited and illegal.

AS AND FOR A FOURTH CAUSE OF ACTION

THIRTY-FIRST: That the plaintiffs repeat and reallege each and every allegation contained in paragraph "FIRST" through "SEVENTEENTH" as if more fully set forth herein.

THIRTY-SECOND: That §63 of the Building Zone Ordinance provides that a lot or premises in a Residence "B" District may be used for certain enumerated purposes and no other.

THIRTY-THIRD: That the use of any property in a Residence "B" District as a general population reception center for evacuees in the event of a radiological emergency including use as a decontamination and radiological assessment facility is not an expressly provided for use.

THIRTY-FOURTH: That in view of the foregoing, because the use as an evacuation reception area including radiological assessment and decontamination operations is not expressly provided for defendant LILCO's use as such is deemed to be prohibited is illegal.

AS AND FOR A FIFTH CAUSE OF ACTION

THIRTY-FIFTH: That plaintiffs repeat and reallege each and every allegation contained in paragraphs "FIRST" through "SEVENTEENTH" as if more fully set forth herein.

THIRTY-SIXTH: That §310 of the Building Zone Ordinance

permits public utility buildings or structures in any residence or business district when permitted by the Board of Zoning Appeals.

THIRTY-SEVENTH: That the defendant LILCO has a Special Exception permit for its entire parcel under Zoning Board Case No. 553 of 1961 which permits the "construction and maintenance of an operations headquarter consisting of an office and assembly room, warehouse, garage, storage platforms, storage rooms, truck parking, and storage areas" to be "constructed . . . in accordance with the plot plan received by the Board of Zoning Appeals."

THIRTY-EIGHTH: That the installation, use, and maintenance of the trailer on any portion of the Bellmore property and the use of any portion of the Bellmore property as a general population reception center for evacuees including radiological assessment and decontamination activities was never presented to nor passed upon by the Board of Zoning Appeals.

THIRTY-NINTH: That in view of the foregoing, the presence of the trailer-structure and its use as a decontamination unit and the use of any portion of the entire premises as an evacuation reception-assessment area all as done by, or permitted by, the defendant LILCO is beyond the scope of the existing Special Use Permit and as such is illegal.

AS AND FOR A SIXTH CAUSE OF ACTION

FORTIETH: That the plaintiffs repeat and reallege each and every allegation contained in paragraphs "FIRST" through "SEVENTEENTH" as if more fully set forth herein.

FORTY-FIRST: That §196 of the Building Zone Ordinance provides that a lot or premises in a "Business" District may be used for certain enumerated purposes and no other.

FORTY-SECOND: That the use of any property in a "Business" District as a general population reception center for evacuees in the event of a radiological emergency including radiological assessment and decontamination operations is not an expressly provided for use.

FORTY-THIRD: That in view of the foregoing, the defendant LILCO's use of its business zoned property as general population reception center for evacuees in the event of a radiological emergency including radiological assessment and decontamination operations is not expressly provided for and is deemed to be prohibited and is illegal.

AS AND FOR A SEVENTH CAUSE OF ACTION:

FORTY-FOURTH: That the plaintiffs repeat and reallege each and every allegation contained in paragraphs "FIRST" through "SEVENTEENTH" and "TWENTY -EIGHTH" as if more fully set forth herein.

FORTY-FIFTH: That the present use of the subject premises which is in the Residence "B" District and which

in anyway advances, implements, or prepares for the designated use as a general population reception area for evacuees by such items as but not being limited to the designation of the Bellmore site in the emergency response plan, the conducting of a drill or exercise, the storage of supplies or equipment, and the installation and/or the capability to introduce the trailer-structure is not an expressly permitted use.

FORTY-SIXTH: That in view of the foregoing, because the present conduct outlined in paragraph "FORTY-FIFTH" is not expressly provided for in a Residence "B" District the defendants' use as such is deemed to be prohibited and is illegal.

AS AND FOR AN EIGHTH CAUSE OF ACTION

FORTY-SEVENTH: That the plaintiffs repeat and reallege each and every allegation contained in paragraphs "FIRST" through "SEVENTEENTH," THIRTY-SIXTH" and "THIRTY-SEVENTH" as if more fully set forth herein.

FORTY-EIGHTH: That the present use of the subject premises which in anyway advances, implements or prepares for the designated use as a general population reception area for evacuees by such items as but not being limited to the designation of the Bellmore site in the emergency response plan, the conducting of a drill or exercise,

the storage of supplies or equipment, and the installation and/or the capability to introduce the trailer-structure was never presented to nor passed upon by the Board of Zoning Appeals.

FORTY-NINTH: That in view of the foregoing, the present conduct outlined in paragraph "FORTY-EIGHTH" is not expressly provided for on the subject premises pursuant to the existing Special Use Permit and the defendants' use as such is beyond the scope of the existing Special Use Permit and as such is illegal.

AS AND FOR A NINTH CAUSE OF ACTION

FIFTIETH: That the plaintiffs repeat and reallege each and every allegation contained in paragraphs "FIRST" through "SEVENTEENTH" and "FORTY-FIRST" as if more fully set forth herein.

FIFTY-FIRST: That the present use of the subject premises which is in the "Business" District and which in anyway advances, implements or prepares for the designated use as a general population reception area for evacuees by such items as but not limited to the designation of the Bellmore site in the emergency response plan, the conducting of a drill or exercise, the storage of supplies or equipment, and the installation and/or the capability to introduce the trailer-structure is not an expressly

permitted use.

FIFTY-SECOND: That in view of the foregoing, because the present conduct outlined in paragraph "FIFTY-FIRST" is not expressly provided for in a "Business" District, the defendants' use as such is deemed to be prohibited and is illegal.

FIFTY-THIRD: That the defendants, with knowledge of the aforementioned violations, continue and refuse to cease the illegal operation and use of its premises as an evacuation reception area including radiological assessment and decontamination operations.

FIFTY-FOURTH: That the defendants threaten to continue and do continue to use and operate said premises and maintain said structure in violation of the Building Zone Ordinance and Town Code of the Town of Hempstead, all to the irreparable harm and injury of the plaintiffs.

FIFTY-FIFTH: That the plaintiff, Town of Hempstead, is authorized to institute these actions pursuant to the provisions of Section 135 and Section 268 of the Town Law of the State of New York.

FIFTY-SIXTH: That upon information and belief the acts complained of commenced on or about July 27, 1987, and continue to date.

FIFTY-SEVENTH: That the plaintiffs have no adequate remedy at law for any of the causes of action.

WHEREFORE, the plaintiffs respectfully pray for judgment as follows:

1. Permanently restraining and enjoining the defendants LILCO, any of their officers, agents, servants, employees, successors or assigns or anyone claiming or acting by, through, or under them from using the trailer or permitting the trailer to be used in anyway in violation of the laws and ordinances of the Town of Hempstead.

2. Ordering the defendant LILCO to permanently remove the trailer and utility connections thereto from the subject premises and further ordering the removal from the premises of any other equipment, supplies, or structures relating to the evacuation - reception - radiological assessment and decontamination uses.

3. Permanently restraining and enjoining the defendants LILCO, any of their officers, agents, servants, employees, successors or assigns or anyone claiming or acting by, through, or under them from using any part of its premises or permitting the premises to be used in any way as a general population reception center for evacuees in the event of a radiological emergency including radiological assessment and decontamination operations.

4. Permanently restraining and enjoining the defendants LILCO, any of their officers, agents, servants, employees,

successors, or assigns or anyone claiming or acting by, through or under them from using any part of its premises or permitting the premises to be used in anyway which advances, implements, or prepares for the designated use as a general population reception center for evacuees in the event of a radiological emergency including but not limited to the conducting of drills or exercises, the storage of equipment and supplies, and the installation of and/or the capability to introduce the trailer-structure.

5. Ordering the defendants to remove the Bellmore Operations Center from its planning documents and further restraining and prohibiting the defendants from in anyway representing that the present and proposed reception-evacuation - radiological assessment and decontamination uses are permitted and lawful.

6. Granting such further and different relief which the Court may deem just and proper together with the cost and disbursements of this action.

Dated: Hempstead, New York
August 14, 1987

W. KENNETH CHAVE, JR., ESQ.,
Town Attorney and Attorney
Plaintiffs
Office and P.O. Address,
Hempstead Town Hall
Town Hall Plaza, Main Street,
Hempstead, New York 11550

STATE OF NEW YORK }
COUNTY OF } ss:

_____, being duly sworn, deposes and says:

he is _____

in the within action; that he has _____ read the foregoing _____

_____ and _____ knows the contents thereof; that the same is true to _____ own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters _____ believes it to be true.

Sworn to before me this _____

day _____ 19

STATE OF NEW YORK, }
COUNTY OF Nassau } ss:

Eugene Kirby Ferencik, being duly sworn, deposes and says that

he is the Deputy Town Attorney of the Town of Hempstead, the plaintiffs named herein.

That he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true. That the reason this verification is made by deponent and not by the Town of Hempstead is that the Town of Hempstead is a municipal corporation and that the deponent is the Deputy Town Attorney thereof, and authorized to make this verification.

Sworn to before me this 14th

day of August 1987

Eugene Kirby Ferencik

ISABELLA SAND LAING
NOTARY PUBLIC, State of New York
No. 30-0134450
Qualified in Nassau County
Commission Expires March 30, 1989

AFFIDAVIT OF [illegible] SERVICE

STATE OF NEW YORK }
COUNTY OF } ss:

_____, being duly sworn, deposes and says that he is over the age of _____ years. That on the _____

day of _____ 19 _____

at No. _____

in the _____

he served the foregoing _____

upon _____

by delivering to and leaving personally with said _____

a true copy thereof.

Deponent further says that he knew the person served as aforesaid to be the person mentioned and described in said _____

as the _____ therein.

Sworn to before me this

day of

_____, sworn, deposes and says:

the above named _____

That on the _____ day of _____

19 he served the within _____

upon _____

the attorney for the above named _____

by depositing a true copy of the same securely enclosed in a post-paid wrapper in the Post-Office [illegible] Branch Post-Office — a Post Office Box regularly maintained by the United States Government at _____

in said County of _____

directed to said attorney _____ for the _____

at No. _____

N. Y. that is the address within the _____ by _____ for that purpose upon the _____ in this action, at the place _____ an office between which places there _____ a regular communication by mail.

Deponent

Sworn to before me this

day of