

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

Monday, September 17, 2007

The Common Council was convened at 7:00 p.m. and was called to order by Council President Morris.

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, and Smith.

Also present was the following staff: John Marsolais, Patrick Jordan, Barbara Samel, and Cashawna Parker.

Council Member Conti led the Pledge of Allegiance.

PUBLIC COMMENT PERIOD

- 1) Richard Kissane, 47 Edgecomb Street, Albany, NY 12209 (Allowing spectators on the golf course during high school games)
- 2) Lynne Jackson, 223 S. Swan Street, Albany, NY 12210 (Reso. 61.69.07R)
- 3) Neil Gifford, 195 New Karner Road, Albany, NY 12205 (Reso. 61.69.07R)
- 4) John Wolcott, 344 Sheridan Avenue, Albany, NY 12206 (Reso. 61.69.07R)

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

APPROVAL OF MINUTES FROM PREVIOUS MEETING

DEFERRED

CONSIDERATION OF LOCAL LAWS

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

REPORTS OF STANDING COMMITTEES

Public Safety – Council Member Scalzo stated that the committee would be meeting on September 27, 2007 at 6PM to discuss the police department gun policies and beginning October 2 to October 4, 2007 the committee would be interviewing Gun Violence Task Force candidates.

Law Buildings and Code Enforcement – Council Member Igoe stated that the committee would be meeting on Tuesday, September 25, 2007 at 5:30PM to consider Ordinance Numbers 58.62.06, 54.51.07, 65.72.07, and 66.81.07.

Finance, Taxation and Assessment – Council Member Sano stated that the committee would be meeting on September 26, 2007 at 6 PM to discuss Resolution Number 15.21.07R and Local Law C-2007.

Human Resources and Human Rights – Council Member Casey stated that the committee would also be meeting on September 26, 2007 prior to caucus to consider the Human Rights Commission vacancies.

CONSIDERATION OF ORDINANCES

Council Member Sano offered the following, which was held:

Ordinance Number 70.92.07

AN ORDINANCE AMENDING ORDINANCE 27.23.07 “AN ORDINANCE AUTHORIZING CERTAIN PROJECTS BY THE CITY OF ALBANY, NEW YORK AT A MAXIMUM ESTIMATED COST OF \$160,000.00 AND AUTHORIZING THE LEASE FINANCING OR THE ISSUANCE OF \$160,000.00 SERIAL BONDS OF SAID CITY TO PAY THE COST THEREOF” (LANDFILL LITTER FENCING)

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

Section 1. The objects or purposes to be authorized and financed pursuant to this ordinance are set forth below, together with estimates of the maximum estimated costs thereof; determinations of the periods of probable usefulness thereof and the subparagraphs of Section 11.00(a) of the New York Local Finance Law pursuant to which it is determined; the maximum amount of the bonds to be issued with respect to such object or purpose and the maximum term of the obligations to be issued with respect to each project or purpose.

Object or Purpose: Miscellaneous expenditures
Local Finance Law Section 11.00(a) Subparagraph 40
Period of Probable Usefulness: 3 years
Maximum Term of Obligations: 3 years
Maximum Estimated Cost: \$160,000.00
Maximum Amount of Bonds: \$160,000.00
Comptroller's Bond Authorization Numbers: AB-07
Comptroller's Project Numbers: [~~GH 71109728~~] GH 81609728

Section 2. This ordinance shall take effect immediately.

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

Ordinance Number 71.92.07

AN ORDINANCE AMENDING CHAPTER 375 OF THE CODE OF THE CITY OF ALBANY (ZONING) CHANGING THE ZONING CLASSIFICATION OF APPROXIMATELY 3.6 ACRES OF PROPERTY LOCATED ON THE SOUTH SIDE OF WASHINGTON AVENUE EXTENSION AND KNOWN AS 124-128R WASHINGTON AVENUE EXTENSION FROM R-1B (SINGLE-FAMILY MEDIUM DENSITY RESIDENTIAL DISTRICT) TO C-2 (HIGHWAY COMMERCIAL) AND AMENDING THE ZONING MAP ACCORDINGLY

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

Section 1. Chapter 375 of the Code of the City of Albany (Zoning) and the Official Zoning Map are hereby amended to change the zoning classification of approximately 3.6 acres of property located on the south side of Washington Avenue Extension and known as 124-128R Washington Avenue Extension from R-1B (Single-family Medium Density Residential District) to C-2 (Highway Commercial), said property being more particularly described as follows:

(See attached Schedule “A”)

Section 2. This Ordinance shall take effect immediately.

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

Ordinance Number 72.92.07

AN ORDINANCE AMENDING ARTICLE IV CHAPTER 375 (ZONING) IN RELATION TO PROCEDURES OF THE BOARD OF ZONING APPEALS AND ARTICLE XXIII CHAPTER 1 OF THE CODE OF THE CITY OF ALBANY (PLANNING) IN RELATION TO PROCEDURES OF THE PLANNING BOARD

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

Section 1. Section 375-13 of Article IV of Chapter 375 of the Code of the City of Albany is hereby amended as follows:

ARTICLE IV BOARD OF ZONING APPEALS

§ 375-13. Meetings; quorum; records.

- A. Meetings of the Board shall be held twice a month on a regular schedule established by the Board members, with additional meetings to be held at the call of the Chair If determined to be necessary. All Board meetings shall be open to the public and shall be held at a time of day after normal business hours to assure the opportunity for public participation. All meetings shall be in strict compliance with the open meetings requirements of Public Officers Law Article 7. All proceedings including all deliberations shall be open to the public.

Section 2. Section 375-19 of Article IX of Chapter 375 of the Code of the City of Albany is hereby amended as follows:

ARTICLE IV BOARD OF ZONING APPEALS

§ 375-19. Hearing.

The Board shall hold a public hearing on each application.

D. Hearing Rules and Regulations of the Board.

- (1) But for the initial presentation of the applicant, there will be a limit of five minutes to speak on proposed agenda items or to read a prepared statement. The name and address of each speaker will be given as an introduction. The Board will also accept and encourage written and signed statements and petitions as part of the public testimony. The primary purpose will be for the Board to listen to interested persons. Remarks should be kept relevant to the item(s) on the agenda being discussed. The Chair at his/her discretion may require that a speaker sum up his or her testimony in order to proceed with the orderly conduct of the meeting. Testimony will be recorded and maintained as part of the public record.
- (2) The order of presentation. (a) The applicant and/or representative (b) Others appearing in support or opposition of the proposal (c) A rebuttal period in which a representative of each side of the issue may rebut and clarify arguments regarding the proposals for a period of five minutes

each.

E. Adjournments

- (1) If further evidence or information is required for the rendering of a decision on the application, the Board shall adjourn the hearing. The Board on its own motion or on the request of any person, may adjourn the hearing for the purpose of giving further notice, taking further evidence, gathering further information or for other reasons that the Board may find sufficient. The hearing shall remain open and shall be adjourned to a fixed date, time and place. Notice shall be given as set forth in Section 375-19
- (2) The Board may limit the testimony in the adjourned hearing to specific issues or questions identified by the Board in the original hearing.

F. Deliberations

The hearing will be closed only after all evidence to be considered by the Board and after all parties and the public has been given the opportunity to examine such evidence. The Board will then convene in a deliberative session during which arguments will be discussed. These discussions will be solely among members of the Board and their staff, but shall be open to the public upon notice in the same manner as set forth in Section 375-19 of this chapter. There will be no disruption of this process by the audience, nor conversation with members of the Board unless recognized by the Chair. After deliberating, a vote of the Board will be taken and recorded.

Section 3. Section 375-20 of Article IX of Chapter 375 of the Code of the City of Albany is hereby amended as follows:

ARTICLE IV BOARD OF ZONING APPEALS

§ 375-20. Decision.

A. The Board shall render a decision within (-30-) 62 days of the final hearing on an application. The decision shall include:

- (1) Findings of fact
- (2) References to all the evidence in the record and to the exhibits, plans or specifications upon which such decision is based
- (3) The reason or reasons for such decision

B. Voting

- (1) The concurring vote of at least four members of the Board shall be necessary to take any action.
- (2) In order to vote all members voting must be present at the time the vote is taken.
- (3) When a member has been absent from a portion of the hearing, the member shall first certify on the record that he/she has reviewed the record of any such portion of the hearing during which he/she was absent and is fully informed of the essential facts and issues of the matter being heard so as to be able to cast an informed and independent vote.

(4) The failure to act upon an application within 62 days following the conclusion of the hearing shall be deemed a denial rendered on the day following the expiration of 62days. In such cases an applicant may file in writing a request to the Board to vote on the application at the next available meeting. A denial of an application as a result of a failure to act by the Board shall not be subject to the provisions for successive applications. A new application may be submitted.

Section 4. Section 42-181 of Article XXIII Chapter 1 of the Code of the City of Albany is hereby amended as follows:

ARTICLE XXIII PLANNING BOARD (GENERAL PROVISIONS)

§ 42-181. Common Council; jurisdiction

A. Notice and agenda of every Planning Board meeting shall be provided to the Common Council at least one week prior to any meeting of the Planning Board. The Planning Board shall notice such meetings and conduct such meetings, deliberations and voting in the same manner as provided for in the Code of the City of Albany Chapter 375 Article IV.

Section 5. This ordinance shall take effect immediately.

Council Member Ellis asked for passage and a roll call vote thereon **ORDINANCE NUMBER 69.91.07 (AN ORDINANCE AUTHORIZING AND DIRECTING THE CONVEYANCE OF ALL THE RIGHT, TITLE AND INTEREST OF THE CITY OF ALBANY IN AND TO 155 CLINTON AVENUE (TAX MAP #65.81-1-18) IN THE CITY OF ALBANY, NEW YORK AT PRIVATE SALE TO THE ALBANY HOUSING AUTHORITY)**, which has been previously introduced.

Ordinance Number 69.91.07(MC) was Co-Sponsored by Council Member Scalzo.

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, and Smith

Affirmative 14 Negative 0 Abstain 0

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

CONSIDERATION OF RESOLUTIONS

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

Resolution Number 61.92.07R

RESOLUTION OF THE COMMON COUNCIL REGARDING COMPLETION OF A SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT AND SCHEDULING A PUBLIC HEARING IN ACCORDANCE WITH ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW (SEQRA) AND THE REGULATIONS PROMULGATED

THEREUNDER IN CONNECTION WITH THARALDSON DEVELOPMENT COMPANY'S APPLICATION FOR REZONING 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 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 and recommendation by the Zoning Committee, 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 Single Family Medium Density Residential District to C-2 Highway Commercial 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: a) adopted a comprehensive SEQRA Findings Statement and b) 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 noted 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, on August 20, 2007, the Common Council adopted a resolution determining to resume the environmental review of the Project, consistent with the Decision, and to continue to act as SEQRA lead agency for this Project; and

WHEREAS, the Common Council contacted the other involved agencies, including the City of Albany Board of Zoning Appeals and Planning Board, and expressed its intention to undertake further consideration of the Project consistent with SEQRA and the Decision and the other involved agencies concurred; and

WHEREAS, in order to address the issues cited in the Decision, the Common Council, without conceding or prejudicing and reserving all of its rights on any appeal, and directed that a Supplemental Draft Environmental Impact Statement (“Supplemental DEIS”) be prepared, which addresses the issues identified in the Decision; and

WHEREAS, in August, 2007, the Supplemental DEIS was filed with the City and provided to the members of the Planning, Economic Development and Land Use Committee of the Common Council and the City of Albany Department of Development and Planning for detailed review as to scope, adequacy and content; and

WHEREAS, all members of the Common Council received and considered the Supplemental DEIS; and

WHEREAS, the Common Council has considered the Supplemental DEIS and consulted with its staff and, finds and determines that the Supplemental DEIS is satisfactory with respect to its scope, content and adequacy for purposes of commencing public review.

NOW, THEREFORE, be it resolved that:

1. The Common Council hereby determines that the Supplemental DEIS for the Project is complete and hereby accepted as adequate with respect to its scope and content for the purpose of commencing public review, pursuant to 6 NYCRR §617.9; and
2. Pursuant to 6 NYCRR §617.9(a)(3), written comments on the Supplemental DEIS will be accepted until October 26, 2007; and
3. Pursuant to 6 NYCRR §617.9(a)(4), a public hearing will be conducted on the Supplemental DEIS, and pursuant to §375-30 of the Code of the City of Albany, on the

rezoning of the subject site on October 15, 2007 at 7:00 P.M. in the Common Council Chambers, City Hall, Albany, New York;

4. The annexed Notice of Completion of Supplemental DEIS and Notice of Public Hearing shall be distributed to the involved and interested agencies and published in accordance with the requirements of 6 NYCRR §617.12.
5. The application, including the Supplemental DEIS, ordinance and all documents constituting a full statement of proposed action is hereby referred to and shall be filed with the Albany County Planning Board pursuant to General Municipal Law §239-m.
6. The Clerk is directed to file, publish and distribute the Supplemental DEIS as required by law.

Council Member Conti asked and received majority consent to add Resolution Number 62.92.07R(MC) and Resolution Number 63.92.07R(MC) to the pending agenda, which was approved by unanimous voice vote.

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

Resolution Number 62.92.07R(MC)

RESOLUTION OF THE COMMON COUNCIL SUPPORTING THE CITY OF ALBANY IN ITS APPLICATION FOR FUNDING TO EMPIRE STATE DEVELOPMENT UNDER THE RESTORE NY GRANT PROGRAM

RESOLVED, that the Common Council of the City of Albany hereby expresses its support of the City of Albany in its application to Empire State Development for funding under the ReStore NY Grant Program to assist with rehabilitating blighted and unstable buildings in the City of Albany.

BE IT FURTHER RESOLVED, that a certified copy of this resolution will follow the application to be submitted by the City of Albany, through the Department of Development and Planning, to Empire State Development in Albany.

Resolution Number 62.92.07R was Co-Sponsored by Council Member Scalzo.

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

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

Negative -- Ellis

Affirmative 13 Negative 1 Abstain 0

**Note: There was discussion from Council Members Calsolaro, Ellis, O'Brien and Conti in regards to using the RESTORE NY grant for residential purposes instead of commercial purposes.*

Council Member Calsolaro offered the following, which was referred to the Parks, Recreation and Family Services Committee:

Resolution Number 63.92.07R(MC)

RESOLUTION OF THE COMMON COUNCIL CONFIRMING THE APPOINTMENT OF FAYE C. ANDREWS AS THE COMMISSIONER OF THE DEPARTMENT OF YOUTH AND WORKFORCE SERVICES

WHEREAS, the Mayor of the City of Albany has, pursuant to the provisions of Article 3 of the City Charter, appointed Faye C. Andrews as the Commissioner of the Department of Youth and Workforce Services.

NOW, THEREFORE, BE IT RESOLVED that Faye C. Andrews is confirmed as the Commissioner of the Department of Youth and Workforce Services.

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

MISCELLANEOUS OR UNFINISHED BUSINESS

Council Member Ellis stated that he submitted a FOIL request for owner names and contact information of the vacant buildings in his ward. He stated that Council Members should not have to FOIL information from the City. He quoted from the City Charter and made reference to a CANA report.

Council Member McLaughlin discussed an incident that happened in her ward involving a vacant building that affected the home of a long time resident, the Lawson family. She stated that there would be a community effort to help the family and stated she felt the City had some accountability for not handling the vacant building issue in a timely manner.

Council Member Calsolaro discussed the difficulties of homeowners who live near or next door to vacant buildings to get homeowners insurance. He stated that the City Charter should be enforced because Council Members should not have to FOIL public information

There was a motion made by Council Member Calsolaro for Council support regarding a comment during public comment period regarding allowing spectators on the golf course during high school games.

There was discussion from Council Members Conti, O'Brien and Herring surrounding the golf course policies, hearing from Mr. Nick D'Antonio and possibly discussing at a committee meeting

Council Member Calsolaro withdrew the motion.

ADJOURNMENT

A motion was made for adjournment.

Council President Morris stated, hearing no objections, that the Council was adjourned.

A true record of the Common Council Minutes of September 17th, 2007.

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