

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

Monday, October 20, 2008

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, Conti, Ellis, Fahey, Fox, Herring, Igoe, McLaughlin, O'Brien, Rosenzweig, Sano, Scalzo, Smith, and Timmons.

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

Council Member Smith led the Pledge of Allegiance.

PUBLIC HEARING

Clerk of the Council John Marsolais read the following:

Notice is hereby given that a Public Hearing will be held in the Common Council Chambers, City Hall, Albany, New York at 7:00 p.m. on Monday, October 20th, 2008, on the following matter:

City of Albany 2009 Proposed Budget

Speakers:

1. Dr. Houston Little, 8 Beverly Ave., Albany, NY 12206 (Tax Concerns of the Spencer Family)
2. Rev. Ed Carlson, 19 Beverly Avenue, Albany, NY 12206 (Increase in Property taxes)
3. John O'Grady, 817 Livingston Ave., Albany, NY 12206 (Budget)
4. Vincent Riguso, 13 Beach Ave., Albany, NY 12208 (Budget)
5. Dahlia Herring, 201 Park Ave. Albany, NY 12202 (Budget)
6. Barbara Furlong, 5 Kensington Pl., Albany, NY 12209 (Increase in Taxes)
7. Patty Watson, 49 McCarty Ave., Albany, NY 12202 (Non-Union Workers)
8. Lynn Jackson, 223 S. Swan Street Albany, NY 12210 (Landfill Expansion)
9. Marlon Anderson, 491 Livingston Ave., Albany, NY 12206 (Budget)
10. Helen Clayson, 817 Livingston Ave., Albany, NY 12206 (Budget)
11. Ruth Pelham, 140 Milner Ave., Albany, NY 12206 (Budget Perspective/Oversight)
12. Jim Travers, Coeymans, NY (Budget)
13. Justin McAlpin, 347 State St., Albany, NY 12203 (Budget)

PUBLIC COMMENT PERIOD

1. Dr. Richard Propp, 13 Marion Ave., Albany, NY 12203 (Support Resolution 77.102.08R)
2. Marlon Anderson 491 Livingston Ave., Albany, NY 12206 (Curfew/Gun Violence Task Force)
3. Tom Ellis, 43 N. Pine Ave., Albany, NY 12208 (Resolution 77.102.08R)
4. Doug Bullock, 77 Benson St., Albany, NY 12208 (Resolution 77.102.08R)
5. Jim Travers, Coeymans, NY (Solid Waste Conference)
6. Lynn Jackson, 223 S. Swan St., Albany, NY 12210 (Albany Pine Bush Lawsuit)

APPROVAL OF MINUTES FROM PREVIOUS MEETING

Council Member Conti made a motion to approve the minutes from the September 4, 2008 and September 15, 2008 meetings, which was approved by unanimous voice vote.

CONSIDERATION OF LOCAL LAWS

Council Member Conti made a motion to hold the Local Laws on the pending agenda, which was approved by unanimous voice vote.

REPORTS OF STANDING COMMITTEES

Finance, Taxation and Assessment – Council Member Sano stated that the Committee would be meeting almost every night this week discussion with the various departments their budgets for the upcoming year.

Law, Buildings and Code Enforcement – Council Member Igoe stated that the committee met on October 15, 2008 to discuss Ordinance 66.81.07 (Smoking near healthcare facilities), which was referred out Committee favorably with amendments.

CONSIDERATION OF ORDINANCES

Council Member Conti introduced the following, which was held:

Ordinance Number 66.102.08

AN ORDINANCE AUTHORIZING AND DIRECTING THE GRANT OF TWO PERMANENT EASEMENTS TO 217-219 LARK STREET OVER, UPON AND UNDER PORTIONS OF THE CITY RIGHT-OF-WAY OF LARK STREET IN THE CITY OF ALBANY

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

Section 1. It is hereby authorized that the City of Albany grant two permanent easements to 217-219 Lark Street over, upon and under portions of the City right-of-way of Lark Street, adjacent to 217-219 Lark Street, in the City of Albany.

Section 2. The form, content, terms and conditions of such easements shall be approved by the Corporation Counsel.

Section 3. The Grantees shall not hinder, interfere with, prevent, delay, obstruct or adversely affect the Grantor in the reasonable exercise of its governmental operations or function.

Council Member Sano introduced the following, which was referred to the Finance, Taxation and Assessment Committee:

Ordinance Number 67.102.08

AN ORDINANCE ADOPTING THE BUDGET AS PRESENTED BY THE MAYOR ON OCTOBER 1, 2008, FOR FISCAL YEAR 2009

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

Section 1. The budget as presented by the Mayor on October 1, 2008, is hereby adopted as and for the Budget of the City of Albany for fiscal year 2009.

Section 2. It is hereby ordered and directed that the sums set forth therein as expenditures are hereby appropriated in the amounts and for the several departments, offices and purposes specified therein.

Section 3. It is further hereby ordered and directed that the sums set forth therein as revenues and the moneys necessary to be raised by tax in addition thereto to pay the expenses of conducting the business of the City shall be and are hereby applicable in the amounts specified for the purpose of meeting said appropriations.

Section 4. This ordinance shall be effective immediately.

Council Member Calsolaro introduced the following, which was held:

ORDINANCE NUMBER 68.102.08

AN ORDINANCE AMENDING PART 3 (DEPARTMENT OF PUBLIC SAFETY) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY IN ORDER TO EXTEND THE TERM OF THE GUN VIOLENCE TASK FORCE

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

Section 1. Section 42-75 of Chapter 42, Part 3 of the Code of the City of Albany is amended as follows:

§ 42-75. Membership; term; compensation; vacancies.

A. The Gun Violence Task Force shall be composed of thirteen voting members, seven of whom shall be appointed by the Common Council and six of whom shall be appointed by the Mayor. The majority of Task Force members shall be residents of the City of Albany and shall be individuals who possess a knowledge or interest in gun violence related issues. The members shall serve without compensation. The Task Force may include representatives of federal, state and local law enforcement agencies, governmental departments, academics or other municipalities.

B. The Common Council will designate one of the voting members as Chairperson. Vacancies on the Task Force shall be filled in the same manner as the predecessor to fill the unexpired term.

C. The [work of the] Task Force shall [be completed within one year after the appointment of its members] submit a report and recommendation in accordance with Section 42-76 of this chapter not later than November 18, 2008 [at] after which time the Task Force [will cease to exist] shall continue until March 1, 2009 or such time as an Implementation Team to oversee implementation of the Task Force's recommendations is created.

Section 2. This ordinance shall take effect immediately.

Council Member Conti asked received majority consent to add Ordinance 69.102.08 to pending agenda, which was approved by unanimous voice vote.

Council Member McLaughlin introduced the following, which was held:

Ordinance Number 69.102.08(MC)

AN ORDINANCE AUTHORIZING AND DIRECTING THE GRANT OF A PERMANENT EASEMENT TO SOUTHEND ASSOCIATES LP OVER, UPON AND UNDER PORTIONS OF THE CITY RIGHT-OF-WAYS OF BROAD AND CLINTON STREETS AND THIRD AVENUE IN THE CITY OF ALBANY

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

Section 1. It is hereby authorized that the City of Albany grant a permanent easement to Southend Associates LP over, upon and under portions of the City right-of-ways of Broad and Clinton Streets and Third Avenue, adjacent to 107, 111, 113 and 115 Broad Street, 112, 114 and 116 Clinton Street and 17 and 21 Third Avenue, in the City of Albany.

Section 2. The form, content, terms and conditions of such easement shall be approved by the Corporation Counsel.

Section 3. The Grantees shall not hinder, interfere with, prevent, delay, obstruct or adversely affect the Grantor in the reasonable exercise of its governmental operations or function.

Section 4. This ordinance shall take effect immediately.

Council Member Conti made a motion to change the order of business to consider Ordinance 60.101.08, which was approved by unanimous voice vote.

Council Member Fahey asked for passage of ORDINANCE 60.101.08 (AN ORDINANCE AUTHORIZING AND DIRECTING THE GRANT OF A PERMANENT EASEMENT TO 22 NEW SCOTLAND AVENUE LLC OVER, UPON AND UNDER PORTIONS OF THE CITY RIGHT-OF-WAYS OF NEW SCOTLAND AVENUE AND MYRTLE AVENUE IN THE CITY OF ALBANY), which had been previously introduced.

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

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

Affirmative 14 Negative 0 Abstain 0

Council Member Sano moved to amend and as amended asked for passage and a roll call vote thereon:

ORDINANCE NUMBER 66.81.07 (As amended 8/4/08 and further amended 10/20/08)

AN ORDINANCE AMENDING CHAPTER 323 (STREETS AND SIDEWALKS) OF THE CODE OF THE CITY OF ALBANY BY ADDING A NEW ARTICLE VII (SMOKING NEAR HEALTH CARE FACILITIES)

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

Section 1. Chapter 323 of the Code of the City of Albany is hereby amended by adding thereto a new Article VII to read as follows:

**ARTICLE VII
SMOKING NEAR HEALTH CARE FACILITIES**

Section 323-96. Legislative Intent.

The City of Albany Common Council finds that scientific studies have proven that cigarette smoking causes chronic lung disease, coronary heart disease, stroke, cancer of the lungs, larynx, esophagus, mouth,

and bladder, and contributes to cancer of the cervix, pancreas, and kidneys. The use of cigars is also known to cause lung, larynx, esophageal, and oral cancer. More than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable illness. Furthermore, the United States Environmental Protection Agency has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a group A carcinogen. Exposure to secondhand smoke is the third leading cause of preventable death in this country.

The City of Albany Common Council further finds that as health care facilities have prohibited smoking in their facilities and directly adjacent to their building doorways, there has been a large increase in people smoking on the public streets and sidewalks adjacent to these facilities. These streets and sidewalks at times are difficult to pass through because of the number of people congregating and the clouds of smoke that fill the air. It has also become unsightly as cigarette butts are thrown all over the ground causing a litter problem in the area.

Section 323-97. Definitions.

Health care facility – For purposes of this article, the term “health care facility” shall be deemed to include a hospital as defined in Section 2801 of the Public Health Law and shall also include such facilities related to the hospital as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

Public place – Shall mean any place open to the general public including, for example, streets, sidewalks, playgrounds, or bus stops. For sidewalks and driveways, this shall include the curb, or if no curb, the edge of the pavement.

Section 323-98. Smoking Prohibited.

A. It shall be unlawful to smoke or possess burning tobacco, including cigarettes, cigars, pipes, tobacco smoking devices, or any other lighted smoking equipment, upon any public place adjoining a health care facility.

B. Health care facilities shall post “No Smoking” or “Smoke Free” signs, or the international “No Smoking” symbol or both in conspicuous places on their properties sufficient to provide public notice of this prohibition.

Section 323-99. Penalties.

The presence or absence of signs shall not be a defense to a violation of this Article. A person found to be in violation of Section 323-98 is subject to a fine up to three hundred dollars (\$300) per violation.

Section 2. This ordinance shall take effect immediately.

Note: There was discussion from Council Member Sano thanking everyone for research needed for the legislation to come together. He also thanked St. Peter's Hospital for working towards a solution and hopefully Albany Medical Hospital would follow suit.

Ordinance 66.81.08 (As Amended) was Co-Sponsored by Council Members Calsolaro, Conti, Ellis, Fahey, Fox, Herring, Igoe, McLaughlin, O'Brien, Rosenzweig, Scalzo, Smith and Timmons.

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

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

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

Resolution Number 77.102.08R

RESOLUTION OF THE COMMON COUNCIL IN SUPPORT OF THE NATIONAL HEALTH INSURANCE ACT AS PROPOSED BY H.R. 676

WHEREAS, every person in the City of Albany and the United States deserves access to affordable, quality healthcare; and

WHEREAS, over 45 million Americans and over 15,000 residents in the City of Albany live daily without healthcare coverage; and

WHEREAS, even those now insured often experience burdensome medical debt and sometimes life-threatening delays in obtaining healthcare; and

WHEREAS, illnesses and medical debt annually cause five hundred thousand bankruptcies in the United States affecting two million people and an increasing number of home foreclosures are also associated with medical debt; and

WHEREAS, administrative costs and profits amount to 30 percent of healthcare spending in the United States, with rising costs contributing to decreased international competitiveness and massive layoffs; and

WHEREAS, Americans spend double what other industrialized countries spend per person while they are covering all their citizens; and

WHEREAS, the City of Albany's 2008 salary expenditures are approximately \$71.5 million for 1420 employees, F.I.C.A. is \$5.4 million, and health insurance is \$24.4 million, including \$10 million for retirees, and

WHEREAS, under the National Health Insurance Act, there would be a F.I.C.A. increase of 4.5% or \$3.2 million, resulting in a new F.I.C.A. expense of \$8.6 million and elimination of the \$24.4 million expense for health insurance for a net savings of \$21.2 million to the City of Albany; and

WHEREAS, these savings could be applied to reducing the current heavy property tax burden which is forcing seniors and others with limited means out of their homes and undermining the Albany's financial viability; and

WHEREAS, U.S. Representative John Conyers has introduced the HR 676, the National Health Insurance Act; and

WHEREAS, the goal of HR 676 is to guarantee that all Americans have access to the highest quality and most cost-effective healthcare services, regardless of employment, income, or healthcare status; and

WHEREAS, HR 676 will cover all medically necessary services, including primary care, inpatient care, outpatient care, emergency care, prescription drugs, durable medical equipment, long term care, mental health services, dentistry, eye care, podiatry, chiropractic, and substance abuse treatment, and

WHEREAS, HR 676 will give patients their choice of physicians, hospitals, providers, and clinics with no co-pays or deductibles in a publicly financed, privately delivered system, and

WHEREAS, HR 676 has 92 co-sponsors in the House of Representatives as of October 2008, including Representative Michael McNulty of the 21st congressional district of New York State; and

WHEREAS, the United States Conference of Mayors at their 76th Annual Meeting in June 2008 adopted a resolution in support of HR 676.

NOW, THEREFORE, BE IT RESOLVED, that the Albany Common Council expresses its support for the National Health Insurance Act (HR 676) and joins with the US Conference of Mayors in calling upon federal legislators to work toward its immediate enactment; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to United States Senators Hillary Clinton and Charles Schumer, United States Representative Michael McNulty, and James Buhrmaster and Paul Tonko candidates for the House of Representatives from the 21st Congressional District of New York.

**Note: There was discussion from Council Member Conti thanking Dr. Propp and Tom Ellis for bringing the issue to his attention. He stated similar resolutions have been adopted around the country and it is an important national issue that needs to be addressed. He stated this model saves costs and adds out voice to millions of others.*

There was discussion from Council Members Smith and Sano on this being a an important issue.

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

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

Affirmative 14 Negative 0 Abstain 0

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

Resolution Number 78.102.08R

RESOLUTION OF THE COMMON COUNCIL SUPPORTING FULL FUNDING OF THE AID AND INCENTIVES FOR MUNICIPALITIES (AIM) PROGRAM AND OPPOSING ANY REDUCTIONS IN FINANCIAL ASSISTANCE

WHEREAS, the Aid and Incentives for Municipalities (AIM) program provides essential direct State aid to cities, towns and villages; and

WHEREAS, the FY2008-09 NYS Budget includes \$1.043 billion in AIM program funding, including \$1.014 billion in direct State aid and \$29.4 million for Local Government Efficiency Grants; and

WHEREAS, as part of a four-year program that targets increases in State aid to distressed municipalities, the FY2008-09 NYS Budget provides AIM increases ranging from three to nine percent to municipalities based on objective measures of fiscal distress; and

WHEREAS, this increase in targeted funding is part of a four year commitment to eligible localities for the State Fiscal Years 2007-08 through 2010-11 and includes accountability standards such as development of a comprehensive fiscal performance plan; and

WHEREAS, the City of Albany received \$13 million in AIM funding for 2008 and is projecting \$15 million for 2009 based on current statutory formulas; and

WHEREAS, the City of Albany and other municipalities within New York are facing fiscal challenges which are burdening an already over-extended property tax base; and

WHEREAS, the State of New York is facing significant financial challenges of its own; and

WHEREAS, expenditure reductions were made in the FY2008-09 NYS Budget prior to its adoption in April of this year, and additional cuts were made during a special session of the NYS Legislature in August of this year, in both instances reductions in AIM funding were rejected; and

WHEREAS, Governor Paterson is asking the State Legislature to return to Albany on November 18 of this year to consider additional reductions to the FY 2008-09 NYS Budget and has indicated that he plans to submit the FY2009-10 NYS Budget in December of this year with additional expenditure reductions; and

WHEREAS, in both instances potential reductions in AIM funding may be under consideration; and

WHEREAS, any reductions in AIM funding will result in regressive property tax increases at the local level or disrupt local government budgets resulting in service cutbacks at a time when municipal governments are already under fiscal strain

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Albany strongly opposes any reductions in AIM funding during the current or future State fiscal years and urges the State Legislature and Governor to maintain its statutory commitment to stable and consistent funding for this program and not indirectly enact a property tax hike for localities through reductions in AIM funding; and

BE IT FURTHER RESOLVED, that a duly certified copy of this resolution be transmitted to Governor Paterson, Senate Majority Leader Skelos and Senators Smith and Breslin, Assembly Speaker Silver and Assembly Members Tedisco, Canestrari and McEneny, NYS Budget Director Laura Anglin and Peter Baynes Executive Director of the NYS Conference of Mayors and Municipal Officials.

**Note: There was discussion from Council Member Conti stating that this is the main category of state assistance received from NYS. He stated a reduction in this category results in increased taxes.*

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

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

Affirmative 14 Negative 0 Abstain 0

Council Member Conti asked and received majority consent to add Resolution 78.102.08R to the pending agenda, which was approved by majority voice vote, with Council Member Calsolaro in opposition.

**Note: There was discussion from Council Member Calsolaro on the MC request regarding the need to introduce this legislation at this meeting and stated that there is no money in the budget that would allow the Council to do their own investigation. He stated that he thought MC meant introduction because of time constraint and that there did not appear to be a time constrain in this instance.*

There was discussion from Council Member Conti stating that this resolution will be referred to the Planning Committee for further discussion and that since the Supplemental Final Environmental Impact Statement was already before the Planning Committee the introduction of the Resolution would be appropriate at this time..

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

Resolution Number 79.102.08R(MC)

RESOLUTION OF THE COMMON COUNCIL REGARDING COMPLETION OF A SUPPLEMENTAL FINAL ENVIRONMENTAL IMPACT STATEMENT IN ACCORDANCE WITH ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW (SEQRA) AND THE REGULATIONS PROMULGATED THEREUNDER AND THE ZONING ORDINANCE 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 Planning, Economic Development and Land Use 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 however states:

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 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, directed that a Supplemental Draft Environmental Impact Statement (“Supplemental DEIS”) be prepared; and

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

WHEREAS, at a meeting of the Zoning Committee on October 9, 2007, the Zoning Committee indicated that the Supplemental DEIS was complete, except for the final determination of future funding to be provided by Tharaldson; and

WHEREAS, Tharaldson supplemented the Supplemental DEIS with an agreement it entered into with The Nature Conservancy that the United States Fish and Wildlife Service found to be acceptable addressing the future funding issue; and

WHEREAS, on June 3, 2008, the Zoning Committee conducted a public meeting to allow public comment, consider the Supplemental DEIS and make a recommendation regarding acceptance of the Supplemental DEIS to the Common Council as complete and adequate and accurate as to form, content, substance and readiness for public comment; and

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

WHEREAS, on June 16, 2008, the Common Council after considering the Supplemental DEIS and consulting with its staff found and determined that the Supplemental DEIS was satisfactory with respect to its scope, content and adequacy for purposes of commencing public review and scheduled a public hearing; and

WHEREAS, on August 4, 2008, a duly noticed combined public hearing was conducted to consider the Supplemental 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 Supplemental DEIS and rezoning; and

WHEREAS, in accordance with SEQRA, the public comment period on the Supplemental DEIS closed on August 15, 2008; and

WHEREAS, the Common Council caused to be prepared a Supplemental Final Environmental Impact Statement (the “SFEIS”) with respect to the Project, which includes, but is not limited to, responses to public comments received on the Supplemental DEIS for the Project; and

WHEREAS, certain information and analysis that were examined in the Supplemental DEIS were amplified and further discussed and evaluated in reports and at public meetings before the Common Council and the Zoning Committee. This material was examined and determined to be consistent with the information regarding such issues contained in the Supplemental DEIS and does not alter the conclusions therein. The information amplifies and augments information previously considered by the Common Council and contained in the EIS’s and did not identify any newly discovered

information about potential significant adverse environmental affects which were not previously addressed; and

WHEREAS, as a result of its independent examination and careful review, the Common Council has determined that, on balance, and after due consideration of all relevant documentation and comments, it has more than adequate information to evaluate all of the relevant benefits and potential impacts of the Project and to issue this Statement of Findings; and

WHEREAS, the Zoning Committee conducted a public hearing/meeting in October, 2008 to allow public comment, consider the Supplemental FEIS and make a recommendation regarding acceptance of the Supplemental FEIS; and

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

WHEREAS, the Common Council, based upon its own independent examination and consideration of the Supplemental FEIS and consultation with its planning staff, finds and determines that the Supplemental FEIS is satisfactory with respect to its scope, content and adequacy.

NOW, THEREFORE, be it resolved that:

1. As required by SEQRA, the SFEIS identifies, includes and responds to all substantive comments, both oral and written, as required by SEQRA, which have been received, and is therefore accepted as complete, adequate and accurate as to form, content and substance.

2. To provide comprehensive and thorough responses, the SFEIS contains additional information and confirmatory analyses when appropriate to aid the Common Council in its analytical and decision-making obligations under SEQRA. As more fully discussed in the SFEIS, the new information and/or confirmatory analyses contained in the SFEIS amplify and further examine issues examined in the Supplemental DEIS, and prior EIS's, as a result of comments received from the involved agencies and the public. The additional information and analyses are consistent with the examination of issues contained in the Supplemental DEIS and do not result in the identification of any new or different significant adverse environmental effects. Therefore, a second supplemental environmental impact statement is not warranted or required and would not aid the Common Council in analyzing the Project and otherwise performing its obligations under SEQRA.

3. The SFEIS includes and considers the most accurate, current and complete information available concerning the environmental aspects of the Project. It incorporates the Supplemental DEIS, prior EIS's and Findings Statement by reference, sets forth revisions and supplements to the Supplemental DEIS and contains copies of, and responses to, all substantive comments, as required by SEQRA, thus enhancing the thoroughness and detail of the environmental analysis conducted by the Common Council.

4. The Common Council hereby authorizes and directs the Clerk to file and distribute, as required by 6 NYCRR §617.12, the Notice of Completion of SFEIS.

5. This Resolution shall take effect immediately.

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

MISCELLANEOUS AND UNFINISHED BUSINESS

RESOLVED THAT THE FOLLOWING PERSONS BE AND HEREBY 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:

Catalfano, Anthony R., 202 Lansing Road South, Schenectady, NY 12304
Richardson, James E., 628 Clinton Avenue, Albany, NY 12206

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 October 20, 2008.

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