

**ALBANY COMMON COUNCIL
MINUTES OF A REGULAR MEETING**

Monday, August 20, 2007

The Common Council was convened at 7:00 p.m. and was called to order by Council President Pro Tempore Richard Conti.

The roll being called, the following answered to their names: Council Members Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, Igoe, McLaughlin, O'Brien, Rosenzweig, Sano, Scalzo, Smith, and Timmons.

Also present was the following staff: John C. Marsolais, Patrick Jordan, Barbara Samel, and Ann DiLillo.

Council Member Conti led the Pledge of Allegiance.

PUBLIC COMMENT PERIOD

- 1) Leonard I. Morgenbesser, 219 Tampa Avenue, Albany, NY 12203 (Gun Violence)
- 2) Peter Sheehan, 32 Buckingham Drive, Albany, NY 12208 (Comprehensive Plan Moratorium)

There being no further speakers, the President Pro Tempore declared the Public Comment Period closed.

Council Member McLaughlin made a motion to change the order of business to allow the introduction and consideration of Resolution 59.82.07R as the first order of business, which was approved by unanimous voice vote.

Council Members Smith, Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, Igoe, McLaughlin, Rosenzweig, Sano, Scalzo, and Timmons offered the following, asked for passage and a roll call thereon:

Resolution Number 59.82.07R

RESOLUTION OF THE COMMON COUNCIL IN HONOR OF THE LATIN FEST AND THE FIRST ANNUAL CAPITAL REGION LATINO PARADE

WHEREAS, the Albany Latin Festival Association, a volunteer organization of committed community residents, will produce the 12th annual Albany LATINFEST and First Annual Capital Region Latino Parade, which will take place at the Washington Park Parade Grounds on August 25, 2007; and

WHEREAS, the Albany Latin Festival Association has established the Albany LATINFEST as a formal and perennial free performance event celebrating the Hispanic culture through presentations of local, regional and international Hispanic performing artists. LATINFEST is promoted and produced as a family oriented event and has become the single largest event of its kind in the Capital Region attracting close to 10,000 community members; and

WHEREAS, by presenting the event at Washington Park, LATINFEST will bring a formal cultural presentation to those residents of the North Albany, West Hill, Arbor Hill and South End communities who have been under served by the traditional cultural institutions and those least able to attend other regional cultural events due to prohibitive costs and transportation barriers. While this event is designed as a celebration of the cultural contributions of the most rapidly expanding ethnic group in Albany (i.e. Hispanics), the ideal location provides the opportunity for all members of the

surrounding Albany community to share in an event that promises to enhance their appreciation of the city's expanding cultural diversity; and

WHEREAS, the Albany Latin Festival Association (ALFA) was founded during the summer of 1996 by Pedro Diaz, Vicente Alfonso, Carlos Maldonado, and other committed community members to feature the music and dance representative of the Hispanic American cultural traditions that have contributed to the contemporary performing arts. ALFA promotes the positive contributions of the Hispanic community through cultural events in order to enhance the positive aspects of Albany's multi cultural diversity and, thereby, promote neighborhood revitalization for residents of designated Enterprise Communities.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Albany hereby congratulates the festival organizers and supporters of this event, thanks them for their efforts and wishes them success with this year's event.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fox, Fahey, Herring, Igoe, McLaughlin, O'Brien, Rosenzweig, Sano, Scalzo, Smith and Timmons

Affirmative 15 Negative 0 Abstain 0

APPROVAL OF MINUTES FROM PREVIOUS MEETING

Deferred

CONSIDERATION OF LOCAL LAWS

Council Member Fahey introduced the following, which was referred to the Planning, Economic Development and Land Use Committee:

LOCAL LAW D-2007

A LOCAL LAW ENACTING A MORATORIUM WITHIN THE CITY OF ALBANY

BE IT ENACTED by the Common Council of the City of Albany as follows:

Section 1. Legislative Intent.

A. The Common Council of the City of Albany by Resolution No. 25.31.07 created a City of Albany Comprehensive Plan Board charged with the preparation of a Comprehensive Plan for the City over a period of approximately 24 months.

B. The Common Council further finds that during the course of the creation of this comprehensive plan development may occur that may have a future deleterious effect within certain zoning districts and the community as a whole.

C. The Common Council therefore finds it necessary to adopt a reasonable interim local law to govern the development of properties in certain districts during the time that the City is working on creating a comprehensive plan.

D. This action is necessary in order to protect the public interest and welfare.

Section 2. Scope of controls.

A. During the effective period of this article as provided below, the City of Albany Common Council shall not accept, process or approve any application for a zoning amendment pursuant to Section 375-28 of the Code of the City of Albany during the moratorium period, and the processing of any such application that may be pending is hereby stayed during the moratorium period.

B. During the effective period of this article as provided below, the City of Albany Board of Zoning Appeals shall not accept, process or approve any application for a use variance pursuant to Sections 375-14 and 375-26(B)(2) of the Code of the City of Albany during the moratorium period, and the processing of any such application that may be pending is hereby stayed during the moratorium period.

C. Nothing contained in this local law shall be deemed to affect or otherwise limit the continued construction of any building or the commencement of construction of any building for which building permit approval has been granted prior to the effective date of this local law or for which application for a building permit has been made granted prior to the effective date of this article.

Section 3. Hardship.

A. The Common Council shall have the power to vary or modify the application of any provision of this local law upon its determination, in its absolute legislative discretion, that such variance from strict compliance with this local law will not be detrimental to the City's physical and/or visual environment or the well-being of persons or property within the City and upon finding that the application of the provisions of this article to a specific property will cause unnecessary hardship and that such hardship is unique to that specific property.

B. Upon receiving written application for such variance, the Common Council shall hold a public hearing within 15 days of the receipt of such application. Within 10 days of the close of the public hearing, the Council shall render a written decision either granting or denying the application. If the Common Council determines that the strict application of this local law creates unnecessary hardship to the particular property, then the Common Council shall vary the application of this local law to the minimum extent necessary. The granting of an appeal for relief by the Common Council shall authorize and permit the Common Council or Board of Zoning Appeals to accept, review, consider and/or otherwise act.

C. Pursuant to Article 78 of the Civil Practice Laws and Rules, any party aggrieved by the determination of the Common Council on an application for a variance may appeal said decision to the Supreme Court, State of New York, within 30 days of the filing of said decision in the office of the City Clerk.

Section 4. Extension, modification or termination of moratorium period.

The moratorium period may be extended, modified or terminated by the Common Council of the City of Albany by the adoption of a local law.

Section 5. Penalties for offenses.

Any person, firm, entity or corporation that shall violate any of the provisions of this article shall be subject to penalties as otherwise provided by the Code of the City of Albany and shall be subject to injunctive relief for actions which may have taken place in violation of this local law.

Section 6. Effective date.

This article shall take effect immediately, as provided by law, and shall remain in force for six months, unless extended by local law.

Section 7. This local law shall take effect upon final passage, public hearing and filing with the Secretary of State.

Council Member McLaughlin made a motion to hold Local Law C-2006, Local Law B-2007, and Local Law C-2007, which was approved by unanimous voice vote.

REPORTS OF STANDING COMMITTEES

Public Safety – Council Member Scalzo stated that the committee met on August 15, 2007 at 6:30pm to have a discussion on Hazardous Materials. The educational process would continue.

Planning, Economic Development and Land Use - Council Member Herring stated that the committee met on August 15, 2007 at 6pm following caucus to discuss Resolution Number 37.51.07R and Ordinance Number 63.61.07. Both pieces of legislation were passed out of committee favorably.

Human Resources and Human Rights – Council Member Casey stated that the committee would be meeting after the Labor Day holiday to consider the Human Rights Commission vacancies and other related issues.

Finance, Taxation and Assessment – Council Member Sano stated that the committee met on August 15, 2007 at 5pm with Comptroller Tom Nitido regarding the 2nd Quarter Financial Report.

CONSIDERATION OF ORDINANCES

Council Member Herring on behalf of Council Member Conti introduced the following, which was referred to the Planning, Economic Development and Land Use Committee:

Ordinance Number 67.82.07

AN ORDINANCE AMENDING CHAPTER 375 (ZONING) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO AUTHORIZING RESIDENTIAL PARKING COOPERATIVES IN CERTAIN ZONING DISTRICTS

The City of Albany, in Common Council convened, does hereby ordain and enact as follows:

Section 1. Findings and intent. The Common Council finds that additional options are needed to facilitate resident parking availability within certain neighborhoods of the City of Albany. The Council also finds that addressing the need for resident parking availability requires multiple options. In authorizing “residential parking cooperatives” it is the Council’s intent to identify a flexible model that can be considered on a case-by-case basis to address resident needs. It is the Council’s further intent that such cooperatives, in design and location, be in consonance with surrounding residential neighborhoods

and that there be flexibility in identifying organizational models that meet the objectives of this ordinance.

Section 2. Subsection B of section 375-7 (Definitions) of the Code of the City of Albany is amended by adding a new definition thereto to read as follows:

RESIDENTIAL PARKING COOPERATIVE – A parking facility owned jointly, on a cooperative basis, by residents of a neighborhood for the sole purpose of providing off-street parking to such residents within a 500-foot radius of their dwelling. Such facility shall not be used for commercial purposes and shall meet the applicable design standards set forth in section 375-180 of this chapter and shall be subject to the review and approval of the Historic Resources Commission under Article XII of Part 4 of Chapter 42 of this Code.

Section 3. Subsection C of section 375-66 (R-2C One- and Two-Family Row House Residential District) is amended by adding a new item (13) to read as follows:

(13) Residential parking cooperatives.

Section 4. No later than 30 days after the effective date of this ordinance, the Commissioner of the Department of Development and Planning shall submit to the Common Council administrative standards and procedures for the application, consideration and approval of residential parking cooperatives as defined in section 2 of this ordinance.

Section 5. This ordinance shall take effect 60 days after its enactment into law.

Council Member Igoe introduced the following, which was referred to the Law Buildings and Code Enforcement Committee:

Ordinance Number 68.82.07

AN ORDINANCE AMENDING ARTICLES IV (UNSAFE BUILDINGS) AND IX (BUILDING CONSTRUCTION AND REGULATION) OF CHAPTER 133 (BUILDING CONSTRUCTION) OF THE CODE OF THE CITY OF ALBANY

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. Section 133-28 of Article IV of Chapter 133 of the Code of the City of Albany is hereby amended as follows:

ARTICLE IV Unsafe Buildings

§ 133-28. Power to make order to repair or demolish.

Whenever any building or part of a building in the City of Albany shall become unsafe by reason of its use, mode or construction or which upon the demolition of an adjoining building shall be discovered to be unsafe or shall be determined to be unfit for human habitation or is a hazard to the health or safety of the occupants or public, the Commissioner of Buildings shall have power to make such order, relative to the discontinuance or modification of such use and the demolition, repair or strengthening of such building, after giving the parties in interest a written or printed notice and a reasonable opportunity to be heard, as the nature of the occasion requires, and to prohibit the use of such building or part of a building until the order of said Commissioner of Buildings is complied with; such order shall prescribe the time within which such use shall be discontinued or modified, or such demolition, repairs or strengthening

shall be made, and said Commissioner of Buildings shall cause a certified copy of said order to be served upon the owner or occupants of any such building or part of a building or the agent of any such owner. If the building is vacant or the owner absent, the notice provided for herein shall be served by attaching a copy thereof to the building and delivering a copy thereof to any person having charge of the building and mailing a copy to the owner as shown by the assessment rolls of the City. Proof of service of such notice by the Commissioner of Buildings in this manner shall be deemed sufficient service. If after the service or posting of such notice the owner or occupant of any such building shall neglect or refuse to comply with the order of said Commissioner of Buildings, or his agent or servants, relative to the use of such building, or shall neglect to comply with the order of said Commissioner of Buildings or his servants relative to the demolition, repair or strengthening of such building within [60] 30 days of notice or posting, the Commissioner of Buildings is hereby authorized and empowered to employ such labor and furnish such materials and take such steps as in his judgment may be necessary to make the building safe.

Section 2. Section 133-55 of Article IX of Chapter 133 of the Code of the City of Albany is hereby amended as follows:

ARTICLE IX Building Construction and Regulation

§ 133-55. Power to act in emergencies.

- A. Whenever the Commissioner finds that a violation of this Part 2 exists which, in his opinion, requires immediate action to abate a direct hazard or an immediate danger to the health, safety or welfare of the occupants of a building or of the public, the Commissioner may, without prior notice or hearing, take any action authorized herein which is reasonably necessary to abate or remove the condition.
- B. Such action may include but is not limited to demolition of the building or structure, vacating the occupants of the premises and of surrounding premises, closing of public or private streets or rights-of-way, termination of utility service, erection of barricades and other protections and the performance of physical work on the premises.
- C. Recovery of any cost incurred with respect to the abatement of an emergency by the Commissioner shall take place pursuant to the provisions of this Part 2, and the Commissioner of Buildings is hereby authorized and empowered to employ such labor and furnish such materials and take such steps as in his judgment may be necessary to make the building safe.
- D. The value of the work done and the materials furnished in doing said work, or any part thereof, under and by direction of the Department of Buildings, as provided for in the last section, shall, when properly certified by the Commissioner of Buildings, be audited and paid by the City in the same manner as other claims against the City are audited and paid, and the amount so paid shall be and remain a lien against the property upon which the work is done and shall be collected by the City from the owner of such property in the same manner as taxes are collected, and the City may institute an action at law against such owner, owners or occupants to recover the cost thereof. The remedy by action at law shall be in addition to the right to assess the cost as a lien against the property.

Section 3. Except as herein amended, Chapter 133 (Building Construction) of the Code of the City of Albany is hereby ratified, continued and approved.

Section 4. This ordinance shall take effect immediately.

Council Member Herring on behalf of Council Member Conti asked for passage and a roll call vote thereon of ORDINANCE 63.61.07 (AN ORDINANCE AMENDING PART 25 (INDUSTRIAL DEVELOPMENT AGENCY) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF THE

CODE OF THE CITY OF ALBANY IN RELATION TO CERTAIN REPORTING REQUIREMENTS FOR THE CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY.), which had been previously introduced.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, Igoe, McLaughlin, O'Brien, Rosenzweig, Sano, Scalzo, Smith and Timmons

Affirmative 15 Negative 0 Abstain 0

Council Member Sano asked for passage and a roll call vote thereon of ORDINANCE 28.31.07 (AN ORDINANCE AUTHORIZING CERTAIN PROJECTS BY THE CITY OF ALBANY, NEW YORK AT A MAXIMUM ESTIMATED COST OF \$1,000,000.00 AND AUTHORIZING THE ISSUANCE OF \$1,000,000.00 SERIAL BONDS OF SAID CITY TO PAY THE COST THEREOF) (LAND ACQUISITION), which had been previously introduced.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Casey, Conti, Fox, Herring, Igoe, McLaughlin, O'Brien, Rosenzweig, Sano, Scalzo, and Timmons

Negative -- Calsolaro, Ellis, Fahey, and Smith

Affirmative 11 Negative 4 Abstain 0

Council Member Sano asked for passage and a roll call vote thereon of ORDINANCE 29.31.07 (AN ORDINANCE AUTHORIZING CERTAIN PROJECTS BY THE CITY OF ALBANY, NEW YORK AT A MAXIMUM ESTIMATED COST OF \$625,000.00 AND AUTHORIZING THE ISSUANCE OF \$625,000.00 SERIAL BONDS OF SAID CITY TO PAY THE COST THEREOF) (LANDFILL EXPANSION), which had been previously introduced.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Casey, Conti, Fox, Herring, Igoe, McLaughlin, O'Brien, Rosenzweig, Sano, Scalzo, and Timmons

Negative -- Calsolaro, Ellis, Fahey, and Smith

Affirmative 11 Negative 4 Abstain 0

The remaining ordinances on the pending agenda were held at the request of Council Member McLaughlin.

CONSIDERATION OF RESOLUTIONS

Council Member O'Brien offered the following, asked for passage and a roll call vote thereon:

Resolution Number 60.82.07R

AUTHORIZING THE IMPLEMENTATION, AND FUNDING IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID AND STATE "MARCHISELLI" PROGRAM-AID ELIGIBLE COSTS, OF A TRANSPORTATION FEDERAL-AID PROJECT, AND APPROPRIATING FUNDS THEREFOR. (CENTRAL AVENUE ROAD REHABILITATION PROJECT, EVERETT ROAD TO CITY LINE [P.I.N. 1754.45])

WHEREAS, a Project for the Highway Reconstruction of Central Avenue (Route 5) from the City Limit to Everett Road, City of Albany, P.I.N. 1754.45 (the Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and

WHEREAS, the City of Albany desires to advance the Project by making a commitment of 100% of the non-federal share of the cost of Construction.

NOW, THEREFORE, the Common Council, duly convened does hereby

RESOLVE, that the Common Council hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Common Council hereby authorizes the City of Albany to pay in the first instance 100% of the federal and non-federal share of the cost of Construction work for the Project or portions thereof; and it is further

RESOLVED, that the sum of \$1,280,000.00 (One million two hundred eighty thousand dollars and no cents) has already been appropriated from Ordinance No. 15.42.01 and made available to cover the cost of participation in the Preliminary Engineering phase (\$1,247,000.00) and the Right of Way Incidentals phase (\$33,000.000).

RESOLVED, that the additional sum of \$13,820,000.00 (Thirteen million eight hundred twenty thousand dollars and no cents) is hereby appropriated pursuant to Ordinance Nos. 15.42.01 and 34.31.06 and made available to cover the cost of participation in the Construction phase of the Project; and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Common Council of the City of Albany shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the New York State Department of Transportation thereof; and it is further

RESOLVED, that the Mayor of the City of Albany be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or Marchiselli Aid on behalf of the City of Albany with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefor that are not so eligible; and it is further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project; and it is further

RESOLVED, this Resolution shall take effect immediately.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, Igoe, McLaughlin, O'Brien, Rosenzweig, Sano, Scalzo, Smith and Timmons

Affirmative 15 Negative 0 Abstain 0

Council Member Fox offered the following, asked for passage, and a roll call vote thereon:

Resolution Number 37.51.07R (As Amended)

RESOLUTION OF THE COMMON COUNCIL DECLARING AND REESTABLISHING ITSELF AS LEAD AGENCY AND REQUIRING PREPARATION OF A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT IN ACCORDANCE WITH ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW (SEQRA) AND THE REGULATIONS PROMULGATED THEREUNDER IN CONNECTION WITH THE THARALDSON DEVELOPMENT COMPANY'S APPLICATION FOR REZONING APPROVAL OF 124-128R WASHINGTON AVENUE EXTENSION

WHEREAS, on or about September 10, 2003, Tharaldson Development Company ("Tharaldson"), filed an application for rezoning with the City of Albany Common Council ("Common Council") together with a legal description of the area to be rezoned, Long Environmental Assessment Form, site plan and other relevant information to allow the construction and operation of a 124-unit Residence Inn facility, and associated improvements (the "Project") on ±3.6 acres of land on the south of Washington Avenue Extension, north of the Town of Guilderland municipal boundary line, in the City of Albany, New York (the "Site"); and

WHEREAS, the Common Council previously determined to act as lead agency for the Project pursuant to Article 8 of the Environmental Conservation Law and 6 NYCRR Part 617 ("SEQRA"), and coordinated review of the Project as SEQRA lead agency with the other involved agencies for this action determined to constitute a Type I action; and

WHEREAS, on February 19, 2004, as SEQRA lead agency, the Common Council determined that the Project may have a significant effect on the environment, requiring the preparation of a Draft Environmental Impact Statement ("DEIS") and, thereafter, published notice of its positive declaration in the Environmental News Bulletin; and

WHEREAS, the Common Council determined to conduct scoping for the Project and consistent with the requirements of SEQRA, conducted a public hearing on August 26, 2004 to consider the Draft Scoping Checklist; and

WHEREAS, written comments were received and considered by the Common Council on the Draft Scoping Checklist which was thereafter modified to reflect substantive comments received

thereon, and a Final Scoping Checklist was prepared in accordance with the requirements of 6 NYCRR 617.8 and accepted as complete on September 20, 2004; and

WHEREAS, the Draft Environmental Impact Statement (“DEIS”) was prepared pursuant to the Final Scoping Checklist and the requirements of 6 NYCRR § 617.9(b); and

WHEREAS, the Common Council based upon its own independent examination and consideration of the DEIS and consultation with its staff, found and determined that the DEIS was satisfactory with respect to its scope, content and adequacy for purposes of commencing public review and consistent with the content of the Final Scope and published it as required by SEQRA; and

WHEREAS, on April 18, 2005, the Common Council conducted a combined public hearing to consider the DEIS and rezoning application/petition as required by SEQRA and Albany City Code (Zoning Ordinance) at which all members of the public desiring to be heard were given an opportunity to submit oral and written comments on the Project, including but not limited to, the DEIS and rezoning; and

WHEREAS, on April 21, 2005, the Albany County Planning Board conducted a meeting and issued a recommendation on the Project which stated “Modify local approval to include: 1) Review by the Albany Pine Bush Commission; and 2) Notification to the Town of Guilderland”; and

WHEREAS, the Albany Pine Bush Preserve Commission has participated in the review of the Project, offering written comments and providing oral comments at public hearings and meetings; and

WHEREAS, the Town of Guilderland has been notified of the Project; and

WHEREAS, at the conclusion of the public comment period on the DEIS on May 19, 2005, the Common Council caused to be prepared a Final Environmental Impact Statement (the “FEIS”) with respect to the Project, which includes, but is not limited to, responses to public comments received on the DEIS for the Project; and

WHEREAS, the Zoning Committee of the Common Council (“Zoning Committee”) conducted a two public meetings to allow public comment, consider the FEIS and make a recommendation regarding acceptance of the FEIS to the Common Council; and

WHEREAS, the Zoning Committee recommended acceptance of the FEIS as complete, adequate and accurate as to form, content and substance; and

WHEREAS, on November 21, 2005, the Common Council, based upon its own independent examination and consideration of the FEIS and consultation with its engineering and legal consultants, determined that the FEIS to be satisfactory with respect to its scope, content and adequacy; and

WHEREAS, on December 15, 2005, the Zoning Committee conducted a public meeting and invited additional public comments on the draft SEQRA Findings Statement and, after due deliberation, the Zoning Committee passed a resolution to recommend adoption of the SEQRA Findings Statement and to rezone the Site from R-1B to C-2 to the Common Council; and

WHEREAS, after waiting the required ten day consideration period of the FEIS, pursuant to 6 NYCRR §617(11)(a), on December 19, 2005, the Common Council adopted a comprehensive SEQRA Findings Statement and thereafter rezoned the Site from R-1B to C-2; and

WHEREAS, an Article 78 proceeding was commenced challenging the determinations of the Common Council, and in a Decision & Order dated February 7, 2007 (the “Decision”), the Court dismissed all of the claims raised against the Common Council with the exception of whether an appropriate amount of attention was given to the potential impact of the Project on “other rare, threatened and endangered species found in the [Pine Bush] Preserve”; and

WHEREAS, the Court specifically referenced a September 2004 letter from NYSDEC concerning the draft Scope for the Project, wherein the NYSDEC commented concerning evaluation of other “rare” species known as the “Hognosed Snake”, “Worm Snake”, “Eastern Spadefoot Toad” and “Frosted Elfin” and an April 25, 2005 letter concerning the DEIS, where the Albany Pine Bush Preserve Commission stated that the Albany Pine Bush is “home to 19 rare plant and animal species” including the Karner blue butterfly, Frosted Elfin and Adder’s Mouth Orchid; and

WHEREAS, the Decision indicated that the EIS’s contained considerable analyses pertaining to the Karner blue butterfly and stated:

Missing from the Futyma reports are any discussion of animals, other than butterflies, which may be present on the site. And, though considerable attention was given to the impact the project may have on the off-site Karner blue butterfly population, and to a lesser extent the Frosted Elfin butterfly, there is no evaluation, despite the contrary statement in the FEIS, of the impact the project may have on any of the ‘rare’ plant and animal species known to be present in the Albany Pine Bush particularly those specifically identified by NYSDEC and the APBPC. Consequently, with respect to this issue the environmental impact statements are deficient; and

WHEREAS, the Court found:

Based upon the absence in the environmental impact statements of a hard look at the potential impacts of the action on the range of rare plant and animals found in the Albany Pine Bush, the determination of the City of Albany Common Council pursuant to SEQRA is vacated, the ordinance rezoning the site of the proposed project is annulled and the matter is remitted to the Common Council; and

WHEREAS, the Common Council hereby determines to reestablish itself and continue to act as SEQRA lead agency for this Project; and

WHEREAS, in order to address the issues cited in the Decision, the Common Council intends to comply, without conceding or prejudicing and reserving all of its rights on any appeal, by requiring preparation of a Supplemental Draft Environmental Impact Statement to address these issues identified in the Decision.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to SEQRA, the City of Albany Common Council hereby reestablishes itself as SEQRA Lead Agency and resumes acting as lead agency for the Project for the supplemental environmental review as required by the Decision.

BE IT FURTHER RESOLVED, that pursuant to SEQRA, the Common Council directs that a Supplemental Draft Environmental Impact Statement be prepared to evaluate the issues raised in the Decision.

BE IT FURTHER RESOLVED, this Resolution shall take effect immediately.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Igoe, McLaughlin, O'Brien, Rosenzweig, Sano, Scalzo, Smith, and Timmons

Affirmative 15 Negative 0 Abstain 0

Council Pro Tempore recognized Council Member Sano to withdraw Resolution Number 17.32.06R.

The remaining Resolutions on the pending agenda were held at the request of Council Member McLaughlin.

MISCELLANEOUS OR UNFINISHED BUSINESS

RESOLVED THAT THE FOLLOWING PERSONS BE AND HEREBY ARE APPOINTED COMMISSIONERS OF DEEDS FOR THE CITY OF ALBANY, NEW YORK FOR THE TERM ENDING DECEMBER 31, 2008, AND WAIVE THE READING OF THE NAMES:

Silver, Nathaniel Christopher, 279 Lark St, Albany, NY 12210

Council Members Calsolaro, Fahey, McLaughlin and Smith expressed concern over incidents of violence which occurred over the previous weekend.

ADJOURNMENT

A motion was made for adjournment.

Council President Pro Tempore Conti stated, hearing no objections, that the Council was adjourned.

A true record of the Common Council Minutes of August 20th, 2007.

**CASHAWNA PARKER
LEGISLATIVE AIDE TO THE COMMON COUNCIL**