CITY OF DANBURY

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Environmental Impact Commission
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MINUTES

November 28, 2007 – 7:00 pm

Common Council Chambers

Next regularly scheduled meeting: December 12, 2007.

The meeting was called to order by Chairman Bernard Gallo at 7:07 pm. Present were Alt. Mark Massoud, William Mills, Chairman Gallo, Jessica Soriano, Jon Fagan, Matthew Rose.

Absent were Craig Westney, Alt. Kurt Webber, Bruce R. Lees.

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

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was led by Mark Massoud at Gallo's request. Gallo read the legal notice for the Public Hearings. The meeting began with five members, and Soriano showed up at 7:09 pm.

PUBLIC HEARINGS:

3-5 Sugar Hollow Road **Regulated Activity # 762**

Sugar Hollow Road Associates, LLC Assessor's Lot #G17002, G17019, CG-20 Zone.

Date of Receipt: 7/25/07. The Shops at Marcus Dairy, 10.0094 acres.

First 65 Days: 9/28/07. Second 65 Days: 12/2/07. Artel Engineering Group, LLC. Photos, reports from S. Danzer received 8/21/07. Public Hearing opened 8/22/07, continued 9/26, 10/10, 10/24/07, 11/14/07, 11/28/07. Extension letter received 9/26/07. Revised maps & plans received 9/21/07 & 9/26/07. Danzer update received 10/23/07. Laux update received 10/24/07. Phase I ESA report received 1/6/07. Revised plans, engineering report, drainage maps received11/15/07. Assessment Report by D. Baroody 11/28/07. Gallo said for the record, note that Jessica Soriano is present. Gallo introduced this application as Attorney Neil Marcus took the mic and identified himself and his firm. There were a couple of questions left open at the last meeting. I'll save you the agony of going through the letter to Paul Estefan regarding Hoyle and Tanner, Marcus said. Now Paul Estefan knows that ……. are somewhat filled with sand, silt and debris. As previously stated by this office and by Artel, the proposal will increase the floodplain storage. The letter from Hoyle, Tanner & Associates, Inc. says, "…they have not provided any calculations to support that claim". In addition we have calculated the additional storage in the proposed pipes. The additional is

approximately 295 cubic yards. Alternate floodplain crossings were submitted previously; please contact Artel if you have any further questions. We have still not heard from Hoyle, Tanner, etc. We don't think that the City's consulting engineers should raise an issue and then walk away from it; we don't think that's fair. Dainius Virbickas' letter does give you the proposed increased floodplain storage. I think Dr. Danzer is completely oblivious or he does not understand. Did we get a number on the tree removal?
Dainius Virbickas stood up identified himself, and said 7 to 9 trees will be removed form this corridor. That question was proposed at the last meeting.
Marcus said we've all gotten copies of the Environmental Assessment report. We draw your attention to page two, end of the first paragraph and the second paragraph. We certainly agree that this is the proper conclusion. Danzer indicated that Parcel B functions as floodplain storage. We agree that it is in the floodplain, as is Parcel A. The report goes on to quote Dr. Danzer, regarding photographs shown of April 2007; well, it's regulated in that it's in the regulated area, Parcel A and Parcel B, Marcus said. It goes on to say that it will be significantly impacted. Now we disagree with that, Marcus concluded.
Dainius Virbickas went to the easel. I've colored in the brook in blue, and green on the north and south sides of the brook. Virbickas gave the square footage on the north and on the south sides.
Marcus said Dr. Danzer seems to think that these wetlands on the north side of the brook will be significantly impacted. We intend to do no activity at that area. We have never heard from Dr. Danzer why he thinks this is the case.
Dainius Virbickas said there is no proposed alteration to that wetland at all. We will be crossing over the top of the brook, but have no direct impact to the wetlands. Marcus and Virbickas discussed why there's no impact. On the south side, which is mostly impervious surface today, Virbickas said everything drains to the Kissen Brook.
Marcus said, again, we don't understand what the significant impacts are. We wish he attended one of these meetings. Again, what will happen to the flood storage along Kissen Brook?
Virbickas answered we will not be touching those wetlands.
Marcus asked him how will wetlands be lost if you're not touching those wetlands? Danzer doesn't understand the plan here. Marcus went on to read about the filling of the floodplain storage in these areas. Marcus said go back to the letter to Hoyle, Tanner & Associates, Inc., and again Danzer does not understand. 295 is the total. I think we've explained this to this Commission a number of times. Why does Dr. Danzer think how this will impact infiltration? And Marcus again asked Virbickas for his opinion, which Virbickas gave: they don't take on the water.
Marcus continued, in addition, they have shown photos showing flooding which we call puddles. It does not infiltrate now. We say it ponds. If it is a flood, it's 2 or 3 inches deep. We're going to store that water in the parking area on that pavement, just as it is stored now on the mall, and Marcus explained how they raised that area, and you've all seen it: in heavy rains, the mall floods. The conclusion that somehow the impervious areas will stop infiltration; but there's no infiltration right now, so that's insignificant. In reality the exact opposite of Danzer's supposition will happen, Marcus said, regarding the detention system proposed. Hoyle & Tanner say the airport acts as a detention pond, and they don't like that. It's not a wetland issue; it is a flood issue. What really concerns me is that Danzer goes on to say it will go upstream into these properties, Marcus said. I don't know how water is going to go upstream. It's all going to go to Segar Street, all flowing downstream. Interestingly enough, I don't know how they built the firehouse in that floodplain. It should be less of a concern in this project. Danzer concludes that this will result in an altered floodplain. My question is why would that happen? Marcus said, first of all, in lieu of its

present slow-release pattern; Danzer is not an engineer. You want your downstream properties to get rid of their water quicker. That's the design here. We have taken sheet flow and put it into a more sophisticated system. The altered hydrology is not going to alter the wetlands. We're moving the water off the site quicker. All of this is lost to Dr. Danzer, Marcus said, and I feel sorry that he has not taken the opportunity to come here and explain his beliefs. As a result of his report, we sent a second soil scientist out there; well-regarded guys, and they both believe that it's not a regulated area. Infact, Danzer is a junior soil scientist, which we went over at the last meeting, and Marcus discussed the asterisk after Danzer's name. I would like to work on beliefs, but I'd rather deal with facts. There's no basis to do that. If you follow that, the City of Danbury never should have let the mall or the new firehouse to be built. Because Dr. Danzer has a belief that it's a regulated area; he discussed that; in reality we did submit a wetlands functions and values report. Marcus continued to argue the aspects of Dan's report, direct impacts, indirect/buffer impacts, stormwater impacts. Dan can tell us exactly what he means, but we are storing more water on this site. Again, we do not intend to reroute the Kissen Brook. The fact of the matter is, when you look at the entire site, we're decreasing the total impervious area than exists today. So we disagree with that direct impact. There's also a suggestion of the timing of the flooding; we agree, it will alter the timing of the flooding: it will help it. It does it in a positive way. Jody Chase's report indicates that there really is no habitat. We don't mitigate for loss of habitat because we did not find any habitat. There is a lot of non-native species that we will rip out; and we will improve that planting and habitat and trees. If the Commission has a suggestion, we'll add it to the plan. (A) We'd like it to look better. We found mattresses in that brook. The News Times talked about the dumping problem in the City, well, this is true in that brook. Marcus discussed what the Commission asked to see in addition to the wetland crossing (EIC #743). There will be absolutely no impact on the wetland and watercourses, Marcus said. Danzer's report talks entirely about the floodplain. We think that there will be no Regulated Activity. (Number Two) Regarding alternatives, the proposal as posed has no impacts. We'll deal with the floodplain. You've got to go back and look at Jody Chase's report. You're not losing wetlands; you're not losing watercourses. Marcus discussed Numbers 5 and 6 in the Assessment Report. I want to comment on Dan's comment about off-site flooding impacts that would occur; but those impacts that will occur will be positive. They will be positive impacts. Number 7, Number 8, there doesn't seem to be any dispute that that's the case. This application I think has gotten the proper analysis by this Commission. The record is complete. We have a soil scientist, Dr. Danzer; honestly, I don't know his qualifications; I think he's led the Commission off base; he's not an engineer. It has to be reviewed by the City Engineer. I think the plan before you accomplishes that, minimum impact. The issue is whether or not this development will impact wetlands and watercourses, and it won't. Marcus asked Dainius Virbickas if there was anything missing from this plan.
Virbickas replied nothing is missing.
Marcus said the applicant rests.
Mills had a question on the dirt parking, or paved parking areas. What exists now is that there isn't any impervious surface?
Virbickas answered for all purposes it is impervious surface.
Mills said it seems I'm having a hang-up about total impervious surface which he discussed.
Virbickas responded yes, we will be increasing it a little bit. As the Commission suggested, we incorporated this tailing area in the impervious surface area.
Mills had a question on the total cubic yards on Parcel B and what he thought the exact figure was.

Virbickas responded I don't have that off the top of my head. I gave it to you before, I know.
Mills and Virbickas discussed the filling in the floodplain; reshaping the parking lot to create a hollow in the center, to provide storage, and the math on cubic yards of fill.
Gallo said the fill was 2893 cubic yards, if you look at the minutes.
Virbickas said they are in the record. The difference between the last meeting and this meeting is that I was asked to include the underground pipes, which I had previously not included. It's a lot of pipe.
Mills said thank you. Mr. Chairman. The Commission submitted pictures from April, 2007, and Mr. Marcus called that puddling. The question comes to my mind, Mills said: what will a 25 or 50 year storm bring by reducing the storage on Parcel B.
Marcus said I'll tell you exactly, as I was on the site for Hurricane Floyd. I asked Bob Perrier if he was on the site at that time, and he and I were on the site, and he reminded me that the power went out. I borrowed an electrical generator from North Street Hardware. Floyd was a 250 year storm as I recall. There was no flooding that would impede the operation of motor vehicles. He said he dropped his cell phone, but it was only an inch of water. As soon as electricity came back on, Marcus said, he filled the entire fleet with fuel on the Parcel A side. No one went out to look at the Parcel B side. Marcus asked Virbickas for the elevation here at easel. Marcus said the water is going to be on the same level. That night, our facility operated 100%; the only delay was that the electricity was out. That's what happened. He woke me up and told me to find a generator. I drove down Hayestown Avenue; the flooding was up to my Suburban's floorboards; now that's flooding; about 10 pm that night; literally a sea of water.
Mills asked so the hurricane did not leave as much water as the April 2007 storm?
Marcus replied it left exactly the same. The reason is that the property was never graded; it was filled. Those pictures also show puddles on Parcel A, where the rolled out tailings exist. We consider those to be impervious surface, the rolled out tailings. Poor grading (Tape A flipped to side B) resulted in those puddles.
Mills said I don't remember ever receiving any alternatives with this application. Also, we asked you for a HEC-2 report; I'm curious why you didn't comply with that request.
Marcus asked did Hoyle and Tanner and this Commission request a HEC-2?
Baroody said yes to Marcus.
Marcus explained why he did not comply with the request for the HEC-2 analysis, since the Kissen Brook does not flow. There's no water in the brook. You want to do a HEC-2 study on a drainage ditch? You're wasting my time. Marcus added what was found by a HEC-2 in another community where he did provide the analysis. By the way, it was an Inland Wetlands Commission, and he said I can't do a HEC-2, because it doesn't run.
Mills said to Marcus you went through all these other studies, but you did not comply with our request for the HEC-2. We're not in Middlebury.
Marcus said our engineer said basically it's a travesty. It's a waste of money. It's a waste of time. If you tell us why you think you need this, we'll go do it. We don't want to cut corners, but when I got the engineer's response, I didn't do it. This is a drainage ditch. If Dan can tell me today why we would do a HEC-2, I guess we would do it, but we know the conclusions.
Mills said we could have clarified it one way or the other, and now we're running out of time. As far as other alternatives, and to the best of my knowledge, I don't remember seeing any alternatives.
Marcus countered on Parcel A, we made those modifications that the Commission asked for. You got a bunch of the alternatives. On Parcel B, we gave you three alternatives for a bridge.

Mills said that was on a previous application.
Marcus said basically, if a plan is denied, the next application is an alternative. Marcus discussed what the property is zoned for; you've seen two versions of a building size, this is the CG-20 zone. There's not much else we can do with it. That's how a building works on the site, so that is an alternative.
Mills reiterated the changes in the previous application are not part of this application, and Mills did not remember seeing any new alternatives for Parcel B; modifications only.
Chairman Gallo asked are there any other questions?
Mark Massoud said to Attorney Marcus, it seems to me there has been a tremendous amount of discussion on Parcel B about flooding and filling. You guys attempted to address the history of the altered and changed site. You expressed amazement with the agency and some of its experts. Parcel B, although containing a fair amount of fill, still has a function as far as its wetland characteristics. The concern is now there will be a layer of imperviousness on top of that and the agency is looking for a couple of things: replacement of that function, Massoud said. There seems to be reluctance to consider that area. What is the value of the wetland on Parcel B.? I understand a little of where Dr. Danzer is coming from when he talks about upstream impacts, which Massoud explained. If and when the stream floods, it will potentially back up and affect the upstream properties.
Marcus said I have a question for you, Mark, on that. The airport floods. The mall floods. Clearly the mall's flooding is all on impervious surface; it's meant to do that.
Massoud said but your property is further to the south.
Massoud said there are other properties going south in that direction. I'm adding my interpretation to what I believe is happening. You're arguing that it is no longer a wetland. I'm hearing otherwise: that is still is a wetland.
Marcus said we went 7 feet down and never found wetland soils. I don't know what we're looking for in reality; we used two qualified soil scientists; I'm flustered by that.
Massoud said I hesitate to agree with your conclusion that it's an intermittent watercourse. Granted it's been rerouted and changed over the years, but it still provided water conveyance and provides that function, and that's the reason why the HEC-2 study was asked for. How much flooding takes place on the site? Massoud continued you presented a great amount of what I call hear-say evidence, and I can't imagine that some of those areas weren't flooding. Some of those properties were under water during Floyd for days and days and days. I sense that's why the agency is looking at that issue so hard. There may be functional values; I'd have to go back and look, but did Jody Chase cover those functions and values? Finfish habitats? If so, that would be great, Massoud said, but maybe it didn't. The alternatives analysis, while you state that the bridge crossing on the previous application was an alternative, I think that that was a means to development that was unknown to the agency. Alternatives should have at lease been put on the table. The agency was looking for you to present various configurations, various layouts, those that provide lesser development. Again I believe that's what this agency was looking for, up to and including no development on Parcel B. I was going to ask questions, but they more came out as statements, Massoud concluded.
Jon Fagan said I have a couple of technical questions for the applicant, about closing the Public Hearing tonight. That leaves 35 days for a decision. I received this assessment at 3:40 pm this afternoon. We've given the applicant an hour and twenty minutes to review this and prepare comments to it. I think there are two different discussions going on about alternatives.
Virbickas said to Fagan you are correct in stating that. Originally we showed a box culvert, similar to how the State had prepared their crossing. Our alternative to have less impact was to put in a bridge.

Marcus added similarly, the building proposed doesn't impact wetlands. It's an upland review area; zero; which is why we would not consider a different shaped or size building. We came up with three different crossings.
Fagan said I hate to beat a dead horse here, but is there an increase in impervious surface?
Virbickas replied including roofs, parking, yes.
Fagan said it was also the wish of this Commission to have Dr. Danzer here, and I just want to get that on the record.
Daniel Baroody identified himself at the microphone, saying I want to go over my report, although the applicant did go over that. Our expert says that this is a wetland. It's a significant impact, and we need to see alternatives, Baroody said. Regarding the science as to whether it's a wetland or not, they were asked to do a HEC-2, and they did their own analysis, which is fine. We're having a Public Hearing, and if the Commission has a finding that there may be an alternative, then the Commission cannot approve the application.
Virbickas then discussed the subject of wetlands, the soil scientists, one of which trained the Health Inspector of the City of Danbury; no floodplain soils were detected by Moeller or Laux. It's unfortunate that Dr. Danzer could not come out and look at the soils as ours did; but ours state a discrepancy between his opinion and ours, Virbickas said.
Marcus said you have a depth soil report from Laux and Moeller. Mr. Baroody said he wanted a HEC-2 study to deal with the wetlands. People that do HEC-2 studies do not even deal with wetlands, and he named two. They do not do wetlands, they do river studies, Marcus said.
Virbickas said we had requested all the airport had done increasing the size of a good number of pipes; we tried to get drainage studies from them; we could not get the information from the airport, nor from Hoyle & Tanner. Hoyle & Tanner did not return our phone calls. Only the DOT responded, Virbickas said. In order for us to analyze the Kissen Brook, we'd have to get data from the Still River and beyond the airport, due to whatever year storm we're looking at to study.
Marcus described the huge drainage problem at the airport; that's where you want a HEC-2. Marcus said the impervious surfaces were to be changed in such a minor way, the only thing that's changed since the City did its drainage at the airport, is they put new buildings up on Sugar Hollow Road, and the City put the firehouse up. The City approved its own drainage plan. Nothing's changed; it's already on file with the City. Read the Jody Chase report; and Marcus discussed the many boxed culverts. Read her report. Look at it again.
Gallo said I'll read this 11/19/07 note into the record, from Steve Danzer, Ph.D.; I just received this this evening. This advises the Commission that I am in fact "a Professional Member of The Society of Soil Scientists of Southern New England" (SSSSNE). Thank you.
Is there anyone from the Public wishing to address this project?
Mills made a motion to **close the Public Hearing**. Fagan seconded the motion.
The motion carried unanimously at 8:31 pm.
Marcus said thank you. Anyone else I can bring dinner back for?
Marcus spoke to Baroody at the table who responded, "The hearing is over".

65-67 Bear Mountain Road **Regulated Activity # 768**

Candlewood Pines Cluster Subdivision Assessor's Lot # H03069, RA-80 Zone.

Date of Receipt: 8/8/07. 14 lot residential cluster subdivision, 119± acres.

First 65 Days: 10/12/07. Second 65 Days: 12/16/07. CCA, LLC. 9/12/07 Received cut

& fill plan and wildlife report. Rec'd. 9/20/07 S. Trinkaus, PE, report & CV. Public Hearing opened 9/26/07, cont'd. 10/10/07, 10/24/07, 11/14/07, 11/28/07. Geotechnical & rock removal review received 9/24/07. Site walk 10/9/07. Mitigation plan received 10/9/07. Danzer's report received 10/10/07. Extension letters received 10/16/07 & 11/14/07. Site dev. plans, response letters, reports, conceptual driveway plan received 10/31/07. CLA and NCD reports received 11/13/07. 2nd Danzer report received 11/14/07. Revised plans, engineering report, drainage maps received 11/15/07. Letters from EPA received11/26/07 regarding salamanders, turtles, eagles, trees. Revised site development plans & letters received 11/28/07 from CCA & Environmental Planning Services (EPS).
Chairman Gallo announced the Public Hearing is now open on Regulated Activity # **768**. Gentlemen, who is first?
Paul N. Jaber, Attorney at Law, identified himself and paraphrased this application, and I understand that the Public Hearing must close on the 12/12/07 meeting. With me is Eric Davison with EPS and James Cowan, soil scientist. Jaber clarified the amount of wetland impact and disturbance previously presented to this Commission. Steve Sullivan, PE, will go over those revised plans, and Jaber spoke of the Candlewood Lake Authority (CLA) input and Mr. Hayden's comments from the Northwest Conservation District (NCD). We filed with the U.S. Fish & Wildlife Services regarding the bog turtles, Jaber said. Michael Clemens is the leading authority in the northeast, maybe in the country, on bog turtles, salamanders and bald eagles. His report, as you will see, indicates that there are no bog turtles on the site, Jaber said. We filed the report from Eric Davison confirming that the bald eagle is no longer a threatened or endangered species. The slimy salamander which is on the site is an upland species. The slimy salamander is not a wetland species, but it's habitat; it is not a wetland obligate species, so it's not an issue in our opinion, but it is an issue for the DEP, Jaber said. And we will go before them after Planning, and there will extensive additional studies. It's not a wetland species. I've had three conversations with Dr. Clemens; it's a Connecticut DEP regulated species. Because we need a stormwater discharge permit, as it's over 5 acres, we will have to go before the CT DEP. The bald eagle is off the list, but we had agreed where there may be bald eagles on the shoreline, we will retain the 12-inch trees and limit our times for construction. The bog turtle, according to both reports, is not on the site. The slimy salamander is a non-wetland species, but threatened, and so regulated by the DEP. You can only submit to DEP approved projects. And I believe that Dan asked us to submit to the U.S. Fish & Wildlife, and the report is backed up by Davison and Clemens. We have submitted feasible and prudent alternatives, and Steve will go over those again; a conventional subdivision which we went over with Scott LeRoy. Now we propose a cluster subdivision to minimize any environmental harm. Also there have been adjustments to the detention basins, which Jaber discussed. Also, we've established a Conservation Easement pursuant to Dr. Danzer's request along the dock site, so 70% of the dock site is Conservation Easement. (Tape B, side A inserted.) The drainage which the neighbors are very concerned about, we feel we've achieved that; we will not create any additional runoff from the site. The bald eagle is still a State listed species, and that's why the State says we do no construct between December and March 1st.
Gallo said you gave us this this week. No one has been able to look at this. We need it by the Friday before our meeting.
Jaber replied that's because the City was closed Thursday and Friday for the Thanksgiving holiday.
Steve Sullivan, PE, of CCA, LLC, introduced himself and took the mic to the easel. Sullivan discussed the changes requested by the NCD's letter. I will go over Sean Hayden's suggestions. Sullivan explained how clean runoff will be diverted into armored discharge areas, how the slopes will be stabilized behind the houses. Sullivan discussed a cross

section through lot 3, existing grades, proposed grades, vegetated slopes, the swales around the house, also the stormwater quality aspect, providing a forebay, dry and wet basins, planting plan, emergency overflow devise: those were already incorporated into our plan. He just missed them. Sullivan discussed the upper basin, a wet basin; the outlet down to the second basin. Each basin has it own emergency overflow, with a scour hole to discharge energy. Sullivan said there's one BMP he did suggest called a level lip spreader, but we did not have much information on it, and we have rain gardens, deep sump catch basins, hydrodynamic separators; we feel that there are significant BMPs (Best Management Practices) incorporated into the site. When you do a general permit with DEP for the stormwater, we'll do that; it's fine.

Also I have an e-mail from Larry Marsicano stating he is satisfied with the subdivision. As far as Dr. Danzer's latest report, we moved the detention basins 50 feet away from the wetlands cross-slope. We still have some buffer plantings adjacent to our disturbed areas, and Danzer and Mill had discussed. We submitted three alternatives for this project and they were discussed in previous meetings, Sullivan said. I introduced an alternate, and another alternative with a common driveway for lot 6 and 7. Dr. Danzer's latest letter looked satisfactorily at the last plan, but I'll explain again about the grading and topography; most likely a deep cut in a ledge situation. Manholes are piped into the City systems. In my letter, 81% is located 50 feet or greater from the wetlands. So we have one point that is located 20 feet from the wetland. That's shown on D-4, cross section B-B. So we have that drainage system and anything that runs off will run into the trench. Our planting plan shows plantings all along the trench, and also at the base of the retaining wall and along the four culverts as previously discussed in the hearing. It's really not a bad situation based on that cross section. Because there's really minimal grading in that area, we feel there are no adverse effects on that wetland system. There is one other Danzer question about putting in the drainage, and Sullivan explained his thought process; it would be better to keep all the activity in that area, leaving a more continuous larger undisturbed area; we felt that was a better way to conserve more land. And with the erosion controls that we've proposed, that's three layers of erosion controls, there are no adverse effects on that wetland system too. Also, one final thing: one member of the Public questioned the location of a house on 61 Bear Mountain Road. It's not adjoining; there's a right of way between. I don't think that's a wetland issue, but it was brought up, so we looked into the location of that house. That concludes my presentation, Sullivan said.

Mills said we have not had time to review this, but Mr. Hayden has the most current ones? Sullivan replied I sent them to Marsicano and I assume he forwards them to Sean Hayden. We'll double check to make sure Sean's got them.

Mills said I just want to be assured that Larry and Sean have them, and give them time to comment.

Jaber said we have Jim Cowan and Eric Davison here tonight, but only if you have questions of them; and Jaber clarified an area owned by the City of Danbury.

Dan Baroody identified himself saying I want to thank the applicants who have been very forthcoming, and I agree with them about the bald eagle, but I'd like to continue the Public Hearing so that you and I and the Public have time to review the new revisions.

Ken Gucker from 89 Padanaram Road signed in stating there are just a couple of things from last meetings, and Gucker reiterated them tonight. I took the liberty of reading your rules regarding the slimy salamander; is it a species covered by your regulations, Section 8, regarding the habitat of an endangered species. This puts the slimy salamander and the bald eagle under the purview of the DEIC. In all due respect to Attorney Jaber, the slimy salamander is under your jurisdiction. It is a State threatened species with a very narrow habitat requirement. You do have jurisdiction over the slimy salamander. You were going

to go to pavers as opposed to impervious surfaces; I have not seen these pavers, but you used to have to compact the soil to 80% compaction, then how does all that compaction limit the absorption of the soil. These are all factors that bother me there, Gucker continued. One person was kind enough to take me on a site walk; if you haven't seen the site, how close these houses are going to be, the septic systems in some areas are 30 to 40 feet apart. All this is going to fall, I assume, under your jurisdiction as well. The grades: you've got a house sitting on top of a mountain with a septic system far away. Does the Lake fall under your jurisdiction as a wetland? The steep terrain, cut and fills; where actually is all this going? Gucker said thank you for your time at 9:17 pm.
Gerhard Brunner of 63 Bear Mountain Road next signed in. My concern is still, as it has been since day one, the wetlands behind my house and the rain water runoff. I'm gonna have a big problem with dirt, leaves, what have you, being washed against my house. There's a big ridge that goes where the supposed new road is. Sullivan clarified for Brunner where the ridge is, and Sullivan said where currently from our property there will be 0.6 acres flowing toward the Brunner property; less run off. The guarantee is the City Engineering Department will be reviewing this system, in answer to Mr. Brunner, so it's not going towards your property, Sullivan said.
Brunner said it's such an incline that the storm drain can hardly take the water now, and one house on Buckskin is getting all the water on his yard.
Sullivan responded with what we're supposed to do, the Engineering Department will not let us negatively impact the drainage.
Brunner said I'd like to see Area 1 be abolished. Whatever's being done up there is not going to solve my problem. It's almost a 45 degree incline. The erosion which Mr. Mills mentioned, and nothing has been done about that; I've helped myself by cutting down some of the trees. I'm very uncomfortable with Area 1. It doesn't stop for a month, there's so much water there, after a rain. I think all the neighbors who were here at the last meeting have the same concerns. So I'd like to see something done in that neighborhood, Brunner said. And if something goes wrong who is going to have the responsibility to fix it? Pamela Equities does not have the best reputation when something goes wrong, Brunner said.
Gallo said we're not here to discuss their reputation.
Brunner said I just don't feel very comfortable about it.
Gallo asked is there any one else wishing to speak?
I'm Raymond Brachfeld. I live at 55 Bear Mountain Road. I'm confused, confounded. At one time I was trained as a chemist. We hear, "I believe, I believe, I believe". We never used that expression in chemistry. I've done whatever research I could in the time allowed, and a lot of these maintenance ideas; and I don't hear where there's prevention of invasive species. I don't hear the word responsibility; a new word, responsibility. Where are your engineers? Where are your scientists? We have this thing called a rain garden; you can't expect the homeowners to know how to maintain a rain garden. They should make sure that everyone, the buyers understand everything required to maintain these systems. They are haphazard, Brachfeld said. I heard that 61 Bear Maountain Road is separated by a proposed road. It doesn't run in back of their property; it runs in front of their property. And they can't even give an accurate report about where an existing house stands. Why should I believe anything they say? Brachfeld said thank you for your time at 9:30 pm.
Victor Westman from 52 Bear Mountain Road identified himseld saying I am across the road from this development. My concern is especially the wells. Westman said I've heard from pretty reliable sources that there is a house on the New Fairfield side of the mountain; their well is 1500 feet deep and it's gone dry. Westman said in a cluster development you ought to have City water. They are going to do something with this, and it may be an

improvement. They should forget about houses 12 and 13. You're going to have to do quite a lot of cutting to get in there, and I wonder where all that fill is going to go. I believe lots 1 and 2 could be combined and that would help the neighborhood up in that area. It's going to be million dollar properties, not $250,000 houses, and you could have a nice tree buffer, and the houses would all be on the right hand side going down. Also, with all the increased number of houses, what about our fire protection, and he listed the fire companies closest to this vicinity. I think the positive part of it is the open space; the back side of Bear Mountain, although the land is unbuildable. And more open space should be added to it, part of the Land Trust or part of the Bear Mountain Reservation. Lot 22 goes down to the Lake. You're going to continue this, I imagine. I'm very glad to be able to talk to you about this, and we are doing the best we can, Westman said.
Gallo asked is there anyone else who wants to address the Commissioners?
Jaber said I'll be very brief. I understand Mr. Gucker's concern about threatened species and Jaber sited the Avalon case in Wilton, CT; so we don't feel that you do not have jurisdiction over the slimy salamanders. Other salamanders maybe.
Steve Sullivan added we have the maintenance procedures in the back of our manual for the swirl concentrators.
Jaber said you know we must submit a maintenance plan for all the systems; the engineers review that plan. Three agencies review that plan, so that is taken care. I'd like to thank Mr. Westman for not ridiculing the 48 acres, and I've discussed this with Mr. Montgomery of the Land Trust, because maybe it's not buildable. But it has turned out to be something that the City and the Trust value dearly.
Fagan made a motion to **continue the Public Hearing** for # 768.
Mills seconded the motion.
The motion carried unanimously at 9:20 pm.

OLD BUSINESS:

40A Payne Road **Regulated Activity # 767**

MRF LLC Assessor's Lots #M13001, M13002, IG-80 Zone.

Date of Receipt: 8/8/07. Driveway, storage construction equipment & materials.

First 65 Days: 10/12/07. Second 65 Days: 12/16/07. David Tinker. ConnSoil report received 9/26/07. Extension letter received 10/15/07. Survey received 10/23/07. C & D order, Violation of Zoning Regs. mailed 10/24/07 by ZEO, T. Rosati. DEIC **Notice of Violation** mailed 11/2/07 to Tinker. Applicant requests to **table to 12/12/07**, pending new plans from Artel. Motion to **table** by Fagan. Mills seconded the motion, and it carried unanimously.

Winnebago Trail, Candlewood Pines **Regulated Activity # 769**

Pamela Equities Corp. Assessor's Lot # H03069, RA-80 Zone.

Date of Receipt: 8/8/07. Parking, storage building, docks.

First 65 Days: 10/12/07. Second 65 Days: 12/16/07. Lots # 1-5. CCA, LLC. Staking to be done 8/25/07. Geotech. Engineering review received 9/24/07. Recommendations from Danzer received 9/25/07. Comments from CLA Marsicano 9/26/07. Site plan & response from CCA received 10/5/07. Site walk 10/9/07. 35-day extension ltr. & revised site plan received 10/16/07. First Light consent ltr. received 10/31/07. Second extension letter received 11/15/07. Gallo introduced this and Dan Baroody took the mic. The applicant has been very responsive to our comments and also revising the plan, however Staff needs more time to review the plans, and we'll have a report for next time.
Mills said just a clarification if I may: Brian Wood acknowledged receiving your request; has there been any further action.
Sullivan answered first we go to EIC, then to FERC.
Fagan made a motion to **table**.
Rose seconded the motion, and the motion carried unanimously.

Pembroke Road **Regulated Activity # 770**

Roger L. Crossland Assessor's Lot # G07044, RA-40 Zone.

Date of Receipt: 8/22/07. Pembroke Day Care Center, 2.5 acres.

First 65 Days: 10/26/07. Second 65 Days: 12/30/07. CCA, LLC. R. Cameron. Site flagged and staked. Site walk by Baroody and Mills. Extension ltr. received 11/14/07.
Fagan said I don't see the applicant. Dan Baroody took the microphone, stating Mills and I had a site walk and found a watercourse that had not been flagged, near the area of Stetson Place, by the sidewalk. I tried to contact the applicant and have it flagged. As of now, they have not flagged it.
Fagan said we should communicate that to applicant; try to contact him, to have that flagged.
Mills said just for the record, there are drains on Barnum and Cannon; I have no idea where they go. It's really funny. I can't see where they go. We don't know where it comes out, Mills said.
It's all sheet flow, at the north end of the site; Baroody said there are catch basins that appear to go no where.
Fagan made a motion to **table**.
Soriano seconded the motion.
The motion carried unanimously at 9:45 pm.

5 Old Post Road, Parcel B **Regulated Activity # 783**

Keith Monroe Assessor's Lot # I20022, RA-80 Zone.

Date of Receipt: 11/14/07. Temporary crossing for septic & main construction.

First 65 Days: 1/18/08. Second 65 Days: 3/23/08. 2.465± acres. A-2 Survey requested. There's no one here. Mills made a motion to **table**. Soriano seconded the motion, and the motion carried unanimously.

NEW BUSINESS:

46 Beaver Brook Road **Regulated Activity # 785**

Pandolfi Brothers, LLC Assessor's Lot # K12176, IG-80 Zone.

Date of Receipt: 11/28/07. Contractor's building, parking, ±2 acres.

First 65 Days: 2/1/08. Second 65 Days: 4/6/08. B. Doto, III, P.E. Gallo introduced this at 9:46 pm. Ben Doto said I'll be brief.
Gallo said we have not reviewed it; neither has staff.
Ben Doto, III, PE, identified himself, and I'd like to discuss the history of an adjacent property that was before this Commission a few years back that I was a part of, and I'll be very brief. It's right across from the Danbury Board of Education Building; a typical residential site, and what I call an intermittent watercourse, and Doto further discussed the vicinity, down to the Still River. The proposal is to build what we're calling a contractors' building. West End Power equipment is here and D'Entremont is here, Doto explained. They are limited to a culvert crossing back here, and a small amount of fill that we've tried to move as far away as possible from the wetlands. We looked at an alternative that would have involved a lot of grading and the one to one mitigation would have been tough. We also looked at reusing the existing driveway. We talked to the traffic engineer who supported our idea, and here we are. To get a sense of what we are doing, I tried to use the next door site as almost a template or model to what we did here. The property line runs right down there. The adjacent project had a large wetland in the middle of the site. We did some revisions as per the Commission's comments; there was about 3000 sq.ft. of disturbance and we mitigated it with a high ratio. Again, you can see what I've tried to do was mirror that site. Scott LeRoy was in Dan's shoes at that time, and Scott and this Commission had asked that some of the areas be protected as a Conservation Easement. And that could be made contiguous to protected an area on this site. Ask him during your site walk if you could look at the D'Entremont site. There is an existing wooden footbridge and a stone wall. We are proposing a woodchip path and keeping that footbridge, Doto said. We have a loading dock. The site gradually drops; we're really working with the lay of the land. There is very little earth work assoc. with that. We are really cognizant of the conditions on the site, and I'd be glad to meet with Dan to discuss anything.
Rose made a motion to **table** this.
Soriano and Mills seconded the motion.
The motion carried unanimously.

APPLICATIONS FOR ADMINISTRATIVE APPROVAL: None.

ADMINISTRATIVE STAFF ACTIONS:

Saw Mill Road & Old Ridgebury Road **Regulated Activity # 778**

WCI Communities, Inc. B15001, PND Zone. The Reserve Dedicated City Roads.

Admin. Approval by D. Baroody 11/19/07. Gallo read this into the record, and there were no questions.

ACCEPTANCE OF MINUTES: 11/14/07 Meeting. Motion to accept the minutes as presented by Soriano. Second by Mills. The motion carried unanimously.

CORRESPONDENCE:

Chairman Gallo read the following into the record. There were no questions.

State DEP letter 9/24/07 re: DOT action for sediment deposition following 4/13/07 significant rain event at U.S. Route # 7 Reconstruction site, State Project No. 34-260.

State DEP letter 11/8/07 to DOT approving State Project No. 34-260, U.S. Route # 7 Reconstruction, Danbury / Ridgefield, 2.31 acres, previously approved 5/01, revised 5/07.

EIC ADMINISTRATION & FUTURE AGENDA ITEMS:

Annual Election of Officers: Chairman, Vice-Chairman, Secretary, as mandated by DEIC By-laws, to be held at the **December 12**, 2007, meeting. Nominating Committee: Fagan, Rose and Mills.

Matt Rose said in the past we've gotten both a negative and a positive assessment of an application; we've had both sides of the report, and I'd like to see that again. Dan Baroody asked which application? Rose said the Marcus site. Baroody said the next time you'll have both my reports, positive and negative.

Chairman Gallo said we have to hear these people out in Public Hearings.

2008 DEIC Meeting Schedule. Meetings start at **7** pm.

ADJOURNMENT: Motion to adjourn by Mills. Second by Soriano. The motion carried unanimously at 9:59 pm.

The next regular EIC meeting will be held on December 12, 2007.