



Save the Pine Bush

December/January Newsletter

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Social Justice Center Annual Gathering Saturday, December 12, 2020 Zoom Program with Real Take-Out Lasagna Dinner in Memory of Rezsins Adams!

Our community's beloved Rezsins Adams, lifelong social justice activist extraordinaire, died this year at the age of 93. Her astounding career of support for multiple social justice causes included many years of service to the Social Justice Center and decades of preparing and serving monthly lasagna dinners for Save the Pine Bush. So what better way to honor Rezsins than to eat lasagna together, talk organizing, and support the Social Justice Center!

Vegetarian or Vegan/Gluten Free Lasagna Dinner \$10, reserve by December 6th, pick up curbside at the Social Justice Center 4:30-6:00 on Dec. 12th. Go home, eat lasagna together on zoom and join a zoom community memorial and program for Rezsins 6:30-8:00. Or cook your own at home and join the free zoom – you are welcome with or without dinner. Kids welcome too!

To reserve your \$10 lasagna dinner and/or register for the free zoom event, go to the Social Justice Center website, www.albansysjc.org. Or call the Social Justice Center at 518-434-4037.

Dinners must be reserved by Tuesday, December 6th at midnight. There will be some extras day-of but we can't guarantee them – don't take a chance! Pickup is curbside at the Social Justice Center, 33 Central Ave., Albany, on December 12th from 4:30 to 6. Pay in advance at www.albansysjc.org, click on the DONATE button and put LASAGNA in the note. Or pay by check or cash at pickup – we can't process card payments on site.

During the zoom party there will be a time to remember Rezsins, as well as a short fun update from the SJC about our past year and what to expect going forward. If you would like to contribute a memory of Rezsins during the zoom or highlight your local social justice work, please reserve a time slot by emailing poet.d.colin@gmail.com. Please limit comments to two minutes so there is enough time for all.

See you on the 12th!

See you for take-out lasagna and/or on the Zoom! • Everyone is welcome!

This event is sponsored and organized by the Social Justice Center.

www.savethepinebush.org

The Residents and the Pine Bush Win Against Pyramid

Justice Prevails

by Lynne Jacksons

ALBANY: In an astonishing, detailed, and carefully written decision, Judge Peter Lynch handed a victory to Westmere Terrace residents and a gas-station owner, the plaintiffs in a lawsuit filed against the Town of Guilderland Planning Board and Pyramid Management Group. The decision makes null and void all of the approvals the Planning Board gave to Pyramid for its proposed development project known as the "Rapp Road Residential/Western Avenue Mixed Use Redevelopment Projects."

This is a significant victory for the residents, for the State Environmental Quality Review Act (SEQRA) process, and for the environment.

The 77-page decision by Judge Lynch is well worth reading. The judge wrote the decision using plain English, and carefully documents every point. Since I cannot fit his entire decision in this article, I will quote directly from the decision as much as possible.

continued on page 2

Grass Roots Victory For Cleaner Air

by Tom Ellis

ALBANY (Online): Barbara Heinzen, Bill Reinhardt, and Matt Miller discussed the recently enacted Albany County Clean Air Law at the October 21, 2020 SPB virtual "Grass Roots Victory For Cleaner Air" meeting.

Self-employed Barbara Heinzen, lives on the border of Albany and Greene counties, a few miles south of the Lafarge cement factory in Ravena. She said we need activists and innovative people in government.

Lynne Jackson hosted the meeting and Carol Waterman moderated the discussion. Carol said "It takes a village to make a law" and "we won a victory over two large corporations."

Barbara Heinzen said that in December, 2017, Mike Ewall of Energy Justice Network, notified area residents the state of Connecticut hoped to send one-third of its trash to Lafarge. A packed December 27, 2017 news conference sent

continued on page 2

Victory for Clean Air continued from page 1

the message that “We will not have it.” News of strong local opposition convinced Connecticut politicians to abandon the plan.

The Town of Coeymans then hired Mike Ewall to draft a clean air law. A 2018 public hearing was held at which workers from the Port of Coeymans, which has a contract to collect tires from around New York, and Lafarge spoke, saying the legislation was not needed. The law was enacted in March, 2019. Three Democrats on the town board and county legislator Rick Touchette were defeated in November 2019 elections.

Sensing the incoming town board would gut or not enforce the town’s Clean Air Law, and during his final weeks as a county legislator, Rick Touchette urged the county legislature to enact a county Clear Air Law. Consideration of it was delayed until 2020 when a newly elected county legislature took power.

Considerable redrafting occurred in 2020, a coalition in support emerged, former U.S. Environmental Protection Agency Regional Administrator Judith Enck helped, an email list of 700 was built, the scandal of Norlite burning two million pounds of “forever” chemicals at its hazardous waste incinerator in Cohoes began, and legislators were lobbied.

She said the Coeymans town board promised to not repeal the law and commissioned a study that concluded the law was unnecessary. Barbara said the town board might revise the law so as to trump (the state’s Environmental Conservation Law allows the most local government to have the final say) the county Clean Air Law. She said we must remain vigilant because other waste processing facilities up and down the Hudson River valley are frequently proposed. She asked, “What is the best way to proceed?” and said the process we use to speak to each other is now broken.

Albany County Legislator Bill Reinhardt said he got involved early in 2020 and worked with progressive and environmentally-minded legislators, and became the Clear Air bill’s main sponsor. He met with county legislators and County Executive Dan McCoy. Many were concerned about the costs of the county regulating and enforcing such a law. They proposed a ban instead. Widespread concern about the text of the bill led to language compromises that help win passage.

Bill thought and hoped he could win Republican votes. All thirty Democrats voted in caucus in support and then again when the legislature voted, along with two Republicans. With 32 votes, and bipartisan support, they had more strength and a veto-proof majority.

Summing up he said compromising con-

tributed to the bill’s success, and said had more compromising occurred with the defeated paid-sick days bill, it might have been enacted. His advice is to compromise, get It passed, and fix or improve it later.

Bill asked Barbara if the town would repeal the town law. Barbara replied that amending was for more likely because repealing it would leave the county law operative. She said the town may also allow Port of Coeymans owner Carver Laraway to own a large transfer station along the Hudson River.

County legislator Matt Miller worked 28 years as a biology teacher in the Ravena-Coeymans-Selkirk (RCS) schools directly across Route 9W from Lafarge. He agreed with Bill that the 30+2 was critical, and constant pressure from constituents helped to flip the two Guelderland Republicans.

He said white dust lands on his car daily, he worked on the RCS physical plant for six years, and Lafarge pays \$100,000 annually for school air filter replacements. He urged listeners to carefully watch Carver Laraway, who throws around plenty of money in Coeymans, and has far too much influence over the town government.

He asked how do we incentivize corporations to be more green, urged we focus increased thinking on this matter, and recommends elected officials lure clean businesses.

A discussion followed. Barbara Heinzen asked why did Coeymans voters replace Democrats with Republicans a year ago. Matt Miller said he thought it was more of a blue-red situation with red voters thinking “you are not going to tell us what to do.” Employees of Laraway and Lafarge packed meetings, almost like a Trump crowd.

Barbara said the the new supervisor is a bully, the Friends of Coeymans is a nasty, Trumpian intimidation effort, and a sovereignty movement.

Bill Reinhardt said the county ban law has no regulatory costs, and saves the town money. Matt said town board members have said they will never repeal the town law. Bill asked if the town law is not enforceable, does that make it null and void.

Bill said regardless of what Coeymans does, the county law is still a plus because it will impact what Norlite can do and it prevents the construction of any trash incinerator in Albany County. He urged efforts to have the state government enact a multi-county law banning trash incineration throughout Hudson Valley counties.

Paul Tick of Delmar, who has worked on Albany county issues for several years, said, he engaged a large coalition of the League of Women Voters, Environmental Advocates, NYPIRG, and others to enact styrofoam bans in the county. A

partial victory was won and three years later, a more comprehensive one and Albany County banned plastic bags a year prior to the state government. He said, “We fought like crazy to get the Clean Air Law passed, Carol Waterman spoke at one legislative meeting after another, we got all the Dems to cosponsor and two Republicans.” He said Dan McCoy had thirty days to act on the bill, he kept us guessing until the last minute, but signed it due to our pressure.

Carol Waterman discussed tobacco legislation--some enacted, some not--in recent years in the legislature, the need for sponsors, and asked how do we get more people to vote.

Paul said few people know who their county legislator is, voters need to know what issues the county legislature works on and how it can impact their lives. He said door-to-door campaigning works.

Bill Reinhardt said the more successful county legislature Democrats are running on environmental issues, and said we need to start looking for green candidates from Colonie, Cohoes, and Guelderland.

Lynne Jackson said Carver Laraway proposed an asphalt manufacturing factory in Albany in 2003, and many came out and chased him away.

Bill Reinhardt said he and others worked hard to persuade the legislature’s Black Caucus to support the Clean Air Law. They know, he said, about the Port of Albany, Norlite, air pollution, and relate to all our shared issues. Paul Tick said the Black Causus was not on board with the styrofoam legislation.

Barbara Heinzen said the hamlet of Coeymans had Black families until the 1960s when their houses were demolished, and they moved to Albany. She said she liked Bill’s proposal to have a state incineration ban in area counties and Matt’s to incentivize green businesses.

Additional comments: On November 23, Governor Cuomo signed state legislation that bans Norlite from burning firefighting foam. On the same day, the Coeymans Town Board voted to greatly weaken the town’s Clean Air Law.

Residents Win continued from page 1

The court begins by criticizing Pyramid’s characterization of the site and how it would fit in the zoning for the Tranist Oriented District. The court said:

Prior to the filing of the subject application, the Town of Guelderland enacted the Transit-Oriented Development District (hereinafter “TOD”) on June 5, 2018. The project is located within and subject to TOD. Prior to its enactment, on May 14, 2018, the Albany County

continued on next page

Residents Win continued from page 2

Planning Board (hereinafter ACPB) commented on TOD's enactment, noting a representative of the project sponsor herein made the following statement, to wit: "Crossgates has bought property in the surrounding area, and is hoping to build something that is first floor commercial, upper floors residential apartments/condos; perhaps a **civic component** as well..." (emphasis added) That representation is most troubling, because the Costco Site plan was prepared as early as November 1, 2017 but apparently not disclosed. It is evident that Costco is not a civic component. On scrutiny, the record herein is replete with conclusory self-serving and equally troubling representations made by the project sponsor, without the support of empirical data, which, unfortunately, the Planning Board relied on. That is not the stuff that the **SEQRA hard look test is made of** [emphasis added].

The issue distills to whether the Planning Board complied with its procedural and substantive SEQRA obligations? It did not, on both counts. . .

The Court said "The historical and cultural significance of RRHD [Rapp Road Historic District] cannot be overstated, and, in turn, cannot be ignored under the hard look test." The Court also pointed out that the proposed 5-story apartments are out of character:

The project impact on the RRHD is assessed in DEIS [Draft Environmental Impact Statement] Section 3.4.1.2 to 3.4.1.3.2. In wholly conclusory terms, the DEIS provides: "**The projects are not out of character with the area**, rather they are authorized pursuant to Town of Guilderland's TOD district." (emphasis added) **Really? Since when do high-rise buildings comport with the character of historical one-story bungalows.** [emphasis added]

The Court pointed out errors in the Draft Environmental Impact Statement (and other documents). Figure 13, submitted by the applicant, Pyramid, showed that the nearest house in the RRHD was 390 LF from the edge of the property for the proposed apartments. In addition, there is no viewshed analysis in the DEIS, FEIS or Findings Statement; the Planning Board failed to require one. The Court said:

Incredibly, not only did the Planning

Board fail to require a viewshed analysis, the viewshed analysis was not even mentioned in the DEIS, the FEIS, or the Findings Statement. Instead, the Board relied on the project sponsor's self-serving and conclusory claim that the residents of the RRHD would not even be able to see any of the project buildings due to the 200' wooded buffer at the north end of the site.

The Court continues a few pages later and quotes from the DEIS: "The five story buildings are situated in closer proximity to Rapp Road which is consistent with the TOD height design strategy for higher buildings to be situated farther away from residentially zoned properties." And the Court responds:

The DEIS fails to account for [how] or evaluate its strategy to move the 5-story buildings closer to the Rapp Road Historic District will enhance visual impact on the RRHD.

Importantly, the Court emphasized that "that compliance with the use and area requirements of an Ordinance [such as the TOD] is not the equivalent of taking a hard look at the project impact on the historical and cultural significance of the RRHD."

When commenting on the DEIS, the court notes:

The DEIS does not address the comment of J. Curt Stager, Ph.D., Paul Smith's College, that "Because the site in question lies on soils that are typical of the Albany Pine Bush, it currently has potential for restoration to classic pitch pine habitat that would be lost if the site is developed as proposed. . . . Once again, the project sponsor's EIS assumes, incorrectly, that compliance with the use and area requirements of an Ordinance is the equivalent of finding no adverse impact, and no need for mitigation.

Regarding Costco and the TOD which emphasizes non-automobile forms of transit, the Court observes:

The DEIS also fails to mention, let alone account, for the fact that Costco will not improve the environment for non-automobile-oriented modes of transportation, will not reduce the number of required parking spaces, and will not focus intense development away from existing residential neighborhoods, all in contravention of TOD.

Adverse impacts were not addressed. The Court said:

DEIS §4.0 identifies unavoidable adverse impacts. The DEIS does not identify any adverse impacts attributable to the 5-story building height, nor any impact from the loss of 19.21 acres of land within the Primary Protection Acres of the Pine Bush Preserve. Moreover, the DEIS does not identify or address any adverse impact attributable to the mass retail nature of the Costco project.

The Court quoted two of the scientists Save the Pine Bush asked to comment on the DEIS:

The ecological report of Dr. Cynthia Lane dated April 15, 2020 was filed to comment on the DEIS and raised serious questions as to the integrity of the DEIS.

Dr. Lane commented:

"The reports prepared by B Laing Associates (2019a, 2019b, Appendix F and G in the DEIS), are incomplete and have numerous inaccuracies. This renders the DEIS incomplete and insufficient since the DEIS is built upon the findings of these reports. The key issues identified include:

- 1) The methods section is incomplete and/or incorrect methods may have been employed.
- 2) Incomplete vegetation survey.
- 3) **Traffic impacts on wildlife are insufficiently addressed and mitigated.**
- 4) **Night lighting impacts on insects need to be examined.**
- 5) Heat island and cumulative effects need further study.
- 6) Climate change impacts not considered."(emphasis added)

The Court notes that the DEIS also did not address the high-rise building night lighting visual impacts on the RRHD.

The ornithological report of Naima Starkloff, Ph.D. dated May 15, 2020 was filed to comment on the DEIS, and also raised serious questions as to the integrity of the DEIS.

Of note, the report identified the impact that the high rise buildings could have on bird death due to collisions with building windows, and recommended "mitigation to limit avian mortality as

continued on next page

Residents Win continued from page 3

a result of window collisions.”

And the Court commented on carbon intensity of fuels:

In a remarkable statement relative to the impact of the carbon intensity of fuels, the Project Sponsor claimed,

“the project will encourage sustainable public transportation by improving public transit” [and]... Similarly, with respect to the Costco, patrons presently travel approximately 87 miles to Springfield, MA, the location of the nearest Costco. The project may result in a net reduction of vehicle miles travelled (VMT) and therefore a net reduction in greenhouse gas emissions.”

Clearly, the record does not sustain any claim that Costco customers will utilize public transportation, nor is there any evidence to demonstrate the subject project will dilute traffic to Springfield.

Save the Pine Bush was not a plaintiff in this lawsuit. However, many Save the Pine Bush cases were cited in the decision. The Court cited many cases and said:

Without question, the Pine Bush ecosystem is unique and judicial review of project impacts have evolved over the last 40 years (see Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany, 13 N.Y. 3d 297 [2009]; Save the Pine Bush, Inc. v. Albany, 70 N.Y. 2d 193 [1987]; Save the Pine Bush, Inc. v. Common Council, 188 A. D. 2d 969 [3d Dept. 1992]; Save the Pine Bush, Inc. v. Albany,

The Governor and the Dump

by Tom Ellis

manufacturing site, a few hundred meters from the Hudson River, a few blocks south of downtown Rensselaer.

In recent months, REC purchased a noise monitor and two air pollution monitors to collect information about heavy truck traffic to, from, and inside the dump. REC members joined a large regional coalition that pressured Governor Cuomo to sign legislation November 23 banning Norlite from incinerating firefighting foam containing per- and polyfluoroalkyl (PFAS) at its hazardous waste incinerator in Cohoes.

REC obtained PFAS testing results DEC initiated concerning the Dunn dump. It is unclear where the tests were taken and if the tests are of leachate or surface waters near the dump. DEC has so far not publicized its several months old test results nor taken any publicly announced regulatory action. The results show contamination levels far higher than tests REC and the Public Employees for Environmental Responsibility (PEER) obtained last winter between the dump and the Hudson River, downhill from the dump. During October, REC wrote to DEC requesting additional information. As of Late November, DEC had not responded.

Meanwhile the dump continues to stink, trucks are operating in the dump some days as early as 4:00 a.m., and the first inbound tractor trailers wake up downtown Rensselaer residents by arriving ten or twenty minutes prior to the allowed 6:40 a.m. start time. Residents of Governors Square in East Greenbush have endured (How could they not?) horrible dump odors on Saturday mornings and early afternoons in recent weeks. DEC’s hotline immediately transfers dump odor complainers to a Dunn dump office. Dump odors on November 21 were exceptionally intense and left some residents gagging.

I imagine Andrew Cuomo takes great satisfaction as he nears the tenth anniversary of his becoming governor of New York. Perhaps he thinks about how he will be remembered long after he is gone. My prediction is his legacy in the capital district will be the Dunn Waste Connections dump in Rensselaer, sited right next to the then brand new Rensselaer public school campus during his first term and opened during his second.

Even though it is located across the Hudson River, the dump is easily visible from the top floors of the Governor’s Mansion, the state Capitol, and the state Department of Environmental Conservation (DEC) headquarters.

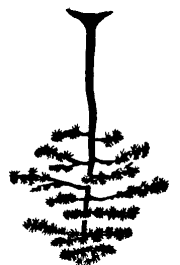
Early in 2020, the Covid-19 wiped out much of the enormous momentum Rensselaer residents and friends had generated during the prior three years to force closure of the dump. Nevertheless the struggle continues and victory will occur, hopefully soon.

To proactively attack the multiple threats facing Rensselaer and East Greenbush, Rensselaer County residents and friends created the Rensselaer Environmental Coalition (REC). REC helped elect a new anti-dump mayor in Rensselaer in November, 2019 and pressured DEC to deny permits last summer to BioHiTech for its proposed solid waste reprocessing facility, atop the closed and still heavily polluted BASF

141 A. D. 2d 949 [3d Dept. 1988]; Save Pine Bush, Inc. v. Planning Bd. of Albany, 130 A. D. 2d 1 [3d Dept. 1987]; Save Pine Bush, Inc. v. Planning Bd. of Albany, 96 A. D. 2d 986 [3d Dept. 1983]; Friends of Pine Bush v. Planning Board, 86 A.D. 2d 246 [3d Dept. 1982], aff’d 59 N.Y. 2d 849).

So, we did have some influence!

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