

STATE OF NEW YORK  
SUPREME COURT, COUNTY OF CLINTON

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COPY

TOWN OF PLATTSBURGH,

Petitioner-Plaintiff,

**DECISION AND ORDER**

v.

**Index No. 10-1558**

**RJI No. 09-1-10-0627**

CITY OF PLATTSBURGH, COUNTY OF CLINTON,  
CLINTON COUNTY LEGISLATURE,

Respondents-Defendants.

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*Whiteman, Osterman & Hanna LLP*, Albany (*William S. Nolan, Esq.*, of counsel), for petitioner-plaintiff.

*John E. Clute, Esq.*, Plattsburgh, for respondent-defendant City of Plattsburgh.

*O'Connell and Aronowitz, P.C.*, Plattsburgh (*William A. Favreau, Esq.*, of counsel), for respondents-defendants County of Clinton and Clinton County Legislature.

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ROBERT J. MULLER, J.S.C.

In the early 1980s, the New York State Department of Environmental Conservation (hereinafter DEC) requested that respondent-defendant City of Plattsburgh (hereinafter the City) terminate its practice of disposing untreated sewage sludge in lagoons in the Town of Altona, Clinton County. Soon thereafter, grant funds became available through the United States Environmental Protection Agency and the DEC to design and construct sewage sludge treatment facilities, but the grant award criteria favored applications from county governments for regional facilities. As a result, respondent-defendant County of Clinton (hereinafter the County) entered into an Agreement with the City relative to “the construction, acquisition, operation and financing of a sludge/composting disposal system.” The Agreement, dated September 22, 1982,

required the County to acquire the site for the system, secure the financing necessary to construct the system and, finally, to complete construction of the system. The Agreement then required the City to operate the system at its sole expense and to “pay to the County all capital costs of construction and financing of [the] system.” The Agreement further provided, in pertinent part:

“The City agrees, in the event that the system ceases operating and said system becomes inactive, to assume ownership for the fee of \$1.00. The City further agrees, when the system is completely paid for, to continue operating the system or to assume ownership of the system, if this is the desire of the County. The intent of this section is to guarantee that there will be no financial burden to the Clinton County Taxpayers, forever, as a result of this system being owned by the County and operated by the City.”

The County acquired property in the Town of Plattsburgh, Clinton County and the system – known as the Clinton County Compost Facility (hereinafter the Facility) – was thereafter constructed. The City began operating the Facility in 1986, accepting sludge generated by both the City and other municipalities in the County of Clinton. Operations then continued until 2005, when a portion of the Facility was destroyed by fire, thus rendering the system inoperable. Since then, the City has been disposing of untreated sewage sludge in landfills in the Town of Malone, Franklin County and Coventry, Vermont.

In the spring of 2010, the City sought to recommence operation of the Facility, proposing a different composting technique engineered to abate the noxious odors typically associated with sewage waste treatment. The City then began the permitting process and initiated the necessary review pursuant to the State Environmental Quality Review Act (*see* ECL art 8 [hereinafter SEQRA]). Additionally, the City – which had completed payment for the Facility – requested that ownership of the Facility be transferred to it by the County for a fee of \$1.00, as set forth in the Agreement. In accordance with this request, defendant-respondent Clinton County

Legislature (hereinafter the County Legislature) passed Resolution No. 728 on October 13, 2010 whereby the Facility, together with the real property upon which it is situated, was transferred to the City for the sum of \$1.00. Plaintiff-petitioner Town of Plattsburgh (hereinafter the Town) has now commenced this combined CPLR article 78 proceeding and action for declaratory judgment to obtain a Judgment annulling and invalidating this Resolution and, further, restraining and enjoining the County from transferring the Facility as authorized by the Resolution.

The Town first contends that Resolution No. 728 violates County Law § 215, which section provides, in pertinent part:

“When the board of supervisors shall determine that any county real property is no longer necessary for public use such board by resolution adopted by the affirmative vote of two-thirds of the total membership of the board taken by roll call and entered in the minutes, may sell and convey all the right, title and interest of the county therein” (County Law § 215 [5]).

This section further provides that “[s]uch property may be sold or leased only to the highest responsible bidder after public advertisement” (County Law § 215 [6]). Here, the County openly admits that it failed to comply with County Law § 215. Indeed, there was no determination made relative to whether the subject real property remained necessary for public use and, further, the property was not sold to the highest bidder after public advertisement. Rather, the property was transferred to the City in accordance with the terms of the Agreement.

The County contends that County Law § 215 is not applicable under these circumstances. According to the County, the transfer is governed by General Municipal Law § 72-h, which section provides, in pertinent part:

“Notwithstanding any provision of any general, special or local law or of any

