



Save the Pine Bush

October/November Newsletter

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Take-Out or Delivery Vegetarian/Vegan Lasagna Dinner

Wednesday, October 20, 2021, at 6:30 p.m.

Yes! Full Lasagna Dinner for Take-out or Delivery!

Laura Ferran & Olivia Rose

Residents of the South End of Albany and founders of SEBS, South End Butterfly Sanctuary.
will speak about

South End Butterfly Sanctuary

Laura and her daughter Olivia, age 13, will take us through their adventure this past summer of raising monarch butterflies and releasing them for their journey to Mexico. Hear the inspirational and wild tale of how their family made it their mission to turn a parking lot into a Wildlife Way-Station and Nature Hub, in and for the South End of Albany, NY.

How to Order Dinner

Lasagna dinner, with vegetarian, vegan and gluten-free options, salad, garlic bread and dessert. Only \$15 for adults and \$6 for students. **Please order dinner by Sunday, October 17.** Order online at savethepinebush.org/dinner or by emailing pinebush@mac.com or calling (518) 366-7324. When ordering, specify take-out or delivery. If delivery, please include your name, address and phone number. Deliveries will be made between 4:00 and 6:00 PM. Pickup will be 4:00 to 5:00 PM on October 20 at Westminster Presbyterian Church, 85 Chestnut Street, Albany, NY. **Please note:** We had some technical issues which prevented Lynne Jackson from receiving all of the dinner orders. We have (hopefully) fixed those issues for this dinner!

How to Join the Zoom Meeting

A link to the Zoom meeting will be posted on the Save the Pine Bush website. Go to savethepinebush.org/zoom.html. Or call in to the meeting at (929 205) 6099, meeting ID 395 892 1225. If you want to test getting online at 6:15, you are welcome to do so! Also, you may call or text (518)366-7324 for assistance.

See you online at 6:30! • Everyone is welcome!

No Save Pine Bush Hike

However, the Pine Bush is open for social distancing hikes and walks. The Discovery Center and the outdoor rest rooms are open for limited hours. The ecosystem is open to visitors. Please practice social distancing, and take precautions for ticks, and enjoy the great outdoors!

www.savethepinebush.org

Pace Environmental Litigation Clinic Defends the Pine Bush

by Tom Ellis

ALBANY, NY: Todd Ommen and Robert O'Connor of the Pace Environmental Litigation Clinic (PELC) made a joint zoom presentation at the June 16th Save the Pine Bush dinner. Lynne Jackson hosted the event.

Mr. Ommen led off. He is the PELC managing attorney and supervises interns. He began practicing environmental law in 2007, joined PELC in 2016, after prior corporate litigation and a stint with the NY Attorney General.

He said there was little environmental law in the United States until the late 1960s and thus little environmental protection. Paint was daily dumped into the Hudson River in the sixties by a Tarrytown factory; locals could easily see different colors each day. Hudson River fishers were increasingly outraged at rising levels of

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What Really Happens to the Dunn Dump Complaints?

by Tom Ellis

RENSSELAER, NY: The Rensselaer Environmental Coalition continues its four-year-campaign to immediately close the construction and demolition debris dump in Rensselaer while dealing with an unresponsive state government.

Residents of Rensselaer and East Greenbush (R&EG) remain disgusted with how the NYS Department of Environmental Conservation (DEC) takes odor and other complaints about the dump. DEC set up a system where people dial a DEC-supplied telephone number that is answered by Dunn Waste Connections — the owners of the landfill the caller is complaining about.

Many R&EG residents would like to be able to report directly to DEC without dump owners knowing they complained. DEC refuses to allow this. Some R&EG residents fear retaliation if they complain. Some wonder if the complaints they make are actually forwarded to DEC. There is no transparency in the complaint reporting system so it is impossible to know if Dunn forwards all complaints to DEC or if DEC has any way of knowing for sure that all complaints are

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pollution that killed fish, dirty water, and their ruined livelihood. They began meeting to plan a response. Bob Boyle told them about the little-known 1899 Rivers and Harbors Act that makes it illegal to pollute rivers, which has a provision granting litigation winners one-half the penalty the courts award. The Hudson River Fishers Association sued and won \$2000, the first verdict of its type. In 1983 the fishers association became Hudson Riverkeeper.

He said a huge environmental awakening occurred in the US and worldwide beginning in the late 1960s. Many new federal laws were enacted; some contained provisions allowing people to bring citizen's suits but few had funds to launch the litigation. Robert Kennedy, Jr. suggested Pace law students become litigators; Pace handled many Hudson Riverkeeper cases including enforcement actions. He said the Save the Pine Bush litigation is an expansion of PELC's work.

He introduced Robert O'Connor, a recent Pace Law School graduate, who worked on the SPB case against Pyramid and the Town of Guilderland. Using a PowerPoint, Mr. O'Connor briefly described the three-part project: 19+ acres for apartments off Rapp Road, 16+ acres for a Costco store and gas station on Western Avenue, and an 11+ acres mixed use complex.

SPB brought the case to PELC prior to the Draft Environmental Impact Statement (DEIS) preparation. The Guilderland Planning Board (Planning Board) issued a positive declaration in August 2019 requiring preparation of a Environmental Impact Statement while saying they saw no significant environmental impacts.

He said the word "environment" is broadly interpreted under the State Environmental Quality Review (SEQR) Act.

During the first half of 2020, more than 600 comments were received by the Planning Board including some from PELC. Mr. O'Connor said the DEIS contained little scientific data and mistakenly asserted there is no Albany Pine Bush habitat on the sites, no adverse environmental impact to the pine bush, and the projects posed no adverse impacts to any endangered, threatened, or species of special concern.

SPB and PELC disagreed and hired four witnesses who wrote expert testimony on endangered species, bats, soils and climate, and that the methodologies used in the applicant's site surveys were inadequate.

The Planning Board adopted the DEIS and its findings statements. SPB and PELC based its Article 78 filing on the applicant and Planning Board's failure to address the comments received and to take a "hard look" at the sites and what

they contained. PELC's strategy was to build an evidentiary record, find expert and lay witnesses, exhaust available administrative procedures, and file within the statute of limitations (four months or 120 days) of Planning Board's final determination of August 28, 2020. The Pace claim was filed on November 27th.

Mr. O'Connor said it is important to narrow litigation to the strongest arguments which are that Planning Board's adoption of the Final Environmental Impact Statement and findings was arbitrary and capricious, The Planning Board voted without having sufficient membership on the Town Board, and the decision to hold a public hearing for Site One was done in Executive Session, contrary to NYS law.

PELC anticipated counter arguments that its lawsuit was not timely filed and Planning Board took a hard look. The Pace strategy was to move for a stay pending the outcome of the Hart litigation brought separately by Guilderland residents seeking to block the project, and file an Amicus brief to aid the Hart litigants.

Mr. O'Connor said SPB and PACE and waiting for the HART court decision. [The Hart lawsuit was subsequently rejected by a unanimous decision of the Appellate Division of NYS Supreme Court.]

During the questions, comments, and answers, Mr. Ommen said the town stopped Pyramid's tree cutting at the proposed Costco site "a little late" after it was nearly clearcut.

Lynne Jackson said that no matter which way Hart goes, the SPB "is still alive." Mr. Ommen had "no comment" to Lynne's mention of the irony of Pyramid seeking a fifty percent reduction in its Crossgates Mall property taxes while pursuing the triple-development.

Mark Schaeffer said developers "often do irreversible damage prior" to final decisions on projects.

Mr. Ommen said NYS laws do not have citizen suit provisions.

Lynne thanked Karen White and Grace Nichols for their superb work locating the four expert witnesses and said one defect in the Endangered Species Act is that someone cannot legally kill individual endangered species but

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forwarded. Many R&EG residents believe that far more complaints would be reported if they did not have to first pass through the dump owner, and DEC may have established the system this way for exactly that reason.

DEC has refused to set up a telephone complaint system answered by DEC or where people could leave a complaint on a DEC telephone answering system. DEC has refused to set up

an email account to take Dunn Waste Connections complaints.

No system exists for Rensselaer residents to report their continuing complaints about heavy tractor trailer traffic through downtown and Partition Street into and from the dump. Some R&EG residents report dump and truck-related complaints via email directly to the DEC regional director.

DEC defends the existing complaint system saying that dump owner immediately become aware of the complaint, and thus responsible for investigating and mitigating the complaint. DEC says it would be impractical for regional staff in Schenectady to travel to Rensselaer to investigate each complaint.

The Rensselaer school campus adjoins the dump. NYS Department of Health (DOH) and DEC met with R&EG residents at the Rensselaer school campus in February 2020 about the dump. This event reminded many of a noisy school science fair where each presenter had a table set up with a display. All conversations were one-to-one or between small groups. The state made no formal presentation, nor did it answer any questions on the record. During the first hour, when most attended, the room was crowded and conversations difficult to hear.

School staff and students told DEC and DOH that dump odors had permeated the school building earlier that same day. The only hand-out DEC and DOH brought to this community meeting was a single sheet of paper with DEC talking points that DOH endorsed. DOH did not bring any scientific reports about dump odors and health. Follow up requests from me for such reports were ignored.

The dump opened in January, 2015. The dump's permit expires in the middle of 2022. If the dump owner desires to renew it, DEC must receive an application by the first day of next year and DEC will treat any renewal request as a brand new application. Residents believe dump owners are using the list of names obtained from dump complaints to assist in their permit renewal preparations. Dump owners will likely assert that dump odor complaints are reduced from 2019-2020 and thus DEC should renew the permit for at least five more years. Many see DEC's behaviors as evidence DEC is assisting Dunn Waste Connections with the permit renewal.

Should a dump application be filed, REC will participate in the flawed permit process while simultaneously continuing our larger campaign to immediately close the dump. This includes conducting surveys of residents, petitions, lawn signs, working without outside experts, and with the Town of East Greenbush, whose town board remains united in favor of immediately closing the dump.

Build It And They Will Come: Cousin of Karner Blue Returns To Albany

By Laura Ferran, Founder of (SEBS) South End Butterfly Sanctuary, Albany NY

ALBANY, NY: My mother Nadia Ferran, now age 89, remembers seeing hundreds of monarchs in the 1970's in our family yard located in the South End of Albany. But when my young children and I came to live in Albany last year, we saw just ONE. This sighting was both exciting and frightening at the same time. We researched that monarchs are plummeting toward extinction. Numbering some 1.2 million in the 1990s, it declined to fewer than 2,000 butterflies in the 2020 count for the western monarch population. The reasons include some natural events but mostly urban housing, paved roads, and pesticide use has removed the fields of milkweed plants, the only food a monarch caterpillar can eat. No milkweed means no monarch butterfly.

Monarchs, a large orange-and-black butterfly, are only 1 of 2 species of insects that migrate as far as Canada upto 3000 miles back to their winter home in Mexico. When you look at a monarch one could hardly imagine a creature so small and fragile can make such an epic journey. The loss of this beautiful animal is telling of what is happening to other pollinators, as humans remove and/or violate their shared habitat. In addition, the food security of humans is dependent on the ecological services that pollinators provide. No pollinators means no fresh produce for us.



The SEBS mural and a monarch way station sign make it public that the plight of the monarchs is important to residents of the South End.

From Nothing To Everything

Understanding that we are either part of the problem or part of the solution, increasing the monarch population at this site became our family's mission. But the problem was:

- We knew practically nothing about the monarch's life cycle and needs.
- There was no dirt.
- There were no plants.
- We had no personal fund for this community beautification project.

But what we did have was a tiny wild field area, a large grey gravel parking lot, and in most abundance, a belief that, if we build it, they will come.

So in June of this year we put our intentions out into the universe and the following happened:

- The dirt was donated by the Albany Department of General Services.
- The milkweeds came from a grant program online.

- The butterfly tags and education came from Monarch Watch, the organization responsible for monitoring migration patterns.
- The water bill was relieved by the Albany Water Department.
- The volunteers and plants came from the community.



By August a small miracle happened.

THE PEOPLE ARRIVED.

SEBS held it's very first event: Pollinator Celebration Day of Albany. We had a half dozen non-profits present their eco-programs, over 50 residents visited, a storyteller and crafts edu-tained the children, live monarchs were on display to be released into the garden, and a few government agents came to applaud the event.

- SEBS won a national Harmony Hero Award hosted by Earthkind.com.
- SEBS to date has 1.3K youtube views!
- SEBS was invited to teach a local school program about monarchs.
- SEBS mural, sign, and facebook page became known by the community.



Olivia Rose and Laura Ferran holding Monarch butterflies at SEBS

Then an even smaller miracle happened.

THE BUTTERFLIES ARRIVED.

24 WILD monarch larvae were born on SEBS milkweeds and survived to adulthood with the help of my daughters. 25 additional monarch larvae were purchased to build the population. Olivia, age 13, reared all the caterpillars in

our kitchen and when they emerged from their chrysalis, she hand fed each butterfly twice a day until the weather was safe for their release. Monarchs extend their proboscis, a straw like tongue, to dip into flowers but they do not naturally understand that a dish of honey water can be food. We had to help them learn to eat and get

strong for their release. With the whole process of rearing monarchs, our family gained an education, a relationship with a wild animal, and a community project to help others gain a greater respect for the balance of natural ecosystems.

A SANCTUARY FOR ALL

In addition to monarchs, other animals found refuge at SEBS. During the summer we viewed bunnies, pheasants, opossums, tree frogs, cicadas, groundhogs, several species of birds, praying mantis, bees and other pollinators. The pheasants hung around for over four months, 3 to 8 at a time. A mother opossum gave birth to a litter of 13 joeys which we were honored to watch for several weeks. The pleasure of getting to observe these animals and to know that we have provided them a waystation gave us joy and hope for our urban community.

PLANNING FOR THE FUTURE

SEBS desires to include in the future a self guided tour display, pollinator info totems, two operating bee hives, a community bulletin board, seating area, litter clean up program, adopt a drain program to teach about Albany's water systems, and inclusion in the CDTA Free Nature Bus stop schedule for local families to gain transport to ecology sites outside of city limits. This is in addition to building onsite a larger milkweed habitat, free vegetable program, and native plant species garden. SEBS also has an outdoor classroom area where as Covid-19 restrictions are reduced, eco-educational programs will be expanded as well as off-site educational programs about the plight of monarchs.

The second annual Pollinator Day Celebration is planned for the second week of August 2022. This event must be carefully timed with the birth of the fourth generation of monarchs, who are the ones who will make the great journey to the monarch's winter home in Mexico's Central Highlands. SEBS will know at the end of the year if they are chosen as the winner of a guided trip to Mexico to see the Kingdom of the Monarchs. The

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contest is hosted by Earthkind.com, who creates pest control products that promote sustainability and preserve the ecosystem through the use of botanical ingredients. This trip would allow SEBS to share the full journey of monarchs, and give a real dimension to the tagging of butterflies so that we as a community care to follow our ALBANY MONARCHS and learn along the way. SEBS is located in a highly visible and high pedestrian trafficked area and will have active interaction throughout each season. (Watch video at www.youtube.com/watch?v=pJB2MkCwgDE)

As they say, "Never doubt that a small group of thoughtful committed individuals can change



the world. In fact, it's the only thing that ever has." In only three months our reach has touched about 160 locals in person, another 160 locals online, and 1.3k across America. We serve to be

an inspiration that it is ok to take steps even with no previous knowledge. To help the monarchs, it can start with one step- plant a milkweed. For if you build it, they will come.

Laura Rose is a resident of the South End of Albany and founder of SEBS, South End Butterfly Sanctuary. For more info and to get involved with the SEBS, go to Facebook SEBSofAlbanyNY.

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they can destroy the species's habitat damaging the species.

Mr. Ommen briefly described other litigation PELC has undertaken, often challenging agency decisions. These include suing the US Environmental Protection Agency for its failure to protect water in the NYC region and suing NYC for not reporting sewage overflows. PELC was part of the recent successful litigation against the NYS Department of Environmental Conservation after the state cut snowmobile trails in the Adirondacks. This case was won at the Court of Appeals which ruled DEC acted unconstitutionally and had adopted a too narrow interpretation of the "forever wild" clause contained in the NYS Constitution. He said PELC was active in the closure of the Indian Point nuclear electricity generating station and decommissioning.

Mr. Ommen said attorneys act within time constraints while courts often take their time rendering decisions. He said if the Hart decision goes against Hart (and SPB interests), PELC and SPB will await judgment in its SPB litigation. He said "we have a stronger case than Hart."

Mr. O'Connor said he would begin working in the DEC's general counsel office in September, to which Lynne joked "we might be suing you." Mr. O'Connor said he is "hoping I can impact the agency in a positive way."

So does Save the Pine Bush.

Proposed Developments to Watch

by Lynne Jackson

GUILDERLAND, NY: Save the Pine Bush is watching several proposals in the Pine Bush in Guilderland. These include the proposed Pyramid projects, one of which is a Costco with 18 gas pumps. With climate change a critical issue, the Town of Guilderland should not permit the construction of any fossil fuel infrastructure. Currently, SPB, represented by the Pace Environmental Law Clinic, has a lawsuit before the New York State Supreme Court over the approval of this development.

The Town of Guilderland has approved a proposal to build affordable housing on 11 acres of a 50 acre parcel of land in an area designated as "full protection" by the Albany Pine Bush Preserve Commission. The project is called "Pine Bush Senior Living" and no environmental impact statement was ever written.

A new project has been proposed — a 60-acre solar farm. Save the Pine Bush supports solar energy. However, to build a solar farm on Pine Bush ecosystem designated as a full protection area is simply unacceptable. Put solar panels on roofs! Put solar panels in parking lots! But, please, do not completely cover sixty acres of beautiful Pine Bush with solar panels. Build somewhere else — not in a unique ecosystem. The solar company proposing this project should go talk to the Pyramid corporation and see about building the solar farm on the roof of Crossgates Mall.

Save the Pine Bush always needs volunteers to attend public hearings, write letters, help with social media and organize to stop destruction of the Pine Bush. If you would like to volunteer, please contact Lynne Jackson at lynnejackson@mac.com.

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