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Members of the Albany City Common Council
City Hall
Albany, NY

Re: Tharaldson's Hotel Project

Dear Council Members;

I have just had an opportunity to read the DEC's letter to the Common Council dated December 15, 2008 which followed its private meeting with the developer on the issue of mitigation. The letter provides a clear illustration as to why the present process is broken and does not comply with SEQRA.

With respect to the Worm Snakes, the DEC proposes a number of mitigation measures to be taken, and then states as follows:

While these measures are intended to reduce impacts to worm snakes, they do not and cannot address the overall issue of habitat loss in this area....Given the level of proposed development of the project site, these impacts to these habitats cannot be fully addressed by the above referenced measures. (Emphasis added)

So apparently the DEC recognizes that the above project will have a significant impact on the Worm Snakes and that the proposed mitigation measures cannot fully address the impact. What alternatives are proposed? What additional mitigation measures might further protect the Worm Snakes? Should the situation of the Worm Snakes be further studied until a clearer plan can be formulated? The December 15, 2008 letter leaves more questions than answers and it provides no basis for the Common Council to take a hard look at the issues or reach any conclusion as to what might be adequate mitigation measures or alternatives.

All of this should have been presented in the Draft Supplemental Environmental Impact Statement (SDEIS), pursuant to 6 NYCRR 617.9(b)(5), which requires that the DSEIS contain:

- (iii) a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence,
- (iv) a description of the mitigation measures, and

(v) a description and evaluation of the range of reasonable alternatives to the action

A public hearing on the SDEIS must address “whether substantive or significant adverse environmental impacts have been identified; [and] the adequacy of the mitigation measures and alternatives”. (6 NYCRR 617.9(a)(4)). Here of course the existence of the Eastern Worm Snake and Eastern Hognose Snake and the habitat for the Eastern Spadefoot Toad was not known until after the August 4, public hearing on the SDEIS, and so the public had no opportunity to comment. Evaluations of impacts, alternatives and mitigation have been conducted in private discussions to which the public has no access, in violation of SEQRA.

In addition it should be noted that the December 15, 2008 letter from the DEC contains not one word about the two Eastern Hognose Snakes, also a species of Special Concern, which were found near the Hotel site, and reported in the DEC’s letter of August 13, 2008. What mitigation measures should be proposed for these snakes? How widespread are they? How will they be impacted by the construction? What alternative should be considered as to them? Why should their situation be considered different from that of the Worm Snakes? There is in the SFEIS no basis for the Common Council to take a hard look at the issue until these critical questions are answered.

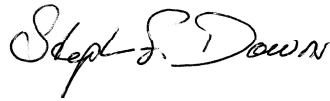
In addition it should be noted that the December 15, 2008 letter from the DEC contains not one word about the habitat of the Eastern Spadefoot Toad, also a species of Special Concern, that was found near the Hotel site, and reported in the DEC’s letter of August 13, 2008. It is well known that the Eastern Spadefoot Toad is a nocturnal, reclusive, amphibian that spend most of its time buried in the ground, and is very hard to find. It is usually observed in the spring or after very heavy rain falls when it comes above ground to mate in vernal or rainwater pools. Here the DEC identified a potential habitat for the Eastern Spadefoot Toad in August, during a time in the year when it would be unlikely that the animals could be seen or identified. In order to determine what “substantive or significant adverse environmental impacts” may result from the Hotel project, it is necessary to know whether the potential Spadefoot Toad habitat is occupied. Do the Toads live there? This is obvious. The Common Council has no basis to take a hard look at this issue until this key fact is known.

Finally we are concerned that no assessment has been made as to the value of these species of Special Concern to the Albany Pine Bush preserve – a preserve that was created especially to protect such rare animals. Like the Karner Blue butterfly, these rare animals could be among the crown jewels of the Pine Bush Preserve if protected, but there has been no discussion about this, and no basis in the SFEIS for the Council to take a hard look at the issue or draw any conclusions.

We continue to object to the way that information about the various species of Special Concern are kept from the public and that discussion of alternatives and mitigation are private between the developer and the DEC. It is impossible for the public to respond to leaked bits of information in a coherent fashion. That is why under SEQRA, the SDEIS

must include sections on “impacts, mitigation and alternatives”, so that the public, at a public hearing, can respond in a coherent fashion to the facts and analysis presented. Here there has been no such opportunity. We continue to respectfully request that the SFEIS be vacated, the SDEIS be redrafted to include information about the species of Special Concern that should have been in there in the first place, and a public hearing on the SDEIS be held to obtain a broad sample of public opinion on this important question.

Yours very truly,



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