



**CITY OF DANBURY**  
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*Environmental Impact Commission*

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**DRAFT MINUTES**

**April 22, 2009**

**Common Council Chambers 7:00 PM**

Next regularly scheduled meeting date **May 13, 2009**, 7 pm

Chairman Bernard Gallo called the meeting to order at 7:08 pm, and the Commissioners identified themselves from right to left. Present were Gallo, Bruce R. Lees, William J. Mills, Matthew Rose, Mark Massoud, Alt. Derek Roy. Absent were Craig D. Westney, Jon Fagan.

Staff present were Daniel Baroody, RS, MPH, Patricia Lee, Secretary.

**PLEDGE OF ALLEGIANCE:** Derek Roy led the Pledge of Allegiance.

**OLD BUSINESS:**

**44 Payne Road**

**Regulated Activity # 825**

**Nejame Development, LLC** Assessor's Lots N12003,N12004,N12005, IG-80 Zone.

Date of Receipt: 12/10/08

Building addition, incl.parking, drainage.

First 65 Days: 2/13/09. Second 65 Days: 4/19/09. R.J. Gallagher, Jr., PE. Site walk scheduled 2/18/09. Revised plans showing forebay & extension letter received 2/25/09. Notified Bethel 2/24/09; Beth Cavagna, Town of Bethel submitted comments. Pre- and post-runoff calculations requested. Screen report by Dan Baroody 4/22/09. Ralph J. Gallagher, Jr., PE, identified himself at the mic and distributed revisions to the Commissioners. The Town of Bethel really had two things they were concerned with, he said. Gallagher described the two concerns of the Town of Bethel. He said the water runs off, not to Bethel, but to the Berkshire Shopping Center. Chairman Gallo asked are there any questions? Dan Baroody took the mic and identified himself. Baroody said Staff is recommending a summary ruling to approve; there are no wetlands on the Nejame property. All the concerns of the Town of Bethel were addressed. I would like to correct one item on Condition #1: that we site the plan dated 10/16/08 and revised 4/20/09, and we can do that. Lees made a motion to **approve** with summary approval with Dan's addendum that he just mentioned, with the date changed on the plan to 4/20/09, received 4/22/09. Rose seconded the motion, and the motion carried unanimously at 7:14 pm.

**22 Shelter Rock Lane****Regulated Activity # 828****His Vineyard Christian Fellowship**

Assessor's Lot # L15006, IL-40 Zone.

Date of Receipt: 1/14/09.

Construction of church with parking.

First 65 Days: 3/20/09. Second 65 Days: 5/24/09. B. Doto, PE. Soil report received 1/20/09. Staking done 1/26/09. Danzer report received 1/28/09. Site visits 2/24 & 3/18/09 with Moeller & Danzer. Ext. ltr. received 3/11/09. 3/31/09 Rec'd. revised plan & add'l. wetlands flagged. Revised site plans received 4/9/09. New basin planting plan coming. Danzer comments received 4/21/09. Revised planting plan received today, 4/22/09. Chairman Gallo introduced this item, and Ben Doto, PE, came forward with Henry Moeller, soil scientist, and Ernie Corrao, Jr., representing the church. Ben identified himself at 7:15 pm. We are here to present some revisions and to address some comments by Dr. Danzer. At the last meeting, about a month ago, there were some things suggested that we could do. Pastor Gary could not make it tonight, so Ernie is here representing the church, and Henry Moeller is here with us too. Going back in time, the initial plan presented to the Commission looked exactly like this. There were some additional wetlands flagged by Henry Moeller over here, and we made some changes per the City traffic engineer. Doto described what new changes have been made, including shifting the building a little to the East, the parking slot changes, eliminated a row of parking here, eliminated some retaining wall, softening up the grading; we can now keep a wet storage basin at the bottom of the basin, and we have lowered the islands, added some leak offs, adjusted a retaining wall here, pulled the sidewalk a little away from the northwest corner of the building, Doto continued. We've split the roof drainage system now; it's clean roof water, and we have increased our wetland mitigation ration to 3 to 1. Commissioner Lees asked for NO DUMPING signs. We added the additional wetland flags that Mr. Moeller put in. I want to reiterate that the parking is driven by the setting capacity. We are well under what could be done here. An acre in the front of the site will be preserved, in our opinion; it's not that intensive. Bruce, you still may disagree, Doto said. The phase 2 parking, the area up here, that may or may not ever happen. During phase 1, that's grass. That's the proposal now. Along the wetland boundary we did not feel a fence was necessary; they are not going to be walking through the wetland and the mud; the wetland delineation markers will be placed; the signs will tell you so. Mark Massoud had some comments about going a little softer with the design. Doto said we have dropped, going to the landscape plan which we just got today; we're focusing now on a really detailed specifics for the planting: the seed mixtures, pond elevation; we have lowered these islands, included leak offs, and she has a lot of plantings in there, and again the roof drains. Commissioner Westney had expressed concern about the multiflora rose, and there are specifications to remove that now, not chemically; it needs to be identified and removed mechanically, by shovel or weed wrench. Then she talks about the maintenance of this through pruning and inspections. We have touched on a lot of what the commission has asked for, and I want to drop off some copies of the 2004 Connecticut Stormwater Quality Manual addressing can we use our basins and consider them wetland mitigation. I have handouts from the CT 2004 Stormwater Manual. This is from the New York State Water Quality Manual; it shows that you can have a water quality volume and storage. We try to design what is most appropriate for the site. Doto discussed why they could not do a deep pond there. There is a storm drain out in the road, but we felt this was more appropriate

here. Mills asked that the reference to New York Stormwater Manual be omitted. Ben Doto said this was just to include that as a common point of current engineering. Dan Baroody said, as a point of order, the engineer has introduced something from New York State; we cannot omit it. Take it for whatever value you can. Lees asked, compared with the new proposed site plan, and does it link up with the new planting plan? Doto confirmed it does, and said the bottom of the basin will be planted; we raised the orifice to provide a constant bathtub effect. Our landscape architect selected the plants, and we are counting that; planting to enhance that rough stone area. Lees said I thought at the last meeting we were not counting detention basins as mitigation. Ben Doto said I can answer that, but in my opinion, of all the mitigation we are doing, what you are asking is some of the most effective mitigation. Lees said, with all respect, we are not accepting that figure. Doto said I can come up with that number. Chairman Gallo asked is there anyone else? Henry Moeller took the mic at 7:31 pm, stating I am the soil scientist on the project. We had met in the field, and obviously Steven Danzer, Ph.D., and I are at odds on some opinions. This watercourse is not really connected; it does not continue all the way down. One side of it is really the fill of the adjacent property. It looks like an old gully. This site was highly disturbed a number of years ago; we're dealing with soils that have been subject to grading, sedimentation and erosion and filling. The gully that he had drawn in there, I would never map that as a watercourse; it's too short, isolated, not connected. The soils obviously were saturated on March 20<sup>th</sup>. In this swale is a moderately well-drained soil. I take issue with; most soil scientists take the opinion that the growing season starts when the buds start to pop out, and Moeller explained why; the vegetation is still rather dormant until the leaves come out. I looked at the site today, and there is water everywhere. At my home, I recorded 1.7 inches of rainfall in the last two days in Southbury, Moeller said. We also, in terms of misinterpretation of the soil colors, in terms of the color book, that's really the first time that I've heard it; I keep my book covered and in my truck. We disagree on that. There may be some changes. I have not really had a chance to check, but I don't know if they would be relevant, and Moeller mentioned the gray chips, saying this is really not relevant. In number one we disagree on the interpretation of the soils. In number two, the topography and the hydrology, we disagree, and Moeller discussed saturation during part of the growing season, what the Army Corps of Engineers maintain, April, May, getting into June; my point too was the fact that he took issue with the source of the water. My basic idea on this is the fact that, during the spring thaw, the soils are drying out and we had a very cool period. The spring thaw is an event, just as a rainfall is an event. It takes time, Moeller explained. In the last couple of days, the leaves are just starting to come out, I noticed. Moeller discussed topsoils and oxidized pore linings, the upper six inches at least, these are moderately well-drained soils, and they can be saturated up to the surface during March, April, on a north-facing slope in a very cold spring. So, in this case, we're at a disagreement on this. Those soils are moderately well-drained, and they will dry out quickly, depending on what our rainfall patterns are. Chairman Gallo said to Moeller you realize you are the applicant's expert, and Dr. Danzer is our expert. There's a pretty big difference in these two reports. Doto asked Secretary Lee about the time (the applicant is out of time 5/24/09). Mills commented about the two soil scientists going out at different dates. Moeller said I went out today, sir. Mills said there is such a big discrepancy. Massoud asked Henry Moeller when did you flag the wetlands on the property? Moeller came back to the mic, and checked his records. Moeller said it was originally done in 1998. Massoud said you flagged the wetlands in 1998 and 2003; how did they come to be in place? Doto said yes. Alternate Derek Roy asked is it too early in the growing season to sight a redoximorphic condition? Chairman Gallo commented that's why I gave him

some options. Moeller said we are not well into the growing season, and we have had very cool weather. Dan had nothing to add. Doto said I think we are going to ask you to table it tonight, and I don't want to be at the same point two weeks from now, and basically we can ask you to vote on it at the next meeting, after another on-site visit. If we get a third soil scientist in there, we'd have to remove all the existing flags, and I can almost guarantee they will not agree, especially on a flat surface. That is my gut feeling, and that is what I will convey to Pastor Gary, Doto said. This property has been before you before, and was approved as a parking area. Now it is a church site, not an industrial site, and I think we all agree that that entrance is in the best place. Henry Moeller has always been the soil scientist on this project. We don't want to ask you to vote at this point. Massoud asked Doto if that parking lot is an expired permit? Ben Doto replied there was a lot line revision next door. It was originally part of the industrial site proposal, and Doto used the plan on the easel to explain the similarities. The only difference was that you did not have Dr. Danzer review that plan. Chairman Gallo asked is there anyone else? Roy made a motion to **table** to the next meeting 5/13/09. Lees seconded the motion, and the motion carried unanimously at 7:54 pm. Roy said we'll do a site walk.

**49-51 Backus Avenue**

**Regulated Activity # 831**

**4244, LLC**

Assessor's Lots #E18005, E18006, IL-40 Zone.

Date of Receipt: 1/28/09.

Prof. office building, parking, driveway, utilities.

First 65 Days: 4/3/09. Second 65 Days: 6/7/09. D. DiVesta, PE. Site flagged & staked 3/3/09. Alternative plans received 3/5/09. Site visit 3/11/09. Extension letter received 3/30/09. Revisions & map received 4/15/09. Screen report by Baroody 4/22/09. Doug DiVesta took the mic at 7:55 pm, and said we submitted revised plans on April 15th that addressed various departments comments. On the first sheet, we showed a 5-foot wide easement for road improvements in the future. On our general notes, we've added a maintenance plan on SP-1. On SP-2 we show the mitigation area, and we are looking to remove the debris and pilings. SP-3 plan shows the sign posts; the black dark squares on the plan. We've also added some additional plantings along the front, the riprap, and mitigation around the inlet is shown on the plan. On SP-7, we have a detail showing what we plan to do with the culvert inlet and outlet, a cross-section. We do show the sign posts at the detention basin area, and the channel at the inlet side on Backus Avenue. We've incorporated the comments from this Commission and other City departments. Dan Baroody said I would like to submit my report, and he read his general comments into the record. Staff recommends a summary approval with the eight conditions. Lees asked Baroody about the area of wetland loss and compensation; is any of that a detention area or basin? Baroody replied no. Lees said thank you. Chairman Gallo said a motion is in order. Lees said I would like to add a statement before his motion: I wish the applicant came forward with a smaller project. I would like to at this time make a motion for **approval** by a summary ruling with the 8 conditions. Mills seconded the motion to approve, and the motion carried unanimously at 8:00 pm, being no further questions. Mr. Kaufman thanked the commissioners.

**25 Plumtrees Road**

**Regulated Activity # 833**

**Plumpar, LLC**

Assessor's Lot # M12014, IG-80 Zone.

Date of Receipt: 2/25/09.

Office/warehouse building, parking, drainage.

First 65 Days: 5/1/09. Second 65 Days: 7/5/09. Ben Doto, PE. 5.5 acres±. Site visit 3/24/09. Chairman Gallo introduced Item # 833. Ben Doto again identified himself, saying this is the current site of Kenosia Construction. Really the only thing, the only changes we made was extending that retaining wall as Mills requested, and Mr. Tarlton agreed; what Mr. Mills was looking for, again the applicant has agreed to that. We are waiting for a staff report. Dan Baroody said Staff recommends we table it for more time to review. Mills made a motion to **table** to the 5/13/09 meeting. Rose seconded the motion, and it carried unanimously at 8:03 pm

**EIC ADMINISTRATION & FUTURE AGENDA ITEMS:**

**128 East Liberty Street**

**Regulated Activity # 836**

**Edward Blasco**

Assessor's Lot # J13010, IL-40 Zone.

Date of Receipt: Pending.

Cleanup, parking and islands.

Artel Engineering Group, LLC. Chairman Gallo introduced this EIC application for 128 East Liberty Street. I don't see anyone here for that. I would like at this time to send him a Notice of Violation, Gallo said. Dan Baroody took the mic, saying we have received an application, however, the applicant has advised me that he has to have revisions reviewed by the Engineering Department. Lees made a motion to send the applicant a Notice of Violation. Mills seconded the motion, stating my comment is that this was originally sited in August of 2008, and he corresponded with us long ago. Baroody said I heard through the Zoning Enforcement Officer and the Engineering Department that we did receive an application. Chairman Gallo said it started nine months ago. Massoud asked how come it is pending? Baroody replied he had not paid his fee yet. It is not a complete application. Massoud said should we deny it then as incomplete? Baroody said Mark Massoud has a point. Derek asked for the time frame from Baroody. Massoud said if we carry a deficient application for too long, it could be construed as accepting the application. If it does not appear that we will get that information anytime soon, should we just deny it as incomplete? Chairman Gallo reiterated what is on the table now, to **send a Notice of Violation**. The motion carried unanimously to send a Notice of Violation at 8:09 pm. Massoud made a motion to **deny** application # **836** as incomplete. Roy said I think we should give him another two weeks after the Notice of Violation is sent to give him time. Baroody reiterated the application is incomplete. Lees seconded Massoud's motion. The motion carried by five with Derek Roy opposed at 8:11 pm.

**APPLICATIONS FOR ADMINISTRATIVE APPROVAL:** None

**ADMINISTRATIVE STAFF ACTIONS:** None

**CORRESPONDENCE:**

Notice of Algonquin Gas Transmission pipeline repairs scheduled in April, 2009, at several Danbury locations in existing right-of-ways and access roads.

**SHOW CAUSE HEARINGS for ENFORCEMENT ACTIONS:**

Notice of Violation – 81-85 Driftway Road, Duane & Rose Schirmer

Chairman Gallo introduced these violations. Who is the petitioner for Duane and Rose Schirmer? You have trails with woodchips in the wetlands, Gallo said to the people in the front row. Mr. Duane Schirmer, Sr., asked Dan Baroody about the house next door. Chairman Gallo said if you feel you are correct, why don't you start by sitting down with Mr. Baroody? Schirmer said we did not realize that when we put a trail there, it's just for the kids. Dave Melody took the mic. They are like parents to me, Melody said. Duane Schirmer, Jr., stood up. Gallo said before he takes out an application to do that, why doesn't he talk to Mr. Baroody down in the Health Department, and he can explain what you did, and it goes away. Duane, Jr., said it's been there for years, in response to Lees' question. Massoud asked for a brief explanation of what's going on. Baroody took the mic, saying we responded to a complaint of a trail constructed through the wetlands down to the reservoir; an ATV trail of fresh woodchips, crossing over onto reservoir property, City property. David Day found that this trail extends on City property right down to the West Lake Reservoir, Baroody said. They will be hearing from the water company too. That's what triggered the Notice of Violation.

Notice of Violation – 66 Chambers Road, Barbara A. Wagner. Chairman Gallo introduced this item at 8:17 pm. Attorney Chris Donohue, of Riefberg, Smart, Donohue & NeJame, PC, came forward and said Ms. Wagner has two residences. She bought this house in August, 2008. I don't know if it's all the way down to the reservoir. The good news is that she already does have a survey, and she's hired Gene McNamara (ESM Associates, Inc.), and she would have been here had she not been in Pennsylvania.

Notice of Violation – 15 Driftway Road, Moises M. Davalos. Chairman Gallo introduced this violation notice at 8:19 pm, saying, Dan, am I correct here? Matt Rose asked can someone fill me in on 15 Driftway Road? Baroody explained we responded to a complaint received by the UNIT (Unified Neighborhood Inspection Team), and we found that there had been filling on the lower end of Driftway Road, and we could see the truck tire tracks, the rocks thrown in, forming a vehicle crossing, all without permits. Let the record show that Davalos did not show up, Baroody said. We did not get a restoration plan, Derek Roy said. Baroody said we can follow up with a Cease and Desist order, and after that, without any action, we turn it over to the City Corporation Counsel. Rou made a motion to file a Cease and Desist order, and go from there. Lees seconded the motion, and the motion carried unanimously at 8:21 pm. (NOTE: Notice of Violation was not delivered by Certified Mail to Davalos, mail came back 4/27/09.)

Notice of Violation – 4 Lower Lake Road, Viktor & Irina Mackevica (called 4/13/09). EIC received note requesting more time 4/21/09 from the alleged violator. Baroody said this is an interesting one, and it came to us via the Engineering Department. It's an interconnection between two reservoirs, and it carries City water, and he's diverted it, and Baroody explained how with an embankment and pipe, he filled a pond that he dug, and it appears to be totally in a wetland area. They hired a civil

engineer, and he was going to ask for more time. Secretary Lee said we did get a letter asking for more time. Lees made a motion to table this to the next meeting pending an application. Baroody said you want a motion to continue the Show Cause hearing. Lees so motioned. Rose seconded the motion. The motion carried unanimously at 8:25 pm.

**OTHER COMMENTS:** I had this added to the agenda, Chairman Gallo said, so we can leave it open. Baroody said regarding David Tinker, the file was given to Corporation Counsel yesterday. He had called me and said he had hired another engineer. And Ralph Gallagher called today, Baroody continued, but the file had already gone upstairs.

Just a little help here, Gallo said: when you ask the applicant a question, let them answer, and then tell them if they have not answered your question.

Mills asked what about moving the fish at the Ridgewood Country Club. Baroody explained to Mills what permit was granted (see EIC #810 granted 10/22/09, approved with six conditions). Secretary Lee asked Mills to read the meeting minutes. They did get a grading permit and they are bonded, Baroody said. Secretary Lee said this was resolved.

Massoud said I would like to ask about the status of the re-write of the regulations? Gallo said about four more weeks; Jon Fagan had some minor surgery and is not here tonight. Massoud and Chairman Gallo discussed.

Derek Roy announced that he has completed Segment One of the DEP program "Connecticut's Inland Wetlands and Watercourses Act: A Primer for New Inland Wetlands Agency Members and Staff – Segment 1". Roy is registered for Segment Two for May 16, 2009, at UConn in Torrington, CT.

**ACCEPTANCE OF MINUTES:** Motion to approve 3/25/09 meeting minutes as presented by Lees. Second by Mills. Motion carried unanimously.

**ADJOURNMENT:**

Motion to adjourn by Lees. Second by Roy. The motion carried unanimously at 8:30 pm.

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This is a DRAFT only, not yet formally adopted and approved by the Commission.